UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re GRAÑA Y MONTERO S.A.A. SECURITIES LITIGATION	Civil Action No. 2:17-cv-01105-LDH-ST
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

Page

STATUTES, RULES AND REGULATIONS

Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully submit this memorandum in support of their motion for an award of attorneys' fees and expenses in connection with their representation of the Settlement Class, and for an award to Plaintiff Marcia Goldberg in connection with her representation of the Settlement Class.[1]

I. INTRODUCTION

After three years of hard-fought litigation, Lead Counsel secured a $20,000,000 settlement for the benefit of the Settlement Class. The Settlement is a very good result for the Settlement Class given the serious obstacles to recovery, the numerous credible defenses to liability and damages that Defendants have articulated, the fact that the Court might have accepted Defendants' arguments at the motion-to-dismiss stage, the difficulty in obtaining documentary and deposition evidence from Peru and Brazil (especially in light of the COVID-19 pandemic), and the recovery relative to the amount of estimated recoverable damages suffered by the Settlement Class.[2] To obtain this Settlement, Lead Plaintiff Treasure Finance Holding Corp. and plaintiff Marcia Goldberg (together "Plaintiffs") and Lead Counsel overcame a number of significant challenges that existed from the filing of the initial complaint. In recognition of these risks and the result obtained, Lead Counsel now respectfully move this Court for an award of attorneys' fees of 25% of the Settlement Amount, and $54,774.05 in expenses that were reasonably and necessarily incurred in prosecuting and

[1] Plaintiffs' Counsel refers to Robbins Geller Rudman & Dowd LLP, Holzer & Holzer, LLC and The Law Offices of Curtis V. Trinko, LLP.

[2] Capitalized terms used herein are defined and have the meanings contained in the Stipulation and Agreement of Settlement (ECF No. 112-2) (the "Stipulation"), the accompanying Declaration of David A. Rosenfeld and Corey D. Holzer in Support of Motions for Final Approval of Class Action Settlement and Approval of Plan of Allocation and an Award of Attorneys' Fees and Expenses and Award to Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Joint Declaration"), and in the Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted concurrently herewith. Internal citations are omitted and emphasis is added throughout unless otherwise noted.

resolving the Litigation, plus interest on both amounts. As set forth below, the relevant factors articulated in the Second Circuit's *Goldberger* decision strongly support the requested awards. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In addition, Plaintiff Marcia Goldberg seeks a modest award of $4,000 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with her representation of the Settlement Class.

This fee request has the full support of Plaintiffs. In addition, following an extensive Court-ordered notice program in which 13,691 Notices have been mailed to potential Settlement Class Members, to date not a single Settlement Class Member has objected to the requested fees or the expenses (not to exceed $100,000, as set forth in the Notice).[3]

As detailed below, in the Joint Declaration, and in the Settlement Memorandum, the Settlement achieved here represents a very good result for Plaintiffs and the Settlement Class, particularly when judged in the context of the significant litigation risks in this Action. The $20 million Settlement that Lead Counsel obtained provides the Settlement Class with an immediate and certain recovery in a case that faced significant risks. In achieving this result, Plaintiffs' Counsel worked more than 3,900 hours over the course of three years on this complex litigation, all on a contingency basis, with no guarantee of ever being paid.

Lead Counsel believe that an attorney fee award of 25%, together with payment of their litigation expenses, properly reflects the many significant risks taken by Lead Counsel in prosecuting the Action, as well as the result achieved. When examined under either of this Circuit's methods of contingency fee determination (*i.e.*, percentage of the fund or lodestar), it is abundantly clear that an award of fees of 25% is reasonable, and well within the range of attorneys' fees awarded in similar

[3] As of the date of this fee memorandum, which is before the November 10, 2020 deadline for filing objections, Lead Counsel have not received any objections to the fee and expense request. If any timely objections are received from Settlement Class Members, Lead Counsel will address them in their reply brief, which will be filed with the Court no later than November 24, 2020.

complex, contingency cases. In addition, the expenses requested by Plaintiffs' Counsel are reasonable in amount and were necessarily incurred, and the modest request by Plaintiff Goldberg adequately reflects her efforts and contributions to the Litigation.

II. HISTORY AND BACKGROUND OF THE LITIGATION

A detailed description of Plaintiffs' claims and Lead Counsel's prosecution of this case (including key pleadings, motions, and mediation efforts) is set forth in the accompanying Joint Declaration. For the sake of brevity, the Court is respectfully referred to that declaration.

III. ARGUMENT

A. Plaintiffs' Counsel Are Entitled to an Award of Attorneys' Fees and Expenses 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); *see also Goldberger*, 209 F.3d at 47; *Fresno Cnty. Emps' Ret. Ass'n. v. Isaacson/Weaver Family Tr.*, 925 F.3d 63, 68 (2d Cir. 2019), *cert denied*, __U.S.__, 140 S. Ct. 385 (2019). 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. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *10-*11 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v.*

Pierson, 607 F. App'x 73 (2d Cir. 2015); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *Veeco*, 2007 WL 4115808, at *2. Indeed, the Supreme Court has emphasized that private securities actions, such as this one, provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)); *accord Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

Courts in this Circuit have consistently adhered to this precedent. *See In re Interpublic Sec. Litig.*, No. 02 Civ. 6527 (DLC), 2004 WL 2397190, at *10 (S.D.N.Y. Oct. 26, 2004) ("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.'"); *Fresno Cnty.*, 925 F.3d at 68. Fairly compensating Lead Counsel for the risks they took in bringing this Action is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

B. The Court Should Award a Reasonable Percentage of the Common Fund

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained. Courts routinely find that the percentage-of-the-fund method, under which counsel is awarded a percentage of the fund that they created, is the preferred means to determine a fee because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("[A]s the district court recognized, the prospect of a

percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."). The percentage approach also recognizes that the quality of counsel's services is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases.[4]

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class."). The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-49 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). Indeed, the Second Circuit has acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart Stores*, 396 F.3d at 121; *see also City of Providence*, 2014 WL 1883494, at *11-*12.[5]

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[4] *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review, or hours they work. . . . The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel."); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (the "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

[5] All federal Courts of Appeal to consider the matter have approved the percentage method, with two circuits requiring its use in common-fund cases. *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*

Recently the Second Circuit reaffirmed these principles in rejecting an objection to the percentage approach for awarding attorneys' fees in PSLRA cases. *See Fresno Cnty.*, 925 F.3d at 63. In *Fresno*, the Second Circuit confirmed the propriety of the percentage approach for awarding attorneys' fees in PSLRA cases (*id.* at 72).

The determination of attorneys' fees using the percentage-of-the-fund method is also supported by the PSLRA, which states that "[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" recovered for the class. 15 U.S.C. §78u-4(a)(6). Courts have concluded that, by drafting the PSLRA in such a manner, Congress expressed a preference for the percentage, as opposed to the lodestar, method of determining attorneys' fees in securities class actions. *See Veeco*, 2007 WL 4115808, at *3; *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 465-66 (S.D.N.Y. 2004).

Given the Supreme Court's indication that the percentage method is proper in this type of case, the Second Circuit's explicit approval of the percentage method in *Goldberger* and *Fresno*, as well as the trend among the district courts in this Circuit and the language of the PSLRA, the Court should award Lead Counsel attorneys' fees based on a percentage of the fund.

Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 821-22 (3d Cir. 1995); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012); *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); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988); *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011); *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. *See Faught*, 668 F.3d at 1242; *Swedish Hosp.*, 1 F.3d at 1271.

C. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). An "'ideal proxy' for the award should reflect the fees upon which common fund plaintiffs negotiating in an efficient market for legal services would agree." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. July 8, 2014). If this were a non-class action, the customary fee arrangement would be contingent and in the range of 33% of the recovery. *See Blum*, 465 U.S. at 903 ("'In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.'") (Brennan, J., concurring).

Here, the Court does not need an "ideal proxy" for what counsel would receive if they were bargaining for their services in the marketplace, because Plaintiffs support the requested fee percentage. Moreover, the requested 25% fee is well within the range of percentage fees awarded by courts within the Second Circuit in other comparable securities cases. *See, e.g.*, *In re BRF S.A. Sec. Litig.*, No. 1:18- cv-02213-PKC, slip op. at 1 (S.D.N.Y. Oct. 23, 2020)(awarding 25% of $40 million recovery, plus expenses); *Xiang v. Inovalon Holdings, Inc., et al.*, No. 1:16-cv-04923-VM-KNF, slip op. at 1 (S.D.N.Y. July 15, 2019) (awarding 27% of $17 million settlement, plus expenses); *In re BHP Billiton Ltd. Sec. Litig.*, No. 1:16-cv-01445-NRB, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding fees of 30% of $50 million recovery, plus expenses), *aff'd sub nom. City of Birmingham Ret. Sys. v. Davis*, 806 F. App'x 17 (2d Cir. 2020); *In re Genworth Fin. Inc. Sec. Litig.*, No. 1:14-cv-02392-AKH, slip op. at 2 (S.D.N.Y. Nov. 16, 2017) (awarding 30% of $20 million recovery, plus expenses); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, No. 1:12-cv-01203-VEC, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 15, 2015) (awarding fees of 30% of $33 million

recovery, plus expenses); *In re Intercept Pharms., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB, slip op. at 1 (S.D.N.Y. Sept. 8, 2016) (awarding fees of 28.63% of $55 million recovery, plus expenses); *Citiline Holdings, Inc. v. iStar Fin. Inc., et al.*, No. 1:08-cv-03612-RJS, slip op. at 1 (S.D.N.Y. Apr. 5, 2013) (awarding fees of 30% of $29 million recovery, plus expenses).[6]

D. The Fee Request Is Reasonable When a Lodestar Cross-Check Is Applied

When using the percentage-of-the-fund method, courts can also look to "hours as a 'cross check' on the reasonableness of the requested percentage," *Goldberger*, 209 F.3d at 50, "to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. When used as a "mere cross-check, the hours documented need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

The lodestar method requires a two-part analysis: "first, to determine the lodestar, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work." *City of Providence*, 2014 WL 1883494, at *13. Performing the lodestar calculation here confirms that the fee requested by Plaintiffs' Counsel is reasonable and should be approved.

Plaintiffs' Counsel and their paraprofessionals have spent, in the aggregate, 3,987 hours in the prosecution of this case, producing a total lodestar amount of $2,483,523.75 when multiplied by counsel's billing rates. *See* accompanying Declaration of David A. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and

[6] All unreported authorities are attached hereto as Exhibits A-H.

Expenses, ¶4 ("Robbins Geller Decl."); Declaration of Corey D. Holzer Filed on Behalf of Holzer & Holzer, LLC in Support of Application for Award of Attorneys' Fees and Expenses, ¶4 ("Holzer Decl."); and Declaration of Curtis V. Trinko Filed on Behalf of Law Offices of Curtis V. Trinko in Support of Application for Award of Attorneys' Fees and Expenses, ¶4 ("Trinko Decl.").[7] The amount of attorneys' fees requested by Lead Counsel herein, $5 million, represents a slight multiplier of 2 to counsel's aggregate lodestar.[8]

In cases of this nature, fees representing multiples above lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("'a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors'"); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

The multiplier of 2 reflected here falls within the range of multipliers found reasonable for cross-check purposes by courts in this Circuit and elsewhere and is fully justified here given the effort required, the risks faced and overcome, and the results achieved. Indeed, "'[i]n contingent litigation, lodestar multipliers of over 4 are routinely awarded by courts[.]'" *Spicer v. Pier Sixty*

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[7] In determining whether the rates are reasonable, the Court should take into account the attorneys' professional reputation, experience, and status. Here, the lawyers and paraprofessionals at Plaintiffs' Counsel's firms are experienced securities practitioners with track records of success, and among the most prominent and well-regarded securities practitioners in the nation. Therefore, the hourly rates are reasonable here. *See In re Merrill Lynch & Co., Inc. Res. Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *22 (S.D.N.Y. Feb. 1, 2007) (approving counsel's hourly rates).

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

LLC, No. 08 Civ. 10240(PAE), 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (quoting *Telik*, 576 F. Supp. 2d at 590); *see also Athale v. Sinotech Energy Ltd., et al.*, No. 1:11-cv-05831(AJN), slip op. at 17 (S.D.N.Y. Sept. 4, 2013) (awarding multiplier of 5.65, finding it "not unreasonable under the particular facts of this case" and "sufficient to compensate counsel for the work they have put in and the risks they took, as well as to reward them for zealously litigating the dispute and timely resolving the action'"); *Cornwell v. Credit Suisse Grp., et al.*, No. 1:08-cv-03758-VM-JCF, slip op. at 4 (S.D.N.Y. July 20, 2011) (awarding fee representing a multiplier of 4.7); *Davis*, 827 F. Supp. 2d at 185 (awarding fee representing multiplier of 5.3, which was "not atypical" in similar cases); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier was appropriate in light of the contingency risk and the quality of the result achieved).

In *Maley*, after almost one year of litigation, the parties reached a "relatively quick settlement" prior to the commencement of extensive discovery. *See Maley*, 186 F. Supp. 2d at 363-64. In awarding a fee of 33-1/3% that resulted in a lodestar cross-check multiplier of 4.65, the court held that "[i]n the context of a complex class action, early settlement has far reaching benefits in the judicial system." *Id.* at 373. The court held that the multiplier of 4.65 was "well within the range awarded by courts in this Circuit and courts throughout the country." *Id.* at 369. Here, while shouldering the risk of non-recovery, Lead Counsel litigated this case on a contingency basis for three years. Accordingly, the lodestar multiplier here is well within the range awarded by courts in this Circuit, and thus Lead Counsel's fee is reasonable when the cross-check is performed.

The lodestar/multiplier is to be used merely as a cross-check on reasonableness. To find otherwise undermines the principles supporting the percentage approach and encourages needless

lodestar building litigation. *See also In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 196 (E.D. Pa. 2000) ("The court will not reduce the requested award simply for the sake of doing so when every other factor ordinarily considered weighs in favor of approving class counsel's request of thirty percent."). Plaintiffs' Counsel invested substantial time and effort prosecuting this Action against the Defendants to a successful completion. The requested fee, therefore, is manifestly reasonable, whether calculated as a percentage of the fund or in relation to Plaintiffs' Counsel's lodestar.

As detailed in the Joint Declaration, based on their efforts in litigating this case and producing an excellent result, Lead Counsel believe the requested fee, whether calculated as a percentage of the fund or in relation to counsel's lodestar, is manifestly reasonable. Moreover, as discussed below, each of the factors cited by the Second Circuit in *Goldberger* also strongly supports a finding that the requested fee is reasonable.

E. The Relevant Factors Confirm that the Requested Fee Is Reasonable

In *Goldberger*, the Second Circuit explained that whether the court uses the percentage-of-the-fund method or the lodestar approach, it should continue to consider the traditional criteria that reflect a reasonable fee in common fund cases, including:

- the time and labor expended by counsel;
- the risks of the litigation;
- the magnitude and complexity of the litigation;
- the requested fee in relation to the settlement;
- the quality of representation; and
- public policy considerations.

Goldberger, 209 F.3d at 50. Consideration of these factors demonstrates that the requested fee is fair and reasonable.

1. The Time and Labor Expended by Counsel

Plaintiffs' Counsel have expended substantial time and effort pursuing the Litigation on behalf of the Settlement Class. Since the Litigation commenced three years ago, Plaintiffs' Counsel and their paraprofessionals devoted in excess of 3,900 hours to prosecuting the Settlement Class' claims. As detailed in the Joint Declaration, submitted herewith, Lead Counsel, among other things:

- conducted an extensive factual investigation into the underlying facts;
- researched the law relevant to the claims asserted and Defendants' potential defenses thereto, and drafted detailed amended complaints;
- translated, reviewed and analyzed documents and evidence from Peruvian and Brazilian civil and criminal proceedings;
- briefed two rounds of motions to dismiss, a motion to serve certain defendants by alternative means, and pre-motion letters;
- retained legal experts to assist with obtaining documents and information from Peru and Brazil;
- participated in lengthy arm's-length settlement negotiations, including a mediation with Gregory P. Lindstrom, Esq. of Phillips ADR Enterprises and follow-up negotiations with the assistance of Mr. Lindstrom; and
- negotiated and drafted the Stipulation and exhibits thereto, as well as the motion for preliminary approval of the Settlement, including a provision requiring Grana to pay five percent (5%) interest on any portion of the Settlement Fund not paid thirty (30) days after preliminary approval of the Settlement.

See generally Joint Decl.

Moreover, Lead Counsel, with the assistance of their damages consultant, prepared the proposed Plan of Allocation based primarily on an analysis estimating the amount of artificial inflation in the price of Graña American Depository Shares ("ADS") during the Class Period. Throughout the Litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. Additional hours and resources will necessarily be expended assisting Members of the Settlement Class with the completion and submission of their Proof of Claim and

Release forms, shepherding the claims process, and responding to Settlement Class Member inquiries. *See Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *6 (S.D.N.Y. Apr. 2, 2013). The significant amount of time and effort devoted to this case by Lead Counsel to obtain a $20 million recovery, work that will not end with the Court's approval of the Settlement, confirms that the 25% fee request is reasonable.

2. The Risks of the Litigation

a. The Contingent Nature of Lead Counsel's Representation Supports the Requested Fee

The risk undertaken in the litigation is often considered the most important *Goldberger* factor. *Goldberger*, 209 F.3d at 54; *Comverse*, 2010 WL 2653354, at *5; *Telik*, 576 F. Supp. 2d at 592. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee is an important factor in determining an appropriate fee award:

> 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.

Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974). "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-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award"); *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) ("Numerous courts have recognized that the attorney's contingent fee risk is an important factor in determining the fee award."). This risk encompasses not just the risk of no payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court's fee award where court

failed to account for, among other things, risk of underpayment to counsel). When considering the reasonableness of attorneys' fees in a contingency action, the court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 55; *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011).

Lead Counsel undertook this Litigation on a wholly contingent-fee basis, investing a substantial amount of time and money to prosecute a risky action with no guarantee of compensation or even the recovery of expenses. Unlike Defendants' counsel, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began in February 2017, and would have received no compensation or payment of their expenses had this case not been resolved successfully.

From the outset, Lead Counsel understood that they were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for investing the time and money the case would require. In undertaking that responsibility, Lead Counsel were obligated to assure that sufficient attorney and paraprofessional resources were dedicated to prosecuting the Litigation and that funds were available to compensate staff and to pay for the considerable costs that a case such as this entails. Under these circumstances, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

In addition to advancing litigation expenses, Lead Counsel faced the possibility that they would receive no attorneys' fees at all. Indeed, it is possible that, if not for this Settlement, the entire case would have been dismissed in response to Defendants' motions to dismiss.[9]

[9] Moreover, it is wrong to presume that a law firm handling complex contingent litigation always wins. There are numerous class actions in which lead counsel expended thousands of hours and yet received no remuneration, despite their diligence and expertise. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiff's favor); *In re Oracle Corp. Sec. Litig.*, No. C 01-00988-SI, 2009

Losses in contingent-fee litigations, especially those brought under the PSLRA, are exceedingly expensive. Lead Counsel's assumption of the contingency fee risk strongly supports the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

b. Risks of Establishing Liability

While Plaintiffs remain confident in their claims, their ability to plead liability arising out of the alleged bribery and corruption scheme was far from certain. As detailed in the Joint Declaration and in the Settlement Memorandum, Defendants raised numerous challenges in their motions to dismiss Plaintiffs' complaints, including challenges to the falsity of the misstatements and omissions alleged, whether they were made with scienter and loss causation. Joint Decl., ¶¶72-78. More specifically, Defendants' motions to dismiss argued that (i) there is no general duty to disclose uncharged, unproven criminal conduct; (ii) Plaintiffs did not plead any falsity in Graña's financial statements; (iii) statements about corporate governance and ethics are actionable puffery; (iv) many of the alleged misstatements are forward-looking statements protected by the PSLRA safe harbor;

WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (court granted summary judgment for defendants after eight years of litigation, after plaintiff's counsel incurred over $7 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately $40 million); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss-causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on basis of 1994 Supreme Court opinion).

and (v) Graña's statements regarding the effectiveness of its disclosures controls are not actionable. Joint Decl., ¶36. Even assuming *arguendo* that Plaintiffs were able to overcome Defendants' motions to dismiss, these arguments would no doubt be raised again on summary judgment. Therefore, whether Plaintiffs ultimately would prove liability under the Securities Exchange Act was far from assured.[10]

c. Risk of Establishing Causation and Damages

With respect to proving causation and damages, Defendants would continue to attack the causal link between Defendants' alleged misstatements about Graña's internal controls and Plaintiffs' losses as well as the damages calculations of Lead Counsel's consultant which, if accepted, would severely limit, or entirely eliminate, the amount of damages that could be recovered. Defendants would never concede these points and would continue to press this defense at summary judgment and trial.

There is no way to know how a jury would decide these issues. The damage assessments of the parties' respective trial experts would become a "battle of experts." The outcome of such battles is never predictable, and there existed the very real possibility that a jury could be swayed by experts for Defendants to minimize the Settlement Class' losses or to show that the losses were attributable to factors other than the alleged misstatements and omissions. Thus, even if Plaintiffs prevailed as to liability at trial, the judgment obtained might well be only a fraction of the damages claimed.

[10] Conducting fact discovery would be expensive and difficult, as documents and witnesses are located in Peru and Brazil. Documents, once obtained (if possible), would have to be translated. And whether Plaintiffs could compel the production of documents and deposition testimony from third parties was uncertain. The COVID-19 pandemic will undoubtedly delay discovery, if it proceeds.

3. The Magnitude and Complexity of the Litigation

The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys' fees requested by class counsel. *See Chatelain v. Prudential-Bache Sec. Inc.*, 805 F. Supp. 209, 216 (S.D.N.Y. 1992). It is widely recognized that "shareholder actions are notoriously complex and difficult to prove." *In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546 (WHP), 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *see also Christine Asia Co., Ltd. v. Yun Ma*, No. 1:15-md-02631 (CM)(SDA), 2019 WL 5257534, at *18 (S.D.N.Y. Oct. 16, 2019) ("Securities class actions in particular are 'notably difficult and notoriously uncertain.'"). "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *Ikon*, 194 F.R.D. at 194; *see also In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages. These challenges are exacerbated . . . where a number of controlling decisions have recently shed new light on the standard for loss causation."). This case was no exception. As described herein, this Litigation involved a number of difficult and complex questions concerning liability and damages against foreign-based defendants that would have required extensive additional efforts by Lead Counsel and consultation with experts.

The trial of liability issues alone would have involved substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested motions, and the considerable expenditures of judicial resources. Because this case revolved around "difficult, complex, hotly disputed, and expert-intensive issues," this factor favors awarding a 25% fee. *City of Providence*, 2014 WL 1883494, at *16.

4. The Quality of Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submit that the quality of the representation here is best evidenced by the quality of the result achieved. *See, e.g.*, Settlement Memorandum at §III.C.; *see also Flag Telecom*, 2010 WL 4537550, at *28; *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007). Lead Counsel demonstrated a great deal of skill to achieve a settlement at this level in this particular case. Lead Counsel are experienced securities class action and complex litigation practitioners. *See* Robbins Geller Decl., Ex. F; Holzer Decl., Ex. D. This Settlement is attributable to the diligence, determination, hard work, and reputation of counsel, who developed, litigated, and successfully negotiated the Settlement of this Litigation and a substantial immediate cash recovery in a very difficult case, without the risk of further litigation. *See Teachers' Ret. Sys.*, 2004 WL 1087261, at *6.

Finally, courts repeatedly recognize that the quality of the opposition faced by plaintiff's counsel should also be taken into consideration in assessing the quality of counsel's performance. *See, e.g.*, *Marsh ERISA*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."); *Veeco*, 2007 WL 4115808, at *7 (among the factors supporting a 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"). Here, Defendants are represented by lawyers from Simpson Thacher & Bartlett LLP and Goodwin Procter LLP, which presented very skilled defenses and spared no effort in representing their clients. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and to demonstrate their willingness to continue to vigorously prosecute the Litigation through trial and then inevitable

appeals enabled Lead Counsel to achieve a very favorable Settlement for the benefit of the Settlement Class.

5. Public Policy Considerations

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *7 (S.D.N.Y. Aug. 18, 2017) (fee award was "appropriate, and not excessive, to encourage further securities class actions"); *Flag Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."). Accordingly, public policy favors granting Lead Counsel's fee and expense application here.

6. The Settlement Class' Reaction to the Fee Request to Date Supports the Requested Fee

To date, the Claims Administrator has sent more than 13,600 copies of the Notice to potential Settlement Class Members and nominees informing them, *inter alia*, that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount, plus expenses not to exceed $100,000, plus interest on both amounts.[11] The time to object to the fee request expires on November 10, 2020. To date, not a single objection to the fee and expense amounts set forth in the Notice has been received. Such a "low level of objection is a 'rare

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

phenomenon.'" *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The fact that no objections have been received to date supports the fairness of the fee request.

Additionally, Plaintiffs support the fee request. Plaintiffs played an active role in the Litigation and closely supervised the work of Lead Counsel.

IV. PLAINTIFFS' COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS LITIGATION

Plaintiffs' Counsel also respectfully request an award of $54,774.05 in expenses incurred while prosecuting the Litigation. Plaintiffs' Counsel have submitted declarations regarding these expenses, which are properly recovered by counsel. *See* Robbins Geller Decl., ¶¶5-6; Holzer Decl., ¶¶5-6; Trinko Decl., ¶5. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "'for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation"'"); *Flag Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (court may compensate class counsel for reasonable expenses necessary to the representation of the class).

Counsel's expenses include, for example, the costs of hiring Peruvian law experts to assist in their efforts, consultants, travel, mediating the Settlement Class' claims, and computerized research. A complete breakdown by category of the expenses incurred is set forth in the accompanying firm declarations. These expenses were critical to Plaintiffs' Counsel's success in achieving the Settlement. *See Glob. Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document

production and review – are the type for which 'the paying, arms' length market' reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund."). So far, not a single objection to the expense amount set forth in the Notice has been received. Accordingly, Plaintiffs' Counsel respectfully request payment for these expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund.

V. PLAINTIFF GOLDBERG IS ENTITLED TO A REASONABLE AWARD UNDER 15 U.S.C. §78u-4(a)(4)

Plaintiff Marcia Goldberg seeks approval of award of $4,000 in recognition of the time and resources she spent representing the Settlement Class. The PSLRA allows an "award of 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). Many courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *In re BRF S.A.*, slip op. at 3 (awarding $2,889.15 to Lead Plaintiff for "the time it spent directly related to its representation of the Class"); *Emerson v. Mutual Fund Series Trust, et al.*, No. 2:17-cv-02565-SJF-SIL, slip op. at 4 (E.D.N.Y. Sept. 9, 2020)(approving awards to lead plaintiffs of amounts between $1,500 and $5,800 "related to their representation of the Class"); *Xiang*, slip op. at 3 (awarding $4,500 to lead plaintiff "for the time it spent directly related to its representation of the Class").

As set forth in the Declaration of Marcia Goldberg in Support of Plaintiffs' Motion for Final Approval of the Settlement and Plan of Allocation and for Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Goldberg Decl."), Plaintiffs took an active role in prosecuting the Litigation, including: (1) communicating with Lead Counsel on issues and developments in the Litigation; (2) reviewing documents filed in the case, including the operative complaint; (3) consulting with Lead Counsel on

litigation and settlement strategy; and (4) reviewing and approving the proposed Settlement. Goldberg Decl., ¶4.

These are precisely the types of activities courts have found support PSLRA awards to class representatives. *See, e.g.*, *Veeco*, 2007 WL 4115808, at *12 (characterizing such awards as "'routine[]'" in this Circuit); *Hicks*, 2005 WL 2757792, at *10 ("Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.").

The Notice informed potential Settlement Class Members that Plaintiffs may seek approval for up to $10,000 in the aggregate for their time and expenses incurred in representing the Settlement Class. Murray Decl., Ex. A (Notice) at 2. The time and expenses requested, $4,000, is well below that amount. To date, no Settlement Class Member has objected to such award. Accordingly, Plaintiff's request is reasonable and fully justified under the PSLRA and should be granted.

VI. CONCLUSION

Based on the foregoing, and the entire record herein, Lead Counsel respectfully request that the Court award attorneys' fees of 25% of the Settlement Amount, plus expenses in the amount of $54,774.05, plus interest on both amounts, and $4,000 to plaintiff Goldberg, as permitted by the PSLRA.

DATED: October 27, 2020

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re BRF S.A. SECURITIES LITIGATION	:	Civil Action No. 1:18-cv-02213-PKC
This Document Relates To:	:	CLASS ACTION
ALL ACTIONS.	:	ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78(u)-4(a)(4)

This matter having come before the Court on October 23, 2020, on the motion of Lead Counsel for an award of attorneys' fees and expenses and an award to Lead Plaintiff (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated May 5, 2020 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. §78u-4(a)(7)), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to persons and entities entitled thereto.

4. The Court hereby awards attorneys' fees of $10,000,000, which is equal to 25% of the Settlement Amount, plus expenses in the amount of $94,821.84, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated among Lead Plaintiff's Counsel in a manner which, in Lead Counsel's good faith judgment, reflects such counsel's contribution to the institution, prosecution, and resolution of the Litigation.

6. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel immediately upon execution of the Final Judgment and Order of Dismissal with Prejudice and this Order and subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

7. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $40,000,000.00 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) over 66,500 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed 27.5% of the Settlement Amount and for expenses in an amount not to exceed $150,000.00, plus interest on both amounts, and no objections to the fees or expenses were filed by Class Members;

(c) Lead Counsel pursued the Litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(d) Lead Counsel expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Counsel pursued the Litigation entirely on a contingent basis;

(f) the Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendants;

(h) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(i) the attorneys' fees and expenses awarded hereby are fair and reasonable and consistent with awards in similar cases within the Second Circuit.

8. Pursuant to 15 U.S.C. §78u-4(a)(4), the Court awards $2,889.15 to Lead Plaintiff City of Birmingham Retirement and Relief System for the time it spent directly related to its representation of the Class.

9. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

10. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

SO ORDERED.

DATED: October 23, 2020

P. Kevin Castel
United States District Judge

CERTIFICATE OF SERVICE

I, David A. Rosenfeld, hereby certify that on October 16, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ David A. Rosenfeld
DAVID A. ROSENFELD

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YI XIANG, Individually and on Behalf of All Others Similarly Situated,

Plaintiff,

vs.

INOVALON HOLDINGS, INC., KEITH R. DUNLEAVY, THOMAS R. KLOSTER, DENISE K. FLETCHER, ANDRÉ S. HOFFMANN, LEE D. ROBERTS, WILLIAM J. TEUBER JR., GOLDMAN SACHS & CO., MORGAN STANLEY & CO. LLC, CITIGROUP GLOBAL MARKETS INC., MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED and UBS SECURITIES LLC,

Defendants.

Civil Action No. 1:16-cv-04923-VM-KNF
(Consolidated)

CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §77z-1(a)(4)

This matter having come before the Court on July 12, 2019, on the motion of Lead Counsel for an award of attorneys' fees and expenses (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated February 19, 2019 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §77z-1(a)(7), the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 27% of the Settlement Amount (or $4,590,000), plus expenses in the amount of $623,811.79, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $17,000,000 in cash that is already on deposit, and numerous Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Lead Counsel;

(b) over 25,300 copies of the Notice were disseminated to potential Class Members indicating that Lead Counsel would move for attorneys' fees in an amount not to exceed 30% of the Settlement Amount and for expenses in an amount not to exceed $850,000, plus interest on both amounts, and no objections to the fees or expenses were filed by Class Members;

(c) Lead Counsel has pursued the Litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(d) Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class;

(e) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee amount has been contingent on the result achieved;

(f) the Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class may have recovered less or nothing from Defendants;

(h) Lead Counsel has devoted over 6,000 hours, with a lodestar value of $3,483,189.45, to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(j) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Second Circuit.

7. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Pursuant to 15 U.S.C. §77z-1(a)(4), the Court awards $4,500 to Lead Plaintiff Roofers Local No. 149 Pension Fund for the time it spent directly related to its representation of the Class.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

SO ORDERED.

DATED: 15 July 2019

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re GENWORTH FINANCIAL, INC. SECURITIES LITIGATION	Master File No. 1:14-cv-02392-AKH
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND REIMBURSEMENT OF THE CLASS REPRESENTATIVES' EXPENSES PURSUANT TO 15 U.S.C. §78u-4(a)(4)

THIS MATTER having come before the Court on November 15, 2017, for a hearing to determine, among other things, whether and in what amount to award Class Counsel in the above-captioned consolidated securities class action (the "Litigation") attorneys' fees and litigation expenses and Class Representatives City of Hialeah Employees' Retirement System ("City of Hialeah") and New Bedford Contributory Retirement System ("New Bedford") expenses relating to their representation of the Class. All capitalized terms used herein have the meanings as set forth and defined in the Stipulation of Settlement, dated as of June 15, 2017 (the "Stipulation"). The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing, substantially in the form approved by the Court (the "Notice"), was mailed to all reasonably identified Class Members; and that a summary notice of the hearing (the "Summary Notice"), substantially in the form approved by the Court, was published in *The Wall Street Journal* and transmitted over *Business Wire*; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has jurisdiction over the subject matter of this Litigation and over all parties to the Litigation, including all Class Members who have not timely and validly requested exclusion and the Claims Administrator.

2. Notice of Class Counsel's motion for attorneys' fees and payment of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion for attorneys' fees and expenses met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private

Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

3. Class Counsel are hereby awarded, on behalf of Plaintiffs' Counsel, attorneys' fees of 30% of the Settlement Amount (or $6,000,000), plus interest at the same rate earned by the Settlement Fund, and payment of litigation expenses in the amount of $576,617.55, plus interest at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

4. In accordance with 15 U.S.C. §78u-4(a)(4), for their representation of the Class, the Court hereby awards City of Hialeah reimbursement of its reasonable lost wages and expenses directly related to its representation of the Class in the amount of $4,948.00, and hereby awards New Bedford reimbursement of its reasonable lost wages and expenses directly related to its representation of the Class in the amount of $6,600.00.

5. The awarded attorneys' fees and expenses and interest earned thereon shall be paid to Class Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and litigation expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a common fund of $20 million in cash and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

(b) The requested attorneys' fees and litigation expenses have been approved as fair and reasonable by the Class Representatives, which are sophisticated institutional investors that have been directly involved in the prosecution and resolution of the Litigation and which have a substantial interest in ensuring that any fees paid to Plaintiffs' Counsel are duly earned and not excessive;

(c) Over 41,700 copies of the Notice were disseminated to potential Class Members indicating that Class Counsel, on behalf of Plaintiffs' Counsel, would move for attorneys' fees in an amount not to exceed 30% of the Settlement Amount, plus accrued interest, payment of litigation expenses not to exceed $675,000, plus accrued interest, and the expenses of Class Representatives, as reimbursement of their reasonable lost wages and costs directly related to their representation of the Class;

(d) There were no objections to the Settlement, Plan of Allocation or the application for attorneys' fees and expenses;

(e) Plaintiffs' Counsel have expended substantial time and effort pursuing the Litigation on behalf of the Class;

(f) The Litigation involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Plaintiffs' Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee award has been contingent on the result achieved;

(h) Plaintiffs' Counsel conducted the Litigation and achieved the Settlement with skillful and diligent advocacy;

(i) Public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation;

(j) The amount of attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Second Circuit; and

(k) Plaintiffs' Counsel have devoted more than 21,480 hours, with a lodestar value of $10,717,448.25, to achieve the Settlement.

7. Any appeal or any challenge affecting this Court's approval of any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Exclusive jurisdiction is hereby retained over the subject matter of this Litigation and over all parties to the Litigation, including the administration and distribution of the Net Settlement Fund to Class Members.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: Nov. 15, 2017

THE HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re INTERCEPT PHARMACEUTICALS, INC. SECURITIES LITIGATION	Civil Action No. 1:14-cv-01123-NRB CLASS ACTION
This Document Relates To: ALL ACTIONS.	~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on September 8, 2016, on Lead Counsel's motion for an award of attorneys' fees and expenses ("Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this class action (the "Litigation") to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement ("Stipulation" or "Settlement") filed with the Court and the memorandum of law in support of the Fee Motion submitted in support thereof. *See* Dkt. Nos. 113, 124.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, 15 U.S.C. §78u-4(a)(7), the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees of 28.63% of the Settlement Amount, plus expenses in the amount of $421,898.62, together with the interest earned on such amounts for the same time period and at the same rate as that earned by the Settlement Fund. The

Court finds that the amount of fees awarded is appropriate, fair, and reasonable under the "percentage-of-recovery" method.

5. The fees and expenses shall be allocated among Plaintiffs' other counsel in a manner which, in Lead Counsel's good-faith judgment, reflects the contributions of such counsel to the prosecution and settlement of the Litigation.

6. The awarded attorneys' fees and expenses shall be paid immediately to Lead Counsel subject to the terms, conditions, and obligations of the Stipulation.

7. In making the award to Lead Counsel of attorneys' fees and litigation expenses to be paid from the recovery, the Court has considered and found that:

(a) The Settlement has created a common fund of $55,000,000 in cash and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been approved as fair and reasonable by the Plaintiffs;

(c) Notice was disseminated to Class Members stating that Lead Counsel would be moving for attorneys' fees not to exceed 28.8% of the Settlement Amount and payment of litigation expenses in an amount not to exceed $450,000, plus interest earned on both amounts;

(d) There were no objections to the requested attorneys' fees and payment of litigation expenses;

(e) Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class;

(f) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee award has been contingent on the result achieved;

(g) The Litigation involves complex factual and legal issues and, in the absence of the Settlement, would involve lengthy proceedings whose resolution would be uncertain;

(h) Lead Counsel conducted the Litigation and achieved the Settlement with skillful and diligent advocacy;

(i) Public policy concerns favor the award of reasonable attorneys' fees in securities class action litigation;

(j) The amount of attorneys' fees awarded is fair and reasonable and consistent with awards in similar cases within the Second Circuit; and

(k) Plaintiffs' counsel devoted 11,106.20 hours, with a lodestar value of $5,784,386.00 to achieve the Settlement.

8. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fee and expense application shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

IT IS SO ORDERED.

DATED: September 8, 2016

THE HON. NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

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EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITILINE HOLDINGS, INC., Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. ISTAR FINANCIAL INC., et al., Defendants.	Civil Action No. 1:08-cv-03612-RJS **(Consolidated)** CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on April 5, 2013, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses in the Litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated September 5, 2012 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Fund, plus expenses in the amount of $234,901.71, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the Litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶¶6.2-6.3 thereof, which terms, conditions, and obligations are incorporated herein.

SO ORDERED.

DATED: April 5, 2013
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BHUSHAN ATHALE, ET AL.,
Plaintiff,

-v-

SINOTECH ENERGY LIMITED, ET AL.,
Defendants.

11 Civ. 05831 (AJN)
(consolidated)

MEMORANDUM & ORDER

ALISON J. NATHAN, District Judge:

A hearing was held on August 26, 2013, during which time the Court heard the Plaintiffs' Motion for Final Approval of Partial Settlement and Plan of Distribution of Settlement Proceeds and their Application for Award of Attorneys' Fees and Expenses. The Court had, on May 16, 2013, entered an Order of Preliminary Approval, in which it: (1) certified for settlement purposes only the proposed Class, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3); (2) approved notice to the Class; (3) established deadlines for objections; (4) set a date for a final fairness hearing; and (5) granted preliminary approval of the proposed Settlement. Dkt. No. 96. Having considered the written submissions of the parties and the written objection submitted by *pro se* Class Member Mark S. Litwin ("Mr. Litwin"), Dkt. No. 113, and having held a final fairness hearing and having considered the arguments offered at the final fairness hearing, it is hereby ORDERED that the Class is finally certified for settlement purposes and the Settlement is finally approved as follows:

I. Class Certification

The class is defined as:

> [A]ll persons who purchased the American Depository Shares ("Shares") of Sinotech Energy Limited ("Sinotech" or the "Company") between November 3, 2010 and August 16, 2011, inclusive ("Class Period"). Excluded from the Class are: (a) Persons or entities who submit valid and timely requests for exclusion from the Class; and (b) Defendants, members of the immediate family of any Defendant, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has or had a controlling interest during the Class Period, the officers and directors of any Defendant during the Class Period, and legal representatives, agents, executors, heirs, successors or assigns of any such excluded Person. The Defendants or any entity in which any of the Defendants has or had a controlling interest (for purposes of this paragraph, together a "Defendant-Controlled Entity") are excluded from the Class only to the extent that such Defendant-Controlled Entity itself purchased a proprietary (*i.e.* for its own account) interest in the Company's shares. To the extent that a Defendant-Controlled Entity purchased Sinotech shares in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund, trust, or employee benefit plan that otherwise falls within the Class, neither such Defendant-Controlled Entity nor the third-party client, account, fund, trust, or employee benefit plan shall be excluded from the Class with respect to such Sintoech shares.

For the reasons set forth below, for purposes of this partial settlement, the Class is certified because it satisfies the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure.

A. The Settlement Class Meets the Rule 23(a) Criteria

Rule 23(a) imposes four threshold requirements for class certification: (1) numerosity ("the class is so numerous that joinder of all members is impracticable"); (2) commonality ("there are questions of law or fact common to the class"); (3) typicality ("the claims or defenses of the representative parties are typical of the claims or defenses of the class"); and (4) adequacy of representation ("the representative parties will fairly and adequately protect the interests of the class"). Fed. R. Civ. P. 23(a).

Numerosity is satisfied here because the Class encompasses upwards of 13,971 members -- too many for joinder to be practical. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) ("[N]umerosity is presumed at a level of 40 members.").

The commonality and typicality requirements are also met. Commonality demands that the class's claims "depend upon a common contention . . . capable of classwide resolution" such that "its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Typicality "requires that the claims of the class representatives be typical of those of the class, and is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (internal quotes and citations omitted). "The commonality and typicality requirements tend to merge into one another, so that similar considerations animate analysis of Rules 23(a)(2) and (3). "The crux of both requirements is to ensure that 'maintenance of a class action is economical and [that] the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Id.* (quoting *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 158 n.13 (1982)); *see also Sykes v. Mel Harris and Assoc., LLC*, 285 F.R.D. 279, 286-87 (S.D.N.Y. 2012).

Here, the Class's claims all flow from the same course of events: the loss in value of American Depository Shares of SinoTech that were purchased between November 3, 2010 and August 16, 2011. All of the claims arise out of the same allegedly false and misleading statements made in connection with the Sinotech initial public offering and all would require essentially the same proof.

Finally, the Lead Plaintiff Zech Capital LLC ("Zech") is an adequate representative of the Class, as determined by the then-assigned judge, Judge Daniels, who appointed Zech as Lead Plaintiff after considering a number of other potential lead plaintiffs who had filed competing

motions seeking appointment. Dkt. No. 40; *see also In re Facebook Inc., IPO Sec. and Derivative Litig.*, 288 F.R.D. 26, 37 (S.D.N.Y. 2012). Lead Plaintiff is also represented by experienced counsel who have been involved in this action since its inception. *See In re Facebook Inc.,* 288 F.R.D. at 37.

B. The Settlement Class Meets the Relevant Rule 23(b)(3) Criteria

In order to meet the requirements of Rule 23(b)(3), the Court must find "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

The Court concludes that Rule 23(b)(3) is satisfied because the Class's claims depend on demonstrating and proving the various and complex alleged violations of Sections 11 and 15 of the Securities Act of 1933 ("1933 Act"), Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and Securities Exchange Commission ("SEC") Rule 10b-5. Thus, for purposes of settlement, the Class meets the relevant 23(b)(3) criteria.

II. NOTICE WAS APPROPRIATE

As required by the Court's Preliminary Approval Order, dated May 16, 2013, the Class was provided with written notice of the terms of the Settlement, the procedures for submitting claims, and the procedures for objecting to or opting out of the Settlement Class. This information was mailed to almost 14,000 Class Members, posted on the claim's administrator's website, and published in both Investor's Business Daily and over the Business Wire. Both the

content of the written notice and the measures taken to provide the notice to Class Members were sufficient to satisfy the requirements of due process.

III. SETTLEMENT APPROVAL

A district court's approval of a settlement is contingent on a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). This entails a review of both procedural and substantive fairness. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). In conducting this review, the Court should be mindful of the "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). "The compromise of complex litigation is encouraged by the courts and favored by public policy." *Id.* at 117 (quoting 4 Newberg § 11:41, at 87). Nonetheless, when considering whether to approve a class action settlement, a district court must "carefully scrutinize the settlement to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion." *D'Amato,* 236 F.3d at 85 (citation omitted).

A. Procedural Fairness

With respect to procedural fairness, a proposed settlement is presumed fair, reasonable, and adequate if it is "reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (quoting *Wal-Mart*, 396 F.3d at 116). If, as here, a mediator is involved in the settlement negotiations between the parties, such involvement weighs heavily in favor of a finding of procedural fairness. *Wal-Mart Stores*, 396 F.3d at 118; *see also Aponte v. Comprehensive Health Mgmt.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at * 9 (S.D.N.Y. Apr. 2, 2013)

("Arm's-length negotiations involving counsel and a mediator raise a presumption that the settlement achieved meets the requirements of due process.").

The presumption that the settlement is fair, reasonable, and adequate, applies to this case where the Settlement was reached after two years of litigation and extensive investigation, involved the use of an experienced mediator (Judge Weinstein) in negotiating settlement, and all parties were represented throughout by experienced counsel.

B. Substantive Fairness

In assessing substantive fairness, the Court considers the nine factors detailed by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974):

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

495 F.2d at 463. "All nine factors need not be satisfied; rather, a court should look at the totality of these factors in light of the particular circumstances." *In re Top Tankers, Inc. Sec. Litig.*, No. 06 Civ. 13761 (CM), 2008 WL 2944620, at *4 (S.D.N.Y. July 31, 2008).

1. The Complexity, Expense, and Likely Duration of the Litigation

This action involves, among other things, complex factual questions involving the energy market and securities industry, which would likely require expert testimony, complex models, and analysis of financial data. The action also involves complex legal questions: the claims require proof of, *inter alia*, falsity, materiality, loss causation, scienter, and damages. Any claim as to the underwriter defendants would also have to overcome any "due diligence" defense that those defendants would likely raise. Furthermore, but for settling, the case would likely have long and hard-fought litigation, expensive foreign discovery, and the added difficulty of

attempting to enforce any final judgment in China. The Court therefore concludes that this factor weighs in favor of approving the proposed settlement.

2. The Reaction of the Class to the Settlement

"If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement." *Wal-Mart Stores*, 396 F.3d at 118 (quoting 4 Newberg § 11.41, at 108). However, the Court should keep in mind that "[l]ack of objection by the great majority of claimants means little when the point of objection is limited to a few whose interests are being sacrificed for the benefit of the majority." *Id.* (quoting *Nat'l Super Spuds, Inc. v. N.Y. Mercantile Exch.*, 660 F.2d 9, 16 (2d Cir. 1981)).

Here, the Court received only one objection, Dkt. No. 112, and no exclusion requests. *See D'Amato*, 236 F.3d at 86-87 (18 objections and 72 exclusions out of 28,000 notices favors settlement); *In re Citigroup Inc. Secs. Litig.*, No. 09 MD 2070 (SHS), 2013 WL 3942951, at *10 (S.D.N.Y. Aug. 1, 2013) (11 objections and 134 exclusion requests in class of 2.5 million favors settlement). As noted, the objection was filed *pro se* by Mr. Litwan, who claims that the settlement is a "shameless pittance," that the attorneys' fees are excessive "given the obvious claims and the quick move to settlement," and that the overall "settlement is not fair, reasonable, or adequate given the strength of the claims, the amount of harm to the class, and the limited work performed by counsel." Dkt. No. 112.

Mr. Litwan's overall argument with regard to the settlement, while reasonable, does not present any actual basis for not finding the settlement fair, reasonable, or adequate. As Plaintiffs' counsel makes clear, although liability for Sinotech for the misrepresentations is "virtually absolute," proof is enormously complex as to the remaining defendants (the underwriters), and made even more so based on the fact that much of the relevant discovery (and

assets) are in China. Although Mr. Litwan argues that the claims are "obvious," as discussed above, proof of these claims and recovery of any judgment rendered is anything but straightforward absent settlement. To the extent that Mr. Litwan objects to the merits of the Settlement, such objection is overruled. To the extent that Mr. Litwan objects to the award of attorneys' fees, such objection will be addressed below.

In sum, the absence of persuasive objections to the settlement and the overall positive reaction of the class weighs heavily in favor of approval.

3. The Stage of Proceedings and the Amount of Discovery Completed

While the parties need not have engaged in extensive discovery, *Plummer v. Chem. Bank*, 668 F.2d 654, 660 (2d Cir.1982), the parties must have "engaged in sufficient investigation of the facts to enable the Court to 'intelligently make . . . an appraisal' of the Settlement." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000) (quoting *Plummer*, 668 F.2d at 660) (alterations in original). In addition, "the pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . [,but] an aggressive effort to ferret out facts helpful to the prosecution of the suit." *Id.* (quoting *Martens v. Smith Barney, Inc.*, 181 F.R.D. 243, 263 (S.D.N.Y.1998)) (alterations in original).

Here, the parties have engaged in over two years of litigation, which did not include significant discovery, but which did involve extensive investigation of Sinotech and the transactions at issue by means of publicly available documents -- including press releases, public statements, Securities and Exchange Committee ("SEC") filings, regulatory filings and reports, and securities reports and advisories. In addition to their investigation of public documents, Plaintiffs conducted a number of witness interviews and reviewed non-public documents produced by the Settling Defendants. In response to Defendants' Motion to Dismiss, Plaintiffs

also filed a massive, complex Second Amended Complaint. Overall, this is sufficient to permit realistic appraisal of the reasonableness of the settlement and weighs in favor of approval.

4. The Risks of Establishing Liability and Damages

"Securities litigation generally involves complex issues of fact and law[.]" *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 161 (S.D.N.Y. 2011). In actions brought pursuant to the 1933 Act, the Exchange Act, and Rule 10b-5, a plaintiff must establish that the defendants made misstatements or omissions of material fact in connection with their offering documents. *See In re Time Warner Sec. Litig.*, 9 F.3d 259, 264-66 (2d Cir. 1993); *TSC Indus. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462 (1977). The risk inherent in such litigation is exacerbated in actions brought pursuant to the Exchange Act, which requires a plaintiff to establish that such misstatements or omissions of material fact were made with *scienter*. *See Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 426 (S.D.N.Y. 2001) (explaining that there is "substantial risk involved in proving *scienter*, because it goes directly to a defendant's state of mind, and proof of state of mind is inherently difficult").

Proving damages in these actions can also be complicated and uncertain, particularly in cases such as this that require proof of loss causation. *In re Citigroup Inc.*, 2013 WL 3942951, at *11 (highlighting the difficulty faced in proving loss causation). Moreover, under the 1933 Act, damages are statutorily set, and if a defendant can prove that the decline in the value of the security in question was not caused by the material omissions or misstatements in the registration statement, any such portion of damages are not recoverable. *See* 15 U.S.C. § 77k(e). Similarly, proving damages under § 10(b) of the Exchange Act would require a plaintiff to establish that the artificial inflation in stock price was caused by the alleged misrepresentations or omissions of

material fact. This would lead to competing expert testimony, which naturally introduces uncertainty into the damages estimation process. *See In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured."); *Am Bank Note*, 127 F. Supp. 2d at 426-27; *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 56 (2d Cir. 2000) (citation omitted) (noting that expert reports are sometimes excluded as insufficiently reliable for admission at trial).

All of these risks are compounded by the fact that Defendants would vigorously contest the claims, generally; the aggregator defendants would argue a "due diligence" defense; and any judgment would potentially not be recoverable to the extent that the assets at issue are located in China. Overall, then, the liability and damages risks weigh in favor of approving the proposed settlement.

5. Risks of Maintaining the Class Action Through Trial

Absent settlement, there is no assurance that Lead Plaintiff's motion for class certification would be granted or that Class status, if granted, would be maintained throughout trial. *C.f. In re Citigroup Inc.*, 2013 WL 3942951, at *11 (noting that maintaining class through litigation can be difficult in securities cases involving serious questions as to loss causation). Moreover, the Settling Defendants are likely to challenge class certification and, if unsuccessful, are likely to attempt to remove Lead Plaintiff from its role as Class representative prior to trial.

Even still, all things considered, this factor is largely neutral. As discussed in Section I, there is nothing in the record to suggest that the Class would not, in fact, survive or that there would be any compelling argument for removing Lead Plaintiff from its role as Class representative, although there is always some possibility. *See Chamber v. Merrill Lynch*, No. 10 Civ. 7109 (ALJ), Memorandum and Order, Dkt. No. 149 (S.D.N.Y. Apr. 26, 2013) (noting "that

certification is never assured and that the Court can reevaluate the appropriateness of certification at any time").

6. The Ability of Defendants to Withstand a Greater Judgment

While Defendants could likely withstand a greater judgment, this does not, standing alone, suggest that the settlement is unfair. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 178 n.9 (S.D.N.Y. 2000). However, given SinoTech's precarious financial condition and the risks associated with enforcing a judgment in China, the fact that Defendants could withstand a greater judgment is of little overall weight in this case.

7. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

"The determination whether a settlement is reasonable does not involve the use of a mathematical equation yielding a particularized sum." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (internal quotes and citation omitted). "[I]n any case there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion – and the judge will not be reversed if the appellate court concludes that the settlement lies within that range." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972); *see also Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 364 (S.D.N.Y. 2002) ("In assessing the Settlement, the Court should balance the benefits afforded to members of the Class and the immediacy and certainty of a substantial recovery for them against the continuing risks of litigation."). "It is well-settled that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 621 (S.D.N.Y. 2012). Indeed, "there is no reason, at

least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell*, 495 F.2d at 455 n.2.

Here, as in *In re Citigroup Inc.*, "the question for the Court is not whether the settlement represents the highest recovery possible -- which it does not -- but whether it represents a reasonable one in light of the many uncertainties the class faces -- which it does." 2013 WL 3942951, at *12 ($590 million settlement on case with "best possible recovery" of $6.3 billion considered fair and reasonable in light of uncertainties and risks). The $20 million recovery in this case represents approximately 13 percent of Lead Plaintiff's best damages model. Def. Br. 18. This is a significant recovery given the risks described, above, as well as in light of the fact that the action had not survived a motion to dismiss at the point at which it settled. This factor also weighs in favor of approving the proposed settlement.

C. Conclusion

For the forgoing reasons, the Court finds the Settlement to be fair, reasonable and adequate.

IV. Attorneys' Fees and Expenses

Lead Counsel seeks attorneys' fees in the amount of 25 percent of the Settlement Fund, or $5 million, and expenses in the amount of $55,454.63, plus interest on both amounts at the same rate that is earned by the Settlement Fund. *See* 15 U.S.C. § 77z-1(a)(6) (explaining that under the PSLRA, fees and expenses awarded to class counsel include "prejudgment interest actually paid to the class").

A. Standard of Review

"The award of attorneys' fees in common fund cases is a 'salient exception' to the 'rule in this country that litigants are expected to pay their own expenses.'" *Wells Fargo Bank, N.A. v.*

ESM Fund I, LP, No. 10 Civ. 7332 (AJN), 2013 WL 2395615, at *3 (S.D.N.Y. May 31, 2013) (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000)); (*citing Alyesaka Pipeline Serv. Co. v. Wilderness Soc'y,* 421 U.S. 240, 247 (1975))). "The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." *Id.* (citing *Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980)). In these cases, however, because neither defense counsel nor the class members have a real incentive to oppose the plaintiff's requested fees, "the fee award should be assessed based on scrutiny of the unique circumstances of each case, and a 'jealous regard to the rights of those who are interested in the fund.'" *Goldberger,* 209 F.3d at 52-53 (quoting *Grinnell.,* 495 F.2d at 468) (citing *City of Detroit v. Grinnell Corp.,* 560 F.2d 1093, 1099 (2d Cir. 1977) ("[D]istrict court was to act 'as a fiduciary who must serve as a guardian of the rights of absent class members."); *Matter of Cont'l Ill. Secs. Litig.,* 962 F.2d 566, 572 (7th Cir. 1992) ("Defendants, once the [common fund] amount has been agreed to, have little interest in how it is distributed and thus no incentive to oppose the fee."); *McDaniel v. Cnty. of Schenectady,* 595 F.3d 411, 417 (2d Cir. 2010) (quoting *Goldberger,* 209 F.3d at 53 ("[Class members] have no real incentive to mount a [fees] challenge that would result in only a 'miniscule' *pro rata* gain from a fee reduction.").

In the Second Circuit, "both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees in common fund cases." *Goldberger*, 209 F.3d at 50; *see also McDaniel,* 595 F.3d at 417 ("While the *Arbor Hill [Concerned Citizens Neighborhood Ass'n v. County of Albany,* 493 F.3d 110 (2d Cir. 2008)] panel indicated its preference for abandonment of the term 'lodestar' altogether, the approach adopted in that case is nonetheless a derivative of the lodestar method."). Inarguably, "the 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," particularly in complex securities class actions. *In re Beacon Assocs. Litig.*, No. 09 Civ. 777 (CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013); *Chamber*, No. 10 Civ. 7109 (ALJ), Dkt. No. 149 (S.D.N.Y. Apr. 26, 2013); *In re Citigroup Inc.*, 2013 WL 3942951, at *15 (noting that "using the percentage of the fund method to compensate plaintiffs' counsel in major securities fraud class actions is now firmly entrenched in the jurisprudence of this Circuit").

But this does not "render the lodestar irrelevant." *In re Citigroup Inc.*, 2013 WL 3942951, at *15. "No matter which method is chosen, district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(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.'" *Wells Fargo Bank, N.A.*, 2013 WL 2395615, at *1 (quoting *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989)); *see also Wal-Mart Stores, Inc.*, 396 F.3d at 122-23 (("Irrespective of which method is used, the *Goldberger* factors ultimately determine the reasonableness of a common fund fee."). "Recognizing that economies of scale could cause windfalls in common fund cases, courts have traditionally awarded fees for common fund cases in the lower range of what is reasonable." *Wal-Mart Stores, Inc.*, 396 F.3d at 122; *see also In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 521 (E.D.N.Y. 2003) (collecting cases). Ultimately, the "[d]etermination of 'reasonableness' is within the discretion of the district court." *In re Interpublic Sec. Litig.*, No. 02 Civ. 6527 (DLC), 2004 WL 2397190, at * 10 (S.D.N.Y. Oct. 27, 2004) (quoting *Goldberger*, 209 F.3d at 47).

B. Discussion

Plaintiffs argue that the Court should apply the percentage of the fund method and request that the Court award 25 percent of the settlement fund, or $5,000,000 (as well as costs and interest). Plaintiffs' request for 25 percent of the common fund falls within the range of percentages regularly awarded in common fund cases. *See, e.g.*, *Chamber*, No. 10 Civ. 7109 (ALJ), Dkt. No. 149. As noted above, the single objection in this case challenged the overall size of the attorneys' fees award, but not the application of the percentage of the fund method for calculating the recovery. Having considered the facts and circumstances of this case, as well as Plaintiffs' arguments, the Court will apply percentage of the recovery method, but subject to the lodestar crosscheck. *See Goldberger*, 209 F.3d at 50.

Upon applying the "lodestar crosscheck," Plaintiffs' request for 25 percent of the Settlement Fund amounts to a request for a 7.04 "lodestar multiplier," which is above what is normally awarded in complex securities litigation with funds of this size. *See In re Citigroup Inc. Secs. Litig.*, 2013 WL 3942951, at *16 (collecting cases). Specifically, Plaintiffs billed 1,516.50 hours in this action and, using their own self-reported billing rates, calculate a lodestar of $709,820.75. Assuming that these rates and the time billed are reasonable, which the Court may do when using the lodestar as a crosscheck, the lodestar multiplier of 7.04 would yield an award of roughly $3,297.07 per hour. *See In re Merrill Lynch & Co., Inc. Research Reports Secs. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *24 (S.D.N.Y. Feb. 01, 2007) (noting that the plaintiffs' request would "represent a fee of approximately $959 per hour, a princely rate of pay by any standard").

Although the Court agrees that the *Goldberger* factors -- and particularly the relatively speedy resolution of a case involving difficult questions of fact and law -- merit a substantial

percentage recovery, the Court concludes that the 25 percent recovery requested is excessive. Indeed, Plaintiffs' own brief acknowledges that even in cases with comparably swift results, courts tended to award percentage fees that yielded lodestar multipliers between four and five. *See* Pls. Br. 20 (citing *Spicer v. Pier Sixty LLC*, No. 08 Civ. 10240 (PAE), 2012 U.S. Dist. LEXIS 137409, at *14 (S.D.N.Y. Sept. 14, 2012) ("lodestar multiples of over 4 are routinely awarded"), and *Maley*, 186 F. Supp. 2d at 363-64 (multiplier of 4.65 "well within range awarded by courts")). And even the cases Plaintiffs attached as exhibits to their application for attorneys' fees demonstrate that although the percentage recovery Plaintiffs seek may be facially reasonable, it is excessive when viewed in light of the lodestar multiplier. *See In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), Order, Dkt. No. 415 (S.D.N.Y. June 11, 2012) (33 percent award; lodestar multiplier of 0.92); *Cornwell v. Credit Suisse Grp.*, No. 08 Civ. 3758 (VM), Order, Dkt. No. 117 (S.D.N.Y. Jul. 20, 2011) (27.5 percent award; lodestar multiplier of 4.7); *In re Jacks Pac. Inc. S'holder Class Action Litig.*, No. 04 Civ. 8807 (RJS), Order, Dkt. No. 121 (S.D.N.Y. Oct. 28, 2010) (30 percent award; lodestar multiplier of 1.35); *Schnall v. Annuity and Life*, No. 02 Civ. 2133 (EBB), Order, Dkt. No. 192 (S.D.N.Y. Jan. 21, 2005) (33 percent award; lodestar multiplier of 2.92); *In re Van Der Moolen Holding N.V. Secs. Litig.*, No. 03 Civ. 8284 (RWS), slip op. (S.D.N.Y. Nov. 6, 2006) (33 percent award; lodestar multiplier 1.78).

The Court was persuaded by Plaintiffs' argument at the hearing on August 26, 2013, that they should be rewarded for having reached a substantial and beneficial result prior to the Court ruling on a motion to dismiss. The Court also does not believe that Plaintiffs should be unduly "punished" for having reached a settlement that exceeded the expectation of the neutral, experienced judge who conducted the settlement negotiations in this case, and that litigants

generally should not be encouraged to overbill in an effort to garner a lower lodestar multiplier. In addition, certain of the *Goldberger* factors weigh in favor of a substantial award in this case: (1) the case is fairly large and relatively complex; (2) there are a number of risks of litigation and recovery, as detailed above, and counsel was working on a contingent fee basis, *see Top Tankers*, 2008 WL 2944620, at * 15; (3) the quality of representation was high; and (4) the settlement was speedy and substantial.

In light of these and the facts discussed above, the Court concludes that although a 25 percent award is unreasonably high in this case, the *Goldberger* factors (as well as the facts discussed above) weigh in favor of an award of 20 percent of the Settlement Fund, or $4 million. This amounts to a lodestar multiplier of 5.65, which although high, is not unreasonable under the particular facts of this case. This award is sufficient to compensate counsel for the work they have put in and the risks they took, as well as to reward them for zealously litigating the dispute and timely resolving the action.

C. Expenses

In addition to attorneys' fees, counsel is entitled to reimbursement from the common fund for reasonable litigation expenses. *Miltland Raleigh-Durham v. Myers,* 840 F. Supp. 235, 239 (S.D.N.Y. 1993) (quoting *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.,* 818 F.2d 278, 283 (2d Cir. 1987)). Here, notice to the class indicated an amount not to exceed $100,000; the amount actually requested is $55,454.63. There have been no objections to the expense request, *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003), and it appears to be reasonable.

V. Conclusion

For the reasons discussed above, the partial Settlement is determined to be fair, reasonable and adequate. Accordingly, Plaintiffs' Motion for Final Approval of the Class Action Settlement is GRANTED; by separate Order, the Court will also approve of Plaintiffs' proposed order approving the plan of distribution of the settlement proceeds. Plaintiffs' Application for Award of Attorneys' Fees and Expenses is GRANTED in part: the Court awards $4,000,000 in attorneys' fees and $55,454.63 in costs.

This Order resolves Docket Number 101.

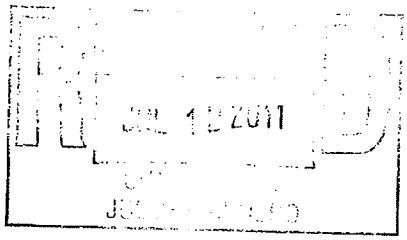
SO ORDERED.

Dated: September 4, 2013
New York, New York

ALISON J. NATHAN
United States District Judge

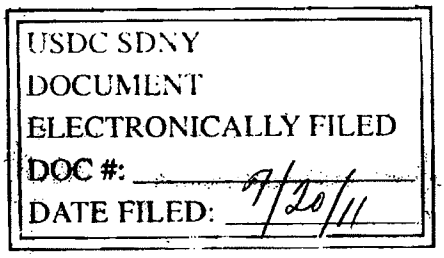
EXHIBIT G

 Marrero, 5



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. CREDIT SUISSE GROUP, et al., Defendants.	Civil Action No. 08-cv-03758(VM) **(Consolidated)** CLASS ACTION ORDER AWARDING ATTORNEYS' FEES AND EXPENSES



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of $285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set fort in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "'vital to the continued enforcement and effectiveness of the Securities Acts.'" *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders_and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

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EXHIBIT H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROGER EMERSON, MARY EMERSON, ROBERT CAPLIN and MARTHA J. GOODLETT, Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

MUTUAL FUND SERIES TRUST, CATALYST CAPITAL ADVISORS LLC, NORTHERN LIGHTS DISTRIBUTORS LLC, JERRY SZILAGYI, TOBIAS CALDWELL, TIBERIU WEISZ, BERT PARISER and ERIK NAVILOFF,

Defendants.

Civil Action No. 2:17-cv-02565-SJF-SIL

CLASS ACTION

[redacted]ORDER AWARDING ATTORNEYS' FEES AND EXPENSES AND LEAD PLAINTIFF AWARDS

This matter having come before the Court on September 9, 2020, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses (the "Fee Motion"), the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of this Action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated March 5, 2020 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Settlement Class who have not timely and validly requested exclusion.

3. Notice of Co-Lead Counsel's Fee Motion was given to all Settlement Class Members who could be located with reasonable effort. The form and method of notifying the Settlement Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §77z-1(a)(7), the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Co-Lead Counsel attorneys' fees of 25% of the Settlement Amount, plus expenses in the amount of $88,564.62, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall be paid to Co-Lead Counsel immediately upon execution of the Final Order and Judgment Approving Settlement and this Order and subject to the terms, conditions, and obligations of the Stipulation, and in particular, ¶14 thereof, which terms, conditions, and obligations are incorporated herein.

6. In making this award of fees and expenses to Co-Lead Counsel, the Court has considered and found that:

(a) the Settlement has created a fund of $3,325,000 in cash, and numerous Settlement Class Members who submit, or have submitted, valid Proof of Claim and Release forms will benefit from the Settlement created by Co-Lead Counsel;

(b) over 212,900 copies of the Postcard Notice were disseminated to potential Settlement Class Members indicating that Co-Lead Counsel would move for attorneys' fees in an amount not to exceed 25% of the Settlement Amount and for expenses in an amount not to exceed $170,000, plus interest on both amounts;

(c) Co-Lead Counsel have pursued the Action and achieved the Settlement with skill, perseverance, and diligent advocacy;

(d) Co-Lead Counsel have expended substantial time and effort pursuing the Action on behalf of the Settlement Class;

(e) Co-Lead Counsel pursued the Action on a contingent basis, having received no compensation during the Action, and any fee amount has been contingent on the result achieved;

(f) the Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) had Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Settlement Class may have recovered less or nothing from Defendants;

(h) Plaintiffs' Counsel have devoted over 3,200 hours, with a lodestar value of $2,089,337.50, to achieve the Settlement;

(i) public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation; and

(j) the attorneys' fees and expenses awarded are fair and reasonable and consistent with awards in similar cases within the Second Circuit.

7. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. Lead Plaintiff Debra Folk is awarded $1,500, Lead Plaintiff Eugene Almendinger is awarded $1,500, Lead Plaintiff Earle Folk is awarded $1,500, Lead Plaintiff Jeffrey Berkowitz is awarded $5,800, Lead Plaintiff Maryann Lovelidge is awarded $1,500, and Lead Plaintiff Tom Lovelidge is awarded $1,500, for a total of $13,300, pursuant to 15 U.S.C. §77z-1(a)(4), related to their representation of the class.

9. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this Order shall be rendered null and void to the extent provided in the Stipulation and shall be vacated in accordance with the Stipulation.

10. The Court has received and considered the objection to the Fee Motion, and finds that it is without merit; it is therefore overruled in its entirety.

IT IS SO ORDERED.

DATED this 9th day of September, 2020

Sandra J. Feuerstein

HONORABLE SANDRA J. FEUERSTEIN
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 27, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such public filing to the all counsel registered to received such notice.

s/ David A. Rosenfeld
DAVID A. ROSENFELD