IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MUTUAL FUNDS INVESTMENT LITIGATION	)	MDL No. 1586
	)	Case No. 04-MD-15862-04
This Document Relates To: *Pilgrim Baxter Sub-Track,* 04-md-15862-04	)	(Hon. J. Frederick Motz)

PLAINTIFFS' COUNSEL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES IN THE PILGRIM BAXTER SUB-TRACK

Dated: September 14, 2010

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Plaintiffs' Counsel – consisting of Court-appointed Class Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Court-appointed Derivative Lead Counsel, Chimicles & Tikellis LLP ("Chimicles") – respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 23(h), for a collective award of attorneys' fees in the amount of 15% of the Gross Settlement Fund (*i.e.*, the $31,538,600 cash Settlement Fund plus interest earned thereon).[1] Plaintiffs' Counsel also seek reimbursement of a collective total of $534,966.85 in litigation expenses incurred in the prosecution of this litigation, also to be paid from the Gross Settlement Fund.[2]

For the reasons set forth below and in the accompanying papers, Plaintiffs' Counsel respectfully submit that the application for attorneys' fees and reimbursement of litigation expenses is reasonable and should be granted in its entirety.[3] In addition to the points and authorities in this Memorandum, Plaintiffs' Counsel respectfully refer the Court to Plaintiffs'

[1] In addition, the Court-appointed Chief Administrative Counsel and Liaison Counsel, Tydings & Rosenberg LLP ("Liaison Counsel"), is separately applying for attorneys' fees and expenses in an amount equal to 1.25% of the Gross Settlement Fund. Plaintiffs' Counsel support Liaison Counsel's application for fees and expenses. No request for attorneys' fees is being made in connection with the $5,730,000 that the Office of the New York State Attorney General obtained in a settlement with the Canary Defendants, which will be distributed along with the Net Settlement Fund.

[2] Unless otherwise indicated, all capitalized terms are used as defined in Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings in the Pilgrim Baxter Sub-Track dated May 19, 2010 (Dkt. No. 1286) (the "Preliminary Approval Order").

[3] Detailed information about the history of the Class Action and the work performed by Class Lead Counsel is set forth in the Declaration of Chad Johnson, William C. Fredericks and Jerald Bien-Willner in Support of Motion for Final Approval of Proposed Settlements, Plan of Allocation of Settlement Proceeds, and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses in the Pilgrim Baxter Sub-Track (the "BLB&G Declaration" or "BLB&G Decl."). Similarly, detailed information about the history of the Derivative Action and the work performed by Derivative Lead Counsel is set forth in the Declaration of Nicholas E. Chimicles in Support of Motion for Final Approval of Proposed Settlements, Plan of Allocation of Settlement Proceeds, and Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses in the Pilgrim Baxter Sub-Track (the "Chimicles Declaration" or "Chimicles Decl.") and the Affidavit of Nicholas E. Chimicles in Support of Joint Petition for Attorneys' Fees and Reimbursement of Expenses (the "Chimicles Affidavit" or "Chimicles Aff."), which are being filed contemporaneously herewith.

Omnibus Memorandum of Law in Support of Motions for Attorneys' Fee and Reimbursement of Expenses ("Omnibus Fee App. Memo"), which is being filed concurrently with this Memorandum and is frequently referred to herein, for additional points and authorities concerning the legal standards applicable to applications for attorneys' fees and reimbursement of expenses.

I. PRELIMINARY STATEMENT

The prosecution of this litigation required extensive effort on the part of Plaintiffs' Counsel, particularly given the great complexity of the litigation, the novelty and difficulty of the legal issues raised, and the vigorous defense mounted by defendants and their counsel. As a result of the respective efforts of counsel, the following substantial monetary recoveries have been obtained in the Pilgrim Baxter sub-track: (i) $26,500,000 paid on behalf of the PB Advisor Defendants for the benefit of the Settlement Class and the PBHG Successor Funds; (ii) $2,865,000 paid on behalf of the Canary Defendants for the benefit of the Settlement Class and the PBHG Successor Funds; (iii) $1,232,000 paid on behalf of the Bear Stearns Defendants for the benefit of the Settlement Class; (iv) $500,000 paid on behalf of the Appalachian Trails Defendants for the benefit of the Settlement Class; and (v) $441,600 paid on behalf of BAS for the benefit of the Settlement Class and the PBHG Successor Funds.

As set forth below and in the BLB&G and Chimicles Declarations, Plaintiffs' Counsel vigorously prosecuted this litigation on a purely contingent-fee basis, with no remuneration whatsoever having been made to them to date for their services during the roughly six years that they have prosecuted the case or for any of the litigation expenses that they have incurred. Given the results obtained, the complexity and amount of work involved, the attorney skill and expertise required, and the substantial risks of non-recovery that counsel undertook, Plaintiffs' Counsel strongly believe that the requested collective award of 15% of the Gross Settlement

Fund is both fair and reasonable. As discussed below, federal courts in this Circuit and around the nation, recognizing the risks and efforts expended by counsel to obtain favorable results, have not hesitated to award fees in securities fraud cases and other comparable class actions, and derivative actions that are similar or substantially higher than those requested here.

In sum, the requested fee is fair and reasonable and the requested expenses are reasonable in their amount and were necessarily incurred for the successful prosecution of the case. Accordingly, Plaintiffs' Counsel respectfully submit that their motion should be granted and the requested amounts awarded in full by the Court.

II. PLAINTIFFS' COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

It is well-established that "a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392-95 (1970); *Jones v. Dominion Res. Servs.*, 601 F. Supp. 2d 756, 758 (S.D.W.Va. 2009); *see generally* Omnibus Fee App. Memo §§ I.A, III.

In addition to providing just compensation, the award of attorneys' fees should create an incentive sufficient "to ensure that competent, experienced counsel will be encouraged to undertake the often risky and arduous task of representing a class in a securities fraud case." *In re MicroStrategy, Inc., Sec. Litig.*, 172 F. Supp. 2d 778, 788 (E.D. Va. 2001); *see also* Omnibus Fee App. Memo § I.A. (citing additional authorities).

III. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Although the Fourth Circuit has not expressly addressed the use of the percentage-of-recovery method in common fund cases, this method has been consistently used by the Supreme Court and has been endorsed by nine other Courts of Appeal as appropriate for use in common

fund cases. *See* Omnibus Fee App. Memo § 1.B.1. The overwhelming trend among district courts in the Fourth Circuit is to use the percentage-of-recovery method in such cases. *See id.* (citing *In re The Mills Corp. Sec. Litig.*, 256 F.R.D. 246, 260 (E.D. Va. 2009); *Jones*, 601 F. Supp. 2d at 760; *Muhammad v. Nat'l City Mortg., Inc.*, No. 2:07-0423, 2008 WL 5377783, at *7 (S.D.W.Va. Dec. 19, 2008); *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05-CV-00187, 2007 WL 119157, at *1 (M.D.N.C. Jan. 10, 2007); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006); *MicroStrategy*, 172 F. Supp. 2d at 786-87; *Goldenberg v. Marriott PLP Corp.*, 33 F. Supp. 2d 434, 438 (D. Md. 1998); *Strang v. JHM Mortg. Sec. Ltd. P'Ship*, 890 F. Supp. 499, 502-03 (E.D. Va. 1995)); *see also Boyer v. Wilmington Materials, Inc.*, C.A. No. 12549, 1999 Del. Ch. LEXIS 81 (Del. Ch. May 17, 1999) (finding percentage of common fund award appropriate in derivative case).

As discussed at greater length in the Omnibus Fee App. Memo, the percentage-of-recovery method has been favored over the lodestar method in common fund cases because it "better aligns the interests of class counsel and class members because it ties the attorneys' award to the overall result achieved rather than the hours expended by the attorneys." *Jones*, 601 F. Supp. 2d at 759, and because it is "more efficient and less burdensome." *Strang*, 890 F. Supp. at 503. *See generally* Omnibus Fee Memo § 1.B.1.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR LODESTAR METHOD

A court's award of attorneys' fees must be reasonable under the circumstances of the particular case. *See* Fed. R. Civ. P. 23(h); *Scardelletti v. Debarr*, 43 Fed. Appx. 525, 528 n.2 (4th Cir. 2002); *see also* 15 U.S.C. § 78u-4(a)(6) ("[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class").

A. The Requested Attorneys' Fees Are Reasonable Under The Percentage-of-Recovery Method

The fee requested here – 15% of the Gross Settlement Fund – is below or at the very low end of the range of percentage fees typically awarded in the Fourth Circuit. *See, e.g., In re MRRM, P.A*, 404 F.3d 863, 867 (4th Cir. 2005) (noting that district court awarded 28.75% of an approximately $70 million settlement fund); *Mills*, 256 F.R.D. at 260-65 (awarding 18% of $202.75 million total settlement fund); *Jones*, 601 F. Supp. 2d at 760 (awarding 20% of settlement fund valued from $40 to $50 million); *Muhammad*, 2008 WL 5377783, at *9 (awarding 33% of $700,000 settlement fund); *Krispy Kreme*, 2007 WL 119157, at *3 (awarding 26% of $4.75 million cash recovery); *MicroStrategy*, 172 F. Supp. 2d at 790 (awarding 18% of $153.5 million total settlement fund); *Kidrick v. ABC Television & Appliance Rental*, No. 3:97CV69m, 1999 WL 1027050, at *1-*2 (N.D.W.Va. May 12, 1999) (awarding 30.6% of settlement fund); *Strang*, 890 F. Supp. at 503 (awarding 25% of $1.15 million settlement fund); *see generally Jones*, 601 F. Supp. 2d at 763 ("fees awarded under the percentage method are often between 25% and 30% of the fund") (citation omitted); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991) (noting that the "majority of common fund fee awards fall between 20% and 30% of the fund" and establishing that range as a "benchmark" for such awards).[4] Accordingly, the collective request for 15% of the roughly $31.5 million Gross Settlement Fund is reasonable and, indeed, modest in light of awards in similar cases.

Likewise, the 15% fee request is also well below the typical range of percentage fees awarded in other securities class actions in other jurisdictions with comparably sized recoveries. *See, e.g., In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (awarding 33.3% of

[4] In reviewing these awards from within the Fourth Circuit, it is worth noting that, as a general rule, the cases in which the percentage awarded was less than 20% (*Mills*, *MicroStrategy*) were cases in which the amount of the recovery exceeded $100 million.

$35 million settlement fund); *In re Bisys Sec. Litig.*, No. 04 Civ. 3480 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% of $65.87 million settlement fund); *In re McLeodUSA Inc. Sec. Litig.*, No. C02-001 MWB, 2007 WL 81956, at *4 (N.D. Iowa Jan. 8, 2007) (awarding 30% of $30 million settlement fund); *In re Heritage Bond Litig.*, No. 02-ML-1475-DT(RCX), 2005 WL 1594389, at *17 (C.D. Cal. June 10, 2005) (awarding 33.3% of $27.8 million settlement fund); *Nichols v. Smithkline Beecham Corp.*, No. 00-6222, 2005 WL 950616, at *22-*23 (E.D. Pa. April 22, 2005) (awarding 30% of $65 million settlement fund); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 512-19 (W.D. Pa. 2003) (awarding 25% of $25 million settlement fund); *In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 16 (D.D.C. 2003) (awarding 28% of $32.5 million settlement fund); *Cromer Fin. Ltd. v. Berger*, No. 00 Civ. 2284 (DLC), 2003 WL 203197, at *1 (S.D.N.Y. Jan. 29, 2003) (awarding 22% of $32 million settlement fund); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433-35 (E.D. Pa. 2001) (awarding 33.3% of $48 million settlement fund).

B. The Requested Attorneys' Fees Are Reasonable When Measured Against The Lodestar Method

Although the preferred method for calculation of reasonable fees in common fund cases is the percentage-of-recovery method, courts often look to the lodestar method as a "cross-check." *See, e.g.*, *Mills*, 265 F.R.D. at 264; *Jones*, 601 F. Supp. 2d at 759-60; *Royal Ahold*, 461 F. Supp. 2d at 385; *see generally* Omnibus Fee App. Memo § I.B.2. The objective of such a cross-check is to see if the fee awarded under the percentage method bears a reasonable relationship to the value of the time expended by the attorneys. *See Jones*, 601 F. Supp. 2d at 759.

When the lodestar method is used only as a cross-check, the burden on the court is greatly lessened because the court need not exhaustively scrutinize the hours documented by

counsel and the hourly rates employed. *See, e.g.*, *Mills*, 265 F.R.D. at 264; *See Royal Ahold*, 461 F. Supp. 2d at 385; Omnibus Fee App. Memo at § I.B.2. To employ the lodestar method as a cross-check, the reasonable value of the time expended by attorneys and other professionals in litigating and resolving the case – based on the number of hours expended and their normal hourly rates – is calculated to produce a "lodestar" value. The requested percentage is then compared to the lodestar value with any difference being expressed as a "multiplier."[5] Courts in this Circuit have generally awarded lodestar multipliers between 2 and 4.5 and found that multipliers within or below that range demonstrate a reasonable attorneys' fee request. *See* Omnibus Fee App. Memo at § I.B.2 (collecting cases).

Here, the lodestar cross-check readily confirms the reasonableness of the 15% award of attorneys' fees requested by Plaintiffs' Counsel. For example, Class Lead Counsel has expended a total of 11,687.65 hours in the prosecution and resolution of the Class Action over the past six years, resulting in a lodestar of $5,400,029.50. *See* BLB&G Decl. ¶ 65.[6] Derivative Counsel has expended a total of 2,734.94 hours in the prosecution and resolution of the Derivative Action

[5] Under the lodestar method, the lodestar value should be adjusted (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the results obtained and the quality of the attorneys' work. *See, e.g.*, *Jones*, 601 F. Supp. 2d at 758; *MicroStrategy*, 172 F. Supp. 2d at 786.

[6] As discussed in the BLB&G Declaration and Chimicles Affidavit, the lodestar value for Class Lead Counsel and Fund Derivative Counsel based on the contemporaneous daily time record of their attorneys and other paraprofessionals and is based on their current hourly billing rates (or, for those who are no longer employed by their respective firms, the rate in their last year of employment). *See* BLB&G Decl. ¶ 64; Chimicles Aff. ¶ 2. Courts approve of the use of current hourly rates in the lodestar calculation in order to compensate for inflation and the delay in receiving compensation. *See Daly v. Hill*, 790 F.2d 1071, 1081 (4th Cir. 1986); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 103 n.11 (D.N.J. 2001); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989). The hourly rates used are commensurate with those performing similar legal services and have been accepted by other Courts for use in similar lodestar analyses. *See* BLB&G Decl. ¶ 64; Chimicles Aff. ¶ 3. In considering the reasonableness of the hourly rates used to generate the lodestar values in an MDL case such as this, the Court should weigh them against the standards applicable to experienced, national firms in their practice areas and the rates prevailing in the cities where the firms are based. *See Royal Ahold*, 461 F. Supp. 2d at 386 n.6 ("[t]hese hourly rates, while somewhat high for this district, are within a reasonable range for the national firms that prosecuted the case"); *MicroStrategy*, 172 F. Supp. 2d at 788 (same).

over the past six years, resulting in a lodestar of $1,223,384.94. *See* Chimicles Decl. ¶ 43. The requested fee of 15% of the Gross Settlement Fund, which comes to $4,730,790 (before interest), is less than Plaintiffs' Counsel's collective lodestar of $6,623,414.44. Indeed, the requested fee represents approximately 72% of Plaintiffs' Counsel's total lodestar or, in other words, a lodestar multiplier of 0.72, a multiplier which is well within the range awarded in this Circuit.[7] Thus, the 15% fee requested represents a multiplier that is within or below the range routinely awarded and the lodestar cross-check fully supports the requested percentage fee.

* * *

In sum, the attorneys' fee requested by Plaintiffs' Counsel is well within the range of what courts in this Circuit and throughout the country commonly award in complex class actions such as this one. The requested 15% fee is, therefore, reasonable and fair, whether calculated as a percentage of the recovery or in relation to Plaintiffs' Counsel's lodestar, and warrants the approval of the Court.

C. All Factors Considered By Courts In The Fourth Circuit Confirm That The Requested Fee Is Reasonable

The Fourth Circuit has not specifically addressed the methodology for awarding attorneys' fees that should be used in common fund cases or the factors that should be considered in assessing the reasonableness of an award under the percentage-of-recovery method. However, in other contexts, the Fourth Circuit has set forth twelve factors that a court should consider in analyzing the reasonableness of an attorney fee award. *See* Omnibus Fee App. Memo § I.C at 7 (citing *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978)). Some district courts in the Fourth Circuit have organized their analysis through the use of a set of closely related factors that

[7] The lodestar multiplier based on Class Lead Counsel's time alone is 0.88.

are specifically tailored for considering the reasonableness of fees awarded under the percentage method. In *Jones v. Dominion Services, Inc.*, the court set out these factors:

> (1) the results obtained for the class, (2) the quality, skill, and efficiency of the attorneys involved, (3) the complexity and duration of the case, (4) the risk of nonpayment, (5) awards in similar cases, (6) objections, and (7) public policy

601 F. Supp. 2d at 760; *see also Mills*, 265 F.R.D. at 261 (substantially same factors); *Muhammad*, 2008 WL 5377783, at *8 (same, citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 283 (3d Cir. 2001)); *Goldenberg*, 33 F. Supp. 2d at 438. All of the relevant *Barber* factors are incorporated in this analysis, albeit in some cases consolidated and presented in a slightly different order.

The same factors apply to derivative suits. *See Shlensky v. Dorsey*, 574 F.2d 131, 149 (3d. Cir. 1978). "The form of suit is not a deciding factor; rather, the question to be determined is whether a plaintiff, in bringing a suit either individually or representatively, has conferred a benefit on others." *Reiser v. Del Monte Props. Co.*, 605 F.2d 1135, 1140 (9th Cir. 1979); *see also In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1445 (N.D. Cal. 1994) (derivative counsel fees are appropriate where a derivative suit is a causal factor in creating a joint class/derivative benefit).

"[T]here is no specific formula for analyzing these factors. Each case is different and in certain cases, one factor may outweigh the rest." *Jones*, 601 F. Supp. 2d at 760 (citation and internal quotation marks omitted). Whether the percentage or lodestar method is used, review of the reasonableness of an attorneys' fee award relies on "the exercise of sound judgment by the trial court" after a "qualitative assessment" of the relevant factors. *MicroStrategy*, 172 F. Supp. 2d at 787.

1. The Results Obtained

The result achieved is an important factor to be considered in assessing the reasonableness of an attorneys' fee award. *See generally* Omnibus Fee App. Memo § I.C.1 (citing, among other authorities, *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *McDonnell v. Miller Oil Co.*, 134 F.3d 638, 641 (4th Cir. 1998) ("'the most critical factor' in calculating a reasonable fee award 'is the degree of success obtained'")).

As a result of the Settlements achieved in the Pilgrim Baxter sub-track, a total of $31,538,600 in cash plus interest (less taxes, notice and administration costs, and Court-approved attorneys' fees and expenses) will distributed pursuant to the Plan of Allocation.[8] This substantial cash recovery is the direct result of the skill, tenacity and efforts of Plaintiffs' Counsel. For example, Plaintiffs' Counsel were successful in recovering $26,500,000 in cash from the PB Advisor Defendants. Bernstein Litowitz, on behalf of the Class Lead Plaintiff in the Pilgrim Baxter sub-track and the investor class plaintiffs in other sub-tracks, played a prominent role in achieving the settlements with the "cross-track" defendants – the BAS, Bear Stearns and Canary Defendants – who collectively paid a total of $47,500,000 in cash to settle the claims asserted against them on an MDL-wide basis, $4,538,600 of which has been allocated to the Settlement Class in the Pilgrim Baxter sub-track. Derivative counsel (Chimicles) also played a prominent role in obtaining the cross-track settlement amounts from the BAS and Canary Defendants, who collectively paid a total of $33,500,000 in cash to settle the claims asserted against them on an MDL-wide basis, $3,306,600 of which has been allocated to the Settlement Class in the Pilgrim Baxter sub-track.

[8] As described in detail in the BLB&G Declaration, the net settlement proceeds will be distributed to eligible members of the Settlement Class who submit valid Claim Forms. After all cost-effective re-distributions of the remaining net settlement proceeds have occurred, the remaining funds shall be distributed to the PBHG Successor Funds, subject to Court approval. *See* BLB&G Decl. ¶ 3 n.5.

Thus, the Settlements provide immediate benefits to the Settlement Class and the PBHG Funds, rather than subjecting plaintiffs to the risks of further litigation and the inevitable delays associated with such litigation. The quality of these results is highlighted by the fact that it was achieved in the face of vigorous opposition by defendants who were represented by highly-skilled and experienced counsel, and who possessed potentially strong defenses to Plaintiffs claims on issues such as proof of *scienter* and reliance (and the related concept of the defendants' duty to disclose information) in the Class Action and the recoverability of damages in the Derivative Action. The total settlement recovery is also a particularly fine result in light of the substantial sums already paid by many of the settling defendants as disgorgement to government regulators and distributed to investors in the PBHG Funds and to the PBHG Funds themselves. Certain of the settling defendants had already and were almost certain to continue to avail themselves of viable arguments that the amounts paid in their settlements with regulators should offset any damages resulting from the market timing and late trading that they allegedly participated in or facilitated. Notably, for example, the Pilgrim Baxter Fair Fund's IDC concluded that funds recovered by the SEC provided shareholders in the PBHG Funds with full compensation for their damages. Although this conclusion was disputed by Class Lead Plaintiff and its damages expert, and Class Lead Plaintiff and its counsel were ultimately successful in obtaining over $31.5 million for members of the Settlement Class beyond the amounts paid by defendants and others to government regulators, the settling defendants had a non-trivial argument that the Settlement Class is not entitled to compensation beyond what was obtained by the government regulators.

In sum, it is respectfully submitted that the Settlements represent an excellent result in this litigation. Thus, this "most critical" factor weighs strongly in favor of approving Plaintiffs' Counsel's fee request.

2. The Quality, Skill and Efficiency of the Attorneys

The court should consider "the skill required to properly perform the legal services rendered" and "the experience, reputation and ability" of the attorneys involved. *Barber*, 577 F.2d at 226; *see also, e.g., Mills*, 265 F.R.D. at 262; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992). It has been recognized by courts in this Circuit that "prosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). Plaintiffs' Counsel's efforts in bringing these cases to a successful resolution and achieving a substantial cash settlement fund, despite the significant substantive and procedural hurdles posed by the litigation, is the best indicator of the experience and ability of the attorneys involved. *See In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) ("[T]he single clearest factor reflecting the quality of class counsel's services are the results obtained.").

The complexity of the Class Action – which involved claims by several sets of plaintiffs against multiple sets of defendants, including the advisors that operated the funds and brokers and traders that allegedly participated in the market timing and late trading schemes (with numerous defendants facing claims in multiple sub-tracks) – required that Class Lead Counsel demonstrate enormous organizational and strategic skills in litigating and settling these complex, interrelated cases. In addition, the relative novelty of the legal issues and factual circumstances presented (compared, for example, to a traditional "stock drop" securities case), required that Class Lead Counsel litigate creatively and assimilate substantial bodies of new knowledge concerning mutual funds' operations and economic theories on how to measure the damages

resulting from market timing and late trading. Derivative Lead Counsel also pursued a complex case against multiple defendants and against novel and challenging factual and legal backdrop.

Similarly, the complexity of the Derivative Action – which involved claims by a group of plaintiffs against multiple sets of defendants – required that Derivative Counsel demonstrate enormous organizational and strategic skills in litigating and settling these complex, interrelated cases. Among other things, the Derivative Action involved novel issues of liability and damages under Section 36(b) of the Investment Company Act which Derivative Lead Counsel bolstered through creative legal and economic theories.

Plaintiffs' Counsel are among the most skilled and experienced practitioners in their respective fields (securities and derivative litigation). As set forth in the firm resumes that accompanying their declarations, Plaintiffs' Counsel have well-established reputations in and strong track records of achieving large recoveries for their clients. *See* BLB&G Decl. Ex. 4-C; Chimicles Aff. Ex. 3.

The quality and experience of the opposing counsel are also an important measure that can be used in evaluating the services rendered by Plaintiffs' Counsel. *See Mills*, 265 F.R.D. at 262; Omnibus Fee App. Memo § I.C.2. In the Pilgrim Baxter sub-track, the Settling Defendants were represented by a number of outstanding firms with national reputations, including: Shearman & Sterling LLP; Wachtell, Lipton, Rosen & Katz; Cleary Gottlieb Steen & Hamilton LLP; Kramer Levin Naftalis & Frankel LLP; Stradley Ronon Stevens & Young, LLP; and Murphy & Shaffer LLC. *See* BLB&G Decl. ¶ 67. These firms litigated with undeniable experience and skill and spared no effort in defense of their clients. *See id.* The fact that Plaintiffs' Counsel achieved these Settlements in the face of such formidable opposition further evidences the quality of their work.

For these reasons, the skill and quality of representation strongly support the approval of the Plaintiffs' Counsel's requested fee.

3. The Complexity and Duration of the Litigation and the Time and Labor Devoted by Plaintiffs' Counsel

Another important set of factors concerns the complexity and duration of the litigation (*see Jones*, 601 F. Supp. 2d at 760; *Goldenberg*, 33 F. Supp. 2d at 439), the "novelty and difficulty of the questions raised" in the litigation (*Barber*, 577 F.2d at 226), and the "the time and labor expended" by the attorneys (*id*.).

Given the large number of parties involved, the huge size of the Settlement Class (as evidenced by the hundreds of thousands of Notices mailed to Settlement Class Members to date), the number of Funds involved in the Derivative Action, and the fact that claims arose from alleged market timing and late trading in numerous Pilgrim Baxter mutual funds, there can be no doubt that the litigation here was extremely complex. The MDL structure and the interactions among the parties while litigating their cases in the various sub-tracks, including the role of "cross-track" defendants who sought to settle only if they could obtain litigation peace in all sub-tracks, and sometimes involving different types of cases (class and fund derivative) further added to the complexity. *See* BLB&G Decl. ¶¶ 27-28; Chimicles Decl. ¶¶ 19-22. The Actions in the Pilgrim Baxter sub-track, like other cases in this MDL, raised a number of novel and difficult questions involving unresolved legal issues, such as the extent to which a mutual fund advisor and others can be held liable for alleged false statements and/or omissions in the funds' prospectuses, the proper method of establishing loss causation and damages resulting from improper market timing and late trading, and liability and damages recoverable under Section 36(b). *See* BLB&G Decl. ¶¶ 36-41; Chimicles Decl. ¶¶ 32-36.

These complex cases played out over more than six years in this Court. A review of the efforts and substantial time expended by Plaintiffs' Counsel during the course of this litigation establishes that the requested fee is justified. With respect to substantial work performed by Class Lead Counsel, the BLB&G Declaration sets forth the myriad tasks undertaken by Bernstein Litowitz to prosecute the Class claims against the various defendants, the time and labor expended, and the creativity of those efforts. Among other things:

- Class Lead Counsel conducted extensive factual investigation and thorough legal research on the class claims, culminating in September 2004 with the filing of a detailed, 69-page complaint (BLB&G Decl. ¶¶ 12, 14-15);

- Class Lead Counsel played a lead role in negotiating and reaching a cross-track settlement with the Canary Defendants in 2004 that resulted in a $15,000,000 global cash settlement and provided for cooperation and information useful to prosecuting plaintiffs' claims against the remaining defendants (*id*. ¶¶ 13, 21);

- In March through November of 2005, Class Lead Counsel vigorously and, for the most part, successfully opposed defendants' motions to dismiss, and successfully opposed motions for reconsideration of the Court's ruling on the motion to dismiss (*id*. ¶¶ 17-19);

- In 2006 and 2007, Class Lead Counsel played a lead role in achieving multi-million dollar settlements with the BAS and Bear Stearns cross-track defendants (*id*. ¶¶ 22, 26);

- In July through October 2007, Class Lead Counsel played a lead role in successfully defending against defendants' motions to dismiss the actions for lack of standing filed on an MDL-wide basis, including substantially drafting and filing the opposition brief to defendants' motion on behalf of all investor class plaintiffs, and arguing at the hearing regarding the same (*id*. ¶ 35);

- Class Lead Counsel expended substantial time and effort to pursue both informal and formal discovery from the various defendants in the Class Action – both on their own behalf and for the benefit of plaintiffs in related litigations – and to carefully review and analyze the materials they received. (*id*. ¶¶ 20-26, 29-34);

- Throughout the litigation, Class Lead Counsel retained and consulted extensively with its damages expert in order to develop Class Lead Plaintiff's case for trial and be informed in settlement negotiations with defendants (*id*. ¶ 20 & n.9);

With respect to substantial work performed by Derivative Lead Counsel, the Chimicles Declaration sets forth the myriad tasks undertaken by Derivative Counsel to prosecute the Derivative claims against the various defendants, the time and labor expended, and the creativity of those efforts. Among other things:

- Derivative Counsel conducted extensive factual investigation and thorough legal research on the derivative claims and damages theories (including flight damages), culminating in September 2004 with the filing of a detailed, 106-page complaint (Chimicles Decl. ¶¶ 7-14);

- Derivative Counsel participated in negotiating and reaching a cross-track settlement with the Canary Defendants in 2004 that resulted in a $15,000,000 global cash settlement and provided for cooperation and information useful to prosecuting plaintiffs' claims against the remaining defendants (*id*. ¶¶ 13, 17);

- Derivative Counsel vigorously and, in large part, successfully opposed defendants' motions to dismiss (*id*. ¶¶ 16-18);

- In 2006 and 2007, Derivative Counsel played a role in achieving multi-million dollar settlements with the BAS cross-track defendants (*id*. ¶ 21);

- In October 2006, Derivative Counsel played a lead role in, in large part, successfully defending against defendants' motions to dismiss the derivative actions for lack of standing filed on an MDL-wide basis, including substantially drafting and filing the opposition brief to defendants' motion on behalf of all derivative plaintiffs, (*id*. ¶ 31);

- After November 2005, Derivative Counsel participated in meetings and conferences with Class Lead Plaintiff's damages experts (*id*. ¶ 23);

As discussed above, the number of hours Plaintiffs' Counsel have expended on this litigation – over 14,000 hours with a resulting lodestar of $6,623,414 – attests to their extensive efforts.

Based on the foregoing, the complexity and duration of the litigation and the time and labor expended by counsel here amply support the requested fee award.

4. The Risk of Non-Payment

This prosecution was undertaken by Plaintiffs' Counsel entirely on a contingent-fee basis. The multiple, substantial risks assumed by Lead Counsel in bringing the claims asserted in the

Class Action to a successful conclusion are highlighted in Section IV.C.1 above and described in greater detail in the BLB&G and Chimicles Declarations. *See* BLB&G Decl. ¶¶ 36-41; Chimicles Decl. ¶¶ 32-36. Those risks are also relevant to an award of attorneys' fees. Thus, the risks assumed by Plaintiffs' Counsel, and the time and expenses incurred without any payment, were extensive.

From the outset, Plaintiffs' Counsel understood that they were embarking on a complex, expensive and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. *See, e.g.*, BLB&G Decl. ¶¶ 68-71; Chimicles Decl. ¶¶ 46-51. In undertaking that responsibility, Plaintiffs' Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of their respective Actions, and that funds were available to compensate staff and to cover the considerable out-of-pocket costs that a case such as this requires. Indeed, Plaintiffs' Counsel have received no compensation during the more than six-year course of this litigation.

Plaintiffs' Counsel also bore the risk that no recovery would be achieved. From the outset, this case presented a number of risks and uncertainties that could have prevented any recovery whatsoever. Indeed, despite the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured. Plaintiffs' Counsel know from experience that the commencement of a class action or derivative suit provides no guarantee of a successful recovery. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

Courts within the Fourth Circuit and throughout the country have consistently recognized that the risk of receiving little or no recovery is a major factor to be considered in awarding

attorneys' fees. *See, e.g.*, *Jones*, 601 F. Supp. 2d at 762 ("[A]ttorneys undertaking class actions bear substantial risks that the litigation will not result in payment. The attorneys risk defeat at several stages of the litigation: class certification, dispositive motions, and, finally, trial."); *Marsh ERISA Litig.*, 265 F.R.D. at 148 ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."). "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 has agreed to pay for his services, regardless of success." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974); *accord In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *6 (S.D.N.Y. Nov. 7, 2007).

In this case, the risk of non-payment to Plaintiffs' Counsel (or of a payment based on a very limited recovery) was substantial and, therefore, this factor also supports approval of the fee application.

5. Awards in Similar Cases

As discussed in detail above, in Section IV.A and IV.B, the 15% fee requested here is at the low end of the range of percentage fees that have typically been awarded in similar cases in this Circuit and elsewhere and the resulting 0.72 lodestar multiplier is also well within the range of awards in similar cases. Accordingly, this factor strongly supports the requested fee award.

6. The Reaction of the Settlement Class and Current Shareholders

Consistent with the Preliminary Approval Order, over 500,000 copies of the Notice were mailed to potential members of the Settlement Class advising them that Plaintiffs' Counsel would request attorneys' fees in an amount not to exceed 15% of the Gross Settlement Fund and that reimbursement of litigation expenses in an amount not to exceed $615,000 would also be

requested. *See* Notice at p. 2. The Notice, Long-Form Notice and other information about the Settlements have also been available since June 30, 2010 on the Pilgrim Baxter settlement website. *See* PB Notice Decl. ¶ 13.

The deadline for objecting to the request for attorneys' fees and expenses is September 21, 2010. Out of the hundreds of thousands of Class Members and current shareholders who received notice, to date, only four people have raised objections concerning the requested attorneys' fees and reimbursement of litigation expenses. *See* BLB&G Decl. Ex. 5. As described herein, given the substantial obstacles that Plaintiffs' Counsel faced in achieving a recovery and the substantial amount of time and resources that they dedicated to this litigation, the requested total fee award of 15% of the Gross Settlement Fund applied for represents appropriate compensation for Plaintiffs' Counsel and the expenses for which reimbursement is sought were reasonable and necessary to the prosecution of the Actions. In the interests of efficiency and of providing the Court with a comprehensive response to all objections that may be received, Plaintiffs' Counsel may address in greater detail these objections (and any other objections received) in their reply brief to be filed October 6, 2010, after the objection deadline has passed.

7. Public Policy

Public policy factors should be considered in determining the reasonableness of the attorneys' fee award. As the court in *Mills* observed, "The public benefits when capable and seasoned counsel undertake private action to enforce the securities laws." 265 F.R.D. at 263. Because the cost and difficulty of bringing such actions acts as a deterrent from doing so, "one object of an award of attorneys' fees should be to counteract this deterrence and incentivize competent attorneys to pursue these cases." *Id.*; *see also MicroStrategy*, 172 F. Supp. 2d at 788 (attorneys' fees must be sufficient "to ensure that competent, experienced counsel will be

encouraged to undertake the often risky and arduous task of representing a class in a securities fraud case"); *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

In particular, public policy strongly supports the award of reasonable attorneys' fees in a case, such as this one, where an extremely large and geographically dispersed class of persons were allegedly harmed by the wrongful conduct of defendants, but no individual's stake was sufficiently large to justify the costs of retaining private counsel to prosecute the litigation. In such a case, the attorneys' fee awarded should not only provide just compensation to the attorneys but also provide sufficient incentive so that skilled counsel will be willing to undertake similarly complex and risky litigation in the future and thereby help deter this type of wrongful conduct. *See Mills*, 265 F.R.D. at 263; *MicroStrategy*, 172 F. Supp. 2d at 788. The countervailing public policy interest – preventing a windfall award to counsel at the expense of class members – is simply not implicated here in light of the relatively low lodestar multiplier of the requested fee when compared to the risks of this litigation and the quality of the results obtained.

8. Summary of the Reasonableness Factors

Three other *Barber* factors not discussed above are the "attorney's opportunity costs in pressing the instant litigation;" "the attorney's expectations at the outset of the litigation;" and "the customary fee for like work." *Barber*, 577 F.2d at 226. All these factors also support the requested attorneys' fees. The over 14,000 hours collectively spent by Plaintiffs' Counsel in pursuing this litigation presented real opportunity costs by preventing the attorneys and other professionals engaged on this case from pursuing other potentially lucrative engagements during that time. Plaintiffs' Counsel's expectations at the outset of the case, which included a recognition that this litigation would be difficult and vigorously defended and that they would

only be paid if they recovered a benefit for their clients, also support the requested fee. The "customary fee for like work" is most closely reflected in the typical awards made in similar class actions, as discussed above. Moreover, in non-class cases involving similar types of claims, the customary fee for plaintiffs' counsel would be a contingency fee arrangement, that would typically provide for 30% to 40% of the recovery as fees. *See Muhammad*, 2008 WL 5377783, at *8 (contingency fees of one-third are standard and presumptively reasonable); *Krispy Kreme*, 2007 WL 119157, at *2 ("contingent fees of one-third (33.3%) are common"). Thus, these factors also strongly support the reasonableness of the 15% fee requested.[9]

In sum, a qualitative analysis of all relevant factors considered by courts in judging the reasonableness of attorneys' award – including, most notably, the quality of the results obtained, the skill and quality of the representation provided, the complexity and duration of the litigation, the extensive efforts of Plaintiffs' Counsel, and the substantial risks of non-payment – all strongly support the present fee application.

D. Class Lead Plaintiff's Approval of the Requested Fee Award Supports Its Approval

The application for attorneys' fees and reimbursement of litigation expenses should also be approved because it has been reviewed and approved by Class Lead Plaintiff. Attorneys' fee applications that have been reviewed and endorsed by a properly selected PSLRA lead plaintiff

[9] The remaining three *Barber* factors – "the time limitations imposed by the client or circumstances," "the nature and length of the professional relationship between attorney and client" and "the undesirability of the case" – do not appear directly relevant to analysis of the fees in this case. Although the case was not "undesirable," only a select few plaintiffs' firms would have had the resources or willingness to pursue these difficult cases over the years. *See Edmonds*, 658 F. Supp. at 1140-41. Depending on the fact and circumstances of the case, a court may emphasize certain *Barber* factors and ignore others if they are inapplicable. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 456 (10th Cir. 1988) ("rarely are all of the ... factors applicable; this is particularly so in a common fund case"); *Edmonds*, 658 F. Supp. at 1140 (finding that time limitations factor was not relevant to determining fee in that case); *Wheeler v. Durham City Bd. Of Educ.*, 88 F.R.D. 27, 34 (M.D.N.C. 1980) (finding that nature of relationship between attorney and client was not relevant to determination of fee award in that case).

are entitled to certain deference, particularly where the lead plaintiff is a sophisticated institutional investor with a substantial financial stake in the litigation. *See Mills*, 265 F.R.D. at 261; *Veeco*, 2007 WL 4115808, at *8 (S.D.N.Y. Nov. 7, 2007); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F.Supp.2d 426, 442 (D.N.J. 2004); *see generally* Omnibus Fee App. Memo § I.D.

Here, Class Lead Plaintiff, the Ohio Public Employees Deferred Compensation Plan ("OPEDCP"), is an institutional investor with extensive experience in negotiating fees with counsel and in evaluating the results in securities fraud class action settlements. Class Lead Plaintiff, which was substantially involved in all aspects of the prosecution of the Class Action and negotiation of the Settlements, has evaluated the fee application in light of the significant recovery obtained and the risks of litigation and approves of the fee and expense request as fair and reasonable. *See* Declaration of Matthew J. Lampke, submitted on behalf of OPEDCP (the "Lampke Declaration" or "Lampke Decl.") ¶¶ 7-9, attached to the BLB&G Decl. as Ex. 1. This approval further confirms the reasonableness of the requested fee award.

V. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE REIMBURSED FROM THE COMMON FUND

The court should also reimburse Plaintiffs' Counsel for the reasonable costs and expenses that they incurred in prosecuting and settling these cases. *See Mills*, 265 F.R.D. at 265; *MicroStrategy*, 172 F. Supp. 2d at 791 ("There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."). The types of expenses that should be reimbursed are those which are typically billed by attorneys to paying clients in the marketplace and were necessary to the prosecution or resolution of the action. *See* Omnibus Fee App. Memo § IV.

Here, Plaintiffs' Counsel collectively seek reimbursement of a total of $529,616.85 in litigation expenses that were reasonably and actually incurred by Plaintiffs' Counsel in

connection with prosecuting and resolving the claims in their respective Actions. *See* BLB&G Decl. ¶ 81; Chimicles Decl. ¶ 54. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them to prosecute this action. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

Plaintiffs' Counsel's expenses are set forth in detail in each firm's declaration and the schedules attached thereto, which identify the category and amount of unreimbursed expenses that were actually incurred. These expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in the respective firms' billing rates. The expenses for which reimbursement is sought, including experts' fees, computerized legal and factual research, out-of-town travel costs, photocopying, telephone, fax and postage expenses, are of the type that have been found reasonable and reimbursed in past cases of this nature. *See Mills*, 265 F.R.D. at 265; *Veeco Instruments*, 2007 WL 4115808, at *10; *MicroStrategy*, 172 F. Supp. 2d at 791.

VI. CLASS LEAD PLAINTIFF SHOULD BE REIMBURSED FOR ITS COSTS DIRECTLY RELATED TO ITS REPRESENTATION OF THE SETTLEMENT CLASS

The PSLRA allows for reimbursement of the "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4); *see also Mills Corp.*, 265 F.R.D. at 265 (reimbursing class representatives for their time spent "in connection with, among other things, traveling to depositions, the review of documents provided by class counsel, and attendance at mediation sessions"); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144(CM), 2009

WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding over $200,000 to two PSLRA lead plaintiffs as reimbursement for their time spent representing the class); *Veeco*, 2007 WL 4115808, at *12 (awarding lead plaintiff $16,000 as reimbursement for the time it spent monitoring and participating in the litigation and its out-of-pocket expenses); *In re Xcel Energy, Inc. Sec. Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding $100,000 to plaintiffs because they "have been actively involved throughout the litigation," by "communicat[ing] with counsel throughout the litigation and review[ing] counsels' submissions").

Here, Class Lead Plaintiff's costs related to its representation of the Settlement Class total $5,350.00. Matthew J. Lampke, Assistant Section Chief for the State of Ohio Attorney General's Office, has submitted a declaration detailing the involvement of OPEDCP and its counsel, the Ohio Attorney General's Office ("Ohio AG"), in the prosecution and settlement of the Class Action. As detailed in the Lampke Declaration, among other things, the Ohio AG and OPEDCP received periodic status reports from Class Lead Counsel on case developments, participated in regular discussions with counsel regarding concerning the conduct of the litigation, reviewed and substantively commented on the Consolidated Amended Class Action Complaint and the briefs and other court-filed documents submitted on behalf of OPEDCP and the Class in connection with the motions to dismiss and other matters, and were substantively involved in overseeing and consulting with BLB&G in connection with the negotiations that led to the proposed Settlements. *See* Lampke Decl. ¶¶ 4-6. As set forth in Mr. Lampke's declaration, in order to compensate the Ohio AG and OPEDCP for the costs of their time spent overseeing this litigation on behalf of the Settlement Class, OPEDCP requests reimbursement of $5,350, consisting of $2,350.00 for the 18.80 hours that the Ohio AG and OPEDCP staff has

already devoted to this litigation – documented since March 8, 2010 – and up to $2,000.00 for the 16 hours that their staff is expected to devote to this litigation and up to $1,000.00 in travel costs in attending the final settlement approval hearing scheduled for October 21-22, 2010. *See* Lampke Decl. ¶ 10.

The time and effort put forth by the Ohio AG and the OPEDCP were essential to the successful prosecution of the Class Action and to the achievement of the Settlements. Accordingly, in light of the important public policy advanced by private securities litigation, the OPEDCP should be reimbursed in full for the costs incurred in supervising and participating in the litigation on behalf of the Settlement Class. *See Mills Corp.*, 265 F.R.D. at 265; *Marsh & McLennan*, 2009 WL 5178546, at *22.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs' Counsel respectfully request that the Court approve their application for attorneys' fees and reimbursement of expenses as fair and reasonable, and (i) award Plaintiffs' Counsel attorneys' fees in the amount of 15% of the Gross Settlement Fund; and (ii) reimburse litigation expenses in the amount of $534,966.85, which includes Class Lead Plaintiff's request for reimbursement of $5,350.00 for the costs of its time spent overseeing this litigation on behalf of the Settlement Class.

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Respectfully submitted,

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