SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

SONNY ST. JOHN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. CLOOPEN GROUP HOLDING LIMITED, CHANGXUN SUN, YIPENG LI, KUI ZHOU, QINGSHENG ZHENG, XIAODONG LIANG, ZI YANG, MING LIAO, FENG ZHU, LOK YAN HUI, JIANHONG ZHOU, CHING CHIU, COGENCY GLOBAL INC., COLLEEN A. DEVRIES, GOLDMAN SACHS (ASIA) L.L.C., CITIGROUP GLOBAL MARKETS INC., CHINA INTERNATIONAL CAPITAL CORPORATION HONG KONG SECURITIES LIMITED, TIGER BROKERS (NZ) LIMITED, and FUTU, INC., Defendants.	Index No. 652617/2021 Part 53: Hon. Andrew Borrok **ORAL ARGUMENT REQUESTED**

MEMORANDUM OF LAW IN SUPPORT OF (1) PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES AND (2) NAMED PLAINTIFFS' REQUESTS FOR SERVICE AWARDS

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State Plaintiff Sonny St. John and Federal Plaintiff Guozhang Wang (together with State Plaintiff, "Plaintiffs"), together with their counsel, respectfully submit this brief in support of: (1) Plaintiffs' Counsel's Applications for Attorneys' Fees and Expenses and (2) Named Plaintiffs' Requests for Service Awards (the "Fee and Expense Application").[1]

INTRODUCTION

After more than two years of hard-fought litigation, during which Plaintiffs and their counsel substantially advanced the Settlement Class's claims, the Parties have reached a global settlement of the securities claims in this Action and the related Federal Action. This is an excellent recovery for the Class, as detailed in the accompanying Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and the Joint Affirmation. With the work performed to achieve this Settlement undertaken in two Actions, State Counsel and Federal Counsel have each submitted an Application for Attorneys' Fees and Expenses, and this Memorandum is filed in common support of those Applications and their collective requests.[2]

As set forth in the Notice, State Counsel and Federal Counsel respectfully seek attorneys' fees that total an award of one-third (33-1/3%) of the $12 million recovery, and submit that they collectively and individually have fully earned the requested amount. As detailed below, in the State Action, Scott+Scott diligently pursued this litigation, beginning with a comprehensive fact investigation and continuing through, *inter alia*: the preparation of their detailed Amended

[1] Unless otherwise indicated herein: (1) all capitalized terms have the meanings set forth in the Stipulation of Settlement (the "Stipulation") filed with the Court on August 16, 2023 (NYSCEF No. 107); and (2) in quoted material, all citations and internal quotation marks are omitted and all emphasis is added.

[2] Plaintiffs' Counsel consists of, in the State Action Scott+Scott Attorneys At Law LLP ("State Class Counsel") along with The Schall Law Firm, and in the Federal Action Berger Montague PC ("Federal Lead Counsel") along with Kirby McInerney LLP.

Complaint (NYSCEF No. 23); the full briefing of (and defeating of) Defendants' motion to dismiss this Action (NYSCEF Nos. 24-59); the commencement of fact discovery and State Class Counsel's review of document discovery from certain defendants; the preparation of State Class Representative for his deposition and defense of that deposition; the briefing of and subsequent stipulation to class certification; the retention of and consultation with damages experts; and the preparation of comprehensive mediation briefs and related materials on both liability and damages issues. Similarly, in the Federal Action, Berger Montague also conducted its own independent and comprehensive fact investigation, prepared and filed its own initial and amended complaints, and fully briefed the separate motions to dismiss filed in the Federal Action. Further, the Federal Action included a securities fraud claim under the Exchange Act, which provided an additional source of recovery in addition to the claims under the Securities Act at issue in the State Action. Owing to Plaintiffs' Counsel's hard work – and their joining forces during the mediation process to present a "united front" on behalf of the common Class that they represented – these counsel, with the Mediator's assistance, successfully negotiated a substantial $12 million global settlement of all claims asserted in both Actions. *See* Joint Aff., ¶¶5-7.

In total, Plaintiffs' Counsel have spent over 3,200 hours, with a "lodestar" value of $2,626,057 – all on a fully contingent fee basis – pursuing the claims at issue. *Id*., ¶¶85, 101. The requested collective 33-1/3% fee is well within the range of percentage-based fees awarded in other securities class actions, and is also merited by the other relevant factors customarily considered by New York courts, including a "lodestar crosscheck." Indeed, the requested one-third fee ($4 million), if awarded, would represent a multiplier of 1.52 of Plaintiff Counsel's combined $2,626,057 lodestar – a reasonable and standard fee for a case in which an above-average result was achieved in the face of above-average litigation risks.

Plaintiffs' Counsel's request for litigation expenses that total $150,936.06, which is below the noticed amount and should also be granted because it seeks payment for expenses (such as electronic research costs, expert fees, investigator fees, and mediation costs) that are routinely reimbursed in common fund cases.

Finally, each Plaintiff's request for a relatively modest $7,500 award for their service to the Settlement Class is fully merited, and should also be approved.

FACTUAL AND PROCEDURAL BACKGROUND

A detailed recitation of the factual and procedural background is set forth in the Joint Affirmation filed herewith, and is further discussed below (at §I.B), as well as in the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation. Accordingly, to minimize duplication, this Section provides a brief overview of those points.

The first complaint in the State Action was filed on April 19, 2021, asserting claims against Cloopen for violations of the Securities Act. NYSCEF No. 2. Following additional investigation, State Class Representative and State Class Counsel submitted the operative Amended Complaint on October 4, 2021. NYSCEF No. 23. The operative complaint alleged that Cloopen misled investors by not recording the fair value of certain warrant liabilities and failed to disclose that Cloopen was not retaining a high level of its existing customers. On December 3, 2021, Cloopen and the other Defendants moved to dismiss the Amended Complaint. State Class Counsel opposed Defendants' motions to dismiss and prepared and presented oral argument on the motions. As a result of State Class Counsel's effective advocacy and work, this Court denied Defendants' motions to dismiss in their entirety. NYSCEF No. 57. The Parties stipulated to class certification with respect to claims under Sections 11 and 15 of the Securities Act and, on April 10, 2023, the

Court appointed Sonny St. John as State Class Representative and Scott+Scott as State Class Counsel. NYSCEF No. 102. As noted in further detail below, State Class Representative and State Class Counsel undertook discovery up to and until the time that a Settlement was reached.

On December 10, 2021, the first complaint in the Federal Action was filed in the United States District Court for the Southern District of New York by Boyan Dong, individually and on behalf of all those who purchased Cloopen ADSs: (1) pursuant or traceable to the Offering Documents for the IPO and were allegedly damaged thereby, and/or (2) between February 9, 2021 and May 10, 2021, both dates inclusive, asserting claims against the Defendants and Xiaodong Liang, Zi Yang, Ming Liao, Feng Zhu, Lok Yan Hui, Jianhong Zhou, Ching Chiu, and Yunhao Liu for alleged violations of the Securities Act and the Securities Exchange Act of 1934 (previously defined as, the "1934 Act"). ECF No. 1. On February 8, 2022, pursuant to the Private Securities Litigation Reform Act ("PSLRA"), eight competing motions for appointment as lead plaintiff were filed in the Federal Action by members of the putative class defined in the Federal Action complaint, and on April 8, 2022, Federal Plaintiff was appointed by Hon. John G. Koeltl as Lead Plaintiff in the Federal Action, with the law firm of Berger Montague PC appointed as Lead Counsel and the law firm of Kirby McInerney LLP appointed as Local Counsel. ECF No. 71. On May 31, 2022, the Federal Plaintiff filed his Amended Class Action Complaint (the "Federal Amended Complaint") alleging claims under the Securities Act and the Exchange Act. ECF No. 84. On July 15, 2022, Cloopen moved to dismiss the Federal Action, with the Cogency Defendants and Underwriter Defendants, upon Joinder with Cloopen, also moving to dismiss the Federal Amended Complaint. ECF Nos. 92-97. Federal Plaintiff opposed these motions, and on March 16, 2023, as a result of (we submit) Federal Class Counsel's effective advocacy and work, the Federal Court denied Defendants' motion to dismiss in its entirety. ECF No. 113. The Parties

then engaged in discovery, which continued through the Parties' mediation efforts, until June 6, 2023, when the Parties informed the Federal Court that they had reached an agreement-in-principle to settle the claims in the State Action and the parallel Federal Action, and requested a continuance of all deadlines. ECF Nos. 134-135.

ARGUMENT

I. THE COURT SHOULD APPROVE THE FEE REQUESTS

A. The Percentage Method and Lodestar Cross-Check Support the Fee Requests

Courts have long recognized that attorneys who obtain a common fund recovery for a class are entitled to an award of fees and expenses from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Fernandez v. Legends Hospitality, LLC*, No. 152208/2014, 2015 WL 3932897, at *6 (Sup. Ct., N.Y. Cnty. June 22, 2015) (successful attorneys in common fund class action settlements should generally be awarded percentage of recovery). "A court may calculate reasonable attorneys' fees by either the lodestar method (multiplying the hours reasonably billed by a reasonable hourly rate, then applying a multiplier based on more subjective factors) or based on a percentage of the recovery." *Fernandez*, 2015 WL 3932897, at *5 (citing *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 540 (Sup. Ct., N.Y. Cnty. 2010)).

When awarding attorneys' fees from a common fund, both state and federal courts in New York favor awarding percentage-based fees, as doing so "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation." *Wal-Mart Stores Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); MANUAL FOR COMPLEX LITIGATION (FOURTH), §14.121 (2004).

Plaintiffs' Counsel, pursuant to CPLR 909, respectfully submit that their work in the State and Federal Actions fully merits a total aggregate fee award of 33-1/3% of the Settlement Fund, or $4 million. Such an award is consistent with awards in similar cases by New York state and

federal courts. *E.g. In re Everquote, Inc. Sec. Litig.*, No. 651177/2019, NYSCEF No. 132 at 9 (Sup. Ct., N.Y. Cnty. June 11, 2020) (awarding one-third fee, plus expenses); *Fernandez*, 2015 WL 3932897, at *6-*7 (awarding one-third fee, plus expenses); *Lopez v. Dinex Grp., LLC*, No. 155706/2014, 2015 WL 5882842, at *5-*8 (Sup. Ct., N.Y. Cnty. Oct. 6, 2015) (awarding one-third fee, plus expenses); *Charles v. Avis Budget Car Rental, LLC*, No. 152627/2016, 2017 WL 6539280, at *4-*5 (Sup. Ct., N.Y. Cnty. Dec. 21, 2017) (awarding 33% fee, plus expenses); *In re China MediaExpress Holdings, Inc. S'holder Litig.*, No. 11-cv-0804-VM, 2015 WL 13639423, at *1 (S.D.N.Y. Sept. 18, 2015) (awarding one-third fee, plus expenses); *Landmen Partners Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding one-third fee, plus expenses).

Importantly, as discussed below, the reasonableness of the requested fee is also confirmed by application of a "lodestar crosscheck," which courts sometimes use to assess the reasonableness of a given fee request. Significantly, the combined $2,626,057 lodestar value of the 3,236.30 hours of time expended by Plaintiffs' Counsel on behalf of the Settlement Class equates to a lodestar multiplier value of 1.52. Given that lodestar multipliers of as high as 3x or 4x are not uncommon in fully contingent cases such as this, the lodestar multiplier of 1.52 here strongly supports the conclusion that the requested combined 33-1/3% fee is fair and reasonable.[3] *See, e.g.*, *Sewell v. Bovis Lend Lease, Inc.*, No. 09-CV-6548, 2012 WL 1320124, at *10, *13 (S.D.N.Y. Apr. 16, 2012) ("[c]ourts commonly award lodestar multipliers between two and six"); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ.1262, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002), *aff'd sub*

[3] Class Counsel filed separate motions for awards of attorneys' fees, expenses, and service awards. Counsel in the Federal Action requested an attorneys' fee award equal to 10% of the Settlement Fund and counsel in the State Action requested an attorneys' fee award equal to 23.3% of the Settlement Fund. Collectively, the attorneys' fees requested total 33-1/3% of the Settlement Fund.

nom. Adams v. Rose, No. 03-7011, 2003 WL 21982207 (2d Cir. 2003) (a "multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit").

B. The *Fiala* Factors Further Support the Reasonableness of the Fee Requests

The Court in *Fiala*, 899 N.Y.S.2d at 540, sets forth a series of factors that New York courts consider when determining whether a requested percentage fee is reasonable: (i) the risks of the litigation; (ii) whether counsel had the benefit of a prior judgment; (iii) the standing at the bar of plaintiffs' and defendants' counsel; (iv) the magnitude and complexity of the action and the responsibilities undertaken; (v) the amount recovered; (vi) what reasonable counsel would charge in comparable circumstances; and (vii) the work performed. An eighth factor, the lodestar crosscheck, is also arguably inherent in considering the amount of "work performed" factor. Here, all these factors support the requested fee.

1. The Litigation Risks Were Substantial

The State and Federal Actions involved very significant litigation risk. Joint Aff., ¶¶60-74. Defendants asserted credible defenses to liability at the motion to dismiss stage. Among other things, Defendants asserted they had no duty to disclose Cloopen's declining Net Customer Retention Rate during Q4 2020 financials because, at the time the Prospectus was filed, this was "interim data" under Section 11 or Item 303. Plaintiffs expected Cloopen would also continue to advance arguments that the Registration Statement contained detailed and specific warnings, including 60 pages of risk factors, that warned about competitive and financial risks and disclosed the trends of increasing losses, increasing accounts receivable, and decreasing trends that were allegedly omitted. Defendants also asserted arguments regarding scienter in the Federal Action, where they specifically argued that the Federal Plaintiff failed to allege instances in which any Defendants received information related to the Retention Rate or warrant liabilities that was

contrary to Cloopen's public declarations, and thus Federal Plaintiff could not sufficiently allege that Defendants acted with an intent to defraud.

While Plaintiffs prevailed on these arguments at the pleading stage, there was no guarantee that they would continue to carry their burdens under the more rigorous standards of proof that would apply at summary judgement and trial. For example, conducting and obtaining adequate discovery, in the face of China's strict regulations, to support Plaintiffs' claims presented unusually high hurdles. Although Defendants were subject to Plaintiffs' discovery demands, the process was proving to be slow, and the Parties had not resolved the inherent problem in taking the depositions of Defendants' China-based witnesses – given that China forbids depositions in its territory. Plaintiffs, as private litigants, did not have any clear way to compel former employees or third parties that are based in China to give deposition testimony. Under its Declarations and Reservations to the Hague Evidence Convention and subsequent diplomatic communications, China has indicated that taking depositions, whether voluntary or compelled, may, as a general matter, only be accomplished through requests to its Central Authority under the Hague Evidence Convention, a multi-year process.

Even if Plaintiffs were successful in proving liability, they faced challenges proving the extent of damages, as Defendants had colorable "negative loss causation" arguments that some of Class's alleged damages resulted from factors other than the alleged material misstatements and omissions in the Offering Documents. For example, Defendants raised negative causation defenses ranging from macroeconomic factors that they say caused the drop in Cloopen's ADSs, to factors unrelated to the undisclosed information that purportedly contributed to those drops, to the timing of when the allegedly undisclosed information was released relative to the drop in the price of Cloopen's ADSs. Such causation issues all too frequently come down to inherently

unpredictable "battles of the experts," and an adverse result could have gutted the value of Plaintiffs' otherwise meritorious claims.

Plaintiffs also faced the risk of being unable to collect on a judgement. Cloopen's financial status and ability to withstand a greater judgment than the recovery here is questionable, as Cloopen's ADSs are currently trading at $0.00010 (as of December 18, 2023) and have been under $1 per share since May 31, 2023. Joint Aff., ¶70. Further, Cloopen has no relevant insurance applicable to the claims here. Courts in China, moreover, are seldom known to recognize and enforce U.S. civil court judgments.

In short, the "risk of litigation" considerations also strongly supports the requested fee.

2. The Non-Existence of Any Prior Favorable Judgment

The State and Federal Actions were the only ones filed and prosecuted arising from the allegedly false and misleading Offering Materials. There were no earnings restatements or governmental regulatory actions to assist Plaintiffs' Class Counsel's investigations. Plaintiffs' Class Counsel were thus required to independently develop the facts and legal theories necessary to achieve the $12 million Settlement for the Class now pending before this Court. This factor also supports the requested fee.

3. Counsel's Standing in the Securities Bar

Plaintiffs' Counsel (Scott+Scott and Berger Montague) are highly experienced in securities litigation, each having a significant history of achieving successful results in securities class actions. *See* firm resumes at Joint Aff., ¶¶96, 104. Plaintiffs' Counsel also respectfully submit that their skill and experience were key factors in obtaining an excellent recovery for the Settlement Class. That success was all the more significant here because Defendants were represented by several well-respected defense firms, including Wilson Sonsini Goodrich & Rosati,

P.C., Wilkie Farr & Gallagher LLP, K&L Gates LLP, and Morrison & Foerster LLP, which vigorously pressed their clients' defenses. That Plaintiffs' Counsel were able to obtain a $12 million Settlement in this challenging litigation, and against such formidable opposition, further supports the requested fee.

4. The Amount Recovered, and the Magnitude and Complexity of the Actions

The securities claims at issue here are also notoriously complex and involved Cloopen's performance in the rapidly developing cloud-based computing industry in China; the regulatory risks posed to Cloopen's business model by Chinese regulators; and how such diverse factors may have impacted the price of Cloopen's ADSs. The recovery is particularly commendable where, as here, Plaintiffs brought securities class actions against a China-based corporate defendant, which involved heightened procedural problems and collectability issues.

The Settlement is also highly favorable when compared to similar cases in both absolute and relative terms. Plaintiffs' expert estimated that the maximum theoretical damages under the statute were approximately $170 million, but that the realistic maximum damages, given the relevant circumstances were approximately $135 million. The proposed Settlement – $12 million – would result in the recovery of roughly 9% of investor losses (and a recovery of approximately 7% of maximum theoretical damages), which is a superior percentage compared to most securities settlements. For example, NERA Economic Consulting recently reported that, between 2012 and 2022, the median securities class action settlement equated to only approximately 2.9% of maximum damages in cases involving estimated investor losses between $100 million and $199

million.[4] The Settlement here is also larger than the median securities class action settlement of $9 million in the Second Circuit between 2013 and 2023.[5]

Plaintiffs' Counsel respectfully submit that the proposed Settlement represents a superior result in the face of above-average risk. Accordingly, these factors also strongly supports the requested fee.

5. Fees Awarded in Comparable Cases

A court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). If this were a non-class action, the customary contingent fee arrangement would be in the range of one-third of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 n.* (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

Moreover, as noted above (at §I.A.), both state and federal courts in New York (and indeed across the country) frequently award percentage-based fees of 33-1/3% (or more) in other securities actions that have settled for comparable amounts. Accordingly, because the requested fee is well within the "range of reasonableness," this factor supports the fee request as well.

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[4] Janeen McIntosh, et al., *Recent Trends In Securities Class Action Litigation: 2022 Full-Year Review*, NERA ECON. CONSULTING (Jan. 25, 2022), at 17, located at https://www.nera.com/content/dam/nera/publications/2023/PUB_2022_Full_Year_Trends.pdf.

[5] Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2022 Review and Analysis*, CORNERSTONE RESEARCH (2022), at 19, located at https://www.cornerstone.com/wp-content/uploads/2023/03/Securities-Class-Action-Settlements-2022-Review-and-Analysis.pdf.

6. Work Performed

As stated in the Joint Affirmation and accompanying affidavits,[6] Plaintiffs' Counsel spent over 3,200 hours and $2,626,057 in lodestar litigating the State and Federal Actions, from pre-filing investigation, through motions to dismiss, and into discovery– culminating in protracted settlement negotiations. Joint Aff., ¶103.

With respect to the State Action in particular, State Plaintiffs' Counsel (Scott+Scott and the Schall Law Firm) spent 1,820 hours and $1,450,149 in lodestar on this Action. Scott Aff., ¶4; Schall Aff., ¶4. Their work began with an extensive pre-filing investigation included, *inter alia*, collecting, reviewing, and analyzing (a) Cloopen's numerous SEC filings, including the voluminous Offering Materials and incorporated exhibits; (b) Cloopen's press releases, investor conference call transcripts, and other public statements; and (c) analyst reports and news stories from the United States and China about Cloopen. Following additional investigation, State Class Representative and State Class Counsel prepared and submitted the operative Amended Complaint, with additional details on October 4, 2021. Joint Aff., ¶¶29-41.

Defendants moved to dismiss the Amended Complaint, which State Class Representative opposed and argued on August 3, 2022. As a result of (we submit) State Class Counsel's effective advocacy and work, this Court denied Defendants' motion to dismiss in its entirety. *See* Decision and Order, dated August 10, 2022 (the "MTD Order," NYSCEF No. 57).

Following the issuance of the MTD Order, in September 2022, State Class Representative moved for class certification (NYSCEF No. 68). In connection with class certification, State Class

[6] In support of the Applications for Fees and Expenses, each of Plaintiffs' Counsel is submitting an affidavit setting out the time, lodestar, and expenses dedicated to prosecuting the Actions. *See* Affidavit of Daryl Scott of Scott+Scott; Affidavit of Brian Schall of The Schall Law Firm; Affidavit of Michael Dell'Angelo of Berger Montague; and Affidavit of Thomas Elrod of Kirby McInerney.

Representative responded to Defendants' various document requests and sat for a deposition on November 12, 2022. Joint Aff., ¶36. On December 5, 2022, the Parties stipulated to class certification with respect to §§11 and 15 of the Securities Act against Defendants Cloopen, Goldman Sachs (Asia) L.L.C., Citigroup Global Market Inc., Tiger Brokers (NZ), and Futu Inc. NYSCEF No. 100. On April 10, 2023, the Court so Ordered the stipulation, appointing Mr. St. John as State Class Representative in the State Action and Scott+Scott as State Class Counsel. NYSCEF No. 102.

Concurrently, State Class Representative commenced discovery by serving interrogatories and document requests, totaling 126 individual requests that sought relevant documents over the span of 4.5 years, on Cloopen, the Cogency Defendants, and the Underwriter Defendants. Over the course of almost a year, State Class Counsel also commenced what proved to be protracted negotiations over the scope of those requests, the electronic search terms (in both English and Chinese) to be used, and the custodial files to be searched. Joint Aff., ¶¶38-40.

The Underwriter Defendants and Cogency Defendants began producing responsive documents in December 2022, ultimately producing over 20,700 documents. State Class Counsel retained a Chinese translator and began to review the evidence in preparation for potential depositions and motions for class certification and summary judgment. Joint Aff., ¶39.

In November 2022, Plaintiffs and Cloopen agreed to explore the possibility of resolving the Actions through mediation, and ultimately agreed to retain Robert Meyer of JAMS as Mediator. In connection with the mediation, State Class Counsel in this Action and Federal Lead Counsel in the Federal Action prepared comprehensive pre-mediation submissions for and engaged in pre-mediation calls with the Mediator on both liability and damages issues. Plaintiffs' Class Counsel also consulted extensively with their damages experts during this period, before

participating in a full-day, in-person mediation session on February 13, 2023. The mediation broke up with the Parties still far apart. It was only after almost four months of protracted negotiations that the Parties accepted the "mediator's proposal" and reached an agreement to settle the Actions. Joint Aff., ¶¶50-56.

With respect to the Federal Action, Federal Plaintiffs' Counsel (Berger Montague and Kirby McInerney) spent 1,416.3 hours and $1,175,908 in lodestar on this Action. Dell'Angelo Aff., ¶4; Elrod Aff., ¶4. After Federal Plaintiff was appointed Lead Plaintiff in the Federal Action– following full briefing and oral argument on the lead plaintiff motions, eight of which were initially filed – Federal Class Counsel launched its own extensive investigation, which included, *inter alia*, a review of SEC filings by Cloopen, press releases, earnings calls, media reports, and other publicly available materials, as well as consultation with experts.

Following their investigation, Federal Plaintiff and Federal Class Counsel prepared and filed Federal Amended Complaint on May 31, 2022. This complaint alleged violations of the Securities Act and Exchange Act individually and on behalf of purchasers of Cloopen ADSs: (1) pursuant or traceable to the Offering Documents for the IPO and were allegedly damaged thereby, and/or (2) between February 9, 2021 and May 10, 2021, both dates inclusive, asserting claims against the Defendants and Xiaodong Liang, Zi Yang, Ming Liao, Feng Zhu, Lok Yan Hui, Jianhong Zhou, Ching Chiu, and Yunhao Liu for alleged violations of the Securities Act and the Securities Exchange Act of 1934. ECF No. 1.

On July 15, 2022, Cloopen moved to dismiss the Federal Action, and the Cogency Defendants and Underwriter Defendants filed a Joinder with Cloopen by which they also moved to dismiss the Federal Amended Complaint. ECF Nos. 92-97. On August 15, 2022, Federal Plaintiff filed papers in opposition to Defendants' Motion to Dismiss (ECF Nos. 104-105), and on

September 14, 2022, Defendants filed reply papers in further support of their Motion to Dismiss. ECF Nos. 109-111.

As stated above, in late 2022, Federal and State Plaintiffs and Cloopen agreed to discuss the possibility of reaching a resolution of both Actions through mediation, with the Parties ultimately agreeing to retain Robert Meyer of JAMS as Mediator. A full-day mediation session took place on February 13, 2023, but no settlement was reached.

On March 16, 2023, the Federal Court issued its Decision and Order in which it denied Defendants' motion to dismiss in its entirety. ECF No. 113. Thereafter, on April 17, 2023, Defendants filed their Answers to Federal Plaintiff's Federal Amended Complaint, and discovery commenced, beginning with Defendants' production of documents in response to Federal Class Representative's requests in April 2023. ECF Nos. 123, 126-127.

Over the course of nearly four months following the Parties' February 13, 2023 mediation session, negotiations continued, with the Parties ultimately reaching a Settlement by accepting the "mediator's proposal." Joint Aff., ¶¶51-56. On June 6, 2023, Federal Class Counsel and Defendants informed the Federal Court that they had reached an agreement-in-principle to settle the claims in the Federal and State Actions, and requested a continuance of all deadlines. ECF Nos. 134-135.

That same day, the Federal Court dismissed the Federal Action with prejudice, with the understanding that the parties plan to seek approval of the joint settlement in the State Action. ECF Nos. 134-135.

In short, as set forth in the Joint Affirmation, the superior result obtained here was the product of significant time, effort and skill expended by Plaintiffs' Counsel since this Action was first filed over two years ago.

Significantly, Plaintiffs' Counsel also performed this work on a fully contingent basis, and thus risked receiving nothing had Defendants prevailed. Joint Aff., ¶105. As case law makes clear, the risk of recovering nothing in securities class actions is all too real, as even the most skilled and diligent contingent-fee counsel – even in cases where they have achieved initial successes – can fail to recover anything in securities actions after committing literally years to litigating them. *See, e.g.*, *In re Oracle Corp. Sec. Litig.*, No. C 01-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment for defendants after eight years of litigation, resulting in plaintiffs' counsel receiving no reimbursement of $7 million in expenses, and no fee on over 100,000 hours with lodestar value of $40 million); *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 730 (11th Cir. 2012) (overturning jury verdict for plaintiffs).

C. The Reasonableness of the Total Requested Combined 33-1/3% Fee Is Confirmed by a "Lodestar Crosscheck," and the Reaction of the Class

As noted earlier, courts may confirm the reasonableness of a requested percentage-based fee by performing a "lodestar crosscheck." To calculate the relevant lodestar, a court takes the hours billed by each timekeeper (attorney or para-professional) and multiplies them by that timekeeper's current hourly rate, which, added together, yields counsel's overall lodestar. *Ousmane v. N.Y.C.*, No. 402648/04, 2009 WL 722294, at *9 (Sup. Ct., N.Y. Cnty. Mar. 17, 2009). The Court then cross-checks the effective dollar value of the requested percentage-based fee against counsel's lodestar to determine whether the requested fee would result in an unreasonably high "multiplier" on counsel's lodestar. *Clemons v. A.C.I. Found., Ltd.*, No. 154573, 2017 WL 1968654, at *5 (Sup. Ct., N.Y. Cnty. May 12, 2017); *Ryan v. Volume Servs. Am., Inc.*, No. 652970, 2013 WL 12147011, at *4-*5 (Sup. Ct. N.Y. Cnty. Mar. 7, 2013).

Plaintiffs' Counsel devoted a total of 3,236.30 hours to the investigation, litigation, and ultimate resolution of the State and Federal Actions over more than two years. The value of that time results in a total aggregate lodestar of $2,626,057. Joint Aff., ¶103. Because the requested combined 33-1/3% fee equates to $4 million, Plaintiffs' Counsel's requested fee represents a "lodestar multiplier" of only 1.52 on their aggregate lodestar. *Taft v. Ackermans*, No. 02 Civ. 7951-PKL, 2007 WL 414493, at *11 (S.D.N.Y. Jan. 31, 2007) (describing 1.44x multiplier as "modest in relation to lodestar multipliers frequently used in this district").[7]

Given that both state and federal courts in New York routinely award percentage-based awards that result in "positive" multipliers of two to four times (or more) the value of counsel's lodestar, *a fortiori* a percentage-based award that, as here, results in a multiplier of 1.52 on Plaintiffs' Counsel's lodestar is plainly reasonable. *See, e.g.*, *N.J. Carpenters Vacation Fund v. The Royal Bank of Scot. Grp., PLC*, No. 08-CV-5093 (LAP), ECF No. 286 (S.D.N.Y. Nov. 5, 2014) (awarding fees representing 2.27 multiplier); *MissPERS v. Merrill Lynch & Co. Inc.*, No. 08-cv-10841-JSR-JLC, ECF No. 186 (S.D.N.Y. May 8, 2012) (awarding fees representing 2.3 multiplier); *In re Am. Int'l Group, Inc. 2008 Sec. Litig.*, No. 08-cv-4772-LTS-DCF, 2015 WL 13697665, at *1 (S.D.N.Y. Mar. 20, 2015) (awarding fees representing 1.5 multiplier); *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 497 (S.D.N.Y. 2017), *aff'd sub nom. Fresno Cnty. Emps.' Ret. Ass'n v. Isaacson/Weaver Family Tr.*, 925 F.3d 63 (2d Cir. 2019) (lodestar crosscheck multiplier of 1.39x "is at the lower range of comparable awards"); *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331-CM-MHD, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) (describing significantly higher multipliers of 3 to 4.5 as "common").

[7] Plaintiffs' Counsel note that their lodestar does ***not*** include any time spent on this Fee and Expense Application – nor will it include the "[additional] time that they will be required to spend administering the settlement going forward." *Fernandez*, 2015 WL 3932897, at *6.

In addition, courts frequently consider the reaction of the class and the views of the named plaintiffs. *See, e.g.*, *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728-CM-SDA, 2020 WL 4196468, at *6 (S.D.N.Y. July 21, 2020); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 266 (S.D.N.Y. 2012). Here, Plaintiffs support the requested fee. *See* Joint Aff., ¶¶108-11; St. John Aff., ¶8; Wang Aff., ¶7. Further, although the January 2, 2024 deadline for objections has not yet passed, the Notice informed Settlement Class Members that the requested fee would be up to one-third of the recovery, and to date no objections to Plaintiff Counsel's requested fee have been received. Joint Aff., ¶8; Schachter Aff., ¶16.

In sum, all of the relevant considerations strongly support the requested 33-1/3% fee.

D. Plaintiffs' Counsel's Expenses Were Reasonably Incurred and Necessary to the Prosecution of the Actions

"It is well established that counsel who obtain a common settlement fund for a class are entitled to the reimbursement of expenses that they advance to a class." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015). In a common fund case, compensable expenses include "reasonable expenses normally charged to a fee paying client." *See generally* 5 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS, §16:5 (6th ed.) (collecting cases).

Plaintiffs' Counsel request collective payment of $150,936.06 in total litigation expenses. These expenses were primarily incurred on retaining industry and damages experts ($88,713.93), legal and factual research ($12,820.79), electronic discovery ($12,200.72), service fees ($15,190), and the Mediator's fees ($11,014). *See* Joint Aff., ¶106-07; Scott Aff., ¶5; Dell'Angelo Aff., ¶5; Elrod Aff., ¶5. All of these expenses were reasonably necessary to Plaintiffs' successful efforts to reach the global settlement in the Actions. *E.g. Lopez*, 2015 WL 5882842, at *8 ("Courts typically allow counsel to recover their reasonable out-of-pocket expenses."); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400-CM-PED, 2010 WL 4537550, at *30 (S.D.N.Y. Nov.

8, 2010) ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced . . . ."); *see also Yang v. Focus Media Holding Ltd.*, No. 11 Civ. 9051(CM)(GWG), 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (approving mediator fees, expert fees, computer research, photocopying, postage, meals, and court filing fees); *Brown v. Pro Football, Inc.*, 839 F. Supp. 905, 916 (D.C. Cir. 1993) ("[p]laintiffs' out-of-pocket costs for telephone, telecopier, air and local couriers, postage, photocopying, [electronic case law] research, secretarial overtime, and counsels' travel expenses were routinely billed to fee-paying clients, and thus all compensable").

Moreover, the Notice informed potential Settlement Class Members that Plaintiffs' Counsel would seek up to $275,000 in expenses. Joint Aff., ¶59; Schachter Aff., ¶16. Since the total amount of expenses for which counsel now seeks payment ($150,936.06) is less than what was estimated in the Notice, the lack of objections also supports counsel's expense request.

E. The Could Should Approve the Requested $7,500 Awards to Each Plaintiff, as They Are Reasonable

State Plaintiff and the Federal Plaintiff request service awards of $7,500. Joint Aff., ¶108; St. John Aff., ¶7; Wang Aff., ¶9. As detailed in their respective affidavits, each Plaintiff has diligently fulfilled their fiduciary obligations to the Settlement Class. For example, State Plaintiff reviewed drafts of the initial complaint and the Amended Complaint, read and reviewed numerous briefs filed in the State Action, reviewed pre-mediation statements submitted to the Mediator by both Class Counsel and Defendants, and conferred with counsel regarding litigation developments, mediation and settlement. St. John Aff., ¶5. State Plaintiff also spent many hours over the course of several days preparing for and providing testimony in response to Defendants' Notice of Deposition. *Id.* In total, State Plaintiff has spent 75 hours in connection with discharging his duties as lead plaintiff and class representative in the State Action. *Id.* ¶6. Similarly, Federal

Plaintiff reviewed drafts of the Amended Class Action Complaint filed in the Federal Action and drafts of his opposition to Defendants' motion to dismiss. Wang Aff., ¶5. Federal Plaintiff also searched for, located, and produced documents in response to Defendants' discovery demands. *Id.* Further, Federal Plaintiff regularly conferred with counsel regarding litigation, mediation, and resolution of this matter. In total, Federal Plaintiff has spent over 45 hours in connection with discharging his duties as lead plaintiff and class representative in the Federal Action. *Id.*, ¶6. Without the Plaintiffs' efforts in commencing and prosecuting this action, there would be no recovery, and the requested awards are relatively modest. *Compare, e.g.*, *Charles*, 2017 WL 6539280, at *2-*3, *5 (awarding $10,000); *Lopez*, 2015 WL 5882842, at *3-*4, *8 (awarding $20,000); *see also Hosue v. Calypso St. Barth, Inc.*, No. 160400, 2017 WL 4011213, at *3, *6 (awarding $5,000). In addition, no objections to the proposed service awards from any Settlement Class Members have been received to date, and they total, as discussed in the Notice, $15,000. The requested awards should accordingly be approved.

CONCLUSION

For the reasons described above and in the accompanying affirmations/affidavits submitted herewith, Plaintiffs respectfully ask the Court to (1) grant Plaintiffs' Counsel's Applications for a total award of attorneys' fees equal to a combined 33-1/3% of the Settlement Fund and $150,936.06 in total expenses, with interest earned on both amounts until paid at the same rate as earned on the Settlement Fund during that time, and (2) award $15,000 in total to Plaintiffs for their service to the Settlement Class.

Dated: December 19, 2023
New York, NY

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

The preceding Omnibus Memorandum of Law in Opposition to Defendants' Motions to Dismiss complies with the 7,000-word limit set by Commercial Division Rule 17. Excluding the caption, table of contents, table of authorities, and the signature block, the document contains 6,109 words as measured by Microsoft Word, the word-processing system that was used to prepare the memorandum.

Dated: December 19, 2023
New York, NY

/s/ Max R. Schwartz
Max. R. Schwartz