

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

IN RE MOL GLOBAL, INC. SECURITIES
LITIGATION

No. 14-Civ-9357 (WHP)

ECF Case

**MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES**

Daniel Hume
Ira M. Press
Meghan J. Summers
KIRBY McINERNEY LLP
825 Third Avenue, 16th Floor
New York, NY 10022
Telephone: (212) 371-6600
Facsimile: (212) 751-2540
dhume@kmlp.com
ipress@kmlp.com
msummers@kmlp.com

*Lead Counsel for Class and Counsel
for Lead Plaintiff TAP Retirement Fund*

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. LEAD COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FROM THE COMMON FUND ... 2

 A. Lead Counsel Is Entitled to an Award of Attorneys’ Fees from the Common Fund 2

 B. The Court Should Award a Reasonable Fee to Lead Counsel..... 3

 C. The Requested Fee Is Fair and Reasonable 5

 D. The *Goldberger* Factors Support the Requested Award of Attorneys’ Fees 7

 1. Lead Counsel Has Devoted Significant Time and Labor to This Action ... 7

 a. Lead Counsel's Hours and Hourly Rates Are Reasonable.....7

 2. The Complexity and Magnitude of the Litigation Weigh in Favor of Approval 9

 3. The Risks of the Litigation Warrant Approval 10

 4. The Quality of Representation Favors Approval of Lead Counsel’s Fees 13

 5. The Requested Fee in Relation to the Settlement Is Reasonable..... 14

 6. Public Policy Considerations 14

 7. The Settlement Class’s Reaction to the Fee Request..... 15

 8. The Lodestar Multiplier Requested by Lead Counsel Is Fair and Reasonable, and the Cross-Check Supports Approval of Attorneys’ Fees 16

IV. LEAD COUNSEL SHOULD BE REIMBURSED FOR REASONABLY INCURRED LITIGATION EXPENSES..... 18

V. CONCLUSION..... 19

TABLE OF AUTHORITIES

Cases

In re Am. Bank Note Holographics, Inc. Sec. Litig.,
127 F. Supp. 2d 418 (S.D.N.Y. 2001).....4

Anixter v. Home-Stake Prod. Co.,
77 F.3d 1215 (10th Cir. 1996)12

In re AOL Time Warner, Inc. Sec. & ERISA Litig.,
No. MDL 1500, 2006 WL 903236 (S.D.N.Y. Apr. 6, 2006).....10

Arkansas Teacher Ret. Sys. v. Bankrate, Inc.,
No. 13 Civ. 7183 (S.D.N.Y. Nov. 25, 2014)6

In re AremisSoft Corp. Sec. Litig.,
210 F.R.D. 109 (D.N.J. 2002).....18

In re Ashanti Goldfields Sec. Litig.,
No. 00 Civ. 717, 2005 WL 3050284 (E.D.N.Y. Nov. 15, 2005)14

In re BankAtlantic Bancorp, Inc. Sec. Litig.,
No. 07 Civ. 61542, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011).....11

Bateman Eichler, Hill Richards, Inc. v. Berner,
472 U.S. 299 (1985).....14

Bd. Of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.,
No. 09 Civ. 686, 2012 WL 2064907 (S.D.N.Y. June 7, 2012).....17

In re Beacon Assocs. Litig.,
No. 09 Civ. 3907, 2013 WL 2450960 (S.D.N.Y. May 9, 2013).....4, 5

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).....2

In re Bristol-Myers Squibb Sec. Litig.,
361 F. Supp. 2d 229 (S.D.N.Y. 2005).....10, 14

Brown v. Phillips Petroleum Co.,
838 F.3d 451 (10th Cir. 1988)4

Camden I Condo. Ass’n, Inc. v. Dunkle,
946 F.2d 768 (11th Cir. 1991)5

In re Camelot Info. Sys. Inc. Sec. Litig.,
 No. 12 Civ. 00086 (S.D.N.Y. July 1, 2015).....6

In re Cardinal Health, Inc. Sec. Litig.,
 528 F. Supp. 2d 752 (S.D. Ohio 2007)18

Carpenters Pension Trust Fund of St. Louis v. Barclays PLC,
 No. 12 Civ. 5329 (S.D.N.Y. Mar. 14, 2016).....6

Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,
 511 U.S. 164 (1994).....12

Chatelain v. Prudential-Bache Sec. Inc.,
 805 F. Supp. 209 (S.D.N.Y.1992)9

Citiline Holdings, Inc. v. iStar Fin., Inc.,
 No. 08 Civ. 3612 (S.D.N.Y. Apr. 5, 2013).....6

City of Detroit v. Grinnell Corp.,
 495 F.2d 448 (2d Cir. 1974).....11

City of Providence v. Aeropostale, Inc.,
 No. 11 Civ. 7132, 2014 WL 1883494 (S.D.N.Y. May 9, 2014)..... *passim*

In re Colgate-Palmolive Co. ERISA Litig.,
 36 F. Supp. 3d 344 (S.D.N.Y. 2014).....17

In re Comverse Tech., Inc. Sec. Litig.,
 No. 06 Civ. 1825, 2010 WL 2653354 (E.D.N.Y. June 24, 2010)4

In re Corel Corp. Inc. Sec. Litig.,
 293 F. Supp. 2d 484 (E.D. Pa. 2003)6

In re Eng’g Animation Sec. Litig.,
 203 F.R.D. 417 (S.D. Iowa 2001).....6

Enter. Energy Corp. v. Columbia Gas Transmission Corp.,
 137 F.R.D. 240 (S.D. Ohio 1991).....18

In re EVCI Career Colls. Holding Corp. Sec. Litig.,
 No. 05 Civ. 10240, 2007 WL 2230177 (S.D.N.Y. July 27, 2007)8, 17

Faircloth v. Certified Fin. Inc.,
 No. 99 Civ. 3097, 2001 WL 527489 (E.D. La. May 16, 2001).....6

In re Flag Telecom Holdings, Ltd. Sec. Litig.,
 No. 02 Civ. 3400, 2010 WL 4537550 (S.D.N.Y. Nov. 8, 2010)10, 13, 17

Fogarazzo v. Lehman Bros., Inc.,
 No. 03 Civ. 5194, 2011 WL 671745 (S.D.N.Y. Feb. 23, 2011)4, 6

Gaskill v. Gordon,
 942 F. Supp. 382 (N.D. Ill. 1996),
aff'd, 160 F.3d 361 (7th Cir. 1998)6

In re Genta Sec. Litig.,
 No. 04 Civ. 2123, 2008 WL 2229843 (D.N.J. May 28, 2008)18

Gierlinger v. Gleason,
 160 F.3d 858 (2d Cir. 1998).....9

In re Global Crossing Sec. & ERISA Litig.,
 225 F.R.D. 436 (S.D.N.Y. 2004)16, 19

In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
 55 F.3d 768 (3d Cir. 1995).....4

Goldberger v. Integrated Res., Inc.,
 209 F.3d 43 (2d Cir. 2000)..... *passim*

In re Green Tree Fin. Corp. Stock Litig.,
 Nos. 97-2666, 97-2679 (D. Minn. Dec. 18, 2003).....6

Harman v. Lyphomed, Inc.,
 945 F.2d 969 (7th Cir. 1991)4

Hicks v. Morgan Stanley,
 No. 01 Civ. 10071, 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005)3, 4

In re Hi-Crush Partners L.P. Sec. Litig.,
 No. 12 Civ. 8557, 2014 WL 7323417 (S.D.N.Y. Dec. 19, 2014).....5

In re IMAX Sec. Litig.,
 No. 06 Civ. 6128, 2012 WL 3133476 (S.D.N.Y. Aug. 1, 2012)4

In re Indep. Energy Holdings PLC Sec. Litig.,
 302 F. Supp. 2d 180 (S.D.N.Y. 2003).....18

In re Initial Pub. Offering Sec. Litig.,
671 F. Supp. 2d 467 (S.D.N.Y. 2009).....4, 13

Johnson v. Brennan,
No. 10 Civ. 4712, 2011 WL 4357376 (S.D.N.Y. Sept. 16, 2011).....17

Johnston v. Comerica Mortg. Corp.,
83 F.3d 241 (8th Cir. 1996)4

Jones v. Amalgamated Warbasse Houses, Inc.,
721 F.2d 881 (2d Cir. 1983).....8

LeBlanc-Sternberg v. Fletcher,
143 F.3d 748 (2d Cir. 1998).....9

In re L.G. Philips LCD Co. Sec. Litig.,
No. 07 Civ. 909 (S.D.N.Y. Mar. 17, 2011).....17

Luciano v. Olsten Corp.,
109 F.3d 111 (2d Cir. 1997).....8

Maley v. Del Global Techs. Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002)..... *passim*

Manners v. Am. Gen. Life Ins. Co.,
No. 98 Civ. 266, 1999 WL 33581944 M.D. Tenn. Aug. 11, 1999).....18

In re Marsh & McLennan Cos., Inc. Sec. Litig.,
No. 04 Civ. 8144, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009).....4, 11

McDaniel v. Cnty. of Schenectady,
595 F.3d 411 (2d Cir. 2010).....7

In re Med. X-Ray Film Antitrust Litig.,
No. 93 Civ. 5904, 1998 WL 661515 (E.D.N.Y. Aug. 7, 1998).....10

In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.,
No. 02 MDL 1484, 2007 WL 313474 (S.D.N.Y. Feb. 1, 2007).....9, 14

In re MetLife Demutualization Litig.,
689 F. Supp. 2d 297 (E.D.N.Y. 2010)10

Missouri v. Jenkins,
491 U.S. 274 (1989).....9, 14, 17

Neuberger v. Shapiro,
110 F. Supp. 2d 373 (E.D. Pa. 2000)6

In re Nortel Networks Corp. Sec. Litig.,
539 F.3d 129 (2d Cir. 2008).....17

Paul, Johnson, Alston & Hunt v. Grauly,
886 F.2d 268 (9th Cir. 1989)4

In re Philip Servs. Corp. Sec. Litig.,
No. 98 Civ. 835, 2007 WL 959299 (S.D.N.Y. Mar. 28, 2007)3

In re Priceline.com, Inc. Sec. Litig.,
No. 00 Civ. 1884, 2007 WL 2115592 (D. Conn. July 20, 2007).....14

In re Ravisent Techs., Inc. Sec. Litig.,
No. 00 Civ. 1014, 2005 WL 906361 (E.D. Pa. Apr. 18, 2005)6, 18

Rawlings v. Prudential-Bache Props., Inc.,
9 F.3d 513 (6th Cir. 1993)4

In re Reliance Grp. Holdings, Inc. Sec. Litig.,
No. 00 Civ. 04653 (S.D.N.Y. Mar. 27, 2006).....6

Reynolds v. Repsol YPF, S.A.,
No. 06 Civ. 00733 (S.D.N.Y. May 7, 2008)5

In re Rite Aid Corp. Sec. Litig.,
396 F.3d 294 (3d Cir. 2005).....15, 18

Robbins v. Koger Props., Inc.,
116 F.3d 1441 (11th Cir. 1997)11

In re Safety Components, Inc. Sec. Litig.,
166 F.Supp.2d 72 (D.N.J. 2001)6

Sewell v. Bovis Lend Lease, Inc.,
No. 09 Civ. 6548, 2012 WL 1320124 (S.D.N.Y. Apr. 16, 2012).....17

Shapiro v. JPMorgan Chase & Co.,
No. 11 Civ. 8331, 2014 WL 1224666 (S.D.N.Y. Mar. 24, 2014)15

Six (6) Mexican Workers v. Ariz. Citrus Growers,
904 F.2d 1301 (9th Cir. 1990)4

Swedish Hosp. Corp. v. Shalala,
1 F.3d 1261 (D.C. Cir. 1993).....5

Taft v. Ackermans,
No. 02 Civ. 7951, 2007 WL 414493 (S.D.N.Y. Jan. 31, 2007).....5

Teachers’ Ret. Sys. of La. v. A.C.L.N., Ltd.,
No. 01 Civ. 11814, 2004 WL 1087261 (S.D.N.Y. May 14, 2004).....11, 13

In re Telik, Inc. Sec. Litig.,
576 F. Supp. 2d 570 (S.D.N.Y. 2008)..... *passim*

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007).....14

In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.,
56 F.3d 295 (1st Cir. 1995).....4

In re Top Tankers, Inc. Sec. Litig.,
No. 06 Civ. 13761, 2008 WL 2944620 (S.D.N.Y. July 31, 2008)3

Van Dongen v. CNInsure Inc.,
No. 11 Civ. 07320 (S.D.N.Y. Aug. 15, 2014)17

In re Veeco Instruments Inc. Sec. Litig.,
No. 05 MDL 01695, 2007 WL 4115809 (S.D.N.Y. Nov. 7, 2007) *passim*

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005).....3, 17

Waterford Twp. Police & Fire Ret. Sys. v. Smithtown Bancorp, Inc.,
No. 10 Civ. 864 (E.D.N.Y. Sept. 27, 2015).....6

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005).....15

Other Authorities

7B Charles A. Wright, Arthur R. Miller & Mary Kay Kane,
Federal Practice and Procedure: Civil 2d §1803 (2d ed. 1986).....2

Leigh Jones, *The National Law Journal* (Dec. 17. 2012)9

NERA Economic Consulting,
Recent Trends in Securities Class Action Litigation:
2015 Full-Year Review (2016).....7

I. INTRODUCTION

Lead Counsel¹ for Lead Plaintiff in the above-captioned action (the “Action”), respectfully submits this memorandum of law in support of its motion pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure for an award of attorneys’ fees and reimbursement of litigation expenses to be paid out of the Settlement Fund, including interest at the same rate as the Settlement Fund’s rate.

Lead Counsel respectfully seeks an award of attorneys’ fees in the amount of 22.5% of the Settlement Amount, or \$1,912,500 plus any accrued interest, which would represent a lodestar multiplier of 2.18. Additionally, Lead Counsel respectfully seeks reimbursement of \$61,853.52 in litigation expenses actually incurred.

As set forth below, this request is reasonable considering the factors identified by the Second Circuit in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) to determine the appropriateness of a fee award. The requested fee is consistent with fees awarded in similar actions in this Circuit and uses the appropriate method of compensating counsel. The amount requested is especially warranted in light of the substantial recovery obtained for the Settlement Class and the significant obstacles presented in the prosecution and settlement of this Action against Defendants.² Further, the requested expenses are also reasonable because they are the kind that are regularly reimbursed by courts within this Circuit and were necessary for the prosecution of the Action.

¹ Unless otherwise noted, all capitalized terms herein have the same meaning as is ascribed to those terms in the Stipulation of Settlement (the “Stipulation”), dated April 11, 2016 and filed with the Court on April 12, 2016. See ECF No. 102-1.

² “Defendants” are all together: MOL Global, Inc. (“MOL”); Citigroup Global Markets Inc., Deutsche Bank Securities Inc., UBS Securities LLC (collectively, the “Underwriter Defendants”); Ganesh Kumar Bangah, Allan Sai Wah Wong, Craig White, Yit Fei Chang, Tek Kuang Cheah, Mun Kee Chang, Eric He, Noah J. Doyle, and Tan Sri Dato’ Seri Vincent Tan (collectively, the “Individual Defendants”).

II. STATEMENT OF FACTS

The relevant facts supporting the motion are set forth in detail in the memorandum of law submitted in support of Lead Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation ("Settlement Brief") and the accompanying Declaration of Ira M. Press in Support of Final Approval of Proposed Class Action Settlement, Plan of Allocation, Award of Attorneys' Fees, and Reimbursement of Litigation Expenses ("Press Decl."), both filed concurrently herewith. *See* Settlement Brief at Section II; Press Decl. ¶¶ 14-28.

III. LEAD COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FROM THE COMMON FUND

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees from the Common Fund

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The court's authority to reimburse the parties stems from the fact that the class action [device] is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." 7B Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure: Civil 2d* §1803, at 493-94 (2d ed. 1986). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *10 (S.D.N.Y. May 9, 2014) (citing *Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *2

(S.D.N.Y. Nov. 7, 2007).

In addition, courts have recognized that awards of attorneys' fees from a common fund encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and therefore to discourage future alleged misconduct of a similar nature. *See City of Providence*, 2014 WL 1883494, at *11 (citing *Hicks v. Morgan Stanley*, No. 01 Civ. 10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002)). As this Court has previously observed, “[c]ourts in this Circuit have consistently adhered to these teachings.” *City of Providence*, 2014 WL 1883494, at *11. (citing *In re Top Tankers, Inc. Sec. Litig.*, No. 06 Civ. 13761, 2008 WL 2944620, at *12 (S.D.N.Y. July 31, 2008) (“It is well established that where an attorney creates a common fund from which members of a class are compensated for a common injury, the attorneys who created the fund are entitled to ‘a reasonable fee – set by the court – to be taken from the fund.’”) (citations omitted)).

B. The Court Should Award a Reasonable Fee to Lead Counsel

Where “an attorney succeeds in creating a common fund from which members of a class are compensated for a common injury inflicted on the class, as . . . in a securities class action litigation, the attorney is entitled to the reasonable value of the services performed in creating that class recovery, as set by the court.” *In re Philip Servs. Corp. Sec. Litig.*, No. 98 Civ. 835, 2007 WL 959299, at *1 (S.D.N.Y. Mar. 28, 2007) (internal citations and quotations omitted).

As the Second Circuit observed in *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*:

Courts may award attorneys' fees in common fund cases under either the “lodestar” method or the “percentage of the fund” method. The lodestar method multiplies hours reasonably expended against a reasonable hourly rate. Courts in their discretion may increase the lodestar by applying a multiplier based

on factors such as the riskiness of the litigation and the quality of the attorneys.

396 F.3d 96, 121 (2d Cir. 2005) (internal citation omitted). Nevertheless, “[t]he trend among district courts in the Second Circuit is to award fees using the percentage method.” *City of Providence*, 2014 WL 1883494, at *11 (citations omitted).³

The Second Circuit’s adoption of the percentage of recovery methodology is consistent with national precedent. *See, e.g., In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008) (citing *Maley*, 186 F. Supp. 2d at 370) (“[T]here is a strong consensus – both in this Circuit and across the country – in favor of awarding attorneys’ fees in common fund cases as a percentage of the recovery.”); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001) (“In recent years, a majority of the Circuit courts have approved the percentage-of-the-fund method.”).⁴

³ *See also In re Beacon Assocs. Litig.*, No. 09 Civ. 3907, 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) (“[T]he trend in this Circuit has been toward the use of a percentage of recovery as the preferred method of calculating the award for class counsel in common fund cases, reserving the traditional ‘lodestar’ calculation as a method of testing the fairness of a proposed settlement.”); *In re IMAX Sec. Litig.*, No. 06 Civ. 6128, 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) (same); *Fogarazzo v. Lehman Bros., Inc.*, No. 03 Civ. 5194, 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011) (same); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06 Civ. 1825, 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (same); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 480 (S.D.N.Y. 2009) (same); *see also, e.g., In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144, 2009 WL 5178546, at *14 (S.D.N.Y. Dec. 23, 2009) (“[T]he percentage method continues to be the trend of district courts in this Circuit and has been expressly adopted in the vast majority of circuits.”); *see also In re Veeco*, 2007 WL 4115808, at *3 (same); *Hicks*, 2005 WL 2757792, at *8 (same).

⁴ Percentage-based fee awards in common fund cases have been approved by every Circuit Court that has addressed the issue. *See In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th Cir. 1989); *Brown v. Phillips Petroleum Co.*, 838 F.2d

Consistent with the approach adopted by the *Goldberger* court, the practice of district courts in this Circuit and nationally, the percentage-of-recovery approach is the appropriate methodology for awarding attorneys' fees in this Action. As detailed herein, Lead Counsel demonstrates that a "cross-check" with a lodestar analysis also supports the fee requested.

C. The Requested Fee Is Fair and Reasonable

Here, Lead Counsel is seeking a fee award of 22.5% of the Settlement Amount.

In securities cases with comparable recoveries, courts in this Circuit regularly approve percentage-based fee awards well in excess of the amount requested here. *See, e.g., In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557, 2014 WL 7323417, at *12-13 (S.D.N.Y. Dec. 19, 2014) (awarding 33 1/3% of \$3.8 million settlement fund); *City of Providence*, 2014 WL 1883494, at *11-12 (awarding 33% of \$15 million settlement fund); *Reynolds v. Repsol YPF, S.A.*, No. 06 Civ. 00733, slip op. at 2 (S.D.N.Y. May 7, 2008) (ECF No. 44) (awarding 25% of \$8 million settlement fund and noting that "courts throughout the [Second] Circuit regularly award fees of 25% to 30% or more of the total recovery under the percentage-of-the-fund method"); *In re Telik*, 576 F. Supp. 2d at 587-88 (awarding 25% of \$5 million settlement fund and noting that 25% was less than the fee awards generally made by courts in the Second Circuit); *Taft v. Ackermans*, No. 02 Civ. 7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007) (awarding 30% of \$15.175 million settlement fund, which was "consistent with fees awarded in similar class action settlements resulting in settlements of comparable value"); *In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *14 (noting that courts in the Southern District of New York generally

451, 454-56 (10th Cir. 1988); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits require the use of the percentage method in common fund cases. *Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

award fees in “the range of 25%-33%”); *Waterford Twp. Police & Fire Ret. Sys. v. Smithtown Bancorp, Inc.*, No. 10 Civ. 864, slip op. at 1 (E.D.N.Y. Sept. 28, 2015) (ECF No. 98) (awarding 30% of \$1.95 million settlement fund).⁵

In securities cases with comparable recoveries, courts in other circuits also regularly approve percentage-based fee awards in excess of the amount requested here. *See, e.g., In re Ravisent Techs., Inc. Sec. Litig.*, No. 00 Civ. 1014, 2005 WL 906361, at *15 (E.D. Pa. Apr. 18, 2005) (awarding attorneys’ fees of one-third of \$7 million settlement); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 101-02 (D.N.J. 2001) (approving fee request of one-third of \$4.5 million settlement).⁶ Indeed, a 2016 report by NERA Economic Consulting indicates that from 2011 through 2015, the median fee award in securities class actions nationwide was 30.0% of the settlement amount where, as here, the settlement was between \$5 and \$10 million. *See*

⁵ *See also Arkansas Teacher Ret. Sys. v. Bankrate, Inc.*, No. 13 Civ. 7183, slip op. at 2 (S.D.N.Y. Nov. 25, 2014) (ECF No. 87) (awarding 25% of \$18 million settlement fund); *Carpenters Pension Trust Fund of St. Louis v. Barclays PLC*, No. 12 Civ. 5329, slip op. at 1 (S.D.N.Y. Mar. 14, 2016) (ECF No. 217) (awarding 30% of \$4.2 million settlement fund); *Fogarazzo*, 2011 WL 671745, at *4 (awarding 33.3% of \$6.75 million settlement fund); *In re Reliance Grp. Holdings, Inc. Sec. Litig.*, No. 00 Civ. 04653, slip op. at 11 (S.D.N.Y. Mar. 27, 2006) (ECF No. 85) (awarding 28% of \$15 million fund); *In re Veeco*, 2007 WL 4115808, at *4 (awarding 30% of \$5.5 million settlement fund); *Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 08 Civ. 3612, slip op. at 1 (S.D.N.Y. Apr. 5, 2013) (ECF No. 127) (awarding 30% of \$29 million settlement fund); *In re Camelot Info. Sys. Inc. Sec. Litig.*, No. 12 Civ. 00086, slip op. at 1-2 (S.D.N.Y. July 1, 2015) (ECF No. 75) (awarding 30% of \$2.75 million fund).

⁶ *See also Faircloth v. Certified Fin. Inc.*, No. 99 Civ. 3097, 2001 WL 527489, at *12 (E.D. La. May 16, 2001) (awarding attorneys’ fees of 35% of settlement plus interest and reimbursement of expenses); *In re Eng’g Animation Sec. Litig.*, 203 F.R.D. 417, 423-24 (S.D. Iowa 2001) (awarding attorneys’ fees of \$2.5 million, or one third of common fund, plus expenses); *Neuberger v. Shapiro*, 110 F. Supp. 2d 373, 386 (E.D. Pa. 2000) (approving fee of 30% of \$4.75 million settlement fund); *Gaskill v. Gordon*, 942 F. Supp. 382, 387-88 (N.D. Ill. 1996) (awarding 38% of the settlement fund), *aff’d*, 160 F.3d 361 (7th Cir. 1998); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (awarding 33 1/3% of \$7 million settlement); *In re Green Tree Fin. Corp. Stock Litig.*, Nos. 97-2666, 97-2679, slip. op. at 9 (D. Minn. Dec. 18, 2003) (ECF No. 140) (awarding 33 1/3% of \$12.45 million settlement); *see also In re Telik*, 576 F. Supp. 2d at 587-88 (noting that a 25% fee on a \$5 million settlement was “less than the fee awards in many cases such as this throughout the rest of the country”).

NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2015 Full-Year Review*, at 36, Figure 32 (2016) (“NERA Report”) (attached as Ex. D to the Press Decl.).

D. The *Goldberger* Factors Support the Requested Award of Attorneys’ Fees

Under either the percentage common fund approach or the lodestar multiplier approach, the “*Goldberger* factors” ultimately determine the reasonableness of a common fund fee. *See Goldberger*, 209 F.3d at 50. They include: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.” *Id.*; *see also McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 417, 422-26 (2d Cir. 2010) (confirming the continued availability of both lodestar and percentage-of-the-fund methods and the applicability of the “*Goldberger* factors”).

As shown below, the requested fee is reasonable on a percentage basis, and Lead Counsel respectfully submits that it should be approved in full.

1. Lead Counsel Has Devoted Significant Time and Labor to This Action

Lead Counsel devoted 1,547.75 hours to this matter (excluding time devoted to preparing this submission), yielding a “lodestar” amount of \$876,287.50. Thus, the requested fee is a multiplier of 2.18 on that lodestar. *See* Press Decl. ¶ 29 & Ex. C (lodestar summary).

a. Lead Counsel’s Hours and Hourly Rates Are Reasonable

Where the lodestar is used as a cross-check, “the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Goldberger*, 209 F.3d at 50. Lead Counsel submits that the time devoted to this litigation reflects the intensive effort they exerted to bring this case to a favorable resolution, and was reasonable. Lead Counsel, among other things:

- Researched the legal and factual bases for Lead Plaintiff’s claims;

- Drafted the Consolidated Class Action Complaint and the Consolidated Amended Class Action Complaint;
- Drafted a brief in opposition to Defendants’ motion to dismiss;
- Drafted a detailed mediation statement; and
- Attended an intensive mediation session and engaged in further settlement negotiations, which resulted in the \$8.5 million Settlement agreed to by the parties.

Accordingly, Lead Counsel’s hours are reasonable. For these reasons and as further discussed below, Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of expenses should be granted.

In a lodestar analysis, the appropriate hourly rates are those rates that are “normally charged in the community where the counsel practices, *i.e.*, the ‘market rate.’” *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240, 2007 WL 2230177, at *17 n.6 (S.D.N.Y. July 27, 2007); *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) (“The lodestar figure should be in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.”) (internal quotations omitted). Awards in comparable cases are an appropriate measure of the market value of counsel’s time. *Jones v. Amalgamated Warbasse Houses, Inc.*, 721 F.2d 881, 885 (2d Cir. 1983).

The rates billed by Lead Counsel (ranging from \$325 to \$900 per hour) for attorneys (Press Decl. Ex. C), are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude. *See* Press Decl. Ex. G.⁷ Similar billing rates for law firms

⁷ “[T]he best indicator of the ‘market rate’ in the New York area for plaintiffs’ counsel in securities class actions is to examine the rates charged by New York firms that defend class

representing plaintiffs in securities class actions have been approved by other courts in this Circuit. *See, e.g., City of Providence*, 2014 WL 1883494, at *13 (finding partner rates of \$640 to \$875 and non-partner attorney rates of \$335 to \$725 to be in line with defense firms); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484, 2007 WL 313474, at *22 (S.D.N.Y. Feb. 1, 2007).

Finally, the use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit, and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation.⁸ Accordingly, Lead Counsel submits that its calculated lodestar of \$876,287.50 and fee request is reasonable as it reflects the contingent nature of the fee and risk incurred by Lead Counsel.

2. The Complexity and Magnitude of the Litigation Weigh in Favor of Approval

“The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys’ fees requested by class counsel.” *City of Providence*, 2014 WL 1883494, at *16 (citing *Chatelain v. Prudential-Bache Sec. Inc.*, 805 F. Supp. 209, 216 (S.D.N.Y.1992)). Courts have recognized the “notorious complexity” of securities class action

actions on a regular basis.” *In re Telik*, 576 F. Supp. 2d at 589 (emphasis omitted) (cited by *City of Providence*, 2014 WL 1883494, at *13). *See also* Leigh Jones, *The best still charge the most*, *The National Law Journal*, at 2 (Dec. 17, 2012) (“Not surprisingly, the biggest firms in the biggest markets generally had the highest rates. Several firms that have their largest offices in New York and Washington had median rates above \$500, according the NLJ survey.”)

⁸ *See, e.g., Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (endorsing “an appropriate adjustment for delay in payment” by applying “current” rate); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (rates “should be ‘current rather than historic’”) (citation and internal quotations omitted); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates “should be applied in order to compensate for the delay in payment”); *In re Telik*, 576 F. Supp. 2d at 589 n.10 (same); *In re Veeco*, 2007 WL 4115808, at *9 (same).

litigation. *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006). A securities class action's magnitude and complexity must be evaluated in comparison to similarly complex cases. *See In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 234 (S.D.N.Y. 2005). As described in the Press Declaration, this case was no exception. It involved complex Securities Act issues regarding, *inter alia*, whether Defendants' statements were materially false or misleading, whether Defendants had a duty to disclose, and whether loss causation could be established. Lead Plaintiff also faced the potential difficulty of enforcing a judgment in Malaysia. Press Decl. ¶¶ 5-6, 32.

Additionally, Lead Counsel did not have the benefit of a "road map" established by a government investigation, but instead independently developed and strengthened factual and legal theories of liability. *See City of Providence*, 2014 WL 1883494, at *16 (citing *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02 Civ. 3400, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010)); *In re Med. X-Ray Film Antitrust Litig.*, No. 93 Civ. 5904, 1998 WL 661515, at *8 (E.D.N.Y. Aug. 7, 1998). Accordingly, the complexity of this case supports the requested fee award.

3. The Risks of the Litigation Warrant Approval

Courts have frequently recognized that "[t]he risk of the litigation is often cited as the first, and most important, *Goldberger* factor." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 361 (E.D.N.Y. 2010) (internal citation and quotations omitted). As the Second Circuit has observed, "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of

time expended.” *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted).

“Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.” *Teachers’ Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004). Indeed, the “Second Circuit has identified ‘the risk of success as perhaps the foremost factor to be considered in determining [a reasonable award of attorneys’ fees].’” *In re Marsh*, 2009 WL 5178546, at *18 (quoting *Goldberger*, 209 F.3d at 54). Lead Counsel undertook the representation of Lead Plaintiff and the class in this Action on a wholly contingent basis, investing substantial time and funds to prosecute this Action, without any guarantee of compensation or of recovering out-of-pocket expenses. There is a real risk of no recovery in complex securities litigation cases such as this one. For example, the NERA Report demonstrates that 51-54% of securities class actions filed from 2009 through 2011 were dismissed on motions prior to trial.⁹ The NERA Report also indicates that of the 21 securities class action cases that have gone to trial since the passage of the PSLRA, defendants were as likely as plaintiffs to prevail.¹⁰ Moreover, “even a victory at trial does not guarantee recovery.” *In re Veeco*, 2007 WL 4115808, at *6 n.6 (citing numerous cases where jury verdicts were overturned).¹¹ This is especially true here given the uncertainties surrounding the

⁹ The majority of cases filed in the years 2013 to 2015 are still pending; for cases filed in 2012, 41% have been dismissed but 31% are still pending. *See* Press Decl. Ex. D (NERA Report) at 22 & Figure 20.

¹⁰ *See id.* at 38, Table 3.

¹¹ *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07 Civ. 61542, 2011 WL 1585605, at *6, *20 (S.D. Fla. Apr. 25, 2011) (although the jury found that certain statements violated section 10(b) of the Securities Exchange Act of 1934, the court entered judgment as a matter of law in favor of the defendants as to all claims and statements, on the ground that plaintiffs had failed to present evidence from which the jury could reasonably find loss causation); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing \$81 million judgment in

enforceability of a U.S. judgment in Malaysia. *See* Press Decl. ¶¶ 6, 32.

While Lead Counsel believes that evidence uncovered in discovery would have revealed Defendants' wrongful conduct, Defendants have steadfastly denied any wrongdoing. In particular, Defendants have argued that: (a) Defendants' admitted accounting error was not material; (b) Defendants' statements concerning internal controls in the Offering Documents were not false; (c) Defendants had no duty to pre-disclose the results for the third quarter of 2014; (d) the disclosure on November 20, 2014 was not corrective; and (e) the drop in MOL's American Depositary Share price on December 1, 2014 was caused largely by news that was not related to any actionable misrepresentations or omissions. *See* Press Decl. ¶ 5. Even if Lead Plaintiff defeated such arguments at the motion to dismiss stage, it still would have faced considerable risk that available evidence would not withstand a summary judgment motion, or that Lead Plaintiff would not be able to convince a jury to accept its theory over Defendants' competing narrative.

As such, prior to mediation, Lead Plaintiff, the proposed class, and Lead Counsel faced a very real likelihood that they would be unable to obtain any recovery from Defendants. Only after retaining the assistance of a highly skilled mediator were the parties able to settle this Action for \$8.5 million. This Settlement is still subject to the Court's final approval. At this time, Lead Counsel remains uncompensated for the investment of time and effort put into this case. None of Lead Counsel's out-of-pocket expenses have been reimbursed. Uncompensated expenditures of time and money of this magnitude can severely and negatively impact firms of

plaintiffs' favor and entering judgment in favor of defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation and remanding for new trial in light of intervening Supreme Court decision in *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994)).

the relatively small size involved here. Thus, this case clearly involved substantial risks that warrant the requested fee award.

4. The Quality of Representation Favors Approval of Lead Counsel's Fees

Lead Counsel also submits that the quality of its representation supports the reasonableness of the requested fee.

Given the number and complexity of the factual and legal issues presented by this Action, this case required the expertise and capacity that Lead Counsel brought to bear. Kirby McInerney has decades of experience in complex federal civil litigation, particularly the litigation of securities and other class actions. *See* Press Decl. Ex. F (firm resume). Kirby McInerney's experience translated into immediate benefits for the Settlement Class. Such experience in the field allowed Lead Counsel to identify the complex issues involved in this case and to formulate strategies to effectively prosecute them.

Another consideration for assessing the quality of services rendered by Lead Counsel is the quality of the opposing counsel in the case. *See In re Flag Telecom*, 2010 WL 4537550, at *28; *Teachers' Ret. Sys.*, 2004 WL 1087261, at *7; *Maley*, 186 F. Supp. 2d at 373. Defendants were represented by Skadden, Arps, Slate, Meagher & Flom LLP, a prominent international defense-oriented law firm, with approximately 1700 attorneys and 22 offices worldwide. *See e.g., In re Initial Pub. Offering*, 671 F. Supp. 2d at 510 (finding plaintiffs' counsel's prosecution against "such formidable opponents . . . an impressive feat"). Defendants' counsel zealously contested the merits of Lead Plaintiff's claims and engaged in a hard fought settlement negotiation, which further highlights the impressiveness of the result achieved here. Accordingly, Lead Plaintiff and Defendants were well represented.

5. The Requested Fee in Relation to the Settlement Is Reasonable

Regardless of which method a court uses to award attorneys' fees, the award must be reasonable under the circumstances of the particular case. *See Goldberger*, 209 F.3d at 47. The Supreme Court has held that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Jenkins*, 491 U.S. at 285-86. As discussed above, *see* Point III. C, *supra*, the 22.5% fee requested by Lead Counsel in this Action is consistent with percentage fees awarded in this Circuit for comparable recoveries.

6. Public Policy Considerations

“A strong public policy concern exists for rewarding firms for bringing successful securities litigation.” *In re Telik*, 576 F. Supp. 2d at 593 (quoting *In re Ashanti Goldfields Sec. Litig.*, No. 00 Civ. 717, 2005 WL 3050284, at *5 (E.D.N.Y. Nov. 15, 2005)). The Supreme Court has recently reaffirmed its longstanding recognition of the importance of private class actions to the enforcement of the securities laws. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318-19 (2007) (private securities fraud actions provide “‘a most effective weapon in the enforcement’ of securities laws and are ‘a necessary supplement to Commission action’”); *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985).

Furthermore, courts in the Second Circuit have held that “[p]ublic policy concerns favor the award of reasonable attorneys’ fees in class action securities litigation.” *In re Merrill Lynch*, 2007 WL 313474, at *21.¹² This Court has also recently recognized the importance of “private

¹² *In re Telik*, 576 F. Supp. 2d at 593; *In re Priceline.com, Inc. Sec. Litig.*, No. 00 Civ. 1884, 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (finding award percentage encourages enforcement of securities laws and supports “attorneys’ decisions to take these types of cases on a contingent fee basis”); *In re Bristol-Myers Squibb*, 361 F. Supp. 2d at 236 (“[P]ublic policy supports granting attorneys fees that are sufficient to encourage plaintiffs’ counsel to bring securities class actions that supplement the efforts of the SEC.”).

enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis.” *City of Providence*, 2014 WL 1883494, at *17 (citing *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331, 2014 WL 1224666, at *23-24 (S.D.N.Y. Mar. 24, 2014)).¹³ Under these circumstances, “provid[ing] appropriate financial incentives” “[i]n order to attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so” is entirely appropriate as “[l]awsuits such as this one can only be maintained if competent counsel” is retained. *Id.* at *17-18 (quoting *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005)).

Accordingly, Lead Counsel respectfully submits that this Court should find that public policy favors granting the fee and expense request in full.

7. The Settlement Class’s Reaction to the Fee Request

In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the class to the fee request in deciding how large a fee to award. *See In re Veeco*, 2007 WL 4115808, at *10; *Maley*, 186 F. Supp. 2d at 374; *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (“The class’s reaction to the fee request supports approval of the requested fees.”).

Here, the reaction of the Settlement Class to date also supports the requested fee. Pursuant to Paragraph 9 of the Preliminary Approval Order (Press Decl. Ex. A), the Claims Administrator has mailed a total of 6,226 copies of the Notice and Proof of Claim Form to potential Settlement Class Members and nominees informing them of Lead Counsel’s intent to

¹³ *See also In re Telik*, 576 F. Supp. 2d at 585 (citing *Maley*, 186 F. Supp. 2d at 369) (“Courts have also recognized that, in addition to providing just compensation, awards of attorneys’ fees from a common fund serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature.”).

apply for an award of attorneys' fees of 22.5% of the Settlement Fund and reimbursement of expenses (exclusive of administration costs) of up to \$80,000. *See* Press Decl. Ex. B (Affidavit of Jose C. Fraga Regarding Mailing of the Notice and Proof of Claim and Release; Publication of the Summary Notice; Telephone Helpline; Website; and Requests for Exclusion ("GCG Aff.") ¶¶ 2-7). The Notice and Proof of Claim Form, along with other documents related to the Settlement, were also posted on a website established by the Claims Administrator (www.molglobalsecuritieslitigation.com) for easy downloading by interested investors. *Id.* ¶ 10. The Claims Administrator also published the Summary Notice once in *Investor's Business Daily* and once over the *PR Newswire*. *Id.* ¶ 8 & Exs. B and C. While the time to object to Lead Counsel's fee application does not expire until August 26, 2016, to date, no objections to the amount of attorneys' fees and expenses set forth in the Notice have been received. *See* Press Decl. ¶¶ 37, 57. Pursuant to the Preliminary Approval Order, Lead Counsel will address any timely objections received in their reply papers to be filed with the Court on September 9, 2016.

8. The Lodestar Multiplier Requested by Lead Counsel Is Fair and Reasonable, and the Cross-Check Supports Approval of Attorneys' Fees

The Second Circuit also permits courts to utilize a lodestar "cross-check" to further test the reasonableness of a percentage-based fee. *See Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each particular attorney or para-professional by their current hourly rate, and totaling the amounts for all timekeepers. Additionally, "[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Id.*

(citing *Goldberger*, 209 F.3d at 47); *see also In re Flag Telecom*, 2010 WL 4537550, at *25-26. “Where the lodestar is ‘used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.’” *In re Veeco*, 2007 WL 4115808, at *8 (quoting *Goldberger*, 209 F.3d at 50).

Lead Counsel and its para-professionals have spent in the aggregate, 1,547.75 hours for a total lodestar of \$876,287.50 in the prosecution of this Action. *See* Press Decl. ¶ 29 & Ex. C. The amount of attorneys’ fees requested by Lead Counsel, 22.5% of the Settlement Amount, or \$1,912,500 (before interest), therefore represents a multiplier of 2.18 to Lead Counsel’s lodestar.¹⁴ This multiplier is well within the range of multipliers that are typically approved in this Circuit.¹⁵ This multiplier is also well within the range approved in other circuits.¹⁶

¹⁴ The Supreme Court and other courts have held that the use of current billing rates is proper since such rates compensate for inflation and the loss of use of funds. *See Jenkins*, 491 U.S. at 283-84.

¹⁵ *See, e.g., In re L.G. Philips LCD Co., Ltd. Sec. Litig.*, No. 07 Civ. 909, slip op. at 1 (S.D.N.Y. Mar. 17, 2011) (ECF No. 82) (awarding 30% of \$18 million settlement fund, representing a multiplier of 3.17, where settlement was reached where motion to dismiss was pending); *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 134 (2d Cir. 2008) (holding that a \$34 million fee, representing a 2.04 multiplier was “toward the lower end of reasonable fee awards”); *Wal-Mart*, 396 F.3d at 123 (multiplier of 3.5 approved on appeal); *Maley*, 186 F. Supp. 2d at 371 (noting that fee equal to “the modest multiplier of 4.65 is fair and reasonable”); *In re EVCI*, 2007 WL 2230177, at *17 (finding a multiplier of 2.48 in a lodestar cross-check to confirm the reasonableness of the requested attorneys’ fees); *Van Dongen v. CNInsure Inc.*, No. 11 Civ. 07320, slip op. (S.D.N.Y. Aug. 15, 2014) (ECF No. 57) (approving 3.11 lodestar multiplier in a case settling for \$6.625 million); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 590 (noting that lodestar multiples of over 4 are “routinely awarded” by this Court); *Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) (noting that courts “commonly award lodestar multipliers between two and six” and approving a lodestar multiplier of three); *Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *21 (S.D.N.Y. Sept. 16, 2011) (noting that “multipliers of two to six times lodestar . . . are regular[ly] awarded in this district”); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 347, 353 (S.D.N.Y. 2014) (awarding fee representing 5.2 lodestar multiplier); *Bd. Of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686, 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding fee representing 2.86 lodestar multiplier).

Accordingly, Lead Counsel's request is well within the range of reasonableness, particularly in light of the substantial risks associated with this Action.

IV. LEAD COUNSEL SHOULD BE REIMBURSED FOR REASONABLY INCURRED LITIGATION EXPENSES

Lead Counsel also requests reimbursement in the amount of \$61,853.52 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this Action. The Press Declaration attests to the accuracy of Lead Counsel's expenses and it is well established that expenses are properly recovered by counsel. *See* Press Decl. ¶¶ 53-56 & Ex. H; *see, e.g., In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (citations omitted).

Because the expenses were incurred with no guarantee of recovery, Lead Counsel had a strong incentive to keep them at a reasonable level, and did so. Lead Counsel made a concerted effort to avoid unnecessary expenditures and economized wherever possible. Most of the expenses arose out of mediation and expert fees, along with the costs of online legal research databases, and other expenses directly related to the prosecution of this Action. *See* Press Decl. Ex. H. The remaining expenses are attributable to such things as travel and other incidental expenses. *Id.* ¶ 53 & Ex. H. These expenses were all necessarily incurred in connection with

¹⁶ *See, e.g., In re Genta Sec. Litig.*, No. 04 Civ. 2123, 2008 WL 2229843, at *11 (D.N.J. May 28, 2008) (lodestar multiplier of 3.72); *In re Ravisent Techs.*, 2005 WL 906361, at *12 (lodestar multiplier of 3.1); *In re Rite Aid*, 362 F. Supp. 2d at 588 (finding multipliers of 4 fairly common); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (lodestar multiplier of 4.3); *In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (performing lodestar cross-check and stating, “[m]ost courts agree that the typical lodestar multiplier in a large post-PSLRA securities class action[] ranges from 1.3 to 4.5”); *Manners v. Am. Gen. Life Ins. Co.*, No. 98 Civ. 266, 1999 WL 33581944, at *31 (M.D. Tenn. Aug. 11, 1999) (observing that multipliers in similar litigations “have ranged from 1-4 and have reached as high as 10”); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991) (noting multipliers of 4 and 5 in other cases).

this litigation and, Lead Counsel respectfully submits, are reasonable. *See In re Global Crossing*, 225 F.R.D. at 468 (“The expenses incurred . . . are the type for which ‘the paying, arms’ length market’ reimburses attorneys . . . [and] [f]or this reason, they are properly chargeable to the Settlement fund.”) (citation omitted).

To date, not a single objection has been made in connection with the expense request. Press Decl. ¶ 57. Accordingly, Lead Counsel respectfully requests payment for these expenses.

V. CONCLUSION

For the reasons set forth above, Lead Counsel submits that this fee request is fair and reasonable. It satisfies the guidelines of *Goldberger*, especially in light of the complicated nature of the case, and the effort and skill required to litigate this Action and reach this Settlement. Accordingly, for the foregoing reasons, Lead Counsel respectfully requests that this Court enter the accompanying proposed Final Approval Order and Judgment awarding: (1) attorneys’ fees of 22.5% of the Settlement Amount of \$8.5 million, or \$1,912,500 plus any accrued interest; and (2) reimbursement of Lead Counsel’s litigation expenses in the amount of \$61,853.52, plus any accrued interest.

Dated: August 12, 2016

Respectfully submitted,

KIRBY McINERNEY LLP

By: /s/ Ira M. Press
Ira M. Press
Daniel Hume
Meghan J. Summers
825 Third Avenue, 16th Floor
New York, NY 10022
Telephone: (212) 371-6600
Facsimile: (212) 751-2540

*Lead Counsel for Class and Counsel for
Lead Plaintiff TAP Retirement Fund*