UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-00453-PAB-KAS

MICHAEL BILINSKY, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

v.

GATOS SILVER, INC.,
STEPHEN ORR,
ROGER JOHNSON,
PHILIP PYLE,
JANICE STAIRS,
ALI ERFAN,
IGOR GONZALES,
KARL HANNEMAN,
DAVID PEAT,
CHARLES HANSARD, and
DANIEL MUÑIZ QUINTANILLA,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND APPROVAL OF THE PLAN OF ALLOCATION

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INTRODUCTION

The parties have agreed, subject to final Court approval, to resolve this securities class action in exchange for a cash payment of $21,000,000—an outstanding result that provides the Settlement Class with a valuable, immediate recovery instead of the risk and uncertainty of years of further litigation.

Final approval of the Settlement is warranted because it satisfies each of the four Tenth Circuit factors, *see Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002), and it is "fair, reasonable, and adequate" under Rule 23(e)(2). In summary:[1]

Arm's-Length Settlement Negotiations: The Settlement was reached after a full-day mediation under the auspices of Robert A. Meyer. When the parties could not reach agreement after exchanging several rounds of demands and counter-offers, Mr. Meyer made a mediator's proposal to settle the Action for $21 million.

Serious Questions of Law and Fact Place the Ultimate Outcome in Doubt: Plaintiffs faced significant legal and factual risks in establishing Defendants' liability, and success was far from assured. While Plaintiffs developed a detailed Amended Complaint, including with the assistance of consulting experts in mining and forensic accounting, Defendants' challenges to the adequacy of the allegations could have defeated the claims entirely. For example, Defendants argued that the core statements regarding Gatos's mineral reserves were inactionable opinions under the

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[1] Capitalized terms not defined herein have the meanings stated in the Amended Class Action Complaint for Violations of the Securities Laws (ECF No. 54), the Stipulation and Agreement of Settlement dated September 12, 2023 (ECF No. 85-1), and the Joint Declaration of Joseph A. Fonti and Kathryn A. Reilly in Support of: (I) Plaintiffs' Motion for Final Approval of the Settlement and Approval of the Plan of Allocation and (II) Lead Counsel and WTO's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Plaintiffs (the "Joint Declaration" or "Joint Decl."). Citations omitted unless otherwise noted.

Supreme Court's decision in *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015), and *Martin v. Quartermain*, 732 F. App'x 37 (2d Cir. 2018). They also challenged the adequacy of the scienter allegations, arguing that Defendants reasonably relied on Tetra Tech's expert opinion over that of another expert. These arguments presented substantial risk to the case proceeding at all (if the Court credited them on the motion to dismiss), and would have continued to present significant risks at later stages of the Action.

The Valuable, Immediate Recovery Outweighs the Possibility of Future Relief: The proposed Settlement recovers an impressive percentage of estimated damages, ranging from 9.4% to 63%. Even the low end of this range is nearly double the median recovery in other securities class actions. And the Settlement is a particularly exceptional result because it provides the Settlement Class with the certainty of substantial, prompt cash payments. By contrast, had litigation continued, the Action could have been dismissed outright (like 54% of securities class actions). Even if the Action survived dismissal at the pleading stage, the prospect of any meaningfully larger recovery was constrained by litigation risk, by delay that could deprive the Class of any recovery for years, and by Gatos's financial condition, with limited cash and a finite and diminishing amount of mineral reserves.

The Parties' Judgment That the Settlement Is Fair and Reasonable: Plaintiffs and their experienced counsel support the proposed Settlement as reasonable, fair, and adequate. In addition, the reaction of the Settlement Class is notably positive: to date, not a single Settlement Class member has objected to the Settlement or sought exclusion.

Finally, the Plan of Allocation is fair, reasonable, and adequate and allocates each Authorized Claimant their *pro rata* share of the Net Settlement Fund, using a methodology

developed with expert assistance that appropriately recognizes the methods to calculate damages under the Securities Act and the Exchange Act.

Accordingly, Plaintiffs respectfully request that the Court grant this Motion and enter the proposed Final Judgment Approving Settlement and Order Approving Plan of Allocation.

ARGUMENT

I. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Court's Preliminary Approval Order (ECF No. 87) conditionally certified the Settlement Class under Rules 23(a) and (b)(3) for purposes of the Settlement. Nothing since then has cast doubt on the propriety of class certification for settlement purposes, and no objections to certification have been received. For the reasons stated in the Preliminary Approval Order (ECF No. 87 at 9-14 of 23), and Plaintiffs' motion for preliminary approval (ECF No. 82-1 at 20-23 of 27), Plaintiffs respectfully request that the Court grant final certification to the Settlement Class under Rules 23(a) and (b)(3). In brief:

A. Numerosity – Rule 23(a)(1)

"Courts generally assume that the numerosity requirement is met in cases involving nationally traded securities," *In re Ribozyme Pharms., Inc. Sec. Litig.*, 205 F.R.D. 572, 577 (D. Colo. 2001). Here, Gatos common stock traded on the NYSE, with over 69 million shares outstanding as of August 15, 2022, and an average daily volume of over 744,000 shares during the Class Period (ECF No. 54 ¶343). To date, at least 29,155 Notices have been disseminated to potential Settlement Class Members. (Ex. D (Kimball Decl.) ¶11.)

B. Commonality – Rule 23(a)(2)

Rule 23(a)(2) is satisfied because this action presents "questions of law or fact common to" the Settlement Class, including whether Defendants violated the federal securities laws; whether Defendants made any untrue statements of material fact or material omissions; whether the Exchange Act Defendants acted with scienter; whether reliance may be presumed under the fraud-on-the-market doctrine; and whether Settlement Class members suffered damages. (*See* ECF No. 54 ¶346.)

C. Typicality – Rule 23(a)(3)

Rule 23(a)(3) is satisfied because Plaintiffs' claims "are typical of the claims" of the Settlement Class: Plaintiffs, like all other Settlement Class members, purchased Gatos Securities at prices that were allegedly inflated, distorted, or maintained by Defendants' challenged statements and omissions (*see* ECF No. 54 ¶344), and Plaintiffs are not subject to any unique defenses.

D. Adequacy – Rule 23(a)(4)

Adequacy is satisfied because Plaintiffs and Plaintiffs' Counsel (a) have no "conflicts of interest with other class members," and (b) have "prosecute[d] the action vigorously on behalf of" the Settlement Class. *Rutter*, 314 F.3d at 1187-88.[2]

As to the first adequacy factor, the proposed Settlement does not raise any issues of conflicts or unequal treatment, and instead provides an objective formula (the Plan of Allocation) for fairly allocating the Settlement proceeds among eligible claimants, as detailed below. (*Infra*

[2] "Plaintiffs' Counsel" refers collectively to Lead Counsel, Wheeler Trigg O'Donnell LLP, The Schall Law Firm, and The Law Offices of Susan R. Podolsky.

at Section III.) As to the second adequacy factor, Plaintiffs and Plaintiffs' Counsel have vigorously prosecuted this Action. The Court noted that "plaintiffs' counsel negotiated an early-stage settlement that will guarantee significant, prompt cash recovery for settlement class members." (ECF No. 87 at 13 of 23.) To achieve that result, Plaintiffs' Counsel devoted 2,210.55 hours (amounting to $1,853,045 in attorney and staff time), and $226,314 in out-of-pocket litigation expenses, to prosecuting the Action with no guarantee of any recovery. (Joint Decl. ¶¶65, 88.)

E. Predominance and Superiority – Rule 23(b)(3)

For the reasons articulated in the Preliminary Approval Order, Rule 23(b)(3) is satisfied because "questions of law and fact common to class members predominate over any questions affecting only individual members," and "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Specifically, "because the settlement class members will receive the same type of relief, and have claims that present common questions of fact and law, . . . class certification is appropriate." (ECF No. 87 at 16 of 23.)

II. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. Legal Standard

Rule 23(e) of the Federal Rules of Civil Procedure provides that the Court should approve a class action settlement if the Court finds it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Tenth Circuit has long recognized the strong judicial policy "to encourage, promote, and sustain the compromise and settlement of disputed claims." *Am. Home. Assur. Co. v. Cessna Aircraft Co.*, 551 F.2d 804, 808 (10th Cir. 1977).

The Tenth Circuit has instructed courts to analyze four factors when determining whether to approve a proposed class settlement:

> (1) whether the proposed settlement was fairly and honestly negotiated;
> (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;
> (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and
> (4) the judgment of the parties that the settlement is fair and reasonable.

Rutter, 314 F.3d at 1188.

In addition, the 2018 amendments to Rule 23(e) provided "four new factors a court must find to render an agreement as fair, reasonable, and adequate."[3] Because the "goal of this amendment is not to displace any factor," Advisory Committee Notes to 2018 Amendment, courts continue to apply the traditional factors, with additional analysis of any non-overlapping Rule 23(e)(2) factors. *See Beasley v. TTEC Servs. Corp.*, No. 22-cv-00097-PAB-STV, 2024 WL 710411, at *4 (D. Colo. Feb. 21, 2024) (Brimmer, C.J.) (where parties establish Tenth Circuit factors, "courts usually presume that the proposed settlement is fair and reasonable").

Here, as demonstrated below, and as supported in the Declarations submitted herewith, the proposed Settlement and Plan of Allocation satisfy each Tenth Circuit and Rule 23(e) factor.

B. The Settlement Is Fair, Reasonable, and Adequate and Should Be Approved

1. The Proposed Settlement Was Fairly and Honestly Negotiated

The proposed Settlement "was fairly and honestly negotiated" at arm's length, satisfying *Rutter*, 314 F.3d at 1188, and Rule 23(e)(2). Specifically, as the Court recognized in the

[3] The amendment requires consideration of "whether: (A) plaintiffs and counsel have adequately represented the class; (B) the settlement was negotiated at arm's length; (C) the relief 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, including the method of processing class-member claims, (iii) the terms of any proposed fee award, including timing of payment, 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."

Preliminary Approval Order, the parties engaged in a full-day, in-person mediation session under the auspices of Robert A. Meyer, resulting in Mr. Meyer's mediator's proposal to settle the Action for $21 million. (ECF No. 87 at 2 of 23; *see also* Joint Decl. ¶¶22-23; Ex. C (Meyer Decl.) ¶¶6-8.)

"Where a settlement results from arm's-length negotiations between experienced counsel, the Court may generally presume the settlement to be fair, adequate and reasonable." *Voulgaris v. Array Biopharma Inc.*, No. 17-cv-02789-KLM, 2021 WL 6331178, at *5 (D. Colo. Dec. 3, 2021), *aff'd*, 60 F.4th 1259 (10th Cir. 2023). Further, the "[u]tilization of an experienced mediator during the settlement negotiations supports a finding that the settlement is reasonable, was reached without collusion and should therefore be approved." *In re Molycorp, Inc. Sec. Litig.*, No. 12-cv-00292-RM-KMT, 2017 WL 4333997, at *4 (D. Colo. Feb. 15, 2017), *report and recommendation adopted*, 2017 WL 4333998 (D. Colo. Mar. 6, 2017).

2. Serious Questions of Law and Fact Exist, Placing the Ultimate Outcome of the Litigation in Doubt

"[S]erious questions of law and fact exist where disputes between the parties are such that they could significantly impact this case if it were litigated." *O'Dowd v. Anthem, Inc.*, No. 14-cv-02787-KLM-NYW, 2019 WL 4279123, at *13 (D. Colo. Sept. 9, 2019). As detailed in the Joint Declaration (¶¶35-38), had litigation continued, Defendants could assert several potentially dispositive arguments that could have reduced or eliminated any recovery.

This Court has recognized that "[l]itigating an action under the PSLRA is not a simple undertaking, especially given the specificity required to plead such claims." *In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351-PAB-KLM, 2014 WL 4670886, at *3 (D. Colo. Sept. 18, 2014). Here, Plaintiffs were required to satisfy this heightened standard as to the Exchange Act claims, and Defendants' motion to dismiss vigorously contested both falsity and scienter on a variety of legal

and factual grounds. As to falsity, for example, Defendants strenuously argued that their statements regarding reserves were inactionable opinions under the Supreme Court's decision in *Omnicare*, 575 U.S. 175, and the Second Circuit's decision in *Quartermain*, 732 F. App'x 37. While Plaintiffs advanced strong responses, had Defendants prevailed on the absence of any material misstatement or omission, the entire case would have been lost.

Defendants further challenged Plaintiffs' allegations of scienter, arguing that Defendants reasonably relied on their expert Tetra Tech instead of another expert who opined that the 2020 Technical Report contained errors. While Plaintiffs again advanced robust arguments in response, if Defendants had prevailed on scienter, it would have eliminated any recovery under the Exchange Act, foreclosing the majority of the Class's overall damages. And Defendants continue to deny all of Plaintiffs' allegations and do not admit any liability.

Thus, Defendants' arguments raised serious risks that would have persisted throughout this Action, placing its ultimate outcome in doubt. The proposed Settlement resolves these risks and "ensures the class members will receive reasonable compensation in light of the uncertainties of litigating to a judgment." *Ramos v. Banner Health*, No. 15-cv-2556-WJM-NRN, 2020 WL 6585849, at *3 (D. Colo. Nov. 10, 2020).

3. The Value of an Immediate Recovery Outweighs the Possibility of Future Relief After Further Litigation

In assessing whether to grant final approval of a settlement, the Court should consider "whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation." *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 690 (D. Colo. 2014) (Brimmer, C.J.) (citing *Rutter*, 314 F.3d at 1188). Similarly, Rule 23(e)(2) directs

consideration of whether "the relief for the class is adequate, taking into account . . . the costs, risks, and delay of trial and appeal."

Here, the proposed Settlement is an exceptional result and provides Settlement Class members with an immediate recovery, the value of which substantially outweighs the mere possibility of future relief after years of risky and protracted litigation.

First, even before considering the risks of further litigation, the proposed Settlement provides a meaningful proportion of realistically recoverable damages. As further described in the Joint Declaration, the proposed Settlement provides a recovery that represents as much as 63% of estimated damages (in a scenario where Plaintiffs only prevailed on Securities Act claims based on the July 2021 Offering and Defendants proved negative causation). (Joint Decl. ¶39.) Even under a scenario where Plaintiffs prevailed on both the Exchange Act and Securities Act claims, subject to negative causation on the latter, the recovery represents a 9.4% recovery—almost double the median recovery of 4.8% in Exchange Act class actions. (*Id.* ¶¶40-41.) The proposed Settlement's percentage recovery warrants final approval. *See Crocs*, 306 F.R.D. at 691 (approving settlement that recovered 1.3% of damages).

Second, the proposed Settlement's immediate recovery is especially valuable given the "risks and costs that go hand in hand with protracted litigation." *Array Biopharma Inc.*, 2021 WL 6331178 at *6. Defendants' motion to dismiss threatened to end the Action outright; approximately 54% of motions to dismiss are granted in securities class actions.[4] And even if Plaintiffs had defeated Defendants' motion to dismiss, achieving any recovery would require

[4] *See* Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation, 2023 Full-Year Review*, NERA, 16 (Jan. 23, 2024).

completing fact and expert discovery, prevailing at summary judgment, and persuading the jury at trial, then defending a favorable judgment from the appeals that would likely follow. In addition to threatening the risk of loss at multiple junctures, these developments could deprive the Class of any recovery for years, magnifying the risk that Gatos's financial condition could further decline over the intervening period. In contrast, the proposed Settlement provides certainty through a substantial, prompt cash payment to the Settlement Class.

Third, even if Plaintiffs prevailed on the merits, Gatos's financial position greatly diminishes the prospect of a meaningfully larger recovery. Gatos reported that it had a cash balance of $10.5 million and $9 million in outstanding debt as of May 31, 2023 (shortly before the parties agreed to settle).[5] Moreover, after correcting the errors in the 2020 Technical Report, Gatos reported that the life of its CLG mine will end in 2028—meaning that no more ore can be economically extracted and sold. In short, there is no assurance that Gatos would be able to pay a meaningfully larger amount than the proposed Settlement.

Thus, the value of the $21 million proposed Settlement substantially outweighs the mere possibility of future relief after further litigation. *See Crocs*, 306 F.R.D. at 691 ("Given the uncertainty of plaintiffs' likelihood of success on the merits and the prospects of prolonged litigation, which would likely continue well beyond any judgment in plaintiffs' favor, the Court finds that immediate recovery in this case outweighs the time and costs inherent in complex securities litigation, especially when the prospect is some recovery versus no recovery.").

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[5] While the LGJV has additional cash, Gatos only has a 70% interest and cannot access the LGJV's cash absent authorized distributions.

4. The Settlement Class Is Adequately Represented and, in the Judgment of All Parties, the Proposed Settlement is Fair, Adequate, and Reasonable

Plaintiffs' Counsel are highly experienced (*see* Joint Decl. ¶¶83-87) and support the proposed Settlement. Given their extensive experience and success in prosecuting similar actions, "[c]ounsel's judgment as to the fairness of the agreement is entitled to considerable weight." *Farley v. Family Dollar Stores, Inc.*, No. 12-cv-00325-RM-MJW, 2014 WL 5488897, at *3 (D. Colo. Oct. 30, 2014). "Moreover, the [S]ettlement was the result of arm's length negotiations and was reached with the aid" of an experienced mediator, as detailed above. *Crocs*, 306 F.R.D. at 691.

The Settlement Class's reaction to date further confirms that the proposed Settlement is fair, reasonable, and adequate. Pursuant to the Preliminary Approval Order (ECF No. 87 at 22-23 of 23), Settlement Class Members must opt out by May 5, 2024, or object by May 10, 2024. To date, Epiq has not received any requests for exclusion or any objections to the proposed Settlement. "The fact that no class member objects shows that the class also considers this settlement fair and reasonable," and further favors final approval. *Diaz v. Lost Dog Pizza, LLC*, No. 17-cv-2228-WJM-NYW, 2019 WL 2189485, at *3 (D. Colo. May 21, 2019); *see also Ramos*, 2020 WL 6585849, at *3.

5. The Additional Rule 23(e)(2) Factors Also Support Final Approval

All of the remaining Rule 23(e)(2) factors also support final approval.

First, the proposed Settlement satisfies Rule 23(e)(2)(D) because it "treats class members equitably relative to each other" through the proposed Plan of Allocation—an objective and fair method of distributing relief, as addressed in Section III below.

Second, the proposed Settlement meets the requirements of Rule 23(e)(2)(C)(ii) by providing an effective method of processing claims and distributing relief. As the Court previously recognized, the Notice contains all of the information required by Rule 23 and the PSLRA, 15 U.S.C. §78u-4(a)(7), and it is "reasonably calculated to apprise the absent class members of the action." (ECF No. 87 at 21 of 23.) More specifically, the Notice "gave the Settlement Class notice of the terms of the proposed Settlement Agreement; the rights of [Settlement] Class Members under the Settlement Agreement—including the rights to opt-out, object, and be heard at a Final Fairness Hearing; [and] the application for counsel fees, costs and expenses." *Gordon v. Chipotle Mexican Grill, Inc.*, No. 17-cv-01415-CMA-SKC, 2019 WL 6972701, at *2 (D. Colo. Dec. 16, 2019) (finding that this "constitutes due and sufficient notice").

Since the Court granted preliminary approval, Plaintiffs' Counsel revised the notice papers to replace "Final Approval Hearing" with "Fairness Hearing" (ECF No. 87 at 20 of 23 n.5), and Epiq, the Court-appointed Claims Administrator, has overseen the dissemination of 29,155 copies of the Notice to potential Settlement Class Members. (*See* Ex. D (Kimball Decl.) ¶¶5, 8-11.) Epiq also created and maintains a case-specific website where Settlement Class Members can obtain additional information and submit their Proof of Claim forms. (*Id.* ¶¶15-20.) Epiq further published the Summary Notice in *Investors' Business Daily* and through the Depository Trust Corporation's Legal Notice System, disseminated it through *PR Newswire*, and published advertisements on the *Google Display Network* and *Yahoo! Finance* websites. (*Id.* ¶¶13-14.) This method of distributing the Notice was adequate. *See Tennille v. Western Union Co.*, 785 F.3d 422, 438-39 (10th Cir. 2015) (finding distribution of notice via first-class mail supplemented by

publishing notice in widely circulated publications and on settlement website sufficiently adequate); *Crocs*, 306 F.R.D. at 693 (same).

Third, satisfying 23(e)(2)(C)(iii), the terms of the proposed awards of attorneys' fees, litigation expenses, and Plaintiffs' reasonable costs and expenses were disclosed in the Notice and are discussed in detail in Lead Counsel's separate motion filed herewith.

Finally, as described in Plaintiffs' motion for preliminary approval, the proposed Settlement satisfies Rule 23(e)(2)(C)(iv) because Plaintiffs identified the confidential Opt-Out Agreement that provided specified options to terminate the Settlement if Persons who otherwise would be Members of the Settlement Class, and timely choose to exclude themselves from the Settlement Class, purchased more than a certain number of shares of Gatos Stock. (*See* ECF No. 82-1 at 18 of 27.)[6]

III. THE PLAN OF ALLOCATION SHOULD BE APPROVED

A settlement plan of allocation "must be fair, reasonable and adequate." *Crocs*, 306 F.R.D. at 692 (quoting *Law v. Nat'l Collegiate Athletic Ass'n*, 108 F. Supp. 2d 1193, 1196 (D. Kan. 2000)). "As a general rule, a plan of allocation that reimburses class members based on the type and extent of their injuries is reasonable." *Id.*

Here, the Plan of Allocation—developed by Lead Counsel with expert assistance and set forth in the Long-Form Notice—is fair, reasonable, and adequate, warranting the Court's approval. The Plan of Allocation allocates each Authorized Claimant their *pro rata* share of the Net Settlement Fund based on their recognized losses in transactions in Gatos Securities.

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[6] As is standard in securities class action settlements, such agreements are not made public in order to avoid incentivizing individual class members to leverage the opt-out threshold to seek disproportionate individual settlements at the expense of the broader class.

Those "Recognized Loss Amounts" are calculated for each qualifying purchase or sale of Gatos Securities using estimates of artificial inflation at the time of each Settlement Class Member's purchase or sale for Exchange Act Claims, and for the Securities Act claims in a manner that generally reflects the statutory damages formula. This appropriately recognizes the different methods to calculate damages under the Securities Act and the Exchange Act.

Specifically, transactions in Gatos common stock and options may result in Recognized Loss Amounts under the Exchange Act, with the calculation depending on when the claimant purchased and/or sold these securities and whether the claimant held them through the statutory 90-day look-back period after the end of the Class Period. *See* 15 U.S.C. § 78u-4(e).

Certain purchases of Gatos common stock between October 28, 2020 and August 18, 2021 may result in Securities Act Recognized Loss Amounts. The calculation of Securities Act Recognized Loss Amounts depends on the amount paid for these shares (not to exceed their offering price), whether they were held after January 25, 2022, and their price or value at the time of suit or the time of sale. *See* 15 U.S.C. § 78k(e).

A claimant's "Recognized Claim" will be the sum of the claimant's Recognized Loss Amounts.[7] The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on their Recognized Claims in proportion to all Recognized Claims. Thus, the proposed Plan of Allocation was designed to fairly and rationally allocate the Net Settlement Fund among Authorized Claimants based on estimates of recognized losses.

[7] To avoid double-counting, the Plan of Allocation provides that a claimant's Recognized Loss Amount for each purchase or acquisition of Gatos common stock during the Class Period shall be the greater of (a) the Securities Act Recognized Loss Amount (if any) or (b) the Exchange Act Recognized Loss Amount (if any). (Joint Decl. ¶56.)

The Plan of Allocation is comparable to plans of allocation approved in other securities class actions, including in this Court. *See, e.g.*, *Crocs*, 306 F.R.D. at 692 ("The Recognized Claim formula helps to determine the basis upon which the Settlement Fund will be proportionally allocated and is based on consultation with plaintiffs' experts, the relative strengths and weaknesses of the Settlement Class claims, and the impact of the alleged misconduct by the Settling Defendants on the price of Crocs' securities at various times during the Settlement Class Period.").

CONCLUSION

Plaintiffs respectfully request that the Court grant this Motion and enter the proposed (1) Final Judgment Approving Settlement and (2) Order Approving Plan of Allocation.

Dated: April 26, 2024

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