

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE CARLOTZ, INC. SECURITIES  
LITIGATION

Lead Case No. 1:21-cv-05906-AS

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT  
AND PLAN OF ALLOCATION AND CERTIFICATION OF SETTLEMENT CLASS**

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Lead Plaintiff David Berger (“Lead Plaintiff”) respectfully submits this memorandum in support of his motion, pursuant to Fed. R. Civ. P. 23(e), for final approval of the Settlement and Plan of Allocation and certification of the Settlement Class.<sup>1</sup>

**I. INTRODUCTION**

After a hard-fought litigation, Lead Plaintiff has agreed to settle all claims brought against Defendants for an all-cash payment of \$13,000,000. The Settlement represents a strong recovery for the Settlement Class. While Lead Plaintiff and Lead Counsel believe the claims are meritorious, there are substantial challenges to establishing liability and damages. Further, even if Lead Plaintiff were to continue with the litigation and prevail at every future stage, it is possible he would not recover anything in light of CarLotz’s bankruptcy and rapidly wasting insurance coverage. The Settlement provides the proverbial “bird in hand”—a substantial, immediate, and guaranteed payment for Settlement Class Members.

Lead Plaintiff and Lead Counsel are well-positioned to evaluate the Settlement after nearly four years of litigating this Action. In the course of the litigation, Lead Plaintiff researched, investigated and drafted three amended complaints; opposed three motions to dismiss and presented oral arguments on two of Defendants’ motions to dismiss before two different federal judges; commenced discovery; prepared a motion for class certification supported by an expert report on market efficiency and damages (which was not filed in light of the Parties’ agreement in principle to settle as the deadline for the motion rapidly approached); participated in a full day mediation session before an experienced mediator, after which the Parties continued to litigate while negotiations continued – among other activities (discussed further *infra* and in the

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<sup>1</sup> The Settlement terms are set forth in the Stipulation and Agreement of Settlement (ECF No. 177; “Stipulation”), preliminarily approved on January 27, 2025. See ECF No. 178. All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation.

accompanying Declaration of Kim E. Miller (“Miller Decl.”) submitted herewith).<sup>2</sup> After this lengthy and contested litigation, Lead Plaintiff and Lead Counsel agree the Settlement is a very good result for the Settlement Class, particularly when the substantial risks of continued litigation are considered.

Lead Plaintiff also moves for approval of the proposed Plan of Allocation, which was developed in conjunction with Lead Plaintiff’s economics consultant and is designed to fairly and equitably distribute the Settlement proceeds to Settlement Class Members.

Finally, the Notice program, conducted under Lead Counsel’s supervision in accordance with the Preliminary Approval Order, constituted “the best notice . . . practicable under the circumstances,” satisfying Rule 23, the PSLRA, and due process, and has been dutifully carried out by Lead Counsel and the Claims Administrator to date. *See* Miller Decl. at ¶¶ 94-99. While the deadline to request exclusion or object to the Settlement has not yet passed,<sup>3</sup> to date, no exclusion requests or objections have been received. *Id.* at ¶¶ 101-102.

## **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

The initial complaint in this Action was filed on July 8, 2021. *See* ECF No. 1. Several additional complaints, alleging substantially similar claims, were subsequently filed and, on October 15, 2021, the Court consolidated the cases, appointed David Berger as Lead Plaintiff, and approved Lead Plaintiff’s selection of Kahn Swick & Foti, LLC (“KSF”) as Lead Counsel. *See* ECF Nos. 16, 40. Following an extensive investigation involving substantial legal and factual

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<sup>2</sup> The Miller Declaration and its exhibits are integral to this submission. Lead Plaintiff respectfully refers the Court to the Miller Declaration for a detailed description of, *inter alia*, the factual background and procedural history of the Action, the negotiations leading to the Settlement, the fairness and reasonableness of the Settlement, the risks and uncertainties of continued litigation, and the terms of the Plan of Allocation.

<sup>3</sup> The deadline for exclusions and objections is May 20, 2025. Lead Plaintiff will supplement this submission in his reply memorandum on June 3, 2025, in accordance with the Court’s Order. *See* ECF No. 178.

research, including the retention of a private investigator and consultation with an economics expert, Lead Plaintiff and Additional Plaintiff Craig Bailey (“Additional Plaintiff”)<sup>4</sup> filed an amended complaint (the “FAC”) on December 14, 2021 asserting claims against CarLotz, Michael W. Bor, Thomas W. Stoltz, Rebecca Polak, Acamar Partners Acquisition Corp., Acamar Partners Sponsor I LLC, Acamar Partners Sub, Inc., Luis Ignacio Solorzano Aizpuru, Juan Carlos Torres Carretero, James E. Skinner, Domenico De Sole, and Teck H. Wong for violations of Sections 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. ECF No. 47. The FAC alleged that between October 22, 2020, and May 26, 2021, CarLotz—a consignment-to-retail used car marketplace that went public on January 21, 2021, after merging with special purpose acquisition company (“SPAC”) Acamar—and certain executives of CarLotz or Acamar made materially false and misleading statements regarding key aspects of CarLotz’s business, operations, and financial results. The FAC further alleged that, when Defendants’ alleged misstatements and omissions were supposedly partially revealed on March 15, 2021, and May 10, 2021, and fully revealed on May 26, 2021, the Company’s share price declined.

After consulting with counsel for Defendants, Plaintiffs filed a second amended complaint (the “SAC”) on March 4, 2022, which, among other changes, dropped the Section 14(a) claim. ECF No. 54.

On June 21, 2022, Defendants jointly moved to dismiss the SAC. ECF No. 67. On December 9, 2022, while the motion to dismiss was pending, CarLotz announced it had merged with Shift Technologies, Inc. (“Shift”), with CarLotz continuing as a wholly-owned subsidiary of Shift.

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<sup>4</sup> At various points herein, Lead Plaintiff and Additional Plaintiff are referred to as “Plaintiffs.”

After extensive briefing, including a sur-reply to allow Plaintiffs to address the then-recent Second Circuit decision *Menora Mivtachim Ins. Ltd. v. Frutarom Indus.*, 54 F.4th 82 (2d Cir. 2022) (“*Frutarom IP*”), the Honorable Judge Ronnie Abrams held oral argument on Defendants’ motion on March 28, 2023. On March 31, 2023, Judge Abrams granted Defendants’ motion to dismiss the SAC, but granted Plaintiffs leave to amend. ECF No. 87. Relying on *Frutarom II*, the Court held that neither Lead Plaintiff nor Additional Plaintiff had standing to pursue Section 10(b) claims for pre-merger statements about pre-merger CarLotz. *See id.* at 9. Judge Abrams also dismissed Plaintiffs’ Section 11, 12(a)(2), and 15 claims on traceability and standing grounds. *Id.* at 11-16.

On May 1, 2023, Plaintiffs filed the operative TAC, which bolstered Plaintiffs’ claims, including detailed allegations supporting a fraudulent scheme in violation of Rules 10b-5(a) and (c). ECF No. 90. On July 18, 2023, Defendants filed a motion to dismiss the TAC along with a motion to strike certain allegations. ECF Nos. 95, 98. While briefing was underway, on August 25, 2023, the case was reassigned to the Honorable Judge Arun Subramanian. On October 11, 2023, CarLotz filed a notice of bankruptcy and suggestion of automatic stay. That same day, the Court ordered the case stayed pursuant to 11 U.S.C. 362. ECF Nos. 103, 106, 107. On October 20, 2023, Plaintiffs filed a motion to partially lift the bankruptcy stay as to Individual Defendants, which the Court granted on December 14, 2023. ECF Nos. 108, 125.

On March 7, 2024, the Court held a hearing on Defendants’ motion to dismiss and motion to strike. On March 29, 2024, the Court issued an order granting in part, and denying in part, Defendants’ motion to dismiss, and denying in full Defendants’ motion to strike. ECF No. 145. In summary, the Court dismissed Plaintiffs’ Section 10(b) claims based on pre-merger statements and Section 11 and 12 claims for substantially the same reasons as Judge Abrams’ previous opinion. ECF No. 145 at 4-5, 9. However, the Court sustained Plaintiffs’ Section 10(b) claims for a variety

of post-merger statements, including alleged misstatements regarding CarLotz's corporate sourcing partners, reconditioning costs, business model, and unit economics for the period January 21, 2021, through May 26, 2021, against Defendants Bor, Stoltz, and Solorzano and sustained a Section 20(a) control person claim against Bor. *Id.* at 23. The Court also sustained Plaintiffs' allegations premised on violations of Items 101 and 303 of Regulation S-K. *Id.* at 15-16. The Court also held that Plaintiffs adequately alleged scienter with respect to Solorzano, Bor, and Stolz. *Id.* at 18-22. Finally, the Court rejected Defendants' loss causation arguments as to each of the three alleged corrective disclosures. *Id.* at 22. As for Plaintiffs' scheme liability claim, the Court allowed additional briefing. *Id.* at 23-24. Individual Defendants filed a motion to dismiss the scheme claim on April 10, 2024, and after briefing, the Court granted the motion to dismiss the scheme liability claim on August 23, 2024. *See* ECF No. 155.

On August 29, 2024, the Court entered a Case Management Plan and Scheduling Order, which required all discovery to be completed by May 30, 2025. ECF No. 160. The Parties immediately began to conduct discovery, exchanging initial disclosures and propounding requests for production ("RFPs"). In anticipation of potential document production issues due to the sale of CarLotz and the bankruptcy of its successor, Shift, between September 24 and October 1, 2024, Lead Plaintiff served document subpoenas on 17 third-parties and met and conferred with many of these third-parties.

On September 5, 2024, the Court entered a Scheduling Order for Lead Plaintiff's Motion for Class Certification, requiring Lead Plaintiff's class certification opening brief and expert report(s) to be filed by November 29, 2024. ECF No. 164.

One of the seventeen subpoenaed third-parties produced documents to Lead Plaintiff on October 14, 2024. The next day, on October 15, 2024, the Parties participated in a full-day

mediation session with Jed Melnick of JAMS, a nationally recognized mediator. The mediation was not successful and discovery continued. The Parties served their responses and objections to the RFPs and Lead Plaintiff propounded interrogatories on Individual Defendants. Lead Plaintiff continued to meet-and-confer with subpoenaed third-parties and receive and review documents from additional third-parties. Between October 24 and October 30, 2024, three additional third-parties produced documents responsive to the subpoenas.

While pursuing discovery, Lead Plaintiff and Individual Defendants also continued settlement discussions on a parallel track, culminating in a mediator's proposal that was ultimately accepted by the Parties. Prior to execution of the Term Sheet, Lead Plaintiff continued working on his motion for class certification, including coordinating with his expert to prepare a report on market efficiency and class-wide damages methodology to support the motion. The motion for class certification was initially due November 29, 2024, but was extended to December 13, 2024. ECF No. 171. The Parties executed a Term Sheet on December 6, 2024, and informed the Court on December 9, 2024. ECF No. 173. The Stipulation was executed on January 24, 2025. ECF No. 177.

Under the terms of the Settlement, following preliminary approval, Individual Defendants caused \$13 million in cash to be paid by their insurers into an interest-bearing escrow account. *See* Miller Decl. at ¶ 63. Upon final approval, the Net Settlement Fund (*i.e.*, the Settlement Amount, plus interest, minus fees, costs, and expenses approved by the Court) will be distributed to Authorized Claimants in accordance with the Plan of Allocation. *See id.* at ¶ 64. In return, Settlement Class Members will dismiss, with prejudice, all claims that were, or could have been brought, against Defendants. *See id.* at ¶ 63.

### III. ARGUMENT

#### A. The Settlement Warrants Final Approval

“In the Second Circuit, ‘[t]here is a strong judicial policy in favor of settlements, particularly in the class action context.’” *McIntosh v. Katapult Holdings, Inc.*, No. 21-cv-07251, 2024 U.S. Dist. LEXIS 226619, at \*14 (S.D.N.Y. Dec. 13, 2024) (citing *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 330 (E.D.N.Y. 2010)). In determining whether to approve a settlement, the Court should consider “both the process by which the settlement was negotiated and the substantive fairness of the agreed-upon terms in light of the circumstances of the litigation.” *In re NQ Mobile, Inc. Secs. Litig.*, No. 13-cv-7608, 2016 U.S. Dist. LEXIS 189606, at \*6 (S.D.N.Y. Mar. 11, 2016). Courts should “not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Further, “courts should give proper deference to the private consensual decision of the parties” [and] “should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation . . . .” *Christine Asia Co. v. Jack Yun Ma*, No. 15-md-02631, 2019 U.S. Dist. LEXIS 179836, at \*35 (S.D.N.Y. Oct. 16, 2019) (citation omitted). “Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.” *Lea v. Tal Educ. Grp.*, No. 18-cv-5480, 2021 U.S. Dist. LEXIS 229314, at \*20 (S.D.N.Y. Nov. 30, 2021) (quoting *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05-cv-10240, 2007 U.S. Dist. LEXIS 57918, at \*12 (S.D.N.Y. July 27, 2007)).

Courts assessing approval are to consider whether: (A) class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, (iii) the terms of any proposed award of attorneys’ fees, and (iv) any agreement required to be

identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. FED. R. CIV. P. 23(e)(2). Before the 2018 amendments to Rule 23, courts in the Second Circuit considered whether a settlement was fair, reasonable, and adequate under the nine factors set out in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974):

(1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of proceedings and amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class through trial; (7) the defendants' ability to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

(internal citations omitted). “All nine factors need not be satisfied; the court must look at the totality of these factors in light of the specific circumstances involved.” *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-cv-8557, 2014 U.S. Dist. LEXIS 177175, at \*14 (S.D.N.Y. Dec. 19, 2014). The new Rule 23(e)(2) factors “add to, rather than displace, the *Grinnell* factors,” and several factors can be examined in tandem. *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 29 (E.D.N.Y. 2019); *see also* 2018 Advisory Comm. Notes to FED. R. CIV. P. 23, subdiv. (e)(2).

As discussed below, an analysis of the relevant factors demonstrates that the Settlement merits final approval. Further, the accompanying Motion for Attorneys' Fees demonstrates that Lead Counsel's request for 33<sup>1/3</sup>% of the Settlement Fund is fair and reasonable, thereby satisfying Rule 23(e)(2)(C)(iii).

### **1. Lead Plaintiff and Lead Counsel Have Zealously Represented the Class**

“Generally, adequacy of representation entails inquiry as to whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation.” *Baffa v. Donaldson, Lufkin & Jenrette*

*Sec. Corp.*, 222 F.3d 52, 60 (2d Cir. 2000).

Plaintiffs' interests are not antagonistic to the interests of other members of the Settlement Class. Further, Lead Plaintiff oversaw the litigation, and both Plaintiffs communicated with Lead Counsel on a regular basis and were fully engaged in the settlement process. *See* Miller Decl. at ¶¶ 163-164. This active participation reinforces the reasonableness of the Settlement. *See EVCI*, 2007 U.S. Dist. LEXIS 57918, at \*11-12 (“A settlement reached under the supervision of appropriately selected lead plaintiffs is entitled to an even greater presumption of reasonableness.”).

Lead Plaintiff also retained Lead Counsel who are highly experienced in securities litigation, have a long and successful track record representing investors in such cases, and have negotiated many securities class action settlements, which settlements have been approved by courts across the country. *See, e.g.*, Miller Decl. at Ex. D (KSF Firm Resumé). Therefore, Lead Plaintiff, along with Additional Plaintiff, and Lead Counsel have put themselves and the Settlement Class in the best “position to realistically evaluate the strengths and weaknesses of the claims, and to evaluate the fairness of the proposed Settlement.” *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04-cv-8144, 2009 U.S. Dist. LEXIS 120953, at \*20 (S.D.N.Y. Dec. 23, 2009). Armed with their knowledge of the strengths and weaknesses of this case, they were able to negotiate a favorable settlement that provides a significant recovery to Settlement Class Members.

**2. The Settlement Was Reached After Substantial Litigation and Arm's-Length Negotiations Between Experienced Counsel with the Assistance of an Experienced Mediator**

“[A] class action settlement enjoys a strong ‘presumption of fairness’ where it is the product of arm's-length negotiations concluded by experienced, capable counsel after meaningful

discovery.”<sup>5</sup> *In re Adv. Battery Techs. Sec. Litig.*, 298 F.R.D. 171, 175 (S.D.N.Y. 2014) (citing *Wal-Mart Stores, Inc. v. VISA USA Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)). Courts should give “proper deference to the private consensual decision of the parties” and bear in mind “the unique ability of class and defense counsel to assess the potential risks and rewards of litigation.” *Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405, 2015 U.S. Dist. LEXIS 121574, at \*17 (S.D.N.Y. Sept. 9, 2015) (quoting *Clark v. Ecolab, Inc.*, No. 07-cv-8623, 2009 U.S. Dist. LEXIS 108736, at \*14 (S.D.N.Y. Nov. 17, 2009)).

Here, the litigation was sufficiently advanced to provide the Parties with a thorough understanding of the strengths and weaknesses of their claims. Prior to entering into the Settlement, Lead Plaintiff, by and through Lead Counsel: prepared three amended complaints, briefed three rounds of motions to dismiss; presented oral arguments on Defendants’ motions to dismiss before two different federal judges; prepared (but did not file) a motion for class certification supported by an expert report on market efficiency and class-wide damages methodology; propounded written discovery requests; served seventeen third-party document subpoenas and met and conferred with many of these third-parties; analyzed preliminary documents produced by Individual Defendants and third-parties; began responding to Individual Defendants’ discovery requests; participated in a full day mediation session and follow up negotiations. *See* Miller Decl. at ¶ 6. Based on the foregoing, Lead Plaintiff and Lead Counsel were eminently knowledgeable about the strengths and weaknesses of the Action prior to the Settlement.

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<sup>5</sup> This prong of 23(e)(2)(B) also encompasses the third *Grinnell* factor, which assesses “whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff’s claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs’ causes of action for purposes of settlement.” *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, No. 12-md-2389, 2015 U.S. Dist. LEXIS 152668, at \*11 (S.D.N.Y. Nov. 9, 2015), *aff’d.*, 674 F. App’x 37 (2d Cir. 2016) (citation omitted).

While discovery was at a relatively early stage, documents reviewed by Lead Counsel provided some support for Lead Plaintiff's case. Indeed, courts have approved settlements where less, or even no, discovery had taken place. *See, e.g., In re Y-Mabs Therapeutics, Inc. Sec. Litig.*, No. 23-cv-431, 2024 U.S. Dist. LEXIS 226526, at \*4 (S.D.N.Y. Oct. 29, 2024) & ECF No. 61 at 2, 9-10 (Subramanian, J.) (settlement approved at early stages of discovery); *In re N. Dynasty Minerals Ltd. Sec. Litig.*, No. 20-cv-5917, 2024 U.S. Dist. LEXIS 14438, at \*30 (E.D.N.Y. Jan. 26, 2024) ("Although the parties have not engaged in formal discovery, the record demonstrates that Plaintiffs' counsel have thoroughly investigated the strengths and weaknesses of the claims and conducted extensive legal research in opposing the motion to dismiss."); *McIntosh*, 2024 U.S. Dist. LEXIS 226619, at \*29 ("While the parties have not engaged in extensive discovery, it is clear from the parties' briefing and representations at the fairness hearing that they were able to exchange information needed to properly evaluate the claims.").

Further, Individual Defendants were represented by highly capable and experienced attorneys from Freshfields US LLP, who zealously represented their clients. *See Miller Decl.* at ¶ 141. As a result, counsel "had a strong grasp of the strengths and weaknesses of the case when negotiating and evaluating the proposed Settlement . . . ." *NJ Carpenters Health Fund v. Royal Bank of Scotland Grp., PLC*, No. 08-cv-5310, 2019 U.S. Dist. LEXIS 39807, at \*15 (S.D.N.Y. Mar. 8, 2019), *aff'd*, 28 F.4th 357 (2d Cir. 2022).

In addition, the Settlement was reached through arm's-length negotiation, which included a full-day mediation session before an experienced securities mediator, Jed D. Melnick of JAMS. *See In re 3D Sys. Sec. Litig.*, No. 21-cv-1920, 2023 U.S. Dist. LEXIS 217637, at \*6 n.2 (E.D.N.Y. Dec. 5, 2023) (collecting cases noting Mr. Melnick is "a highly qualified mediator"). The hard fought, arm's-length negotiations and involvement of an experienced mediator "helps to ensure

that the proceedings were free of collusion and undue pressure.” *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). Lead Plaintiff also had the benefit of attorneys who are highly experienced in complex securities litigation and deeply familiar with the legal and factual issues of the case. *See* Miller Decl. at Ex. D (KSF Firm Resumé). Lead Counsel’s belief that the Settlement is in the best interest of the Settlement Class (*see id.* at ¶ 92) “is entitled to “great weight.” *In re Signet Jewelers Ltd. Sec. Litig.*, No. 16-cv-06728-CM, 2020 U.S. Dist. LEXIS 128998, at \*10 (S.D.N.Y. July 21, 2020) (citation omitted). Further, the highly-experienced mediator who conducted the Parties’ mediation, Mr. Melnick, also submits that the Settlement was a product of extensive, informed, and vigorous negotiations conducted at arm’s length and in good faith by the Parties. *See* Miller Decl. at Ex. E (Declaration of Jed Melnick).

### **3. The Relief Provided to the Class Is Adequate**

#### **a. The Complexity, Expense, and Likely Duration of Litigation**

“[I]n evaluating the settlement of a securities class action, federal courts . . . ‘have long recognized that such litigation is notably difficult and notoriously uncertain.’” *Signet Jewelers*, 2020 U.S. Dist. LEXIS 128998, at \*11 (citation omitted); *see also Maley v. Del Glob. Techs. Corp.*, 186 F.Supp. 2d 358, 372 (S.D.N.Y. 2002) (“A securities case such as this one, ‘by its very nature, is a complex animal . . . .’”) (citation omitted). Lead Plaintiff had a heavy burden to convince a jury that Individual Defendants made material misrepresentations, acted with scienter (for the Exchange Act claims), and that the artificial inflation in CarLotz securities and subsequent declines in the prices of CarLotz securities were attributable to disclosures of information revealing the fraud. *See Maley*, 186 F. Supp. 2d at 372 (discussing “factual and legal hurdles” in establishing securities fraud case). This is especially true in this case where Individual Defendants have argued their statements were not false, but merely a product of the complicated macroeconomic effects of the COVID-19 pandemic on the auto industry, something some jurors may have experienced first-

hand. *See Kataput Holdings*, 2024 U.S. Dist. LEXIS 226619, at \*28 (difficulty of proving securities allegations heightened when the case involved “a niche business that was affected by complex economic factors”).

The complexity of this action was also heightened by CarLotz merging with Shift, which successor company then filed for bankruptcy in the middle of litigation. “[T]he courts have repeatedly recognized that a defendant’s bankruptcy in securities cases adds substantially to the difficulties and risks facing plaintiff’s counsel in achieving a recovery for a class.” *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-7192, 2019 U.S. Dist. LEXIS 218116, at \*25 (S.D.N.Y. Dec. 18, 2019) (citation omitted); *see also In re Fine Host Corp. Sec. Litig.*, No. 97-cv-2619, 2000 U.S. Dist. LEXIS 19367, at \*15 (D. Conn. Nov. 8, 2000) (“As the court found in approving the settlement, this case involved many complex issues, particularly after [defendant] declared bankruptcy, which threatened the plaintiffs’ chances for a successful recovery.”).

Continued litigation “likely would have wasted the limited available insurance.” *EVCI*, 2007 U.S. Dist. LEXIS 59718, at \*29. Completion of discovery would be lengthy, contentious, and expensive, as it would involve reviewing potentially hundreds of thousands of documents and travelling to take numerous depositions. Further, class certification would have been vigorously disputed, and regardless of the outcome, would possibly have resulted in a Rule 23(f) petition. In addition, all Parties would have relied on multiple experts to produce reports and testify on complex issues, including loss causation and damages, and either Party might have challenged the other’s expert(s) with a *Daubert* motion. *See McIntosh*, 2024 U.S. Dist. LEXIS 226619, at \*31 (expert testimony “creates further litigation risk and uncertainty, particularly if expert testimony is subject to a *Daubert* motion.”). Assuming Lead Plaintiff was successful at class certification, Individual Defendants would likely move for summary judgment and, even if Lead Plaintiff

succeeded there, he nevertheless would have faced substantial risks at trial, with respect to both liability and damages. Moreover, even if Lead Plaintiff won at trial, “[d]elay, not just at the trial stage but through post-trial motions and the appellate process, would cause Class Members to wait years for any recovery, further reducing its value.” *Maley*, 186 F. Supp. 2d at 362; *see also In re Flag Telecom Holdings*, No. 02-cv-3400, 2010 U.S. Dist. LEXIS 119702, at \*44 (S.D.N.Y. Nov. 5, 2010) (noting “substantial” costs and duration of trial, post-trial motions, and appeals).

“Even very large judgments recovered after lengthy litigation and trial can be completely lost on appeal or because of post-trial motion practice. This is especially true of securities class actions, where intervening shifts in legal standards have undermined trial victories.” *Pearlstein v. BlackBerry Ltd.*, No. 13-cv-7060, 2022 U.S. Dist. LEXIS 177786, at \*9 (S.D.N.Y. Sept. 29, 2022); *see also Glickenhau & Co. v. Household Int’l, Inc.*, 787 F.3d 408, 414, 433 (7th Cir. 2015) (reversing and remanding \$2.46 billion jury verdict after 13 years of litigation on loss causation grounds and error in jury instruction in light of intervening Supreme Court case); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011), *aff’d*, 838 F.3d 223 (2d Cir. 2016) (Supreme Court decision after entry of billion-dollar verdict reduced award to approximately \$78 million).

The Settlement provides the Settlement Class with guaranteed and substantial relief *now*, without the delay, risk, and expense of continued litigation, and therefore should be approved. *See, e.g., Sillerman*, 2019 U.S. Dist. LEXIS 218116, at \*30 (“In considering the reasonableness of the Settlement, the Court should also consider that the Settlement provides for payment to the Class now, rather than a speculative payment potentially many years down the road.”) (citations omitted); *Strougo v. Bassini*, 258 F.Supp. 2d 254, 260 (S.D.N.Y. 2003) (“Much of the value of a settlement lies in the ability to make funds available promptly.”).

b. The Risks of Establishing Liability and Damages

This factor “does not require the Court to adjudicate the disputed issues or decide unsettled questions; rather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement.” *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004). In other words, “[i]n assessing the Settlement, the Court should balance the benefits afforded to members of the Class and the immediacy and certainty of a substantial recovery for them against the continuing risks of litigation.” *Castagna v. Madison Square Garden, L.P.*, No. 09-cv-10211, 2011 U.S. Dist. LEXIS 64218, at \*17 (S.D.N.Y. June 7, 2011) (citation omitted). Courts should “approve settlements where plaintiffs would have faced significant legal and factual obstacles to proving their case.” *Glob. Crossing*, 225 F.R.D. at 459.

“Courts routinely recognize that securities class actions present hurdles to proving liability that are difficult for plaintiffs to clear.” *Flag Telecom*, 2010 U.S. Dist. LEXIS 119702, at \*48. While Lead Plaintiff was eventually successful in part at the pleading stage, some of his claims did not survive – increasing the difficulty of proving liability. *See In re Tenaris S.A. Sec. Litig.*, No. 18-cv-7059, 2024 U.S. Dist. LEXIS 72980, at \*22 (E.D.N.Y. Apr. 22, 2024) (noting risk is heightened when the Court “has already narrowed Lead Plaintiffs’ claims” at the motion to dismiss phase, “including by dismissing several of the original Defendants”). Individual Defendants vehemently dispute that their alleged statements or omissions were materially false or misleading would continue to do so at summary judgment and at trial. While the Court partially rejected those arguments at the dismissal stage, further discovery may have strengthened them at summary judgment or trial.

Further, Lead Plaintiff faced a “substantial risk involved in proving scienter, because it goes directly to a defendant’s state of mind, and proof of state of mind is inherently difficult.” *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001); *Christine Asia*, 2019

U.S. Dist. LEXIS 179836, at \*46 (S.D.N.Y. Oct. 16, 2019) (“Proving scienter is hard to do.”). Lead Plaintiff believes discovery would have revealed significant evidence of Defendants’ scienter, but Individual Defendants no doubt saw things differently. *See* Miller Decl. at ¶ 87; ECF No. 96 at 46-58; *see also Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at \*46 (“As with falsity, although Plaintiffs uncovered significant evidence that they believe supported a finding of Defendants’ scienter, Defendants would have marshalled substantial evidence in opposition.”). For example, in *In re Tesla, Inc. Sec. Litig.*, despite the court granting partial summary judgment in favor of plaintiffs on falsity and scienter, after a three-week trial and only a few hours of deliberations, the jury found in favor of Tesla primarily based on the testimony of CEO Elon Musk, and the Ninth Circuit affirmed the verdict on appeal.<sup>6</sup> No. 18-cv-4865, 2022 U.S. Dist. LEXIS 88609 (N.D. Cal. Apr. 1, 2022) & ECF Nos. 671, 685, 697, 707. After over four years of hard-fought litigation, Tesla investors received nothing – exemplifying the risks and difficulty of proving liability.

Even if Lead Plaintiff established liability, he faced significant risks in proving loss causation and damages. Establishing loss causation is a “complicated and uncertain process, typically involving conflicting expert opinion[s].” *Glob. Crossing*, 225 F.R.D. at 459; *see also In re Citigroup, Inc.*, 965 F. Supp. 2d 369, 383 (S.D.N.Y. 2013) (highlighting difficulty in proving loss causation). While Lead Plaintiff is confident he would establish loss causation, Individual Defendants would likely argue the alleged misstatements had no price impact and the alleged corrective disclosures were not, in fact, “corrective.” *See, e.g.*, ECF No. 96 at 60-62; *see also Vaccaro v. New Source Energy Partners L.P.*, No. 15-cv-8954, 2017 U.S. Dist. LEXIS 205785, at

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<sup>6</sup> *See, e.g.*, Bonnie Eslinger, *Tesla Jury Clears Musk In \$12B ‘Take Private’ Tweet Trial*, LAW360, Feb. 3, 2023, <https://www.law360.com/articles/1572558/tesla-jury-clears-musk-in-12b-take-private-tweet-trial>.

\*16 (S.D.N.Y. Dec. 14, 2017) (“Plaintiffs may have been unable to prove that Defendants’ misleading statements were the cause of Plaintiffs’ losses . . . .”). Further, “[t]he determination of damages, like the determination of liability, is a complicated and uncertain process . . . .” *Maley*, 186 F. Supp. 2d at 365; *see also Signet Jewelers*, 2020 U.S. Dist. LEXIS 128998, at \*31 (noting various risks to proving damages). If this case proceeded to trial, Lead Plaintiff would attempt to prove Individual Defendants’ alleged misrepresentations artificially inflated the price of CarLotz shares by a certain amount throughout the Class Period, causing losses to Class Members who held their stock through a corrective disclosure. Individual Defendants would argue the amount of inflation, if any at all, was far lower. “These disputes would involve at trial a ‘battle of the experts,’ and a ‘jury could be swayed by experts for the Defendants, who [c]ould minimize the amount of Plaintiffs’ losses.’” *BlackBerry*, 2022 U.S. Dist. LEXIS 177786, at \*16 (citing *In re Bear Stearns Cos. Inc. Sec., Deriv. & ERISA Litig.*, 909 F. Supp. 2d 259, 266-268 (S.D.N.Y. 2012)).

Then, only if Lead Plaintiff obtained a favorable verdict, a claims process would use the inflation number determined by the jury to calculate damages for each Class Member who submits a valid, timely claim. Lead Plaintiff’s maximum estimated damages assumes not only that a jury would adopt the maximum inflation for each day of the Class Period, but that every Class Member would submit a timely, valid claim representing each damaged share of CarLotz stock. Thus, recovering Lead Plaintiff’s maximum damages is unlikely (even if the Company had not gone bankrupt and wasted its coverage litigating through trial). “When the benefits of the guaranteed recoveries from Defendants are weighed against the risks of continued litigation, approval of the Settlement is warranted.” *EVCI*, 2007 U.S. Dist. LEXIS 57918, at \*29.

c. The Risks of Maintaining Class Certification

In the absence of Settlement, Defendants would have likely opposed certification of a litigation class and would very likely have submitted an expert report challenging price impact and

potentially market efficiency. While Lead Plaintiff expected to succeed in certifying a litigation class, there is a risk the Court could agree with Defendants and deny certification, which would have prevented recovery for Class members. Further, “[FRCP] 23(c) authorizes a court to decertify a class at any time.” *Adv. Battery*, 298 F.R.D. at 178. Accordingly, the risks and uncertainties of maintaining a class (and for the entire Class Period) supports approval of the Settlement. *See id.*; *see also Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-cv-2207, 2010 U.S. Dist. LEXIS 79679, at \*12 (S.D.N.Y. Aug. 6, 2010) (holding this risk weighed in favor of approval).

d. The Range of Reasonableness of the Settlement Fund

Courts typically analyze the last two *Grinnell* factors together, “consider[ing] and weigh[ing] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.” *Grinnell*, 495 F.2d at 462-63. This “does not involve the use of a mathematical equation yielding a particularized sum.” *Bear Stearns*, 909 F. Supp. 2d at 269. Instead, “[t]here is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Wal-Mart*, 396 F.3d at 119. Further, “that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” *Grinnell*, 495 F.2d at 455.

The Settlement here is a highly favorable result for the Settlement Class: \$13,000,000 in cash plus interest, less Court-awarded fees and expenses. The Settlement is particularly reasonable when juxtaposed against the significant obstacles that Lead Plaintiff would need to overcome, as it provides an immediate, tangible, and significant benefit to the Settlement Class now. *See Teachers’ Ret. Sys. v. ACLN Ltd.*, No. 01-cv-11814, 2004 U.S. Dist. LEXIS 8608, at \*1 (S.D.N.Y. May 14, 2004) (“Given the obstacles and uncertainties attendant to this complex litigation, the

proposed Settlement is within the range of reasonableness, and is unquestionably better than the other likely possibility -- little or no recovery.”); *see also Sillerman*, 2019 U.S. Dist. LEXIS 218116, at \*30 (considering how immediate payment to the class, “rather than a speculative payment potentially many years down the road” favors approval).

The absolute highest recoverable damages as estimated by Lead Plaintiff’s damages expert is \$126 million (*see Miller Decl.* at ¶ 72); however, this number is essentially unattainable because it “assume[s] complete victory on both liability and damages as to all class members on every claim asserted against each defendant in the Action.” *ACLN*, 2004 U.S. Dist. LEXIS 8608, at \*14-15.<sup>7</sup> At any rate, the Settlement represents more than 10% of the maximum damages were Lead Plaintiff to succeed on every element of his case, which is an excellent result for the Settlement Class. *See Tenaris*, 2024 U.S. Dist. LEXIS 72980, at \*25 (approving a settlement that “represents 4.02-5.01% of the total estimated ‘best-case’ recovery”); *N. Dynasty Minerals.*, 2024 U.S. Dist. LEXIS 14438, at \*34 (approving settlement representing approximately 2.3% of maximum estimated damages); *Initial Pub. Offering*, 671 F. Supp. 2d at 483-84 (approving settlement representing approximately 2% of aggregate damages). According to research collected by the National Economic Research Associates (“NERA”), the median ratio of total losses to settlement amount from January 2015 to December 2024, in cases where the total estimated damages ranged from \$100 million to \$199 million, was just 3%, and, in 2024, the median ratio of settlement

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<sup>7</sup> *See also* Catherine Galley, Erin McGlogan & Peirrick Morel, *Approved Claims Rates in Securities Class Actions*, Law360 Expert Analysis (April 10, 2017), <https://www.law360.com/articles/911463/approved-claims-rates-in-securities-class-actions> (“Aggregate damages estimates are likely to differ from the total amount of approved claims resulting from any judgment in favor of plaintiffs for a number of reasons. As a foundational matter, plaintiff-style aggregate damages estimates assume the plaintiffs prevail on their initial allegations regarding class period and the amount of inflation in the defendant company’s shares during the class period.”).

amount to investor losses was just 1.2%. *See* Miller Decl., Ex. A, at 26-27. Based on these figures, the Settlement achieved in this case is significantly above average.

Lead Plaintiff’s economics consultant’s estimate that a maximum of 58.1 million shares of CarLotz common stock were damaged throughout the Class Period (ECF No. 177-2 at 4) is similarly academic. Based on the most conservative estimate, however, if claimants were to submit claims for *each* of those 58.1 million potentially damaged shares, they would recover approximately \$0.22 per share (before deduction of attorneys’ fees and expenses), on average ( $\$13,000,000 / 58,100,000 = \$0.22$ ).<sup>8</sup> This assumes both a perfect notice plan and a 100% claims rate, which are virtually unachievable in securities class action settlements. *See BlackBerry*, 2022 U.S. Dist. LEXIS 177786, at \*19 (“[A]s in any securities class action, it is almost certain that less than 100% of eligible Class Members will file claims . . . accordingly, the percentage of damages that claiming Class Members will recover will likely be higher—and could be significantly higher.”); *In re Celera Corp. Sec. Litig.*, No. 10-cv-2604, 2015 U.S. Dist. LEXIS 42228, at \*11 (N.D. Cal. Mar. 31, 2015) (court-appointed claims administrator estimating typical claims rates between 20-30% of all eligible shares).<sup>9</sup> Thus, assuming a claims rate of 30% of *maximum*

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<sup>8</sup> As explained in the Notice and Plan of Allocation, shares of Acamar common stock are eligible for recovery, notwithstanding the Court’s March 29, 2024 Order dismissing claims predicated on the purchase or acquisition of Acamar stock prior to its de-SPAC merger with CarLotz on January 22, 2021. *See* ECF No. 177-2 at 3, 10-13. Because Settlement Class Members who made purchases before January 22, 2021 (unless they exclude themselves) will be bound by the releases of the Settlement, a nominal inflation of \$0.05 has been assigned to that period. *See* Miller Decl. at ¶ 110 & n.4.

<sup>9</sup> In fact, empirical analysis suggests that for securities class action settlements of \$20 million and below, “estimated damages are significantly larger than approved claims.” Narinder Walia & Adam Werner, *Validating Aggregate Securities Class Damage Estimates*, Law360 Expert Analysis (Feb. 24, 2021), <https://www.law360.com/articles/1356593/validating-aggregate-securities-class-damage-estimates>. Experts have theorized that because “there is greater institutional ownership in these large companies and institutions are more likely to have systems in place for filing properly documented claims,” “damaged investors are more likely to file claims in larger cases than in smaller cases.” *Id.*

estimated damaged shares, the average recovery before deduction of fees and expenses is approximately \$0.75 per share ( $\$13,000,000 / 17,430,000 = \$0.75$ ). Finally, the estimated “average” per share recovery is just that—an estimate of an average—as calculation of each Claimant’s Recognized Loss is necessarily individualized and considers when he or she bought CarLotz common stock, for how much, when he or she sold them, and for how much.

Moreover, given CarLotz’s bankruptcy and rapidly wasting insurance coverage, even if Lead Plaintiff were able to prevail at all future stages of the litigation on all claims, any victory would be pyrrhic because the Settlement Class would almost certainly recover far less, or nothing at all. These additional risks weigh in favor of approval. *See Tenaris*, 2024 U.S. Dist. LEXIS 72980, at \*26 (“The proposed settlement provides the class with a degree of certainty and immediacy that protracted litigation and further enforcement proceedings could significantly compromise.”); *Signet Jewelers*, 2020 U.S. Dist. LEXIS 128998, at \*37 (even if plaintiff had obtained maximum possible judgment, “there is no assurance that the Company could have satisfied it”); *EVCI*, 2007 U.S. Dist. LEXIS 57918, at \*28-29 (approving settlement where company could not satisfy judgment due to poor financial condition and continued litigation would have wasted remaining insurance); *ACLN Ltd.*, 2004 U.S. Dist. LEXIS 8608, at \*15-16 (approving settlement “for an amount significantly less than” expected damages where further litigation and defense costs “might have consumed in its entirety the proceeds of the insurance policy, the only meaningful source of recovery”); *Maley*, 186 F.Supp. 2d at 365 (approving settlement providing class with maximum available cash, in light of limited insurance and company’s poor cash position and possible imminent bankruptcy: “given that the Company was and remains in difficult financial straits...the relatively quick settlement provides a certain benefit to the Class and a benefit to the Company and its current shareholders”).

e. The Proposed Plan of Allocation

The Plan of Allocation, prepared in consultation with an expert economist, is effective, treats all Settlement Class Members equitably, and should be approved. *See infra* at §III.C.

f. The Supplemental Agreement

The Supplemental Agreement allows Defendants to terminate the Settlement if Settlement Class Members with a certain aggregate number of shares who meet certain criteria exclude themselves. *See* ECF No. 177 at ¶32. The specific terms of the Agreement are confidential to protect the Settlement Class and “avoid creating incentives for a small group of investors to opt out solely to leverage the threshold to exact an individual settlement.” *In re PPD AI Grp. Inc. Sec. Litig.*, No. 18-cv-6716, 2022 U.S. Dist. LEXIS 11427, at \*34-35 (E.D.N.Y. Jan. 21, 2022); *see also Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at \*54 (endorsing this “standard” agreement). The Parties are happy to provide the Supplemental Agreement to the Court for *in camera* review, if requested.

g. The Remaining Grinnell Factors Confirm the Settlement Is Fair

i. *Individual Defendants’ Ability to Withstand a Greater Judgment*

Individual Defendants likely could not have withstood a greater judgment, as CarLotz could not indemnify them by virtue of the bankruptcy proceeding, there are very limited remaining insurance proceeds to cover Lead Plaintiff’s claims, and it is Lead Plaintiff’s understanding after investigation that Individual Defendants could not contribute meaningfully to any judgment. *See Sillerman*, 2019 U.S. Dist. LEXIS 218116, at \*27 (that D&O insurance policies were a wasting asset, several defendants were in bankruptcy, and opt-out plaintiffs had to be paid from same insurance, weighed in favor of approval); *Maley*, 186 F. Supp. 2d at 365 (in view of defendant’s “dire financial condition” and wasting of insurance, “obtaining a greater recovery than provided by the Settlement would have been difficult”); *ACLN* 2004 U.S. Dist. LEXIS 8608, at \*12-13

(approving settlement where “overriding consideration driving the settlement negotiations was the inability of the Settling Defendants to contribute in any meaningful way to a recovery by the Class. The Company was defunct and the individual settling defendants did not have any meaningful resources to satisfy a judgment,” and “the only meaningful source of recovery, the insurance policy, would in all likelihood have been substantially reduced or exhausted” by further litigation). Even if Individual Defendants could withstand a greater judgment, which is very unlikely here, “this would not be an impediment to settlement when the other factors favor the settlement.” *Hi-Crush*, 2014 U.S. Dist. LEXIS 177175, at \*24 (citation omitted).

*ii. The Reaction of the Settlement Class*

The reaction of the Settlement Class is a factor to weigh when considering the adequacy of the Settlement *See, e.g., City of Providence v. Aéropostale, Inc.*, No. 11-cv-7132, 2014 U.S. Dist. LEXIS 64517, at \*15 (S.D.N.Y. May 9, 2014), *aff’d sub nom. Arbuthnot v. Pierson*, 607 F. App’x 73 (2d Cir. 2015). While the reaction of the class will be further addressed on reply, to date, no exclusion requests or objections have been received. *See Miller Decl.* at ¶¶ 101-102. “The overwhelmingly positive response to date by the Class attests to the approval of the Class with respect to both the Settlement and the fee and expense application.” *Flag Telecom*, 2010 U.S. Dist. LEXIS 119702, at \*86.

**B. The Court Should Finally Certify the Settlement Class**

The Court’s Preliminary Approval Order certified the Settlement Class for settlement purposes only. *See ECF No. 178* at ¶ 1. There have been no changes to alter the propriety of this Order. Thus, Lead Plaintiff respectfully requests that the Court affirm its determinations and finally certify the Settlement Class under Fed. R. Civ. P. 23(a) and (b)(3).

**C. The Plan of Allocation Should Be Approved**

“To warrant approval, the plan of allocation must also meet the standards by which the

settlement was scrutinized—namely, it must be fair and adequate.” *EVCI*, 2007 U.S. Dist. LEXIS 57918, at \*32 (citation omitted). This does not mean that the plan must be “perfect”; rather, “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *Id.* (citation omitted).

The proposed Plan of Allocation was developed by Lead Counsel after consultation with an expert economist. *See* Miller Decl. at ¶ 106. A Recognized Loss will be calculated for each purchase or acquisition of CarLotz and/or Acamar common stock purchased or acquired during the Settlement Class Period listed on the Claim Form for which adequate documentation is provided. Recognized Loss is based on the difference between estimated alleged artificial inflation on the purchase date and the estimated alleged artificial inflation on the sale date. *See id.* at ¶¶ 108-111. A Claimant’s Recognized Claim is the sum of his or her Recognized Loss amounts, and the Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of Recognized Claims. *See id.* at ¶ 113. Because the Proposed Plan of Allocation fairly and rationally allocates the proceeds of the Net Settlement Fund among Settlement Class Members based on the losses they suffered on transactions in CarLotz and/or Acamar common stock attributable to the conduct alleged, it should be approved as fair and reasonable. Moreover, the Plan of Allocation is set forth in detail in the Notice and no objections have yet been received (*see id.* at ¶ 116), which also weighs in favor of approval. *See Flag Telecom*, 2010 U.S. Dist. LEXIS 119702, at \*64.

**D. The Notice Complied with Rule 23, the PSLRA, and Due Process**

The Court-approved notice included all the information required by Rule 23(c)(2)(B) and the PSLRA, 15 U.S.C. § 78u-4(a)(7), including: (i) an explanation of the nature of the Action and the claims asserted; (ii) the definition of the Settlement Class; (iii) the amount of the Settlement; (iv) a description of the Plan of Allocation; (v) the Parties’ reasons for proposing the Settlement;

(vi) the attorneys' fees and costs sought; (vii) how to opt-out of the Settlement Class; (viii) how to object to the Settlement, Plan of Allocation, or the requested attorneys' fees or expenses; and (ix) the binding effect of a judgment. *See* ECF No. 177-2; *see also Signet Jewelers*, 2020 U.S. Dist. LEXIS 128998, at \*43. It also apprised Settlement Class Members about the final approval hearing, as did the Court's PACER entry and the Settlement website.

Epiq Class Action & Claims Solutions ("Epiq"), a nationally recognized claims administrator, is carrying out the Notice program under Lead Counsel's supervision. As the Court ordered, as of May 9, 2025, Epiq has sent out 42,618 total mailings to potential Settlement Class Members and their brokers, including copies of the Postcard Notice and emails with links to settlement documents. *See* Miller Decl. at ¶ 97. The Summary Notice was also published twice: February 17, 2025 on *PR Newswire* and February 24, 2025 on *Business Wire*, directing potential Settlement Class Members to the Settlement website, which contains the Notice, Claim Form, Preliminary Approval Order, and other documents. *See id.* at ¶ 98; ECF No. 179 at ¶ 8. The Settlement Website, [www.carlotzsecuritieslitigation.com](http://www.carlotzsecuritieslitigation.com), is accessible 24 hours a day, seven days a week, and allows potential Settlement Class Members to submit their claim online. *See* Miller Decl. at ¶ 99. Epiq also maintains a toll-free telephone number to answer questions from Settlement Class Members. *See id.* This combination of individual first-class mail and/or email notice, supplemented by publication and posted online, was "the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974) (citing FED. R. CIV. P. 23(c)(2)); *see also Tecku v. Yieldstreet, Inc.*, No. 20-cv-07327-, 2025 U.S. Dist. LEXIS 31606, at \*19 (S.D.N.Y. Feb. 21, 2025) (finding notice to the settlement class "by both U.S. mail and email" was "the best notice practicable under the circumstances").

**IV. CONCLUSION**

For the foregoing reasons, Lead Plaintiff respectfully requests the Court grant final approval to the Settlement and Plan of Allocation and certify the Settlement Class.

DATED: May 9, 2025

Respectfully submitted,

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Berger and the Settlement Class*

**WORD COUNT CERTIFICATION**

I, Kim E. Miller, certify that the foregoing memorandum of law complies with the word-count limitations set forth in Local Civil Rule 7.1(c). According to the word count of the word-processing program used to prepare the memorandum, and exclusive of the portions of it that are excluded by the rule, there are 8,235 words in the document.

/s/ Kim E. Miller

Kim E. Miller