UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re TALKSPACE, INC. SECURITIES LITIGATION	:	Civil Action No. 1:22-cv-00163-PGG
	:	CLASS ACTION
	:	JOINT DECLARATION OF LAWRENCE M. ROLNICK AND EVAN J. KAUFMAN IN SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

LAWRENCE M. ROLNICK and EVAN J. KAUFMAN, jointly declare as follows:

1. Lawrence M. Rolnick, a member of the bars of the State of New York and the State of New Jersey admitted to practice before this Court and a member of the law firm of Rolnick Kramer Sadighi LLP ("Rolnick Kramer"), and Evan J. Kaufman, a member of the bar of the State of New York admitted to practice before this Court and a partner at the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Court-appointed Lead Counsel in the above-captioned litigation (the "Action"), submit this Joint Declaration in support of: (a) Plaintiffs' motion for final approval of the settlement of this Action; (b) Plaintiffs' motion for approval of the proposed Plan of Allocation; and (c) Lead Counsel's application for an award of attorneys' fees and expenses, including awards to Plaintiffs for their time representing the Class. We each have personal knowledge of the matters set forth herein based on our active participation in material aspects of the prosecution and settlement of this litigation. If called upon, we could and would competently testify that the following facts are true and correct.

2. The plaintiffs in the Action are Steven Jacob Greenblatt, Montague Street LP, Greenblatt Family Investments LLC, William Greenblatt, Judith Greenblatt, the Brandon T. Greenblatt 2015 Trust, the Maggie S. Greenblatt 2015 Trust, the Steven Jacob Greenblatt 2015 Trust, and Ivan M. Baron (collectively, "Plaintiffs").[1] The defendants are Talkspace, Inc. ("Talkspace" or the "Company") f/k/a Hudson Executive Investment Corp. ("HEIC"), Groop Internet Platform, Inc. n/k/a Tailwind Merger Sub II, LLC, Oren Frank, Mark Hirschhorn, HEC Sponsor LLC, Hudson Executive Capital LP, HEC Master Fund LP, Douglas L. Braunstein, Douglas

[1] All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Stipulation of Settlement (the "Stipulation"), filed with the Court on May 26, 2023 (ECF 84).

G. Bergeron, Jonathan Dobres, Robert Greifeld, Amy Shulman, and Thelma Duggin (collectively, "Defendants").

3. Plaintiffs allege violations of: (i) Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), on behalf of all persons or entities that purchased or otherwise acquired Talkspace securities between June 11, 2020 and November 15, 2021, inclusive (the "Class Period"); and (ii) Sections 14(a) and 20(a) of the Exchange Act on behalf of all holders of Talkspace common stock as of the May 19, 2021 Record Date for the special meeting of shareholders held on June 17, 2021, and who were entitled to vote on the approval of the Merger between HEIC and Talkspace, based on the Proxy statement issued in connection with the Merger.

4. Plaintiffs have entered into a settlement on behalf of themselves and the Class with Defendants, which provides a recovery of $8,500,000 in cash to resolve this securities action as well as claims asserted in an action pending in Delaware Court of Chancery, entitled *Valdez v. Braunstein*, No. 2022-1148-KSJM (the "Delaware Action") (the "Settlement"). The Settlement is contained in a settlement agreement entered into by all parties dated May 19, 2023, and previously filed with the Court on May 26, 2023 (ECF 84).

5. This Joint Declaration sets forth the nature of the claims asserted, the principal proceedings in the Actions, the legal services provided by Lead Counsel, the settlement negotiations between the parties, and also demonstrates why the Settlement and Plan of Allocation are fair, reasonable, adequate and in the best interests of the Class, and why the application for attorneys' fees and expenses and awards to Plaintiffs are reasonable and should be approved by this Court.

I. PRELIMINARY STATEMENT

6. The proposed Settlement of $8.5 million in cash provides a considerable benefit to the Class by conferring a substantial, certain, and immediate recovery, while avoiding the significant

risks and expense of continued litigation. This beneficial Settlement was achieved as a direct result of Plaintiffs' and Lead Counsel's efforts to successfully investigate the claims, initiate the Action, seek appointment as representatives of the Class, aggressively litigate the Action, and negotiate a settlement of the Action during a full-day mediation against highly competent opposing counsel.

7. Specifically, the Settlement represents an estimated recovery of approximately 13% of the estimated recoverable damages, significantly higher than the 3.8% median percentage recovery in securities class actions of this size. The benefit the proposed Settlement will provide to the Class is particularly meaningful when considered against the substantial risk the Class might recover significantly less (or nothing) if litigation would have continued through adjudication of Defendants' pending motion to dismiss, extensive fact and expert discovery, class certification, dispositive motions, trial, and any appeals that would likely follow—a process that could last years. There is no guarantee Plaintiffs would have been able to establish Defendants' liability or damages, or would have been able to achieve any monetary recovery for the Class.

8. Indeed, even though Plaintiffs disagree, Defendants argued forcefully that the Action should be dismissed at the pleading stage, contending that the Section 10(b) claims should be dismissed because Plaintiffs failed to adequately plead falsity, scienter, and loss causation, and that the Section 14(a) claims should be dismissed because the Complaint did not adequately plead falsity. Defendants also argued that because Plaintiffs had the right to redeem their shares regardless of whether they voted for the Merger, they did not plead the "essential link" of transaction causation required under Section 14(a). The risk that this Court could have ruled in Defendants' favor and dismissed the claims of the Class in their entirety was not insignificant.

9. Lead Counsel thoroughly investigated and vigorously litigated the claims asserted in this Action. Lead Counsel performed a significant factual investigation at the pleading stage to gain

a detailed understanding of the claims at issue regarding the Merger between Talkspace and HEIC. In this regard, Lead Counsel thoroughly analyzed the de-SPAC transaction and reviewed and analyzed the publicly available information regarding the various Defendants, including, but not limited to, relevant U.S. Securities and Exchange Commission ("SEC") filings, financial reports and press releases, as well as media and analysts' reports. Lead Counsel also identified and interviewed a former employee of Talkspace, who provided consequential information further supporting Plaintiffs' claims.

10. In addition, Lead Counsel thoroughly researched the law applicable to the claims and defenses asserted, including SEC rules, regulations and guidelines and proposed SEC rules and guidelines relating to SPAC transactions.

11. Plaintiffs filed the Consolidated Class Action Complaint (the "Complaint") on August 1, 2022.[2] Defendants filed their motion to dismiss the Complaint on September 13, 2022, Plaintiffs filed their opposition papers on October 11, 2022, and Defendants filed their reply brief on October 25, 2022. Thereafter, the parties engaged in settlement discussions and participated, along with counsel in the Delaware Action, in a mediation on February 16, 2023, before Robert A. Meyer, Esq., of JAMS, where they made arguments regarding their claims and defenses, including damages, and negotiated possible settlement terms to resolve claims in both Actions on a global basis.

12. After a full-day mediation of arm's-length negotiations, the parties reached an agreement in principle to settle the Actions and negotiated and entered into a term sheet on February 17, 2023. Thereafter the parties extensively negotiated and entered into the Stipulation, which was filed with the Court on May 26, 2023. During the course of the parties' negotiations, Lead Counsel made it clear that, while we were prepared to assess the strengths and weaknesses of our case fairly,

[2] References to paragraphs of the Complaint appear herein as "¶__."

we would continue to litigate rather than settle for less than fair value. Lead Counsel persisted in negotiations until we achieved an amount we thought was in the best interests of the Class.

13. The proposed $8,500,000 Settlement, derived from substantial efforts of Lead Counsel, is a notable achievement under the circumstances of the Action. Although Plaintiffs believe they would have defeated Defendants' motion to dismiss, and that the allegations of the Complaint would have been borne out by the evidence, they also recognize that they faced a difficult road in prevailing on the merits. This case presents substantial hurdles not only because Defendants deny their liability altogether, but also because the unique nature of the de-SPAC transaction increased the complexity of this Action and complicated the theories of liability. Thus, the Settlement is eminently fair, reasonable, and adequate based on the impediments to recovery, the legal hurdles and risks involved in proving liability and damages, as well as the further risk, delay, and expense had this case continued to summary judgment and trial against Defendants.

14. The Settlement was negotiated on all sides by experienced counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses. The Settlement confers substantial and immediate benefits to the Class, while eliminating the risk that the Class would receive nothing. Furthermore, even if Plaintiffs had prevailed at the motion to dismiss stage, at the summary judgment stage, and then at trial, any recovery could still be years away, as Defendants would likely have appealed. Given Talkspace's precarious financial condition, delay may have resulted in the exhaustion of insurance proceeds and any viable source of recovery. Lead Counsel respectfully submit that, under these circumstances, the Settlement is in the best interest of the Class and should be approved as fair, reasonable, and adequate.

15. Lead Counsel also respectfully submit that the Court should approve the Plan of Allocation and award attorneys' fees in the amount of 30% of the Settlement Amount, plus expenses

in the amount of $20,891.65, which have been incurred or advanced by counsel in connection with the Actions, plus interest thereon, as a result of counsel's considerable efforts in creating this substantial benefit on behalf of the Class, and as recognition for the risks faced and overcome.

16. The Class appears to approve the Settlement overwhelmingly. Pursuant to the Court's Order granting preliminary approval and permitting notice to the Class, dated June 30, 2023 (the "Notice Order"), more than 12,800 copies of the Postcard Notice were mailed to potential Class Members and nominees and the Notice of Pendency and Proposed Settlement of Class Actions ("Notice") and Proof of Claim and Release ("Proof of Claim") were posted to the case-designated website.[3] Murray Decl., ¶¶5-11, 14. Additionally, a Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on July 28, 2023 (the "Summary Notice"). *Id.*, ¶12. The Notices apprised Class Members of their right to object to the Settlement, the Plan of Allocation or to Lead Counsel's application for attorneys' fees of 30% of the Settlement Amount plus expenses of up to $75,000. While the time to file objections to any of the relief, by October 9, 2023, has not yet expired, to date, there have been no objections to the Settlement, the Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and expenses.

17. Lead Counsel zealously and aggressively litigated this case for well over a year and a half on a wholly-contingent basis. The fee application for 30% of the total recovery is fair, reasonable and adequate, and warrants Court approval. This fee request is well within the range of fees typically awarded in actions of this type and is wholly justified in light of the benefits obtained, the substantial risks undertaken, and the quality, nature and extent of the services rendered, as more fully set forth in the Memorandum of Law in Support of Lead Counsel's Motion for an Award of

[3] *See* the accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl.").

Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), submitted herewith.

18. The following sections set forth the principal proceedings in this matter and the major legal services provided by Lead Counsel, the negotiation of the Settlement, the terms of the Settlement, why the Settlement and the Plan of Allocation are fair, reasonable, adequate and in the best interests of the Class, and the reasonableness of Lead Counsel's fee and expense request.

II. SUMMARY OF PLAINTIFFS' ALLEGATIONS

19. Talkspace is a behavioral healthcare company that virtually connects patients with licensed mental health providers. Talkspace began as a private company in 2012 and became a public company on or about June 22, 2021, when it merged with a SPAC named HEIC. During the Class Period (June 11, 2020 through November 15, 2021, inclusive), Plaintiffs allege Defendants misrepresented and omitted material facts to ensure the Merger would be approved and which caused an artificial inflation in the price of HEIC securities prior to the Merger and Talkspace securities after the Merger.

20. Plaintiffs allege Defendants portrayed Talkspace as a cutting-edge technology company with strong operations, solid leadership, advanced technology, and tremendous growth opportunities. Plaintiffs allege from the time Defendants announced their proposed business combination through the Merger, Defendants issued false and misleading statements regarding Talkspace's business and growth prospects, including in the Proxy statement for the Merger, which induced investors to vote in favor of the Merger and artificially inflated its stock.

A. Talkspace's Purported Scalable Platform and Matching and Conversion Ability

21. Plaintiffs allege Defendants emphasized Talkspace's strong growth opportunities and its ability to quickly match clients with therapists. Notably, that Talkspace's proprietary algorithm

had an "almost 100% rate of matching in the same day—typically between 3 and 4 hours" (¶154) and that Talkspace retained customers longer than traditional therapy. ¶148 ("[w]ith Talkspace, we are scoring well over 5 months of tenure for our people that are our members. So we exceed the 3 months that is needed for basic remission very easily . . ."). Plaintiffs allege these statements were materially false and misleading because Talkspace's service was not sufficiently scalable, was not matching clients with providers as quickly as represented, and suffered from customer conversion and retention issues. ¶¶121, 127, 131-132, 137.

B. Talkspace's Purported Automated Claims Processing

22. Plaintiffs allege Defendants stated to investors that Talkspace was "essentially a technology company" and represented that it had a "scalable platform," including "reduced administrative burdens[.]" ¶¶159, 160, 163, 164. Plaintiffs allege, contrary to Defendants' statements, Talkspace did not have an automated process to bill and submit claims to insurance companies, negatively impacting Talkspace's ability to collect on receivables and increasing the likelihood that insurers would not reimburse Talkspace for claims. ¶¶165-166.

C. Talkspace's Elevated Customer Acquisition Costs

23. Plaintiffs allege that Defendants closely monitored customer acquisition costs, which Defendants acknowledged as "critical" to the Company's business. ¶¶115, 208-209. Plaintiffs allege Defendants knew, or recklessly disregarded, that Talkspace failed to warn investors that online advertising costs in the B2C business had substantially increased since at least the beginning of 2021 (¶114), which Defendant Hirschhorn subsequently characterized on August 9, 2021, as "really punitive[.]" ¶115.

D. Talkspace's B2B Segment

24. Plaintiffs allege Talkspace's B2B business was supposed to serve as a key growth segment for the business but was not as rosy as Defendants represented. B2B eligible lives measured the number of enterprise, large health plan, and employee assistance program clients eligible to receive treatment on the Talkspace platform. ¶¶73, 221. Talkspace identified B2B eligible lives as a key business metric and one of "the metrics most meaningful to investors in evaluating the performance of Talkspace[.]" ¶73. Plaintiffs allege, contrary to Defendants' statements about the number of eligible lives, Defendants knew, or recklessly disregarded, that the B2B eligible lives metric was inflated because Talkspace double-counted users who were covered by more than one plan, thereby overstating the then-existing value and opportunity of the B2B segment. ¶¶78, 169.

E. Talkspace's Pre-Merger Management

25. Plaintiffs allege, before the Merger, Defendant Braunstein stated Talkspace's management shared "a similar mission and a similar vision for how the business is going to grow" and was "very much aligned." ¶¶171-172. Plaintiffs also allege Defendant Frank stated that he and his wife, Roni Frank, would "stay in [their] jobs" after the Merger. ¶173. Plaintiffs allege that, contrary to Defendants' statements, Talkspace's management and Board were discussing succession plans to replace Talkspace's pre-Merger management team—including Defendant Frank, around the time of the filing of the Proxy, and that Defendant Frank did not plan to stick around after the Merger. ¶¶86-87.

F. The Corrective Disclosures

26. Plaintiffs allege that shortly after the Merger closed, Defendants began to reveal their prior statements were materially false and misleading. On August 9, 2021, Talkspace reported an

adjusted EBITDA loss for Q2 2021 of $12 million compared to a loss of $300,000 for the year prior. ¶114. Defendant Hirschhorn confirmed that "[t]he majority of the excess losses in the quarter relative to initial expectations can be attributed to this increase in customer acquisition cost" and that "advertising costs have dramatically increased during the first half of this year[.]" *Id.* Following the news, Talkspace stock declined over 18% on August 10, 2021. ¶240.

27. On November 15, 2021, Talkspace reported "disappointing" Q3 2021 results, missing analyst consensus on quarterly sales by nearly 20%. ¶¶120, 128, 241. Plaintiffs allege Talkspace also revealed other facts, including matching and retention problems, Talkspace's "highly manual and complex" claims processing, that the B2B eligible lives metric was artificially inflated, and that Defendant Frank and his wife Roni Frank would be resigning, effective immediately. ¶¶121-123, 127, 132-134, 137, 139. Following this news, Talkspace's stock declined over 36%. ¶242.

III. PROCEDURAL HISTORY AND PROSECUTION OF THE TALKSPACE ACTIONS

A. The Commencement of the Action, Appointment of the Plaintiffs, and Filing of the Complaint

28. The initial complaint was filed on January 7, 2022. ECF 1. Specifically, Robbins Geller filed a lawsuit on behalf of plaintiff Ivan M. Baron in this Court (the "*Baron* Action"). Plaintiff in the *Baron* Action brought claims on behalf of a putative class of all holders of Talkspace common stock as of the record date for the June 17, 2021 Talkspace shareholder meeting under Sections 14(a) and 20(a) of the Exchange Act, and SEC Rule 14a-9 promulgated thereunder.

29. Then, on January 31, 2022, another firm filed a lawsuit on behalf of plaintiff Luis Diaz Valdez bringing claims on behalf of a putative class of Talkspace shareholders under Sections 10(b) and 20(a) of the Exchange Act, and SEC Rule 10b-5 promulgated thereunder, as well

as Section 14(a) claims, as in the *Baron* Action. Counsel for Valdez marked the *Valdez* Action related to the *Baron* Action.

30. The Private Securities Litigation Reform Act of 1995 ("PSLRA") provides that "[n]ot later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class . . . of the pendency of the action, the claims asserted therein, and the purported class period." 15 U.S.C. §78u-4(a)(3)(A)(i).

31. Counsel for Plaintiff Baron, Robbins Geller, published a notice of pendency of the *Baron* Action in *Business Wire* on January 7, 2022. Counsel for Plaintiff Valdez published a notice of pendency of the *Valdez* Action via *Globe Newswire* on January 31, 2022.

32. On March 8, 2022, Robbins Geller and Rolnick Kramer, along with several other law firms, filed competing motions for lead plaintiff and lead counsel. ECF 23-44.

33. On March 22, 2022, Rolnick Kramer and Robbins Geller jointly, and a competing firm, separately, filed memoranda of law in opposition to the other competing motions for lead plaintiff and lead counsel. ECF 47, 49. Several other firms filed notices of non-opposition. ECF 45-46, 48.

34. On June 3, 2022, the Court appointed the Plaintiffs as Lead Plaintiffs, and approved their selection of Rolnick Kramer and Robbins Geller as Co-Lead Counsel. ECF 56.

35. Following our appointment, Lead Counsel continued our aggressive, wide-ranging investigation into the facts and circumstances of the de-SPAC transaction and the public statements issued in connection therewith. Lead Counsel reached out to numerous potential witnesses, including former employees of Talkspace, reviewed Defendants' public statements and SEC filings, media reports about Defendants, and proposed SEC rules and guidance on SPAC transactions. On

August 1, 2022, Plaintiffs filed the Complaint, which spanned 298 numbered paragraphs over 80 pages and greatly expanded on the initial complaint. ECF 60.

36. The Complaint alleges violations of: (i) Sections 10(b) and 20(a) of the Exchange Act, on behalf of all persons or entities that purchased or otherwise acquired Talkspace securities between June 11, 2020 and November 15, 2021, inclusive (the Class Period); and (ii) Sections 14(a) and 20(a) of the Exchange Act on behalf of all holders of Talkspace common stock as of the May 19, 2021 Record Date for the special meeting of shareholders held on June 17, 2021, and who were entitled to vote on the approval of the Merger between HEIC and Talkspace, based on the Proxy statement issued in connection with the Merger.

37. The Complaint alleges, among other things, that Talkspace failed to disclose it was experiencing substantial difficulties with its operations, including matching and conversion issues on its platform, automated claims processing issues, elevated customer acquisition costs due to increased competition, a faltering B2B segment, and unstable management. The Complaint alleged detailed factual allegations supporting Plaintiffs' claims based on Plaintiffs' investigation. Lead Counsel also continued their investigation and attempts to interview former employees who could provide additional facts supporting Plaintiffs' claims.

B. Defendants' Motion to Dismiss

38. On September 13, 2022, Defendants filed a motion to dismiss the Action in its entirety. ECF 67. Defendants' motion to dismiss was supported by a 41-page memorandum of law. ECF 68. Defendants challenged Plaintiffs' claims on various grounds, including that the Section 10(b) claims should be dismissed primarily on falsity, scienter, and loss causation grounds, and that the Section 14(a) claims should be dismissed because they sounded in fraud, which was not adequately pleaded, as well as on falsity grounds.

39. On October 11, 2022, Plaintiffs filed an opposition to Defendants' motion to dismiss (ECF 70) supported by a 42-page memorandum of law responding to Defendants arguments and explaining why the Complaint adequately alleges claims under Sections 10(b), 14(a), and 20(a) of the Exchange Act. ECF 70.

40. Plaintiffs supported their opposition to Defendants' motion to dismiss with facts provided by a former Talkspace employee ("FE1") who Plaintiffs interviewed after the filing of the Complaint and as part of Plaintiffs' ongoing investigation. Among other things, FE1 provided additional details supporting Plaintiffs' allegations concerning Talkspace's matching and conversion issues, claims processing and customer issues, and management issues.

41. On October 25, 2022, Defendants filed their reply in further support of the motion to dismiss. ECF 72. Defendants reiterated that Plaintiffs' claims are not actionable and that additional details provided by FE1 did not cure the Complaint's purported defects.

1. Defendants Claimed the Complaint Did Not Allege Actionable False Statements or Omissions

42. Defendants argued the allegations concerning Talkspace's inability to timely match customers with therapists on the platform were not sufficiently factually supported in the Complaint. Defendants contended Plaintiffs' Complaint failed to establish that Talkspace was not scoring well over 5 months of tenure for members on the platform. Defendants also contended that challenged statements concerning matching and conversion issues on Talkspace's platform were taken out of context from statements made during an analyst call.

43. Defendants argued that statements about Talkspace's scalability, "reduced administrative burden" in claims processing, and strength of the Company's management were mere puffery statements that are routinely held inactionable as a matter of law. Defendants further argued that statements about the number of eligible lives covered, even if it involved double-counting, were

not false because Talkspace never suggested it would be able to identify which lives were eligible for Talkspace under multiple plans, and that there were no facts to show that investors understood that Talkspace had been "de-duping" this figure. Defendants claimed that Plaintiffs did not allege how many lives were double-counted, and analysts showed little interest in this information when it was disclosed.

44. In response, Plaintiffs disputed Defendants' arguments regarding Talkspace's matching and conversion issues, and provided additional facts to support their allegations from Talkspace's former employee, FE1. Plaintiffs provided additional facts to support that Talkspace was experiencing a therapist shortage on the platform resulting in considerable matching delays and negatively impacting client retention.

45. In response to Defendants' arguments that statements about Talkspace's scalability, "reduced administrative burden" in claims processing, and strength of the Company's management were inactionable puffery, Plaintiffs asserted that such statements are not puffery since they are verifiable statements of fact that can be proven true or untrue. *See Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175, 184 (2015) ("determinate, verifiable statement" of fact is not puffery). In response to Defendants' argument regarding the B2B eligible lives metric, which Defendants contended investors never understood to have been "de-duped" for individuals covered under multiple plans, Plaintiffs countered that Defendants' argument is at odds with the common sense meaning of words and figures and is rebutted by the level of specificity in which Talkspace reported B2B eligible lives. *See* ¶¶167, 222-223, 225.

2. Defendants' Loss Causation Argument

46. Defendants argued that the August 9, 2021 disclosure was not corrective of any allegedly false and misleading statement since rising customer acquisition costs were purportedly

disclosed in the Proxy and/or known by the market, generally. Defendants further argued that the November 22, 2021 announcement that Defendant Hirschhorn would be resigning was not a corrective disclosure because Plaintiffs did not define the class period to include November 22, 2021, nor did Plaintiffs connect this announcement to the falsity of any challenged statements.

47. In response, Plaintiffs argued that Defendants conceded that loss causation was adequately alleged for November 15, 2021 since Defendants failed to challenge that disclosure. Plaintiffs argued that loss causation relating to the August 9, 2021 rising customer acquisition cost disclosure was adequately alleged because Defendants were improperly attempting to assert a truth on the market affirmative defense, the Proxy specifically warned investors not to rely on outside information, and Talkspace did not disclose to investors the dramatically increased customer acquisition costs it was facing at the time of the Merger.

3. Defendants' Scienter Argument

48. Defendants argued that Plaintiffs did not provide any specific allegations that any Defendant had access to contradictory information from their public statements, what that information was, or how the Defendant gained access to it. Defendants further argued that the SPAC transaction entailed a generalized desire to close a business deal and did not adequately support scienter.

49. Defendants also argued that non-fraudulent inferences were more compelling given that Defendants were under no compulsion to do a transaction when they announced their deal with Talkspace and argued that certain Defendants were investing in Talkspace during the relevant time period, which cuts against an inference of scienter.

50. In response to Defendants' argument that Plaintiffs did not provide specific allegations that Defendants had access to information that contradicted their public statements,

Plaintiffs argued that the Complaint identified purported robust tracking data by which Defendants were able to review information about key metrics and that details provided by FE1 revealed that Jennifer Fulk, Talkspace's CFO, led weekly meetings where Talkspace's therapist shortage issue and scheduling problems were discussed, and written presentations also informed management of the problems.

51. In response to Defendants' argument that the SPAC transaction entailed a generalized desire to close a business deal that was not an adequate motive supportive of scienter, Plaintiffs argued that, because of the SPAC structure, Defendants HEC Sponsor, Duggin, and Schulman were motivated to mislead (and cause others to mislead) investors to ensure that the Merger was approved so that they would receive Talkspace securities worth considerably more than the nominal amount they paid for their founder shares.

52. Plaintiffs also argued that Defendant Frank discussed his desire to leave the Company after the Merger and Defendants Braunstein, Bergeron, Dobres, Duggin, Greifeld, and Schulman conducted "extensive due diligence" into Talkspace before the Merger, and Defendant Braunstein had "unique access" to Talkspace through his wife, Talkspace's Chief Marketing Officer, which supported their scienter.

4. Defendants' Arguments Regarding Specific Defendants

53. Defendants argued Hudson Executive Capital LP, HEC Fund, and HEC Sponsor should be dismissed because they were not alleged to have made any statements. Generally, only the "maker" of a false statement can be liable under Rule 10b-5(b). *See, e.g.*, *SEC v. Rio Tinto plc*, 41 F.4th 47, 52 (2d Cir. 2022). Moreover, Defendants argued that Frank and Hirschhorn were not affiliated with Talkspace before the Merger.

54. In response, Plaintiffs argued that such Defendants are liable under Rule 10b-5(a) & (c) for their participation in the alleged scheme to defraud investors and are liable because they had "ultimate authority" over the statements. Plaintiffs also asserted that Defendants ignored Plaintiffs' allegations of scheme liability under Rule 10b-5(a) & (c).

5. Defendants' Section 14(a) Arguments

55. Defendants contended the above arguments pertaining to Talkspace's matching algorithm, management, B2B eligible lives, and reduced administrative burdens apply to the Section 14(a) claims since such challenged statements were duplicative of Plaintiffs' Section 10(b) claims and fail for the same reasons. Defendants further argued that Plaintiffs alleged no facts to show HEIC overstated its diligence capabilities and that Defendants disclosed in the Proxy the very risks Plaintiffs pointed to.

56. Defendants also argued that Plaintiffs' Section 14(a) claims should be dismissed because they sounded in fraud, which was not adequately pleaded, as well as on falsity grounds. Defendants also argued that Plaintiffs were, in essence, alleging a "holder claim," *i.e.*, that Plaintiffs were induced not to sell or redeem their shares due to the allegedly false and misleading statements in the Proxy, which is not cognizable under the federal securities laws. *See In re Citigroup Inc. Sec. Litig.*, 987 F. Supp. 2d 377, 383 (S.D.N.Y. 2013).

57. In response, Plaintiffs contended the statements pertaining to Talkspace's matching algorithm, management, B2B eligible lives, and reduced administrative burdens should be upheld for the reasons stated above. In response to Defendants' argument that Plaintiffs did not plead facts that show HEIC overstated its diligence capabilities, Plaintiffs argued existing management's deficit of knowledge in the growing B2B segment and Talkspace's highly manual and complex claims processing evidence Defendants' failure to conduct adequate due diligence. In response to

Defendants' argument that the Proxy disclosed the very risks Plaintiffs pointed to, Plaintiffs argued Defendants' risk disclosures were framed as mere hypotheticals when Talkspace was experiencing substantially increased online advertising costs in the B2C business since the beginning of 2021 and experiencing lower conversion rates from its online advertising in its B2C business and more tepid demand than represented to investors.

58. In response to Defendants' argument that the Section 14(a) claims sounded in fraud and were subjected to heightened pleading requirements, Plaintiffs argued the Section 14(a) claims do not sound in fraud and are only subject to the notice pleading standard of Rule 8. Plaintiffs argued the Complaint specifies that the Section 14(a) claims are based solely in negligence and disclaims any allegations that "could be construed as alleging or sounding in fraud or intentional or reckless misconduct" and was structured to draw a clear distinction between the fraud and non-fraud claims. *See* ¶¶275, 281, 292.

59. In response to Defendants' argument that Plaintiffs alleged a "holder claim," Plaintiffs argued Defendants' citations to "holder" cases were mistaken because such cases focus on Section 10(b) claims which have a purchase and seller element of the claim, unlike Plaintiffs' Section 14(a) claims where there is no purchase or sale requirement, and that Defendants' argument runs contrary to settled principles of securities laws and would enable SPACs to circumvent securities laws designed to protect investors.

C. The Delaware Action

60. On December 13, 2022, Delaware Plaintiff's Counsel filed a Verified Class Action Complaint (the "Delaware Complaint") on behalf of Delaware Plaintiff. The Delaware Complaint asserts claims for breach of fiduciary duty and aiding and abetting on behalf of Delaware Plaintiff and all similarly situated former holders of Talkspace's common stock.

61. The Delaware Complaint alleges that Defendants breached their fiduciary duties under Delaware law or aided and abetted such breaches by orchestrating a conflicted and unfair Merger between HEIC and Talkspace and by causing a materially false and misleading Proxy to be issued in connection with the Merger, thereby impairing stockholders' redemption rights. The Delaware Complaint further alleges that the Proxy contained materially false and misleading projections, falsely stated that Talkspace believed the assumptions used to derive its forecasts were "both reasonable and supportable," failed to disclose that the metric "business to business eligible lives" was created using double counting, omitted material information and contained materially misleading statements regarding Talkspace's matching capabilities and technology, and omitted material information regarding the key metric "conversion rates." Finally, the Delaware Complaint alleges that the unfair and conflicted Merger is subject to entire fairness review under Delaware law, and that the Merger was not entirely fair to Delaware Plaintiff and similarly situated former HEIC stockholders.

D. Settlement Negotiations

62. In October 2022, Defendants contacted Plaintiffs to discuss a potential mediation. Shortly thereafter, the financial press reported Talkspace was in "advanced negotiations" to be acquired for $200 million, approximately 85% *less* than its $1.4 billion valuation at the time of the Merger completed just a year prior. The acquisition rumors came on the heels of a November 18, 2022 letter from the Nasdaq warning that Talkspace may be de-listed.

63. After a series of communications, Plaintiffs and Defendants agreed to participate in a mediation scheduled for February 16, 2023, with Robert A. Meyer, Esq. of JAMS. On December 13, 2022, after the parties had decided to schedule a mediation but before the mediation took place, the Delaware Plaintiff commenced the Delaware Action. As a result, Defendants requested that the

Delaware Action be included in the mediation so that Defendants could determine whether the claims in both actions could be resolved on a global basis. Plaintiffs agreed to Defendants' request to include the Delaware Action in the mediation.

64. In advance of the mediation session, Plaintiffs and Defendants submitted and exchanged written mediation statements addressing the legal and factual issues in the Action. Plaintiffs submitted a 24-page mediation statement and Defendants submitted a 17-page mediation statement. Plaintiffs worked closely with one of Lead Counsel's in-house damages expert in connection with the preparation of the mediation statement and for purposes of negotiations during the mediation. Lead Counsel's efforts in drafting Plaintiffs' mediation statement, preparing responses to Defendants' mediation statement for use at the mediation, and participation in the mediation were instrumental in achieving the settlement of the Actions.

65. The mediation was a formal, all-day virtual mediation session before Mr. Meyer. The negotiations at the mediation went back-and-forth with each side arguing for their positions. During that session, the parties discussed the merits of the Actions, including liability and damages. During the course of these negotiations, Lead Counsel made it clear they would continue to litigate rather than settle for less than fair value.

66. The parties negotiated back and forth all day and well into the evening, culminating in an agreement in principle for a cash settlement of $8,500,000. The parties, however, were not yet able to agree on all of the other basic terms of the settlement so negotiations continued the next morning. The parties continued their negotiations of the remaining core terms and executed a term sheet memorializing their agreement on February 17, 2023. The term sheet set forth the core terms of the settlement, including that the parties would negotiate and submit a formal stipulation of settlement to the Court.

67. The parties vigorously negotiated the terms in the stipulation of settlement over three months and entered into the agreement on May 19, 2023. The inclusion of the Delaware Action in a global resolution of the claims complicated the negotiations.

68. Lead Counsel continue to believe the claims asserted in the Action are meritorious. Nonetheless, we recognize that Defendants would be able to mount a vigorous defense to those claims, rendering an outcome in Plaintiffs' favor far from certain, and a settlement all the more desirable. Importantly, the Company's then-precarious financial condition also weighed in favor of the Settlement because the Company's ability to pay after lengthy litigation was unclear. Around the time of the Merger, Talkspace was valued at approximately $1.4 billion. But by the time the parties engaged in their February 2023 mediation session, Talkspace's market capitalization fell to approximately $150 million, representing a concerning development Lead Counsel had to take into account.

69. Thus, Lead Counsel firmly believe the compromise embodied in the Stipulation represents an excellent recovery for the Class. The proposed $8.5 million Settlement will provide Class Members a benefit now without risking the possibility of losing the case or prevailing against Defendants after years of litigation and not being able to collect any judgment because of Defendants' inability to pay.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

70. On May 26, 2023, Plaintiffs filed their unopposed motion for preliminary approval of settlement. In connection therewith, Plaintiffs requested that the Court approve the forms of notice, which, among other things, describe the terms of the Settlement, advise Class Members of their rights in connection with the Settlement, set forth the Plan of Allocation, inform Class Members of the amount of attorneys' fees and expenses that Lead Counsel would request, and explain the

procedure for filing a Proof of Claim in order to be eligible to receive a payment from the Net Settlement Fund. In addition, Plaintiffs requested that the Court certify the Class for settlement purposes.

71. By Order dated June 30, 2023, the Court preliminarily approved the terms of the Settlement and directed that Lead Counsel cause the mailing of the Postcard Notice to all potential Class Members identifiable with reasonable effort and the Notice and Proof of Claim to be posted to the case-designated website. The Court's Notice Order also directed Lead Counsel to cause the Summary Notice to be published once in *The Wall Street Journal* and once over a national newswire service.

72. Submitted herewith is the Murray Declaration, which attests that over 12,800 Postcard Notices have been mailed to potential Class Members and nominees and that the Summary Notice was published on July 28, 2023, as directed by the Court. Murray Decl., ¶¶11-12.

73. The Notices informed Class Members of, among other things, the terms of the Settlement, the Plan of Allocation, and that Lead Counsel would apply for an award of attorneys' fees not to exceed 30% of the Settlement Amount, plus expenses not to exceed $75,000, plus interest on each amount at the same rate earned on the Settlement Fund until paid.

74. The Notices state that objections to any aspect of the Settlement, the Plan of Allocation or the application for attorneys' fees and expenses must be filed by October 9, 2023. While the deadline for objections has not expired, to date, no objections have been filed by any member of the Class to the Settlement, the Plan of Allocation or to the request for attorneys' fees and expenses. This fact supports Lead Counsel's conclusion that they obtained a highly favorable outstanding result for the Class under the circumstances.

V. THE PLAN OF ALLOCATION

75. In accordance with the Notice Order, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a valid Proof of Claim by October 23, 2023. As described in the Notice, the Net Settlement Fund will be distributed among eligible Class Members according to the plan of allocation approved by the Court.

76. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed. The proposed Plan of Allocation provides that, to qualify for payment, a claimant must be, among other things, an eligible member of the Class and must submit a valid Proof of Claim form that provides all of the requested information. The Plan of Allocation is set forth in the Notice.

77. Lead Counsel developed the Plan of Allocation with a damages consultant, and it is comparable to plans of allocation that courts have approved in numerous other securities class actions.

78. The Plan of Allocation, which is described in the Notice, is based on the Complaint's allegations that (a) Defendants' materially false and misleading statements and omissions artificially inflated the price of Talkspace securities during the Class Period; (b) that a series of public disclosures that partially corrected the challenged statements removed the inflation from the securities; and (c) that the Proxy contained materially false and misleading statements and omissions.

79. The Plan of Allocation calculates each Class Member's share of the Net Settlement Fund based on a formula for the "Recognized Loss" for each Talkspace security purchased, acquired, or held during the Class Period that is listed in the Proof of Claim and for which adequate documentation is provided by the claimant.

80. The calculation of Recognized Loss Amounts under the proposed Plan of Allocation will depend on several factors, including when the Talkspace security was purchased or acquired and in what amounts, whether the securities were sold, and, if so, when they were sold and for what amounts. For a Class Member to have a "Recognized Loss Amount" under the Plan of Allocation, shares of Talkspace securities must have been purchased or acquired during the Class Period and held through at least one corrective disclosure.

81. Plaintiffs' claims are treated equally with the claims of every other Class Member.

82. The Claims Administrator will calculate claimants' Recognized Loss Amounts using the transaction information that claimants provide to the Claims Administrator in their Proofs of Claim.

83. Once the Claims Administrator has processed all submitted claims, notified claimants of deficiencies or ineligibility, processed responses, and made claim determinations, the Claims Administrator will make distributions to eligible Authorized Claimants in the form of checks and wire transfers.

84. If any monies remain in the Net Settlement Fund after at least six months from the first distribution, the Claims Administrator will conduct additional re-distributions until it is no longer cost effective. At that time, any remaining balance will be donated to any appropriate non-sectarian, non-profit charitable organization(s) serving the public interest.

85. The proposed Plan of Allocation is thus a fair and reasonable method for allocating the Net Settlement Fund to eligible Class Members.

86. To date, no objections to the Plan of Allocation have been received.

VI. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

87. As set forth above, the terms of the Settlement were negotiated by the parties at arm's-length through adversarial good faith negotiations. The Settlement was reached only after extensive settlement negotiations, including an all-day mediation session, and additional negotiations after execution of the term sheet. Consistent with the parties' hard-fought and aggressive litigation of the Action, Lead Counsel spent many hours investigating the allegations of wrongdoing and litigating Plaintiffs' claims, while at the same time pursuing settlement discussions.

88. Lead Counsel's knowledge of the merits and potential weaknesses of Plaintiffs' claims are unquestionably adequate to support the Settlement. This knowledge is based on Lead Counsel's thorough investigation during the prosecution of the Action (which began before the initial complaint was filed and continued past the filing of the Complaint), the extensive briefing on Defendants' motion to dismiss, and the substantial settlement negotiations, including, *inter alia*: (i) reviewing Defendants' public statements, SEC filings, regulatory filings and reports, and securities analysts' reports about Talkspace; (ii) reviewing media reports about Defendants; (iii) researching the applicable law with respect to the claims asserted in the Action and the potential defenses thereto; (iv) reaching out to former employees of Talkspace, including FE1; (v) briefing the opposition to Defendants' motion to dismiss; and (vi) negotiating the Settlement with Defendants, including participating in a full-day mediation and submitting a comprehensive mediation statement, in which the parties thoroughly presented arguments supporting their claims and defenses. The accumulation of the information found in the above sources permitted Plaintiffs and Lead Counsel to be well informed about the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants.

89. The Settlement avoids the hurdles Plaintiffs would have to clear in proving liability and damages if the Action continued and avoids the significant costs and risks associated with further litigation of such a complex securities action and the risk of no recovery, even if Plaintiffs had obtained a large judgment that was upheld after likely appeals. In view of the significant risks and additional time and expense involved in taking the Action further in litigation, we respectfully submit that the Settlement is fair, reasonable, adequate and in the best interest of the Class.

90. As a result of the litigation efforts of Lead Counsel and the discussions that occurred during the parties' settlement negotiations, Lead Counsel identified the issues that were critical to the outcome of this case. Lead Counsel considered the risks of continued litigation, the likelihood of getting past the motion to dismiss, the likely summary judgment motions after completion of fact and expert discovery and, if successful, the risk, expense, and length of time to prosecute the Action through trial and the inevitable subsequent appeals. Lead Counsel also considered the substantial monetary benefit provided by the Settlement in light of the risk of continued litigation. Additionally, Lead Counsel considered the ability of the Defendants to fund a settlement now and in the future or to satisfy a judgment.

91. Lead Counsel are actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. Lead Counsel believe that our reputation as attorneys who are unafraid to zealously carry a meritorious case through the trial and appellate levels gave us a strong position in engaging in settlement negotiations with Defendants.

92. We respectfully submit that, under the circumstances, the Settlement represents a highly favorable result for the Class. The Settlement will provide Class Members with a substantial benefit now without the risk of zero recovery if the litigation were to continue and be unsuccessful – or even if successful, Defendants not being able to pay the awarded amount.

B. Serious Questions of Law and Fact Placed the Outcome of the Action in Significant Doubt

1. Defendants Would Argue that Plaintiffs May Not Prevail on Their Claims

93. Another factor considered in assessing the merits of class action settlements – whether serious questions of law and fact exist – supports the conclusion that the Settlement is fair, reasonable, and adequate to the Class.

94. Throughout the course of the litigation and in the pending motion to dismiss, Defendants argued that Plaintiffs failed to sufficiently plead their Section 10(b), 14(a), and 20(a) claims. As discussed above, *inter alia*, Defendants argued that: Plaintiffs failed to plead material misstatements and omissions; certain Defendants were not alleged to have made any statements; alleged losses are not causally connected to alleged misstatements and omissions; and Plaintiffs failed to plead scienter.

95. If the case continued after the motion to dismiss stage and after completion of discovery, it was likely that Defendants would have moved for summary judgment and if Plaintiffs were successful in opposing summary judgment, Defendants would have likely continued to trial. At trial, Defendants would have continued to argue that Plaintiffs could not prevail on their claims.

96. While Plaintiffs believe that their claims and allegations are sound, Plaintiffs, nevertheless, recognized that they face substantial risks if the Action continued. Plaintiffs and Lead Counsel heavily considered and analyzed potential risks to continued litigation of the Action in determining the Settlement's fairness, and, in light of such risks, believe the Settlement is in the best interests of the Class.

97. Although Plaintiffs believe that they effectively countered Defendants' arguments in their motion to dismiss opposition brief, Defendants' arguments in their likely summary judgment

motion would have been just as hard-fought and extensive, and Plaintiffs would have no guarantee of success. Even if Defendants' potential summary judgment motions were denied, Defendants would likely renew their arguments at trial. In turn, Lead Counsel recognize that the finding of liability by a jury is never assured and could lead to no recovery in the Action.

98. The risks of establishing liability posed by conflicting testimony and evidence would be exacerbated by risks inherent in all shareholder litigation, including the unpredictability of a lengthy and complex jury trial, the risk that the jury would react to evidence in unforeseen ways, the risk that a jury would find that some or all of the alleged misrepresentations were not material and the risk that the jury would find no damages were caused by Defendants' actions. Thus, Plaintiffs faced the risk that Defendants' arguments would find favor with a jury and result in the Class losing at trial and receiving no recovery.

2. Defendants Would Argue the Declines in Talkspace Securities Were Unrelated to the Alleged Misrepresentations and Omissions

99. Plaintiffs also faced the risk that they would not be able to prove that their alleged damages were caused by the alleged misrepresentations and omissions – even if liability was established. Defendants would have likely continued to assert a loss causation defense that if accepted by the Court, would substantially lessen the prospect of recovery.

100. The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions. If the case continued after the motion to dismiss stage and after completion of discovery, it was likely that Defendants would have moved for summary judgment and if Plaintiffs were successful in opposing summary judgment, Defendants would have likely continued to trial. Moreover, the reaction of the jury to such complex expert testimony is highly unpredictable. At trial, Defendants would have likely presented evidence

that unforeseen forces outside Defendants' control or other factors caused the losses suffered by the Class.

C. The Judgment of the Parties that the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

101. Another factor in considering whether to approve class action settlements is the judgment of the parties that the settlement is fair and reasonable. As outlined above, the Settlement is the product of arm's-length negotiations between adversaries with significant experience in securities class action litigation.

102. Lead Counsel strongly believe that the Settlement represents a highly favorable resolution for the Class under the circumstances. As outlined above, the Settlement is fair, reasonable and adequate in all respects, and should be approved by the Court.

103. Furthermore, over 12,800 copies of the Postcard Notice have been mailed to potential Class Members and nominees. As of the date of this Declaration, no objections to the Settlement or the Plan of Allocation have been submitted by a Class Member. Should any objections be timely filed between the date of this Declaration and the final approval hearing, Lead Counsel will address them in a supplemental memorandum to be filed with the Court on or before October 23, 2023.

D. The Settlement Amount in the Context of Total Damages Provides Additional Support for the Settlement

104. Based on Lead Counsel's consultations with their in-house damages consultant, estimated maximum recoverable damages are approximately $66.3 million. Thus, the Settlement represents a recovery of approximately 13% of the estimated damages. This is considerably higher than the 3.8% median percentage recovery for cases with estimated losses of between $50 and $99 million in securities class actions from December 2011 through December 2022. *See* Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action*

Litigation: 2022 Full-Year Review, at 17, Fig. 18 (NERA Economic Consulting Jan. 24, 2023), available at: https://www.nera.com/content/dam/nera/publications/2023/PUB_2022_Full_Year_Trends.pdf. Further, maximum recoverable damages represented approximately 44% of Talkspace's market capitalization around the time of the parties' February 16, 2023 mediation session.

VII. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

105. Despite working on this matter for more than a year and a half, Lead Counsel have not received any payment for their services in prosecuting this litigation, nor have we been paid for our expenses incurred in the prosecution of the litigation. The Notices provide that Lead Counsel may apply for an award of attorneys' fees not to exceed 30% of the Settlement Amount, plus expenses of up to $75,000, which were incurred in the litigation. In addition, the Notice states that Plaintiffs may seek reimbursement from the Settlement Fund pursuant to 15 U.S.C. §78u-4(a)(4) for their time and expenses incurred in connection with the Action in an amount not to exceed $25,000 in the aggregate.

106. As set forth in the Fee Memorandum, Lead Counsel are requesting attorneys' fees of 30% of the Settlement Amount plus expenses of $20,891.65 for themselves and counsel in the Delaware Action. The requested fee award of 30% is well within the range of fees awarded by courts in this District and in courts throughout the country.

107. Lead Counsel achieved this highly favorable result for the Class at great risk and substantial expense. Lead Counsel were unwavering in our dedication to the interests of the Class and our investment of the time and resources necessary to bring this litigation to a successful conclusion against the Defendants. Lead Counsel's compensation for the services rendered has always been wholly contingent. The requested fee is reasonable based on the quality of Lead Counsel's work and the substantial benefit obtained for the Class.

108. Indeed, the result obtained by Lead Counsel for the Class is impressive given the obstacles that existed to obtaining any recovery. Defendants have maintained throughout this litigation that they had no liability. Additionally, Talkspace's current market capitalization is significantly below its $1.4 billion valuation at the time of the Merger. And although Talkspace is currently trading above the Nasdaq's $1.00 per share minimum, there is no certainty it will continue to do so. If the case survived Defendants' motion to dismiss, which there was no guarantee, Defendants would have likely moved for summary judgment after discovery was complete. Then, if the case continued after summary judgment, which would also not be guaranteed, Plaintiffs would likely seek to go to trial. If Plaintiffs could obtain a judgment, and if such judgment was upheld, it would be years before any recovery was obtained for the Class.

109. For our extensive efforts on behalf of the Class, Lead Counsel are applying for compensation from the Settlement Fund on a percentage basis, and seek the Court's approval of this fee percentage. The percentage method is the appropriate method of compensating counsel because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum recovery in the shortest amount of time required under the circumstances. In addition, here, the percentage method is particularly appropriate given the highly favorable result under the circumstances it was achieved.

110. Counsel's compensation for the services rendered was wholly contingent on our success. Demonstrating counsel's tremendous commitment to this litigation, counsel and their paraprofessionals have devoted more than 2,400 hours to litigating the Action resulting in a lodestar of $1,690,838.00. Counsel's 30% fee request represents a 1.5 multiplier to their aggregate lodestar, well within range of multipliers awarded by courts in this District and in courts throughout the country. The expenses incurred in the prosecution of the litigation are set forth in the accompanying

Declarations of Lawrence M. Rolnick, Evan J. Kaufman, Michael E. Criden, and Delaware Plaintiff's Counsel in support of the application for award of attorneys' fees and expenses (together, the "Fee and Expense Declarations"). As described in the Fee and Expense Declarations, the expenses are reflected in the books and records maintained by the respective firms, and are an accurate recordation of the expenses incurred. In total, counsel incurred expenses in the amount of $20,891.65 to successfully prosecute the Action, significantly below the $75,000 that Class Members were notified could be sought.

111. We respectfully submit that all of these costs and expenses are reasonable and should be approved by the Court.

VIII. FACTORS TO BE CONSIDERED IN SUPPORT OF THE REQUESTED ATTORNEYS' FEE AWARD

112. Based on the quality of the result achieved, the extent and quality of the work performed, the significant risks of the litigation, and the fully contingent nature of the representation, Lead Counsel respectfully submit that the requested fee award is reasonable and should be approved. As discussed in the Fee Memorandum, a fee award of 30% of the proceeds of the Settlement, expenses in the amount of $20,891.65, plus interest earned on each amount, respectively, is fair and reasonable for attorneys' fees in securities class actions such as this Action and is well within the range of percentages awarded in this Circuit and elsewhere for comparable settlements.

A. Extent of Litigation

113. As described above, this case was aggressively litigated and settled only after extensive settlement negotiations, including a formal mediation session before Robert A. Meyer, Esq., of JAMS. Lead Counsel thoroughly researched the law applicable to the Class' claims and Defendants' defenses, conducted an intensive investigation which included engaging with former employees of Talkspace, prepared and filed a fact-specific complaint specifying Defendants' alleged

violations of the federal securities laws, opposed Defendants' motion to dismiss the case, drafted a mediation statement, participated in a full day mediation session with Defendants, and engaged in extensive settlement negotiations with the Defendants. Lead Counsel's work in this case will, however, not cease after final approval of the Settlement. Lead Counsel anticipate spending significant time assisting Class Members with claims administration issues and in working with the Claims Administrator to ensure a prompt distribution of the Net Settlement Fund to the Class.

B. Standing and Expertise of Lead Counsel

114. As shown in Lead Counsel's firm resumes attached to the Fee and Expense Declarations, Rolnick Kramer, Robbins Geller, Monteverde & Associates PC, Kahn Swick & Foti, LLC, and Cooch and Taylor, P.A. are experienced and skilled law firms in the securities-litigation field. The attorneys have a long and successful track record representing investors in securities fraud litigation and other complex litigation.

C. Standing and Caliber of Opposition Counsel

115. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of Defendants' representation by some of the country's top defense firms, Milbank LLP, Cohen & Gresser LLP, and Cole Schotz P.C., which vigorously represented Defendants in the Action.

D. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High Risk, Contingent Securities Cases

116. It is also in the public interest to have competent counsel (such as Lead Counsel) and sophisticated and experienced investors (such as Plaintiffs) enforce the securities laws. To further this policy, the law firms that bring successful securities class actions must be adequately compensated, especially in light of the inherently risky nature of such complex and contingent-value lawsuits.

117. This litigation was undertaken by Lead Counsel on a wholly-contingent basis. From the outset, we understood that we were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Lead Counsel were obligated to ensure that sufficient attorney and paraprofessional resources were dedicated to the prosecution of this Action and that funds were available to compensate staff and the considerable costs which a case such as this entails.

118. Because of the nature of a contingent practice in the area of securities litigation, where cases are predominantly "big cases" lasting several years, not only do contingent litigation firms have to pay regular overhead, but they also have to advance the expenses of the litigation. This does not even take into consideration the possibility of no recovery. As discussed above, from the outset, this Action presented a number of risks and uncertainties which could have prevented any recovery whatsoever. It is wrong to assume that a law firm handling complex contingent litigation such as this always wins. Tens of thousands of hours have been expended in losing efforts. The factor labeled by the courts as "the risks of litigation" is not an empty phrase.

119. As discussed in the Fee Memorandum, there have been many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or a decision of a judge following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel.

120. The foregoing refutes the argument that the commencement of a class action is a guarantee of a settlement and payment of a fee. Thus, there was a demonstrable risk that the Class and its counsel would receive nothing. It took hard and diligent work by skilled counsel to develop facts and theories which persuaded defendants to enter into serious settlement negotiations. If

defendants believe they will prevail, experience shows that they will litigate to the end. The risk factor is real.

121. When Lead Counsel undertook to act for the Plaintiffs and the Class in this matter, it was with the knowledge that we would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of obtaining any compensation for our efforts. The benefits conferred on the Class by this Settlement are particularly noteworthy in that a Settlement Fund worth $8.5 million was obtained for the Class despite the existence of substantial risks of no recovery in light of the vigorous defense mounted by Defendants, and the practical other obstacles to obtaining a larger recovery after continued litigation.

122. For the reasons explained above, we believe the requested fee is reasonable and should be approved.

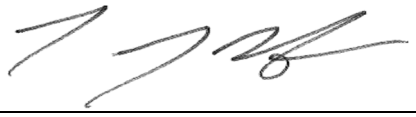
IX. CONCLUSION

123. For the reasons set forth above and in the accompanying Fee Memorandum and the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation, we respectfully submit that: (a) the Settlement is fair, reasonable and adequate, and should be finally approved; (b) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (c) the application for attorneys' fees of 30% of the proceeds of the Settlement, expenses in the amount of $20,891.65, plus interest earned on each amount, respectively, and an award to Plaintiffs for their service to the Class, should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of September, 2023, at New York, New York.

LAWRENCE M. ROLNICK

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of September, 2023, at Melville, New York.



EVAN J. KAUFMAN

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on September 25, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Evan J. Kaufman

EVAN J. KAUFMAN

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Mailing Information for a Case 1:22-cv-00163-PGG Baron v. Talkspace, Inc. et al

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)