

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and  
DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

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THE ANDOVER COMPANIES EMPLOYEE SAVINGS  
AND PROFIT SHARING PLAN, on behalf of itself, and  
JAMES PEHOUSHEK-STANGELAND, and all others  
similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

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**THORNTON LAW FIRM LLP'S SUR-REPLY  
IN SUPPORT OF ITS OBJECTIONS TO  
THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS**

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## INTRODUCTION

The Special Master’s Response to Thornton Law Firm’s Objections is not a “response” in any sense, but simply a repetition of the same mischaracterizations and misstatements in his original Report and Recommendations. While the many glaring errors in the Report and Recommendations may have been deemed at first to be simple mistakes, the fact that the Special Master and his counsel withdraw none of their erroneous findings (and, in fact, forcefully repeat many of them in the Response) compels a different conclusion. That is, despite their awareness of the weaknesses of their arguments, the Special Master and his counsel seem content with proposing any legal or factual findings—no matter how inaccurate—that will somehow persuade this Court to impose draconian and unprecedented sanctions on the Thornton Law Firm and Garrett Bradley. They will ignore, omit, or mischaracterize any non-conforming facts to suit their own narrative, which does a disservice to this Court’s efforts to resolve an unfortunate situation arising from what all parties acknowledge were mistaken lodestar calculations. The Special Master and his counsel are entitled to “prosecute with earnestness and vigor—indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.” *Ferrara v. United States*, 372 F. Supp. 2d 108 (D. Mass. 2005) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)).

### **a. Motive And Intent**

As set forth below, the Special Master has once again mischaracterized the evidence in an attempt to prove that Garrett Bradley was *motivated* to file a false declaration and *intended* to mislead the Court by *knowingly* filing a false declaration. In doing so, the Special Master not only repeats the errors he included in the Report and Recommendations, but also introduces new errors. The most serious of these is that the Special Master or his counsel attempt to change the

certified deposition transcript of Evan Hoffman—inserting what the Special Master or his counsel claim is a “correction” to the testimony—without filing an errata sheet, consulting counsel, consulting the witness, or even consulting the court reporter. Undersigned counsel contacted the court reporting company within 24 hours of receiving the Special Master’s filing, and the reporting company confirmed that the transcript was accurate. The Special Master’s “correction” to Mr. Hoffman’s deposition puts words in Mr. Hoffman’s mouth which Mr. Hoffman never said in an attempt to show that various Thornton partners were aware of the misstatements in the fee declaration prior to filing. This error is discussed in further detail below.

Second, while the Special Master continues to claim that Garrett Bradley intentionally filed a false declaration, he now acknowledges that “evidentiary imprecision” prevents him from determining whether Garrett Bradley actually read the boilerplate section of the declaration prior to submitting it. The Special Master’s novel solution to these inconsistent findings is to declare:

Contrary to Thornton’s objection, it is not the Special Master’s finding that Garrett Bradley read the declaration, but rather that he reviewed it, knew that it contained false information, but signed it anyway.

SM Resp. to TLF at 19.<sup>1</sup>

It is difficult to understand how the Special Master or his counsel could present such arguments to the Court with a straight face; undersigned counsel is not aware of any difference between the words “review” and “read” in this context. Either Garrett Bradley carefully read the declaration, recognized that it contained misstatements, and signed it anyway, or he did not. Further errors of the Special Master related to this topic are also detailed in the pages below.

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<sup>1</sup> The citations contained herein refer to document page numbers according to the documents’ internal pagination, rather than ECF pagination.

**b. Rule 11 / BBO Referral**

Notably, the Special Master does not respond in any substantive manner to Thornton’s extensive objections regarding his findings of violations of Rule 11 and the Massachusetts Rules of Professional Conduct. Instead, the Special Master reiterates that the *amount* of Rule 11 sanctions he has suggested, \$400,000 to \$1 million—despite being the first or second highest sanctions in the First Circuit in at least twenty years—is appropriate. In doing so, the Special Master also brushes aside all of Thornton’s Objections on the amount of sanctions. In particular, the Special Master declines to engage with Thornton on the point that the recommended sanctions do not take into account the deterrence achieved by the nearly \$5 million investigation costs. And—without citation to anything at all—the Special Master suggests that undersigned counsel’s empirical research on Rule 11 sanctions is unhelpful because “courts within the First Circuit have not had the occasion to impose monetary sanctions with any frequency.” SM Resp. to TLF at 22. With respect to the two serious legal errors in the Special Master’s Report and Recommendations on this subject (i.e., payment to anyone other than the Court of *sua sponte* monetary sanctions, and the propriety of *sua sponte* monetary sanctions post-settlement), the Special Master is silent.

**c. “Like Cases Should Be Decided Alike”**

The Special Master continues to violate the “basic principle of justice that like cases should be decided alike.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005); *see also* 11/7/18 Hr’g Tr. at 106:10-13 (Dkt. 519) (noting importance of ensuring “no unwarranted disparity in the way the lawyers are treated”). In particular, with respect to the boilerplate fee declarations, the Special Master charged only Garrett Bradley with professional misconduct, and recommended the imposition of Rule 11 sanctions only on Thornton—all for boilerplate

language in Thornton's declaration that is **identical** to the language in Labaton's, Lieff's, and most of the ERISA counsels' fee declarations. Most notable is that the Special Master now attempts to distinguish Labaton on the flimsy basis that four of the 71 timekeepers listed on Labaton's lodestar had hourly clients in 2016—even though in all four cases the lodestar rates submitted to the Court in 2016 were higher than those paid by Labaton's hourly clients in 2016. This is not to say that all firms should be sanctioned, but that the Special Master's conclusion as to Labaton and Lieff, that they used "imprecise and inexact language," should apply to Thornton as well. Further instances of the Special Master's unequal treatment of Thornton are demonstrated below, such as the morphing of the Chargois issue from "[t]he most troubling issue in this case," R&R at 303, to a nebulous "emerging best practices" issue, SM Supp. to R&R at 5 (Dkt. 485).

**d. "Regular Rates Charged"**

The Court has understandably expressed great concern with the "regular rates charged" language used in Thornton's, Labaton's, Lieff's, and most of the ERISA counsels' fee declarations. This language was unclear and sloppy, and should never be used again to describe exclusively or primarily contingent fee law firms' rates. It is not an "everyone does this" excuse, however, to point out that such boilerplate language, or its equivalent, is incredibly common in fee declarations both in the District of Massachusetts and around the country. Such information provides crucial context for the Court to consider as it determines whether (as the Special Master has charged) Thornton's use of the boilerplate language was an *intentional* effort to mislead the Court. In addition to 26 declarations filed in the District of Massachusetts employing such boilerplate language, undersigned counsel has identified at least 36 declarations filed in 14 additional jurisdictions employing such language. The sampling below is not intended to

constitute an exhaustive treatment of the issue, but to demonstrate to the Court just how common this boilerplate language is.

**e. Double-Counting**

As noted in Thornton's Objections, the Special Master's recommendation that Customer Class Counsel disgorge the entire amount of the double counting error is unjustified. Even the Special Master has concluded that the error was inadvertent, and the effect of the error on the lodestar multiplier cross-check is insignificant. The Special Master continues to press the point—for example, by misleadingly citing to statutory fee shifting cases where the lodestar is not a cross-check for the actual percentage of fee award, but the lodestar is the basis for the fee award itself. Even if any disgorgement were justified, such disgorgement should not be imposed on Thornton because Thornton does not bear responsibility for the double counting error. As set forth below, Thornton's lodestar was accurate, and it was Lief's and Labaton's lodestars that erroneously included double-counted time on their lodestars. Further, as the Special Master found, Labaton was the only law firm that had access to all of the fee declarations, and thus must bear "ultimate responsibility" for the error. Exec. Summ. at 18.

**f. Contract Attorneys, Michael Bradley**

Despite the lack of any supporting authority (and in the face of significant authority to the contrary), the Special Master continues to argue—on the basis of employment law and his views of public policy—that contract attorneys should be listed as expenses rather than in class counsel's lodestar. His arguments are as meritless now as they were in the Special Master's Report and Recommendations. *See* Rubenstein Decl., 6/20/18, at ¶¶ 13-16 (Dkt. 368). With respect to Michael Bradley, although the Special Master argues that his rate should be reduced to below that of some of the other firms' paralegals, and the difference in the reduction of rate

should be disgorged, the Special Master continues to ignore that even if *all of* Michael Bradley's time is removed from the corrected lodestar, the multiplier is 2.01.

**g. Staff Attorneys**

Although the Special Master found that Customer Class Counsel's rates for staff attorneys were reasonable, this Sur-Reply briefly addresses the reasonableness of such rates in light of CEI's Response (Dkt 522). In short, empirical research shows that the staff attorney rates are consistent with those accepted in other cases. To the extent to which any of the staff attorney rates are higher, such rates are justified (as the Special Master found) by the skill and experience of the staff attorneys, as well as their substantive contributions to the litigation. Further supporting the reasonableness of the staff attorney rates is that the *overall* blended attorney rate is consistent with those accepted in other cases, which indicates appropriate staffing.

**ARGUMENT**

**I. There Was No Motive To File A False Declaration**

Ignoring the substance of Thornton's Objections on the issue of motivation, the Special Master simply proclaims that "Bradley's motivation for making the false statements is clear and damaging." SM Resp. to TLF at 15. The paragraph that follows this pronouncement is nothing more than a jumble of disconnected thoughts that conflates all of the issues in the case. For instance, the Special Master finds Mr. Bradley was motivated to submit a false declaration because:

[T]he record evidence shows that Bradley was *fully aware* of the firm's participation in the name-and-cost sharing agreement, and felt that agreement was the best way to "jack up" Thornton's individual lodestar vis-à-vis the other Customer Class firms.

*Id.* (emphasis in original).

The Special Master does not explain how evidence (undisputed by Thornton) that Mr. Bradley was “fully aware” of Thornton’s agreement to pay for Lief’s and Labaton’s staff attorneys as part of a risk-sharing arrangement could possibly support the conclusion that Mr. Bradley was motivated to intentionally file a *false* declaration *with the Court*.<sup>2</sup> Of course all three firms were “fully aware” of the risk-sharing agreement because all three firms voluntarily entered into the joint risk-sharing agreement. Although the Special Master’s italicization is intended to imply otherwise, Mr. Bradley’s mere knowledge of the risk-sharing agreement was not in any way improper and is not evidence of motive.

It bears repeating that the “jack up the lodestar” email is not the smoking gun the Special Master would like it to be and is not evidence of Mr. Bradley’s motivation to file a false declaration with the Court. The email was written in February 2015, **nearly a year and a half** prior to the fee declaration being filed with the Court, and in response to an email **from Labaton** attaching an invoice for staff attorneys. *See* 3/11/15 Email, TLF-SST-011124 (R&R Ex. 64) (Dkt. 401-63). What Mr. Bradley was referring to is the fact that if Thornton bore more risk by investing in additional staff attorneys over the course of the litigation in relation to Lief and Labaton (and pursuant to Lief’s and Labaton’s express agreement), Lief and Labaton would agree to a more favorable fee split with Thornton if the litigation was successful. This would in no way increase the overall lodestar submitted to the Court or increase the overall attorneys’ fees

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<sup>2</sup> The Special Master insinuates in his Response that there is something wrong with the fact that “staff or contract attorney hours comprised approximately 71.5% of Thornton’s individual lodestar,” SM Resp. to TLF at 9, as he also stated in his Report and Recommendations. R&R at 45. Had he bothered to calculate the percentage of staff/contract attorney time for Lief and Labaton, he would have realized that Thornton’s proportion of staff/contract attorney time is actually the lowest of all three firms. *See* TLF Objs. at 28 n.20. What is more, the 71.5% figure is not even accurate. As pointed out in Thornton’s Objections, the Thornton staff attorney time submitted to the Court accounted for 68.9% of all Thornton time, not 71.5%, as the Special Master suggests in both his Response and his Report and Recommendations. *See id.* at 5 n.3. It speaks volumes that, even after this simple arithmetic error was highlighted in Thornton’s Objections, the Special Master or his counsel not only fail to correct the error, but actually repeat it.



awarded from the common fund. The amount of documents to review and analysis to perform was finite; the only question was which firm would pay for the staff attorneys to complete these tasks. While the language may be coarse, the concept is entirely unobjectionable. *See* TLF Objs. at 33-34.<sup>3</sup>

Still desperately clinging to the “jack up” email, which the Special Master believes is his best evidence of motivation, the Special Master’s next supposed “clear” support for Mr. Bradley’s motivation to deceive is that:

As noted in the Master’s report, Bradley’s misrepresentations “infected the entire pleading” . . . . At the least, the Court was substantially misled by this artifice.

SM Resp. to TLF at 15-16.

That the supposed false statements “infected the entire pleading,” even if true (which Thornton vigorously disputes), has absolutely nothing to do with any possible motivation—or intent—to file a false declaration. The Special Master simply borrows a term of art from the Rule 11 context and uses it to support an entirely different conclusion. The next proposition seems to be that because the Court was misled, Mr. Bradley must have been motivated to—and must have intended to—mislead the Court. This logic is false—the assertion that a reader *was* misled does not mean that the author *intended* the reader to be misled. *Cf. United States v. Watkins*, 278 F.3d 961, 967 (9th Cir. 2002) (“Many statements, whether true, incomplete, or false, can be misleading even when the maker of the representation does not intend to mislead the recipient.”); *United States v. Jones*, 686 F. Supp. 2d 147, 156 (D. Mass. 2010) (Wolf, J.)

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<sup>3</sup> As noted in Thornton’s Objections, the very same email shows Thornton’s care in avoiding any inaccuracies in the actual lodestar which would someday be submitted to the Court. In the same email, Michael Lesser writes, “Just following up on the doc review recordkeeping. The attached invoice is dated 2/6/2015 (and was sent on 2/6 as well) but includes billables through 2/28. Can you ask them to confirm whether these hours were billed for 2/6 – 2/28? **I don’t want us to double-count anything.**” 3/11/15 Email, TLF-SST-011124 (R&R Ex. 64) (Dkt. 401-63) (emphasis added). *See also* TLF Objs. at 34. Notably, the Special Master does not cite this part of the email because it does not fit his narrative.

(“[W]hile Ms. Sullivan made inexcusable and inexplicable errors, she did not engage in intentional misconduct[.]”).

Most telling on the issue of motivation is that the Special Master largely ignores Thornton’s substantive objections to his findings on this subject. These objections were briefed extensively, *see* TLF Objs. at 26-37, and there is no need for Thornton to repeat them all here. What warrants special emphasis, however, is that the final fee allocation agreement among counsel was executed in August 2016, **prior to** the existence of the fee declarations and lodestars submitted to the Court in September 2016. *See id.* at 30. In August 2016, Customer Class Counsel agreed that Labaton would receive 47% of Customer Class Counsel’s fee, Thornton would receive 29%, and Lieff would receive 24%. *Id.* (citing Final Fee Agreement, TLF-SST-056305 (TLF Objs. Ex. 8) (Dkt. 446-9)).<sup>4</sup> What is more, as all counsel were aware, the agreed-upon final fee division did not track the lodestars submitted to the Court—Labaton had 50% of the lodestar but received 47% of the fee, Thornton had 22% of lodestar but received 29% of the fee, and Lieff had 28% of the lodestar but received 24% of the fee.<sup>5</sup> *Id.*

In other words, which staff attorneys were listed on which lodestar would not affect the **percentage of the total fee award** Thornton would receive. The firms had already negotiated their fee split, and memorialized the fee split in a signed agreement, **before** the lodestars were filed with the Court. Whether all staff attorneys were listed on the lodestar of the firm that paid for them, or all were listed on the lodestar of the firm that housed them, the firms had agreed that Labaton would receive 47%, Thornton would receive 29%, and Lieff would receive 24% of

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<sup>4</sup> As the Special Master conceded, “[a]t the inception of the case, Customer Class Counsel had agreed to a fee sharing arrangement pursuant to which Labaton, Lieff, and Thornton would each be entitled to 20% of any fee award, with the remaining 40% to be distributed at the end of the litigation . . . .” R&R at 51.

<sup>5</sup> Percentage of lodestar and fee refers to percentage of Customer Class Counsel’s lodestar and fee, not the overall lodestar or fee.

Customer Class Counsel's fee. There was no motivation to deceive because, for purposes of Thornton's percentage share of the Customer Class Counsel fee, it did not matter which staff attorneys were listed on which lodestar. The Special Master or his counsel does not understand this concept, instead asserting that "it was only by putting the attorneys of the other firms on its lodestar that it [Thornton] was able to generate the lodestar hours to justify a substantial fee award . . . ." SM Resp. to TLF at 7 n.11. In fact, the Court awarded a single fee award, not a fee award for each firm, and far from being the only way Thornton would have received 29% of Customer Class Counsel's fee, Thornton would have received (as agreed between Labaton, Lieff, and Thornton) the same percentage of the aggregate fee even if none of the staff attorneys appeared on Thornton's lodestar.

The Special Master does not attempt to counter this argument (or even mention it), assumedly because there is no possible reply. Instead, the Special Master further confuses the issues by suggesting, "If Thornton felt it was entitled to an out-sized share of the fee award by virtue of a contribution to the result of the case, **it should have negotiated that with the other firms, or at least made its case for a higher fee to the Court**, rather than attempting to misrepresent its contribution by a 'jacked up' lodestar." *Id.* at 15 n.18. (emphasis added). What the Special Master refuses to acknowledge is that Thornton's "share" of the fee award *was*, in fact, the result of an arms-length negotiation among experienced, sophisticated law firms. Lieff and Labaton willingly compensated Thornton in the fee split among counsel, in part, because Thornton bore the risk of paying for a number of the staff attorneys throughout the course of the litigation, and also contributed, as an equal, to the substantive work of the litigation and mediation.

The Special Master’s further suggestion that Thornton should have “made its case for a higher fee to the Court” is nonsensical. The Special Master repeatedly ignores relevant class action practice and procedure. In this case, as is common, counsel requested a single fee award and allocated the fee award among themselves.<sup>6</sup> Further evidence of the Special Master’s or his counsel’s lack of understanding, or intentional obfuscation, is the statement that Bradley’s “sworn declaration served as the sole basis for the Court to approve Thornton’s \$18 million dollars [sic] fee request, from a total fee award of \$75 million.” *Id.* at 23. This is demonstrably false. Thornton **did not** file an \$18 million fee request and the Court **did not** award Thornton \$18 million in fees. All counsel filed a **single fee request** for approximately 25% of the common fund and the Court used counsel’s **combined** lodestars as a cross-check to ensure that

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<sup>6</sup> Although the Court has the authority to allocate fees among counsel, the Court did not do so here. *See* 9 NEWBERG ON CLASS ACTIONS, § 15.23 (5th ed.) (“It is typical in such cases that the lawyers can decide among themselves how to split the aggregate fee.”). *See also In re Raytheon Co. Secs. Litig.*, No. 99-cv-12142-PBS, 2004 WL 7329762, at \*1 (D. Mass. Dec. 6, 2004) (“The award of attorneys’ fees shall be allocated among Plaintiffs’ Counsel in a fashion which, in the opinion of Plaintiff’s Lead Counsel, fairly compensates Plaintiffs’ Counsel for their respective contributions in the prosecution of the Action.”); Final Judgment, Dkt. 1007, *In re Lernout & Hauspie Secs. Litig.*, No. 00-cv-11589-PBS (D. Mass. July 20, 2005) (same in material respects); Order and Final Judgment, Dkt. 159, *In re Xchange, Inc. Secs. Litig.*, No. 01-cv-10322-RWZ (D. Mass. May 1, 2006) (same in material respects); Order and Final Judgment, Dkt. 167, *In re Polymedica Corp. Secs. Litig.*, No. 00-cv-12426-WGY (D. Mass. Sept. 5, 2007) (same in material respects); *In re Evergreen Ultra Short Opportunities Fund Secs. Litig.*, No. 08-cv-11064-NMG, 2012 WL 6184269, at \*2 (D. Mass. Dec. 10, 2012) (“The fees shall be allocated among counsel for Lead Plaintiffs by Lead Counsel in a manner that reflects each such counsel’s contribution to the institution, prosecution and resolution of the captioned action.”). *Cf. Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Emps. Ret. Sys.*, 814 F.3d 652, 658-60 (2d Cir. 2016) (reversing fee order as abuse of discretion where district court denied fees to non-lead counsel “where lead plaintiffs and lead counsel seek to compensate other counsel as part of a capped percentage-of-the-fund recovery” and noting “a rebuttable presumption of correctness to Lead Plaintiffs’ proposed allocation of fees”); *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 624 (8th Cir. 2017) (“[Where] there is no dispute among class counsel over how to allocate the award of attorney’s fees and expenses . . . the district court did not abuse its discretion by leaving the matter to class counsel to resolve among themselves.”). To the extent the Court now wishes to allocate fees among counsel, Thornton respectfully requests an opportunity to inform the Court in a separate brief of its substantive contributions to this litigation, from participation in drafting the complaint, to developing the theories and factual support for liability and damages, to advocacy at the mediation sessions, to directing the most crucial, targeted portions of the staff attorneys’ document review. Thornton had extensive experience in the subject matter of the litigation, having represented whistleblowers in False Claims Act cases across the country in matters involving FX standing instructions years before the *State Street* complaint. In fact, Thornton was the first law firm to ever bring a case challenging FX standing instruction practices.

the **total** multiplier was reasonable.<sup>7</sup> See Lead Counsel’s Motion for Award of Fees and Expenses (R&R Ex. 110) (Dkt. 401-109); Order and Final Judgment (R&R Ex. 113) (Dkt. 401-112); 11/2/16 Hr’g Tr. at 36:1-5 (R&R Ex. 78) (Dkt. 401-77) (the Court finding that “[t]he amount awarded is about 1.8 times the lodestar. The lodestar is about \$41 million. This is reasonable.”). The Court did not calculate individual multipliers for each firm for the simple reason that, as is common, the Court did not ask for, and counsel did not share with the Court, the percentage of fees that Thornton, Lieff, and Labaton would receive.

The Special Master *may* have been able to show that Mr. Bradley (and every other lawyer in the case) had some *potential* motive<sup>8</sup> to increase his firm’s lodestar submitted to the Court if either: (1) the Court allocated fees among counsel; or (2) each firm applied for its own fee award. If either of these two scenarios were true, each firm would have had an incentive to submit the highest possible lodestar to the Court. But despite his bombastic language (i.e., that Thornton’s Objections are “Orwellian”), it is the Special Master who is presenting what can only be called alternative facts to the Court. Although it had the authority, the Court (as is common) did *not* allocate fees among counsel or ever indicate that it would do so, and each firm did *not* apply for its own fee award. There was therefore no **motivation** for Mr. Bradley to deceive the Court by increasing his firm’s lodestar.

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<sup>7</sup> It is astonishing that the Special Master or his counsel fail to grasp these fundamental concepts after spending nearly \$5 million on a two-year investigation.

<sup>8</sup> Of course, potential motive does not equal actual intent.

## II. The Special Master Continues To Mischaracterize And Confuse The Evidence

### a. In Arguing That Garrett Bradley Reviewed The Boilerplate Section Of The Declaration, The Special Master Or His Counsel Not Only Mischaracterize But Actually Change The Evidence

Thornton's Objections demonstrated how the Special Master's Report and Recommendations misrepresented Evan Hoffman's deposition testimony in order to further the false narrative that Garrett Bradley carefully read the boilerplate section of the fee declaration and was aware of its defects prior to submitting the declaration to the Court. As noted on page 37 of Thornton's Objections, the Special Master characterized Evan Hoffman's testimony as follows:

Emails among Garrett Bradley, Mike Lesser and Evan Hoffman show that drafts of the declaration were circulated among these Thornton attorneys for their review. This is confirmed by the testimony of Evan Hoffman: "[w]e put in all the hours that we had kept track of, I along with our accounting department and Anasthasia put in the expenses and then **mostly Mike Lesser and then Garrett Bradley, Mike Thornton and myself all reviewed**" the declaration before Bradley signed it. Hoffman 6/5/17 Dep., p. 94:9-15.

R&R at 229 (emphasis in original).

This supposed "evidence" suggests that four Thornton partners sat down and studied the entire declaration (including the boilerplate section containing the misstatements) and realized that some of the language contained misstatements. But as Thornton indicated in its Objections, the Special Master misrepresented the record by replacing the material words of Mr. Hoffman's deposition with the Special Master's own characterization. In fact, Mr. Hoffman did not testify that the four partners reviewed the entire declaration. The full testimony is:

[T]here was a section on fill in what your hours are, fill in what your expenses are, fill in what your lodestar is, fill in what your specific contributions were to the case, and the rest of the language was sort of, it was called a model fee declaration. And so that's what we did, he put in all the hours that we had kept track of, I along with our accounting department and Anasthasia put in the expenses and then mostly Mike Lesser and then Garrett Bradley, Mike Thornton and myself all reviewed **the**

**sort of narrative about the firm’s contribution, which I believe mostly Mike Lesser drafted.**

Hoffman Dep., 6/5/17, at 94:1-17 (R&R Ex. 63) (Dkt. 401-62) (emphasis added—the emphasized portion was omitted from the Special Master’s quotation of this deposition).

In other words, the Special Master or his counsel intentionally replaced Mr. Hoffman’s actual words—“the sort of narrative about the firm’s contribution, which I believe mostly Mike Lesser drafted”—with words that Mr. Hoffman did not say: “the declaration.”

As noted in Thornton’s Objections, the declaration was a template “fill-in-the-blank” document provided by Labaton with two primary sections for each firm to customize: (1) a narrative of each firm’s contribution; and (2) the lodestar itself. *See* Template Decl. at ¶ 2, TLF-SST-029797 (TLF Objs. Ex. 9) (Dkt. 446-10) (instructing that each firm should: “Supplement to explain role in the Class Actions and give overview of work performed.”). The rest of the declaration was Labaton’s boilerplate and the Special Master himself concluded that most of the firms did not modify the problematic boilerplate section at issue in these proceedings. *See* R&R at 57. The “narrative” to which Mr. Hoffman refers is that of Thornton’s particular contributions to the litigation. It makes perfect sense that Thornton partners carefully reviewed the customized section of the fee declaration, but in no way does this prove that Mr. Bradley or anyone else must have also carefully reviewed the entire boilerplate section of the fee declaration, realized that misstatements were present, and intentionally filed a false declaration.

As demonstrated above, the Special Master simply lifted a quote, omitted the most material aspect of it, and inserted substitute language to create a different meaning and support a different conclusion. In his Response, the Special Master refuses to admit any error and, shockingly, forcefully repeats his assertion by referring to “the complete and damaging testimony of Evan Hoffman on the matter of **Bradley and fellow attorneys’ review of the six**

**false statements concerning the shared staff and agency attorneys,”** which he submits is evidenced by pages 93 to 99 of Mr. Hoffman’s deposition. SM Resp. to TLF at 16-17 (emphasis added). These deposition pages are the supposed “most accurate record on this issue,” which is termed as the “continuum of testimony by Hoffman establishing **that Thornton’s review included the false statements at issue.**” *Id.* at 17 (emphasis added). Those pages are reproduced below for the Court:

[BY MR. SINNOTT:]

Q. Let me ask you this then.

In other cases, to your knowledge –

JUDGE ROSEN: One more question, I’m sorry. Off the record.

(Discussion off the record.)

BY MR. SINNOTT:

Q. Let’s move into the fee declaration.

Could you describe what your role was in that process.

A. So we received from Labaton, from a partner there named Nicole Zeiss, a sort of model fee declaration that was sent around in advance of submitting the total fee declaration and it had a bunch of text in it and it was like those fill-in-the-blank, whatever that game is, but it was sort of put your information here.

JUDGE ROSEN: Not Hang Man.

THE WITNESS: Not Hang Man, no.

A. Put your information here, so there was a section on fill in what your hours are, fill in what your expenses are, fill in what your lodestar is, fill in what your specific contributions were to the case, and the rest of the language was sort of, it was called a model fee declaration.

And so that’s what we did, he put in all the hours that we had kept track of, I along with our accounting department and Anasthasia put in the expenses and then mostly Mike Lesser and then Garrett Bradley, Mike Thornton and myself all reviewed the sort of narrative about the firm’s contribution, which I believe mostly Mike Lesser drafted.



And then it was sent back to Labaton for their review and maybe an edit or two and that was the last we saw of it until it was submitted on ECF for the final, when it was actually given to the judge.

JUDGE ROSEN: You never saw Labaton's fees or Lieff's fees in the declaration?

THE WITNESS: Correct.

JUDGE ROSEN: In the actual fee declaration, did you ever see their fees?

THE WITNESS: No, not until it was already filed.

JUDGE ROSEN: Not until it was filed?

THE WITNESS: Correct.

JUDGE ROSEN: Did you in any way attempt to edit or change the narrative in the fee declaration?

THE WITNESS: So let me just be clear.

The document that I'm talking about is the sort of, whatever it is, I'm talking about the affidavit, so, yes, there was a spot where we were instructed to add what our firm-specific contributions would have been, because it was a fee declaration on behalf of our firm.

As to the overall package of whatever the declaration, maybe it was Labaton's declaration which described in general the case, I don't believe that we offered any edits to that.

JUDGE ROSEN: Drilling down just a little more finely on this, there was a phrase, I don't remember the actual language, but is it customary and regular rates charged -- "the hourly rates for attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services which have been accepted in other complex class actions," was that your language or was that language that was supplied to you by Nicole Zeiss?

THE WITNESS: Language supplied to us by Nicole.

JUDGE ROSEN: And you never changed that, edited it or talked to her about changing it?

THE WITNESS: Correct.

Q. Did that strike you as being incongruous --

(Discussion off the record.)

JUDGE ROSEN: I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions.

BY MR. SINNOTT:

Q. Do you remember seeing that language?

A. Yes.

Q. Did it trouble you at all?

A. No, firstly because it was given to us by Labaton who I think has probably done hundreds, if not thousands, of these fee declarations.

My understanding was that Nicole Zeiss's sort of whole role at Labaton was to be the person and partner in charge of preparing the fee petition, so it didn't strike me as anything really.

If anyone knew what they were doing, I would have thought it would be her and them.

And also, just on a basic level, our fees had been accepted by a Federal Judge, Judge Kaplan, in the BNY Mellon case, an almost identical litigation, and so there was nothing that stood out to me as being not accurate or wrong in any sense considering we had a judge who had just recently approved everyone's fees for a very, very similar case on the exact same topic.

JUDGE ROSEN: On the same rates?

THE WITNESS: And on the same rates, yes.

Q. In other cases, if you know, where Thornton was teamed up with other firms, would Thornton typically do its own fee petition or would it join in in another fee petition, was there any consistency or method there?

A. I can only speak to the only other case I have been involved in, which would have been the BNY Mellon case, in which we submitted our own fee petition as part of all of the firms led by Lieff and Kessler Topaz, but, yes, each firm who worked on the case had its own fee petition which was then approved by the judge.

Q. When did you first realize in this case that there was an overlap?

A. I am trying to remember the exact day, but Garrett came down to my office and looked like he had seen a ghost and told me how it is that he heard about it.

I don't remember exactly how he heard about it.

Q. When was that?

A. It had to be in the fall, early winter of last year.

He came in and said something to the effect of, I won't use expletives, but there were a lot of them, and they're saying that we double-counted our hours.

And so me being the person who was in charge of warehousing our hours, my career flashed before my eyes and we downloaded everything, printed everything out, started to look it up and realized ....

Hoffman Dep., 6/5/17, at 93:1-99:25 (R&R Ex. 63) (Dkt. 401-62) (Attached hereto at Nassif Decl., 12/18/18 (TLF Sur-Reply Ex. 4-A)).<sup>9</sup>

At no point in this supposed “**most accurate record of this issue**” is there any indication of “Bradley and fellow attorneys’ **review of the six false statements** concerning the shared staff and agency attorneys.” All that can be said after reading the deposition excerpt is that: (1) Mr. Hoffman recalls that he and Messrs. Lesser, Thornton, and Bradley reviewed the *firm-specific narrative section* of the declaration; and (2) Mr. Hoffman recalls that he personally read a portion of the boilerplate language but did not think anything of it because the rates listed were materially the same as those listed in the *BNY Mellon* litigation. There is zero evidence that Messrs. Hoffman, Lesser, Thornton, and Bradley all reviewed “the six false statements concerning the shared staff and agency attorneys” or that “Hoffman and the other Thornton attorneys he previously acknowledged as having reviewed the declaration—including Garrett Bradley—saw the ‘language’ and declined to edit it.” SM Resp. to TLF at 16-18. The Special

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<sup>9</sup> The original version of the Hoffman transcript filed publically at Dkt. 401-62 did not contain pages 96 to 99. By order dated December 17, 2018 (Dkt. 529), the Court unsealed pages 96 to 99 pursuant to Thornton’s motion (Dkt. 528).

Master or his counsel's repeated insistence on this mischaracterization of the evidence is troubling.

But the Special Master or his counsel are not content to only mischaracterize the evidence. Disturbingly, and without regard for consequences for misrepresentations to the Court, the Special Master or his counsel actually **change the evidence**. On page 17 of his Response, the Special Master excerpts Mr. Hoffman's deposition testimony in attempting to prove that Thornton attorneys reviewed the boilerplate section of the declaration. One of the excerpts is:

(Discussion off the record.)

HOFFMAN [erroneously attributed to Judge Rosen]: I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions.

*Id.* at 17 (bracketed text is the Special Master's).

The certified deposition transcript, at page 97 line 3, however, indicates that this statement was made by "JUDGE ROSEN." The Special Master, because he would like to attribute this statement instead to Mr. Hoffman as to better fit his narrative, simply changes "JUDGE ROSEN" to "HOFFMAN," and claims that the statement was "erroneously attributed to Judge Rosen." By doing so, the Special Master or his counsel hope to use the phrase "our recollection," in conjunction with "that language was the same in all," to show that the Thornton lawyers reviewed all of the operative language at issue.

There are three significant problems with the Special Master's or his counsel's alteration and conclusion. First, the Special Master is quite simply wrong—Evan Hoffman never said this. As set forth in the attached declarations of Mr. Hoffman and former Nixon Peabody attorney Emily Harlan, the certified deposition transcript is accurate, and the statement in question was

made by Judge Rosen, not Mr. Hoffman. *See* Hoffman Decl., 12/17/18, (TLF Sur-Reply Ex. 1); Harlan Decl., 12/17/18 (TLF Sur-Reply Ex. 2). The “she” referred to in the testimony is the Special Master’s own counsel, Elizabeth McEvoy, who was physically handing the Special Master documents at this point in the deposition, and not Nicole Zeiss, as the altered testimony suggests. *See id.* Second, the Special Master never filed an errata sheet to make a correction, which was required if the Special Master actually believed there was an error in the transcript. *See* Sharp Decl., 12/17/18 (TLF Sur-Reply Ex. 3-A); Fed. R. Civ. P. 30(e). And third, the Special Master never checked with the court reporter to ensure that his “correction” to the transcript was sound. Thornton knows that the Special Master never checked with the court reporter because within twenty-four hours of receiving the Special Master’s Response, undersigned counsel contacted the reporting company and identified the section of the transcript that had been called into question. The reporting company replied: “Our reporter has reviewed her notes. She says the transcript is accurate.” *See id.* at Ex. 3-A.

It is difficult to overstate the gravity of the Special Master’s misrepresentation to the Court in the context of this case, where the Special Master seeks \$1 million in Rule 11 sanctions for Mr. Bradley’s signature on a boilerplate affidavit that was identical to the affidavits submitted by the other attorneys, and which Mr. Bradley did not draft. Here, in a Court filing, the Special Master or his counsel has changed deposition testimony to suit a desired narrative without bothering to: (1) file an errata sheet; (2) inquire of the witness whether the transcript was accurate; (3) inquire of counsel whether the transcript was accurate; or (4) inquire of the court reporter whether the transcript was accurate. Moreover, this was not an immaterial misrepresentation. On the contrary, the Special Master excerpted Mr. Hoffman’s testimony as a means of proving Mr. Bradley’s intentional misconduct. And prior to excerpting this particular

testimony, the Special Master emphasized that it contains “the most **accurate** record on the issue” (emphasis added) and that “the following exchange is **compelling**.” SM Resp. to TLF at 17 (emphasis added). There are only two possible conclusions: either the Special Master or his counsel changed the deposition transcript with knowledge that the change was not accurate; or, prior to changing the deposition transcript, the Special Master or his counsel failed woefully to make “an inquiry reasonable under the circumstances.” *See* Fed. R. Civ. P. 11(b); SM Resp. to TLF at 21 (“His utter failure to verify the statement he was signing . . . on facts he either had first-hand knowledge of, or could discover the answer to with a phone call or email, is unacceptable . . .”).

**b. The Special Master Again Mischaracterizes The Evidence To Support His Assertion That Garrett Bradley Admitted He Lied To The Court**

Strangely, while stating that he does not mean to imply that Garrett Bradley admitted that he “lied to the court,” the Special Master maintains his position that “[a]t numerous times during the March 7 hearing, Bradley acknowledged that he knew his declaration contained inaccurate information, but he signed it anyway.” *See* SM Resp. to TLF at 18. That the Special Master differentiates “lying” from intentionally filing a false declaration is bizarre, but beside the point. The Special Master is correct that the hearing transcript “speaks for itself.” *Id.* That is why Thornton’s Objections excerpt in full all lines of the transcript that the Special Master cites in support of his assertion that Garrett Bradley *admitted* he intentionally filed a false affidavit with the Court. None of the citations support the Special Master’s conclusion. *See* TLF Objs. at 41-42. Quite simply, the fact that Garrett Bradley signed the affidavit in September 2016 (undisputed) and that Garrett Bradley stated in March 2017 that the affidavit contained misstatements (undisputed) does not mean that at the time Garrett Bradley signed the affidavit in 2016 he knew it contained the misstatements he recognized in 2017. The Special Master or his

counsel either do not understand this simple logic or are intentionally conflating two concepts as a means of misleading the Court into a finding of misconduct.

**c. The Special Master Still Cannot Decide Whether Garrett Bradley Read The Boilerplate Declaration**

As noted in Thornton's Objections, TLF Objs. at 40, it is impossible to reconcile the Report and Recommendations' statement that "The Special Master believes Bradley did not read the narrative section at all," R&R at 231, with its findings that Bradley "intentionally and willfully" and "deliberately and intentionally" filed a false affidavit. *See* R&R at 233-35. Unable to fit the facts to his theory, the Special Master now attributes this striking inconsistency to what he calls, in perhaps the understatement of the year, "**evidentiary imprecision.**" SM Resp. to TLF at 19 (emphasis added). Yet in the very same brief, the Special Master also stridently states that there is "**voluminous evidence** presented by the Master during his investigation, which, **in compelling fashion**, shows that Bradley acted intentionally in submitting a false fee declaration." *Id.* at 14 (emphasis added). *See also id.* at 24 n.20 ("As the **evidence abundantly shows**, Thornton, acting largely through its managing partner Garrett Bradley, intentionally misled the Court . . .") (emphasis added); *id.* at 27 ("[T]he record evidence establishes that Bradley knew his declaration contained false and misleading statements[.]"). Apparently, the Special Master's "voluminous" evidence of intent is both "compelling" and "abundant," but it also happens to be "imprecise."

The nonsense does not end there. In what is perhaps the most illogical sentence in all of the Special Master's submissions, the Special Master writes in his Response:

Contrary to Thornton's objection, it is not the Special Master's finding that Garrett Bradley read the declaration, but rather that he reviewed it, knew that it contained false information, but signed it anyway.

*Id.* at 19.

It is difficult to understand what this means or how the Special Master could include this sentence in a submission to the Court with a straight face. Undersigned counsel is aware of no distinction between the words “read” and “review” in this context. Either Mr. Bradley carefully **read** the boilerplate section of the affidavit, **recognized** that it contained misstatements, and signed it anyway, or he did not. Because the Special Master continues to waver on whether Mr. Bradley actually read the boilerplate section of the affidavit, the Special Master comes up with an admittedly novel argument that there is some sort of difference between the words “review” and “read,” and while Mr. Bradley may have never “read” the fee declaration, he most certainly “reviewed” it.

The rest of this section of the Special Master’s Response, which includes the following sentence, fares no better:

Whether Bradley read the Declaration, “saw” it, or whether it was read or explained to him by Evan Hoffman or another colleague, or whether he was content to read only the emailed drafts, **is not important**.

*Id.* at 19. (emphasis added).

Far from being “not important,” it is instead crucially important that Mr. Bradley carefully read the affidavit and recognized the misstatements, if the Special Master is to charge Mr. Bradley with “intentionally and willfully” and “deliberately and intentionally” filing a false affidavit. *See* R&R at 233-35. How can the Special Master establish that Mr. Bradley “**knew** the declaration contained inaccurate statements but signed it anyway,” SM Resp. to TLF at 19, if “evidentiary imprecision” leads the Special Master to present contradictory statements to the Court as to whether Mr. Bradley ever read the boilerplate section of the affidavit? It bears repeating that the Special Master found that “the statements in Bradley’s Declaration were false and **not the product of negligence**, but of an **intentional and willful decision to . . . submit a**



**false affidavit,**” yet the Special Master cannot tell the Court whether Garrett Bradley read the declaration and recognized the misstatements or not.<sup>10</sup> *See id.* at 19-20 (emphasis added).

Simply put, the Special Master’s conclusions as to Thornton don’t arise from the record but distort the record. It is indeed troubling that such material inconsistencies could exist in a document generated at the end of a two-year, nearly \$5 million investigation, especially when the conclusions of the investigation unfairly tarnish a law firm with a 40-year history of service to clients.

**d. The Special Master Again Mischaracterizes An Email Which Was Explained To Him Both During His Investigation And In Thornton’s Objections**

Further mischaracterizing the evidence, on page 20 of his Response, the Special Master quotes an email in which there is a reference to **Michael Thornton** mistakenly using a lodestar figure in **August 2015** for the proposition that “even among Class Counsel, Thornton, and Garrett Bradley, were neither forthright nor clear with the reporting of their lodestar.” Thornton previously addressed this email with the Special Master in an April 2018 submission, *see* Thornton’s Resp. to Request for Add’l. Submission, 4/12/18, at 11-12 (TLF Objs. Ex. 3) (Dkt. 446-4), and then again in a lengthy footnote in its Objections. The footnote is reproduced in its entirety below for the benefit of the Court:

Of course, this is not the only place where the Report and Recommendations unfairly impugns the reputation of the Thornton Law Firm and its attorneys. As an additional example, page 54 of the Report quotes a lengthy email from co-counsel which the Special Master characterizes as “warning Bradley not to include unwarranted hours in Thornton’s fee petition.” The underlying email states, “I heard third-hand that Mike [Thornton] recently said on a call (that I wasn’t on) that Thornton Law Firm was showing \$14 million . . . I am hopeful that Mike T simply misspoke or was guessing when he said \$14 million and that we are not going to suddenly see an additional 12,000 hours mysteriously appear on Thornton Law Firm’s behalf.” In the response, which does not appear in the Report, Michael Thornton replies, “I did say something like that on the call, but preceded it by saying

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<sup>10</sup> *See also id.* at 20 (“Bradley **intentionally** submitted his sworn declaration and **deliberately** allowed the Court to rely on information that **he knew** to be false.”) (emphasis added).

**it was a guess** and that I would have to ask Mike Lesser for the actual figure at that point which of course is not complete as with the other firms.” 8/30/15 Email, TLF-SST-031166 (SM Ex. 87) (emphasis added). Nor does the Special Master include a subsequent email, which clarified that the mistake was the result of a simple transposing of concepts, in which Michael Lesser writes, “**I think that 14 would have been our share of the fee, making some assumptions, and not the actual size of our lodestar.**” 8/30/15 Email, TLF-SST-038587 (TLF Ex. 24) (emphasis added). This later email was identified for the Special Master, *see* Thornton’s Resp. to Request for Add’l. Submission, 4/12/18, at 11-12 (TLF Ex. 3), as was deposition testimony from co-counsel that “I think Mike Thornton may have simply been mistaken because that’s not the number they ultimately reported.” *Id.* (citing Chiplock Dep., 9/8/17, at 64:16-18 (SM Ex. 41)). The Special Master was either recklessly inattentive or chose to ignore this evidence, publishing innuendo with a complete disregard for injuring the reputation of a highly respected member of the bar.

TLF Objs. at 109 n.87.

The Special Master must either have neglected to read this footnote or have decided to disregard the evidence cited therein because it did not fit his false narrative.

### **III. The Special Matter Does Not Respond To Thornton’s Arguments That Thornton Did Not Violate Rule 11 And That The Court Should Not Refer Garrett Bradley To The Board Of Bar Overseers**

Surprisingly, the Special Master declines to respond in any substantive manner to the over 25 pages of legal and factual analysis in Thornton’s Objections explaining why Thornton did not violate Rule 11 and why Garrett Bradley should not be referred to the Board of Bar Overseers. Thornton respectfully refers the Court to pages 44 to 59 of its Objections, which discuss the legal framework for Rule 11 sanctions and evaluates in detail each of the six discrete “false statements” that the Special Master believes support Rule 11 sanctions. With respect to the BBO referral, Thornton respectfully refers the Court to pages 67 to 78 of its Objections, which contain a detailed legal analysis of Rules 3.3 and 8.4 of the Massachusetts Rules of Professional Conduct.

As with other areas where the Special Master remains silent, Thornton assumes that the Special Master's failure to address Thornton's substantive objections is a recognition that such objections are well-founded. In particular, Thornton's Objections regarding the Special Master's reliance on the *In re Schiff* case should completely undermine any confidence in the Special Master's or his counsel's legal analysis.<sup>11</sup> Perhaps Thornton's Objections are why the Special Master seems now to step back from the bar referral, which he initially stated was necessary because he "conclud[ed] that Garrett Bradley is guilty of professional misconduct for violating rules 3.3(a)(1) and (3) and 8.4(c) of the Massachusetts Rules of Professional Conduct." R&R at 245. The Special Master now concludes only that "[a] referral, of course, is meant to prompt greater scrutiny of Attorney Bradley's actions and is not a recommendation that any bar discipline be imposed." SM Resp. to TLF at 21. *Compare* R&R at 365 ("For the falsity of the sworn declaration statements . . . the Special Master recommends that significant monetary sanctions, and *professional discipline be levied.*") (emphasis added).

#### **IV. The Special Master Continues To Suggest That The Court Impose The Highest Or Second Highest Rule 11 Sanctions Imposed in The First Circuit In At Least The Last Twenty Years**

The Rules 11 sanctions the Special Master continues to seek, between \$400,000 and \$1 million, are truly extraordinary. As noted in Thornton's Objections, undersigned counsel searched for all reported Rule 11 orders in all courts in the First Circuit over the last twenty years and identified only three cases where a court imposed sanctions of over \$100,000. In one of

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<sup>11</sup> The Special Master, perhaps neglecting to fully read the underlying case he cited, stated in his Report and Recommendations that Bradley's purported misconduct was "eerily similar" to the *Schiff* case and that "*Schiff* informs the Special Master with regard to Bradley's false Declaration in this matter." See R&R at 241, 244. In its Objections, Thornton pointed out that in *Schiff*, the attorney sought costs and fees 47 times greater than her client's recovery, and sought payment for time not actually worked, and in some cases for more than 24 billable hours in one day. See TLF Objs. at 8, 69. Mr. Bradley's conduct is in no way "eerily similar" to attorney Schiff's conduct, and the Special Master's Response is eerily silent on the *Schiff* case.

those cases, the First Circuit, citing Justice Holmes for the proposition that “even a dog . . . distinguishes between being kicked and being stumbled over,” reduced the sanction from \$250,000 to only \$5,000. *See In re Nosek*, 609 F.3d 6, 9-10 (1st Cir. 2010). The Special Master’s response to this exhaustive research is to state—*without citation to any source whatsoever*—that undersigned counsel’s findings are not surprising because “courts within the First Circuit have not had the occasion to impose monetary sanctions with any frequency.” SM Resp. to TLF at 22. Perhaps the Special Master actually conducted a circuit-by-circuit analysis and neglected to include a citation, but this is likely another instance where the Special Master simply states what he hopes to be true without any regard for whether he is accurately representing the facts and law to this Court.

What is telling is that the Special Master does not contest that a \$400,000 to \$1 million sanction would be the first or second highest Rule 11 sanction imposed in the First Circuit in at least twenty years—and perhaps ever. More importantly, the Special Master does not cite *a single case in any circuit* where Rule 11 sanctions in the range he suggested have been imposed, for similar conduct, *or for any conduct whatsoever*. Either the Special Master actually believes that Garrett Bradley’s conduct in this case is *sui generis* in the history of the federal courts and therefore deserving of such an extraordinary Rule 11 sanction or, on the other hand, the Special Master is simply stuck with his previous recommendation because he never researched the range of appropriate sanctions and does not wish to admit the error. *Cf. Lamboy-Ortiz v. Ortiz-Velez*, 630 F.3d 228, 249 (1st Cir. 2010) (citing Rule 11 cases, and noting that in the § 1927 context, \$64,936 sanction “lies far outside the mainstream in this circuit, where sanctions typically amount to less than \$10,000”).

While insisting that the Rule 11 sanction must “have a material effect on Thornton’s recovery [and a] deterrent effect on future violations of the Rule,” *see* SM Resp. to TLF at 22, the Special Master also completely ignores Thornton’s argument that it has already funded its share of the Special Master’s nearly **\$5 million investigation**, and incurred both very substantial legal costs and significant opportunity costs associated with the loss of the Thornton attorneys’ time. As the exclusive purpose of Rule 11 sanctions is deterrence, *see* TLF Objs. at 60, it does not matter where the money went—all that matters is that Thornton has paid a significant amount of money that it otherwise would not have and has been sufficiently deterred. In the unusual context of this case, the Court must consider the costs that have already been imposed on Thornton and then consider whether any additional deterrence is necessary, mindful that any sanction “**must be limited** to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4) (emphasis added).<sup>12</sup>

The Special Master now asserts that the Rule 11 sanction must be substantial because misstatements in fee declarations may be common, and anything short of the recommended sanctions “will have little to no impact on deterring other law firms from continuing the purportedly ‘common’ practice of making misrepresentations before a court to support their substantial fee requests.” SM Resp. to TLF at 24 n.19. This argument again ignores the fact, as noted above, that Thornton has already paid a significant amount of money in the course of this investigation, which also serves the goal of general deterrence as much as a payment directly to the Court under Rule 11 would. The Special Master’s argument also begs the question of

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<sup>12</sup> If the Court is inclined to impose any monetary sanctions on Thornton, the Court should consider crediting Thornton’s payments to fund the Special Master’s investigation against any monetary sanction imposed.

whether such extraordinary Rule 11 sanctions are appropriate given that the conduct is not at all unique—in the context of either this case, or among the class action bar in general.<sup>13</sup>

Further, the Special Master’s recommendation of Rule 11 sanctions continues to be infected by his mistaken belief that such sanctions are compensatory and therefore that the sanctions should be paid to the class. *See* TLF Objs. at 61-62. As noted in Thornton’s Objections, it is clear legal error for the Special Master to recommend that the *sua sponte* sanctions be paid to the class. *Id.* The Special Master is content to let the Court continue to rely on this serious error, and does not withdraw the recommendation or make any correction. His method of calculating the sanctions, 10% to 25% of the double counting error so as to be “proportionate to the relative contribution Garrett’s Bradley false statements had on the [double counting] error itself,” SM Resp. to TLF at 24, is also driven by compensatory purposes. This method—even assuming that the “relative contribution” is correct—does not serve the goals of Rule 11 because it is not “**limited** to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4) (emphasis added). As the 10<sup>th</sup> Circuit Court of Appeals wrote many years ago:

Although a mathematical percentage approach arguably serves the goal of compensation, such an approach fails even to consider whether the penalty imposed is the least severe sanction adequate to deter future abuses. Because the instant district court calculated sanctions without considering the minimum sanction necessary to deter future abuses, we vacate the award of sanctions[.]

*Dodd Ins. Servs., Inc. v. Royal Ins. Co. of Am.*, 935 F.2d 1152, 1159 (10th Cir. 1991).<sup>14</sup>

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<sup>13</sup> Given the widespread use of boilerplate forms among the class action bar, it may be more appropriate for the Court to recommend the adoption of a model Local Rule regarding fee declarations and hourly rate calculations in class actions rather than to penalize Thornton further.

<sup>14</sup> In some instances—for example, where one party incurs fees as a result of responding to an opposing party’s frivolous motion—the person violating the rule may be required to pay the party injured by the violation. *See* TLF Objs. at 65 n.47 (citing Fed. R. Civ. P. 11 advisory committee’s notes).

Finally, Thornton notes that the Special Master is silent in response to Thornton's argument that the unambiguous language of Rule 11 prohibits the imposition of *sua sponte* monetary sanctions post-settlement, and that by recommending such sanctions, the Special Master committed clear legal error. *See* TLF Objs. at 66-67.

**V. The Special Master Continues To Violate The “Basic Principle of Justice That Like Case Should Be Decided Alike”**

The Special Master's recommendations continue to violate the “basic principle of justice that like cases should be decided alike.” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005).

**a. Chargois Recommendations**

In his Report and Recommendations, the Special Master found that the Chargois matter was the “[t]he most troubling issue in this case,” that Labaton's failure to inform the Court was “in derogation of the duties imposed upon it by Fed. R. Civ. P. 23(e)(3),” that Labaton “kept the Court in the dark,” and that Labaton engaged in a “pattern of concealment.” R&R at 303, 309, 313, 316. The Special Master further found that Labaton violated Massachusetts Rules of Professional Conduct 1.2, 1.4, 1.5(e), 3.3, and 7.2(b). *Id.* at 255, 286, 322, 337. Yet despite finding violations of at least five separate Massachusetts Rules of Professional Conduct, the Special Master—without any sense of parity whatsoever with respect to Mr. Bradley—did **not** recommend that Labaton or any of its lawyers be referred to the Board of Bar Overseers.<sup>15</sup>

Somehow after Labaton's offer of settlement, the Special Master's finding of violations of five separate Massachusetts Rules of Professional Conduct has morphed into a finding that Labaton “did not comport with emerging best practices.” *See* SM Supp. to R&R at 5 (Dkt. 485).

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<sup>15</sup> This is particularly ironic in light of the Special Master's recent statement that, with respect to Garrett Bradley, “[a] referral, of course, is meant to prompt greater scrutiny of Attorney Bradley's actions and is not a recommendation that any bar discipline be imposed.” SM Resp. to TLF at 21.

As the Court has indicated, *see* 11/7/18 Hr’g Tr. at 11:11-12 (Dkt. 519), it is unclear what “emerging best practices” actually means, although that term appears eight times in the Special Master’s “Supplement to His Report and Recommendations.” The Special Master’s filings are also unclear, perhaps intentionally so, as to whether he replaced his original conclusions that Labaton violated the Rules of Professional Conduct with his new conclusion that Labaton fell short of “emerging best practices,” or whether the “emerging best practices” conclusion is simply supplemental to his Rules of Professional Conduct conclusions. For instance, the following is indecipherable as to whether the Special Master has withdrawn the Rule 3.3 violation in favor of an amorphous “emerging best practices” finding:

Given Labaton’s past failure to appreciate the full scope of its duty to the Court and the encumbering effects they had on the Court’s duty to administer justice, the Special Master has reevaluated his conclusion that Labaton’s omission of the Chargois Arrangement violated its duty of candor, but finds that Labaton still failed to comport with emerging best practices as to disclosure of fee arrangements with the Court.

SM Brief in Support of Settlement at 17 (Dkt. 511).

And at least with respect to Rule 1.5(e) (regarding “division of a fee”), the Special Master previously found that Labaton violated that rule, *see* R&R at 254 (stating, in a section titled “Labaton failed to comply with Rule 1.5(e),” “Labaton more than ‘imperfectly’ complied with Rule 1.5(e); it violated the Rule, however technical that violation may now be construed in hindsight”). But now the Special Master states not only that there was no violation, but that he never found a violation in the first place. *See* SM Brief in Support of Settlement at 15 n.6 (Dkt. 511) (“The Special Master made no finding with respect to the propriety of the payment itself made to Damon Chargois.”).

The point is not that Labaton should be referred to the BBO; Labaton should not be referred to the BBO, as Labaton’s Objections demonstrated. Rather, the point is that the Special



Master's findings are more severe for Thornton than for Labaton for no discernable reason. Further, the "revised" Labaton recommendations demonstrate that the Special Master considered Labaton's Objections and changed his approach and findings considerably (i.e., "emerging best practices") in light of Labaton's Objections. Yet as demonstrated by the Special Master's Response to Thornton's Objections, the Special Master did not seriously consider Thornton's Objections but instead reflexively countered all of Thornton's arguments without regard for their validity. The unequal treatment is striking.

**b. "Employees" Language**

The Special Master's recommendations of extraordinary Rule 11 sanctions and a BBO referral for Thornton and Garrett Bradley relied, in part, on his conclusion that the following statements in Thornton's declaration were false: (1) that the lodestar summarized "time spent by each attorney and professional support staff-member *of my firm* who was involved in the prosecution of the Class Actions"; and (2) that "[f]or personnel who are no longer *employed* by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of *employment* by my firm." R&R at 227 (emphasis added). In this instance, as well, the Special Master did not treat "like case alike" because, despite the fact that both Lieff and Labaton used the **exact same boilerplate** the Special Master finds objectionable as to Thornton, the Special Master recommended Rule 11 sanctions and the BBO referral only for Thornton and Garrett Bradley.

Under the Special Master's reading of the declaration, Lieff's and Labaton's declarations might also be "false." As noted in Thornton's Objections with detailed citations, TLF Objs. at 47-48, the Lieff affidavit lists as Lieff "employees" those attorneys who were actually "contract"

or “agency” attorneys with whom Liefv did not have an employer-employee relationship.<sup>16</sup> Similarly, the Labaton affidavit lists as “employees” those attorneys who were invoiced to Thornton pursuant to the cost-sharing agreement, implying that Labaton paid for all costs of such attorneys on its lodestar when in fact it did not. *Id.* If the Court were interested in the investment each firm made into the case, neither the Labaton nor the Liefv declaration, in a technical sense, conveyed such information, because each of Labaton’s and Liefv’s declarations contained attorney costs that Thornton—not Labaton or Liefv—actually paid for.

Although the Special Master now belatedly acknowledges the technical issues with the Liefv declaration (but not the Labaton declaration), he states that no sanction or discipline is warranted for Liefv, because the statements were simply “imprecise,” “sloppy,” and constituted “loose language.” SM Resp. to Liefv at 27. These conclusions are also applicable to the Thornton declaration, and the Special Master’s conclusion as to Thornton, and in particular the Special Master’s unequal treatment of Thornton, Liefv, and Labaton, is unwarranted.<sup>17</sup> Moreover, the fact that the Special Master, despite his two-year, nearly \$5 million investigation, did not identify the supposed misstatements in the Chiplock declaration prior to submitting his Report and Recommendations to the Court suggests that neither Thornton’s nor Liefv’s misstatements are as significant as the Special Master now claims they are.

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<sup>16</sup> The Special Master states that Thornton’s Objections “insinuate[ed] that the Chiplock Declaration is not entirely accurate.” SM Resp. to Liefv at 6. To be clear, Thornton’s position is that Liefv’s Declaration is only inaccurate under the Special Master’s reading. Thornton does not argue that Liefv and Labaton should be sanctioned for these misstatements, but emphasizes that such misstatements are not sanctionable for any of the three firms. *See Obert v. Republic W. Ins. Co.*, 398 F.3d 138, 143 (1st Cir. 2005) (attorneys should not be sanctioned for erroneously describing a chambers conference as a “hearing”).

<sup>17</sup> Thornton further notes that it appears quite common for non-employees to be listed on firms’ lodestars. For instance, in the *Insulet* case, Glancy Prongay did not disclose on its lodestar that the attorneys listed as “staff attorneys” were actually contract attorneys. Under questioning from the Court, Glancy Prongay described the non-employees as “two contract attorneys . . . . We contracted with them individually.” 8/2/18 Hr’g Tr. at 36:19-21, Dkt. 136, *Ark. Tchrs. Ret. Sys. v. Insulet Corp.*, No. 15-cv-12345-MLW (D. Mass. Aug. 6, 2018).

**c. “Regular Rate Charged”**

As set forth below, the “regular rates charged” language in Thornton’s fee declaration is extremely common. But regardless of how common such language is in class action fee declarations in general, the Special Master completely ignored the fact that in this very case, the statements he takes issue with in Thornton’s declaration—“based on my firm’s current billing rates” and “the same as my firm’s regular rates charged for their services”— are **identical** to those in Lief’s and Labaton’s declarations. Although all three firms **used the exact same language**, and although all three firms acknowledged at the March 7, 2017 hearing that they generally do not have clients who pay by the hour, *see, e.g.*, 3/7/17 Hr’g Tr. at 79:9-22; 88:8-9; 93:11-21 (R&R Ex. 96) (Dkt. 401-95) (*e.g.*, as to Lief, “We have only a handful of paying clients over the years.”), somehow the Special Master finds that only Garrett Bradley violated the Massachusetts Rules of Professional Conduct and should be referred to the BBO and that only Thornton should be sanctioned up to \$1 million. The Special Master concludes that Lief and Labaton, on the other hand, simply used “**imprecise and inexact language**,” but did not violate the Rules of Professional Conduct and that no discipline or sanctions should be imposed because “[a]fter undergoing such particularized scrutiny, these firms [Lief and Labaton] are surely now on notice of the level of exactness required by the Courts . . . .” SM Further Resp. at 4 (Dkt. 523).

The Special Master’s reason for differentiating between Thornton and Labaton is his supposed belief that, unlike Thornton’s, Labaton’s “regular rates charged” language was accurate because Labaton has since discovered it had *some* paying clients. *Id.* at 3. This is another one of the Special Master’s arguments that does not pass the straight face test. Labaton disclosed a very

small number of paying clients (apparently a total of five paying clients in the seven-year period between January 1, 2010 and December 31, 2016),<sup>18</sup> but Labaton has not indicated the number of hours billed to these clients, or the (likely infinitesimal) proportion of hourly revenue compared to Labaton's contingent fee revenue. And indicative of the paying clients' insignificance, Mr. Sucharow, who is Chairman of Labaton, and who signed Labaton's fee declaration in September 2016, stated at the March 2017 hearing, "We don't have paying clients, your Honor. . . . Most firms in our field do not have billable clients. . . . [W]e don't have billable clients." 3/7/17 Hr'g Tr. at 79:9-15 (R&R Ex. 96) (Dkt. 401-95).

Importantly, although the Special Master represented to the Court that "Labaton provided information to the Special Master during written discovery showing that, from 2010-2016, Labaton had a small number of hourly clients who paid by invoice those rates listed on the fee petition, or commensurate with the listed rates," he never compared the seventy-one timekeepers listed on Labaton's declaration with the list of Labaton attorneys who had paying clients. Had he done so, the Special Master would have found that of the **seventy-one** timekeepers on Labaton's lodestar, only **four** timekeepers had charged time to paying clients in 2016.<sup>19</sup> Moreover, the "**2016 billing rates**" for the four timekeepers charged to paying clients do not match the lodestar rates submitted to this Court **in 2016**. *Compare* Wolosz Aff., 10/30/18, Ex. A (Dkt. 510-2) *with* Sucharow Decl., 9/15/16, Ex. A (R&R Ex. 88) (Dkt. 401-87). In all four cases, the lodestar rates submitted to this Court **in 2016** are **higher** than the rate Labaton's billable clients paid **in 2016**.

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<sup>18</sup> See Wolosz Aff., 10/30/18, Ex. A (Dkt. 510-2). Although there are only five clients listed, some timekeepers have the notation "general rate for hourly matters" next to their rate. There is no indication what this means, but it is possible that based on this notation the actual number of clients is greater than five.

<sup>19</sup> A fifth, Jonathan Gardner, had a single paying client in 2012, but does not appear to have had any paying clients in the years 2013, 2014, 2015, or 2016. Mr. Gardner's paying client paid a rate of \$750 per hour in 2012. See Wolosz Aff., 10/30/18, Ex. A (Dkt. 510-2). Mr. Gardner's rate on Labaton's lodestar in the State Street matter was \$925 per hour. See Sucharow Decl., 9/15/16, Ex. A (R&R Ex. 88) (Dkt. 401-87).

In three instances, the lodestar premium is modest—\$10 in one case and \$25 in two cases—but for attorney Elizabeth Wierzbowski, the rate submitted to the Court as a “regular rate charged” is \$140 more than the rate paid by Labaton’s billable client for Ms. Wierzbowski’s time in 2016.<sup>20</sup> All of this is to say that the after-the-fact realization that Labaton did in fact have a very small number of paying clients (all of whom, a comparison shows, paid rates lower than Labaton’s lodestar rates for the same attorneys) does not place Labaton in any different position than Thornton regarding representations in the fee declaration made in 2016.

As to Lief, although the firm appears to have more paying clients than Thornton or Labaton, it is unlikely that **all** of the attorneys listed on Lief’s lodestar had previously been charged to paying clients at the rates listed. First, nine of the attorneys were contract attorneys, at least two of whom likely began their relationship with Lief in March 2015. *See* Lief’s Resp. to Interrog. 19, 6/1/17 (R&R Ex. 57) (Dkt. 401-56). Second, the \$515 rate at which five staff attorneys were listed on the lodestar was likely an error—the attorneys billed at \$515 per hour were likely intended to be billed at \$415 per hour. *See* Heimann Dep., 7/17/17, at 109:6-12 (R&R Ex. 19) (Dkt. 401-18).<sup>21</sup> And two of the attorneys billed at the \$515 rate—Ann Ten Eyck and Rachel Wintterle—were contract attorneys. *See* Lief’s Resp. to Interrog. 19, 6/1/17 (R&R Ex. 57) (Dkt. 401-56).

Further, five of the six ERISA firms who submitted fee declarations in the State Street matter used the exact same (or substantially similar) boilerplate language that Thornton, Lief, and Labaton used. The Special Master did not focus on the ERISA law firms’ representations, but he did find that at least one ERISA firm which used the boilerplate “regular rates charged”

<sup>20</sup> Ms. Wierzbowski also charged her hourly client \$585 per hour in 2014 and 2015.

<sup>21</sup> That is not to say that the rates were not reasonable, only that they may not have been—under the Special Master’s reading—the “regular rates charged.”

language, Richardson Patrick, is “a 100% contingent fee firm.” R&R at 68. And McTigue Law, which also used the “regular rates charged” language, only has “very few” clients who pay hourly rates. McTigue Dep., 7/7/17, at 83:19 (R&R Ex. 11) (Dkt. 401-10). Further, McTigue Law represented on its fee declaration in the *BNY Mellon* litigation, submitted just thirteen months before the *State Street* fee declaration was filed, that its “regular rates” for attorneys McTigue, Moore, and Markey were \$625, \$625, and \$525—in other words, \$100 less per hour than was represented to the Court as the attorneys’ “regular rates” in the *State Street* litigation.<sup>22</sup> See McTigue Decl., Dkt. 622-5, *In re Bank of N.Y. Mellon Corp. Forex Trans. Litig.*, No. 12-md-2335 (LAK)(JLC) (S.D.N.Y. Aug. 17, 2015) (R&R Ex. 189) (Dkt. 401-188). The “regular rate” for “Sarah McGuane, MBA,” who is a member of McTigue Law’s “staff,” was \$125 less per hour in the *BNY Mellon* litigation than it was in the *State Street* litigation. See *id.*<sup>23</sup>

Aside from McTigue Law and Richardson Patrick, Thornton does not know whether or not the other ERISA law firms have a non-negligible number of clients who pay by the hour. However, the Special Master does not appear to have examined the other firms’ lodestars in the same manner he examined Thornton’s. For instance, in a declaration submitted to the court on April 20, 2017 in the Western District of Washington, a Keller Rohrback partner represented that “Partner rates in my firm range from \$345 to \$900.” Smart Decl., Dkt. 208, *IDS Prop. and Cas. Ins. Co. v. Fellows*, No. 2:15-cv-2031 (W.D. Wash. Apr. 20, 2017). But Mr. Sarko’s lodestar

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<sup>22</sup> As noted, Thornton employed modest increases of \$30 and \$50 for three of its timekeepers. See R&R at 165; TLF Objs. at 56 (“The rates for both Evan Hoffman and Michael Lesser were \$50 greater than in the *BNY Mellon* litigation to reflect that Hoffman had become a partner and that Lesser had gained valuable expertise in FX litigation from the *BNY Mellon* case. The rate for associate Jotham Kinder was \$30 greater than in the *BNY Mellon* litigation.”).

<sup>23</sup> Thornton notes that approximately six weeks ago, McTigue Law filed a fee declaration in support of a nearly \$3 million lodestar in the Southern District of New York which stated: “The hourly rates utilized by my firm in computing its lodestar are at or below its **usual and customary hourly rates charged** for other similar matters.” See McTigue Decl., Dkt. 284-2, *Leber v. Citigroup 401(k) Plan Investment Comm.*, No. 07-cv-9329 (S.D.N.Y. Nov. 2, 2018) (emphasis added).

rate in the State Street matter (2016) was \$925. *See* Sarko Decl., 9/14/16, Ex. A (R&R Ex. 90) (Dkt. 401-89). Another filing in the Washington case lists Jennifer Hill’s “2017 rate” as \$225 (“Keller Rohrback LLP’s established hourly rate[] for th[is] timekeeper[]”). Defendant’s Motion for Attorney Fees and Costs, Dkt. 206, *IDS Prop. and Cas. Ins. Co. v. Fellows*, No. 2:15-cv-2031 (W.D. Wash. Apr. 20, 2017). However, in the *State Street* matter (2016), Ms. Hill’s rate was represented to this Court as \$255. Sarko Decl., 9/14/16, Ex. A (R&R Ex. 90) (Dkt. 401-89).<sup>24</sup> It does not appear that the Special Master has determined whether each of the 56 timekeepers (including 36 paralegals) listed on Keller Rohrback’s lodestar were previously billed at the “regular rates charged” that are listed on the lodestar. As set forth in its Objections, Thornton does not believe this is the proper standard or that Keller Rohrback should be punished if not all timekeepers had been previously billed at the lodestar rates. This is, however, the standard the Special Master applies to Thornton and to Thornton only. *See* TLF Objs. at 53-56.

Simply put, there is no principled basis by which the Special Master can recommend that Thornton should be sanctioned for these misstatements when Lieff, Labaton, Richardson Patrick, and the McTigue Law Firm committed the same error, and additional ERISA counsel may very well have committed the same error as well. This is not to say that all of the firms should be sanctioned, but to highlight that the error itself is not the proper basis for sanctions.

#### **d. Rates Accepted In Other Actions**

As an additional example of how the Special Master deviates from the “basic principle of justice that like cases should be decided alike,” *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005), Thornton refers the Court to the Special Master’s finding that the phrase “have been

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<sup>24</sup> These issues were raised in Thornton’s November 5, 2018 filing (Dkt. 514). Subsequent to that filing, Mr. Sarko contacted undersigned counsel to explain these discrepancies. Thornton raises the discrepancies simply to place in context Thornton’s inadvertent errors and not to suggest that Keller Rohrback’s discrepancies were anything other than inadvertent.

accepted in other complex class actions” in the Thornton fee declaration is false because, “[w]ith the exception of 4 staff attorneys, the \$425 rate charged for the remaining staff attorneys listed on the lodestar, including Michael Bradley, had not been accepted in other complex class actions.” R&R at 228. This is another supposed “false” statement upon which the Special Master based his recommendation that Thornton pay up to \$1 million in Rule 11 sanctions and Garrett Bradley be referred to the BBO.

But only with respect to Thornton does the Special Master read the phrase “have been accepted in other complex class actions” to mean that each *individual* staff attorney (rather than the staff attorney position in general) had previously been listed on an approved lodestar petition at the same rate. **The Special Master does not hold any other firm to this standard.** If the Special Master actually believed that the phrase referred to the history of each individual attorney, he would have been obligated to inquire whether each of the 20 staff attorneys listed on the Lieff affidavit (including the attorneys listed at \$515—which is above Michael Bradley’s rate) and each of the 35 staff attorneys on the Labaton affidavit, had actually been listed somewhere on an approved lodestar petition at the relevant rate (as well as, for that matter, all of the other attorneys on Customer Class Counsel’s and on the ERISA firms’ declarations, including Keller Rohrback’s 36 paralegals). The fact that the Special Master has undertaken this investigation only with respect to Thornton—but has apparently declined to even investigate any of the other firms in the same manner—highlights the unfairness of his approach.

**e. Michael Bradley**

As noted in Thornton’s Objections, Michael Bradley, who the Special Master described as “an experienced attorney,” SM Resp. to TLF at 16, is the only timekeeper the Special Master identified by name for a reduction in rates. There are many issues with the Special Master’s



arguments (including the fact that Michael Bradley’s proposed rate of \$250 is **below** the approved **paralegal** rates for both Lieff and Labaton, and the fact that Lieff listed some of its staff attorneys at \$515 per hour with no objection from the Special Master). *See* TLF Objs. at 9, 84; Sucharow Decl., 9/14/16, Ex. A (R&R Ex. 88) (Dkt. 401-87); Chiplock Decl., 9/14/16, Ex. A (R&R Ex. 89) (Dkt. 401-88). For purposes of this Sur-Reply, however, Thornton simply notes the stark incongruity of the Special Master’s disgorgement recommendation (the difference in lodestar rate and the Special Master’s proposed rate being \$101,600)<sup>25</sup> when Labaton erroneously included nearly the same amount—\$80,000—on its lodestar related to fee petition hours and the Special Master did not recommend disgorgement, or even mention the matter anywhere in his Report and Recommendations.<sup>26</sup>

#### **VI. Thornton Should Not Be Sanctioned For The “Regular Rates Charged” Language**

Thornton has acknowledged that the “regular rates charged” language was unclear and should have been more precise. *See, e.g.*, TLF Objs. at 53. Although the lack of clarity is certainly an issue and class action attorneys should no longer use this boilerplate language, it is important to advise the Court that, based on undersigned counsel’s review, such language is **very common** and is somewhat of a **standard practice** in class counsels’ fee declarations, both in the District of Massachusetts and elsewhere. The language is simply part of one of the boilerplate templates that class action law firms—even exclusively or primarily contingent fee firms—use in submitting fee declarations to the Court. This is not an “everyone does it” excuse, but rather

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<sup>25</sup> The Special Master recommends disgorgement of this amount multiplied by the 1.8 multiplier. R&R at 367.

<sup>26</sup> Lawrence Sucharow executed the Fee Declaration stating that the “[t]ime expended in preparing this application for fees and payment of expenses has not been included in this [fee] request,” but later it came to light that over 100 hours of time totaling \$80,330 related to fee applications was mistakenly included in Labaton’s lodestar submitted to the Court. *See* Labaton’s Resp. to Interrog. 71, 6/9/17 (R&R Ex. 174) (Dkt. 401-173).

crucial context and background for the Court to consider as it determines whether Thornton’s declaration was *intentionally* false, and whether it is appropriate to refer Garrett Bradley to the BBO and to impose the First Circuit’s first or second largest Rule 11 sanctions in the last twenty years—and perhaps ever—on Thornton and Mr. Bradley. Thornton submits that this context shows that the “regular rate charged” language, which was also used by Lief, Labaton, and most of the ERISA law firms, is a sloppy effort, but is not *intentionally* false.

**a. The “Regular Rate Charged” Language Is Common In Fee Declarations Filed In The District Of Massachusetts**

As recent cases demonstrate, the “regular rates charged” language is quite common in fee declarations filed in the District of Massachusetts. As the Court is aware, in the *Insulet* case, both Bernstein Litowitz and Glancy Prongay filed declarations stating that their lodestar rates were the “same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.” See James A. Harrod Decl., ¶ 4, Dkt. 129-3, *Ark. Teacher Ret. Sys. v. Insulet Corp.*, No. 15-cv-12345-MLW (D. Mass. June 1, 2018) (TLF Sur-Reply Ex. 4-B); Joshua L. Crowell Decl., ¶ 3, Dkt. 129-5, *Insulet Corp.*, No. 15-cv-12345-MLW (TLF Sur-Reply Ex. 4-C). Under questioning from the Court, Bernstein Litowitz thereafter informed the Court that the firm did “not meaningfully” have hourly clients and that “we don’t have a practice which we . . . charge people with a bill and then they remit payment to us. The way in which we are compensated is by what we’re doing today, which is to seek reimbursement or to seek payment of fees from common funds.” 8/2/18 Hr’g Tr. at 38:15-18, 41:14-18, *Insulet Corp.*, No. 15-cv-12345 (Dkt. 136). The Glancy Prongay firm likewise informed the Court after questioning that “we are a contingent-based firm” and that the firm had only “a very, very small percentage” of billable work. *Id.* at 37:15-22. The attorney who signed that affidavit told the Court that he was “not knowledgeable about the pay rates” for the firm’s hourly practice, but

gave the example of “someone who works in intellectual property, not really comparable here[.]”  
*Id.* at 37:22-25.<sup>27</sup>

The *Insulet* case was not the only matter in which this Court has received fee declarations containing such language. In at least two additional cases where this Court presided, *Zametkin v. Fidelity Mgmt. and Research Co* and *Harris v. Citigroup*, attorneys submitted fee declarations that included the “regular rates charged” or equivalent language. In both cases, this Court granted the fee award requested by counsel. *See* Order, ¶ 16, Dkt. 115, *Zametkin v. Fidelity Mgmt. and Research Co.*, No. 1:08-cv-10960-MLW (D. Mass. May 11, 2012); Order, ¶ 11, Dkt. 128, *Harris v. Citigroup, Inc.*, No. 1:08-cv-10417-MLW (D. Mass. Aug. 10, 2012). Although it is likely that most or all of the firms submitting declarations in these two cases rely primarily or exclusively on contingent fees, this is clearly true for at least one of the firms. *See In re Johnson and Johnson Derivative Litig.*, No. 10-2033(FLW), 2013 WL 11228425 at \*58 n.84 (D.N.J. June 13, 2013) (“Robbins Geller also apprised me that for the period January 1, 2010 to October 1, 2012, it ‘performed work for clients solely on a contingency basis.’”). The docket numbers, firm names, and excerpts of the relevant declaration language are presented in the chart below.

*Zametkin v. Fidelity Mgmt. & Research Co.*, No. 1:08-cv-10960-MLW (D. Mass.)  
 (all declarations submitted April 13, 2012)

Dkt #	Firm	Excerpt	TLF Sur-Reply Ex.
104	Robbins Geller <sup>28</sup>	“The rates shown below are the usual and customary rates charged for each individual.” (¶ 5)	4-E

<sup>27</sup> As Thornton has previously noted, Glancy Prongay filed a declaration in the Northern District of California with the boilerplate language “are the usual and customary hourly rates charged by Glancy Prongay & Murray LLP” one week *after* the August 2, 2018 hearing in which this Court informed attorneys for the *Insulet* class of the potential issues with their fee declarations. *See* Lee Albert Decl., ¶ 6, Dkt. 2176-9, *In re: Capacitators Antitrust Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. Aug. 13, 2018) (TLF Sur-Reply Ex. 4-D).

<sup>28</sup> As noted above, a Special Master in the District of New Jersey stated, “Robbins Geller also apprised me that for the period January 1, 2010 to October 1, 2012, it ‘performed work for clients solely on a contingency basis.’” *In re Johnson and Johnson Derivative Litig.*, No. 10-2033(FLW), 2013 WL 11228425 at \*58 n.84 (D.N.J. June 13, 2013).

105	Dyer & Berens	“The hourly rates shown below are the usual and customary rates charged for each individual.” (¶ 5)	4-F
107	Holzer Holzer & Fistel	“The hourly rates shown below are the usual and customary rates charged for each individual.” (¶ 5)	4-G

*Harris v. Citigroup, Inc.*, No. 1:08-10417-MLW (D. Mass.)  
(all declarations submitted July 26, 2012)

Dkt #	Firm	Excerpt	TLF Sur-Reply Ex.
121-1	Bonnett, Fairbourn, Friedman & Balint	“This lodestar amount was calculated using the hourly rates shown below, which are the usual and customary rates charged by each attorney/paralegal in matters of this nature[.]” (¶ 8)	4-H
121-2	Klein Kavanagh Costello	“The hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature.” (¶ 8)	4-I
121-3	Robbins Geller <sup>29</sup>	“The hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature.” (¶ 6)	4-J
121-6	National Consumer Law Ctr.	“The hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature.” (¶ 8)	4-K

The “regular rates charged” language or its equivalent routinely appears on fee declarations submitted in this district. Just two months prior to the *Insulet* hearing, in the *In re Solodyn (Minocycline Hydrochloride) Antitrust Litigation* matter, **seventeen law firms**, including Glancy Prongay, filed declarations containing language perhaps more problematic than the language used in Lief’s, Labaton’s, Thornton’s, and the ERISA firms’ declarations in the State Street matter. The firms, docket citations, and excerpts of the relevant declaration language are presented in the chart below.

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<sup>29</sup> See supra note 28.

*In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503-DJC (D. Mass.)

(all declarations submitted June 1, 2018)

<b>Dkt #</b>	<b>Firm</b>	<b>Excerpt</b>	<b>TLF Sur-Reply Ex.</b>
1159-1	Berman Tabacco	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-L
1159-2	Cohen Milstein Sellers & Toll	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-M
1159-3	Cohen, Placitella & Roth	“The historical hourly rates for all personnel of the firm as reflected in Exhibit A were the usual and customary rates that were charged by my firm in similar matters at the time of the case’s inception.” (¶ 5)	4-N
1159-5	Fine, Kaplan and Black	“The historical hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-O
1159-7	Glancy Prongay & Murray	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-P
1159-8	Hach Rose Schirripa & Cheverie	“The hourly rates shown below are the usual and customary rates charged for each individual in our antitrust and complex class action litigation matters.” (¶ 3)	4-Q
1159-9	Heins, Mills & Olson	“The historic hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered.” (¶ 5)	4-R
1159-10	Hilliard Shadowen	“The hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 4)	4-S
1159-11	Hutchings Barsamian Mandelcorn	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-T

1159-12	Lauletta Birnbaum	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-U
1159-13	McGowan Hood & Felder	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-V
1159-14	Miller Law	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-W
1159-15	Motley Rice	“The hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-X
1159-16	Pomerantz LLP	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 4)	4-Y
1159-17	Rusing Lopez & Lizardi	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-Z
1159-19	Shepherd, Finkelman, Miller & Shah	“The historical hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-AA
1159-20	Weinstein Kitchenoff & Asher	“The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms’ hourly and commercial clients.” (¶ 5)	4-BB

There is no way to know whether all seventeen of these firms are exclusively (or primarily) contingent fee firms—or whether each attorney listed on each lodestar was previously charged at the lodestar rate to the firms’ “hourly and commercial clients,” where such language

is used. Given, however, that most or all of the above firms are plaintiffs' firms and that—as demonstrated by both the *State Street* and *Insulet* matters—most plaintiffs' firms are exclusively or primarily contingent fee firms, it is likely that most or all of the seventeen declarations are misleading in the same manner that the Special Master found Thornton's declaration was misleading. Nonetheless, it does not appear that the *Solodyn* Court took any issue with the language; counsel's request for a 33.3% fee award was granted. Order, Dkt. 1176, *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-md-02503-DJC (D. Mass. July 18, 2018).

**b. The “Regular Rate Charged” Language Is Common In Jurisdictions Across The Country**

The “regular rates charged” language is not unique to declarations filed in the District of Massachusetts. Such language is in widespread use in jurisdictions across the country. Because it would require an inordinate amount of space to catalog all uses of the “regular rates charged” language in all jurisdictions, for the purposes of this Sur-Reply, Thornton focuses on declarations filed by law firms who have publicly acknowledged that they rely or have been found to rely exclusively or primarily on contingent fees. The sample is admittedly small because most law firms do not have occasion to publicly acknowledge their fee structures and there are very few judicial findings regarding law firms' fee structures. Nonetheless, as set forth below, Thornton has identified 36 fee declarations filed by 7 firms in 14 jurisdictions containing the “regular rates charged” language or equivalent language. Thornton notes that these firms are well-regarded in the industry and have served their clients and the public for many years. Many of the firms have distinguished histories of bringing important lawsuits that have held corporations accountable for their misdeeds and shone a light on corporate malfeasance that would have otherwise have continued indefinitely. Thornton's identification of these firms is no way a criticism, and Thornton has utmost respect for these law firms and their contributions to the legal profession

and society at large. These examples are only intended to demonstrate to the Court just how common boilerplate language in fee declarations actually is.

**i. Bernstein Litowitz**

As noted above, on August 2, 2018, Bernstein Litowitz informed this Court that the firm did “not meaningfully” have hourly clients and that “we don’t have a practice which we . . . charge people with a bill and then they remit payment to us. The way in which we are compensated is by what we’re doing today, which is to seek reimbursement or to seek payment of fees from common funds.” 8/2/18 Hr’g Tr. at 38:15-18, 41:14-18, *Insulet Corp.*, No. 15-cv-12345-MLW (Dkt. 136). As further evidence of Bernstein Litowitz’s contingent fee practice, Thornton refers the Court to the Special Master’s Report in *In re Johnson and Johnson*, 2013 WL 11228425 at \*58 n.84 (“Bernstein Litowitz indicates that its work is undertaken almost ‘exclusively’ on a contingent basis.”). The following Bernstein Litowitz fee declarations contain the “regular rates charged” language or equivalent language:

Case	Dkt.	Date	Excerpt	TLF Sur-Reply Ex.
<i>In re CTI Biopharma Corp. Sec. Litig.</i> , 2:16-cv-00216 (W.D. Wash.)	110	12/28/17	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 5B are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.” (¶ 83)	4-CC
<i>Bach v. Amedisys, Inc.</i> , 3:10-cv-00395-BAJ-RLB (M.D. La.)	343-6	11/8/17	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.” (¶ 4)	4-DD
<i>In re Salix Pharma., Ltd.</i> , 1:14-cv-08925-KMW (S.D.N.Y.)	225-4	6/19/17	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.” (ECF p.55, ¶ 4)	4-EE



<i>In re Dole Food Co., Inc.</i> , 1:15-cv-01140-LPS (D. Del.)	94-1	6/13/17	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.” (ECF p. 69 ¶ 4)	4-FF
<i>In re: NII Holdings, Inc. Sec. Litig.</i> , 1:14-cv-00227-LMB-JFA (E.D. Va.)	257-2	8/12/16	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm’s regular rates charged for their services, which have been accepted in other securities or shareholder litigations.” (ECF p. 53 ¶ 4)	4-GG
<i>In re Schering-Plough Corp. / Enhance Sec. Litig.</i> , 2:08-cv-00397-ES-JAD (D.N.J.)	423-5	7/2/13	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates that would be charged for their services in non-contingent matters.” (ECF p. 57 ¶ 4)	4-HH
<i>In re Merck &amp; Co., Inc. Vyotrin/Zetia Sec. Litig.</i> , 2:08-cv-02177-ES-JAD (D.N.J.)	333-3	7/2/13	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates that would be charged for their services in non-contingent matters.” (PDF p.158 ¶ 4)	4-II
<i>In re Johnson &amp; Johnson Derivative Litig.</i> , 3:10-cv-02033-FLW-DEA (D.N.J.)	192-5	8/31/12	“The hourly rates shown below are the usual and customary rates charged for each individual.” (¶ 4)	4-JJ
<i>In re King Pharma., Inc. Sec. Litig.</i> , 2:03-cv-77 (E.D. Tenn.)	284	12/19/06	“The hourly rates for attorneys and professional staff members included in these schedules are the same as the regular current rates charged for their services in non-contingent matters.” (¶ 79)	4-KK

## ii. Glancy Prongay & Murray

As noted above, on August 2, 2018, Glancy Prongay informed the Court after questioning, that “we are a contingent-based firm” and that the firm had only “a very, very small percentage” of billable work. 8/2/18 Hr’g Tr. at 37:15-22, *Insulet Corp.*, No. 15-cv-12345-MLW (Dkt. 136). The attorney who signed that affidavit told the Court that he was “not

knowledgeable about the pay rates” for the firm’s hourly practice. *Id.* at 37:22-25. The following Glancy Prongay fee declarations contain the “regular rates charged” language or equivalent language:

Case	Dkt.	Date	Excerpt	TLF Sur-Reply Ex.
<i>In re: Capacitators Antitrust Litig.</i> , 3:14-cv-03264-JD (N.D. Cal.)	2176-9	8/13/18	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the usual and customary hourly rates charged by Glancy Prongay & Murray LLP.” (¶ 6)	4-D
<i>In re Ductile Iron Pipe Fittings (“DIPF”) Indirect Purchaser Antitrust Litig.</i> , 3:12-cv-00169-AET-LHG (D.N.J.)	338-2	5/9/18	“The hourly rates for the attorneys and professional staff in my firm reflected in Exhibit A are the usual and customary hourly rates charged by my firm in similar matters.” (PDF p.186; ¶ 5)	4-LL
<i>In re Marcum LLP.</i> 1:15-cv-01938-DAB (S.D.N.Y.)	28	1/3/18	“The hourly rates shown below are the usual and customary rates charged for each individual in our cases.” (¶ 5)	4-MM
<i>In re Nu Skin Enter., Inc. Sec. Litig.</i> , 2:14-cv-00033-JNP (D. Utah)	140-6	8/31/16	“The hourly rates for attorneys and professional support staff in GPM included in Exhibit A are the same as GPM’s regular rates charged for their services, which have been accepted in other securities or shareholder litigations.” (¶ 4)	4-NN
<i>Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd.</i> , 2:09-cv-00852-LA (E.D. Wis.)	688-8	6/9/15	“The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 2 are the usual and customary hourly rates charged by the firm.” (¶ 7)	4-OO

### iii. Scott & Scott

Although Scott & Scott did not use the “regular rates charged” language in its *Insulet* declaration, it informed the Court during the hearing that although it has “some clients who pay hourly rates,” the firm’s “practice is primarily contingent.” 8/2/18 Hr’g Tr. at 38:20-22, *Insulet*

*Corp.*, No. 15-cv-12345 (Dkt. 136) Likewise, in a hearing in the District of New Jersey in 2012, Scott & Scott informed the Court, “[w]e do almost exclusively contingent fee work” and that, although “[we have] some hourly rate cases,” “we almost have almost none.” 9/18/12 Hr’g Tr. at 18:14-19, *Glover v. Ferrero USA*, 11-CV-1086 (D.N.J.) (Dkt. 111). The following Scott & Scott fee declarations contain the “regular rates charged” language or equivalent language:

<b>Caption</b>	<b>Dkt.</b>	<b>Date</b>	<b>Excerpt</b>	<b>TLF Sur-Reply Ex.</b>
<i>In re Ductile Iron Pipe Fittings Indirect Purchaser (“DIPF”) Antitrust Litig.</i> , 3:12-cv-00169-AET-LHG (D.N.J.)	338-2	5/9/18	“The hourly rates for the attorneys and professional staff as reflected in Exhibit B are the usual and customary hourly rates charged by my firm in similar matters.” (ECF p.283 ¶ 6)	4-PP
<i>Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd.</i> , 2:09-cv-00852-LA (E.D. Wisc.)	688-16	6/9/15	“The hourly rates for the attorneys and professional support staff as set forth in Exhibit 2 are the usual and customary hourly rates charged by my firm.” (¶ 10)	4-QQ
<i>Murr v. Capital One Bank (USA), N.A.</i> , 1:13-cv-01091-LMB-TCB (E.D. Va.)	135-2	4/27/15	“The lodestar calculation is based on the firm’s current billing rates, including for attorneys and employees no longer employed by the firm, at the firm’s customary hourly rates charged to our fee-paying clients, and which have been accepted as reasonable by other district courts in numerous other class action litigations.” (¶ 3)	4-RR
<i>Cornwell v. Credit Suisse Grp.</i> , 1:08-cv-03758-VM-JCG (S.D.N.Y.)	109	6/27/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-SS

#### iv. Richardson Patrick

In this case (the *State Street* matter), the Special Master found that Richardson Patrick is “a 100% contingent fee firm.” R&R at 68. The following Richardson Patrick fee declarations contain the “regular rates charged” language or equivalent language:

Case	Dkt.	Date	Excerpt	TLF Sur-Reply Ex.
<i>Pinel v. Aurora Loan Serv. LLC</i> , 4:10-cv-03118-SBA (N.D. Cal.)	233	11/14/14	“[T]he rates charged by the attorneys and support professionals at my firm are the same as charged for non-contingent legal services by the law firm, and are within the range of rates normally and customarily charged in the Northern District of California by attorneys and support professionals of similar qualifications and experience in cases of this kind, and in my home district in the District of South Carolina.” (¶ 20)	4-TT
<i>Latham v. Matthews, et al.</i> , 6:08-cv-029995-JMC (D.S.C.)	253-3	6/29/11	“The hourly rates for the partners, attorneys and professional support staff in my firm are the same as the regular current rates charged for their services in securities or shareholder litigation.” (¶ 4)	4-UU

#### v. Carney Bates & Pulliam<sup>30</sup>

In a 2010 opinion, the Massachusetts Superior Court noted that “counsel acknowledged that the Carney Williams firm has no paying clients; its business consists entirely of shareholder class action suits similar to this case, and it receives payment only through court-approved applications for attorneys’ fees and expenses to be paid either by opposing parties or from a common fund.” *Pennsylvania Ave. Funds v. Brandi*, No. 08-2106-BLS2, 2010 WL 1173044 at \*1 (Mass. Super. Ct. Mar. 25, 2010). The following Carney Bates fee declarations contain the “regular rates charged” language or equivalent language:

<sup>30</sup> It appears that the firm was previously known as Carney Williams Bates Bozeman & Pulliam.

<b>Case</b>	<b>Dkt.</b>	<b>Date</b>	<b>Excerpt</b>	<b>TLF Sur-Reply Ex.</b>
<i>In re Google, LLC</i> , 5:15-cv-04062-LHK (N.D. Cal.)	97-1	10/30/17	“Our respective firms’ billing rates, which were used for purposes of calculating the lodestar here, have been approved by courts in California and throughout the country, are the usual and customary rates that our respective firms charge for services in other actions, and are set in accordance with prevailing market rates.” (¶ 20)	4-VV
<i>In re Facebook, Inc.</i> , 4:13-cv-05996-PJH (N.D. Cal.)	238-1	5/26/17	“Our respective firms’ billing rates, which were used for purposes of calculating the lodestar here, have been approved by courts in California and throughout the country, are the usual and customary rates that our respective firms charge for services in other actions, and are set in accordance with prevailing market rates.” (¶ 27)	4-WW

#### vi. Robbins Geller

The Special Master in the *In re Johnson and Johnson Derivative Litig*, stated in his report that, “Robbins Geller also apprised me that for the period January 1, 2010 to October 1, 2012, it ‘performed work for clients solely on a contingency basis.’” *In re Johnson and Johnson*, 2013 WL 11228425 at \*58 n.84. The following Robbins Geller fee declarations contain the “regular rates charged” language or equivalent language:

<b>Case</b>	<b>Dkt.</b>	<b>Date</b>	<b>Excerpt</b>	<b>TLF Sur-Reply Ex.</b>
<i>In re Matrixx Initiatives Inc.</i> , 2:04-cv-00886-NVW (D. Ariz.)	165	9/28/12	“The hourly rates shown below are the usual and customary rates charged for each individual.” (¶ 5)	4-XX
<i>In re Johnson &amp; Johnson Derivative Litig.</i> , 3:10-cv-	192-8	8/31/12	“The hourly rates shown below are the usual and customary rates charged for each individual.” (¶ 5)	4-YY

02033-FLW-DEA (D.N.J.)				
<i>In re Amaranth Nat. Gas Commodities Litig.</i> , 1:07-cv-06377-CM-HBP (S.D.N.Y.)	389	3/12/12	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 5)	4-ZZ
<i>In re Giant Interactive Grp., Inc. Sec. Litig.</i> , 1:07-cv-10588-PAE (S.D.N.Y.)	82	10/5/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-AAA
<i>In re RHI Entm’t, Inc.</i> , 1:09-cv-08634-AKH (S.D.N.Y.)	44	10/4/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-BBB
<i>In re Intervoice-Brite, Inc.</i> , 3:01-cv-01071-K (N.D. Tex.)	306-2	7/27/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-CCC
<i>In re Accuray Inc. Sec. Litig.</i> , 4:09-cv-03362-CW (N.D. Cal.)	138	7/15/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 5)	4-DDD
<i>In re JA Solar Holdings Co., Ltd.</i> , 1:08-cv-10475-JGK (S.D.N.Y.)	82	6/3/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-EEE
<i>In re The PMI Grp., Inc. Sec. Litig.</i> , 3:08-cv-01405-SI (N.D. Cal.)	98	10/8/10	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-FFF

### vii. Abraham Fruchter

The Special Master in the *In re Johnson and Johnson Derivative Litig*, found that “[t]he practice of Abraham Fruchter only handles contingent matters.” 2013 WL 11228425 at \*58 n.84 (citing a May 22, 2013 letter from Jeffrey S. Abraham to the Special Master.) The following Abraham Fruchter fee declarations contain the “regular rates charged” language or equivalent language:

Case	Dkt.	Date	Excerpt	TLF Sur-Reply Ex.
<i>In re Marcum LLP</i> , 1:15-cv-01938-DAB (S.D.N.Y.)	22	12/4/17	“The hourly rates shown below are the usual and customary rates charged for each individual attorney in our cases or were the rates last in effect when work was performed with regard to this matter for attorneys no longer employed by the firm.” (¶ 79)	4-GGG
<i>In re Fuqi Int’l Inc. Sec. Litig.</i> , 1:10-cv-02515-DAB (S.D.N.Y.)	109-3	8/31/15	“The hourly rates shown below are the usual and customary rates charged for each individual attorney in our cases or were the rates charged when the work was performed with regard to this matter for attorneys no longer employed by the firm.” (¶ 7)	4-HHH
<i>In re Internap Network Serv. Corp.</i> , 1:08-cv-03462-CAP (N.D. Ga.)	85-7	10/30/13	“The hourly rates shown below are the usual and customary rates charged for each individual in our cases.” (¶ 7)	4-III
<i>In re Giant Interactive Grp., Inc. Sec. Litig.</i> , 1:07-cv-10588-PAE (S.D.N.Y.)	83	10/5/11	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-JJJ
<i>In re Warner Chilcott Ltd. Sec. Litig.</i> , 1:06-cv-11515-WHP (S.D.N.Y.)	81	4/9/09	“The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.” (¶ 4)	4-KKK

#### viii. Labaton Sucharow

In addition to the above examples, as Thornton noted in its Objections, Labaton identified ten cases filed in eight jurisdictions in which it submitted fee declarations to courts with the “regular rates charged” language or equivalent language. *See* Labaton’s Resp. to Interrog. No. 61, 6/9/17 (R&R Ex. 174) (Dkt. 401-173). *See also* Labaton’s Resp. to Interrog. No. 71, 6/9/17 (R&R Ex. 174) (Dkt. 401-173) (stating that such language “has appeared in Labaton Sucharow’s fee petitions for several years.”).

**c. Other Courts Considering The Boilerplate Language Do Not Impose Sanctions**

Despite the extremely common use of the “regular rates charged” or equivalent language, few Court appear to have commented on it. Those that have commented on the “regular rates charged” language or similar language, however, have not imposed sanctions, much less substantial sanctions. For example, in *Ryan v. Allied Interstate, Inc.*, 882 F. Supp. 2d 628, 635 (S.D.N.Y. 2012), the Court noted that there was “no evidence that any of the [petitioning law] firm’s clients pay its so-called ‘regular’ hourly billing rates . . . – the rates appear to exist for the purposes of charging defendants . . . under . . . fee shifting provisions.” No sanction was imposed despite the fact that numerous courts had previously rejected the law firm’s “regular” rates. In *Pennsylvania Avenue Funds*, 2010 WL 1173044 at \*1, Judge Fabricant of the Superior Court noted that the “declaration . . . refers to the hourly rates sought as counsel’s ‘regular hourly rates.’ At the hearing, however, counsel acknowledged . . . that the . . . firm has no paying clients . . . . Thus, the hourly rates claimed are ‘regular’ only in the sense that these are the rates the firm regularly seeks in its fee applications.” Judge Fabricant did not impose any sanctions.

In *Pasternak v. Radek*, the Court considered an attorney’s declaration in support of another attorney’s fee and stated “I currently charge an hourly rate of \$425 per hour.” Mark D. DeBofsky Decl., ¶ 2, Dkt. 32-2, No. 07-C-2858 (N.D. Ill. Nov. 21, 2007). In reviewing the affidavit, the Court that it “cannot determine from [the] affidavit whether he actually charges this rate to, and collects it from, clients who are paying him on an hourly basis, or whether (for example) this is a rate that he has been awarded by courts in similar litigation.” *Pasternak v. Radek*, No. 07-C-2858, 2008 WL 278851 at \*6 (N.D. Ill. Apr. 3, 2008). Finally, in the *Johnson & Johnson* litigation in the District of New Jersey, the Special Master found that the firms that used the “regular rates charged” language had “no paying clients and always depend[ed] on the



vagaries of fee shifting and the approval of courts for payment of their declared rates[.]” *In re Johnson & Johnson*, 2013 WL 11228425 at \*58. The Special Master further noted that “the certifications of the three attorneys vouching for the rates in this case did not discuss the lack of a ‘living, breathing’ fee-paying plaintiff.”” *Id.* Although the Special Master recommended reducing the fee, no sanction was imposed.

**d. Alternative Language Fares No Better**

It appears that the most common alternative to the “regular rates charged” language is an attestation to the effect of: “the lodestar rates are the same as regular rates charged in non-contingent matters and/or that have been accepted in class actions.” Thornton provides the following examples from *In re Sonus Networks Inc. Sec. Litig. II* (D. Mass.), *Esposito v. Am. Renal Holdings* (D. Mass.), and *In re Delphi Corp. Sec. Litig.* (E.D. Mich.) (Rosen, J.). In all three of the cases, the Court awarded the full amount of attorney’s fees sought by class counsel.

*In re Sonus Networks, Inc. Sec. Litig. II*, No. 1:06-CV-10040-MLW (D. Mass.)  
(all declarations submitted Apr. 17, 2009)

Dkt #	Firm	Excerpt	TLF Sur-Reply Ex.
93	Wolf Popper	“The hourly rates for the attorneys, paralegals, and other professionals and para-professionals at the firm listed in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent fee matters and/or which have been accepted and approved in other securities or shareholder litigations.” (¶ 53)	4-LLL
93-5	Berman DeValerio	“The hourly rates for the attorneys, paralegals, and other professionals and para-professionals at the firm listed in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent fee matters and/or which have been accepted and approved in other securities or shareholder litigations.” (¶ 6)	4-MMM

*Esposito v. Am. Renal Assoc. Holdings, Inc.*, No. 1:16-cv-11797-ADB (D. Mass.)  
(all declarations submitted May 10, 2018)

Dkt #	Firm	Excerpt	TLF Sur-Reply Ex.
103	Kirby McInerney	“The hourly rates for the attorneys and professional staff included in Exhibits C and D are the same range as the	4-NNN

		regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigations.” (¶ 53)	
103-4	Law Offices of Mark Booker	“My hourly rate is the same as the regular current rates that I charge for my services in non-contingent fee matters or that have been accepted in other securities or shareholder litigation.” (¶ 5)	4-000

*In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich.)  
(all declarations submitted November 6, 2007)

Dkt #	Firm	Excerpt	TLF Sur-Reply Ex.
279-3	Bernstein Litowitz	“The hourly rates for the BLB&G attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-PPP
279-6	Nix, Patterson & Roach	“The hourly rates for the NPR attorneys, NPR professional support staff and contract attorneys included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-QQQ
279-8	Schiffirin Barroway Topaz & Kessler	“The hourly rates of the attorneys and paralegals in my firm included in Exhibit ‘1’ are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-RRR
279-11	Grant & Eisenhofer	“The hourly rates for the G&E attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-SSS
279-14	Lowenstein Sandler	“The hourly rates for the LS attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-TTT
279-15	Sullivan, Ward, Asher & Patton	“The hourly rates for the SWA&P attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.” (¶ 3)	4-UUU

At first glance these declarations might seem preferable to the declarations submitted by Loeff, Labaton, Thornton, and most of the ERISA counsel in the State Street matter because of

the use of the word “or.” Even assuming that the word “charged” means billed to paying clients, the statement is technically correct for exclusively contingent fee firms because the attestation is only that **either** the rates are billed to hourly clients **or** the rates are accepted in class actions. If the rates had been accepted in class actions, then because of the disjunctive “or,” it simply would not matter whether or not the firm had paying, hourly clients. Of course, in the context of this case, it would be a grossly unfair result if a BBO referral and up to \$1 million in Rule 11 sanctions were to hinge upon the omission of the word “or” in Thornton’s fee declaration.<sup>31</sup>

The more important point, however, is the fact that these “and/or” declarations are common and have been accepted in this district and by Judge Rosen himself in the Eastern District of Michigan. While the transcript for Judge Rosen’s fee hearing is not available, it does not appear that in the other cases the courts asked whether the “and” or the “or” were applicable to the firms submitting the declarations (i.e., whether the lodestar rates had been paid by hourly clients, whether the lodestar rates had been accepted in other class actions, or both). 6/14/18 Hr’g Tr., *Am. Renal*, No. 1:16-cv-11797-ADB (Dkt. 107); 7/1/09 Hr’g Tr., *Sonus*, No. 1:06-cv-10040-MLW (Dkt. 103). On notice that the law firms may or may not have had paying clients, the courts granted class counsel’s fee requests in full. That is not to say, or in any way suggest, that declarations to the Court are unimportant, but simply to put in context Lief’s, Labaton’s, Thornton’s, and most of the ERISA counsel’s declarations in this case.

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<sup>31</sup> The insertion of the bolded “or” in paragraph 4 of Thornton’s declaration would have apparently solved these issues: “The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm’s regular rates charged for their services, **OR** which have been accepted in other complex class actions.”

## VII. Thornton Should Not Disgorge One Third Of The Double Counting Error

### a. Disgorgement Is An Inappropriate Remedy For The Double Counting Error

The Special Master or his counsel fundamentally misunderstand how fee awards are calculated. This misunderstanding permeates his Report and his Responses to both Lief and Thornton, and fatally informs his ultimate recommendation that the firms disgorge part of their fee award related to the double-counting error. As explained in Thornton’s Objections, the First Circuit has endorsed the percentage-of-fund method for determining attorney’s fees in common fund cases. *See In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 308 (1st Cir. 1995) (“[T]he POF approach offers significant structural advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace.”). Under this approach, the lodestar is not used as a *basis* for the fee award, but as a *cross-check* on the reasonableness of the fee award.<sup>32</sup> *See* TLF Objs. at 14-15. Thus, when a court finds it necessary to reduce the lodestar in a percentage-of-fund case, the next step is to determine if the resulting multiplier is reasonable—*not* to require counsel to forfeit the difference between the submitted lodestar and the reduced lodestar. *See* Rubenstein Decl., 6/20/18, at ¶¶ 18-20 (Dkt. 368).

The Special Master continues to ignore this basic principle, arguing that his recommendation is not intended to replace a percentage-of-fund calculation, but is an “equitable remedy.” *See* SM Resp. to Lief at 10-12. In support of this claim, the Special Master misleadingly cites **four statutory fee award cases** where courts apply discounts to the lodestar

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<sup>32</sup> The lodestar cross check is intended to avoid the “item-by-item” accounting that is present in the pure lodestar method. *See In re Thirteen Appeals*, 56 F.3d at 308 (“The difficulties inherent in implementing the lodestar . . . militate in favor of sticking to the POF method.”).

in order to reach a reasonable fee award.<sup>33</sup> But in these cases, the lodestar is used as the basis for counsel's fee request, and *not* as a cross check. In the one case the Special Master cites in support of his disgorgement theory which considered a percentage-of-fund award, the court ended up employing the same approach used by countless other courts that have adjusted the lodestar post-filing.<sup>34</sup> *See In re Anthem*, No. 15-MD-02617-LHK, 2018 WL 3960068, at \*27 (N.D. Cal. Aug. 17, 2018) (reducing hours and rates on the lodestar and then using the resulting multiplier to determine if the percentage awarded was reasonable); *see also* TLF Objs. at 14 n.7 (collecting cases).

**b. Thornton Is Not Responsible For The Double Counting Error**

Even if disgorgement were a proper remedy, Thornton should not be required to disgorge any amount related to the double-counting error. As noted in Thornton's Objections, all of the attorney time on Thornton's lodestar was proper; it was Lieff's and Labaton's lodestars that contained the erroneously "double counted" time. *See id.* at 18. Although these double counting errors were simple mistakes, the mistakes were made by Lieff and Labaton—not by Thornton. *See id.*; *see generally* Ltr. from B. Kelly to W. Sinnott (TLF Objs. Ex. 4) (Dkt. 446-5). In particular, as to Labaton, Michael Rogers "assumed . . . that Thornton would take credit for the hours spent by the Staff Attorneys for which it paid on its own lodestar," and "[i]f he had been asked at the time . . . [Eric Belfi] likely would have assumed that Thornton would report the time spent by Staff Attorneys for whom it was paying on a Thornton lodestar." Labaton's Resp. to Interrog. 33, 6/1/17 (R&R Ex. 249) (Dkt. 401-260). Due to "compartmentalization" at Labaton,

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<sup>33</sup> *See, e.g., Moreno v. City of Sacramento*, 534 F.3d 1106 (9th Cir. 2008) (reducing lodestar submitted in support of statutory fee-shifting award); *Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc.*, 776 F.2d 646 (7th Cir. 1985) (same); *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) (same); *Natalie M. ex rel. David M. v. Dep't of Educ., Haw.*, No. 06-cv-00539 JMS-BMK, 2007 WL 2110510 (D. Haw. July 19, 2007) (same).

<sup>34</sup> The Special Master cited to the *Anthem* Special Master's Report and Recommendations, but the District Court did not adopt the *Anthem* Special Master's method of calculating the fee award.

the attorneys that Thornton paid for were nonetheless included on Labaton's lodestar.<sup>35</sup> See R&R at 56. For its part, Lieff acknowledged in its interrogatory responses that the double-counting of the four attorneys on its lodestar was its own mistakes caused by internal Lieff miscommunications and internal Lieff training issues:

[As to two of the staff attorneys, t]his error appears to have been due to miscommunication in the February – May 2015 timeframe between and among the lead attorney on the case (Mr. Chiplock), the partner tasked with ensuring that time was correctly reported and invoiced to Thornton (Mr. Diamand), the person overseeing Staff Attorneys on a day-to-day basis (Mr. Dugar), the Firm's Accounting Department, and the Firm's Human Resources Department.

Lieff's Resp. to Interrog. 39, 6/1/17 (R&R Ex. 57) (Dkt. 401-56).

...

In short, due to personnel issues, [an additional two staff attorneys] do not appear to have received the same timekeeping training that [other staff attorneys] received earlier that year (and whose time, as described above, was correctly allocated).

Lieff's Resp. to Interrog. 40, 6/1/17 (R&R Ex. 57) (Dkt. 401-56).

The Special Master himself does not appear to quibble with the fact that there were no errors on Thornton's lodestar, noting in his Report:

[A]t least some attorneys at both Labaton and Lieff believed that the staff attorneys paid for and allocated to Thornton would be included on Thornton's lodestar petition, and that the **inclusion of these same staff attorneys by Labaton and Lieff on their own fee petitions was simply a mistake**[.]

R&R at 220-21 (emphasis added).<sup>36</sup>

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<sup>35</sup> The November 10, 2016 letter to the Court, which was the product of drafting and careful review by all three firms, itself states that the inadvertent double counting occurred in the Labaton and Lieff lodestars. See Goldsmith Ltr. to Ct., 11/10/16 (R&R Ex. 178) (Dkt. 401-177) ("The hours of the Alper SAs reported in the Thornton lodestar report **mistakenly were also reported in the Labaton Sucharow lodestar report** . . . . A portion of the hours of two of the Jordan SAs reported in the Thornton lodestar report (C. Jordan and J. Zaul) **mistakenly were also reported in the Lieff Cabraser lodestar report** . . . . The hours of two other Jordan SAs (A. Ten Eyck and R. Winterle) **mistakenly were included in the Lieff Cabraser lodestar report.**") (emphasis added).

<sup>36</sup> See also SM Resp. to Lieff at 13 ("Specifically, Lieff overstated [its] lodestar by \$868,417 hours, and erroneously credited itself for a substantial portion of hours worked by four different attorneys."); *id.* at 18 (" . . . Lieff failed to supply accurate information in two material respects: (1) the time for two Lieff contract attorneys . . . should not have been included as part of Lieff's lodestar at all; and (2) a portion of two staff

Moreover, once Lief and Labaton drafted lodestars that included the erroneously double-counted time, there was only one firm, Labaton, that had the opportunity—and the responsibility—to catch the error before submitting the declarations to the Court. *See Exec. Summ.* at 18 (“Labaton was Lead Class Counsel and as such was ultimately responsible for preparing an accurate and reliable fee petition . . . . This responsibility would surely encompass catching and rectifying any mistakes or misstatements[.]”). Labaton was the only firm with access to all of the fee declarations before they were filed. *See TLF Objs.* at 19-20. A Labaton “settlement attorney,” tasked with compiling the fee declarations for submission to the Court and coordinating the fees process, “did nothing to verify the accuracy of any hours submitted by the various firms,” R&R at 223, and did not “circulate among the class firms the individual declarations or lodestar reports.” *Id.* at 224. Further, the Labaton settlement attorney failed to “perform a side-by-side comparison of the lodestar reports,” which would have revealed the double-counting errors on Lief’s and Labaton’s lodestars. *See R&R* at 56 n.39. The Special Master himself found that, “as to allocation of responsibility for the double-counting, Labaton must bear ultimate responsibility.” *Exec. Summ.* at 18.<sup>37</sup>

The fact that: (1) all attorney time listed on Thornton’s lodestar was correct (the errors occurring on the Lief’s and Labaton’s lodestars); and (2) Labaton was responsible for compiling the fee declarations for submission to the Court, should be dispositive of responsibility for the double-counting error. But in his Response, the Special Master continues to argue that Thornton

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attorneys[’] . . . hours, were mistakenly included on Lief’s lodestar for a period of time in which they had been allocated to Thornton.”).

<sup>37</sup> The Special Master backpedals in his Response and implies (counterintuitively) that Thornton should not equate his reference to Labaton’s “ultimate responsibility” for the lodestar to mean that Labaton had “the greatest responsibility for the overstated lodestar.” *See SM Resp. to TLF* at 10. The Special Master now opines that Labaton’s failure to check the lodestar “is not the only cause nor even the leading proximate cause” of the lodestar error. *Id.*

“significantly contributed to the double-counting mistake,” and that Thornton had a “material role in causing the overstatement.” SM Resp. to TLF at 9. The Special Master’s proposed remedy, although touted as “tailored to the mistakes each firm made,” *id.* at 10, is not “tailored” at all, but simply requires each firm to disgorge the double counting in equal shares.<sup>38</sup>

The Special Master’s arguments that Thornton “significantly contributed to the double-counting mistake” conflate participation in an otherwise valid risk-sharing agreement with the missteps within Lieff and Labaton that led to the double-counting error. For instance, he alleges that Thornton “spearheaded” the risk-sharing agreement; Thornton “benefited disproportionately” from the risk-sharing agreement; and Thornton was a “willing and originating participant” in the risk-sharing agreement. *Id.* at 6-7, 10. But all of these are arguments that Thornton simply **participated in an otherwise valid agreement**—not that Thornton “significantly contributed to the double-counting mistake,” which was due to Lieff’s and Labaton’s internal errors. The Special Master himself found that “the agreement itself was not a ‘significant’ cause of the double-counting,” SM Resp. to Lieff at 15, and that the purpose of the agreement was legitimate, *see* R&R at 43 (“The purpose of the cost-sharing agreement was to share the cost and risk burdens of the litigation among the three Customer Class firms.”).<sup>39</sup>

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<sup>38</sup> The Special Master himself appears confused as to whether the “one third each” remedy is “tailored” or not, employing different—and contradictory—arguments in his Responses to Thornton and Lieff. In his Response to Thornton defending this remedy, he cites the First Circuit for the proposition that “individualization is the name of the game,” and as noted above, states that the remedy is “tailored.” SM Resp. to TLF at 9-10. But in the section of his Response to Lieff defending the “one third each” remedy, he states: “It is important to point out that the Special Master did *not* equate the firms’ respective responsibility for the double counting with the percentage of the overstated lodestar that he recommended each firm pay to the class. Because it was not possible to assign percentage responsibility with Talmudic precision, the Special Master, rather struck a balance to administer ‘rough justice’ to remedy the double-counting errors[.]” SM Resp. to Lieff at 19 (citations omitted).

<sup>39</sup> Of course, such risk-sharing is sometimes necessary for plaintiffs’ firms to bring large scale class actions given that the firms may never receive *any* compensation for their work and even if they do receive compensation, it is often years away. The firms’ costs (staff salary, rent, etc.) do not disappear during the pendency of the litigation.



Further, the Special Master’s claim that Thornton “spearheaded” the risk-sharing agreement is misleading. All three firms agreed that for their mutual benefit they would share the risk of the staff and contract attorneys. As set forth in Labaton’s response to the Special Master’s interrogatories, it “made sense . . . to [Labaton] because it was a fair way to share costs associated with the review.” Labaton’s Resp. to Interrog. 32, 6/6/17 (R&R Ex. 249) (Dkt. 401-260). Further, it was not as if this was the first time that Labaton had engaged in a risk-sharing arrangement. As further noted in Labaton’s response to the Special Master’s interrogatories, Labaton identified at least 17 other cases where costs of Labaton-employed staff attorneys were paid by another law firm. *Id.* And in one or more of those previous cases, the firm which paid for the attorneys listed the attorneys on its lodestar. *See* R&R at 222; <sup>40</sup> Politano Dep., 6/14/17, at 23:11-19 (R&R Ex. 98) (Dkt. 401-97). And of course, Thornton was not special in being a “willing and originating participant” in the risk-sharing agreement—all three firms had to be “willing and originating participant[s]” in the risk-sharing agreement. In any case, the Special Master has provided no evidence to support the theory that Thornton “spearheaded” the agreement.

The Special Master’s conclusion that Thornton should pay one third disgorgement due to errors on Lief’s and Labaton’s lodestar because Thornton “benefited disproportionately to the other firms from the artifice of putting the attorneys employed (or retained) by Labaton and Lief on its own lodestar,” SM Resp. to TLF at 7 n.11, is also unpersuasive. If the agreement was valid, whether Thornton benefitted disproportionately from the agreement is beside the point. But it is simply not true—as the Special Master continues to insinuate—that the risk-sharing

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<sup>40</sup> The Special Master’s description of the risk-sharing agreement in his Response as “an **otherwise unheard-of** name-and-cost sharing agreement to list employees of another firm on a lodestar petition” (emphasis added) is not true and is directly contradicted by his R&R. *Compare* SM Resp. to TLF at 10 *with* R&R at 222.

agreement was primarily for the benefit of Thornton. Lief and Labaton would not have agreed to enter into the risk-sharing agreement if it was not also in their interest to do so. If the case had failed, Thornton would have been disproportionately harmed because it had invested resources into the case that it did not need to, and Labaton and Lief would have benefited disproportionately from the risk-sharing agreement.<sup>41</sup> All three firms received the “benefit of the bargain.”

As to the Special Master’s theory that Thornton is responsible for the double-counting error because it did not inform the Court of the mechanics of the risk-sharing agreement, **none** of the three customer class counsel did so.<sup>42</sup> Although the Thornton declaration did not state that it financed but did not house certain attorneys listed on its lodestar, the Lief and Labaton declarations did not note that certain attorneys listed on their lodestars were financed by Thornton.<sup>43</sup> If **any** firm had been more explicit about the risk-sharing agreement, perhaps the Court would have **identified** the double-counting error, but **the cause** of the error was Lief’s and Labaton’s internal miscommunications that led them to improperly add attorney time to their lodestars. The Special Master’s argument is essentially that Thornton is responsible for the double-counting error because if Thornton had described the risk sharing agreement—even

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<sup>41</sup> The Special Master also believes Thornton bears responsibility because the risk-sharing agreement was not reduced to writing. *See* SM Resp. to TLF at 11 (“[N]ot a single email explicitly communicated Thornton’s intention to include Labaton’s and Lief’s contract and staff attorneys on its lodestar.”). This is not a valid criticism of Thornton because, as noted, the double-counting occurred on Lief’s and Labaton’s lodestars. Perhaps a writing would have helped Lief and Labaton more effectively communicate to their accounting department and/or settlement counsel how the shared attorneys should be accounted for, but that is a Lief/Labaton communication problem, not a Thornton problem. The “cognitive [ ] barrier to identifying and correcting any mistakes on the lodestar before it went to the Court,” SM Resp. to Lief at 16, was present at Lief and Labaton—not at Thornton.

<sup>42</sup> The Special Master attaches to his Response a revised declaration that Thornton sent to Labaton on September 13, 2016, demonstrating the edits to the firm contribution section, to show that Thornton *could have* modified the boilerplate language that is at issue in this case. *See* SM Resp. to TLF at 11 n.16. The fact that TLF, like Lief, Labaton, and most of the ERISA firms who did not modify the boilerplate language *could have done so* is not in dispute.

<sup>43</sup> As noted, attorney time financed by Thornton was included in Lief’s and Labaton’s lodestars by mistake.

though no firm did so—it would have been easier for the Court to discover **Lieff’s and Labaton’s errors.**

**VIII. The Special Master’s Theory That Contract Attorneys Should Be Listed As Expenses Is Supported By Nothing Other Than His Newfound Personal Policy Preference**

In his Report, the Special Master proposed that contract attorneys be listed as expenses rather than included as lodestar. The Special Master failed to cite any legal authority supporting his recommendation, instead basing his argument solely on his personal policy preferences. In his Response, the Special Master once again fails to cite a single case in support of his position.<sup>44</sup> In fact, he acknowledges that the approval of contract attorneys in the lodestar is the “consistent trend” in the “vast majority” of cases.<sup>45</sup> SM Resp. to Lieff at 22, 24. Yet the Special Master disregards precedent, claiming that courts considering the issue have engaged merely in “superficial discussions” that ignore the “various factors that should be considered in evaluating whether a non-associate attorney should be included on the lodestar but focus exclusively on addressing contract attorneys vis-à-vis their associate counterparts.” *Id.* It is unclear what the Special Master means by this, as it seems that comparing contract attorneys to associates is precisely what the Special Master is doing. Nevertheless, the Special Master neither lists nor cites to any authority regarding these purported “factors.” This is likely because the “factors” do not exist in case law. What does exist is an abundance of opinions approving the practice of including contract attorneys in the lodestar. *See In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d

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<sup>44</sup> This is not surprising; undersigned counsel’s extensive review of case law has not turned up any cases supporting the Special Master’s position.

<sup>45</sup> In fact, the Special Master himself has approved this arrangement in the past. In at least one case, a firm listed contract attorneys on its lodestar at rates ranging from \$275 to \$325. *Beckworth Aff.*, Dkt. 350-5, *In re Delphi Corp. Secs. Litig.*, No. 05-md-1725 (E.D. Mich. Apr. 22, 2008). Judge Rosen did not appear to take any issue with this arrangement and awarded the amount of fees requested by class counsel. *See Order Awarding Attorneys’ Fees*, Dkt. 417, *In re Delphi Corp. Secs. Litig.*, No. 05-md-1725 (E.D. Mich. June 26, 2008) (awarding 18% attorneys’ fees from the “Gross Deloitte & Touche Settlement Fund”).

369, 394 (S.D.N.Y. 2013) (“[C]ourts routinely reject claims that contract attorney labor should be treated as a reimbursable litigation expense.”); *see also* TLF Objs. at 78-79 (collecting cases). This Court should not ignore the substantial weight of authority simply because the Special Master muses that courts have failed to “wade deeply” into the issues he finds important.<sup>46</sup>

Because the Special Master has identified no *relevant* legal authority to support his recommendation, the Special Master turns in his Response to employment law, relying on cases prohibiting employers from misclassifying employees as independent contractors. *See* SM Resp. to Lieff at 22-23. This is an apples-to-oranges comparison. Further, the Special Master’s argument that courts should frown upon the use of contract attorneys because they present an impediment to “fostering up and coming attorney talent” and because “[i]t should be the goal of law firms . . . to fully employ the attorneys they trust to handle such high level work,” *see id.*, is an unwarranted intrusion into law firms’ staffing models based on what the Special Master thinks is best for the legal profession writ large, rather than what is legal and appropriate based on precedent.<sup>47</sup> *See* Rubenstein Decl., 6/20/18, at ¶ 15 (Dkt. 368) (“[I]t would be bad public policy to premise the right to an attorney’s fee on the indicia of the employment relationship rather than on the services being provided to the client.”). To the extent the Special Master’s policy

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<sup>46</sup> In fact, the one court to have the benefit of the Special Master’s Report at its disposal when considering this issue flatly rejected his proposal. *See In re Anthem, Inc. Data Breach Lit.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at \*18 (N.D. Cal. Aug. 17, 2018) (“To the extent that [objector] advocates for a categorical rule that contract and staff attorneys must be billed at cost, the Court disagrees. [Objector] identifies *no* case adopting this *hardline* position.” (emphasis added)).

<sup>47</sup> *See* Edward Levi, Att’y Gen. of the U.S., Address at the Phila. Award Dinner Honoring J. William H. Hastie (Apr. 7, 1975), <https://www.justice.gov/sites/default/files/ag/legacy/2011/08/23/04-07-1975.pdf> (noting the “tendency [that] puts the courts, inappropriately, in the forefront on questions which really require statements of policy preference rather than elaboration of established principle.”).

concerns are availing, those arguments are best suited for a legislature, a local rules committee, or the ABA—not a court determining the proper amount of attorneys’ fees for class counsel.<sup>48</sup>

In addition to the flawed reasoning underpinning his analysis, the Special Master’s recommended remedy does not withstand scrutiny. In his Report, the Special Master recommended that the firms disgorge the “total award” of \$2,386,058 “for the time of the contract attorneys” less an expense of \$50 per hour for all of the hours worked. R&R at 368 (emphasis added). Now, the Special Master recommends that Liefk disgorge \$2,241,098.40<sup>49</sup> and Thornton disgorge *an additional* \$1,344,057, for a total disgorgement of over \$3.5 million related to contract attorneys. He explains that “while Liefk retained all seven of the contract attorneys . . . Thornton claimed four of these rented attorneys on its lodestar,” and recommends that Thornton disgorge an amount for the “four contract attorneys not employed by Thornton or any of the Customer Class firms.” Resp. to TLF at 12-13. It is unclear how the Special Master arrives at these figures. In total, Liefk listed nine contract attorneys on its lodestar, not seven, and Thornton listed four. Some of the hours for these attorneys were double counted. It is unclear which seven attorneys were included in the Special Master’s initial calculation, or how he accounted for overlapping time. Thus, his recommendation that Thornton should pay an amount in addition to the previously-determined “total award” of \$2,386,058 appears to be a

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<sup>48</sup> See Remarks of Gerald Rosen, Thomas M. Cooley Law School Distinguished Brief Award Banquet, *Judicial Independence in an Age of Political and Media Scrutiny*, 14 T.M. COOLEY L. REV. 685 (1997) (“[J]udges must understand that with the great privilege of independence comes a concomitant obligation to exercise restraint and not exceed the judicial role of interpretation, not law making.”). Even if this were a policy discussion, the Special Master neglects to consider that his proposal would disadvantage the plaintiffs’ bar vis-à-vis the defense bar, thus making it more difficult to bring class action cases. The staff and contract attorney models allows plaintiffs’ firms the flexibility needed to respond to market demand and to take on incremental risk. Hiring full-time staff is a completely different financial proposition for defense firms, whose attorneys can regularly bill by the hour, than it is for plaintiffs’ firms, who may not realize any value from their full-time staff until years after attorney salaries are paid.

<sup>49</sup> In his Report, the Special Master used the \$2,386,058 figure. R&R at 367. In his Response to Liefk’s Objections, the Special Master used, and accepted as true, the \$2,241,098.40 figure calculated by Liefk. SM Resp. to Liefk at 6 n.8.

mistake that may improperly double count contract attorney time that appeared on both Thornton's and Lief's lodestar.

**IX. For Purposes Of The Lodestar Cross-Check, Michael Bradley's Rate Does Not Affect The Fee Award**

As Thornton noted in its October 25, 2018 filing, the Special Master need not respond to, and the Court need not decide, Thornton's objection to the Special Master's finding that Michael Bradley's lodestar rate should be reduced to \$250.<sup>50</sup> *See* TLF Resp. to Ct. Order at 2 (Dkt. 504). Although Thornton detailed in its Objections why the recommended rate of \$250 (which is lower than the approved lodestar rates for both Lief and Labaton **paralegals**), *see* TLF Objs. at 83-89, is unsupported by the facts, the Court need not determine a lodestar rate because **any reduction in Michael Bradley's lodestar rate does not affect the fee award**. Even if **all value** associated with Michael Bradley's work were removed from the lodestar—which would be unfair because the Special Master has acknowledged that “the total time Michael Bradley spent working on the *State Street* document review, 406.4 hours, was reasonable,” R&R at 217, and that such time “is supported by reasonably reliable contemporaneous records,” R&R at 366—there would be no material effect on Thornton's lodestar or the overall lodestar. The overall multiplier would be 2.01 after accounting for the double-counted time and removing all of Michael Bradley's time.

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<sup>50</sup> Thornton made this statement in its October 25, 2018 filing pursuant to the Court's October 16, 2018 Order that Thornton and the Special Master attempt to narrow the issues in dispute. *See* Oct. 16, 2018 Order (Dkt. 494). The Special Master refers to this as: “Thornton gloss[ing] over its previous objection to the Special Master's conclusion that \$250 /hour, rather than the proffered rate of \$50/hour, was a more appropriate rate for Michael Bradley.” SM Resp. to TLF at 24. There is no “glossing over”; Thornton was attempting to narrow the issues in dispute pursuant to the Court's order. Thornton understands that the Court may be concerned with Michael Bradley's rate for the purposes of determining whether the attestations in the declaration were accurate as to his regular rate. This is a different question than whether \$250, \$500, or anything in between is an “appropriate” rate for Michael Bradley for lodestar purposes and whether any rate would change the multiplier.

Despite Thornton's October 25, 2018 filing,<sup>51</sup> the Special Master's Response continues to argue that Michael Bradley's rate should be reduced to \$250 and the difference in the submitted rate and the actual rate should be disgorged. Both as a substantive and procedural matter, the Special Master is wrong. But to the extent the Court is inclined to adjudicate this issue, Thornton respectfully refers the Court to pages 83 to 92 of its Objections. There is no need to repeat those Objections here, but Thornton notes that the Special Master's Response provocatively states that there is a "question of whether Michael Bradley added any value to the State Street case." SM Resp. to TLF at 25. Yet, in the **same paragraph**, the Special Master admits that "the **value added** by Michael Bradley, with a legal background and years of legal practice under his belt, was **comparable to an associate**[".]” *Id.* Thornton further notes that the Special Master's assertion that Michael Bradley "had no affiliation with the firm, no stake in the case, and no stake in the firm's success," *id.*, is patently false. Michael Bradley had more stake in the success of the case than any of the other staff attorneys. As the Special Master himself found, "Bradley worked on a contingent basis; he would only be paid if the class recovered a settlement entitling counsel to fees." R&R at 45 n.26.

#### **X. Staff Attorney Rates Are Reasonable**

As both the Special Master and Prof. Rubenstein found, the staff attorney rates used by customer class counsel in this case were reasonable. Prof. Rubenstein found that the range of staff attorney rates in his sample of twelve class action cases was \$250 to \$550 with a mean (in 2016 dollars) of \$379.53. Rubenstein Decl., 7/31/17, at ¶ 36 (TLF Objs. Ex. 1) (Dkt. 446-2). To

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<sup>51</sup> Thornton also narrowed the issues in dispute by agreeing that the Special Master need not respond to, and the Court need not decide, Thornton's Objections regarding ERISA counsel. *See* TLF Resp. to Ct. Order at 2 (Dkt. 504). This is because the ERISA-related objections were related to the Chargois payment and have been resolved by Labaton's proposed resolution. Nonetheless, Thornton respectfully requests that the Court review Thornton's ERISA-related objections because they further demonstrate the unreliability of the Special Master's Report and Recommendations. *See* TLF Objs. at 92-108.

the extent that Customer Class Counsel's staff attorney rates were higher than the mean, it is important to note that the Special Master found that their rates were justified because of the experience of the staff attorneys in FX litigation and the nature of their work on the case. As the Special Master concluded:

[T]he higher rates billed were justified [because] . . . the staff attorneys involved in this complex litigation performed substantive and valuable work beyond simple document review . . . . Most, if not all, of the staff attorneys had specialized experience and/or skills that made them particularly equipped to perform comprehensive document review and spot important issues in the case [and] the staff attorneys here performed tasks that were more important than simple document review, such as preparing sophisticated legal memoranda and factual memoranda to prepare their respective litigation teams for depositions should the case reach that stage.

R&R at 172-73.

...

[T]he Customer Class firms have presented sufficient evidence that the staff attorneys involved in this complex litigation possessed specialized experience and performed substantive and valuable work well beyond simple document review. The majority of the staff attorneys had specialized experience and skills in securities litigation, and a number of staff attorneys carried specialized knowledge from their prior participation in the *BONY Mellon* matter.

R&R at 180.

After a two-year, \$5 million investigation in which the Special Master recommended draconian sanctions be imposed (including, perhaps, the largest Rule 11 sanction in the First Circuit), it is notable that the Special Master concluded the staff attorney rates were reasonable. If the Special Master had a plausible basis to challenge the rates of Customer Class Counsel's staff attorneys, he would no doubt have done so.<sup>52</sup>

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<sup>52</sup> As noted in his Report and Recommendations, the Special Master distinguishes staff attorneys employed by Lief and Labaton from contract attorneys employed by outside agencies. See R&R at 181-89. The Special Master finds that the contract attorney rates are not reasonable. Although the Special Master suggests at one point that the \$425 rate that Thornton used for staff attorneys might be inappropriate, he does not appear to make any finding about such rates, nor about Lief's \$515 rate for certain attorneys. See TLF Objs. at 22-26.



Also relevant is that the *overall* blended rate for Customer Class Counsel was reasonable. Prof. Rubenstein identified 20 Massachusetts federal and state class action fee approvals and calculated a mean blended billing rate (adjusted to 2016 dollars) of \$484.05. Rubenstein Decl., 7/31/17, at ¶ 30 (TLF Objs. Ex. 1) (Dkt. 446-2). When Prof. Rubenstein selected another sample of 20 cases across the country limited to settlements between \$100 million and \$500 million, he found a nearly identical mean blended billing rate (adjusted to 2016 dollars) of \$484.67. *Id.* at ¶ 31. In this case, Prof. Rubenstein found that customer class counsel’s blended billing rate was \$484.70, just 65 cents above the mean of the first sample, and 3 cents above the mean of the second sample. *Id.*

The *overall* blended billing rate is an important consideration for the Court because it indicates that “Lead Counsel distributed work among partners, associates, non-partnership track attorneys, and paralegals in an appropriate fashion.” *Id.* at ¶ 32. To the extent that staff attorneys’ rates are at the higher end of the spectrum, it is important to recognize that the staff attorneys here were replacing associates who would have charged clients at even higher rates. As the Special Master stated in his Report and Recommendations:

These rates are particularly reasonable when compared to the relatively low number of hours billed by associates for the three Customer Class law firms (less than 2% of the total time billed). This can be attributed to the fact that the staff attorneys effectively did the work of lower- to mid- level associates.

R&R at 180.

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Instead, the Special Master concluded that “the hours and rates of the attorneys of each of the law firms for whom lodestar petitions were submitted to the Court are reasonable and accurate, and consistent with applicable market rates for comparable attorneys in comparable markets for comparable work.” R&R at 365.

Essentially, the rates of the staff attorneys are justified in part because they were functioning as associates—performing the work that associates might be performing at defense firms or at other plaintiffs’ firms.<sup>53</sup>

Unlike Prof. Rubenstein’s empirical work on the appropriate rates for staff attorneys, *supra*, CEI’s recommendation that the rates of all but three of the staff attorneys be reduced to \$200 does not appear to be supported by any relevant metric.<sup>54</sup> For instance, in arguing that \$200 per hour is “overly generous for attorneys doing the work of junior associates,” CEI cites to a Southern District of New York case stating that a \$200 rate for a second-year associate is “higher than the norm in this district.” CEI Memo. at 18 (Dkt. 522) (citing to *Gonzalez v. Scalinatella, Inc.*, 112 F. Supp. 3d 5, 28 (S.D.N.Y. 2015)). CEI does not disclose that this is a distorted comparison; the cited case concerns the rates of **FLSA attorneys**, who have significantly lower rates than attorneys involved in complex financial fraud litigation such as the *State Street* case.

CEI brushes aside the best benchmark for staff attorney rates in this case—the most analogous case to this one, *BNY Mellon*, where Lief’s blended staff attorney rate was \$418.23 and the overall blended staff attorney rate was \$378.03. *See* Nirmul and Chiplock Joint Decl., Dkt. 622, *In re Bank of New York Mellon Corp. Forex Trans. Lit.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y. Aug. 17, 2015) (hereinafter *BNY Mellon*) (R&R Ex. 186) (Dkt. 401-185).<sup>55</sup>

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<sup>53</sup> *See also* R&R at 177 (“[T]hey were all attorneys with years of experience and the majority of them had specialized knowledge or skills in the FX and securities areas . . . They did not simply do first-level document review; they also digested complex information and prepared topical memoranda and witness memoranda for depositions – the same kind of work done by associates at large firms.”).

<sup>54</sup> CEI’s brief is not without error. Page 4 of the accompanying affidavit states that “Roger Yamada, who billed time for legal research and tasks besides document review, also [is] assigned a rate of \$375/hour for the sake of the cross check.” M. Frank Bednarz Decl. at ¶ 9 (Dkt. 522-1). The chart on the following page, however, assigns Mr. Yamada a rate of \$200/hour, not \$375/hour. *Id.*

<sup>55</sup> *See also* Daniel Chiplock Decl., Dkt. 622-1, *BNY Mellon*, No. 12-MD-2335 (LAK) (JLC); Joseph H. Meltzer Decl., *BNY Mellon*, No. 12-MD-2335 (LAK) (JLC); Frank R. Schirripa Decl., Dkt. 622-6, *BNY Mellon*, No.

Counterintuitively, CEI argues that the comparison to *BNY Mellon* is unwarranted because: (1) “the Judge in *BONY Mellon* has not been shy about slashing similar fees to avoid windfalls;” and (2) “the *BONY Mellon* request was approved in full because [the Court found that] ‘this really was an extraordinary case in which plaintiff’s counsel performed, at no small risk, an extraordinary service, and they ought to be compensated for it.’” CEI Memo. at 29 n.15 (Dkt. 522). As to the first point, it does not make sense that this Court would decline to credit the *BNY Mellon* rates because, although Judge Kaplan sometimes reduces rates, he declined to do so in the *BNY Mellon* case. The fact that Judge Kaplan did not reduce the rates indicates that the *BNY Mellon* rates were reasonable; not that they were unreasonable. Second, the result and advocacy in *BNY Mellon* was as laudable as the result and advocacy in this case. CEI’s attempt to prove otherwise demonstrates its misunderstanding of the mediation process that this Court encouraged throughout the litigation. As this Court found:

[I]n this case the plaintiffs’ lawyers took on a contingent basis a novel, risky case. The result at the outset was uncertain, and it remained, until there was a settlement, uncertain. The plaintiffs’ counsel were required to develop a novel case. This is not a situation where they piggybacked on the work of a public agency that had made certain findings. They were required to be pioneers to a certain extent. They were required to engage in substantial discovery that included production of nine million documents. They engaged in arduous arm’s length negotiation that included 19 mediation sessions. They had to stand up on behalf of the class to experienced, able, energetic, formidable adversaries. They did that.

11/2/16 Hr’g Tr. at 36:2-14 (Dkt. 114).

The reasoning applicable to *BNY Mellon* is therefore applicable in this case as well, and the rates the *BNY Mellon* court approved support the reasonableness of the staff attorneys’ rates in the *State Street* matter.

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12-MD-2335 (LAK) (JLC); Christopher L. Lesock Decl., Dkt. 622-7, *BNY Mellon*, No. 12-MD-2335 (LAK) (JLC); Jeffrey Angelovich, Dkt. 622-10, *BNY Mellon*, No. 12-MD-2335 (LAK) (JLC).

Finally, to the extent that CEI (similar to the Special Master) argues that the contract attorneys should be listed at \$50 per hour, TLF respectfully refers the Court to Prof. Rubenstein's June 20, 2018 declaration. *See* Rubenstein Decl., 6/20/2018, at p. 10-17 (Dkt. 368) (explaining his conclusion that the Special Master's approach to contract attorneys "embodies at least five errors of law and fact.").<sup>56</sup> Thornton further notes that two of the contract attorneys on its lodestar, unlike the typical contract attorney in any given case, had worked on the *BNY Mellon* and "acquired substantial relevant experience concerning custodial FX trading in general, indirect (or 'standing instructions') vs. direct/negotiated FX pricing, and custodial FX marketing." *See* Loeff's Resp. to Interrog. No. 19, 6/1/17 (R&R Ex. 57) (Dkt. 401-56). In any event, the appropriate rates for the contract attorneys is not determinative to the fee award in this case. Even if *all contract attorney time were removed*, the multiplier would only increase to 2.07.<sup>57</sup>

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<sup>56</sup> CEI's musings in footnote 8 that perhaps all of the staff attorneys on Thornton's lodestar should be assigned contract attorney rates (i.e., \$50.00) illustrates CEI's aversion to class actions in general. As explained *supra*, the risk-sharing agreement was entered into for the benefit of all three firms. Thornton would not have agreed to bear the risk of financing staff attorneys if it could not be rewarded if the litigation succeeded. No rational actor bears unnecessary financial risk. Had Thornton not agreed to finance the staff attorneys, perhaps Loeff and Labaton could have financed the staff attorneys themselves. But that will not be so in every class action. The flexibility accorded to class counsel by the ability to enter into risk-sharing agreements, and to allocate fees among themselves, is part of what enables plaintiffs' law firms to bring complex, risky class actions against powerful defendants without guarantee that they will ever be paid for their work. Here as elsewhere, CEI's goal is to undermine attorneys' incentives to bring class actions and therefore to undermine the entire class action system itself.

<sup>57</sup> Professor Rubenstein calculated this amount by first deducting the value of the double-counted attorneys disclosed to the Court from the aggregate lodestar, resulting in a revised lodestar of \$37,265,241.25. He then deducted the contract attorney lodestar identified by the Special Master in his Report and Recommendations at page 367 (valued at \$1,325,588), which reduced the lodestar to \$35,939,653.25. Using this revised lodestar, the multiplier becomes 2.07. Rubenstein Decl., 6/20/18, at ¶ 19 n.77 (Dkt. 368). As noted, *supra*, there is some ambiguity about the total contract attorney lodestar, particularly because the Special Master has now revised his recommendations regarding contract attorney disgorgement. Even if the Special Master's revised figure is used—\$1,344,057 for Thornton plus \$1,245,055 for Loeff (which erroneously counts the same contract attorney time twice)—the lodestar would be 2.15.

**CONCLUSION**

For the foregoing reasons, Thornton objects to the Special Master's factual and legal findings identified above and in its Objections to the Special Master's Report and Recommendations. *See* TLF Objs. (Dkt. 446-1).

Respectfully submitted,

/s/ Brian T. Kelly  
Brian T. Kelly (BBO No. 549566)  
Joshua C. Sharp (BBO No. 681439)  
NIXON PEABODY LLP  
100 Summer Street  
Boston, MA 02110  
Telephone: (617) 345-1000  
Facsimile: (844) 345-1300  
bkelly@nixonpeabody.com  
jsharp@nixonpeabody.com

Dated: December 18, 2018

*Counsel for the Thornton Law Firm LLP*

**CERTIFICATE OF SERVICE**

I certify that the foregoing document was filed electronically on December 18, 2018 and thereby delivered by electronic means to all registered participants as identified on the Notice of Electronic Filing ("NEF").

/s/ Joshua C. Sharp  
Joshua C. Sharp

# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

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ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and  
DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

---

THE ANDOVER COMPANIES EMPLOYEE SAVINGS  
AND PROFIT SHARING PLAN, on behalf of itself, and  
JAMES PEHOUSHEK-STANGELAND, and all others  
similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

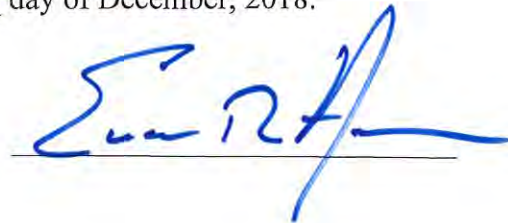
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**DECLARATION OF EVAN HOFFMAN IN SUPPORT OF  
THORNTON LAW FIRM LLP'S SUR-REPLY**

I, Evan Hoffman, hereby declare as follows:

1. I am a partner at the Thornton Law Firm LLP.
2. I have personal knowledge of the facts set forth herein.
3. On June 5, 2017, I was deposed at the JAMS office in New York City.
4. I reviewed the certified transcript of my deposition shortly after my deposition and determined it to be accurate.
5. I have since again reviewed the certified transcript of my deposition.
6. I recall the exchange reflected on page 97 of the transcript.
7. After reviewing the transcript, I recall that, as reflected on page 97 of the transcript, Judge Rosen said, "I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions." I recall that at this point in the deposition, attorney Elizabeth McEvoy, sitting to Judge Rosen's right, was handing the Special Master documents, which included several paper copies of the various fee petitions signed by the firms in this case.
8. I believe the "she" referred to by the Special Master was Ms. McEvoy.
9. During my deposition, I did not say "I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions."

Signed under the penalties of perjury this 17 day of December, 2018.





# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

---

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and  
DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

---

THE ANDOVER COMPANIES EMPLOYEE SAVINGS  
AND PROFIT SHARING PLAN, on behalf of itself, and  
JAMES PEHOUSHEK-STANGELAND, and all others  
similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

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**DECLARATION OF EMILY C. HARLAN IN SUPPORT OF  
THORNTON LAW FIRM LLP'S SUR-REPLY**

I, Emily C. Harlan, hereby declare as follows:

1. Until November 30, 2018, and at all times relevant to this declaration, I was a partner with the law firm of Nixon Peabody LLP.

2. I submit this declaration in support of Thornton Law Firm LLP's Sur-Reply. I have personal knowledge of the facts set forth in this declaration.

3. On June 5, 2017, I attended the deposition of Thornton Law Firm partner Evan Hoffman at JAMS in Manhattan.

4. I have since reviewed the transcript of Mr. Hoffman's deposition.

5. I was present in the room for the exchange reflected on page 97 of the transcript.

6. I recall that, at this point in the deposition, counsel to the Special Master Elizabeth McEvoy handed the Special Master a document from a set of documents she had before her.

7. I recall observing at the time that Ms. McEvoy handed the Special Master a declaration that was not the one made by Garrett Bradley.

8. I recall observing at the time that the Special Master realized this after reviewing the document, as the transcript reflects.

9. I recall that the statement on page 97, lines 3 to 6, was made by the Special Master.

9. It is my belief, and recollection, that the transcript accurately reflects that the statement at page 97, lines 3 to 6 was made by the Special Master, and that the "she" on page 97, line 3 refers to Ms. McEvoy.

Signed under the penalties of perjury this 17<sup>th</sup> day of December, 2018.

  
Emily C. Harlan

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and  
DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

THE ANDOVER COMPANIES EMPLOYEE SAVINGS  
AND PROFIT SHARING PLAN, on behalf of itself, and  
JAMES PEHOUSHEK-STANGELAND, and all others  
similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

**DECLARATION OF JOSHUA C. SHARP IN SUPPORT OF  
THORNTON LAW FIRM LLP'S SUR-REPLY**

I, Joshua C. Sharp, hereby declare as follows:

1. I am an associate at Nixon Peabody LLP.
2. I have personal knowledge of the facts set forth herein.
3. On the morning of November 21, 2018, I contacted Veritext, the court reporting service for Evan Hoffman's June 2017 deposition, and inquired whether or not the deposition was audio recorded and requested that the court reporter review her stenographer notes related to pages 96 and 97 of the deposition transcript.
4. A true and correct copy of my correspondence with Veritext, including Veritext's responses to my questions, is attached hereto as Exhibit A. Although pages 5 to 53 of Exhibit A are difficult to read and immaterial to the Sur-Reply, I am including the entire copy of the email for the sake of completeness.

Signed under the penalties of perjury this 17 day of December, 2018.

  
Joshua C. Sharp

# **EXHIBIT A**

**Sharp, Joshua**

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**From:** Nina DeAngelo <cs-corp@veritext.com>  
**Sent:** Wednesday, November 21, 2018 12:28 PM  
**To:** Sharp, Joshua  
**Subject:** Re: File(s) for: Arkansas Teacher Retirement System Et Al v State St Bank & Trust Co. Et Al; Witness(es): Comfort Orji, David H. Alper, Evan Hoffman, Maritza Bolano, Todd Kussin, Tryphena Greene; Assignment #2629858

Hello,

Our reporter has reviewed her notes. She says the transcript is accurate.  
Should you have any questions or concerns, please do not hesitate to contact us.

Regards,

Nina DeAngelo  
Senior Case Manager

---

**VERITEXT**

290 West Mount Pleasant Avenue | Livingston, NJ 07039  
P 800-567-8658  
[cs-corp@veritext.com](mailto:cs-corp@veritext.com)  
[www.veritext.com](http://www.veritext.com)

On Wed, Nov 21, 2018 at 10:50 am, <[jsharp@nixonpeabody.com](mailto:jsharp@nixonpeabody.com)> Sharp, Joshua wrote:

It's pages 96 and 97.

On Nov 21, 2018, at 10:25 AM, Nina DeAngelo <[cs-corp@veritext.com](mailto:cs-corp@veritext.com)> wrote:

I need to know what portion of the transcript you need her to review.  
Kindly advise.

Nina DeAngelo  
Senior Case Manager

---

**VERITEXT**

290 West Mount Pleasant Avenue | Livingston, NJ 07039  
P 800-567-8658  
[cs-corp@veritext.com](mailto:cs-corp@veritext.com)  
[www.veritext.com](http://www.veritext.com)

On Wed, Nov 21, 2018 at 10:10 am, <[jsharp@nixonpeabody.com](mailto:jsharp@nixonpeabody.com)>  
Sharp, Joshua wrote:

Yes please! And if she has it even if not required to we would need  
to know. Can you ask?



Thanks so much!

On Nov 21, 2018, at 9:57 AM, Nina DeAngelo <[cs-corp@veritext.com](mailto:cs-corp@veritext.com)> wrote:

They are not required to.  
Do you want me to have her review her steno notes?

Nina DeAngelo  
Senior Case Manager

---

**VERITEXT**

290 West Mount Pleasant Avenue | Livingston, NJ 07039

P 800-567-8658

[cs-corp@veritext.com](mailto:cs-corp@veritext.com)

[www.veritext.com](http://www.veritext.com)

On Wed, Nov 21, 2018 at 09:50 am,  
<[jsharp@nixonpeabody.com](mailto:jsharp@nixonpeabody.com)> Sharp,  
Joshua wrote:

Does the stenographer  
maintain backup audio for double  
checking in case there is a conflict  
about what was said?

On Nov 21, 2018, at 9:48 AM, Nina  
DeAngelo <[cs-corp@veritext.com](mailto:cs-corp@veritext.com)>  
wrote:

[EXTERNAL E-  
MAIL]

Good morning,

We do not have the  
audio. We haven't  
received the Errata from  
counsel.

Regards,

Nina DeAngelo  
Senior Case Manager

---

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On  
Wed,  
Nov  
21,  
2018 at  
09:44  
am,  
<[jsharp@nixonpeabody.com](mailto:jsharp@nixonpeabody.com)>  
Sharp,  
Joshua  
wrote:

Hello,

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# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

---

ARKANSAS TEACHER RETIREMENT SYSTEM,  
on behalf of itself and all others similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 11-cv-10230 MLW

---

ARNOLD HENRIQUEZ, MICHAEL T. COHN,  
WILLIAM R. TAYLOR, RICHARD A. SUTHERLAND,  
and those similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,  
STATE STREET GLOBAL MARKETS, LLC and  
DOES 1-20,

Defendants.

No. 11-cv-12049 MLW

---

THE ANDOVER COMPANIES EMPLOYEE SAVINGS  
AND PROFIT SHARING PLAN, on behalf of itself, and  
JAMES PEHOUSHEK-STANGELAND, and all others  
similarly situated,

Plaintiffs,

v.

STATE STREET BANK AND TRUST COMPANY,

Defendant.

No. 12-cv-11698 MLW

---

**DECLARATION OF BRIANNA NASSIF IN SUPPORT OF  
THORNTON LAW FIRM LLP'S SUR-REPLY IN SUPPORT OF ITS OBJECTIONS  
TO THE SPECIAL MASTER'S REPORT AND RECOMMENDATIONS**

I, Brianna Nassif, hereby declare as follows:

1. I am an associate at Nixon Peabody LLP.
2. I submit this declaration in support of Thornton Law Firm LLP's Sur-Reply In Support Of Its Objections To The Special Master's Report And Recommendations. I have personal knowledge of the facts set forth in this declaration.
3. Attached hereto as Exhibit A is a true and correct copy of pages 93-99 of the transcript of Evan Hoffman's Deposition dated June 5, 2017.
4. The below documents are true and correct copies downloaded from PACER, except to the extent that the voluminous firm resumes and firm biographies have been removed to account for space concerns. In addition, to the extent that any of the documents below were filed as part of a compilation of documents within a single docket entry, the other documents have been removed for the same reason.<sup>1</sup>
5. Attached hereto as Exhibit B is the Declaration of James A. Harrod in *Ark. Teacher Ret. Sys. v. Insulet Corp.*, No. 1:15-cv-12345-MLW (D. Mass. June 1, 2018).
6. Attached hereto as Exhibit C is the Declaration of Joshua L. Crowell in *Ark. Teacher Ret. Sys. v. Insulet Corp.*, No. 1:15-cv-12345-MLW (D. Mass. June 1, 2018).
7. Attached hereto as Exhibit D is the Declaration of Lee Albert in *In re: Capacitators Antitrust Litig.*, No. 3:14-cv-03264-JD (N.D. Cal. Aug. 13, 2018).
8. Attached hereto as Exhibit E is the Joint Declaration of Evan J. Kaufman and Ellen Gusikoff Stewart in *Zametkin v. Fidelity Mgmt. & Research Co.*, No. 1:08-cv-10960-MLW (D. Mass. Apr. 13, 2012).

---

<sup>1</sup> If it would aid the Court, counsel for Thornton Law Firm would be pleased to file full copies of the documents including firm resumes and biographies.

9. Attached hereto as Exhibit F is the Declaration of Jeffrey A. Berens in *Zametkin v. Fidelity Mgmt. & Research Co.*, No. 1:08-cv-10960-MLW (D. Mass. Apr. 13, 2012).

10. Attached hereto as Exhibit G is the Declaration of Michael I. Fistel, Jr. in *Zametkin v. Fidelity Mgmt. & Research Co.*, No. 1:08-cv-10960-MLW (D. Mass. Apr. 13, 2012).

11. Attached hereto as Exhibit H is the Declaration of Wendy J. Harrison in *Harris v. Citigroup, Inc.*, No. 1:08-cv-10417-MLW (D. Mass. July 26, 2012).

12. Attached hereto as Exhibit I is the Declaration of Gary Klein in *Harris v. Citigroup, Inc.*, No. 1:08-cv-10417-MLW (D. Mass. July 26, 2012).

13. Attached hereto as Exhibit J is the Declaration of Theodore J. Pintar in *Harris v. Citigroup, Inc.*, No. 1:08-cv-10417-MLW (D. Mass. July 26, 2012).

14. Attached hereto as Exhibit K is the Declaration of Stuart T. Rossman in *Harris v. Citigroup, Inc.*, No. 1:08-cv-10417-MLW (D. Mass. July 26, 2012).

15. Attached hereto as Exhibit L is the Declaration of Nathaniel L. Orenstein in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

16. Attached hereto as Exhibit M is the Declaration of Sharon K. Robertson in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

17. Attached hereto as Exhibit N is the Declaration of Michael Coren in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).



18. Attached hereto as Exhibit O is the Declaration of Paul Costa in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

19. Attached hereto as Exhibit P is the Declaration of Lee Albert downloaded from PACER in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

20. Attached hereto as Exhibit Q is the Declaration of Frank R. Schirripa in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

21. Attached hereto as Exhibit R is the Declaration of Renae D. Steiner in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

22. Attached hereto as Exhibit S is the Declaration of Steve Shadowen in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

23. Attached hereto as Exhibit T is the Declaration of Theodore M. Hess-Mahan in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

24. Attached hereto as Exhibit U is the Declaration of Krishna Narine in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

25. Attached hereto as Exhibit V is the Declaration of John G. Felder, Jr. in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

26. Attached hereto as Exhibit W is the Declaration of Marvin A. Miller in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

27. Attached hereto as Exhibit X is the Declaration of Michael M. Buchman in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

28. Attached hereto as Exhibit Y is the Declaration of Marc I. Gross in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

29. Attached hereto as Exhibit Z is the Declaration of Michael J. Rusing in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

30. Attached hereto as Exhibit AA is the Declaration of Natalie Finkelman Bennett in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

31. Attached hereto as Exhibit BB is the Declaration of Robert S. Kitchenoff in *In re Solodyn (Minocycline Hydrochloride) Antitrust Litig.*, No. 1:14-cv-02503-DJC (D. Mass. June 1, 2018).

32. Attached hereto as Exhibit CC is the Declaration of David R. Stickney in *In re CTI Biopharma Corp. Sec. Litig.*, No. 2:16-cv-00216-RSL (W.D. Wash. Dec. 28, 2017).

33. Attached hereto as Exhibit DD is the Declaration of John C. Browne in *Bach v. Amedisys, Inc.*, No. 3:10-cv-00395-BAJ-RLB (M.D. La. Nov. 8, 2017).

34. Attached hereto as Exhibit EE is the Declaration of Salvatore J. Graziano in *In re Salix Pharma., Ltd.*, No. 1:14-cv-08925-KMW (S.D.N.Y. June 19, 2017).

35. Attached hereto as Exhibit FF is the Declaration of Katherine M. Sinderson in *In re Dole Food Co., Inc.*, No. 1:15-cv-01140-LPS (D. Del. June 13, 2017).

36. Attached hereto as Exhibit GG is the Declaration of Gerald H. Silk in *In re: NII Holdings, Inc. Sec. Litig.*, No. 1:14-cv-00227-LMB-JFA (E.D. Va. Aug. 12, 2016).

37. Attached hereto as Exhibit HH is the Declaration of Salvatore J. Graziano in *In re Schering-Plough Corp./Enhance Sec. Litig.*, No. 2:08-cv-00397-ES-JAD (D.N.J. July 2, 2013).

38. Attached hereto as Exhibit II is the Declaration of Salvatore J. Graziano in *In re Merck & Co., Inc. Vytarin/Zetia Sec. Litig.*, No. 2:08-cv-02177-ES-JAD (D.N.J. July 13, 2013).

39. Attached hereto as Exhibit JJ is the Declaration of Mark Lebovitch in *In re Johnson & Johnson Derivative Litig.*, No. 3:10-cv-02033-FLW-DEA (D.N.J. Aug. 31, 2017).

40. Attached hereto as Exhibit KK is the Declaration of Jeffrey N. Leibell in *In re King Pharma., Inc. Sec. Litig.*, No. 2:03-cv-77 (E.D. Tenn. Dec. 19, 2006).

41. Attached hereto as Exhibit LL is the Declaration of Brian P. Murray in *In re Ductile Iron Pipe Fittings ("DIPF") Indirect Purchaser Antitrust Litig.*, No. 3:12-cv-00169-AET-LHG (D.N.J. May 9, 2018).

42. Attached hereto as Exhibit MM is the Declaration of Ex Kano S. Sams II in *In re Marcum, LLP*, No. 1:15-cv-01938-DAB (S.D.N.Y. Jan. 3, 2018).

43. Attached hereto as Exhibit NN is the Declaration of Joshua L. Crowell in *In re Nu Skin Enter., Inc., Sec. Litig.*, No. 2:14-cv-00033-JNP (D. Utah Aug. 31, 2016).

44. Attached hereto as Exhibit OO is the Declaration of Susan G. Kupfer in *Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd.*, No. 2:09-cv-00852-LA (E.D. Wis. June 9, 2015).

45. Attached hereto as Exhibit PP is the Declaration of Daryl F. Scott in *In re Ductile Iron Pipe Fittings ("DIPF") Indirect Purchaser Antitrust Litig.*, No. 3:12-cv-00169-AET-LHG (D.N.J. May 9, 2018).

46. Attached hereto as Exhibit QQ is the Declaration of Daryl F. Scott in *Fond Du Lac Bumper Exch., Inc. v. Jui Li Enter. Co., Ltd.*, No. 2:09-cv-00852-LA (E.D. Wis. June 9, 2015).

47. Attached hereto as Exhibit RR is the Declaration of Daryl F. Scott in *Murr v. Capital One Bank (USA), N.A.*, No. 1:13-cv-01091-LMB-TCB (E.D. Va. Apr. 27, 2015).

48. Attached hereto as Exhibit SS is the Declaration of Daryl Scott in *Cornwell v. Credit Suisse Grp.*, No. 1:08-cv-03758-VM-JCG (S.D.N.Y. June 27, 2011).

49. Attached hereto as Exhibit TT is the Declaration of T. Christopher Tuck in *Pinel v. Aurora Loan Serv. LLC*, No. 4:10-cv-03118-SBA (N.D. Cal. Nov. 14, 2014).

50. Attached hereto as Exhibit UU is the Declaration of Daniel S. Haltiwanger in *Latham v. Matthews, et al.*, No. 6:08-cv-02995-JMC (D.S.C. June 29, 2011).

51. Attached hereto as Exhibit VV is the Joint Declaration of Michael Sobol, Hank Bates, and Ray Gallo in *In re Google LLC*, No. 5:15-cv-04062-LHK (N.D. Cal. Oct. 30, 2017).

52. Attached hereto as Exhibit WW is the Joint Declaration of Michael Sobol and Hank Bates in *In re Facebook, Inc.*, No. 4:13-cv-05996-PJH (N.D. Cal. May 26, 2017).

53. Attached hereto as Exhibit XX is the Joint Declaration of Scott H. Saham and Jeffrey D. Light in *In re Matrixx Initiatives, Inc.*, No. 2:04-cv-00886-NVW (D. Ariz. Sept. 28, 2012).

54. Attached hereto as Exhibit YY is the Joint Declaration of Travis E. Downs III and David W. Mitchell in *In re Johnson & Johnson Derivative Litig.*, No. 3:10-cv-02033-FLW-DEA (D.N.J. Aug. 31, 2012).

55. Attached hereto as Exhibit ZZ is the Declaration of Robert M. Rothman in *In re Amaranth Nat. Gas Commodities Litig.*, No. 1:07-cv-06377-CM-HBP (S.D.N.Y. Mar. 12, 2012).

56. Attached hereto as Exhibit AAA is the Declaration of Ellen Gusikoff in *In re Giant Interactive Grp., Inc. Sec. Litig.*, No. 1:07-cv-10588-PAE (S.D.N.Y. Oct. 5, 2011).

57. Attached hereto as Exhibit BBB is the Declaration of Ellen Gusikoff in *In re RHI Entm't, Inc.*, No. 1:09-cv-08634-AKH (S.D.N.Y. Oct. 4, 2011).

58. Attached hereto as Exhibit CCC is the Declaration of Keith F. Park in *In re Intervoice-Brite, Inc.*, No. 3:01-cv-01071-K (N.D. Tex. July 27, 2011).

59. Attached hereto as Exhibit DDD is the Declaration of Joy Ann Bull in *In re Accuray Inc. Sec. Litig.*, No. 4:09-cv-03362-CW (N.D. Cal. July 15, 2011).

60. Attached hereto as Exhibit EEE is the Declaration of Ellen Gusikoff Stewart in *In re JA Solar Holdings Co., Ltd., et al.*, No. 1:08-cv-10475-JGK (S.D.N.Y. June 3, 2011).

61. Attached hereto as Exhibit FFF is the Declaration of Keith F. Park in *In re The PMI Grp., Inc. Sec. Litig.*, No. 3:08-cv-01405-SI (N.D. Cal. Oct. 8, 2010).

62. Attached hereto as Exhibit GGG is the Declaration of Lawrence D. Levit in *In re Marcum, LLP*, No. 1:15-cv-01938-DAB (S.D.N.Y. Dec. 4, 2017).

63. Attached hereto as Exhibit HHH is the Declaration of Mitchell M.Z. Twersky in *In re Fuqi Int'l, Inc. Sec. Litig.*, No. 1:10-cv-02515-DAB (S.D.N.Y. Aug. 31, 2015).

64. Attached hereto as Exhibit III is the Declaration of Jeffrey S. Abraham in *In re Internap Network Serv. Corp.*, No. 1:08-cv-03462-CAP (N.D. Ga. Oct. 30, 2013).

65. Attached hereto as Exhibit JJJ is the Declaration of Jack G. Fruchter in *In re Giant Interactive Grp., Inc. Sec. Litig.*, No. 1:07-cv-10588-PAE (S.D.N.Y. Oct. 5, 2011).

66. Attached hereto as Exhibit KKK is the Declaration of Lawrence D. Levit in *In re Warner Chilcott Ltd. Sec. Litig.*, No. 1:06-cv-11515-WHP (S.D.N.Y. Apr. 9, 2009).

67. Attached hereto as Exhibit LLL is the Declaration of James A. Harrod in *In re Sonus Networks, Inc. Sec. Litig.-II*, No. 1:06-cv-10040-MLW (D. Mass. Apr. 17, 2009).

68. Attached hereto as Exhibit MMM is the Declaration of Glen Devalerio in *In re Sonus Networks, Inc. Sec. Litig.-II*, No. 1:06-cv-10040-MLW (D. Mass. Apr. 17, 2009).

69. Attached hereto as Exhibit NNN is the Declaration of Ira M. Press in *Esposito v. Am. Renal Assoc. Holdings, Inc.*, No. 1:16-cv-11797-ADB (D. Mass. May 10, 2018).

70. Attached hereto as Exhibit OOO is the Declaration of Mark Booker in *Esposito v. Am. Renal Assoc. Holdings, Inc.*, No. 1:16-cv-11797-ADB (D. Mass. May 10, 2018).

71. Attached hereto as Exhibit PPP is the Declaration of John P. Coffey in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).

72. Attached hereto as Exhibit QQQ is the Affidavit of Bradley E. Beckworth in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).


73. Attached hereto as Exhibit RRR is the Affidavit of Andrew L. Barroway in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).

74. Attached hereto as Exhibit SSS is the Declaration of James J. Sabella in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).

75. Attached hereto as Exhibit TTT is the Affidavit of Michael S. Etkin in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).

76. Attached hereto as Exhibit UUU is the Declaration of Debra Beth Pevos in *In re: Delphi Corp. Sec. Litig.*, No. 2:05-md-01725-GER (E.D. Mich. Nov. 6, 2007).

Signed under the penalties of perjury this 18<sup>th</sup> day of December, 2018.

  
Brianna Nassif

# **EXHIBIT A**



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JAMS, Inc.

Reference No. 1345000011

-----x

In Re State Street Attorneys Fees

-----x

June 5, 2017

9:16 a.m.

BEFORE:

Special Master Hon. Gerald Rosen, United  
States District Court, Retired

Deposition of EVAN HOFFMAN,  
taken by Counsel to the Special Master,  
held at JAMS, Inc., 620 Eighth Avenue, New  
York, New York, before Jineen Pavesi, a  
Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter and Notary Public of the  
State of New York.

Job No. CS2629858

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A P P E A R A N C E S :  
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Counsel to Special Master  
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- and -

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BY: JOHN W. TOOTHMAN, ESQ.

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A P P E A R A N C E S (Continued):  
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Attorneys for Labaton Sucharow LLP  
BY: JUSTIN WOLOSZ, ESQ.  
(via teleconference)

MCTIGUE LAW FIRM  
4530 Wisconsin Avenue  
Washington, DC 20016  
Attorneys for McTigue Law Firm  
BY: BROOKE EDWARDS, ESQ.  
(via teleconference)

ALSO PRESENT:  
LINDA HYLENSKI, JAMS

1 HOFFMAN

2 Q. Let me ask you this then.

3 In other cases, to your  
4 knowledge --

5 JUDGE ROSEN: One more  
6 question, I'm sorry.

7 Off the record.

8 (Discussion off the record.)

9 BY MR. SINNOTT:

10 Q. Let's move into the fee  
11 declaration.

12 Could you describe what your  
13 role was in that process.

14 A. So we received from Labaton,  
15 from a partner there named Nicole Zeiss, a  
16 sort of model fee declaration that was  
17 sent around in advance of submitting the  
18 total fee declaration and it had a bunch  
19 of text in it and it was like those  
20 fill-in-the-blank, whatever that game is,  
21 but it was sort of put your information  
22 here.

23 JUDGE ROSEN: Not Hang Man.

24 THE WITNESS: Not Hang Man, no.

25 A. Put your information here, so

1 HOFFMAN

2 there was a section on fill in what your  
3 hours are, fill in what your expenses are,  
4 fill in what your lodestar is, fill in  
5 what your specific contributions were to  
6 the case, and the rest of the language was  
7 sort of, it was called a model fee  
8 declaration.

9 And so that's what we did, he  
10 put in all the hours that we had kept  
11 track of, I along with our accounting  
12 department and Anasthasia put in the  
13 expenses and then mostly Mike Lesser and  
14 then Garrett Bradley, Mike Thornton and  
15 myself all reviewed the sort of narrative  
16 about the firm's contribution, which I  
17 believe mostly Mike Lesser drafted.

18 And then it was sent back to  
19 Labaton for their review and maybe an edit  
20 or two and that was the last we saw of it  
21 until it was submitted on ECF for the  
22 final, when it was actually given to the  
23 judge.

24 JUDGE ROSEN: You never saw  
25 Labaton's fees or Lief's fees in the

1 HOFFMAN

2 declaration?

3 THE WITNESS: Correct.

4 JUDGE ROSEN: In the actual fee  
5 declaration, did you ever see their fees?

6 THE WITNESS: No, not until it  
7 was already filed.

8 JUDGE ROSEN: Not until it was  
9 filed?

10 THE WITNESS: Correct.

11 JUDGE ROSEN: Did you in any  
12 way attempt to edit or change the  
13 narrative in the fee declaration?

14 THE WITNESS: So let me just be  
15 clear.

16 The document that I'm talking  
17 about is the sort of, whatever it is, I'm  
18 talking about the affidavit, so, yes,  
19 there was a spot where we were instructed  
20 to add what our firm-specific  
21 contributions would have been, because it  
22 was a fee declaration on behalf of our  
23 firm.

24 As to the overall package of  
25 whatever the declaration, maybe it was

1 HOFFMAN

2 Labaton's declaration which described in  
3 general the case, I don't believe that we  
4 offered any edits to that.

5 JUDGE ROSEN: Drilling down  
6 just a little more finely on this, there  
7 was a phrase, I don't remember the actual  
8 language, but is it customary and regular  
9 rates charged -- "the hourly rates for  
10 attorneys and professional support staff  
11 in my firm included in Exhibit A are the  
12 same as my firm's regular rates charged  
13 for their services which have been  
14 accepted in other complex class actions,"  
15 was that your language or was that  
16 language that was supplied to you by  
17 Nicole Zeiss?

18 THE WITNESS: Language supplied  
19 to us by Nicole.

20 JUDGE ROSEN: And you never  
21 changed that, edited it or talked to her  
22 about changing it?

23 THE WITNESS: Correct.

24 Q. Did that strike you as being  
25 incongruous --

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HOFFMAN

(Discussion off the record.)

JUDGE ROSEN: I thought she was giving me the Thornton declaration, but our recollection is that that language was the same in all of the fee petitions.

BY MR. SINNOTT:

Q. Do you remember seeing that language?

A. Yes.

Q. Did it trouble you at all?

A. No, firstly because it was given to us by Labaton who I think has probably done hundreds, if not thousands, of these fee declarations.

My understanding was that Nicole Zeiss's sort of whole role at Labaton was to be the person and partner in charge of preparing the fee petition, so it didn't strike me as anything really.

If anyone knew what they were doing, I would have thought it would be her and them.

And also, just on a basic level, our fees had been accepted by a



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HOFFMAN

Federal judge, Judge Kaplan, in the BNY Mellon case, an almost identical litigation, and so there was nothing that stood out to me as being not accurate or wrong in any sense considering we had a judge who had just recently approved everyone's fees for a very, very similar case on the exact same topic.

JUDGE ROSEN: On the same rates?

THE WITNESS: And on the same rates, yes.

Q. In other cases, if you know, where Thornton was teamed up with other firms, would Thornton typically do its own fee petition or would it join in in another fee petition, was there any consistency or method there?

A. I can only speak to the only other case I have been involved in, which would have been the BNY Mellon case, in which we submitted our own fee petition as part of all of the firms led by Lief and Kessler Topaz, but, yes, each firm who

1 HOFFMAN

2 worked on the case had its own fee  
3 petition which was then approved by the  
4 judge.

5 Q. When did you first realize in  
6 this case that there was an overlap?

7 A. I am trying to remember the  
8 exact day, but Garrett came down to my  
9 office and looked like he had seen a ghost  
10 and told me how it is that he heard about  
11 it.

12 I don't remember exactly how he  
13 heard about it.

14 Q. When was that?

15 A. It had to be in the fall, early  
16 winter of last year.

17 He came in and said something  
18 to the effect of, I won't use expletives,  
19 but there were a lot of them, and they're  
20 saying that we double-counted our hours.

21 And so me being the person who  
22 was in charge of warehousing our hours, my  
23 career flashed before my eyes and we  
24 downloaded everything, printed everything  
25 out, started to look it up and realized

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C E R T I F I C A T I O N

I, Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and a Notary Public, do hereby certify that the foregoing witness, EVAN HOFFMAN, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



JINEEN PAVESI, RPR, RMR, CRR



# **EXHIBIT B**

# Exhibit 2A

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT  
SYSTEM, THE CITY OF BRISTOL  
PENSION FUND, and THE CITY OF  
OMAHA POLICE AND FIRE RETIREMENT  
SYSTEM, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

INSULET CORPORATION, DUANE  
DESISTO, ALLISON DORVAL, BRIAN  
ROBERTS, and CHARLES LIAMOS,

Defendants.

Civil Action No. 15-12345-MLW

**DECLARATION OF JAMES A. HARROD IN SUPPORT OF  
LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED  
ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, JAMES A. HARROD, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”), counsel for Lead Plaintiff Arkansas Teacher Retirement System (“Arkansas Teachers”) and one of the Court-appointed Lead Counsel in the above-captioned action (the “Action”).<sup>1</sup> I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees and reimbursement of litigation expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated February 8, 2018 (ECF No. 110) (the “Stipulation”).

2. My firm, as one of the Lead Counsel firms, was involved in all aspects of the litigation and its settlement as set forth in the Joint Declaration of James A. Harrod and William C. Fredericks in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through May 18, 2018, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. I am the partner who oversaw or conducted the day-to-day activities in the Litigation and I reviewed these daily time records in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the Litigation. As a result of this review, I made reductions to certain of my Firm's time entries such that the time included in Exhibit 1 reflect that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of BLB&G attorneys and staff reflected in Exhibit 1 was reasonable and necessary for the effective and efficient prosecution and resolution of the Litigation. No time expended on the application for fees and reimbursement of expenses has been included.



4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1, from inception of the case through and including May 18, 2018, is 4,005.00. The total lodestar reflected in Exhibit 1 for that period is \$2,224,923.75, consisting of \$1,811,135.00 for attorneys' time and \$413,788.75 for professional support staff time.

6. A summary describing the principal tasks in which each attorney was involved in this Action, is attached as Exhibit 2.

7. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

8. As detailed in Exhibit 3, my firm is seeking reimbursement for a total of \$216,691.33 in expenses incurred in connection with the prosecution of this Action from its inception through and including May 18, 2018.

9. The expenses reflected in Exhibit 3 are the expenses actually incurred by my firm or reflect "caps" based on the application of the following criteria:

- (a) Out-of-town travel - airfare is capped at coach rates, hotel charges per night are capped at \$350 for high-cost cities and \$250 for low-cost cities (the relevant cities and how they are categorized are reflected on Exhibit 3); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
- (b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.

- (c) In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person for dinner.
- (d) Internal Copying - Charged at \$0.10 per page.
- (e) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

10. The expenses incurred by BLB&G in the Litigation are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

11. To facilitate the sharing of expenses, Lead Counsel and Glancy Prongay & Murray LLP, additional counsel for Lead Plaintiffs, established and jointly contributed to a litigation fund, which my firm was responsible for managing. Attached as Exhibit 4 is a chart reflecting the contributions of the three firms to the litigation fund and the disbursements from the fund. A balance of \$7,079.02 remains in the litigation fund that will be repaid to BLB&G. The amount reflected on BLB&G's Expense Report (Exhibit 3) has been reduced by that amount to avoid any double counting of expenditures.

12. With respect to the standing of my firm, attached hereto as Exhibit 5 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 1, 2018.

/s/James A. Harrod  
James A. Harrod

**EXHIBIT 1**

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through May 18, 2018

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max W. Berger	77.75	\$1,250	\$97,187.50
James A. Harrod	926.25	\$850	787,312.50
Avi Josefson	49.25	\$850	41,862.50
Gerald H. Silk	50.00	\$995	49,750.00
<b>Senior Counsel</b>			
Rebecca Boon	553.75	\$725	401,468.75
Rochelle Feder Hansen	12.50	\$750	9,375.00
<b>Associates</b>			
Kate Aufses	84.50	\$475	40,137.50
David L. Duncan	116.50	\$650	75,725.00
Scott Foglietta	47.75	\$550	26,262.50
Ross Shikowitz	42.00	\$550	23,100.00
<b>Staff Attorneys</b>			
Pedro Ariston	261.75	\$340	88,995.00
Girolamo Brunetto	11.00	\$340	3,740.00
Christina (Suarez) Papp	443.25	\$375	166,218.75
<b>Financial Analysts</b>			
Matthew McGlade	20.75	\$335	6,951.25
Michelle Miklus	14.50	\$325	4,712.50
Sharon Safran	18.50	\$335	6,197.50
Tanjila Sultana	21.25	\$335	7,118.75
Adam Weinschel	47.00	\$465	21,855.00

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Investigators</b>			
Chris Altiery	64.00	\$255	16,320.00
Amy Bitkower	46.50	\$520	24,180.00
Jenna Goldin	55.75	\$275	15,331.25
Victoria Kapastin	353.50	\$290	102,515.00
Joelle (Sfeir) Landino	11.50	\$300	3,450.00
Lisa C. Williams (Burr)	33.25	\$300	9,975.00
<b>Paralegals</b>			
Martin Braxton	192.25	\$245	47,101.25
Matthew Mahady	26.50	\$335	8,877.50
Ruben Montilla	14.00	\$255	3,570.00
Norbert Sygdziak	346.00	\$335	115,910.00
Nyema Taylor	12.75	\$295	3,761.25
<b>Litigation Support</b>			
Andrea R. Webster	22.00	\$330	7,260.00
Jessica M. Wilson	14.00	\$295	4,130.00
<b>Managing Clerk</b>			
Errol Hall	14.75	\$310	4,572.50
<b>TOTALS</b>	<b>4,005.00</b>		<b>\$2,224,923.75</b>

## EXHIBIT 2

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

### BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

#### SUMMARY OF TASKS PERFORMED BY ATTORNEYS

##### PARTNERS

**Max W. Berger** (77.75 hours): Mr. Berger, managing partner and a founder of BLB&G, was actively involved in developing litigation strategy and participated in the mediation and settlement process.

**James A. Harrod** (926.25 hours): I was the partner at BLB&G primarily responsible throughout for supervising the day-to-day handling and strategy of the litigation and oversaw all aspects of case management and prosecution following the appointment of Lead Plaintiffs. I was involved in the pre-complaint investigation, the drafting and reviewing of the Complaint and all briefing related to Defendants' motion to dismiss and Lead Plaintiffs' motion for class certification. I also prepared for and presented oral argument in opposition to Defendants' motion to dismiss. I was responsible for strategy relating to case management issues and consulted extensively with our experts throughout the litigation. I oversaw discovery efforts and prepared for and defended the depositions of Arkansas Teachers' representative, Rod Graves, and Lead Plaintiffs' damages expert, Steven Feinstein. I also participated in preparing Lead Plaintiffs' mediation submissions and attended and actively participated in the mediation and continued negotiations. I was also one of the attorneys who regularly communicated with Lead Plaintiff Arkansas Teachers.

**Avi Josefson** (49.25 hours): Mr. Josefson is a partner in BLB&G's "New Matters" department and was most involved in early case analysis and submissions made in support of Arkansas Teacher's motion for appointment with Lead Plaintiff.

**Gerald H. Silk** (50.00 hours): Mr. Silk is a BLB&G partner and the leader of the firm's "New Matters" department. Mr. Silk supervised the analysis of plaintiffs' potential claims, the submissions made in support of Arkansas Teacher's motion for appointment with Lead Plaintiff, and the relationship with the client in the case. He also participated in many major strategic and tactical decisions throughout the litigation.

## SENIOR COUNSEL

**Rebecca Boon** (553.75 hours): Ms. Boon was significantly involved in all aspects of the case following the appointment of Lead Plaintiffs, including the investigation of the claims asserted, the preparation of the Complaint, and researching and drafting the opposition to Defendants' motion to dismiss and Lead Plaintiffs' motion for class certification. Ms. Boon was also heavily involved in discovery efforts, including drafting initial disclosures and discovery requests to Defendants and third parties, frequently corresponding with Defendants regarding discovery matters, leading "meet and confer" teleconferences with defense counsel, supervising the review and analysis of Lead Plaintiffs' documents for production and the documents produced by Defendants and various third parties, and assisting in preparation for depositions. Ms. Boon also prepared for, assisted with the defense of, and attended the depositions of Rod Graves and Steven Feinstein. Ms. Boon also participated in preparing Lead Plaintiffs' mediation submissions and was one of the attorneys who regularly communicated with Lead Plaintiff Arkansas Teachers.

**Rochelle Feder Hansen** (12.50 hours): Ms. Hansen, whose primary role at the firm is to oversee claim processing stage of class action settlements, worked on the selection and retention of the claim administrator and the escrow agent used for the Settlement.

## ASSOCIATES

**Kate Aufses** (84.50 hours): Ms. Aufses assisted with discovery and class certification efforts, including researching various legal issues and drafting discovery-related papers. Ms. Aufses also participated in multiple "meet and confer" teleconferences with defense counsel and follow-up letters concerning discovery issues that were raised on those calls.

**David L. Duncan** (116.50 hours): Mr. Duncan, whose primary role at the firm is to manage and implement class action settlements, had responsibility for drafting, editing, and coordinating the settlement documentation. Mr. Duncan was also responsible for coordinating with the claims administrator regarding dissemination of notice to the Settlement Class.

**Scott Foglietta** (47.75 hours) and **Ross Shikowitz**. (42.00 hours): Mr. Foglietta and Mr. Shikowitz are associates in BLB&G's "New Matters" department. They assisted Mr. Silk and Mr. Josefson with the initial factual investigation and legal analysis of the claims against Defendants and the preparation of Arkansas Teacher's motion for appointment with Lead Plaintiff.

## STAFF ATTORNEYS

**Pedro Ariston** (261.75 hours): Mr. Ariston was primarily involved in fact discovery, including the review and analysis of electronically-produced documents by Defendants and the preparation of memoranda and reports related to such evidence. He participated in regular and periodic

meetings with other attorneys and researched various issues, including mechanism failures and customer complaints. Mr. Ariston reviewed the custodial files of Charles Lianos, among others.

**Girolamo Brunetto** (11 hours): Mr. Brunetto assisted Rochelle Hansen in review and analysis of bids submitted by potential claims administrators for the Settlement.

**Christina (Suarez) Papp** (443.25 hours): Ms. Papp was primarily involved in fact discovery, including the review and analysis of ATRS's documents for production, the review and analysis of electronically-produced documents by Defendants, and the preparation of memoranda and reports related to such evidence. She also analyzed testimony from witnesses, prepared errata sheets, participated in regular and periodic meetings with other attorneys, prepared witness kits for depositions, including the noticed deposition of Dino Tsamparlis, and researched various issues in Defendants' production, such as mechanism failures and customer complaints.

**EXHIBIT 3**

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****EXPENSE REPORT**

Inception through May 18, 2018

<b>CATEGORY</b>	<b>AMOUNT</b>
PSLRA Notice Costs	\$ 1,740.00
Service of Process	790.00
On-Line Legal Research	33,117.09
On-Line Factual Research	2,172.05
Telephones/Faxes	575.70
Postage & Express Mail	194.74
Hand Delivery Charges	90.10
Local Transportation	245.15
Internal Copying and Printing	2,198.30
Outside Copying and Printing	230.29
Out of Town Travel*	12,348.65
Working Meals	1,045.38
Court Reporters and Transcripts	7,609.04
Mediation Fees	261.47
Contributions to Litigation Fund	60,000.00
<b>Total Paid:</b>	<b>\$122,617.96</b>
<b>Outstanding Expenses:</b>	
Document Management/Litigation Support	\$28,995.47
Independent Counsel for Witnesses	\$72,156.92
<b>Total Outstanding:</b>	<b>\$101,152.39</b>
Less Adjustment for Repayment from Litigation Fund	<b>(\$7,079.02)</b>
<b>TOTAL EXPENSES:</b>	<b>\$216,691.33</b>

\* Out of town travel includes hotels in Boston and New York, which are both “high-cost” cities capped at \$350 per night. The travel to and accommodations in New York were for a representative of Lead Plaintiff Arkansas Teachers who attended the mediation on July 20, 2017.



**EXHIBIT 4**

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

**CONTRIBUTIONS TO AND  
EXPENDITURES FROM THE LITIGATION FUND  
For Expenses Incurred from Inception through May 18, 2018**

**CONTRIBUTIONS:**

<b>Firm</b>	<b>Amount</b>
Bernstein Litowitz Berger & Grossmann LLP	\$60,000.00
Scott + Scott Attorneys at Law LLP	45,000.00
Glancy Prongay & Murray LLP	45,000.00
<b>TOTAL CONTRIBUTED:</b>	<b>\$150,000.00</b>

**DISBURSEMENTS:**

<b>Category of Expense</b>	<b>Amount Expended</b>
Court Reporter and Transcripts	6,717.60
Mediation Fees	15,429.38
Experts	120,774.00
<b>TOTAL DISBURSED:</b>	<b>\$142,920.98</b>

**\*BALANCE: \$7,079.02**

\* The balance in the litigation fund will be repaid to BLB&G. The amount reflected on BLB&G's Expense Report (Exhibit 3) has been reduced by the amount of the balance in the litigation fund.

# **EXHIBIT C**

# Exhibit 2C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ARKANSAS TEACHER RETIREMENT  
SYSTEM, THE CITY OF BRISTOL  
PENSION FUND, and THE CITY OF  
OMAHA POLICE AND FIRE RETIREMENT  
SYSTEM, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

INSULET CORPORATION, DUANE  
DESISTO, ALLISON DORVAL, BRIAN  
ROBERTS, and CHARLES LIAMOS,

Defendants.

Civil Action No. 15-12345-MLW

**DECLARATION OF JOSHUA L. CROWELL IN SUPPORT OF  
LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES  
FILED ON BEHALF OF GLANCY PRONGAY & MURRAY LLP**

I, JOSHUA L. CROWELL, declare as follows:

1. I am a partner of the law firm of Glancy Prongay & Murray LLP ("GPM"), additional counsel for Plaintiffs in the above-captioned action (the "Action").<sup>1</sup> I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who,

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<sup>1</sup> Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated February 8, 2018 (ECF No. 110).

from inception of the Action through May 18, 2018, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. I am the partner who oversaw or conducted the day-to-day activities in the Action and I reviewed these daily time records in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the records as well as the necessity for, and reasonableness of, the time committed to the Action. As a result of this review, I made reductions to certain of my Firm's time entries such that the time included in Exhibit 1 reflect that exercise of billing judgment. Based on this review and the adjustments made, I believe that the time of GPM attorneys and staff reflected in Exhibit 1 was reasonable and necessary for the effective and efficient prosecution and resolution of the Action. No time expended on the application for fees and reimbursement of expenses has been included.

3. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.

4. The total number of hours reflected in Exhibit 1, from inception of the case through and including May 18, 2018, is 1,525.50. The total lodestar reflected in Exhibit 1 for that period is \$787,473.00, consisting of \$753,520.00 for attorneys' time and \$33,953.00 for professional support staff time.

5. A summary describing the principal tasks in which each attorney in my firm were involved in is attached as Exhibit 2.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 3, my firm is seeking reimbursement for a total of \$60,952.39 in expenses incurred in connection with the prosecution of this Action from its inception through and including May 18, 2018.

8. The expenses reflected in Exhibit 3 are the expenses actually incurred by my firm or reflect "caps" based on the application of the following criteria:

(a) Out-of-town travel - airfare is capped at coach rates, hotel charges per night are capped at \$350 for high-cost cities and \$250 for low-cost cities (the relevant cities and how they are categorized are reflected on Exhibit 3); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.

(b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.

(c) Internal Copying - Charged at \$0.10 per page.

(d) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred by GPM in the Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 4 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 1, 2018.

  
Joshua L. Crowell

**EXHIBIT 1**

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

**GLANCY PRONGAY & MURRAY LLP****TIME REPORT**

Inception through May 18, 2018

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Robert Prongay	97.55	\$725.00	\$70,723.75
Joshua Crowell	419.70	\$750.00	\$314,775.00
Casey Sadler	38.25	\$625.00	\$23,906.25
<b>Associates</b>			
Alexa Mullarky	215.30	\$395.00	\$85,043.50
Garth Spencer	71.40	\$525.00	\$37,485.00
Elaine Chang	30.40	\$425.00	\$12,920.00
<b>Staff Attorneys</b>			
Gary Johnston	314.70	\$395.00	\$124,306.50
Cami Daigle	222.00	\$380.00	\$84,360.00
<b>Paralegal</b>			
Harry Kharadjian	35.00	\$290.00	\$10,150.00
<b>Research Analysts</b>			
Jack Ligman	12.75	\$310.00	\$3,952.50
Erin Krikorian	20.70	\$290.00	\$6,003.00
Michaela Ligman	47.75	\$290.00	\$13,847.50
<b>TOTALS</b>	<b>1,525.50</b>		<b>\$787,473.00</b>



## EXHIBIT 2

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

### GLANCY PRONGAY & MURRAY LLP

#### SUMMARY OF TASKS PERFORMED BY ATTORNEYS AND KEY SUPPORT STAFF

##### PARTNERS

**Robert V. Prongay** (97.55 hours): Mr. Prongay is a GPM partner and the leader of the firm's New Cases department. He supervised the analysis of potential claims, the submissions made in support of Jefferey Smith's motion for appointment as lead plaintiff. He also actively participated in the mediation and formulating litigation strategy.

**Joshua L. Crowell** (419.70 hours): I was primarily responsible for handling the prosecution of this Action on behalf of my firm. I was involved in drafting Lead Plaintiffs' consolidated amended complaint, the opposition to Defendants' motion to dismiss, Lead Plaintiffs' class certification motion, and Lead Plaintiffs' mediation submissions. In addition, I was involved in preparing Lead Plaintiffs' discovery requests directed to Defendants and meeting and conferring with Defendants regarding their objections and the scope of their document production. My firm took the lead on third-party discovery, and I supervised the preparation of document subpoenas directed to Insulet's distributors and then meeting and conferring with distributors' counsel regarding their responses. I also actively participated in the mediation and formulating litigation strategy.

**Casey Sadler** (38.25 hours): Mr. Sadler is a partner in GPM's New Cases department and was mainly involved in early case analysis and submissions made in support of Jefferey Smith's motion for appointment as lead plaintiff.

##### ASSOCIATES

**Alexa Mullarky** (215.30 hours): Ms. Mullarky was the primary associate handling the Action on behalf of GPM. She assisted in preparing Lead Plaintiffs' consolidated amended complaint, the opposition to Defendants' motion to dismiss, and Lead Plaintiffs' discovery requests directed to Defendants. In addition, she drafted the third-party document subpoenas directed to Insulet's distributors and was involved with meeting and conferring with distributors' counsel regarding their responses. She also drafted a letter rogatory and related motion papers seeking discovery from Insulet's European distributor (a motion that was not ultimately filed).

**Garth Spencer** (71.40 hours): Mr. Spencer mainly conducted legal research in connection with Lead Plaintiffs' opposition to Defendants' motion to dismiss and in connection with certain discovery disputes.

**Elaine Chang** (30.40 hours): Ms. Chang mainly conducted legal research to assist in the preparation of the draft letter rogatory to Insulet's European subsidiary.

#### **STAFF ATTORNEYS**

**Gary Johnston** (314.70 hours): Mr. Johnston was primarily involved in fact discovery, including the review and analysis of electronically-produced documents by Defendants. He participated in regular and periodic meetings with other attorneys. He reviewed the custodial files of Insulet and its Director of Distribution and Materials Management, among other custodians.

**Cami Daigle** (222.00 hours): Ms. Daigle was primarily involved in fact discovery, including the review and analysis of electronically-produced documents by Defendants. She participated in regular and periodic meetings with other attorneys. She reviewed the custodial files of Insulet's Vice President of Research & Development, among other custodians.

**EXHIBIT 3**

*Arkansas Teacher Retirement Sys. v. Insulet Corp.*,  
Civil Action No. 15-12345-MLW

**GLANCY PRONGAY & MURRAY LLP****EXPENSE REPORT**

Inception through May 18, 2018

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$21.00
PSLRA Notice Costs	\$725.00
Service of Process	\$5,770.25
On-Line Legal Research	\$3,148.58
Telephones/Faxes	\$119.85
Postage & Express Mail	\$5.81
Hand Delivery Charges	\$26.61
Out of Town Travel*	\$4,150.29
Third Party Production Costs	\$1,985.00
Contributions to Litigation Fund	\$45,000.00
<b>TOTAL EXPENSES:</b>	<b>\$60,952.39</b>

\* Out of town travel includes hotels in Boston and New York, which are “high-cost” cities capped at \$350 per night.

# **EXHIBIT D**

**GLANCY PRONGAY & MURRAY LLP**

Lee Albert  
230 Park Avenue  
Suite 530  
New York, NY 10169  
Telephone: (212) 682-5340  
Fax: (212) 884-0988  
Email: lalbert@glancylaw.com

*Class Counsel for Indirect Purchaser Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE: CAPACITORS ANTITRUST  
LITIGATION**

**MASTER FILE NO. 14-cv-03264-JD**

**THIS DOCUMENT RELATES TO:**

**ALL INDIRECT PURCHASER ACTIONS**

**DECLARATION OF LEE ALBERT IN  
SUPPORT OF CLASS COUNSEL'S  
APPLICATION FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF  
EXPENSES SUBMITTED ON BEHALF  
OF GLANCY PRONGAY & MURRAY  
LLP**

**Date: October 18, 2018  
Time: 10:00 a.m.  
Place: Courtroom 11, 19<sup>th</sup> Floor**

Judge: Hon. James Donato

1 I, Lee Albert, declare and state as follows:

2 1. I am a Partner of Glancy Prongay & Murray LLP, Counsel for Indirect Purchaser  
3 Plaintiffs (“IPPs” or “Plaintiffs”) in this action. I submit this declaration in support of Class  
4 Counsel’s interim application for attorneys’ fees and reimbursement of expenses reasonably  
5 incurred in connection with the services rendered in this litigation on behalf of the indirect  
6 purchaser classes. I make this declaration based on my personal knowledge and if called as a  
7 witness, I could and would competently testify to the matters stated herein.

8 2. I have reviewed the Court’s October 31, 2014 Order Appointing Interim Lead Class  
9 Counsel (Dkt. 319) (“Order”), including in particular the Order’s provisions regarding fees, costs  
10 and expenses. The Firm has adhered to those provisions.

11 3. During the pendency of the litigation, Glancy Prongay & Murray LLP , acted as  
12 class counsel to IPPs. The Glancy Prongay & Murray LLP has prosecuted this litigation solely on  
13 a contingent-fee basis, and has been at risk that it would not receive any compensation for  
14 prosecuting claims against the defendants. While Glancy Prongay & Murray LLP devoted its time  
15 and resources to this matter, it has foregone other legal work for which it would have been  
16 compensated.

17 4. During the course of this litigation, Glancy Prongay & Murray LLP has been  
18 involved in the following activities on behalf of IPPs at the request and under the direction of IPP  
19 Lead Counsel: Worked extensively with the AGS plaintiffs to gather and analyze plaintiffs’  
20 documents and electronic data; reviewed documents prior to production for relevance and  
21 privilege; reviewed, analyzed and coded extensive documents produced by Defendants in the  
22 course of discovery which were produced in Japanese language and attending numerous  
23 teleconference discovery issues; preparation of AGC plaintiff for deposition and representing  
24 plaintiff at deposition; assisted lead counsel in drafting Consolidated Amended Complaint;  
25 preparation for and attendance in Hong Kong of NCC deposition; and made substantial financial  
26 contributions to the litigation.

27 5. Attached hereto as **Exhibit A** is my firm’s total hours and lodestar, computed at  
28 historical rates, from October 1, 2016 through March 31, 2018. The total number of hours spent by

1 Glancy Prongay & Murray LLP during this period of time was 3,463.2, with a corresponding  
2 historical lodestar of \$1,305,114.00. This summary was prepared from contemporaneous, daily  
3 time records regularly prepared and maintained by Glancy Prongay & Murray LLP. The lodestar  
4 amount reflected in Exhibit A is for work assigned by Lead Counsel, and was performed by  
5 professional staff at my law firm for the benefit of the IPP Class during the aforementioned time  
6 period.

7 6. All of the services performed by Glancy Prongay & Murray LLP in connection with  
8 this litigation were reasonably necessary in the prosecution of this case. There has been no  
9 unnecessary duplication of services for which Glancy Prongay & Murray LLP now seeks  
10 compensation. The lodestar calculations exclude time spent reading or reviewing work prepared by  
11 others or other information relating to the case unless related to preparation for or work on a matter  
12 specifically assigned to Glancy Prongay & Murray LLP by Lead Counsel. The hourly rates for the  
13 attorneys and professional support staff in my firm included in Exhibit A are the usual and  
14 customary hourly rates charged by Glancy Prongay & Murray LLP.

15 7. Glancy Prongay & Murray LLP has expended a total of \$78,451.48 in unreimbursed  
16 costs and expenses in connection with the prosecution of this litigation from October 1, 2016  
17 through March 31, 2018. These costs and expenses are broken down in the chart attached hereto as  
18 **Exhibit B**. They were incurred on behalf of IPPs by Glancy Prongay & Murray LLP on a  
19 contingent basis and have not been reimbursed. The expenses incurred in this action are reflected  
20 on the books and records of my firm. These books and records are prepared from expense  
21 vouchers, check records and other source materials and represent an accurate recordation of the  
22 expenses incurred. Expense documentation has been provided to Lead Counsel for review.

23 8. I have reviewed the time and expenses reported by my firm in this case which are  
24 included in this declaration, and I affirm that they are true and accurate to the best of my  
25 knowledge.

26 I declare under penalty of perjury under the laws of the United States of America that the  
27 foregoing is true and correct.  
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Executed on August 8, 2018 at New York, New York.

/s/Lee Albert  
Lee Albert



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**ATTESTATION**

I, Adam J. Zapala, hereby attest, pursuant to United States District Court, Northern District of California Civil Local Rule 5-1(i)(3), that concurrence to the filing of this document has been obtained from the signatory hereto.

By: /s/ Adam J. Zapala  
Adam J. Zapala

# **EXHIBIT A**

***In re Capacitors Antitrust Litigation***  
**Case No. 14-cv-03264-JD**

**EXHIBIT A**

GLANCY PRONGAY & MURRAY LLP

Hours Reported and Lodestar on a Historical Basis

October 1, 2016 – March 31, 2018

<b>Timekeeper</b>	<b>Professional Status</b>	<b>Hours</b>	<b>Rate</b>	<b>Total Lodestar</b>
Lee Albert (2016-2017 Rate)	P	172	\$725	\$124,700.00
Brian P. Murray (2016-2017 Rate)	P	63.4	\$745	\$47,233.00
Garth Spencer	A	23.8	\$495	\$11,781.00
Edward Ahn	OC	3,204	\$350	\$1,121,400.00
<b>Grand Total:</b>		<b>3,463.20</b>		<b>\$1,305,114.00</b>

# **EXHIBIT B**

***In re Capacitors Antitrust Litigation***  
**Case No. 14-cv-03264-JD**

GLANCY PRONGAY & MURRAY LLP

Expenses Incurred

October 1, 2016 – March 31, 2018

EXPENSE CATEGORY	AMOUNT INCURRED
Assessments	\$75,000
Court Costs / Filing Fees	\$
Experts / Consultants	\$
Federal Express / UPS / Ontrac	\$
Postage / U.S. Mail	\$.94
Service of Process	\$
Messenger / Delivery	\$
Hearing Transcripts	\$
Investigation	\$
Lexis / Westlaw	\$80.80
Photocopies – In House	\$
Photocopies – Outside	\$
Telephone / Telecopier	\$
Travel – Transportation	\$1,633.72
Travel - Hotels	\$1,395.98
Travel – Meals	\$340.04
<b>TOTAL:</b>	\$78,451.48

# **EXHIBIT E**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALAN ZAMETKIN, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT & RESEARCH  
COMPANY, et al.,

Defendants.

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) No. 1:08-cv-10960-MLW

)  
) CLASS ACTION

) JOINT DECLARATION OF EVAN J.  
) KAUFMAN AND ELLEN GUSIKOFF  
) STEWART FILED ON BEHALF OF  
) ROBBINS GELLER RUDMAN & DOWD  
) LLP IN SUPPORT OF APPLICATION FOR  
) AWARD OF ATTORNEYS' FEES AND  
) EXPENSES  
)  
)

We, EVAN J. KAUFMAN AND ELLEN GUSIKOFF STEWART, declare as follows:

1. We are members of the firm of Robbins Geller Rudman & Dowd LLP. We are submitting this joint declaration in support of our firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. Our firm is co-lead counsel of record for plaintiff.

3. The identification and background of our firm and its partners is attached hereto as Exhibit A.

4. The information set forth below regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. We were the partners who either oversaw and/or conducted the day-to-day activities in the Litigation or were involved in the settlement process. We reviewed the firm's time and expense printouts (and backup documentation where necessary or appropriate) to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the Litigation. As a result of these reviews, reductions were made to time or expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines, policies, and limitations regarding certain expenses such as charges for hotels, meals, and transportation. As a result of these reviews and adjustments, we believe that the time set forth in this declaration and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation.

5. The total number of hours spent on the Litigation by our firm is 1,434.50. The total lodestar amount for attorney/paraprofessional time based on the firm's current hourly rates is \$758,881.25. The rates shown below are the usual and customary hourly rates for each individual. A breakdown of the lodestar is as follows:



<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Geller, Paul J.	(P)	7.25	790	5,727.50
George, David	(P)	26.75	715	19,126.25
Gusikoff Stewart, Ellen	(P)	37.00	735	27,195.00
Kaufman, Evan J.	(P)	467.00	660	308,220.00
Rothman, Robert M.	(P)	6.50	685	4,452.50
Rudman, Samuel H.	(P)	24.50	800	19,600.00
Wilens, Douglas	(P)	108.75	660	71,775.00
Barber, Kathleen	(A)	61.75	380	23,465.00
Capeci, Michael	(A)	18.00	310	5,580.00
Clark, Mary	(A)	21.75	395	8,591.25
Davidson, James	(A)	95.00	510	48,450.00
Heikkinen, Bailie	(A)	31.00	380	11,780.00
Reich, Mark	(A)	64.25	570	36,622.50
Tirabassi, Sabrina	(A)	16.50	415	6,847.50
Mccormick, Tricia	(PA)	42.25	450	19,012.50
Barhoum, Anthony J.	(EA)	10.25	400	4,100.00
Roelen, Scott	(EA)	26.00	325	8,450.00
Uralets, Boris	(EA)	12.00	335	4,020.00
Villalovas, Frank E.	(EA)	7.00	400	2,800.00
Brandon, Kelley T.	(I)	8.00	440	3,520.00
Courtney, Jean M.	(I)	8.00	315	2,520.00
Peitler, Steven	(I)	134.00	465	62,310.00
Paralegal I		136.50	290-295	40,106.25
Paralegal III		30.00	265	7,950.00
Shareholder Relations		28.00	195	5,460.00
Document Clerk		1.50	150	225.00
Summer Document Clerk		5.00	195	975.00
<b>TOTAL</b>		<b>1,434.50</b>		<b>\$758,881.25</b>

(P) Partner

(A) Associate

(PA) Project Attorney

(EA) Economic Analyst

(I) Investigator

(LS) Litigation Support

6. My firm seeks an award of \$50,060.35 in expenses which were reasonably and necessarily committed to the prosecution of the Litigation. They are broken down as follows:

**EXPENSES**

From Inception to April 10, 2012

<b>EXPENSE CATEGORY</b>		<b>TOTAL</b>
Meals, Hotels & Transportation		4,618.87
Photocopies (11,361 copies @ \$0.25 per page)		2,840.25
Postage		2.58
Telephone, Facsimile		47.87
Messenger, Overnight Delivery		60.13
Filing, Witness & Other Fees		15.00
Lexis, Westlaw, Online Library Research		3,085.86
Class Action Notices/Business Wire		973.25
Mediation Fees (JAMS, Inc.)		5,603.87
Experts/Consultants/Investigators		32,600.27
Financial Markets Analysis LLC	\$18,625.64	
Worms & Hirsch, Inc.	13,974.63	
Publications/Subscriptions		212.40
<b>TOTAL</b>		<b>\$ 50,060.35</b>

7. The following is additional information regarding certain of these expenses:

(a) Out-of-town meals, hotels and transportation:

<b>NAME</b>	<b>DATE</b>	<b>DESTINATION</b>	<b>PURPOSE</b>
Wilens, Douglas	02/18/09 – 02/19/09	Boston, MA	Attend hearing
Kaufman, Evan	11/14/10 – 11/15/10	Boston, MA	Oral argument for motion to dismiss
Gusikoff Stewart, Ellen	12/20/11 – 12/21/11	Boston, MA	Prepare for and attend preliminary approval hearing

(b) Lexis, Westlaw, Online Library Research: \$3,085.86. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis Nexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation and Choice Point. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

(c) Class Action Notices/Business Wire: \$973.25. This expense was necessary under the Private Securities Litigation Reform Act of 1995's early notice requirements, which

provides, among other things, that “[n]ot later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely-circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class (I) of the pendency of the action, the claims asserted therein, and the purported class period; and (II) that, not later than 60 days after the date on which notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class. *See* §27(3)(A)(i).

(d) Mediation Fees: \$5,603.87. These are the fees of the mediator, David Geronemus, who held a joint, pre-mediation telephone conference with the parties, reviewed the parties’ mediation submissions, and held a full-day mediation session leading to the settlement of the Litigation.

(e) Experts/Consultants/Investigators: \$32,600.27:

(i) Financial Markets Analysis LLC: \$18,625.64. These are the fees charged by Lead Plaintiff’s damages expert who consulted with Lead Counsel and analyzed and computed the amount of potentially recoverable damages suffered by the Class in connection with the claims alleged by Lead Plaintiff.

(ii) Worms & Hirsch, Inc.: \$13,974.63. These are the fees charged by the investigators hired by Lead Plaintiff in connection with their interviews of numerous former Fidelity employees, including the confidential witnesses referenced in the complaint.

8. The expenses pertaining to this case are reflected in the books and records of the firm. These books and records are prepared from receipts, expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April, 2012, at Melville, New York.

s/Evan J. Kaufman  
\_\_\_\_\_  
EVAN J. KAUFMAN

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April, 2012, at San Diego, California.

s/Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 13, 2012.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

# **EXHIBIT F**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALAN ZAMETKIN, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT & RESEARCH  
COMPANY, *et al.*,

Defendants.

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) No. 1:08-cv-10960-MLW

)  
) CLASS ACTION

)  
) DECLARATION OF JEFFREY A. BERENS  
) FILED ON BEHALF OF DYER & BERENS  
) LLP IN SUPPORT OF APPLICATION FOR  
) AWARD OF ATTORNEYS' FEES AND  
) EXPENSES

I, JEFFREY A. BERENS, declare as follows:

1. I am a partner with the Dyer & Berens LLP law firm. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is Co-Lead Counsel and counsel of record for Lead Plaintiff Dr. Alan J. Zametkin.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The following information set forth below regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. I reviewed these printouts to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses. As a result of these reviews and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation.

5. The total number of hours spent on this litigation by my firm is 1,452.10. The total lodestar amount for attorney time based on the firm's current rates is \$712,918.50. The hourly rates shown below are the usual and customary rates charged for each individual. A breakdown of the lodestar is as follows:



<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Robert J. Dyer III	(P)	70.70	\$825	\$58,327.50
Jeffrey A. Berens	(P)	721.80	\$595	\$429,471.00
Darby K. Kennedy	(SA)	181.60	\$450	\$81,720.00
Kristin A. Martinez	(FA)	386.00	\$300	\$115,800.00
Scott C. James	(FA)	92.00	\$300	\$27,600.00
<b>TOTAL:</b>		1,452.10		\$712,918.50

(P) Partner  
(SA) Senior Associate  
Attorney  
(FA) Former Attorney

6. My firm seeks an award of \$12,291.95 in expenses which were reasonably and necessarily committed to the prosecution of the litigation. They are broken down as follows:

**EXPENSES**

From Inception to April 11, 2012

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Transportation, Hotels & Meals	\$9,150.50
Photocopies	\$331.80
Telephone, Facsimile	\$68.40
Messenger, Overnight Delivery	\$66.25
Class Action Notices/Business Wire	\$175.00
Mediation Fees	\$2,500.00
<b>TOTAL</b>	<b>\$12,291.95</b>

7. The following is additional information regarding certain of these expenses:

(a) Out-of-town Meals, Hotels and Transportation: \$9,150.50

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Jeffrey A. Berens	2/18-2/19/09	Boston, MA	Client meeting/LP Hearing
Dr. Alan Zametkin	2/18-2/19/09	Boston, MA	Client meeting/LP Hearing
Jeffrey A. Berens	11/14-11/16/10	Boston, MA	MTD Hearing
Jeffrey A. Berens	12/7-12/8/10	Melville, NY	Preliminary settlement meeting with Defs' counsel.
Robert J. Dyer III	4/13-4/15/11	New York, NY	Client meeting/Mediation
Jeffrey A. Berens	4/13-4/15/11	New York, NY	Client meeting/Mediation

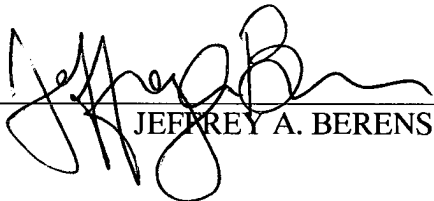
Dr. Alan Zametkin	4/13-4/14/11	New York, NY	Client meeting/Mediation
Jeffrey A. Berens	12/20-12/21/11	Boston, MA	Prelim. Approval Hearing
Jeffrey A. Berens	5/10-5/11/12	Boston, MA	Final Approval Hearing*

\* Because the final hearing has yet to occur, counsel only includes in expenses the airfare and hotel actually purchased.

- (b) Photocopying:  
In-house (1,659 copies @ \$0.20 per copy): \$331.80
- (c) Class Action Notice (early notice of filing): \$175.00
- (d) Mediation Fees (D&B portion): \$2,500.00

8. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of April 2012, at Denver, Colorado.

  
 \_\_\_\_\_  
 JEFFREY A. BERENS

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 13, 2012.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

# **EXHIBIT G**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALAN ZAMETKIN, On Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

vs.

FIDELITY MANAGEMENT & RESEARCH  
COMPANY, et al.,

Defendants.

) No. 1:08-cv-10960-MLW

)  
) CLASS ACTION

)  
) DECLARATION OF MICHAEL I. FISTEL,  
) JR. FILED ON BEHALF OF HOLZER  
) HOLZER & FISTEL LLC IN SUPPORT OF  
) APPLICATION FOR AWARD OF  
) ATTORNEYS' FEES AND EXPENSES

I, MICHAEL I. FISTEL, JR., declare as follows:

1. I am Partner with the firm of Holzer Holzer & Fistel LLC. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.
2. This firm is counsel for plaintiff Alan Zametkin.
3. The identification and background of my firm and its partners is attached hereto as Exhibit A.
4. The following information set forth below regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. My firm worked on the Litigation at the direction of co-lead counsel. As the partner that oversaw the day-to-day activities in this Litigation, I reviewed these printouts. The purpose of my review was to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the Litigation and to ensure that the time spent by my firm on the Litigation was consistent with the work assignments given to the firm by co-lead counsel. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation.
5. The total number of hours spent on this litigation by my firm is 164. The total lodestar amount for attorney/paralegal (or attorney/paraprofessional) time based on the firm's current rates is \$59,555.50. The hourly rates shown below are the usual and customary rates charged for each individual. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Corey D. Holzer	(P)	10.25	\$595.00	\$6,098.75
Michael I. Fistel, Jr.	(P)	13.35	\$545.00	\$7,275.75
Marshall P. Dees	(A)	54.25	\$395.00	\$21,428.75
William W. Stone	(A)	55.40	\$365.00	\$20,221.00
Taimur Ghaznavi	(LC)	13.75	\$175.00	\$2,406.25
Robert Quinn	(LC)	17.00	\$125.00	\$2,125.00
<b><i>TOTAL:</i></b>		<b><i>164.00</i></b>		<b><i>\$59,555.50</i></b>

(P) Partner

(A) Associate

(PL) Paralegal

(LC) Law Clerk

6. My firm seeks an award of \$224.02 in expenses which were reasonably and necessarily committed to the prosecution of the litigation. They are broken down as follows:

***EXPENSES***


From Inception to April 3, 2012

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Lexis, Westlaw, Online Library Research	\$79.02
Class Action Notices/Marketwire	\$145.00
<b><i>TOTAL</i></b>	<b><i>\$224.02</i></b>

(a) Lexis, Westlaw, Online Library Research: \$79.02. These included vendors such as Lexis Nexis, and Pacer Service Center. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

(b) Class Action Notices/Marketwire: \$145.00.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3<sup>rd</sup> day of April, 2012, at Atlanta, Georgia.

  
 \_\_\_\_\_  
 MICHAEL I. FISTEL, JR.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 13, 2012.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART



# **EXHIBIT H**

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<p><b>SHATONYA HARRIS, MATEO HUERTA AND KEVIN NICHOLSON,</b> <b>on behalf of themselves and all others</b> <b>similarly situated,</b></p> <p><b>Plaintiffs,</b></p> <p><b>vs.</b></p> <p><b>CITIGROUP, INC., and</b> <b>CITIMORTGAGE, INC.</b></p> <p><b>Defendants.</b></p>		<p><b>C.A. NO. 08-10417-MLW</b></p>
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**DECLARATION OF WENDY J. HARRISON IN SUPPORT OF**  
**PLAINTIFFS' MOTION FOR APPROVAL OF PAYMENT OF ATTORNEYS' FEES,**  
**COSTS AND SERVICE PAYMENTS TO CLASS REPRESENTATIVES**

I, WENDY J. HARRISON, declare as follows:

1. I am a shareholder with the firm of Bonnett, Fairbourn, Friedman & Balint, P.C. (“BFFB”). I am one of the attorneys representing the Plaintiffs and Class Members in the above-entitled action. I am submitting this declaration in support of the settlement and my firm’s application for an award of attorneys’ fees and expenses in connection with services rendered in this action.
2. Attached as Exhibit 1 is BFFB’s firm biography.
3. My firm is one of the Plaintiffs’ Counsel in this matter.
4. From the inception of this litigation, BFFB, as counsel for Plaintiffs, has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class.

5. BFFB was involved in this action from the very outset, conducting legal research concerning the alleged discriminatory effects of CitiMortgage's home financing policies and practices. BFFB researched and assisted with the preparation of the original complaint for Plaintiff Felix Puello, captioned *Puello v. Citifinancial Services, Inc. and Citigroup, Inc.*, No. 08-10417, filed in the District of Massachusetts on March 13, 2008.

6. I am one of the signatories of the Joint Declaration of Counsel filed contemporaneously herewith, which contains a more complete description of the litigation history of this matter.

7. BFFB assumed an active role in all aspects of the litigation and settlement of this case, including formulating Plaintiff's litigation strategy, preparing and drafting pleadings and submissions to the Court, conducting document review and discovery, and participating in expert discovery. My firm also took an active role in negotiating the settlement, preparing the settlement documents, and handling over 900 calls from class members responding to the settlement notice.

8. BFFB spent a total is 580.1 hours on this litigation, resulting in a lodestar amount of \$153,130.00. This lodestar amount was calculated using the hourly rates shown below, which are the usual and customary rates charged by each attorney/paralegal in matters of this nature, multiplied by the number of hours reasonably incurred by each attorney/paralegal based upon contemporaneously kept time records. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Andrew S. Friedman	Partner	4.4	\$650.00	\$2,860.00
Wendy J. Harrison	Partner	83.7	\$575.00	\$48,127.50
Guy A. Hanson	Sr. Associate	4.0	\$525.00	\$2,100.00
Trent B. Jordan	Sr. Associate	59.5	\$500.00	\$29,750.00
Samantha C. Dillon	Associate	4.60	\$250.00	\$1,150.00
Rose K. Creech	Paralegal	10.3	\$175.00	\$1,802.50
Lydia L. Rueda	Paralegal	193.00	\$165.00	\$31,845.00

David J. Streyle	Paralegal	106.2	\$165.00	\$17,523.00
Karen M. Vanderbilt	Paralegal	32.5	\$165.00	\$5,362.50
Craig L. Lerner	Paralegal	36.7	\$165.00	\$6,055.50
Amy L. Owen	Paralegal	19.0	\$145.00	\$2,755.00
Nidia Terrazas-Shuemaker	Paralegal	16.0	\$145.00	\$2,320.00
Rikke M. Liska	Paralegal	10.2	\$145.00	\$1,479.00
<b>TOTALS:</b>		<b>580.1</b>		<b>\$153,130.00</b>

9. The hourly rates reflected in the foregoing table are consistent with those charged by similarly situated practitioners in the legal community. In particular, BFFB’s rates have been accepted for purposes of lodestar determinations and cross-checks made in the following class action cases, among many others:

- Klein v. Freedom Wireless*, No. 08-1369 (D. Nev.);
- Negrete v. Fidelity and Guaranty Life Ins. Co.*, No. CV 05-6837 (C.D. Cal.);
- DeHoyas v. Allstate*, No. SA-01-CA-1010 (W.D. Tex.);
- Wood v. Ionatron, Inc.*, No. 4:06-cv-00354-CKJ (D. Ariz.);
- Slomovics v. Vistacare*, No. 04-CV-1661 (D. Ariz.);
- Conseco MDL 1610*, MDL No. 04-1610 (C.D. Cal.);
- Lebrilla v. Farmers Group Inc.*, No. 00-CC-07185 (Cal. Sup. Ct., Orange County);
- Williams v. Fields National Security Ins. Co.*, No. 1:02cv877 (M.D. Ala.);
- Sudbeck v. Wellman*, No. 28,003-II (Cir. Ct. Cocke County, Tenn.);
- McJimsey v. White Electronics*, No. CIV-04-1499 (D. Ariz.); and
- Amico v. GM*, No. CV2004-092816 (Ariz. Sup. Ct., Maricopa County).

10. BFFB’s time in this case was spent on the following tasks:

<b>CATEGORY</b>	<b>HOURS SPENT</b>
Pleadings and Motions re Pleadings	4.8
Legal and Other Research	74.9
Depositions, including Preparation	36.5

Experts – Retention, Preparation, and Discovery (for any purpose; e.g., consultation, class certification, summary judgment, damage analysis, and trial)	6.7
Non-Deposition Merits and/or Class Discovery; (e.g., interrogatories, document requests, subpoenas, negotiations and motions regarding same, and document review and analysis)	89.4
Settlement	315.3
Case Planning, Organization, and Strategy	36.3
Litigation Strategy	16.2
<b>TOTAL:</b>	<b>580.1</b>

11. BFFB incurred a total of \$25,216.74 in expenses in prosecuting this litigation.

They are broken down as follows:

<i>EXPENSE CATEGORY</i>	<i>AMOUNT</i>
Litigation Fund Assessments	\$2,500.00
Litigation Fund Check Charge	\$34.95
Expert Fees	\$4,245.00
Mediation/Arbitration	\$12,550.00
Electronic Research (Westlaw/Lexis, Pacer, Accurint)	\$158.47
Transcripts	\$4,361.43
Travel, Meals, Hotels & Transportation	\$1,209.01
Photocopies (Internal)	\$51.40
Outside Photocopy Expense	\$21.75
Long Distance Telephone/Fax/Teleconference	\$64.93
Overnight Delivery	\$19.80
<b>TOTAL:</b>	<b>\$25,216.74</b>

12. As reflected in the table above, Plaintiffs' counsel established a litigation fund at the inception of this action to pay for certain expenses necessary for the prosecution of this litigation. Contributions to the fund were used to pay for consultants and experts retained by Plaintiffs to assist in prosecuting this action, and costs related to depositions and mediation.

13. The afore-mentioned expenses pertaining to this case are reflected in the books and records of BFFB. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

14. From the case's inception, BFFB agreed that its compensation for the services rendered to the Class would be on a contingent basis. Additionally, any award of fees and expenses is limited to the stipulated amount agreed to by Defendants, subject to the approval of the Court.

15. BFFB has extensive experience prosecuting consumer class actions, including those involving mortgage loan transactions. The firm specializes in complex class action litigation, representing consumers, employees and investors in class actions pending in state and federal courts throughout the United States. During its successful history, the firm has litigated over 100 class action cases and recovered millions of dollars for class members.

16. The lodestar summary reflects BFFB's experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

17. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 24<sup>th</sup> day of July, 2012, at Phoenix, Arizona.

/s/ Wendy J. Harrison  
Wendy J. Harrison

# **EXHIBIT I**



## **EXHIBIT 2**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<p><b>SHATONYA HARRIS, MATEO HUERTA AND KEVIN NICHOLSON,</b> <b>on behalf of themselves and all others</b> <b>similarly situated,</b></p> <p><b>Plaintiffs,</b></p> <p><b>vs.</b></p> <p><b>CITIGROUP, INC., and</b> <b>CITIMORTGAGE, INC.</b></p> <p><b>Defendants.</b></p>		<p><b>C.A. NO. 08-10417-MLW</b></p>
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**DECLARATION OF GARY KLEIN IN SUPPORT OF MOTION FOR**  
**ATTORNEYS' FEES, COSTS AND EXPENSES**

I, GARY KLEIN, DECLARE AS FOLLOWS:

1. I am a partner with the firm of Klein Kavanagh Costello, LLP. I am one of the attorneys representing the Plaintiffs and Class Members in the above-entitled action. I am submitting this declaration in support of the settlement and my firm's application for an award of attorneys' fees and expenses in connection with services rendered in this action.

2. Attached as Exhibit 1 is a copy of my resume.

3. My Firm is one of the Plaintiffs' Counsel in this matter.

4. From the inception of this litigation, Klein Kavanagh Costello, LLP ("Klein Kavanagh Costello") (successor firm to Roddy Klein & Ryan ("RKR") as of January 1, 2012<sup>1</sup>) as counsel for Plaintiffs has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class.

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<sup>1</sup> Klein Kavanagh Costello is the successor firm to Roddy Klein & Ryan, a Boston, Massachusetts-based law firm that specialized in the representation of consumers in individual and class action cases against mortgage lenders, finance companies, debt collectors, and utilities.

5. Klein Kavanagh Costello was involved in this action from the very outset, conducting initial factual investigation and legal research concerning the alleged discriminatory effects of Citimortgage's home financing policies and practices. Klein Kavanagh Costello fielded calls from and met with many potential clients with concerns. Klein Kavanagh Costello researched, drafted and filed the original complaint for Plaintiff Felix Puello captioned *Puello v. Citifinancial Services, Inc. and Citigroup, Inc.*, No. 08-10417, in the District of Massachusetts on March 13, 2008.

6. I am one of the signatories of the Joint Declaration of Counsel filed contemporaneously herewith, which contains a more complete description of the litigation history of this matter and of the other cases covered by the Settlement Agreement.

7. Klein Kavanagh Costello assumed a lead role in all aspects of the litigation and settlement of this case, including the formulation of Plaintiff's litigation strategy, the preparation and drafting of pleadings and submissions to the Court, appearances and presentation of argument to the Court at the motion hearings and status conferences in this case, conducting document review and discovery and participating in expert and expert-related discovery. My firm also took a primary role in settlement negotiations and all mediation sessions and in negotiating and preparing the settlement documents.

8. The total number of hours spent on this litigation by Klein Kavanagh Costello is 840.85. The total lodestar amount for attorney/professional time based on the firm's rates is \$445,096.50. The hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Gary Klein	Partner	280.2	\$725	\$203,145.00
Shennan Kavanagh	Partner	38.00	\$550	\$20,900.00
Kevin Costello	Partner	303.20	\$550	\$166,760.00
John McGowan	Associate	2.60	\$395	\$1,027.00
Melissa Garlick	Associate	30.00	\$275	\$8,250.00
Gillian Feiner	Associate	.30	\$275	\$82.50
Corinne Reed	Law Clerk	65.00	\$245	\$15,925.00
Rebecca Neale	Law Clerk	47.10	\$245	\$11,539.50
Marjorie Charney	Paralegal	53.30	\$245	\$13,058.50
Mary McClay	Paralegal	17.90	\$210	\$3,759.00
Jennifer Pereira	Legal Assistant	3.25	\$200	\$650.00
<b>TOTALS:</b>		<b>840.85</b>		<b>\$445,096.50</b>

Approximately 42% of Klein Kavanagh Costello's billed time is attorney time.

9. The hourly rates reflected in the foregoing table are consistent with those charged by similarly situated practitioners in the legal community. In particular, Klein Kavanagh Costello's rates and those of its predecessor firm RKR have been accepted for purposes of lodestar and cross-checks made in the following recent class action cases:

*Ana Ramirez, et al. v. Greenpoint Mortgage Funding, Inc.*, Case No. 089-cv-00369-THE (ND CA)

*In re: First Franklin Financial Corporation Litigation*, Case No. 08-cv-01515-JW (ND CA)

*In re: Ocwen Federal Bank FSB Mortgage Servicing Litigation*, Case No. 04-cv-02714 (ND IL)

*In re: Robert and Anna Cano v. GMAC Mortgage Corp.*, Case No. 08-07019 (USBC SD TX)

*Herbert and Doris Steele, et al. v. GE Money Bank, et al.*, Case No. 08-cv-01880 (ND IL)

*Alfredo B. Payares, et al. v. Chase Bank USA, N.A., et al.*, Case No. 07-05540 AG (ANx) (CD CA)

10. Klein Kavanagh Costello's time in this case was spent on the following tasks:

<i>CATEGORY</i>	<i>HOURS SPENT</i>
Pleadings and Motions re Pleadings	164.50
Legal and Other Research	51.2
Depositions, including Preparation	35.5
Experts – Retention, Preparation, and Discovery (for any purpose, e.g., consultation, class certification, summary judgment, damage analysis, trial)	5.1
Non-Deposition Merits and/or Class Discovery, e.g. Interrogatories, Document Requests, Subpoenas, Negotiations and Motions re same, and Document Review and Analysis	101.4
Settlement	379.95
Case Planning, Organization, and Strategy	88.1
Litigation Strategy	15.1
<b><i>TOTAL:</i></b>	<b><i>840.85</i></b>

11. Klein Kavanagh Costello incurred a total of \$7,108.25 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

<i>EXPENSE CATEGORY</i>	<i>AMOUNT</i>
Litigation Fund Assessments	\$1,250.00
Court/Filing Fees	\$797.90
Travel, Meals, Hotels & Transportation	\$4,968.56
Outside Messenger/Overnight Delivery	\$86.79
Electronic Research (Westlaw/Lexis, Pacer, Accurint)	\$5.00
<b><i>TOTAL:</i></b>	<b><i>\$7,108.25</i></b>

12. The aforementioned expenses pertaining to this case are reflected in the books and records of Klein Kavanagh Costello. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

13. Klein Kavanagh Costello's compensation for the services rendered to the class is wholly contingent. Any fees and reimbursement of expenses will be limited to the stipulated amount agreed to by the Defendants, subject to the approval of the Court.

14. Klein Kavanagh Costello has extensive experience prosecuting consumer class actions, including those involving mortgage loan transactions. The firm specializes in complex class action litigation, representing consumers, employees and investors in class actions pending in state and federal courts throughout the United States. During its successful history, the firm (including as RKR) has litigated over 100 class action cases and has served as lead, co-lead or other high level positions in the leadership of class actions and successfully litigated and recovered millions of dollars for class members.

15. The lodestar summary reflects Klein Kavanagh Costello's experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

16. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 24th day of July, 2012 at Boston, Massachusetts.

/s/ Gary Klein  
Gary Klein

# **EXHIBIT J**



# **EXHIBIT 3**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>SHATONYA HARRIS, MATEO HUERTA AND KEVIN NICHOLSON, on behalf of themselves and all others similarly situated,</b>  <b>Plaintiffs,</b>  <b>vs.</b>  <b>CITIGROUP, INC., and CITIMORTGAGE, INC.</b>  <b>Defendants.</b>		<b>C.A. NO. 08-10417-MLW</b>
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**DECLARATION OF THEODORE J. PINTAR IN SUPPORT  
OF MOTION FOR ATTORNEYS' FEES, COSTS AND EXPENSES**

I, THEODORE J. PINTAR, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"). I am one of the attorneys representing Plaintiffs and Class Members in this action. I am submitting this declaration in support of the settlement and my firm's application for an award of attorneys' fees and expenses in connection with services rendered in this action.

2. Attached as Exhibit 1 is a firm biography for Robbins Geller.

3. My firm is one of the Plaintiffs' Counsel in this matter.

4. From the inception of this litigation, Robbins Geller as counsel for Plaintiffs has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class.

5. Robbins Geller assisted in certain aspects of this litigation and settlement of this case, including the formulation of Plaintiff's litigation strategy, the preparation and drafting of pleadings and submissions to the Court, and conducting document review and discovery.

6. The total number of hours spent on this litigation by Robbins Geller is 112.5. The total lodestar amount for attorney/professional time based on the firm's rates is \$49,602.50. The

hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature. A breakdown of the lodestar is as follows:

NAME	POSITION	HOURS	RATE	LODESTAR
Theodore J. Pinta	Partner	3.25	750.00	\$ 2,437.50
Robert Rothman	Partner	14.50	685.00	\$ 9,932.50
Rachel Jensen	Partner	.25	610.00	\$ 152.50
Leslie Hurst	Partner	14.75	585.00	\$ 8,628.75
Coty R. Miller	Associate	30.75	410.00	\$ 12,607.50
Paula M. Roach	Associate	22.75	360.00	\$ 8,190.00
Michele M. Wallbrett	Paralegal	17.25	295.00	\$ 5,088.75
Soviz Fallahian	Summer Associate	9.00	285.00	\$ 2,565.00
<b>TOTAL</b>		<b>112.50</b>		<b>\$ 49,602.50</b>

Approximately 76.7% of Robbins Geller's billed time is attorney time.

7. Robbins Geller's rates are based, in large part, on National Law Journal ("NLJ") billing surveys. As shown by the current 2011 NLJ billing survey, attached hereto as Ex. 2, Robbins Geller's rates are consistent with those of major defense firms with offices in the Los Angeles and Orange County area. In September 2008, the court in *In re Enron Corp. Secs. Derivative & "ERISA" Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), extensively analyzed the rates charged by Robbins Geller's predecessor firm Coughlin Stoia Geller Rudman & Robbins LLP and accepted them. *Id.* at 779-81. In doing so, the *Enron* court relied heavily on NLJ billing surveys and cited a number of other courts that have similarly relied on such surveys as evidence of prevailing hourly rates in the relevant community. *Id.* at 781.

8. Robbins Geller's time in this case was spent on the following areas:

CATEGORY	HOURS SPENT
Draft Complaint	1.25
Pleadings & Motions	3.75
Discovery	23.25
Factual Investigation	28.25
Case Planning, Strategy	54.75
Settlement	1.25
<b>TOTAL</b>	<b>112.50</b>

9. Robbins Geller incurred a total of \$7,109.68 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

EXPENSE CATEGORY	TOTAL
Litigation Fund	\$ 1,250.00
Internal Reproduction (Copies)	\$ 20.50
Court Reporters & Transcripts	\$ 826.55
Computer Research (Lexis/Westlaw)	\$ 524.01
Telephone	\$ 23.15
Postage/Express Delivery/Messenger	\$ 54.41
Witness/Service Fees	\$ 41.73
Travel (Air Transportation, Ground Travel, Meals, Lodging, etc.)	\$ 4,369.33
<b>TOTAL</b>	<b>\$ 7,109.68</b>

10. The aforementioned expenses pertaining to this case are reflected in the books and records of Robbins Geller. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

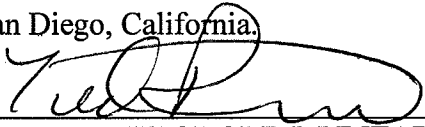
11. Robbins Geller's compensation for the services rendered to the Class is wholly contingent. Any fees and reimbursement of expenses will be limited to the stipulated amount agreed to by the Defendants, subject to the approval of the Court.

12. Robbins Geller has extensive experience prosecuting consumer class actions, such as this case, as described more fully in the firm's attached biography.

13. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of July, 2012, at San Diego, California.

  
 \_\_\_\_\_  
 THEODORE J. PINTAR

# EXHIBIT 2



## 2011 NLJ Billing Survey

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Fiscal Year	Firm Name	Principal Location	Average FTE Attorney	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Associate Billing Rate Med	NLJ Billing Source
2011	Andrews Kurth	Houston	355											National Law Journal, December 19, 2011
2011	Baker, Donelson, Bearman, Caldwell & Berkowitz	Memphis	527	\$311	\$310	\$595	\$250	\$357	\$345	\$315	\$160	\$228	\$225	National Law Journal, December 19, 2011
2011	Best Best & Krieger	Riverside, CA	195	\$358	\$360	\$575	\$275	\$417	\$420	\$375	\$205	\$265	\$240	National Law Journal, December 19, 2011
2011	Bingham McCutchen	Boston	901											National Law Journal, December 19, 2011
2011	Briggs and Morgan	Minneapolis	185			\$625	\$325			\$305	\$230			National Law Journal, December 19, 2011
2011	Broad and Cassel	Orlando	160	\$377	\$350	\$575	\$295	\$435	\$395	\$350	\$180	\$265	\$265	National Law Journal, December 19, 2011
2011	Bryan Cave	St. Louis	908	\$475	\$460	\$795	\$375	\$565	\$553	\$540	\$200	\$356	\$360	National Law Journal, December 19, 2011
2011	Butzel Long	Detroit	176			\$700	\$325	\$440		\$425	\$225	\$274		National Law Journal, December 19, 2011
2011	Cadwalader, Wickersham & Taft	New York	481											National Law Journal, December 19, 2011
2011	Carlton Fields	Tampa	270	\$397	\$400	\$815	\$320	\$470	\$470	\$380	\$195	\$262	\$265	National Law Journal, December 19, 2011
2011	Cozen O'Connor	Philadelphia	504	\$439	\$410	\$900	\$305	\$510	\$490	\$550	\$225	\$330	\$330	National Law Journal, December 19, 2011
2011	Day Pitney	Parsippany	324	\$447	\$450	\$960	\$380	\$537	\$525	\$470	\$235	\$317	\$315	National Law Journal, December 19, 2011
2011	Dickinson Wright	Detroit	229			\$600	\$325			\$320	\$200			National Law Journal, December 19, 2011
2011	Dickstein Shapiro	Washington	335	\$560	\$550	\$1,000	\$540	\$680	\$670	\$545	\$225	\$435	\$465	National Law Journal, December 19, 2011
2011	Dinsmore & Shohl	Cincinnati	407	\$308	\$295	\$630	\$150	\$373	\$370	\$310	\$130	\$217	\$220	National Law Journal, December 19, 2011
2011	DLA Piper	New York	3,348	\$585	\$615	\$1,120	\$530	\$747	\$730	\$730	\$320	\$508	\$510	National Law Journal, December 19, 2011
2011	Dorsey & Whitney	Minneapolis	567	\$426	\$405	\$810	\$295	\$526	\$525	\$465	\$190	\$294	\$275	National Law Journal, December 19, 2011
2011	Duane Morris	Philadelphia	629	\$503	\$500	\$875	\$375	\$575	\$570	\$530	\$225	\$365	\$365	National Law Journal, December 19, 2011
2011	Dykema Gossett	Detroit	333	\$406	\$400	\$665	\$310	\$482	\$485	\$395	\$260	\$309	\$305	National Law Journal, December 19, 2011
2011	Epstein Becker & Green	New York	300	\$428	\$425	\$850	\$350	\$519	\$500	\$550	\$195	\$341	\$325	National Law Journal, December 19, 2011
2011	Fitzpatrick, Cella, Harper & Scinto	New York	168			\$730	\$460		\$525	\$440	\$275		\$325	National Law Journal, December 19, 2011
2011	Ford & Harrison	Atlanta	173											National Law Journal, December 19, 2011
2011	Fox Rothschild	Philadelphia	450	\$413	\$420	\$725	\$325	\$486	\$483	\$455	\$190	\$297	\$295	National Law Journal, December 19, 2011
2011	Frost Brown Todd	Cincinnati	401	\$296	\$295	\$515	\$205	\$340	\$340	\$265	\$150	\$200	\$200	National Law Journal, December 19, 2011
2011	Gardere Wynne Sewell	Dallas	265	\$435	\$450	\$815	\$380	\$550	\$550	\$500	\$225	\$325	\$320	National Law Journal, December 19, 2011
2011	Gibbons	Newark	199	\$505	\$450	\$725	\$400	\$563	\$505	\$475	\$285	\$380	\$320	National Law Journal, December 19, 2011
2011	Harris Beach	Rochester	176			\$390	\$275			\$260	\$160			National Law Journal, December 19, 2011
2011	Hiscock & Barclay	Syracuse	174	\$269	\$240	\$750	\$195	\$304	\$265	\$350	\$150	\$207	\$195	National Law Journal, December 19, 2011
2011	Hodgson Russ	Buffalo	199			\$685	\$240	\$378	\$360	\$420	\$180	\$234	\$225	National Law Journal, December 19, 2011
2011	Holland & Knight	Washington	910	\$445	\$455	\$895	\$300	\$530	\$520	\$495	\$175	\$295	\$290	National Law Journal, December 19, 2011
2011	Hughes Hubbard & Reed	New York	300	\$633	\$615	\$990	\$625	\$828	\$800	\$695	\$270	\$533	\$540	National Law Journal, December 19, 2011
2011	Hunton & Williams	Richmond	855											National Law Journal, December 19, 2011
2011	Husch Blackwell	St. Louis	551	\$341	\$340	\$850	\$225	\$395	\$390	\$425	\$175	\$226	\$210	National Law Journal, December 19, 2011
2011	Jackson Kelly	Charleston, WV	170	\$275	\$275	\$505	\$255	\$319	\$325	\$260	\$155	\$208	\$205	National Law Journal, December 19, 2011
2011	Jackson Lewis	White Plains	614											National Law Journal, December 19, 2011
2011	Kaye Scholer	New York	425	\$661	\$665	\$1,080	\$685	\$831	\$835	\$705	\$310	\$519	\$525	National Law Journal, December 19, 2011
2011	Kelley Drye & Warren	New York	321	\$474	\$400	\$925	\$480	\$634	\$645	\$595	\$275	\$425	\$420	National Law Journal, December 19, 2011
2011	Knobbe Martens Olson & Bear	Irvine	268	\$439	\$415	\$735	\$415	\$525	\$500	\$495	\$295	\$346	\$345	National Law Journal, December 19, 2011
2011	Lane Powell	Seattle	180	\$405	\$425	\$645	\$340	\$460	\$450	\$360	\$225	\$295	\$285	National Law Journal, December 19, 2011
2011	Latham & Watkins	New York	1,931											National Law Journal, December 19, 2011
2011	Lathrop & Gage	Kansas City, MO	281	\$337	\$340	\$735	\$275	\$390	\$390	\$410	\$205	\$246	\$245	National Law Journal, December 19, 2011
2011	Lewis, Rice & Fingersh	St. Louis	162	\$275		\$470	\$270			\$320	\$150			National Law Journal, December 19, 2011
2011	Lowenstein Sandler	Roseland, NJ	249	\$478	\$480	\$895	\$435	\$613	\$595	\$660	\$250	\$400	\$390	National Law Journal, December 19, 2011
2011	Manatt, Phelps & Phillips	Los Angeles	322	\$602	\$620	\$850	\$540	\$676	\$670	\$550	\$215	\$464	\$500	National Law Journal, December 19, 2011

Fiscal Year	Firm Name	Principal Location	Average FTE Attorney	Firmwide Billing Rate Average	Firmwide Billing Rate Med	Partner Billing Rate High	Partner Billing Rate Low	Partner Billing Rate Average	Partner Billing Rate Med	Associate Billing Rate High	Associate Billing Rate Low	Associate Billing Rate Average	Associate Billing Rate Med	NLJ Billing Source
2011	<b>McElroy, Deutsch, Mulvaney &amp; Carpenter</b>	Morristown, NJ	272	\$245	\$275	\$575	\$295	\$350	\$375	\$325	\$185	\$250	\$235	National Law Journal, December 19, 2011
2011	<b>McKenna Long &amp; Aldridge</b>	Atlanta	425	\$472	\$455	\$800	\$405	\$562	\$540	\$510	\$215	\$374	\$375	National Law Journal, December 19, 2011
2011	<b>Michael Best &amp; Friedrich</b>	Milwaukee	208	\$321	\$310	\$650	\$245	\$413		\$310	\$205	\$241		National Law Journal, December 19, 2011
2011	<b>Miller &amp; Martin</b>	Chattanooga	184	\$313	\$325	\$610	\$240	\$369	\$375	\$275	\$185	\$215	\$215	National Law Journal, December 19, 2011
2011	<b>Nelson Mullins Riley &amp; Scarborough</b>	Columbia, SC	399	\$318	\$310	\$850	\$220	\$412	\$400	\$350	\$170	\$255	\$250	National Law Journal, December 19, 2011
2011	<b>Nexsen Pruet</b>	Columbia, SC	178			\$550	\$235			\$265	\$170			National Law Journal, December 19, 2011
2011	<b>Orrick, Herrington &amp; Sutcliffe</b>	San Francisco	1,022											National Law Journal, December 19, 2011
2011	<b>Patton Boggs</b>	Washington	512	\$546	\$540	\$990	\$410	\$659	\$645	\$570	\$240	\$410	\$415	National Law Journal, December 19, 2011
2011	<b>Pepper Hamilton</b>	Philadelphia	459			\$825	\$380	\$557		\$460	\$235	\$344		National Law Journal, December 19, 2011
2011	<b>Perkins Coie</b>	Seattle	693	\$462		\$875	\$285	\$550	\$545	\$590	\$215	\$368		National Law Journal, December 19, 2011
2011	<b>Phelps Dunbar</b>	New Orleans	280	\$236	\$225	\$465	\$190	\$281	\$275	\$245	\$150	\$189	\$190	National Law Journal, December 19, 2011
2011	<b>Polsinelli Shughart</b>	Kansas City, MO	466			\$630	\$275			\$335	\$205			National Law Journal, December 19, 2011
2011	<b>Reed Smith</b>	Pittsburgh	1,449											National Law Journal, December 19, 2011
2011	<b>Saul Ewing</b>	Philadelphia	220	\$431	\$450	\$750	\$350	\$502	\$490	\$495	\$245	\$326	\$300	National Law Journal, December 19, 2011
2011	<b>Schulte Roth &amp; Zabel</b>	New York	406	\$615	\$630	\$935	\$770	\$846	\$840	\$675	\$285	\$608	\$580	National Law Journal, December 19, 2011
2011	<b>Sedgwick, Detert, Moran &amp; Arnold</b>	San Francisco	345											National Law Journal, December 19, 2011
2011	<b>Seyfarth Shaw</b>	Chicago	702	\$437	\$425	\$790	\$355	\$528	\$525	\$505	\$225	\$341	\$340	National Law Journal, December 19, 2011
2011	<b>Sheppard, Mullin, Richter &amp; Hampton</b>	Los Angeles	465			\$860	\$505			\$635	\$275			National Law Journal, December 19, 2011
2011	<b>Shumaker, Loop &amp; Kendrick</b>	Toledo	208	\$345	\$365	\$555	\$265	\$364	\$375	\$320	\$195	\$252	\$250	National Law Journal, December 19, 2011
2011	<b>Stephoe &amp; Johnson LLP</b>	Washington	408											National Law Journal, December 19, 2011
2011	<b>Stoel Rives</b>	Portland, OR	373	\$385	\$395	\$625	\$320	\$451	\$450	\$500	\$195	\$292	\$275	National Law Journal, December 19, 2011
2011	<b>Strasburger &amp; Price</b>	Dallas	181	\$363	\$362	\$630	\$211	\$395	\$397	\$332	\$199	\$250	\$238	National Law Journal, December 19, 2011
2011	<b>Thompson &amp; Knight</b>	Dallas	319	\$520	\$520	\$875	\$440	\$594	\$585	\$460	\$250	\$358	\$350	National Law Journal, December 19, 2011
2011	<b>Thompson Coburn</b>	St. Louis	325			\$750	\$315			\$445	\$195			National Law Journal, December 19, 2011
2011	<b>Ulmer &amp; Berne</b>	Cleveland	179	\$316		\$585	\$280	\$405		\$390	\$200	\$260		National Law Journal, December 19, 2011
2011	<b>Vedder Price</b>	Chicago	246	\$445	\$445	\$735	\$295	\$500	\$490	\$520	\$265	\$345	\$335	National Law Journal, December 19, 2011
2011	<b>White and Williams</b>	Philadelphia	216											National Law Journal, December 19, 2011
2011	<b>Wiley Rein</b>	Washington	270											National Law Journal, December 19, 2011
2011	<b>Wilmer Cutler Pickering Hale and Dorr</b>	Washington	890											National Law Journal, December 19, 2011
2011	<b>Winstead</b>	Dallas	265	\$406		\$680	\$365	\$477		\$410	\$215	\$301		National Law Journal, December 19, 2011
2011	<b>Winston &amp; Strawn</b>	Chicago	868	\$557	\$550	\$1,130	\$580	\$713	\$700	\$600	\$350	\$434	\$413	National Law Journal, December 19, 2011
2011	<b>Wyatt, Tarrant &amp; Combs</b>	Louisville	181	\$312	\$350	\$500	\$240	\$325	\$375	\$275	\$180	\$220	\$235	National Law Journal, December 19, 2011

\* Attorney numbers are from the 2011 NLJ 250, published in April 2011.

# **EXHIBIT K**



# **EXHIBIT 6**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>SHATONYA HARRIS, MATEO HUERTA AND KEVIN NICHOLSON, on behalf of themselves and all others similarly situated,</b>		
<b>Plaintiffs,</b>		
<b>vs.</b>		
<b>CITIGROUP, INC., and CITIMORTGAGE, INC.</b>		<b>C.A. NO. 08-10417-MLW</b>
<b>Defendants.</b>		

**DECLARATION OF STUART T. ROSSMAN IN SUPPORT OF MOTION FOR  
ATTORNEYS' FEES, COSTS AND EXPENSES**

I, STUART T. ROSSMAN DECLARE AS FOLLOWS:

1. I am the Director of Litigation at the National Consumer Law Center ("NCLC"). I am one of the attorneys representing the Plaintiffs and Class Members in the above-entitled action. I am submitting this declaration in support of the settlement and my organization's application for an award of attorneys' fees and expenses in connection with services rendered in this action.
2. Attached as Exhibit 1 is an organizational biography for NCLC.
3. NCLC is one of the Plaintiffs' Counsel in this matter.
4. From the inception of this litigation, NCLC as counsel for Plaintiffs has aggressively prosecuted this case and vigorously represented the best interests of Plaintiffs and the Class.
5. NCLC was involved in this action from the very outset, conducting legal research concerning the alleged discriminatory effects of Citimortgage's home financing policies and practices. NCLC researched and participated in the preparation of the pleadings filed for

Plaintiff Felix Puello captioned *Puello v. Citifinancial Services, Inc. and Citigroup, Inc.*, No. 08-10417, in the District of Massachusetts on March 13, 2008.

6. I am one of the signatories of the Joint Declaration of Counsel filed contemporaneously herewith, which contains a more complete description of the litigation history of this matter and of the other cases covered by the Settlement Agreement.

7. NCLC assumed an active role in all aspects of the litigation and settlement of this case, including the formulation of Plaintiff's litigation strategy, the preparation and drafting of pleadings and submissions to the Court, appearances and presentation of argument to the Court at the motion hearings and status conferences in this case, and conducting document review and discovery. NCLC also took an active role in settlement negotiations and all mediation sessions and in negotiating and preparing the settlement documents.

8. NCLC spent a total of 63.9 hours on this litigation. The total lodestar amount for attorney/professional time based on the firm's rates is \$525.00. The hourly rates shown below are the usual and customary rates charged for each individual in matters of this nature. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Stuart Rossman	Advocate	27.8	\$525.00	\$14,595.00
Charles Delbaum	Advocate	36.1	\$525.00	\$18,952.50
<b><i>TOTALS:</i></b>		<b><i>63.9</i></b>	<b><i>\$525.00</i></b>	<b><i>\$33,547.50</i></b>

Approximately 100% of NCLC's billed time is attorney time.

9. The hourly rates reflected in the foregoing table are consistent with those charged by similarly situated practitioners in the legal community.

10. NCLC's time in this case was spent on the following tasks:

<i>CATEGORY</i>	<i>HOURS SPENT</i>
Pleadings and Motions re Pleadings	20.3
Legal and Other Research	
Depositions, including Preparation	
Experts – Retention, Preparation, and Discovery (for any purpose, e.g., consultation, class certification, summary judgment, damage analysis, trial)	
Non-Deposition Merits and/or Class Discovery, e.g. Interrogatories, Document Requests, Subpoenas, Negotiations and Motions re same, and Document Review and Analysis	8.5
Settlement	16.2
Case Planning, Organization, and Strategy	18.9
Litigation Strategy	
<b>TOTAL:</b>	<b>63.9</b>

11. NCLC incurred a total of \$1095.00 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

<i>EXPENSE CATEGORY</i>	<i>AMOUNT</i>
Litigation Fund Assessments	
Court/Filing Fees	
Travel, Meals, Hotels & Transportation	
Photocopies (Internal)	
Outside Photocopy Expense	
Long Distance Telephone/Fax/Teleconference	
Postage	
Outside Messenger/Overnight Delivery	
Electronic Research (Westlaw/Lexis, Pacer, Accurint)	
Mediation/Arbitration	

Scanning/Coding/Software	
Expert Fees	\$1095.00
<b>TOTAL:</b>	\$1095.00

12. The afore-mentioned expenses pertaining to this case are reflected in the books and records of NCLC. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

13. NCLC's compensation for the services rendered to the class is wholly contingent. Any fees and reimbursement of expenses will be limited to the stipulated amount agreed to by the Defendants, subject to the approval of the Court.


14. NCLC has extensive experience prosecuting consumer class actions, including those involving mortgage loan transactions. The firm specializes in complex class action litigation, representing low income and elderly consumers in class actions pending in state and federal courts throughout the United States. During its successful history, NCLC has litigated over 80 class action cases, served as lead, co-lead or other high level positions in the leadership of class actions and successfully litigated and recovered millions of dollars for class members.

15. The lodestar summary reflects NCLC's experience in the field, the complexity of the matters involved in this litigation, and the prevailing rate for providing such services.

16. In my opinion, the time expended and expenses incurred in prosecuting this action were reasonable and necessary for the diligent litigation of the matter.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 17th day of July, 2012, at Boston, MA.



Stuart T. Rossman B.B.O. #430640

# **EXHIBIT L**

# EXHIBIT 1

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:  
  
ALL END-PAYOR ACTIONS

**DECLARATION OF NATHANIEL L. ORENSTEIN IN SUPPORT OF THE END-  
PAYOR PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Nathaniel L. Orenstein, hereby declare as follows:

1. I am a Partner at Berman Tabacco. This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Berman Tabacco represents the End-Payor Class as Liaison Counsel.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Berman Tabacco performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- **Drafting, editing and filing pleadings and motions;**
- **Attending Court appearances; and**
- **Assisting with the development of case strategy and Massachusetts federal practice.**

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's current hourly



rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is **\$68.80** with a corresponding lodestar of **\$47,170.20**. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of **\$626.34**, are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30<sup>th</sup> day of May, 2018, in Boston, Massachusetts.

/s/ Nathaniel L. Orenstein  
Nathaniel L. Orenstein

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Berman, Norman '17 - '18	11.70	\$895.00	\$10,471.50
Buttacavoli, Steven '14	2.20	\$480.00	\$1,056.00
DeValerio, Glen '15	1.30	\$875.00	\$1,137.50
DeValerio, Glen '14	13.80	\$835.00	\$11,523.00
DeValerio, Glen '13	4.60	\$795.00	\$3,657.00
Donovan-Maher, Kathleen '17	0.20	\$875.00	\$175.00
Donovan-Maher, Kathleen '16	0.30	\$850.00	\$255.00
Eng, Jay '14	6.60	\$510.00	\$3,366.00
Orenstein, Nathaniel '18	8.80	\$670.00	\$5,902.70
Orenstein, Nathaniel '17	5.60	\$610.00	\$3,416.00
Orenstein, Nathaniel '14	6.60	\$445.00	\$2,937.00
Orenstein, Nathaniel '13	5.40	\$425.00	\$2,295.00
Saif, Justin '17	1.40	\$610.00	\$854.00
Watson, Marie '14	0.30	\$415.00	\$124.50
<b>TOTALS</b>	68.80		\$47,170.20
<b>Solodyn Expenses</b>			
Reproduction			\$176.20
Postage			\$10.50
Travel/Hotels/Meals			\$18.24
ECF/Court Docket Charges/Filing Fees			\$411.60
Overnight Delivery			
Service of Process			
Online Legal Research			\$9.80
Litigation Fund Contributions			
<b>TOTAL</b>			\$626.34

# **EXHIBIT M**

# EXHIBIT 2

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF SHARON K. ROBERTSON IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Sharon K. Robertson, hereby declare as follows:

1. I am a partner at Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Cohen Milstein represents End-Payor Class Representative Plaintiff International Union of Operating Engineers Local 39 ("IUOE Local 39").

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Cohen Milstein performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Filing an initial class action complaint;
- Assisting with the preparation of the Consolidated Amended Class Action Complaint;
- Assisting with drafting the opposition to Defendants' motion to dismiss;

- Participating in discovery by searching for and reviewing documents, drafting responses to defendants' request for productions and interrogatories, engaging in meet and confers and drafting discovery correspondence;
- Providing a representative to sit for a deposition;
- Preparing and defending various plaintiff depositions;
- Preparing for and participating in depositions of defendants' witnesses;
- Assisting with drafting and/or providing input regarding various pleadings including the opposition to defendants' motion to dismiss, motion for class certification and related briefing; and
- Assisting with expert discovery

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's current hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The total number of hours spent by my firm during this period of time is 2192.40 with a corresponding lodestar of \$1,143,220.25. All of the work performed was on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30th day of May, 2018, in New York, New York.

/s/ Sharon K. Robertson  
Sharon K. Robertson

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate<sup>1</sup></b>	<b>Total</b>
Jonathan Abetti	57.50	\$290	\$16,365.00
John Bracken	903.50	\$350	\$310,790.00
Manuel Dominguez	.50	\$620	\$310.00
Donna Evans	592.50	\$805	\$449,320.00
Hiba Hafiz	43.25	\$440	\$17,920.00
Richard Koffman	3.50	\$805	\$2,738.75
Jihoon Lee	5.50	\$260	\$1,415.00
Michael McBride	.50	\$255	\$127.50
Victoria Nugent	1.50	\$655	\$982.50
J. Douglas Richards	35.90	\$885	\$29,906.50
Sharon Robertson	545.50	\$645	\$312,196.25
Daniel Sommers	.75	\$870	\$652.50
Andrew Twigg	2.00	\$250	\$496.25
<b>TOTALS</b>	2192.40		\$1,143,220.25

<sup>1</sup> Rates contained in this column are historical and reflect the rate in effect in the most recent year in which the individual incurred time. Variations in those historical rates are not reflected in this chart but are contained in the detailed time reports referenced in paragraph 5.

# **EXHIBIT N**



# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF MICHAEL COREN IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Michael Coren, hereby declare as follows:

1. I am a member at Cohen, Placitella & Roth, P.C. ("CPR"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. CPR represents End-Payor Class Representative Plaintiffs Sheet Metal Workers Local No. 25 Health & Welfare Fund and Local 274 Health & Welfare Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work CPR performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Investigation of claim by clients and counsel;
- Preparation and filing an initial class action complaint in consultation with clients;
- Drafting motions and accompanying briefs assigned by Lead Counsel;

- Participating in discovery by searching for and reviewing documents and consulting with lead counsel on discovery;
- Providing and preparing Sheet Metal Workers Local No. 25's and Local 274 Health & Welfare Fund's representatives for designated representative depositions; and
- Reviewing and consulting on case filings, including motion to dismiss and its responses and the motion for class certification and its responses.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is **105.1** with a corresponding lodestar of \$ **54,292.50**. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The historical hourly rates for all personnel of the firm reflected in Exhibit A were the usual and customary rates that were charged by my firm in similar matters at the time of the case's inception. The historical hourly rates reflected in Exhibit A were used for all work performed on the case even where these persons' hourly rates have increased since the case's inception.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30 day of May, 2018, in Philadelphia, Pennsylvania.

/s/ Michael Coren  
Michel Coren

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Historical Rate</b>	<b>Total</b>
Michael Coren	38.10	\$825.00	\$30,387.50
Jacob Goldberg	1.40	\$675.00	\$945.00
Tim Peter	6.50	\$350.00	\$2275.00
Elizabeth Amesbury	59.10	\$350.00	\$20685.00
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>TOTALS</b>	105.10		\$54292.50
<b>Solodyn Expenses</b>			
Reproduction			\$
Postage			\$
Travel/Hotels/Meals			\$
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$
Litigation Fund Contributions			\$
<b>TOTAL</b>			\$0

# **EXHIBIT O**

# EXHIBIT 5

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF PAUL COSTA, ESQ. IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Paul Costa, hereby declare as follows:

1. I am a Member at Fine, Kaplan and Black, R.P.C. ("Fine Kaplan"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Fine Kaplan represents End-Payor Class Representative Plaintiffs Sheet Metal Workers Local No. 25 Health & Welfare Fund, and Local 274 Health & Welfare Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Fine Kaplan performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Investigating our clients' potential claims, conducting research to support those claims, drafting memoranda to the clients regarding potential claims, and evaluating those claims in consultation with co-counsel;
- Drafting, editing and finalizing our clients' complaints, and filing those complaints;



- Working with co-counsel to develop case strategy and to craft a proposed Case Management Order and oppose the motion to stay proceedings.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is **126.60** with a corresponding lodestar of \$ **\$71,342.50**. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The historical hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30th day of May, 2018, in Philadelphia, PA.

/s/ Paul Costa

Paul Costa

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Donald L. Perelman	4.50	\$725	\$3,262.50
Roberta D. Liebenberg	46.50	\$750	\$34,875.00
Jeffrey S. Istvan	8.50	\$625	\$5,312.50
	.5	\$650	\$325.00
Paul Costa	39.70	\$525	\$20,842.50
Nancy M. Blakeslee	26.90	\$250	\$6,725.00
<b>TOTALS</b>	<b>126.60</b>		<b>\$71,342.50</b>
<b>Solodyn Expenses</b>			
Reproduction			\$
Postage			\$
Travel/Hotels/Meals			\$
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$
Litigation Fund Contributions			\$
<b>TOTAL</b>			<b>\$0.00</b>

# **EXHIBIT P**

# EXHIBIT 7

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF LEE ALBERT IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Lee Albert, hereby declare as follows:

1. I am a partner at Glancy Prongay & Murray LLP. This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Glancy Prongay & Murray LLP represents End-Payor Class Representative Plaintiff Plumbers Local 178.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Glancy Prongay & Murray LLP performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Filing an initial class action complaint;
- Reviewing client data and documents;
- Participating in discovery by searching for and reviewing documents;
- Attending Plumbers Local 178's deposition;

- Reviewing case filings, including the motion to dismiss and its responses and the motion for class certification and its responses with Plumbers 178;
- Participated in the review of Defendants' redacted and withheld documents contained in Defendants' privilege logs and provided challenges to Defendants' deficient privilege claims;
- Created case memorandums and indices related to important documents that were identified from the review;
- Identified Lupin produced documents to be certified as authentic by Defendants per the settlement agreement;
- Identified and prepared files of important documents for various depositions;
- Drafted case timeline and narrative from reviewed documents.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. My firm has incurred no expenses on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 4,013.8 with a corresponding lodestar of \$1,477,966.00. All of the work performed was on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 29th day of May, 2018, in New York, New York.

/s/ Lee Albert  
Lee Albert

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Brian Murray	10.8	\$745	\$8,046
Lee Albert	35.8	\$725	\$25,955.00
Lee Albert	94.8	\$825 (New Rate as of 1/1/17)	\$78,210.00
Joseph Cohen	.2	\$825	\$165.00
Gregory Linkh	27.6	\$725	\$20,010.00
Jared Pitt	3,842.00	\$350	\$1,344,700.00
Thomas Kennedy	2.6	\$350	\$910.00
<b>TOTALS</b>	<b>4,013.8</b>		<b>\$1,477,966.00</b>



# **EXHIBIT Q**

# EXHIBIT 8

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

Civil Action No. 1:14-MD-2503-DJC

This Document Relates to:

All End-Payor Actions

**DECLARATION OF FRANK SCHIRRIPIA IN SUPPORT OF END-PAYOR  
PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR APPROVAL OF  
ATTORNEYS' FEES**

I, Frank R. Schirripa, declare as follows:

1. I am a partner at the firm of Hach Rose Schirripa & Cheverie LLP and represent the International Union of Operating Engineers Stationary Engineers Local 39 Health & Welfare Trust Fund ("IUOE Local 39") this action. I submit this declaration in support of End-Payor Plaintiffs' motion for approval of attorneys' fees.

2. IUOE Local 39 is a certified class representative and serves as lead plaintiff for the End-Payor Plaintiffs' Settlement Class with responsibility for supervising all aspects of the case. Over the course of this litigation to date, IUOE Local 39 and Hach Rose Schirripa & Cheverie LLP have been involved in the following specific activities:

- Filing an initial class action complaint;
- Participating in discovery by searching for and reviewing documents;
- Providing a representative to sit for a deposition;
- Reviewing and drafting case filings, including the amended complaint, motion to dismiss and its responses and the motion for class certification and its responses; and
- Meetings and consultations with IUOE Local 39 throughout the course of this litigation.

3. From the commencement of this Action through March 29, 2018, HRS&C attorneys, law clerks and other staff have dedicated approximately 169.5 hours to the successful prosecution and settlement of this Action. HRS&C's total lodestar amount based on the firm's current billing rates is \$115,351.25. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the application for fees and reimbursement of expenses has not been included. The hourly rates shown below are the usual and customary rates charged for each individual in our antitrust and complex class action litigation matters. A breakdown of the lodestar is as follows:

<b>Name</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
<b>Partners</b>			
Gregory S. Hach	1.0	\$725.00	\$725.00
Frank R. Schirripa	129.75	\$725.00	\$94,068.75
David R. Cheverie	4.25	\$550.00	\$2,337.50
Daniel B. Rehns	19.5	\$675.00	\$13,162.50
<b>Associates</b>			
John A. Blyth	0.75	\$350.00	\$262.50
Seth Pavsner	11.00	\$375.00	\$4,125.00
<b>Law Clerks</b>			
Jihad Hakamy	1.5	\$250.00	\$375.00
<b>Paralegal</b>			
Amanda Lyons	1.75	\$190.00	\$332.50
<b>TOTALS</b>	<b>169.50</b>		<b>\$115,351.25</b>

4. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items.

Date: May 30, 2018

/s/ Frank R. Schirripa

# **EXHIBIT R**

# EXHIBIT 9

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF RENAE D. STEINER IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Renae D. Steiner, hereby declare as follows:

1. I am a partner at Heins, Mills & Olson, P.L.C. ("Heins Mills"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Heins Mills represents End-Payor Class Representative Plaintiff Heather Morgan.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018, which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Heins Mills performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Researched facts and claims and filed an initial class action complaint on behalf of Class Representative Plaintiff Heather Morgan;

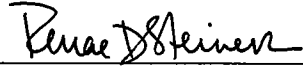
- Participated in Plaintiffs' discovery by reviewing Plaintiff Heather Morgan's utilization data and preparing her relevant documents for production;
- Prepared Plaintiff Heather Morgan for her deposition; and defended her deposition in South Carolina; and
- Worked with Co-Lead Counsel to respond to the objection to Class Notice provision requiring proof of authority to opt out of settlement on behalf of a third party, including providing research and edits to the Class's response.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historic hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The total number of hours spent by my firm during this period of time is 64.20 with a corresponding lodestar of \$39,311.25. All of the work performed was on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The historic hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered.



I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is executed this 30th day of May, 2018, in Minneapolis, Minnesota.

  
\_\_\_\_\_  
Renae D. Steiner

**EXHIBIT A**

**Heins Mills & Olson, P.L.C.  
Time and Lodestar Summary  
Case Inception through March 29, 2018**

<b>Timekeeper</b>	<b>Title</b>	<b>Year of Bar Admission</b>	<b>Hours</b>	<b>Historic Rate</b>	<b>Lodestar</b>
Rena D. Steiner	Partner	1991	0.50	\$575	\$ 287.50
Rena D. Steiner	Partner	1991	23.25	\$650	\$ 15,112.50
Rena D. Steiner	Partner	1991	1.70	\$700	\$ 1,190.00
Vincent J. Esades	Partner	1994	10.25	\$575	\$ 5,893.75
David Woodward	Partner	1975	22.00	\$665	\$ 14,630.00
David Woodward	Partner	1975	0.75	\$700	\$ 525.00
Teresa M. Jones	Associate	1996	0.75	\$400	\$ 300.00
Katherine T. Kelly	Associate	2004	1.75	\$395	\$ 691.25
Irene M. Kovarik	Paralegal		2.00	\$200	\$ 400.00
Irene M. Kovarik	Paralegal		1.25	\$225	\$ 281.25
<b>TOTALS</b>			<b>64.20</b>		<b>\$ 39,311.25</b>

# **EXHIBIT S**

# EXHIBIT 10

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF STEVE SHADOWEN IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND GRANT OF INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Steve Shadowen, hereby declare as follows:

1. I am a partner at Hilliard Shadowen, LLP ("Hilliard Shadowen"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Grant of Incentive Awards to the Class Representatives.

2. Hilliard Shadowen is co-lead counsel for the Class.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Hilliard Shadowen performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Conducting the trial against Impax;
- Examining multiple fact and expert witnesses;
- Preparing evidentiary outlines for trial use;
- Briefing and arguing motions *in limine*;
- Briefing and arguing summary judgment motions;

- Briefing and arguing the class certification motion;
- Working with experts to prepare expert reports;
- Taking and defending multiple fact and expert witness depositions;
- Extensive document discovery, including briefing contested discovery issues;
- Briefing and arguing the motion to dismiss;
- Researching and drafting the initial and consolidated complaint.

Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historic hourly rates, through March 29, 2018. The hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 5,210.5 with a corresponding lodestar of \$3,104,890. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

4. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work necessary for the prosecution of this action and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed is available for *in camera* review if requested by the Court. The hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

5. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$90,534.60 are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 31 day of May, 2018, in Austin, Texas.

/s/ Steve D. Shadowen  
Steve D. Shadowen

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Last Billed Rate</b>	<b>Total</b>
Steve Shadowen	982.5	\$950	\$896,940
Rudy Gonzalez	104	\$1,100	\$114,400
Anne Fornecker	392.95	\$600	\$199,555
Elizabeth Arthur	143.7	\$650	\$83,205
Sean Nation	2516.95	\$650	\$1,467,052.50
Matthew Weiner	197.45	\$500	\$77,762.50
Bryce Duke	36.4	\$450	\$12,940
Frazar Thomas	66.3	\$450	\$28,880
Jako Garos	162	\$250	\$40,500
Justin Vatter	20.2	\$275	\$5,555
Nick Shadowen	.8	\$250	\$200
Amy Weintraub	151.2	\$250	\$37,800
Rob George	10.6	\$550	\$4,190
Daniel Gonzalez	338.8	\$350	\$118,580
Daniela Ritchie	59.65	\$200	\$11,930
Victor Glasper	27	\$200	\$5,400
<b>TOTALS</b>			\$3,140,890.00
		Note: Totals reflect historical hourly rates	



<b>Solodyn Expenses</b>			
Reproduction			\$3122.94
Teleconference Charges			\$126.08
Travel/Hotels/Meals			\$74,189.06
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$247.77
Service of Process			\$
Online Legal Research			\$367.40
Litigation Fund Contributions			\$
Transcripts			\$12,481.35
<b>TOTAL</b>			\$90,534.60

# **EXHIBIT T**

# EXHIBIT 11

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<p>IN RE SOLODYN (MINOCYCLINE HYDROCHLORIDE) ANTITRUST LITIGATION</p>
<p>THIS DOCUMENT RELATES TO:  ALL END-PAYOR ACTIONS</p>

MDL No. 2503

1:14-md-2503-DJC

**DECLARATION OF THEODORE M. HESS-MAHAN, ESQ. IN SUPPORT OF THE  
END-PAYOR PLAINTIFFS’ PETITION FOR AN AWARD OF ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Theodore M. Hess-Mahan, hereby declare as follows:

1. I am Of Counsel to the law firm of Hutchings Barsamian Mandelcorn, LLP (“HBM”). This declaration is submitted in support of the End-Payor Plaintiffs’ Petition for an Award of Attorneys’ Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. HBM represents End-Payor Class Representative Plaintiff NECA-IBEW Welfare Trust Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court (“Final Settlement”).

4. Attached Exhibit A sets forth my firm’s total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm’s current hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were

incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 3.3 hours with a corresponding lodestar of \$1,650.00. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$700.00 are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business, and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30th day of May, 2018, in Wellesley, Massachusetts.

/s/Theodore M. Hess-Mahan  
Theodore M. Hess-Mahan

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Theodore M. Hess-Mahan	3.3	\$500.00/hour	\$1,650.00
<b>TOTALS</b>	3.3		\$1,650.00
<b>Solodyn Expenses</b>			
Reproduction			\$0
Postage			\$0
Travel/Hotels/Meals			\$0
ECF/Court Docket Charges/Filing Fees			\$700.00
Overnight Delivery			\$0
Service of Process			\$0
Online Legal Research			\$0
Litigation Fund Contributions			\$0
<b>TOTAL</b>			\$700.00



# **EXHIBIT U**



# EXHIBIT 12

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<p>IN RE SOLODYN (MINOCYCLINE HYDROCHLORIDE) ANTITRUST LITIGATION</p>
<p>THIS DOCUMENT RELATES TO:  ALL END-PAYOR ACTIONS</p>

MDL No. 2503

1:14-md-2503-DJC

**DECLARATION OF KRISHNA NARINE IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS’ PETITION FOR AN AWARD OF ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Krishna Narine, hereby declare as follows:

1. I am a Partner at Lauletta Birnbaum (“Lauletta”). This declaration is submitted in support of the End-Payor Plaintiffs’ Petition for an Award of Attorneys’ Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. Lauletta represents End-Payor Class Representative Plaintiff Man-U Service Contract Trust Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court (“Final Settlement”). The work Lauletta performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Responding to discovery requests; and
- Preparation for and representation of Man-U Service Contract Trust Fund at deposition.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's current hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 36.8 hours with a corresponding lodestar of \$25,392.00. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also provides for an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. Lauletta is not seeking reimbursement of any expenses.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 31<sup>st</sup> day of May, 2018, in Philadelphia, Pennsylvania.

/s/ Krishna Narine  
Krishna Narine, Esq.

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Krishna, N.	3.2	690.00	2,208.00
Krishna, N.	0.3	690.00	207.00
Krishna, N.	4	690.00	2,760.00
Krishna, N.	0.2	690.00	138.00
Krishna, N.	3.3	690.00	2,277.00
Krishna, N.	0.2	690.00	138.00
Krishna, N.	1	690.00	690.00
Krishna, N.	1.7	690.00	1,173.00
Krishna, N.	1.5	690.00	1,035.00
Krishna, N.	1.5	690.00	1,035.00
Krishna, N.	0.4	690.00	276.00
Krishna, N.	0.5	690.00	345.00
Krishna, N.	0.5	690.00	345.00
Krishna, N.	12.5	690.00	8,625.00
Krishna, N.	1	690.00	690.00
Krishna, N.	2.5	690.00	1,725.00
Krishna, N.	2.5	690.00	1,725.00
<b>TOTALS</b>	36.80		\$25,392.00

# **EXHIBIT V**

# EXHIBIT 13

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

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THIS DOCUMENT RELATES TO:  
  
ALL END-PAYOR ACTIONS

MDL No. 2503

1:14-md-2503-DJC

**DECLARATION OF JOHN G. FELDER JR. IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, JOHN G. FELDER, JR., hereby declare as follows:

1. I am a PARTNER at MCGOWAN HOOD & FELDER, LLC. This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. MCGOWAN HOOD & FELDER, LLC represents End-Payor Class Representative Plaintiff HEATHER MORGAN.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work MCGOWAN HOOD & FELDER, LLC performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- **CORRESPONDING AND COORDINATING WITH THE CLASS REPRESENTATIVE CLIENT**

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who



reviewed documents was limited to, at most, \$500 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 3.60 with a corresponding lodestar of \$ 1,800.00. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$ 0.00 are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business, and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30 day of May, 2018, in COLUMBIA, SOUTH CAROLINA.

/s/ John G. Felder, Jr.  
JOHN G. FELDER, JR.

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
John G. Felder Jr	3.60	\$500.00	\$1,800.00
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>TOTALS</b>			\$1,800.00
<b>Solodyn Expenses</b>			
Reproduction			\$
Postage			\$
Travel/Hotels/Meals			\$
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$

Litigation Fund Contributions			\$
<b>TOTAL</b>			\$0.00

# **EXHIBIT W**

# EXHIBIT 14

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF MARVIN A. MILLER IN SUPPORT OF  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS**

I, Marvin A. Miller, hereby declare as follows:

1. I am an attorney at Miller Law LLC ("Miller Law"). This declaration is submitted in support of Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards.

2. Miller Law represents End-Payor Class Representative Plaintiff Painters District Council No. 30 Health and Welfare Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Miller Law performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Extensive legal and factual basis for possible claims and preparation of class action complaint, research and preparation of opposition to motion to dismiss, research, analysis and preparation of class certification motion, research and preparation of opposition to motion for summary judgment, extensive document review of

Defendants' and third-party document productions, confer with Co-lead counsel re: strategy at various stages in the litigation, participate in general discovery matters, including depositions, extensive work relating to expert reports and preparation of expert for deposition.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, for solely reviewing documents the hourly rate was capped at \$350 per hour, irrespective of their usual hourly rate for other services performed. If those people performed other tasks in connection with the document review, that time was charged at the usual historic hourly rate. The audited total number of hours spent by my firm is 2,236.2 with a corresponding lodestar of \$998,835.00. All work that was performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$31.50 are reflected in my firm's books and records, regularly



maintained in the ordinary course of the firm's business, based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed June 1, 2018, in Chicago, Illinois.

/s/ Marvin A. Miller  
Marvin A. Miller

## EXHIBIT A

<b>Time Keeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Marvin A. Miller	41.5	\$815	\$33,822.50
Matthew E. Van Tine	21.5	\$685	\$14,727.50
Lori A. Fanning	306.4	\$600	\$183,840.00
Lori A. Fanning	10.8	\$650	\$7,020.00
Jorge Ramirez	281.5	\$220	\$61,930.00
Anne Jewell	32.4	\$250	\$8,100.00
Kathleeyn E Boychuck	5.5	\$355	\$1,952.50
Andrew Kanter	1515.9	\$450	\$682,155.00
Dena Robison	20.2	\$250	\$5,050.00
Stacy Bond	0.5	\$475	\$237.50
	<b><u>2236.2</u></b>		<b><u>\$998,835.00</u></b>

**COSTS ADVANCED**

Reproduction	<b>\$31.50</b>
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# **EXHIBIT X**

# EXHIBIT 15

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF MICHAEL M. BUCHMAN IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND GRANT OF SERVICE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Michael M. Buchman, hereby declare as follows:

1. I am a member of Motley Rice LLC ("Motley Rice"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Grant of Service Awards to the Class Representatives.

2. Motley Rice is one of two Co-Lead Counsel for the End-Payor Class.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work Motley Rice performed up to the Final Settlement includes:

- conducting a thorough and wide-ranging investigation into the claims asserted in the action, including a detailed review and analysis of information submitted to the United States Food and Drug Administration ("FDA") and the United States Patent and Trademark Office ("USPTO");
- preparing and filing a detailed Consolidated Complaint and Consolidated Amended Complaint;
- researching, drafting and filing an opposition to the comprehensive motion to dismiss the Complaint filed by Defendants;

- orally arguing the motion to dismiss;
- engaging in extensive fact discovery, which included Plaintiffs' Counsel's review and analysis of more than half a million pages of Defendants' and third-party documents;
- conducting numerous depositions of Defendants' employees and the employees of third-parties;
- defending the depositions of the class representative plaintiffs;
- consulting with numerous patent, scientific, economic and regulatory experts involving more than 15 affirmative expert reports and more than 10 expert reports from Defendants;
- preparing briefs and expert reports in connection with the class certification motion;
- successfully opposing the appeal of the class certification motion;
- successfully opposing Defendants' summary judgment and *Daubert* motions;
- preparing and opposing 34 motions *in limine*;
- engaging in extensive mediation efforts, including meetings with Professor Eric D. Green which included the preparation of mediation briefs, a full-day mediation session, and extensive subsequent negotiations; and
- preparing and presenting this case for trial against Defendant Impax for nearly three weeks before amicably resolving this matter.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historic hourly rates, through March 29, 2018. The hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement were incurred on or after October 27, 2017.<sup>1</sup> The total number of hours spent by my firm during this period of time is 6,985.2 with a corresponding lodestar

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<sup>1</sup> The initial expense application was filed on October 27, 2017 and a supplemental motion was made on November 22, 2017. See ECF 693, ECF 791. In the supplemental motion, Co-Lead Counsel sought unreimbursed expenses of \$127,770.02 and permission to pay \$209,682.11 in unpaid bills. The only firm that sought the reimbursement of expenses under the supplemental motion and this motion is Motley Rice. The \$512.12 paid in connection with the supplemental application has been deducted from Motley Rice's expense application on this motion.

of \$4,230,930.00 All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work necessary for the prosecution of this action and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed is available for *in camera* review if requested by the Court. The hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since November 22, 2017. These expenses, in the amount of \$492,660.58, are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 1st day of June, 2018, in New York, New York.

/s/ Michael M. Buchman  
Michael M. Buchman

EXHIBIT A

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Last Billed Rate</b>	<b>Total</b>
Ashby, Lisa	1.5	\$270.00	\$405.00
Buchman, Michael	1914.7	\$950.00	\$1,759,110.00
Camputarro, Elizabeth	2	\$500.00	\$1,000.00
Drazan, Thomas	159.25	\$350.00	\$55,737.50
Durba, Erin	1504.9	\$700.00	\$1,026,032.50
Finch, Nathan	2.5	\$950.00	\$2,375.00
Fuardo, Carl	3	\$350.00	\$1,050.00
Gayed, Vivian	6.5	\$350.00	\$2,275.00
Gruetzmacher, Max	5.25	\$600.00	\$3,150.00
Hamilton, Matt	34.75	\$475.00	\$16,506.25
Hassanali, Sabrina	8.8	\$350.00	\$3,080.00
Ioannou, John	201.5	\$675.00	\$136,012.50
Isaacson, Daniel	2.75	\$240.00	\$660.00
Jackson-Bailey, Julie	13.55	\$350.00	\$4,742.50
Janelle, Alice	4	\$350.00	\$1,400.00
Korenblit, Lotan	5.5	\$240.00	\$1,320.00
Kouba, Annie	26	\$400.00	\$10,400.00
Lucas, Kathleen	48	\$250.00	\$12,000.00
McLaughlin, Lora	1.25	\$295.00	\$368.75
Naraine, Nicole	6.25	\$250.00	\$1,562.50
Narwold, William H	63.25	\$1,050.00	\$65,548.75
Oliver, Lance	136	\$825.00	\$112,200.00
Oliver, Meghan	92.5	\$625.00	\$57,812.50



Onile-Ere, Jacob	7.25	\$300.00	\$2,175.00
Pendell, Michael	21	\$775.00	\$16,275.00
Quillin, Kelly	3	\$425.00	\$1,275.00
Schaufler, Margaret	5.25	\$350.00	\$1,837.50
Sharda, Lynn	98.25	\$350.00	\$34,387.50
Shaw, Johnny	371	\$275.00	\$95,937.50
Sosa, Jennifer	19.5	\$350.00	\$6,825.00
Straus, Alex	123.5	\$525.00	\$58,068.75
Weil, Katherine	0.75	\$350.00	\$262.50
Williams, Erin C.	33.25	\$450.00	\$14,962.50
Young, Robert	2038.5	\$350.00	\$713,475.00
Zolnoski, Michelle	20.25	\$550.00	\$10,700.00
<b>TOTAL</b>	<b>6,985.2</b>		<b>\$4,230,930.00</b>
		Note: Total reflects historical hourly rates	
<b>Solodyn Expenses</b>			
Reproduction/Supplies			342.29
Teleconference Charges			\$20.65
Travel/Hotels/Meals			\$36,009.45
ECF/Court Docket Charges/Filing Fees			\$25.00
Postage/Overnight Delivery			\$449.93
Service of Process			
Online Legal Research			\$2,017.61

Litigation Fund Contributions			
Transcripts			\$486.25
Experts/Consultants/ Other Professionals			\$453,309.37
<b>TOTAL</b>			\$492,660.58

# **EXHIBIT Y**

# EXHIBIT 16

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-MD-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF MARC I. GROSS  
IN SUPPORT OF THE END-PAYOR PLAINTIFFS'  
PETITION FOR AN AWARD OF ATTORNEYS' FEES**

I, Marc I. Gross, hereby declare as follows:

1. I am Senior Counsel to Pomerantz LLP which represents the Fraternal Order of Police, Fort Lauderdale Lodge 31, Insurance Trust Fund ("Ft. Lauderdale") in this action. This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees.

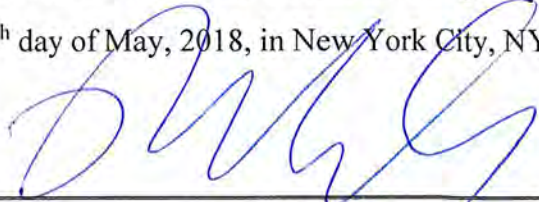
2. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). Over the course of this litigation to date, Ft. Lauderdale and/or Pomerantz LLP have been involved in the following specific activities:

- Drafting and filing Complaint;
- Participating in discovery by database searches, drafting memoranda, review of documents and preparation of deposition material;
- Preparing and filing memoranda of law in connection with Lead Plaintiff, Class Certification and Motion to Dismiss; Drafting editing, ESI/Document Preservation Order;
- Confer with co-counsel re: strategy for advancement of litigation;
- Online research regarding potential experts.

3. Attached is Exhibit A which sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 2 above, computed at the firm's current hourly rates, through May 31, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The total number of hours spent by my firm during this period of time is 1,768.95 with a corresponding lodestar of \$609,783.25. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

4. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30<sup>th</sup> day of May, 2018, in New York City, NY.



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Marc I. Gross

**EXHIBIT A**

<b>Attorney</b>		<b>Current Rate</b>	<b>Hours</b>	<b>Total</b>
Dahlstrom, Patrick	Partner	\$865	2.25	\$1,946.25
Dell, Jessica N.	Associate	\$350	836.30	\$135,205.00
Kurtz, Adam G.	Associate	\$645	30.60	\$19,737.00
Kurtz, Adam G.	Associate	\$615	10.70	\$6,580.50
Goldstein, Jayne	Partner	\$820	166.60	\$136,612.00
Goldstein, Jayne	Partner	\$805	101.80	\$81,949.00
Goldstein, Jayne	Partner	\$770	10.00	\$7,700.00
Goldstein, Jayne	Partner	\$735	21.60	\$15,876.00
Goldstein, Mark	Associate	\$325	15.70	\$5,102.50
Sidi, Samir	Staff Attorney	\$350	0.40	\$140.00
Chang, Hui	Associate	\$350	307.90	\$107,765.00
Gattegno, Perry	Associate	\$350	200.50	\$70,175.00
Gattegno, Perry	Associate	\$325	64.60	\$20,995.00
<b>ATTORNEY TOTAL:</b>			<b>1,768.95</b>	<b>\$609,783.25</b>

# **EXHIBIT Z**



# EXHIBIT 17

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

<p>IN RE SOLODYN (MINOCYCLINE HYDROCHLORIDE) ANTITRUST LITIGATION</p>
<p>THIS DOCUMENT RELATES TO:  ALL END-PAYOR ACTIONS</p>

MDL No. 2503

1:14-md-2503-DJC

**DECLARATION OF MICHAEL J. RUSING IN SUPPORT OF THE END-PAYOR  
PLAINTIFFS’ PETITION FOR AN AWARD OF ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, **MICHAEL J. RUSING**, hereby declare as follows:

1. I am a **PARTNER** at **RUSING LOPEZ & LIZARDI, P.L.L.C.** (“**RLL**”). This declaration is submitted in support of the End-Payor Plaintiffs’ Petition for an Award of Attorneys’ Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. **RLL** represents End-Payor Class Representative Plaintiff **CITY OF PROVIDENCE, RHODE ISLAND**.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court (“Final Settlement”). The work **RLL** performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- **Conduct research and analysis of claims;**
- **Draft pleadings, including complaint and stipulation for extension of time to file answers;**
- **Oversee all Arizona filings and service of same as local counsel;**

- **Multiple conference calls and emails regarding status of matter, request for extension, motion to consolidate and motion to dismiss.**

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's current hourly rates, through March 29, 2018. The total number of hours spent by my firm during this period of time is 32.1 with a corresponding lodestar of \$15,762.00. All of the work performed was on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

This Declaration is executed this 29th day of May, 2018, in **TUCSON, ARIZONA**.

/s/ Michael J. Rusing  
**MICHAEL J. RUSING**

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Sarah J. Stanton	1.6	\$320.00	\$512.00
Timothy J. Reckart	8.8	\$500.00	\$4,400.00
Ed Moomjian, II	10.3	\$500.00	\$5,150.00
Michael J. Rusing	11.4	\$500.00	\$5,700.00
		\$	\$
<b>TOTALS</b>	32.1		\$15,762.00
<b>Solodyn Expenses</b>			
Reproduction			\$
Postage			\$
Travel/Hotels/Meals			\$
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$
Litigation Fund Contributions			\$
<b>TOTAL</b>			\$

# **EXHIBIT AA**

# EXHIBIT 19

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF NATALIE FINKELMAN BENNETT IN SUPPORT OF THE END-  
PAYOR PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES,  
REIMBURSEMENT OF EXPENSES AND INCENTIVE AWARDS  
TO THE CLASS REPRESENTATIVES**

I, Natalie Finkelman Bennett, hereby declare as follows:

1. I am a member of Shepherd, Finkelman, Miller & Shah, LLP ("SFMS" or "the Firm"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. SFMS represents End-Payor Class Representative Plaintiff United Food and Commercial Workers Local 1776 & Participating Employers Health and Welfare Fund and Fraternal Order of Police, Fort Lauderdale Lodge 31 Insurance Trust Fund.

3. The Firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with researching the claims litigating this action since prior to and at the time the case was initiated through March 29, 2018 which is the day that the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work of SFMS, performed at the request of Co-Lead Counsel in this case up to the Final Settlement included the following activities:

- Researching factual and patent history, citizen petitions, defendants' public filings, market research, legal research regarding state-related claims, drafting and filing the initial class action complaint;

- Participating in discovery including communicating with clients, searching for and reviewing documents and transactional data maintained by clients, providing Rule 26 materials; responding to written discovery requests, and multiple additional requests for information;
- Participating on two different substantive subject area teams, including analyzing documents and information, team calls and participation in preparation for defendant depositions;
- Preparing client documents for production and preparing and providing client representatives for depositions;
- Preparing and defending additional class plaintiffs for depositions and participation in conference calls for trial team;
- Work with retention of expert and communications with expert and meet with expert to prepare for deposition and trial;
- Communications with lead counsel regarding status hearings; discovery and deposition and trial preparation;
- Analyzing case filings and communications with clients regarding the progression of the litigation at all stages.

4. The attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who reviewed documents was limited to \$350 per hour for the time spent reviewing documents, irrespective of their usual hourly rate for other types of services performed. The expenses for which we seek reimbursement were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is **2,024.60** with a corresponding lodestar of **\$1,014,467**. All of the work that was performed and all necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The historical hourly rates for all personnel of the firm as reflected in Exhibit



A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$1,644.81 are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business, and based on receipts and other data maintained by the Firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 30th day of May, 2018, in Media, Pennsylvania.

/s/ Natalie Finkelman Bennett  
Natalie Finkelman Bennett

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate and (Year)</b>	<b>Total</b>
Valerie Chang	.10	\$400.00 (2016)	\$40.00
Elena DiBattista	3.50	\$195.00 (2018)	\$682.50
Betsy Ferling-Hitriz	1.10	\$185.00 (2014)	\$203.50
Natalie Finkelman Bennett	110.40	\$650.00 (2013)	\$71,760.00
	15.70	\$700.00 (2014)	\$10,990.00
	20.30	\$725.00 (2015 & 2016)	\$14,717.50
	42.50	\$750.00 (2017 & 2018)	\$31,875.00
Jayne A. Goldstein	337	\$775.00 (2017 & 2018)	\$261,175
Scott Johnson	105.30	\$350.00 (doc review rate)	\$36,855.00
Karen Leser-Grenon	17.00	\$475.00 (2014)	\$8,075.00
Rose Luzon	53.30	\$475.00 (2013)	\$25,317.50
	10.10	\$550.00 (2014)	\$5,555.00
Pam Mauger	.40	\$185.00 (2013)	\$74.00
Christine Mon	1.40	\$195.00 (2017)	\$273.00
Sue Moss	8.30	\$185.00 (2013)	\$1,535.50
	.30	\$195.00 (2017)	\$58.50
Bruce Parke	656.4	\$350.00 (doc review rate)	\$229,740
	70	\$475 (2015)	\$33,250.00

	414.9	\$500 (2016)	\$207,450.00
	132.9	\$525 (2017)	\$69,772.50
Chiharu Sekino	2.50	\$185.00 (2013)	\$462.50
Itza Vilaboy	19.50	\$185.00 (2013)	\$3,607.50
Nathan Zipperian	1.30	\$575.00 (2013)	\$747.50
	.20	\$600.00 (2014)	\$120.00
	.20	\$650.00 (2018)	\$130.00
<b>Total Lodestar</b>	<b>2,024.6</b>		<b>\$1,014,467</b>
<b>Solodyn Expenses</b>			
Reproduction			\$516.50
Postage			\$392.25
Travel/Hotels/Meals			\$736.06
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$
Litigation Fund Contributions			\$
<b>Total Expenses</b>			<b>\$1,644.81</b>
<b>TOTALS</b>			<b>\$1,016,111.81</b>

# **EXHIBIT BB**

# EXHIBIT 20

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SOLODYN (MINOCYCLINE  
HYDROCHLORIDE) ANTITRUST  
LITIGATION

MDL No. 2503

1:14-md-2503-DJC

THIS DOCUMENT RELATES TO:

ALL END-PAYOR ACTIONS

**DECLARATION OF ROBERT S. KITCHENOFF IN SUPPORT OF  
THE END-PAYOR PLAINTIFFS' PETITION FOR AN AWARD  
OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES  
AND INCENTIVE AWARDS TO THE CLASS REPRESENTATIVES**

I, Robert S. Kitchenoff, hereby declare as follows:

1. I am a member at Weinstein Kitchenoff & Asher LLC ("WKA"). This declaration is submitted in support of the End-Payor Plaintiffs' Petition for an Award of Attorneys' Fees, Reimbursement of Expenses and Incentive Awards to the Class Representatives.

2. WKA represents End-Payor Class Representative Plaintiff International Union of Operating Engineers Local 132 Health and Welfare Fund.

3. My firm has continuously devoted efforts and resources on behalf of members of the End-Payor Class in connection with litigating this action since the case was initiated through March 29, 2018 which is the day the final settlement, with Impax Laboratories, Inc., was filed with this Court ("Final Settlement"). The work WKA performed at the request of Co-Lead Counsel in this case up to the Final Settlement includes:

- Preparation and filing of the Complaint;
- Preparation of pro hac vice motions.

4. Attached Exhibit A sets forth my firm's total hours and lodestar incurred in connection with the work described in Paragraph 3 above, computed at the firm's historical hourly rates, through March 29, 2018. At the direction of Co-Lead Counsel, the hourly rate for people who

reviewed documents was limited to, at most, \$350 per hour, irrespective of their usual hourly rate for other services performed. The expenses for which we seek reimbursement, if any, were incurred on or after October 27, 2017. The total number of hours spent by my firm during this period of time is 4.60 with a corresponding lodestar of \$2,094.00. All of the work performed and necessary expenses incurred were on a purely contingent basis, subject to an award by the Court.

5. My firm kept records contemporaneously documenting all time spent and expenses incurred in this action. The lodestar reflected in the summary chart attached as Exhibit A represents the time spent for work assigned by Co-Lead Counsel and was performed by attorneys and professional staff at my firm for the benefit of the End-Payor Class. The computer-generated detailed support which reflects the contemporaneous time entries for the work performed has been delivered to Co-Lead Counsel and they are authorized to submit those documents for *in camera* review if requested by the Court. The current hourly rates for all personnel of the firm as reflected in Exhibit A are the usual and customary rates that were charged by my firm in similar matters on the dates when the services were rendered, as well as to the firms' hourly and commercial clients.

6. Exhibit A also includes an itemization of the reasonable and necessary expenses my firm incurred for the prosecution of this litigation on behalf of the Class since October 27, 2017. These expenses, in the amount of \$0.00 are reflected in my firm's books and records, regularly maintained in the ordinary course of the firm's business, and based on receipts and other data maintained by the firm.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This Declaration is executed this 29<sup>th</sup> day of May, 2018, in Philadelphia, Pennsylvania.

/s/ Robert S. Kitchenoff  
Robert S. Kitchenoff

**EXHIBIT A**

<b>Solodyn Time</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Leila E. Ely	3.70	\$375.00	\$1,387.50
Robert S. Kitchenoff	0.90	\$785.00	\$706.50
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>TOTALS</b>			\$2,094.00
<b>Solodyn Expenses</b>			
Reproduction			\$
Postage			\$
Travel/Hotels/Meals			\$
ECF/Court Docket Charges/Filing Fees			\$
Overnight Delivery			\$
Service of Process			\$
Online Legal Research			\$
Litigation Fund Contributions			\$
<b>TOTAL</b>			\$





# **EXHIBIT CC**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

IN RE CTI BIOPHARMA CORP.  
SECURITIES LITIGATION

Case No. 2:16-cv-00216-RSL

CLASS ACTION

**DECLARATION OF DAVID R. STICKNEY  
IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL  
OF THE PROPOSED SETTLEMENT, THE PLAN OF ALLOCATION,  
AND LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND EXPENSES**

DECLARATION OF DAVID R. STICKNEY  
(Case No. 2:16-cv-00216-RSL)

**BRESKIN | JOHNSON | TOWNSEND** <sup>PLLC</sup>  
1000 Second Avenue, Suite 3670  
Seattle, Washington 98104 Tel: 206-652-8660

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**EXHIBIT LIST**

Ex. #	Description
1	Declaration of Jed D. Melnick, Esq. in Support of Final Approval of Class Action Settlement (“Melnick Decl.”)
2	Declaration of Fariba F. Ghodsian on Behalf of Lead Plaintiff’s Motion for Final Approval of the Proposed Settlement, Plan of Allocation; and Lead Counsel’s Request for Attorneys’ Fees and Expenses (“Ghodsian Decl.”)
3	Declaration of Jennifer M. Bareither Regarding (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received to Date (“Bareither Decl.”)
4	Declaration of Bjorn I. Steinholt, CFA in Support of the Proposed Plan of Allocation (“Steinholt Decl.”)
5	Compendium of Lead Counsel’s Lodestar and Expense Information 5A – Summary of Plaintiffs’ Counsel’s Lodestar and Expenses 5B – Lead Counsel BLB&G’s Time Report 5C – Lead Counsel BLB&G’s Expense Report
6	BLB&G Firm Resume
7	Declaration of Roger M. Townsend in Support of Lead Counsel’s Request for An Award of Attorneys’ Fees and Reimbursement of Litigation Expenses Filed on Behalf of Breskin, Johnson & Townsend PLLC
8	Cornerstone Research, <i>Securities Class Action Settlements, 2016 Review and Analysis</i> (2017) (“Cornerstone 2016 Report”)
9	Stefan Boettrich and Svetlana Starykh, <i>Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review</i> (2017) (“NERA 2016 Report”)



1           6.       Although Lead Plaintiff and Lead Counsel believe that the claims asserted are  
2 meritorious, continued litigation through trial and likely appeals posed significant risks that made  
3 any recovery uncertain. Even if Lead Plaintiff were successful at trial and on appeal, Lead Plaintiff  
4 might have been unable to collect on a substantial judgment against Defendants. CTI's financial  
5 condition deteriorated during the course of this litigation, and its resources are extremely limited.  
6 On March 2, 2017, the Company reported in its SEC Form 10-K that its auditor held "substantial  
7 doubt about [CTI's] ability to continue as a going concern." CTI further reported that, as of March  
8 2017, it had accumulated a deficit of \$2.2 billion, it expected to continue to incur net losses, and  
9 its current cash holdings could fund its operations only into the third quarter of 2017. In addition,  
10 the assets of James Bianco and the other Individual Defendants were limited and could not support  
11 a substantial judgment. Moreover, the Company has indemnity obligations to the Underwriter  
12 Defendants. CTI's liability insurance, meanwhile, is a wasting asset that would have been  
13 substantially reduced, if not depleted entirely, by extended litigation. Accordingly, if Lead Plaintiff  
14 elected to proceed with protracted litigation through trial, there is substantial doubt that Lead  
15 Plaintiff and the class would be able to obtain a recovery of \$20 million. In contrast, the Settlement  
16 allows the Settlement Class to obtain a meaningful recovery at this time from combined payments  
17 by insurers and the Company.

18           7.       The \$20 million recovery is the result of Lead Counsel's diligent prosecution of the  
19 Action, development of a compelling record up to this point and extensive settlement negotiations.  
20 These settlement negotiations spanned across several months and included two, in-person  
21 mediation sessions and a series of telephonic discussions, which were facilitated by Jed D.  
22 Melnick, Esq., of JAMS ADR, an experienced mediator of securities class actions and other  
23 complex litigation. *See* Ex. 1 (Melnick Decl.), ¶¶ 4-9. Plaintiffs' prosecution of the Action  
24 included a detailed investigation and an analysis of information about CTI and pacritinib,  
25 interviews with numerous former employees of CTI and other industry participants, the use of



1 Freedom of Information Act (“FOIA”) requests to obtain documents from the Food and Drug  
2 Administration (“FDA”), extensive consultation with experts in FDA standards and regulations  
3 and with experts on damages and loss causation issues, the drafting of a detailed complaint based  
4 on Lead Counsel’s investigation, and the drafting of an opposition to Defendants’ motions to  
5 dismiss. As part of the mediation process, Plaintiffs also reviewed certain internal, core CTI  
6 documents relevant to this matter.

7 8. Thus, by the time the Settlement was reached, Lead Plaintiff and Lead Counsel had  
8 a thorough and realistic understanding of the strengths and weaknesses of the Parties’ positions  
9 concerning liability and damages, their respective abilities to prove or defend the claims at trial,  
10 and Defendants’ ability to pay a substantial judgment. Lead Plaintiff and Lead Counsel  
11 respectfully submit that, considering the risks of continued litigation and the time and expense  
12 which would be incurred to prosecute the Action through a trial, the \$20 million Settlement  
13 represents an excellent result that is in the best interests of the Settlement Class. *See* Ex. 2  
14 (Ghodsian Decl.), ¶ 5.

15 9. In connection with the Settlement, Lead Plaintiff proposes a Plan of Allocation to  
16 equitably distribute the Net Settlement Fund to Settlement Class Members who submit valid Claim  
17 Forms. Lead Counsel developed the Plan of Allocation in consultation with Lead Plaintiff’s  
18 damages expert, whose declaration in support of the Plan of Allocation is attached hereto as Ex. 4  
19 (Steinholt Decl.). The proposed Plan of Allocation is substantially the same as plans that have  
20 been used successfully to distribute recoveries in securities class actions in the Ninth Circuit and  
21 throughout the country. As discussed further below, the Plan of Allocation calculates Recognized  
22 Loss Amounts for purposes of making a *pro rata* distribution of the Net Settlement Fund. The  
23 calculation for purchasers of CTI Series N-1 and N-2 Preferred Stock is based on the statutory  
24 measure of damages under Section 11 of the Securities Act and enhanced by 20% to reflect the  
25 relative strength of such claims. The calculation for purchasers of CTI common stock is based on

1 an event study that measures the amount of artificial inflation in CTI common stock during the  
2 Class Period.

3 10. In addition, Lead Counsel respectfully submits that the requested attorneys' fees of  
4 20% of the Settlement Fund and the request for reimbursement of \$123,211.61 in litigation  
5 expenses, as well as reimbursement of \$18,362.50 in litigation costs incurred by Lead Plaintiff  
6 DAFNA (collectively, the "Fee and Expense Application"), are fair, reasonable, and consistent  
7 with requests approved in similar actions.

8 11. Lead Plaintiff endorses the Settlement and supports Lead Counsel's fee and expense  
9 request. *See* Ex. 2 (Ghodsian Decl.), ¶¶ 5-8. Lead Plaintiff's endorsement of the Settlement and  
10 support of Lead Counsel's fee and expense request is informed by Lead Plaintiff's active oversight  
11 and communications with Lead Counsel, as well as its active involvement in the litigation and  
12 settlement negotiations. *Id.* ¶¶ 3-5.

13 12. For all of the reasons discussed in this Declaration, its attached Exhibits, and in the  
14 accompanying Final Approval Motion, Lead Plaintiff and Lead Counsel respectfully submit that  
15 the Settlement and the Plan of Allocation are fair, reasonable, and adequate and should be  
16 approved. In addition, Lead Counsel respectfully submits that the request for attorneys' fees and  
17 reimbursement of Litigation Expenses is fair, reasonable, and should be approved.

18 **I. THE PROSECUTION OF THE ACTION**

19 **A. Commencement Of The Action And Appointment Of Lead Plaintiff**

20 13. This securities fraud class action was commenced on February 10, 2016, with the  
21 filing of an initial securities class action complaint alleging claims against CTI and the Individual  
22 Defendants filed in the United States District Court for the Southern District of New York, styled  
23 *Ahrens v. CTI BioPharma Corp.*, No. 1:16-cv-01044-PAE ("*Ahrens*"). On February 12, 2016, a  
24 securities class action complaint alleging substantially identical claims was filed in the Western  
25

1 District of Washington, *McGlothin v. CTI BioPharma Corp.*, No. 2:16-cv-00216-RSL  
2 (“*McGlothin*”). ECF No. 1.

3 14. On April 11, 2016, DAFNA moved for appointment as the lead plaintiff in both  
4 *Ahrens* and *McGlothin*. Other investors filed competing motions for appointment as the lead  
5 plaintiff. On May 2, 2016, certain defendants in *Ahrens* moved to transfer the case from New York  
6 to this Court. DAFNA filed a statement in support of the motion to transfer. By Order dated May  
7 19, 2016, the Southern District of New York granted the motion to transfer *Ahrens* to the Western  
8 District of Washington, where it was docketed as *Ahrens v. CTI BioPharma Corp.*, No. 2:16-cv-  
9 00796-JPD.

10 15. DAFNA initiated and, on June 3, 2016, filed a Stipulation and Proposed Order  
11 consolidating *Ahrens* and *McGlothin* for all purposes. ECF No. 26. On June 13, 2016, this Court  
12 entered the proposed order consolidating the cases and ordered that the consolidated action be re-  
13 captioned as *In re CTI BioPharma Corp. Securities Litigation*, No. 16-cv-216-RSL. ECF No. 31.

14 16. Following further briefing on the motion for appointment of a lead plaintiff and a  
15 hearing on August 25, 2016, the Court appointed DAFNA as Lead Plaintiff for the consolidated  
16 action pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”) and  
17 approved Lead Plaintiff’s selection of Bernstein Litowitz Berger & Grossmann LLP as Lead  
18 Counsel for the class. ECF No. 50.

19 **B. Lead Plaintiff’s Investigation And**  
20 **Preparation Of The Consolidated Class Action Complaint**

21 17. Lead Counsel undertook a thorough factual and legal investigation in connection  
22 with this Action. As part of its investigation, Lead Counsel conducted a thorough review and  
23 analysis of, among other things: (a) CTI’s public filings with the Securities and Exchange  
24 Commission (the “SEC”); (b) research reports by securities and financial analysts; (c) transcripts  
25 of CTI’s conference calls with analysts and investors; (d) CTI’s and medical expert’s presentations

1 and analyses; (e) news and media concerning the Company, its competitors and pacritinib; and  
2 (f) data reflecting the pricing of CTI securities. Lead Counsel’s investigation also included  
3 consultation with experts in FDA standards and regulations, damages in securities actions, and loss  
4 causation issues.

5 18. As part of its investigation, Lead Counsel spoke with former employees of CTI and  
6 other industry participants. In total, Lead Counsel spoke with over two dozen former CTI  
7 employees, including former employees with direct knowledge of pacritinib’s clinical trials and  
8 the recommendations of the Independent Data Monitoring Committee (“IDMC”). In addition,  
9 Lead Counsel spoke with other industry participants, including persons with significant experience  
10 working in clinical trials and drug safety. Facts provided by these witnesses informed numerous  
11 allegations contained in the Complaint, as well as contributed to Lead Plaintiff’s understanding of  
12 the strengths and weaknesses of the case.

13 19. During the course of its investigation, Lead Counsel also submitted a FOIA request  
14 to the FDA. The request sought documents and information related to CTI and pacritinib. The  
15 documents received from the FDA pursuant to the FOIA request further informed the allegations  
16 contained in the Complaint.

17 20. On November 8, 2016, Lead Plaintiff and additional plaintiff Michael Li filed the  
18 Consolidated Class Action Complaint (the “Complaint”) on behalf of purchasers of CTI securities  
19 from March 9, 2015 through February 9, 2016. ECF No. 65. The Complaint, which includes 70  
20 pages of detailed allegations, asserts claims under Section 11 of the Securities Act of 1933 (the  
21 “Securities Act”) against CTI, the Individual Defendants and the Underwriter Defendants; claims  
22 under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; and claims under  
23 Section 15 of the Securities Act against James A. Bianco. The Complaint alleges that the Offering  
24 Materials issued by Defendants in connection with the October 2015 offering of CTI Series N-1  
25 Preferred Stock and the December 2015 offering of CTI Series N-2 Preferred Stock contained

1 materially false statements and misleading omissions concerning CTI’s drug candidate, pacritinib,  
2 and the results of a Phase III trial of that drug.

3 21. The Complaint also asserts claims arising under Section 10(b) of the Securities  
4 Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against CTI  
5 and James Bianco; and claims under Section 20(a) of the Exchange Act against James Bianco. The  
6 Complaint alleges that CTI and James Bianco made misstatements and omissions concerning  
7 pacritinib, including during investor presentations and conference calls. The Complaint further  
8 alleges that these alleged misstatements and omissions were made with scienter and that the truth  
9 concealed by the alleged misstatements and omissions was revealed on February 8 and 9, 2016,  
10 when CTI disclosed that the FDA had placed holds on the clinical trials for pacritinib.

11 **C. Defendants’ Motions to Dismiss**

12 22. On January 9, 2017, Defendants filed their motions to dismiss the Complaint. ECF  
13 Nos. 85, 87. The CTI Defendants argued that the Complaint did not plead any actionable  
14 misrepresentations or omissions, scienter, or reliance under Section 10(b). According to the CTI  
15 Defendants, the Complaint did not include facts showing that CTI’s and Bianco’s statements about  
16 pacritinib’s clinical trials were false or misleading. In addition, the CTI Defendants argued that  
17 the IDMC’s recommendation to stop the clinical trials was non-binding, immaterial, based on a  
18 statistically insignificant discrepancy, and did not require disclosure. ECF No. 85 at 2, 19-23.

19 23. The CTI Defendants also contended that the Complaint failed to raise a strong  
20 inference that CTI and James Bianco acted with scienter. The CTI Defendants contended that the  
21 Complaint alleged no facts demonstrating that CTI or Bianco believed that the FDA would reject  
22 pacritinib based on the clinical trial results, noting that the Complaint did not include any allegation  
23 of insider stock sales by Bianco. ECF No. 85 at 11-18. In addition, the CTI Defendants also  
24 argued that Lead Plaintiff could not establish that investors relied upon the alleged  
25 misrepresentations and omissions because they were immaterial. *Id.* at 24-25. The CTI

1 Defendants further contended that investors could not have relied on any of the alleged  
2 misrepresentations concerning the IDMC before September 23, 2015 because no IDMC-related  
3 statements were made by CTI or Bianco before that date. *Id.* at 24-25. Finally, the CTI Defendants  
4 argued that the Complaint did not adequately allege that CTI's and Bianco's purported conduct  
5 caused Lead Plaintiff's losses because, according to the CTI Defendants, the February 2016  
6 disclosures did not even discuss the IDMC's recommendation. *Id.* at 25-27.

7         24. With respect to the Securities Act claims, the CTI Defendants – joined by the  
8 Underwriter Defendants – vigorously argued that the Complaint did not identify any material  
9 misrepresentations or omissions in the Offering Materials. ECF No. 85 at 28-31; ECF No. 87 at  
10 2-4. The Individual Defendants additionally argued that they could not be held liable under the  
11 Securities Act for any purported misstatements in the Offering Materials because the alleged false  
12 statements were contained in prospectus supplements – *i.e.*, not in the original registration  
13 statement. ECF No. 85 at 31-32. Each of these arguments, if accepted by the Court at the motion  
14 to dismiss or summary judgment stage, threatened to eliminate or reduce any potential recovery  
15 for the class.

16         25. On February 6, 2017, Plaintiffs filed their opposition to Defendants' motions to  
17 dismiss (ECF No. 91) and, on February 22, 2017, Defendants filed their reply papers. ECF Nos.  
18 92-94. On June 15, 2017, Plaintiffs filed a Notice of Recent Authority in further support of their  
19 opposition to Defendants' motions. ECF No. 100.

20         26. While Defendants' motions to dismiss were being briefed and pending before the  
21 Court, Lead Counsel continued to investigate the claims. Lead Plaintiff and Lead Counsel also  
22 monitored CTI's financial condition, which deteriorated markedly during the pendency of this  
23 Action. Indeed, CTI's stock price declined by well over 60% during 2016, from \$1.23 at the close  
24 on December 31, 2015 to \$0.41 at the close on December 30, 2016 and continued its decline in  
25 2017 with plunging revenue and the withdrawal of the New Drug Application for pacritinib. In

1 addition, CTI received a notification from NASDAQ that the Company would be delisted if it did  
2 not regain compliance with the minimum \$1.00 per share price required for listing of common  
3 stock on the NASDAQ, which forced CTI to conduct a 1-for-10 reverse stock split of its common  
4 stock in order to allow it to return to compliance with this NASDAQ rule. CTI's stock price  
5 continues to struggle and, when adjusted to account for the Company's reverse stock split, is  
6 currently trading at less than 30% of its price during the Class Period just prior to the Company's  
7 February 2016 disclosures.

8 **D. Mediation Efforts**

9 27. In February 2017, Lead Plaintiff and the CTI Defendants engaged Jed Melnick of  
10 JAMS, an alternative dispute resolution provider that specializes in mediating complex, multi-  
11 party business and commercial cases. Mr. Melnick is a nationally-regarded mediator who has  
12 mediated over 1,000 disputes, including securities class actions. Mr. Melnick's mediation  
13 experience includes mediating major securities class actions involving Adelphia, Enron, and  
14 Lehman Brothers, as well as other major NYSE and NASDAQ corporations.

15 28. The Parties participated in two, in-person mediation sessions before Mr. Melnick.  
16 The first session occurred on March 29, 2017, in New York. In advance of the first mediation  
17 session, Lead Plaintiff and the CTI Defendants exchanged detailed confidential mediation  
18 statements, which were then submitted to Mr. Melnick. The mediation statements contained the  
19 Parties' respective views on liability, damages and CTI's financial condition. As part of the  
20 mediation process, CTI also provided Lead Counsel with certain core internal CTI documents  
21 relevant to the Parties' dispute, which further informed Lead Plaintiff's understanding of the  
22 strengths and weaknesses of its case.

23 29. Despite the Parties' good faith negotiations, the March 29, 2017 mediation session  
24 ended with the Parties far apart and without any agreement being reached. Following the first  
25



1 mediation session, however, Lead Plaintiff and the CTI Defendants continued to exchange  
2 information and remained in contact with the assistance of Mr. Melnick.

3 30. On June 26, 2017, Lead Plaintiff and the CTI Defendants convened for a second  
4 mediation session in New York. In advance of the mediation session, the Parties exchanged  
5 supplemental mediation briefs to address developments since the first mediation, including CTI's  
6 deteriorating financial condition. The second mediation session again ended with the Parties at an  
7 impasse and without reaching agreement.

8 31. To break the impasse, the Mediator propounded to both sides a double-blind,  
9 mediator's proposal to resolve the Action. Lead Plaintiff thereafter made a non-negotiable demand  
10 of \$20 million in cash to resolve the Parties' dispute, subject to Court approval. On August 3,  
11 2017, the Parties reached an agreement in principle to settle the Action for a cash payment of \$20  
12 million for the benefit of the Settlement Class, which was memorialized in a term sheet executed  
13 that day (the "Term Sheet").

14 **E. Consultation with Experts**

15 32. Throughout the litigation, Lead Counsel consulted extensively with experts  
16 regarding FDA standards and regulations. Lead Counsel also consulted extensively with experts  
17 regarding damages and loss causation issues in complex securities litigation. These experts were  
18 consulted during Lead Counsel's preparation of the Complaint and opposition to Defendants'  
19 motions to dismiss, as well as during the mediation process and settlement negotiations.

20 33. Lead Counsel consulted with Richard Guarino, M.D., an expert on the FDA's  
21 standards and regulations for the drug approval process with over 40 years of experience in the  
22 pharmaceutical industry. Lead Counsel benefited from Dr. Guarino's analyses and expertise when  
23 preparing the Complaint. The Complaint directly quotes Dr. Guarino and contains his expert  
24 opinions about, among other things, FDA regulations, clinical trials, and clinical holds.



1           34. Lead Counsel also consulted with Bjorn Steinholt, a financial economist and  
2 Managing Director at Caliber Advisors, a full-service valuation and economic consulting firm with  
3 offices in San Diego, California, and Chicago, Illinois. Mr. Steinholt has more than 25 years of  
4 experience providing capital markets consulting and frequently serves as an expert in complex  
5 securities litigation on damages and loss causation issues. Mr. Steinholt provided assistance to  
6 Lead Counsel in calculating estimated damages and advising on loss causation. Mr. Steinholt also  
7 assisted Lead Counsel in preparing a fair and equitable plan to allocate the settlement proceeds  
8 among Settlement Class Members based on the legal claims asserted and the economic damages  
9 suffered by Settlement Class Members.

10 **II. THE SIGNIFICANT CHALLENGES AND RISKS OF THE ACTION**

11           35. The risk that Lead Plaintiff and the class would not secure a meaningful recovery  
12 was very real in this case. Indeed, there was no assurance that the Court would sustain Plaintiffs’  
13 claims or that Plaintiffs would overcome later dispositive motions. As explained below,  
14 Defendants had substantial defenses with respect to liability, loss causation, and damages.

15 **A. Risks Of Proving Liability**

16           36. Defendants vigorously argued that they did not make any material misstatements  
17 or omissions. Defendants contended that their purported failure to disclose mortality data from  
18 the PERSIST-1 study of pacritinib was not material because there was no statistically significant  
19 imbalance in the mortality rates between the two arms of the PERSIST-1 study. Defendants also  
20 argued that there was no duty to disclose the IDMC’s recommendations because those  
21 recommendations were non-binding and, accordingly, immaterial under federal securities laws.  
22 Defendants further contended that, even if Lead Plaintiff’s IDMC-related allegations were  
23 actionable, Lead Plaintiff could not establish any actionable IDMC-related misstatement or  
24 omission until September 23, 2015, which is when Defendants first began publicly discussing the  
25 IDMC’s recommendations for the PERSIST-1 study.

1           37. Defendants made additional arguments that the Company fully disclosed the risks  
2 that the FDA might delay or fail to approve pacritinib, as well as that the FDA's clinical hold was  
3 merely the materialization of a known risk. Defendants further contended that CTI fully disclosed  
4 its communications with the FDA seeking further guidance on PERSIST-1's cross-over design,  
5 warning investors that any future announcements regarding clinical trial results and other  
6 regulatory actions would significantly affect the Company's stock price.

7           38. The Exchange Act Defendants also raised potentially threatening arguments that  
8 they did not act with scienter. According to the Exchange Act Defendants, Lead Plaintiff did not  
9 allege any facts demonstrating that CTI and Bianco did not believe that pacritinib would gain  
10 regulatory approval. In support of these arguments, Defendants noted that multiple independent  
11 statisticians and clinicians disagreed with the FDA and that, shortly after Lead Plaintiff filed its  
12 complaint, the FDA removed its clinical hold for pacritinib.

13           39. If Defendants prevailed on their falsity or scienter arguments, Lead Plaintiff and  
14 the class may have recovered nothing at all.

15           **B. Risks Of Proving Reliance, Loss Causation and Damages**

16           40. Even assuming that Lead Plaintiff successfully established that Defendants made  
17 actionable misstatements and omissions with scienter, Lead Plaintiff also faced risks in proving  
18 reliance, damages and loss causation. Defendants contended, and would continue to contend, that  
19 Lead Plaintiff could not show that investors relied on CTI's and Bianco's alleged  
20 misrepresentations and omissions. According to Defendants, Lead Plaintiff could not demonstrate  
21 reliance because (i) the *Affiliated Ute* presumption of reliance was inapplicable; (ii) the efficient-  
22 market presumption of reliance did not apply because the alleged misstatements were immaterial;  
23 and (iii) investors could not have relied on any misrepresentations or omissions concerning CTI's  
24 IDMC prior to September 23, 2015, because no IDMC-specific statements were made before that  
25 date.

1 41. Defendants raised additional arguments that Lead Plaintiff could not establish loss  
2 causation for the Exchange Act claims. Among other things, Defendants contended that the  
3 corrective disclosures in February 2016 of a clinical hold did not disclose any facts concerning the  
4 IDMC's recommendations. If Defendants had succeeded on this or any other of these substantial  
5 defenses, Lead Plaintiff and the class would have recovered nothing at all or likely substantially  
6 less than the Settlement Amount.

7 **C. Ability-to-Pay Risks**

8 42. Defendants' inability to pay a substantial judgment also factored into Lead  
9 Plaintiff's decision to resolve the case for \$20 million at this time. CTI's financial condition  
10 weakened throughout the litigation. On March 2, 2017, the Company reported in its Form 10-K  
11 filed with the SEC that its auditor had "substantial doubt about [its] ability to continue as a going  
12 concern." CTI further reported that its deficit increased to \$2.2 billion, that it would continue to  
13 incur net losses, and that its cash holdings could only fund its operations into the third quarter of  
14 2017. Accordingly, there was a substantial risk that, even if successful at trial, Lead Plaintiff and  
15 the class would be unable to obtain a recovery of an amount equal to or greater than the \$20 million  
16 settlement.

17 43. CTI's precarious financial condition and the limited resources of the Individual  
18 Defendants meant that their insurance coverage was the most available source for a substantial  
19 recovery for investors in this case. CTI's liability insurance is a wasting asset that was rapidly  
20 being depleted by defense costs from this Action and an ongoing SEC investigation. Such  
21 insurance policies would be completely wasted if this case proceeded into discovery, trial and  
22 appeals.

23 44. Lead Counsel also obtained information about the financial resources of the  
24 Individual Defendants, including James Bianco, the only other Defendant against whom Exchange  
25

1 Act claims for purchasers of CTI common stock were asserted. Lead Counsel concluded that those  
2 assets were limited and not sufficient to satisfy a substantial judgment.

3 45. As a result of the above factors – including CTI’s deteriorating financial position  
4 and indemnity obligations, the limited insurance, and the limited assets of the individuals – Lead  
5 Plaintiff and Lead Counsel believed that there was a very substantial risk that, even if Lead Plaintiff  
6 prevailed on all issues through the remainder of the litigation and secured a verdict at trial, such a  
7 victory might be hollow because the CTI Defendants would not be able to fund that judgment.  
8 Lead Plaintiff also faced the real risk that CTI might become insolvent, which would stay the  
9 Action against CTI, making any recovery against the Company difficult and delayed. In contrast,  
10 the proposed Settlement, which obtains all available CTI insurance and additional amounts from  
11 the Company itself, allows Lead Plaintiff and the class to maximize the amount of their recovery.

12 46. The significant risk that continued litigation may yield a smaller recovery several  
13 years into the future further supported entering into the Settlement.

14 **D. Other Risks**

15 47. Continued litigation in this Action, including appeals, could possibly extend for  
16 years and might ultimately lead to a smaller recovery, or no recovery at all. In order to succeed in  
17 this litigation, Lead Plaintiff would need to prevail at several distinct stages of the litigation,  
18 including on the pending motions to dismiss, a motion for class certification, an expected motion  
19 for summary judgment, and at trial. Even if Plaintiffs prevailed at all of these stages, Defendants  
20 would likely appeal any judgment. On appeal, Defendants would be able to renew their arguments  
21 as to why Lead Plaintiff had failed to establish liability and damages, thereby exposing Plaintiffs  
22 to the risk of having any favorable judgment reversed or reduced.



1 **III. THE SETTLEMENT**

2 51. While Defendants’ motions to dismiss the Complaint were pending, the Parties  
3 participated in extensive settlement negotiations over several months. As discussed above, the  
4 Parties participated in two, in-person mediation sessions before Mr. Melnick and other additional  
5 settlement negotiations assisted by Mr. Melnick before reaching an agreement in principle to settle  
6 the Action for \$20 million.

7 52. Mr. Melnick has submitted a declaration in support of the Settlement, which  
8 provides a summary of the negotiations. *See* Ex. 1 (Melnick Decl.), ¶¶ 5-8. In his declaration, Mr.  
9 Melnick explains his “involvement in the negotiations, review and analysis of the Parties’  
10 mediation submissions, extensive communications with the parties, and assessment of the risks  
11 inherent in this litigation.” *Id.* ¶ 9. He further details how the “mediation process involved  
12 significant disputed issues and hard-fought, arm’s-length negotiations.” *Id.* Based on his extensive  
13 involvement in the negotiations and independent review of the mediation submissions, Mr.  
14 Melnick determined that the proposed Settlement is a “reasonable resolution of the Action for the  
15 Parties.” *Id.*

16 53. After reaching an agreement in principle, the Parties negotiated and submitted to  
17 the Court on September 1, 2017 a detailed Stipulation and Agreement of Settlement. ECF No.  
18 103-2. The Stipulation and Agreement of Settlement was revised on September 15, 2017 (ECF  
19 No. 106-2) to include CTI’s insurers as released parties. The Stipulation and Agreement of  
20 Settlement was the product of extensive negotiation among the Parties, with Lead Counsel  
21 ensuring that the Stipulation accurately memorialized the Settlement and most benefited the  
22 Settlement Class.

23 **IV. PLAN OF ALLOCATION**

24 54. The Net Settlement Fund will be distributed according to the plan of allocation  
25 approved by the Court.

1           55.     Lead Plaintiff’s proposed plan of allocation (the “Plan of Allocation”) was set forth  
2 in full in the Notice mailed to potential Settlement Class Members. Lead Counsel developed the  
3 Plan of Allocation in consultation with Lead Plaintiff’s damages expert, Bjorn Steinholt. *See*  
4 Ex. 4 (Steinholt Decl.), ¶¶ 4-20. Lead Counsel and Lead Plaintiff believe that the Plan provides a  
5 fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized  
6 Claimants (*i.e.*, those Settlement Class Members whose claims are timely submitted and then  
7 verified by the Claims Administrator).

8           56.     The Plan of Allocation provides for distribution of the Net Settlement Fund among  
9 Authorized Claimants on a *pro rata* basis based on the formula described in detail in the Notice.  
10 The Plan of Allocation is divided into two parts. The first part governs purchases or acquisitions  
11 of CTI Series N-1 or Series N-2 Preferred Stock (“Preferred Stock”) that converted to common  
12 stock with Section 11 claims; and the second part governs purchases or acquisitions of CTI  
13 common stock (other than through conversions from Preferred Stock) that have only Section 10(b)  
14 claims. *See* Ex. 4 (Steinholt Decl.), ¶ 8.

15           57.     As detailed in the Steinholt Declaration, the calculation of Recognized Loss  
16 Amounts for purchases and acquisitions of the CTI Series N-1 and N-2 Preferred Stock is based  
17 on the statutory damage formula applicable to claims under Section 11, 15 U.S.C. § 77k. To reflect  
18 the fact that claims under Section 11 have lower burdens of pleading and proof than claims under  
19 Section 10(b), the Recognized Loss Amounts for purchases of the Preferred Stock are 120% of the  
20 calculated amount. *See* Ex. 4 (Steinholt Decl.), ¶¶ 9-11; Notice ¶ 54.

21           58.     Recognized Loss Amounts for purchases and acquisitions of CTI common stock  
22 under the Plan of Allocation are calculated based on the difference between the amount of  
23 estimated alleged artificial inflation in CTI common stock at the time of purchase and the time of  
24 sale. The amount of estimated inflation in CTI common stock during the Class Period was  
25 determined by an event study conducted by Lead Plaintiff’s expert according to a well-accepted



1 event study methodology. *See* Ex. 4 (Steinholt Decl.), ¶¶ 12-15. For shares of CTI common stock  
2 sold before the first corrective disclosure on February 8, 2016, there is no Recognized Loss because  
3 any losses on these shares did not result from any disclosure of the alleged fraud. *Id.* ¶ 16. The  
4 Plan of Allocation also limits a Settlement Class Member’s Recognized Loss Amount to the  
5 difference between (i) the actual purchase price of the CTI common stock; and (ii) the sales price  
6 of the common stock or, where applicable, the price set by the PSLRA’s 90-Day Bounce Back  
7 Rule. *Id.* ¶ 17.

8 59. Under the Plan of Allocation, a “Recognized Claim” is calculated for each  
9 Claimant, which is the sum of the Recognized Loss Amounts calculated for all of its purchases or  
10 acquisitions of CTI Securities during the Class Period. The Net Settlement Fund will be distributed  
11 on a *pro rata* basis based on the amount of the Claimants’ respective Recognized Claim amounts.

12 60. Lead Counsel and Lead Plaintiff submit that the Plan of Allocation fairly and  
13 equitably allocates the proceeds of the Net Settlement Fund among Authorized Claimants based  
14 on the claims asserted and the losses suffered on transactions in CTI Securities attributable to the  
15 conduct alleged in the Action.

16 **V. NOTICE TO THE SETTLEMENT**  
17 **CLASS AND CLASS REACTION TO DATE**

18 61. The Court’s October 24, 2017 Order Preliminarily Approving Settlement and  
19 Providing for Notice (ECF No. 107) (the “Preliminary Approval Order”) directed that the Notice  
20 of (I) Pendency of Class Action and Proposed Settlement; (II) Fairness Hearing; and (III) Motion  
21 for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and  
22 Proof of Claim and Release Form (“Claim Form”) be disseminated to the Settlement Class. The  
23 Preliminary Approval Order also set a January 11, 2018 deadline for Settlement Class Members to  
24 submit objections to the Settlement, the Plan of Allocation and/or the Fee and Expense Application



1 or to request exclusion from the Settlement Class, and set a final approval hearing date of February  
2 1, 2018.

3 62. Pursuant to the Preliminary Approval Order, the Court appointed Garden City  
4 Group, LLC (“GCG or the “Claims Administrator”) to supervise and administer the notice  
5 procedure in connection with the proposed Settlement and the processing of claims.

6 63. Lead Counsel instructed GCG to begin disseminating copies of the Notice and the  
7 Claim Form by mail and to publish the Summary Notice. The Notice contains, among other things,  
8 a description of the Action, the Settlement and the proposed Plan of Allocation. The Notice also  
9 describes the Settlement Class Members’ rights to participate in the Settlement, object to the  
10 Settlement, or exclude themselves from the Settlement Class. The Notice also informed Settlement  
11 Class Members of Lead Counsel’s intent to apply for an award of attorneys’ fees in an amount not  
12 to exceed 20% of the Settlement Fund (*i.e.*, 20% of the Settlement Amount and any interest  
13 accrued), and for reimbursement of Litigation Expenses in an amount not to exceed \$200,000.

14 64. To disseminate the Notice, GCG obtained information from CTI, the Underwriter  
15 Defendants, and from the banks, brokers and other nominees regarding the names and addresses  
16 of potential Settlement Class Members. *See* Declaration of Jennifer M. Bareither Regarding  
17 (A) Mailing of Notice and Claim Form; (B) Publication of Summary Notice; and (C) Report on  
18 Requests for Exclusion Received to Date (“Bareither Decl.”), attached hereto as Exhibit 3, ¶¶ 3-4.

19 65. GCG began mailing copies of the Notice and Claim Form (together, the “Notice  
20 Packet”) to potential Settlement Class Members and nominee owners on November 9, 2017. *See*  
21 Ex. 3 (Bareither Decl.), ¶¶ 3-4. As of December 26, 2017, GCG had disseminated a total of 18,139  
22 Notice Packets by first-class mail to potential Settlement Class Members and nominees. *Id.* ¶ 7.

23 66. On November 20, 2017, in accordance with the Preliminary Approval Order, GCG  
24 caused the Summary Notice to be published in *Investor’s Business Daily* and to be transmitted over  
25 the *PR Newswire*. *Id.* ¶ 8.

1           67. Lead Counsel also caused GCG to establish a dedicated settlement website,  
2 [www.CTIBiopharmaSecuritiesSettlement.com](http://www.CTIBiopharmaSecuritiesSettlement.com), to provide potential Settlement Class Members  
3 with information concerning the Settlement and access to downloadable copies of the Notice and  
4 Claim Form, as well as copies of the Stipulation, Preliminary Approval Order and Complaint. *See*  
5 Ex. 3 (Bareither Decl.), ¶ 10. Lead Counsel also made copies of the Notice and Claim Form  
6 available on its own website, [www.blbglaw.com](http://www.blbglaw.com), beginning on November 9, 2017.

7           68. The deadline for Settlement Class Members to file objections to the Settlement, the  
8 Plan of Allocation and/or the Fee and Expense Application, or to request exclusion from the  
9 Settlement Class is January 11, 2018. To date, no objections to the Settlement, the Plan of  
10 Allocation or Lead Counsel’s Fee and Expense Application have been received. Nor have any  
11 requests for exclusion been received. *See* Ex. 3 (Bareither Decl.), ¶ 11. Lead Counsel will file  
12 reply papers on or before January 25, 2018, seven calendar days before the Settlement Hearing,  
13 that will address any requests for exclusion or objections that may be received.

14 **VI. ATTORNEYS’ FEES AND LITIGATION EXPENSES**

15           69. Lead Counsel, on behalf of itself and Local Counsel Breskin Johnson Townsend  
16 PLLC (“BJT”), is requesting an award of attorneys’ fees of 20% percent of the Settlement Fund,  
17 including interest, and reimbursement of \$123,211.61 in Litigation Expenses incurred in the  
18 pursuit of the Action.

19 **A. The Fee Application**

20           70. Lead Counsel respectfully submits that the requested fee award is reasonable,  
21 particularly in light of the result achieved, the quality of the work performed, the significant risks  
22 of the litigation, and the fully contingent nature of the representation. As discussed in the Final  
23 Approval Motion, a 20% fee award is fair and reasonable for attorneys’ fees in common-fund cases  
24 like this and is well within the range of percentages awarded in class actions in this District and  
25 Circuit for comparable settlements.

1                   **1. Lead Plaintiff Has Authorized And Supports The Fee Application**

2           71. Lead Plaintiff DAFNA is a sophisticated institutional investor that closely  
3 supervised and participated in the prosecution and settlement of the Action. *See* Ex. 2 (Ghodsian  
4 Decl.), ¶¶ 2-4. Lead Plaintiff has evaluated the fee application and supports the fee requested. *Id.*  
5 ¶ 7. The fee requested is consistent with an agreement entered into between Lead Plaintiff and  
6 Lead Counsel at the outset of the litigation. *Id.* After the agreement to settle the Action was  
7 reached, Lead Plaintiff approved the proposed fee as consistent with the agreement and believes it  
8 is fair and reasonable in light of the result obtained, the work performed by Lead Counsel and the  
9 risks of the litigation. *Id.*

10                   **2. Lead Counsel Undertook Significant Financial Risk**

11           72. The prosecution of this Action was undertaken by Lead Counsel entirely on a  
12 contingent-fee basis. Lead Counsel received no compensation during the course of the Action  
13 and, meanwhile, incurred over \$120,000 in litigation expenses in prosecuting the Action for the  
14 benefit of the Settlement Class. The risks assumed by Lead Counsel in bringing these claims to a  
15 successful conclusion are described above at ¶¶ 35-50. Those risks are also relevant to an award  
16 of attorneys' fees.

17           73. From the outset, Lead Counsel understood that it was embarking on a complex,  
18 expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial  
19 investment of time and money the case would require. Lead Counsel nevertheless ensured that  
20 sufficient resources were dedicated to the prosecution of the Action, and that funds were available  
21 to compensate staff and to cover the considerable litigation costs that a case like this requires. In  
22 prosecuting this Action, Lead Counsel bore a substantial risk that no recovery would be achieved  
23 for the class and none of its fees or expenses would be recovered. As discussed above, this case  
24 presented multiple risks and uncertainties that could have prevented any recovery whatsoever.

1                   **3.     Lead Counsel Achieved This Result Through Skill**  
2                   **And Experience, Despite Multiple Levels Of Complexity**

3           74.     Lead Counsel is one of the leading firms in the specialized area of securities  
4 litigation. The attorneys who were principally responsible for leading the prosecution of this case  
5 have prosecuted securities claims throughout their careers, overseen numerous securities class  
6 actions, and recovered billions of dollars on behalf of investors over the course of decades. Lead  
7 Counsel’s depth of skill and experience, including its experience in this District and throughout  
8 the country successfully prosecuting securities class actions, allowed Lead Plaintiff and the  
9 Settlement Class to achieve the result obtained – a result that Lead Counsel respectfully submits  
10 might not have been achieved by less experienced counsel.

11                   **a)     The Action Revolved Around Complex Subject Matter**

12           75.     This Action required Lead Counsel to develop a mastery of complex and intricate  
13 legal and factual issues and to develop a compelling record up to the point of resolution. In  
14 conducting its investigation and preparing the Complaint, Lead Counsel developed a deep  
15 knowledge of the relevant FDA regulations, the science underlying pacritinib, and the PERSIST-1  
16 clinical studies. Lead Counsel worked extensively with experts in the fields of the pharmaceutical  
17 industry and statistics, as well as spoke with former CTI employees and industry participants.  
18 These efforts greatly contributed to the favorable result achieved for the Settlement Class.

19           76.     The Action also presented complex legal issues. Lead Counsel conducted legal  
20 research concerning, among other things, the circumstances under which a company has a duty to  
21 disclose an IDMC’s non-binding recommendation and statistically insignificant adverse results.  
22 These hotly disputed issues required extensive legal research to ensure that Lead Counsel  
23 presented the most compelling arguments to the Court.

24                   **b)     Lead Counsel Has Considerable Skill And Experience**

25           77.     As demonstrated by its firm résumé, which is attached as Exhibit 6, Lead Counsel  
26 is among the most experienced and skilled law firms in the securities-litigation field and has a long

1 and successful track record representing investors in cases of this kind. Lead Counsel is  
2 consistently ranked among the top plaintiffs' firms in the country. Further, Lead Counsel has taken  
3 complex cases like this to trial, and is among the few firms with experience doing so on behalf of  
4 plaintiffs in securities class actions. Lead Counsel possesses extensive experience litigating  
5 securities class actions and has successfully prosecuted numerous securities fraud class actions on  
6 behalf of injured investors in this District and in courts across the country. Lead Counsel has been  
7 appointed as lead or co-lead counsel in landmark, precedent-setting class actions and has achieved  
8 resounding successes on behalf of shareholders nationwide. Lead Counsel's willingness and  
9 ability to take complex cases to trial, when necessary, added valuable leverage in the settlement  
10 negotiations.

11 **c) Lead Counsel Faced Formidable Opposition**

12 78. The quality of the work performed by Lead Counsel in attaining the Settlement  
13 should also be evaluated in light of the quality of the opposition. Here, the CTI Defendants were  
14 represented by O'Melveny & Meyers LLP and Davis Wright Tremaine LLP, and the Underwriter  
15 Defendants were represented by Dorsey & Whitney LLP. Defense counsel included some of the  
16 country's most prominent and experienced defense attorneys, who vigorously represented their  
17 clients. In the face of this opposition, Lead Counsel was nonetheless able to resolve the case on  
18 terms favorable to the Settlement Class.

19 **4. Lead Counsel Invested Significant Time And**  
20 **Worked With Efficiency To Secure The Settlement**

21 79. The time and labor expended by Lead Counsel BLB&G and Local Counsel BJT  
22 (collectively, "Plaintiffs' Counsel") in pursuing the Action and achieving the Settlement strongly  
23 support the reasonableness of the requested fee. Lead Counsel undertook substantial efforts to  
24 investigate and prosecute this case before arriving at the present Settlement.

1           80. The investigation, prosecution, and settlement of the claims asserted in this Action  
2 required extensive efforts on the part of Lead Counsel, given the complexity of the legal and factual  
3 issues raised by Lead Plaintiff's claims and the vigorous defense mounted by Defendants. The  
4 tasks undertaken by Lead Counsel in this case included, among other things:

- 5           i) conducting an extensive factual investigation, including identifying and contacting
- 6           witnesses with direct knowledge of the facts;
- 7           ii) consulting with relevant experts, including Dr. Guarino and Mr. Steinholt;
- 8           iii) drafting the Complaint subject to the heightened pleading standards of the PSLRA;
- 9           iv) opposing Defendants' motions to dismiss;
- 10          v) preparing for and participating in two mediation sessions before Mr. Melnick;
- 11          vi) monitoring and evaluating CTI's financial condition; and
- 12          vii) monitoring related litigation against CTI and communicating as necessary with
- 13          counsel for such actions.

14           81. Throughout the litigation, Lead Counsel maintained an appropriate level of staffing  
15 that avoided unnecessary duplication of effort and ensured the efficient prosecution of this  
16 litigation. I maintained control of and monitored the work performed on the case by other lawyers.  
17 I devoted substantial time to the case, personally reviewing and editing all pleadings, motions, and  
18 significant correspondence prepared on behalf of Lead Plaintiff. Additional attorneys at my firm  
19 were involved in the litigation and settlement negotiations appropriate to their level of experience.

20           82. The principal tasks that each attorney at BLB&G was involved with in this case are  
21 as follows:

22           **David Stickney** (322.25 hours): I was primarily responsible throughout the Action for  
23 supervising the day-to-day handling and strategy of the litigation and oversaw all aspects  
24 of case management and prosecution. I was involved in drafting and reviewing the  
25 Complaint and all briefing related to Defendants' motions to dismiss. I was responsible  
26 for strategy relating to case management issues and consulted extensively with our experts.  
I participated in preparing Lead Plaintiff's mediation submissions and attended and

1 actively participated in the mediations and continued negotiations. I was also one of the  
2 attorneys who regularly communicated with Lead Plaintiff DAFNA. I also negotiated the  
terms of the settlement stipulation, and oversaw the notice and claims process.

3 **Jonathan Uslander** (409.25 hours): Mr. Uslander, one of the Firm’s partners, was  
4 responsible throughout the Action for supervising the day-to-day handling of the litigation.  
5 Mr. Uslander was involved in drafting and reviewing the Complaint, all briefing related to  
6 Defendants’ motions to dismiss, and various correspondence. He worked closely with  
investigators and experts throughout the litigation. Mr. Uslander participated in preparing  
7 Lead Plaintiff’s mediation submissions and attended and actively participated in the  
mediations and continued negotiations.

8 **Max Berger** (30.25 hours): Mr. Berger, one of the Firm’s founding partners, was involved  
9 in strategy for settlement negotiations in advance of the mediations. He also participated  
in decisions on case management.

10 **Niki Mendoza** (346 hours): Ms. Mendoza was involved in drafting the Complaint,  
11 including related factual investigation and legal research, preparing briefing in response to  
Defendants’ motions to dismiss, and preparing Lead Plaintiff’s mediation submissions.

12 **Rachel Felong** (450.25 hours): Ms. Felong was involved in briefing DAFNA’s motion to  
13 be appointed lead plaintiff, and the drafting of the Complaint, including related factual  
investigation and legal research.

14 **David L. Duncan** (160 hours): Mr. Duncan, whose primary role at the firm is to manage  
15 and implement class action settlements, had responsibility for drafting, editing, and  
16 coordinating the settlement documentation, including the Stipulation and Lead Plaintiff’s  
motion for final approval. Mr. Duncan was also responsible for coordinating with the  
17 claims administrator.

18 **Julia Johnson** (75 hours): Ms. Johnson assisted in the drafting, editing, and coordinating  
19 of the settlement documentation, including the Stipulation and Lead Plaintiff’s motions for  
preliminary approval and final approval of the Settlement.

20 **Scott Foglietta** (21 hours): Mr. Foglietta was responsible for drafting various procedural  
21 filings.

22 83. Attached as Exhibit 5B is a detailed summary indicating the amount of time spent  
23 by the attorneys and professional support staff employees of my firm who worked on this matter,  
24 from inception of the Action through December 20, 2017, and the lodestar calculation for those  
25 individuals based on my firm’s current billing rates. The schedule was prepared from



1 contemporaneous daily time records regularly prepared and maintained by my firm. Time  
2 expended in preparing the application for fees and reimbursement of expenses has not been  
3 included in this report, and time for timekeepers who had worked only a *de minimus* amount of  
4 total time on this case (*e.g.*, less than 10 hours) was also removed from the time report. The hourly  
5 rates for the attorneys and professional support staff in my firm included in Exhibit 5B are the  
6 same as the regular rates charged for their services, which have been accepted in other securities  
7 or shareholder litigation.

8 84. The Declaration of Roger Townsend of Local Counsel BJT, attached hereto as  
9 Exhibit 7, lists the number of hours he worked on the Action and the lodestar for his time.

10 85. As shown in Exhibits 5B and 7 and summarized in Exhibit 5A, Plaintiffs' Counsel  
11 collectively expended a total of 2,981.80 hours in investigating and prosecuting the Action from  
12 its inception through and including December 20, 2017, for a total lodestar of \$1,661,110.25.

13 **5. The Requested Percentage Fee Is Comparable To**  
14 **Fee Awards Approved In Cases With Similar Recoveries**

15 86. The requested percentage fee is in line with the range of fee awards approved by  
16 courts within this District and Circuit in complex common-fund cases involving comparably sized,  
17 and even smaller, settlements. *See, e.g., Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th  
18 Cir. 1993) (affirming award of 25% of \$30 million class settlement); *In re Galena Biopharma, Inc.*  
19 *Sec. Litig.*, 2016 WL 3457165, at \*13 (D. Or. June 24, 2016) (approving 25% award of \$28 million  
20 settlement); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175-76 (S.D. Cal. 2007)  
21 (awarding 25% of \$10 million settlement); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,  
22 1048 (N.D. Cal. 2008) (awarding 28% of \$14 million settlement); *Vizcaino v. Microsoft Corp.*, 290  
23 F.3d 1043, 1051 (9th Cir. 2002) (affirming award of 28% of \$97 million settlement with multiplier  
24 of 3.65); *In re WSB Fin. Grp. Sec. Litig.*, 2009 WL 10677102, at \*1 (W.D. Wash. Mar. 27, 2009)  
25 (awarding 25% of \$4.85 million settlement); *McGuire v. Dendreon Corp.*, Case No. C07-800 MJP,



1 slip op. at 3-4 (W.D. Wash. Dec. 20, 2010), ECF No. 235 (awarding 25% of \$16.5 million  
2 settlement); *In re BP Prudhoe Bay Royalty Tr. Sec. Litig.*, No. C06-1505 MJP, slip op. at 2 (W.D.  
3 Wash. June 30, 2009), ECF No. 127 (awarding 27% of \$43.25 million settlement).

4 \* \* \*

5 87. For each of the reasons discussed above, Lead Counsel respectfully submits that a  
6 fee award of 20% of the Settlement Fund is appropriate and reasonable.

7 **B. The Litigation Expenses Application**

8 88. Lead Counsel also seeks reimbursement from the Settlement Fund of \$123,211.61  
9 in Litigation Expenses that were reasonably incurred by Plaintiffs' Counsel in connection with  
10 commencing, litigating, and settling the claims asserted in the Action.

11 89. From the beginning of the case, Lead Counsel was aware that it might not recover  
12 any of its expenses, and, even in the event of a recovery, would not recover any of its out-of-pocket  
13 expenditures until the Action might be successfully resolved. Lead Counsel also understood that,  
14 even assuming that the case was ultimately successful, reimbursement for expenses would not  
15 compensate it for the lost use of the funds advanced to prosecute the Action. Accordingly, Lead  
16 Counsel was motivated to and did take appropriate steps to avoid incurring unnecessary expenses  
17 and to minimize costs without compromising the vigorous and efficient prosecution of the case.

18 90. Plaintiffs' Counsel have incurred a total of \$123,211.61 in unreimbursed Litigation  
19 Expenses in prosecuting the Action. The expenses are summarized in the expense report for  
20 BLB&G, attached hereto as Exhibit 5C, which identifies each category of expense, *e.g.*, expert  
21 fees, on-line research, out-of-town travel, mediation fees, photocopying, and postage expenses,  
22 and the amount incurred for each category, and in the Declaration of Roger Townsend for Local  
23 Counsel BJT, attached hereto as Exhibit 7. These expense items are billed separately by Lead  
24 Counsel and Local Counsel and are not duplicated in their billing rates.

1           91. The expenses incurred in this Action by Lead Counsel are reflected in the records  
2 of my firm, which are regularly prepared and maintained in the ordinary course of business. These  
3 records are prepared from expense vouchers, check records and other source materials and are an  
4 accurate record of the expenses incurred.

5           92. Of the total amount of expenses, \$44,137.50, or approximately 36%, was incurred  
6 for the retention of consulting and testifying experts. As noted above, Lead Counsel consulted  
7 with Dr. Guarino, an expert on the FDA's standards and regulations for the drug approval process  
8 with over 40 years of experience in the pharmaceutical industry. Lead Counsel also consulted with  
9 Mr. Steinholt, a financial economist at Caliber Advisors who frequently serves as an expert in  
10 complex securities litigations on damages and loss causation issues.

11           93. On-line legal and factual research was another component of the Litigation  
12 Expenses. Such research was necessary to prepare the Complaint, research the law pertaining to  
13 the claims asserted in the Action and oppose Defendants' motions to dismiss. The total charges  
14 for on-line legal and factual research amount to \$15,100.31, or approximately 12% of the total  
15 amount of expenses.

16           94. Lead Counsel has also incurred expenses totaling \$34,695.66 for mediation fees, or  
17 approximately 28% of the total expenses.

18           95. The other expenses for which Plaintiffs' Counsel seek reimbursement are the types  
19 of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the  
20 hour. These expenses include, among others, court fees, copying costs, postage, and out-of-town  
21 travel costs.

22           96. The expenses reflected in Exhibits 5C and 7 are the expenses incurred by each firm,  
23 which are further limited by "caps" based on the application of the following criteria:

- 24           a. Out-of-town Travel – Airfare is capped at coach rates, hotel rates are capped at  
25                 \$250 for small cities and \$350 for large cities (the relevant cities and how they are

1 categorized are reflected on Exhibit 5C); meals are capped at \$20 per person for  
2 breakfast, \$25 per person for lunch, and \$50 per person for dinner.

3 b. Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for  
4 dinner.

5 c. In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person  
6 for dinner.

7 d. Internal Copying - Capped at \$0.10 per page.

8 e. On-Line Research - Charges reflected are for out-of-pocket payments to the  
9 vendors for research done in connection with this litigation. On-line research is  
10 billed to each case based on actual time usage at a set charge by the vendor. There  
11 are no administrative charges included in these figures.

12 97. All of the Litigation Expenses incurred by Plaintiffs' Counsel were reasonable,  
13 necessary to the successful litigation of the Action, and approved by Lead Plaintiff. *See* Ex. 2  
14 (Ghodsian Decl.), ¶ 8.

15 **C. The Reaction Of The Settlement**  
16 **Class To The Fee And Expense Application**

17 98. The Notice informed potential Settlement Class Members that Lead Counsel would  
18 seek an award of attorneys' fees for all Plaintiffs' Counsel in an amount of 20% of the Settlement  
19 Fund or less, and reimbursement of expenses in an amount not to exceed \$200,000. The total  
20 amount of expenses requested, \$141,574.11, which includes \$123,211.61 in reimbursement of  
21 Litigation Expenses incurred by Plaintiffs' Counsel and \$18,362.50 in reimbursement of costs and  
22 expenses incurred by Lead Plaintiff, is below the \$200,000 that Settlement Class Members were  
23 notified could be sought. To date, no Settlement Class Member has objected to the fee request or  
24 the maximum amount of expenses disclosed in the Notice. Lead Counsel will address any  
25 objections in its reply papers.

**VII. REIMBURSEMENT OF THE COSTS AND EXPENSES OF THE LEAD PLAINTIFF**

99. In accordance with the PSLRA, DAFNA seeks reimbursement of its reasonable costs and expenses incurred directly in connection with its representation of the Settlement Class, in the amount of \$18,362.50. The amount of time and effort devoted to this Action by officers and employees of DAFNA, who consulted with Lead Counsel through the Action and in connection with settlement negotiations, is detailed in the accompanying Ghodsian Declaration. Ex. 2, ¶ 10.

100. As set forth in the Ghodsian Declaration, Lead Plaintiff was fully committed to pursuing the interests of the Settlement Class throughout the litigation of this Action. Lead Plaintiff's efforts are precisely the types of activities that courts have found to support reimbursement to class representatives, and fully support its request for reimbursement.

**VIII. CONCLUSION**

101. For all the reasons discussed above, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement, Plan of Allocation, and Lead Counsel's Fee and Expense Application should be approved as fair and reasonable.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of December, 2017.



David R. Stickney

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 28, 2017, I presented the foregoing Declaration and its exhibits to the Clerk of the Court for filing and uploading to the CM/ECF system. This system will send electronic notice of filing to all counsel of record by operation of the Court’s electronic filing system.

/s/ Roger M. Townsend  
Roger M. Townsend, WSBA #25525  
BRESKIN JOHNSON & TOWNSEND PLLC  
1000 Second Avenue, Suite 3670  
Seattle, WA 98104  
Tel: (206) 652-8660  
Fax: (206) 652-8290  
rtownsend@bjtlegal.com

*Local Counsel for Lead Plaintiff DAFNA  
and the Settlement Class*

# **EXHIBIT DD**

# Exhibit 5A

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA**

ROBERT F. BACH, et al.,

Plaintiff,

v.

AMEDISYS, INC., et al.,

Defendants.

Consolidated Securities Class Action

Civil Action No. 10-00395-BAJ-RB

Consolidated With:

No. 10-464-BAJ-RB

No. 10-470-BAJ-RB

No. 10-497-BAJ-RB

**DECLARATION OF JOHN C. BROWNE IN SUPPORT OF  
LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES FILED ON  
BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, JOHN C. BROWNE, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP, one of the Court-appointed Lead Counsel in the above-captioned action (the “Action”). I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees and reimbursement of litigation expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as one of the Lead Counsel firms, was involved in all aspects of the litigation and its settlement as set forth in the Joint Declaration of John C. Browne and Robert C. Finkel in Support of (I) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through October 20, 2017, billed ten or more hours to the Action,



and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the application for fees and reimbursement of expenses has not been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 from inception through and including October 20, 2017, is 11,172.75. The total lodestar reflected in Exhibit 1 for that period is \$6,173,803.00, consisting of \$5,468,723.75 for attorneys' time and \$705,079.25 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$413,825.65 in expenses incurred in connection with the prosecution of this Action from its inception through and including October 20, 2017. In addition, the outstanding costs for Document Management/Litigation Support include charges of maintaining the archive of documents produced in the Action through December 2017 and the Out-of-Town Travel costs include the estimated costs of travel to attend the final approval hearing on December 13, 2017.

8. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm or reflect “caps” based on the application of the following criteria:

- (a) Out-of-town travel - airfare is at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
- (b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.
- (c) In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person for dinner.
- (d) Internal Copying - Charged at \$0.10 per page.
- (e) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

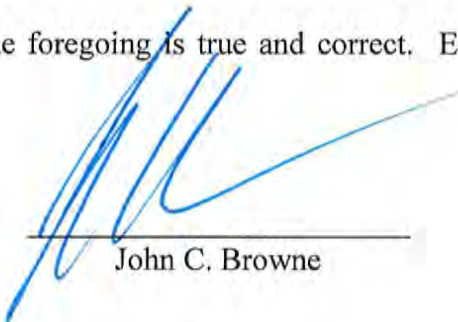
9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. To facilitate the sharing of expenses, BLB&G and Co-Lead Counsel Wolf Popper LLP established and jointly contributed to a litigation fund, which my firm was responsible for managing. Attached as Exhibit 3 is a chart reflecting the contributions to and disbursements from the litigation fund. A balance of \$4,257.49 remains in the litigation fund that will be repaid to BLB&G. The amount reflected on BLB&G’s Expense Report (Exhibit 2) has been reduced

by that amount to avoid any double counting of expenditures.

11. With respect to the standing of my firm, attached hereto as Exhibit 4 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 8, 2017.



---

John C. Browne

#1133262

**EXHIBIT 1**

*Bach v. Amedisys, Inc.*,  
Civil Action No. 10-00395-BAJ-RB

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through October 20, 2017

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max Berger	97.00	1,250.00	121,250.00
Michael Blatchley	108.00	750.00	81,000.00
John Browne	1,066.25	895.00	954,293.75
William Fredericks	524.00	875.00	458,500.00
Ben Galdston	19.75	750.00	14,812.50
Chad Johnson	15.25	800.00	12,200.00
Blair Nicholas	16.50	995.00	16,417.50
Jeremy Robinson	620.75	750.00	465,562.50
Gerald Silk	159.50	995.00	158,702.50
Adam Wierzbowski	1,419.50	750.00	1,064,625.00
<b>Senior Counsel</b>			
Rochelle Hansen	14.50	750.00	10,875.00
David Kaplan	18.95	725.00	13,738.75
<b>Associates</b>			
David L. Duncan	81.00	650.00	52,650.00
Laurence Hasson	61.00	450.00	27,450.00
Adam Hollander	895.75	650.00	582,237.50
John Alden Meade	209.25	475.00	99,393.75
Katherine Stefanou	11.75	500.00	5,875.00
Julia Tebor	70.00	475.00	33,250.00
<b>Staff Associate</b>			
Matthew Berman	233.00	465.00	108,345.00
<b>Staff Attorneys</b>			
Erwin Abalos	707.00	375.00	265,125.00
Jim Briggs	212.75	340.00	72,335.00

NAME	HOURS	HOURLY RATE	LODESTAR
Girolamo Brunetto	65.50	340.00	22,270.00
Reiko Cyr	86.25	395.00	34,068.75
George Doumas	132.25	395.00	52,238.75
Daniel Gruttadaro	805.75	340.00	273,955.00
Stephen Imundo	613.00	395.00	242,135.00
Danielle Leon	266.25	340.00	90,525.00
Marion Passmore	24.75	395.00	9,776.25
Jeff Powell	316.75	395.00	125,116.25
<b>Financial Analysts</b>			
Nick DeFilippis	16.00	550.00	8,800.00
Adam Weinschel	50.50	465.00	23,482.50
Sharon Safran	51.50	335.00	17,252.50
Ryan S. Ting	12.50	235.00	2,937.50
<b>Investigators</b>			
Amy Bitkower	71.25	520.00	37,050.00
Lisa C. Williams (Burr)	31.50	300.00	9,450.00
Chris Altiery	17.50	255.00	4,462.50
Jaelyn Chall	66.75	290.00	19,357.50
Victoria Kapastin	33.00	290.00	9,570.00
Joelle (Sfeir) Landino	708.75	300.00	212,625.00
<b>Paralegals</b>			
Erik Andrieux	35.50	245.00	8,697.50
Ricia Augusty	415.30	335.00	139,125.50
Dena Bielasz	25.50	335.00	8,542.50
Martin Braxton	193.50	245.00	47,407.50
Jose Echegaray	64.75	255.00	16,511.25
Amanda Figueroa	176.25	290.00	51,112.50
Leigh Gagliardi	38.75	310.00	12,012.50
Ellen Jordan	67.50	245.00	16,537.50
Matthew Mahady	13.50	335.00	4,522.50
Ruben Montilla	73.25	255.00	18,678.75
Gary Weston	14.75	350.00	5,162.50
Ranae G. Wooley	12.50	250.00	3,125.00

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Litigation Support</b>			
Babatunde Pedro	15.00	295.00	4,425.00
Jessica M. Wilson	6.25	295.00	1,843.75
<b>Document Clerk</b>			
Michael Andres	44.00	190.00	8,360.00
<b>Managing Clerk</b>			
Errol Hall	45.25	310.00	14,027.50
<b>TOTALS</b>	<b>11,172.75</b>		<b>\$6,173,803.00</b>

**EXHIBIT 2**

*Bach v. Amedisys, Inc.*,  
Civil Action No. 10-00395-BAJ-RB

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****EXPENSE REPORT**

Inception through October 20, 2017

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 362.00
Service of Process	2,854.60
On-Line Legal Research	76,854.09
On-Line Factual Research	19,436.19
Telephones/Faxes	162.68
Postage & Express Mail	1,198.43
Local Transportation	5,093.27
Internal Copying and Printing	4,529.50
Outside Copying and Printing	6,499.34
Out-of-Town Travel*	16,301.41
Working Meals	7,646.23
Court Reporters and Transcripts	475.00
Experts	3,712.65
Special Counsel	69,381.11
Mediation Fees	20,390.08
Contributions to Litigation Fund	39,000.00
<b>Total Paid:</b>	<b>\$273,896.58</b>
<b>Outstanding Expenses:</b>	
Document Management/Litigation Support	41,508.27
Experts	102,678.29
<b>Total Outstanding:</b>	<b>\$144,186.56</b>
Less Adjustment for Repayment from Plaintiffs' Litigation Fund	<b>(\$4,257.49)</b>
<b>TOTAL EXPENSES:</b>	<b>\$413,825.65</b>

\* Out-of-town travel includes hotels in the following "large" (high-cost) cities capped at \$350 per night: New Orleans, LA; New York, NY, and San Francisco, CA; and the following "small" (lower cost) cities capped at \$250 per night: Baton Rouge, LA and Jackson, MI.

**EXHIBIT 3**

*Bach v. Amedisys, Inc.*,  
Civil Action No. 10-00395-BAJ-RB

**CONTRIBUTIONS TO AND  
EXPENDITURES FROM THE LITIGATION FUND  
For Expenses Incurred from Inception through October 20, 2017**

**CONTRIBUTIONS:**

<b>Firm</b>	<b>Amount</b>
Bernstein Litowitz Berger & Grossmann LLP	\$39,000.00
Wolf Popper LLP	44,000.00
<b>TOTAL CONTRIBUTED:</b>	<b>\$83,000.00</b>

**DISBURSEMENTS:**

<b>Category of Expense</b>	<b>Amount Expended</b>
Service of Process	\$ 6,345.80
Court Reporters & Transcripts	65.70
Outside Copying	482.69
Mediation Fees	21,500.22
Experts	119,842.50
<b>TOTAL DISBURSED:</b>	<b>\$78,742.51</b>

**\*BALANCE: \$4,257.49**

\* The balance in the litigation fund will be repaid to BLB&G. The amount reflected on BLB&G's Expense Report (Exhibit 2) has been reduced by the amount of the balance in the litigation fund.



# **EXHIBIT EE**

# Exhibit 3A

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

	)	
	)	Case No. 14 Civ. 8925 (KMW)
IN RE SALIX PHARMACEUTICALS, LTD.	)	CLASS ACTION
	)	
	)	

**DECLARATION OF SALVATORE J. GRAZIANO IN SUPPORT OF LEAD  
COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON  
BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, SALVATORE J. GRAZIANO, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP, the Court-appointed Lead Counsel in the above-captioned action (the “Action”). I submit this declaration in support of Lead Counsel’s application for an award of attorneys’ fees and reimbursement of litigation expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as Lead Counsel, was involved in all aspects of the litigation and its settlement as set forth in my Declaration in Support of: (I) Lead Plaintiff’s Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through May 31, 2017, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm’s current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by

my firm. Time expended on the application for fees and reimbursement of expenses has not been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 from inception through and including May 31, 2017, is 29,758.25. The total lodestar reflected in Exhibit 1 for that period is \$12,349,533.75, consisting of \$11,718,620.00 for attorneys' time and \$630,913.75 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$1,924,023.98 in expenses incurred in connection with the prosecution of this Action from its inception through and including May 31, 2017.

8. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm or reflect "caps" based on the application of the following criteria:

- (a) Out-of-town travel - airfare is at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
- (b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.



**EXHIBIT 1**

*In re Salix Pharmaceuticals, Ltd.*,  
Case No. 14 Civ. 8925 (KMW)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through May 31, 2017

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max W. Berger	196.50	\$995	\$195,517.50
Michael Blatchley	400.00	\$700	280,000.00
Salvatore J. Graziano	485.75	\$945	459,033.75
Avi Josefson	26.00	\$800	20,800.00
Mark Lebovitch	32.75	\$875	28,656.25
John Rizio-Hamilton	797.50	\$750	598,125.00
Gerald H. Silk	171.50	\$945	162,067.50
Katherine M. Sinderson	817.25	\$700	572,075.00
<b>Associates</b>			
David L. Duncan	113.50	\$600	68,100.00
Scott Foglietta	317.00	\$500	158,500.00
Adam Hollander	660.00	\$600	396,000.00
Angus Fei Ni	568.00	\$450	255,600.00
David Schwartz	232.25	\$575	133,543.75
Katherine A. Stefanou	493.00	\$500	246,500.00
<b>Staff Attorneys</b>			
Erwin Abalos	1,752.50	\$375	657,187.50
Sheela Aiyappasamy	599.75	\$375	224,906.25
Pedro Ariston	1,676.25	\$340	569,925.00
Jim Briggs	1,497.50	\$340	509,150.00
Girolamo Brunetto	87.75	\$340	29,835.00
Ryan Candee	614.00	\$395	242,530.00
Brian Chau	985.50	\$375	369,562.50
Anne T. Cirasuolo	514.00	\$395	203,030.00
Chris Clarkin	719.00	\$375	269,625.00
Alex Dickin	1,874.50	\$340	637,330.00
George Doumas	625.00	\$395	246,875.00
Michael Graff	761.25	\$340	258,825.00

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
Daniel Gruttadaro	1,544.00	\$340	524,960.00
Keith Guilfoyle	803.00	\$395	317,185.00
Stephen Imundo	1,699.50	\$395	671,302.50
Merlyne Jean-Louis	738.75	\$340	251,175.00
Laura Lefkowitz	594.75	\$395	234,926.25
Danielle Leon	810.00	\$340	275,400.00
Maureen McCarren	605.50	\$395	239,172.50
John Moore	449.50	\$340	152,830.00
Jeff Powell	635.00	\$395	250,825.00
Prashantha Ratnayake	611.25	\$395	241,443.75
Daniel Renehan	865.75	\$395	341,971.25
Madeleine Severin	564.00	\$375	211,500.00
Christina Suarez	216.25	\$375	81,093.75
Catherine Van Kampen	333.00	\$395	131,535.00
<b>Financial Analysts</b>			
Nick DeFilippis	21.00	\$500	10,500.00
Sharon Safran	91.25	\$325	29,656.25
Adam Weinschel	112.75	\$415	46,791.25
<b>Investigators</b>			
Chris Altieri	114.50	\$245	28,052.50
Lisa C. Williams (Burr)	271.50	\$290	78,735.00
<b>Paralegals</b>			
Martin Braxton	19.50	\$245	4,777.50
Jose Echegaray	704.00	\$245	172,480.00
Ellen Jordan	370.00	\$245	90,650.00
Matthew Mahady	52.00	\$310	16,120.00
Gary Weston	178.75	\$325	58,093.75
<b>Litigation Support</b>			
Babatunde Pedro	142.50	\$275	39,187.50
Andrea R. Webster	18.50	\$310	5,735.00
Jessica M. Wilson	106.50	\$275	29,287.50
<b>Managing Clerk</b>			
Errol Hall	67.25	\$310	20,847.50
<b>TOTALS</b>	<b>29,758.25</b>		<b>\$12,349,533.75</b>

**EXHIBIT 2**

*In re Salix Pharmaceuticals, Ltd.,*  
Case No. 14 Civ. 8925 (KMW)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****EXPENSE REPORT**

Inception through May 31, 2017

<b>CATEGORY</b>	<b>AMOUNT</b>
Service of Process	6,775.40
On-Line Legal Research	49,720.40
On-Line Factual Research	14,144.40
Document Management/Litigation Support	8,723.21
Telephones/Faxes	333.54
Postage & Express Mail	3,2014.24
Hand Delivery Charges	220.00
Local Transportation	7,389.52
Internal Copying	10,459.40
Outside Copying	10,016.51
Out-of-Town Travel*	18,639.78
Working Meals	7,833.39
Court Reporting and Transcripts	6,051.04
Deposition/Meeting Hosting	1,988.93
Experts	1,437,077.61
<b>Total Paid:</b>	<b>\$1,582,387.37</b>
<b>Outstanding Expenses:</b>	
Document Management/Litigation Support	102,973.68
Court Reporting and Transcripts	10,122.93
Experts	228,540.00
<b>Total Outstanding:</b>	<b>\$341,636.61</b>
<b>TOTAL EXPENSES:</b>	<b>\$1,924,023.98</b>

\* Out of town travel includes hotels in the following "large cities" capped at \$350 per night: Columbus, Ohio, Washington, DC, and San Francisco, California; and the following "small" city capped at \$250 per night: Costa Mesa, California.



# **EXHIBIT FF**

# Exhibit 3A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SAN ANTONIO FIRE AND POLICE  
PENSION FUND, FIRE AND POLICE  
HEALTH CARE FUND, SAN ANTONIO,  
PROXIMA CAPITAL MASTER FUND LTD.,  
and THE ARBITRAGE FUND,

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., DAVID H.  
MURDOCK and C. MICHAEL CARTER,

Defendants.

Civil Action No. 1:15-cv-1140-LPS

**DECLARATION OF KATHERINE M. SINDERSON IN SUPPORT OF LEAD  
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON  
BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

I, KATHERINE M. SINDERSON, declare as follows:

1. I am a partner of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"), one of the Court-appointed Lead Counsel in the above-captioned action (the "Action"). I submit this declaration in support of Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. My firm, as one of the Lead Counsel firms, was involved in all aspects of the litigation and its settlement as set forth in the Joint Declaration of Katherine M. Sinderson and Vincent R. Cappucci in Support of: (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by attorneys and professional support staff employees of my firm who, from inception of the Action through May 31, 2017, billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended on the application for fees and reimbursement of expenses has not been included.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates charged for their services, which have been accepted in other securities or shareholder litigation.

5. The total number of hours reflected in Exhibit 1 from inception through and including May 31, 2017, is 9,317.50. The total lodestar reflected in Exhibit 1 for that period is \$4,110,982.50, consisting of \$3,964,868.75 for attorneys' time and \$146,113.75 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$530,190.31 in expenses incurred in connection with the prosecution of this Action from its inception through and including May 31, 2017.

8. The expenses reflected in Exhibit 2 are the expenses actually incurred by my firm or reflect "caps" based on the application of the following criteria:

- (a) Out-of-town travel - airfare is at coach rates, hotel charges per night are capped at \$350 for large cities and \$250 for small cities (the relevant cities and how they are categorized are reflected on Exhibit 2); meals are capped at \$20 per person for breakfast, \$25 per person for lunch, and \$50 per person for dinner.
- (b) Out-of-Office Meals - Capped at \$25 per person for lunch and \$50 per person for dinner.
- (c) In-Office Working Meals - Capped at \$20 per person for lunch and \$30 per person for dinner.
- (d) Internal Copying - Charged at \$0.10 per page.
- (e) On-Line Research - Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. On-line research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were involved in this Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 13, 2017.



---

Katherine M. Sinderson

**EXHIBIT 1**

*San Antonio Fire & Police Pension Fund v. Dole Food Company, Inc.*  
Civil Action No. 1:15-cv-1140-LPS

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through May 31, 2017

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partner</b>			
Max W. Berger	62.75	\$995	62,436.25
Michael Blatchley	160.00	\$700	112,000.00
John Browne	39.50	\$845	33,377.50
Avi Josefson	68.25	\$800	54,600.00
Mark Lebovitch	25.00	\$875	21,875.00
Gerald H. Silk	180.50	\$945	170,572.50
Katherine M. Sinderson	828.25	\$700	579,775.00
<b>Senior Counsel</b>			
Jai K. Chandrasekhar	15.00	\$700	10,500.00
Rochelle Hansen	33.25	\$700	23,275.00
<b>Associate</b>			
David L. Duncan	141.50	\$600	84,900.00
Scott Foglietta	79.25	\$500	39,625.00
Adam Hollander	496.50	\$600	297,900.00
Jake Nachmani	150.50	\$500	75,250.00
Julia Tebor	309.25	\$450	139,162.50
<b>Staff Attorney</b>			
Jeffrey Compton	601.75	\$375	225,656.25
Lauren Cormier	663.25	\$340	225,505.00
Danielle Disporto	125.00	\$375	46,875.00
France Kaczanowski	561.75	\$395	221,891.25
Frank Kalamajka	548.25	\$395	216,558.75
Stavros Katsetos	602.00	\$340	204,680.00
Adrienne Lester-Fitje	476.50	\$340	162,010.00
Laurie Maxis	678.50	\$375	254,437.50
Chesley Parker	139.00	\$340	47,260.00
Abbie Pugh Rea	462.75	\$340	157,335.00

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
Lewis Smith	38.50	\$340	13,090.00
Joanna Tarnawski	712.25	\$340	242,165.00
Ghavrie Walker	645.75	\$375	242,156.25
<b>Financial Analyst</b>			
Matthew McGlade	15.75	\$325	5,118.75
Adam Weinschel	26.00	\$415	10,790.00
<b>Litigation Support</b>			
Babatunde Pedro	20.00	\$275	5,500.00
Andrea R. Webster	20.00	\$310	6,200.00
Jessica M. Wilson	11.00	\$275	3,025.00
<b>Managing Clerk</b>			
Errol Hall	18.00	\$310	5,580.00
<b>Paralegal</b>			
Yvette Badillo	55.50	\$285	15,817.50
Matthew Mahady	68.00	\$310	21,080.00
Ruben Montilla	46.50	\$245	11,392.50
Nyema Taylor	19.75	\$285	5,628.75
Gary Weston	172.25	\$325	55,981.25
<b>TOTALS</b>	<b>9,317.50</b>		<b>\$4,110,982.50</b>

**EXHIBIT 2**

*San Antonio Fire & Police Pension Fund v. Dole Food Company, Inc.*  
Civil Action No. 1:15-cv-1140-LPS

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****EXPENSE REPORT**

Inception through May 31, 2017

<b>CATEGORY</b>	<b>AMOUNT</b>
PSLRA Notice Costs	\$ 940.00
Service of Process	525.00
On-Line Legal Research	20,533.55
On-Line Factual Research	1,971.21
Telephones/Faxes	496.30
Postage & Express Mail	435.31
Hand Delivery Charges	38.00
Local Transportation	2,374.08
Document Reproduction / Copying	1,685.07
Out of Town Travel*	6,428.17
Working Meals	1,678.36
Court Reporters and Transcripts	6,615.00
Meeting Hosting	170.78
Mediation Fees	8,250.00
<b>Total Paid:</b>	<b>\$52,140.83</b>
<b>Outstanding Expenses:</b>	
Document Management/Litigation Support	108,802.98
Experts	369,246.50
<b>Total Outstanding:</b>	<b>\$478,049.48</b>
<b>TOTAL EXPENSES:</b>	<b>\$530,190.31</b>

\* Out of town travel includes hotels in the following "small" city capped at \$250 per night: Newport Beach, California.



# **EXHIBIT GG**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

IN RE NII HOLDINGS INC.  
SECURITIES LITIGATION

Civ. No. 1:14-cv-00227-LMB-JFA

**EXHIBITS 8-12 IN SUPPORT OF THE JOINT DECLARATION OF  
GREGORY M. CASTALDO, JOEL H. BERNSTEIN, AND SUSAN R. PODOLSKY  
IN SUPPORT OF PROPOSED CLASS ACTION SETTLEMENT, PLAN OF  
ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES**

# Exhibit 9

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

IN RE: NII HOLDINGS, INC.  
SECURITIES LITIGATION

Case No. 1:14-cv-227-LMB-JFA

**DECLARATION OF GERALD H. SILK ON BEHALF OF  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP IN  
SUPPORT OF CLASS COUNSEL’S MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES AND PAYMENT OF EXPENSES**

Gerald H. Silk, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am a partner of the law firm Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”). I submit this declaration in support of Class Counsel’s motion for an award of attorneys’ fees and payment of litigation expenses on behalf of all plaintiff’s counsel who contributed to the prosecution of the claims in the above-captioned action (the “Action”) from inception through July 8, 2016 (the “Time Period”).

2. My firm is counsel for Lead Plaintiff Jacksonville Police and Fire Pension Fund (“Jacksonville P&F”) and additional counsel for the Class. Our work in this Action included, among other things:

(a) helping to draft Lead Plaintiffs’ motion papers seeking appointment as Lead Plaintiffs under the Private Securities Litigation Reform Act of 1995, the Amended Complaint and Second Amended Complaint, Lead Plaintiffs’ opposition to Defendants’ motion to dismiss, discovery requests, discovery responses, discovery-related motions, status reports to the Court, Lead Plaintiffs’ papers in support of class certification, Lead Plaintiffs’ opposition to Defendants’ Rule 23(f) petition, mediation statements, and settlement papers;

(b) researching the legal issues presented by the motion to dismiss, discovery motions, and class certification;

(c) reviewing and analyzing documents produced by NII and the Individual Defendants;

(d) taking the depositions of three witnesses, including a Rule 30(b)(6) deposition of NII and the deposition of Defendant Steven Shindler;

(e) communicating regularly with Jacksonville P&F about the status of the case, litigation strategy, and settlement negotiations;

(f) reviewing, analyzing, and producing to Defendants thousands of pages of documents from Jacksonville P&F;

(g) defending the deposition of a representative of Jacksonville P&F;

(h) attending hearings before the Court;

(i) participating in strategy discussions with Lead Counsel, Liaison Counsel, and Bankruptcy Counsel concerning all phases of the litigation, including the effect of NII's bankruptcy;

(j) consulting with Lead Plaintiffs' damages expert;

(k) revising Lead Plaintiffs' industry expert's report; and

(l) participating in two mediations with Lead Counsel and Defendants.

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of my firm who billed ten or more hours to the Action during the Time Period, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of



employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit A are the same as my firm's regular rates charged for their services, which have been accepted in other securities or shareholder litigations.

5. The total number of hours reflected in Exhibit A from inception through and including July 8, 2016 is 6,480.00 hours. The total lodestar for my firm for those hours is \$2,928,763.75.

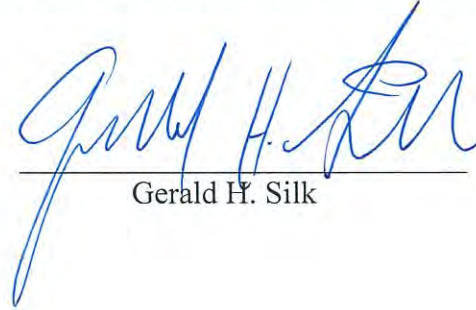
6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and are not duplicated in my firm's billing rates.

7. As detailed in Exhibit B, my firm is seeking reimbursement for a total of \$143,187.77 in expenses incurred in connection with the prosecution of this Action. The reported expenses comply with BLB&G's policies concerning, among other things, out-of-town travel expenses (e.g., no first-class airfare, reasonable meal reimbursement, and lodging) and working meal reimbursement. In addition, internal copying costs have been capped at \$0.10 per page.

8. The litigation expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

9. With respect to the standing of my firm, attached hereto as Exhibit C is a brief biography of my firm as well as biographies of the attorneys in my firm who were involved in this Action.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 10, 2016.



Gerald H. Silk

#100366

## **Exhibit A**



**EXHIBIT A**

***IN RE NII HOLDINGS, INC. SEC. LITIG.***  
**Civ. No. 1:14-cv-00227-LMB-JFA (E.D. Va.)**

**LODESTAR REPORT**

**FIRM: BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**REPORTING PERIOD: INCEPTION THROUGH JULY 8, 2016**

<b>PROFESSIONAL</b>	<b>STATUS</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>TOTAL LODESTAR</b>
Avi Josefson	(P)	800.00	24.00	19,200.00
Gerald Silk	(P)	945.00	202.00	190,890.00
Jai Chandrasekhar	(SC)	700.00	601.00	420,700.00
Joseph Cohen	(SC)	700.00	12.00	8,400.00
Adam Hollander	(A)	600.00	13.00	7,800.00
Catherine McCaw	(A)	450.00	106.50	47,925.00
John Mills	(A)	600.00	49.00	29,400.00
Katherine Stefanou	(A)	500.00	121.00	60,500.00
Chris Clarkin	(SA)	375.00	556.00	208,500.00
Reiko Cyr	(SA)	395.00	542.75	214,386.25
George Doumas	(SA)	395.00	722.00	285,190.00
Jared Hoffman	(SA)	375.00	707.00	265,125.00
Lawrence Hosmer	(SA)	395.00	638.50	252,207.50
Jed Koslow	(SA)	375.00	638.50	239,437.50
Laura Lefkowitz	(SA)	395.00	400.25	158,098.75
Robert Stinson	(SA)	395.00	12.00	4,740.00
Emily Strickland	(SA)	340.00	404.00	137,360.00
Christina Suarez	(SA)	375.00	582.75	218,531.25
Nick DeFilippis	(FA)	500.00	14.00	7,000.00
Adam Weinschel	(FA)	415.00	43.00	17,845.00
Michelle Miklus	(FA)	325.00	24.00	7,800.00

<b>PROFESSIONAL</b>	<b>STATUS</b>	<b>HOURLY RATE</b>	<b>HOURS</b>	<b>TOTAL LODESTAR</b>
Rochelle Moses	(FA)	325.00	17.00	5,525.00
Sharon Safran	(FA)	325.00	46.50	15,112.50
Tanjila Sultana	(FA)	325.00	10.50	3,412.50
Chris Altiery	(I)	245.00	38.50	9,432.50
Amy Bitkower	(I)	495.00	17.25	8,538.75
Norbert Sygdziak	(PL)	310.00	87.00	26,970.00
Yvette Badillo	(PL)	285.00	148.75	42,393.75
Martin Braxton	(PL)	245.00	31.00	7,595.00
Errol Hall	(MC)	310.00	12.25	3,797.50
Babatunde Pedro	(LS)	275.00	18.00	4,950.00
<b>TOTALS:</b>			<b>6,480.00</b>	<b>\$2,928,763.75</b>

Partner (P)  
 Senior Counsel (SC)  
 Associate (A)

Staff Attorney (SA)  
 Financial Analyst (FA)  
 Investigator (I)

Paralegal (PL)  
 Managing Clerk (MC)  
 Litigation Support (LS)



**EXHIBIT B**

***IN RE NII HOLDINGS, INC. SEC. LITIG.***  
**Civ. No. 1:14-cv-00227-LMB-JFA (E.D. Va.)**

**EXPENSE REPORT**

**FIRM: BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**REPORTING PERIOD: INCEPTION THROUGH JULY 8, 2016**

<b>EXPENSE</b>	<b>TOTAL AMOUNT</b>
Duplicating	\$3,858.94
Postage	19.59
Telephone / Fax	7.30
Online Legal, Financial & Factual Research	8,986.36
Overnight Delivery Services	576.33
Transportation/Meals/Lodging	8,680.25
Litigation Expense Fund Contribution	121,059.00 <sup>1</sup>
<b>TOTAL</b>	<b>\$143,187.77</b>

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<sup>1</sup> In addition to this Litigation Expense Fund Contribution, BLB&G also contributed \$31,191.00 to the Litigation Expense Fund which was applied to pay a portion of local counsel Susan Podolsky's legal fees. This sum will be reimbursed through the Court's fee award.

# **EXHIBIT HH**

# Exhibit 7A



UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH  
CORPORATION/ENHANCE  
SECURITIES LITIGATION

Civil Action No. 08-397 (DMC) (JAD)

**DECLARATION OF SALVATORE J. GRAZIANO  
IN SUPPORT OF CO-LEAD COUNSEL’S MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES AND REIMBURSEMENT OF LITIGATION EXPENSES FILED  
ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

SALVATORE J. GRAZIANO, declares as follows:

1. I am a member of the law firm of Bernstein Litowitz Berger & Grossmann LLP. I submit this declaration in support of Co-Lead Counsel’s application for an award of attorneys’ fees in connection with services rendered in the above-captioned action (the Action”), as well as for reimbursement of expenses incurred in connection with the Action.

2. My firm, which served as Court-appointed Co-Lead Counsel in this Action, was involved in all aspects of the litigation and its settlement, as set forth in detail in the Joint Declaration of Salvatore J. Graziano and Christopher J. McDonald in Support of (I) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, submitted herewith.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each attorney and professional support staff employee of my firm who

was involved in this Action who billed ten or more hours to the Action, and the lodestar calculation for those individuals based on my firm's 2013 billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates that would be charged for their services in non-contingent matters.

5. The total number of hours expended on this Action by my firm from its inception through and including May 31, 2013, is 58,416.75. The total lodestar for my firm for that period is \$25,482,331.25, consisting of \$24,065,623.75 for attorneys' time and \$1,416,707.50 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$2,061,671.67 in unreimbursed expenses incurred in connection with the prosecution of this Action from its inception through and including May 31, 2013.

8. The expenses reflected in Exhibit 2 are presented in accordance with my firm's expense policies.



9. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were principally involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on July 2, 2013.



Salvatore J. Graziano

# EXHIBIT 1

**EXHIBIT 1**

*In re Schering-Plough Corporation/ENHANCE Securities Litigation,*  
Civil Action No. 08-cv-00397 (DMC)(JAD)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP****TIME REPORT**

Inception through May 31, 2013

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max Berger	443.50	\$975.00	\$ 432,412.50
Sean Coffey	26.00	850.00	22,100.00
Salvatore Graziano	1,890.50	875.00	1,654,187.50
Mark Lebovitch	27.25	775.00	21,118.75
Gerald Silk	236.50	875.00	206,937.50
David Wales	26.75	800.00	21,400.00
<b>Senior Counsel</b>			
Jai Chandrasekhar	126.50	650.00	82,225.00
Ben Galdston	38.50	650.00	25,025.00
Rochelle Hansen	163.25	700.00	114,275.00
Jeroen Van Kwawegen	35.75	575.00	20,556.25
<b>Of Counsel</b>			
Bruce Bernstein	27.50	600.00	16,500.00
Tony Gelderman	14.00	750.00	10,500.00
Kurt Hunciker	1,142.50	700.00	799,750.00
<b>Associates</b>			
Abe Alexander	995.75	525.00	522,768.75
Matthew Berman	285.00	465.00	132,525.00
Michael Blatchley	39.75	525.00	20,868.75
David L. Duncan	97.00	550.00	53,350.00
Laura Gundersheim	3,646.00	550.00	2,005,300.00
Ann Lipton	76.00	550.00	41,800.00
Noam Mandel	59.00	465.00	27,435.00
John Mills	118.00	550.00	64,900.00
Sean O'Dowd	1,140.25	475.00	541,618.75
David H. Webber	565.25	450.00	254,362.50
Adam Wierzbowski	2,891.75	550.00	1,590,462.50

NAME	HOURS	HOURLY RATE	LODESTAR
<b>Staff Attorneys</b>			
Scott Aurnou	4,334.25	395.00	1,712,028.75
David C. Carlet	6,317.50	395.00	2,495,412.50
David L. Duncan	49.00	395.00	19,355.00
Erika Flierl	777.50	395.00	307,112.50
Cynthia Gill	4,524.25	395.00	1,787,078.75
Pat Gillane	4,218.00	395.00	1,666,110.00
Mark van der Harst	5,153.00	375.00	1,932,375.00
Diana Jarvis	23.00	395.00	9,085.00
William Marino	1,622.75	375.00	608,531.25
Andrew McGoey	31.75	395.00	12,541.25
Marion Passmore	45.50	395.00	17,972.50
Noreen Rhosean Scott	5,276.00	395.00	2,084,020.00
Robert Stinson	6,915.50	395.00	2,731,622.50
<b>Summer Associates</b>			
Melissa Berger	74.50	190.00	14,155.00
Katherine Celeste	21.50	310.00	6,665.00
<b>Financial Analysts</b>			
Nick DeFilippis	22.50	500.00	11,250.00
Adam Weinschel	78.50	415.00	32,577.50
Amanda Beth Hollis	25.00	295.00	7,375.00
Rochelle Moses	99.00	325.00	32,175.00
Sharon Safran	15.00	325.00	4,875.00
<b>Investigators</b>			
Amy Bitkower	28.50	495.00	14,107.50
Jaclyn Chall	61.25	290.00	17,762.50
David Kleinbard	35.00	345.00	12,075.00
Joelle (Sfeir) Landino	246.75	290.00	71,557.50
<b>Litigation Support</b>			
Jesse Baidoe	44.00	275.00	12,100.00
Sheron P. Brathwaite	18.00	250.00	4,500.00
Michael Hartling	35.50	225.00	7,987.50
<b>Communications</b>			
Dalia El-Newehy	26.50	225.00	5,962.50

NAME	HOURS	HOURLY RATE	LODESTAR
<b>Paralegals</b>			
Ricia Augusty	22.00	310.00	6,820.00
Virgilio Soler, Jr.	23.00	310.00	7,130.00
Gary Weston	2,243.00	310.00	695,330.00
Alyssa David	240.00	220.00	52,800.00
Matthew Mahady	12.00	285.00	3,420.00
Dafne Maytorena	335.00	220.00	73,700.00
Ruben Montilla	1,280.75	245.00	313,783.75
Nyema Taylor	18.75	285.00	5,343.75
<b>Managing Clerk</b>			
Errol Hall	10.50	310.00	3,255.00
<b>TOTALS</b>	<b>58,416.75</b>		<b>25,482,331.25</b>



# EXHIBIT 2

**EXHIBIT 2**

*In re Schering-Plough Corporation/ENHANCE Securities Litigation,*  
Civil Action No. 08-cv-00397 (DMC)(JAD)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**EXPENSE REPORT**  
**Inception through May 31, 2013**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 2,097.00
Service of Process	92.66
PSLRA Notice Costs	1,062.50
On-Line Legal Research	135,573.22
On-Line Factual Research*	19,095.84
Telephone/Faxes	1,210.58
Postage & Express Mail	4,925.94
Hand Delivery Charges	541.73
Local Transportation	34,666.84
Internal Copying	127,583.50
Outside Copying	8,009.27
Out of Town Travel	48,473.95
Working Meals	20,471.27
Depositions/Meetings Hosting	10,546.23
Court Reporters and Transcripts	237.30
Special Publications	2,020.06
Document Storage & Retrieval	397.40
Contributions to Plaintiffs' Litigation Fund	1,195,750.00
<b>SUBTOTAL:</b>	<b>\$1,612,755.29</b>
<b>Outstanding Invoices:</b>	
Experts	\$188,507.97
Document Management/Litigation Support	176,125.57
Court Reporters and Transcripts	84,044.60
Outside Copying	644.42
<b>SUBTOTAL:</b>	<b>\$449,322.56</b>
<b>Adjustment</b>	<b>(\$406.18)</b>
<b>TOTAL EXPENSES:</b>	<b>\$2,061,671.67</b>

\* Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. Online research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

## **EXHIBIT II**



# EXHIBIT H

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

IN RE MERCK & CO., INC.  
VYTORIN/ZETIA SECURITIES  
LITIGATION

Civil Action No. 08-2177 (DMC) (JAD)

**DECLARATION OF SALVATORE J. GRAZIANO IN SUPPORT OF CO-LEAD  
COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND  
REIMBURSEMENT OF LITIGATION EXPENSES FILED ON BEHALF OF  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

SALVATORE J. GRAZIANO, declares as follows:

1. I am a member of the law firm of Bernstein Litowitz Berger & Grossmann LLP. I submit this declaration in support of Co-Lead Counsel's application for an award of attorneys' fees in connection with services rendered in the above-captioned action (the Action"), as well as for reimbursement of expenses incurred in connection with the Action.

2. My firm which served as Court-appointed Co-Lead Counsel in this Action, was involved in all aspects of the litigation and its settlement as set forth in detail in the Joint Declaration of Daniel L. Berger and Salvatore J. Graziano in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses, submitted herewith.

3. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each attorney and professional support staff employee of my firm who was involved in this Action who billed ten or more hours to the Action, and the lodestar

calculation for those individuals based on my firm's 2013 billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 1 are the same as the regular rates that would be charged for their services in non-contingent matters.

5. The total number of hours expended on this Action by my firm from its inception through and including May 31, 2013, is 30,817.50. The total lodestar for my firm for that period is \$13,813,696.25, consisting of \$13,235,317.50 for attorneys' time and \$578,378.75 for professional support staff time.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 2, my firm is seeking reimbursement for a total of \$575,860.01 in unreimbursed expenses incurred in connection with the prosecution of this Action from its inception through and including May 31, 2013.

8. The expenses reflected in Exhibit 2 are presented in accordance with my firm's expense policies.

9. The expenses incurred in this Action are reflected on the books and records of my

firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

10. With respect to the standing of my firm, attached hereto as Exhibit 3 is a brief biography of my firm and attorneys in my firm who were principally involved in this Action.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on July 1, 2013.



SALVATORE J. GRAZIANO

# EXHIBIT 1

**EXHIBIT 1**

*In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation,*  
 Civil Action No. 08-2177 (DMC)(JAD)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

**TIME REPORT**

**Inception through May 31, 2013**

<b>NAME</b>	<b>HOURS</b>	<b>HOURLY RATE</b>	<b>LODESTAR</b>
<b>Partners</b>			
Max Berger	312.00	\$975.00	\$ 304,200.00
Salvatore Graziano	1,324.50	875.00	1,158,937.50
Avi Josefson	11.50	700.00	8,050.00
Gerald Silk	178.00	875.00	155,750.00
David Wales	26.75	800.00	21,400.00
<b>Senior Counsel</b>			
Jai Chandrasekhar	15.75	650.00	10,237.50
Rochelle Hansen	166.75	700.00	116,725.00
Jeroen Van Kwawegen	35.75	575.00	20,556.25
<b>Of Counsel</b>			
Kurt Hunciker	1,088.75	700.00	762,125.00
<b>Associates</b>			
Abe Alexander	981.50	525.00	515,287.50
Matthew Berman	77.00	465.00	35,805.00
David L. Duncan	78.00	550.00	42,900.00
Laura Gundersheim	2,829.00	550.00	1,555,950.00
Ann Lipton	41.50	550.00	22,825.00
Noam Mandel	90.75	465.00	42,198.75
John Mills	66.50	550.00	36,575.00
Sean O'Dowd	438.25	475.00	208,168.75
Adam Wierzbowski	1,067.00	550.00	586,850.00
<b>Staff Attorneys</b>			
Tamara Bedic	6,009.75	395.00	2,373,851.25
Jed Koslow	3,618.00	375.00	1,356,750.00
Amanda Philip	181.50	395.00	71,692.50

NAME	HOURS	HOURLY RATE	LODESTAR
Loveena Rajanayakam	3,520.50	375.00	1,320,187.50
Yasmin Roman	3,829.25	375.00	1,435,968.75
Matthew Spilka	2,714.75	395.00	1,072,326.25
<b>Financial Analysts</b>			
Nick DeFilippis	30.00	500.00	15,000.00
Adam Weinschel	62.75	415.00	26,041.25
Amanda Beth Hollis	21.00	295.00	6,195.00
Rochelle Moses	47.00	325.00	15,275.00
Sharon Safran	40.50	325.00	13,162.50
<b>Investigators</b>			
Joelle (Sfeir) Landino	33.75	290.00	9,787.50
<b>Communications</b>			
Dalia El-Newehy	44.25	225.00	9,956.25
<b>Paralegals</b>			
Leigh Gagliardi	27.50	310.00	8,525.00
Gary Weston	461.50	310.00	143,065.00
Yvette Badillo	38.50	285.00	10,972.50
Martin Braxton	233.25	245.00	57,146.25
Ruben Montilla	1,074.50	245.00	263,252.50
<b>TOTALS</b>	<b>30,817.50</b>		<b>\$13,813,696.25</b>

# EXHIBIT 2



**EXHIBIT 2**

*In re Merck & Co., Inc. Vytorin/Zetia Securities Litigation,*  
 Civil Action No. 08-2177 (DMC)(JAD)

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

**EXPENSE REPORT**

**Inception through May 31, 2013**

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$ 1,161.00
PSLRA Notice Costs	1,062.50
On-Line Legal Research*	36,829.14
On-Line Factual Research*	11,209.41
Telephone	120.26
Postage & Express Mail	1,585.78
Hand Delivery Charges	318.50
Local Transportation	11,442.41
Internal Copying	56,060.00
Outside Copying	2,097.69
Out of Town Travel	26,991.87
Working Meals	3,979.04
Depositions/Meetings Hosting	3,873.28
Court Reporters and Transcripts	39.60
Special Publications	339.53
Contributions to Plaintiffs' Litigation Fund	418,750.00
<b>TOTAL EXPENSES:</b>	<b>\$575,860.01</b>

\* Charges reflected are for out-of-pocket payments to the vendors for research done in connection with this litigation. Online research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

# **EXHIBIT JJ**

## Exhibit 3

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

IN RE JOHNSON & JOHNSON DERIVATIVE LITIGATION	Civil Action No. 10-2033 (FLW)
IN RE JOHNSON & JOHNSON FCPA SHAREHOLDER DERIVATIVE LITIGATION	Civil Action No. 11-2511 (FLW)
COPELAND v. PRINCE, <i>et al.</i>	Civil Action No. 11-4993 (FLW)

**DECLARATION OF MARK LEOVITCH IN SUPPORT OF  
APPROVAL OF AWARD OF REQUESTED ATTORNEY'S FEES  
AND EXPENSES**

I, MARK LEOVITCH, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner in the firm of Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”). I submit this declaration in support of the application for an award of attorneys’ fees and reimbursement of expenses in connection with services rendered in the course of the litigation of the Derivative Actions (as defined in the Stipulation of Settlement, executed on July 11, 2012) on behalf of Nominal Defendant Johnson & Johnson.

2. BLB&G’s firm experience and background is reflected in the firm’s biography, attached as Exhibit A. As indicated on the page of the firm biography that lists my background, I head BLB&G’s corporate governance and fiduciary duty litigation practice.

3. The following information regarding BLB&G’s time and expenses is taken from time and expense printouts maintained by the firm in the ordinary course of business. I am the partner who oversaw and conducted the day-to-day activities in the litigation. The time and

expense entries were reviewed by me and, under my supervision, by BLB&G senior associate Jeroen van Kwawegen to confirm my belief in both the accuracy of the entries and the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review process, I reduced certain time entries associated with the case and eliminated the billing entries of certain lawyers who spent only modest time on the case. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The total number of hours spent on this litigation by BLB&G is 2,125.50. The total lodestar amount for attorney and paraprofessional time based on BLB&G's current rates is \$1,060,237.50. The hourly rates shown below are the usual and customary rates charged for each individual. A breakdown of the lodestar is as follows:

<u>Name</u>		<u>Rate</u>	<u>Hours</u>	<u>Lodestar</u>
Max Berger	Senior Partner	\$975.00	15.00	\$14,625.00
Gerald Silk	Senior Partner	\$800.00	176.50	\$141,200.00
Mark Lebovitch	Partner	\$700.00	468.75	\$328,125.00
Amy Miller	Senior Counsel	\$575.00	147.50	\$84,812.50
Jeroen van Kwawegen	Senior Associate	\$500.00	414.75	\$207,375.00
John Mills	Senior Associate	\$550.00	18.50	\$10,175.00
Jeremy Friedman	Associate	\$440.00	66.25	\$29,150.00
Laurence Hasson	Associate	\$450.00	18.50	\$8,325.00
Thomas Keevins	Staff Attorney	\$395.00	86.50	\$34,167.50
Matt Mulligan	Staff Attorney	\$375.00	58.00	\$21,750.00
Spencer Oster	Staff Attorney	\$375.00	118.50	\$44,437.50
Kenneth Cardwell	Case Manager	\$290.00	135.00	\$39,150.00
Martin Braxton	Paralegal	\$225.00	267.50	\$60,187.50
Professional Support Staff	Financial analysts and investigators	\$150.00 - \$465.00	134.00	\$36,757.50
			2,125.50	\$1,060,237.50

5. Attached as Exhibit B is a task-based summary of the work performed and the lodestar incurred by each attorney and professional staff member who performed services in this litigation. The following is additional information regarding the experience of the above-referenced attorneys and the role they had in prosecuting this litigation, as reflected in the time spent and their standard hourly rates:

- **Max Berger** is a founding partner of BLB&G and provided me with periodic strategic advice, in particular in connection with the proposed settlement.
- **Gerald Silk** is a senior partner at BLB&G and head of the Firm's new matters group. Mr. Silk was involved from the beginning of this action and regularly provided me with strategic advice throughout all stages of the litigation.
- **Mark Lebovitch** is a partner at BLB&G and in charge of this litigation on behalf of the Firm. I was directly involved in all stages of this action from its filing to the present.
- **Amy Miller** is a senior counsel at BLB&G. Ms. Miller was involved from the initial stages of this case through the filing of the amended complaint, taking the lead in drafting the initial complaint and various pleadings.
- **Jeroen van Kwawegen** is a senior associate at BLB&G. Mr. van Kwawegen took over Ms. Miller's role on the team and has been directly involved in every stage of this action from the amended complaint until the present.
- **John Mills** is a senior associate at BLB&G and one of two attorneys at the firm who is specialized in finalizing and documenting settlements.
- **Jeremy Friedman** is an associate at BLB&G and assisted on the amended complaint and related filings.

6. BLB&G incurred a total of \$13,975.44 in expenses which were reasonably and necessarily committed to the prosecution of the litigation. They are broken down as follows:


Expense Category	Total
Court Fees	\$1,062.00
Online Legal Research	\$6,552.20
Online Factual Research	\$1,856/26
Telephone, postage and delivery charges	\$181.87

Local Transportation	\$2,209.09
Copying	\$1,107.24
Working Meals	\$506.81
Court Reporting and Transcripts	\$369.75
Staff Overtime	\$130.22
Total	\$13,975.44

7. In addition, BLB&G incurred a total of \$75,000.00 in expert expenses which were reasonably and necessarily committed to the prosecution and settlement of the litigation. Specifically, at the request of and in coordination with our co-lead counsel, BLB&G engaged former SEC Chairman Harvey L. Pitt as an expert on corporate governance matters to advise on, and assist in crafting, corporate governance and compliance reforms in connection with our efforts to negotiate a global settlement of the derivative actions. Chairman Pitt was instrumental in analyzing the structural problems plaguing Johnson & Johnson, and in designing changes to the company's corporate governance and compliance systems to address Plaintiffs' core allegations in this action. Chairman Pitt was involved throughout the settlement negotiations, and I believe that Plaintiffs would not have achieved the results of the proposed settlement without his significant involvement and contributions.

8. The expenses incurred pertaining to this case are reflected in the books and records of BLB&G. These books and records are prepared from expense vouchers and records prepared in the normal course of business, and are an accurate record of the expenses incurred.

Executed on August 31, 2012

  
 Mark Lebovitch

# EXHIBIT B



**JOHNSON & JOHNSON  
SHAREHOLDER DERIVATIVE ACTION  
BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP  
LODESTAR CATEGORY BREAKDOWN  
PERIOD: Inception – August 30, 2012**

Name	1	2	3	4	5	6	7	Hours	Rate	Lodestar
Max Berger (P)	-	-	-	-	-	15.00	-	15.00	\$975.00	\$14,625.00
Mark Lebovitch (P)	5.75	64	152	11.25	165	37.75	33	468.75	\$700.00	\$328,125.00
Gerald Silk (P)	19	31	58	-	33.50	35	-	176.50	\$800.00	\$141,200.00
Amy Miller (A)	48.5	32.25	66.75	-	-	-	-	147.50	\$575.00	\$84,812.50
Jeroen van Kwawegen (A)	-	30	220.50	43.50	63.5	21.50	35.75	414.75	\$500.00	\$207,375.00
Jeremy Friedman (A)	2.75	50.75	12.75	-	-	-	-	66.25	\$440.00	\$29,150.00
Laurence Hasson (A)	17.50	1.0	-	-	-	-	-	18.50	\$450.00	\$8,325.00
John Mills (A)	-	-	-	-	-	18.50	-	18.50	\$550.00	\$10,175.00
Thomas Keevins (A)	-	-	-	86.50	-	-	-	86.50	\$395.00	\$34,167.50
Matt Mulligan (A)	-	-	-	58.00	-	-	-	58.00	\$375.00	\$21,750.00
Spencer Oster (A)	10	108.50	-	-	-	-	-	118.50	\$375.00	\$44,437.50
Kenneth Cardwell (PL)	-	14.50	70.5	33.50	-	4.0	12.50	135.00	\$290.00	\$39,150.00
Martin Braxton (PL)	-	58	-	199	-	-	10.50	267.50	\$225.00	\$60,187.50
Financial Investigators, Analyst and Support Staff	38.25	68.75	-	27	-	-	-	134	\$150.00 - \$465.00	\$36,757.50
<b>TOTAL</b>	141.75	458.75	580.5	458.75	262	131.75	91.75	2125.25	-	\$1,060,237.50

**JOHNSON & JOHNSON  
SHAREHOLDER DERIVATIVE ACTION  
BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP  
LODESTAR CATEGORY BREAKDOWN  
PERIOD: Inception – August 30, 2012**

**CATEGORIES**

- |  |                |
|--|----------------|
| 1. Investigation, research, drafting original complaints, and demand letters             | (P) Partner    |
| 2. Investigation, research, and drafting amended complaint/demand refused complaint      | (A) Associate  |
| 3. Motion practice   | (PL) Paralegal |
| 4. Discovery and investigation post filing of amended complaint/demand refused complaint |                |
| 5. Governance and compliance analysis, and drafting of settlement proposals              |                |
| 6. Settlement negotiation process and documentation                                      |                |
| 7. Post settlement documentation and briefing  |                |

# **EXHIBIT KK**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
GREENEVILLE DIVISION

IN RE KING PHARMACEUTICALS, INC. SECURITIES LITIGATION	Lead Case No. 2:03-CV-77  <u>CLASS ACTION</u>  Judge Thomas W. Phillips Magistrate Judge Dennis H. Inman  <u>ECF FILED</u>
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**DECLARATION OF JEFFREY N. LEIBELL  
IN SUPPORT OF THE PROPOSED SETTLEMENT, PLAN OF  
ALLOCATION AND APPLICATION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

I, JEFFREY N. LEIBELL, under the penalty of perjury, declare as follows:

1. I am a senior counsel at the law firm of Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”). I was directly involved in the litigation of the case, and the negotiation of the proposed settlement. Bernstein Litowitz is the Court-appointed Lead Counsel for class representatives the Police and Fire Retirement System of the City of Detroit (f/k/a the Policemen and Firemen Retirement System of the City of Detroit) (“Detroit P&F”) and the Los Angeles County Employees Retirement Association (“LACERA”) (together, with Kathleen Crews, the “Class Representatives”), and the Class in the above-captioned civil action. I have personal knowledge of the matters set forth herein based on my active participation in the prosecution and settlement of this action, and, if called as a witness, could and would testify competently thereto.

2. The purpose of this declaration is to set forth the basis for and background of the litigation of this action, its procedural history, and the negotiations that led to the proposed settlement. This declaration, along with the Class Representatives' Motion For Final Approval Of Settlement and Plan of Allocation and Supporting Memorandum of Law ("Settlement Memorandum"), demonstrates why the proposed settlement is fair, reasonable and adequate, and should be approved by the Court.

3. Specifically, I submit this declaration in support of the proposed settlement that will resolve all the claims in this Action (the "Settlement") on behalf of a class of all persons or entities (the "Class") who purchased or acquired the common stock of King Pharmaceuticals, Inc. ("King" or the "Company") during the period beginning on February 16, 1999 to March 10, 2003 (the "Class Period"), including persons who acquired King stock by virtue of the merger of Jones Pharmaceuticals, Inc. ("Jones") with King in August 2000 (the "Jones Merger"), and who were damaged thereby. This declaration is also submitted in support of the plan of allocation of the Settlement's consideration to the Class members (the "Plan of Allocation") and in support of Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses.

## **II. INTRODUCTION AND OVERVIEW OF THE SETTLEMENT**

4. After more than three years of hard-fought litigation, the efforts of plaintiffs' counsel have resulted in an excellent settlement of \$38.25 million in cash, plus interest, for the benefit of the Class. The Settlement, if approved, will completely resolve the claims asserted in the Action.

5. On July 31, 2006, after months of mediated negotiations, the Class Representatives reached an agreement to settle with King, the Individual Defendants and the

Underwriter Defendants.<sup>1</sup> The Settlement is set forth in the Stipulation and Agreement of Settlement dated July 31, 2006, and filed with the Court on August 28, 2006 (the “Stipulation”), pursuant to which King agreed to pay \$38.25 million in cash for the benefit of the Class. Pursuant to the Stipulation and this Court’s Preliminary Approval Order, dated September 27, 2006 (the “Preliminary Approval Order”), the cash payment of \$38.25 million was deposited into Escrow on October 30, 2006 and, since deposited, has been earning interest for the benefit of the Class.

6. As demonstrated herein and in the accompanying Settlement Memorandum, the Settlement is fair, reasonable and adequate, and should be approved by this Court. The Settlement confers a substantial benefit on the Class, and eliminates the risk of continued litigation under circumstances where a favorable outcome could not be assured. Moreover, the proposed Plan of Allocation is a fair and reasonable method for distributing the proceeds of the Settlement to the members of the Class, and, therefore, also should be approved.

7. The Settlement was reached only after Lead Counsel and Counsel for the Jones Merger Subclass (defined in ¶ 16 below as “Jones Merger Lead Counsel”), and with the assistance of counsel working under the direction of Lead Counsel (together with Lead Counsel and Jones Merger Lead Counsel, “Plaintiffs’ Counsel”): (i) investigated the facts and drafted the detailed Amended Complaint; (ii) briefed motions to dismiss (including briefing to District Judge Hull in connection with Defendants’ objections to Magistrate Judge Inman’s initial ruling); (iii) engaged in extensive discovery, including document discovery and taking twenty-five

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<sup>1</sup> The Individual Defendants are Jefferson J. Gregory, John M. Gregory, Joseph R. Gregory, James E. Gregory, Brian G. Schrader, James R. Lattanzi, Kyle P. Macione, Rufus Henry Richards, Ernest C. Bourne, Frank W. DeFriece, Jr., D. Greg Rooker, Earnest W. Deavenport, Jr., Gregory D. Jordan, R. Charles Moyer, Richard C. Williams, and Dennis M. Jones. The “Underwriter Defendants” are Credit Suisse First Boston Corporation, J.P. Morgan Securities, Inc., Banc of America Securities, Inc., and UBS Warburg. King, the Individual Defendants and the Underwriter Defendants are referred to collectively herein as “Defendants.”

depositions; (iv) interviewed additional witnesses who had knowledge of the issues in the case; (v) evaluated complex issues relating to the Medicaid rebate regulation programs at issue, as well as other Federal and State regulations relating to payment of rebates on pharmaceutical products; (vi) consulted with damages, accounting and industry experts; and (vii) challenged Defendants' assertion of a "settlement privilege" and other privileges (including making a motion to compel and opposing Defendants' motion for reconsideration and objections to Magistrate Judge Inman's opinion granting Lead Counsel's motion to compel).

8. Thus, the Settlement was reached after Lead Counsel had attained – through aggressive and comprehensive prosecution efforts – a thorough understanding of the strengths and weaknesses of the claims against Defendants, and were in an optimal position to negotiate and judge the terms of the proposed Settlement, to quantify the damages suffered by the Class, and to assist with the proposed Plan of Allocation. In addition, the Settlement was achieved only after protracted arms'-length negotiations, which included two separate in-person mediations conducted under the auspices of a highly respected and experienced mediator. Specifically, in the fall of 2005, the parties agreed to non-binding, formal mediation of this dispute with the assistance of mediator Gary V. McGowan. In-person mediation sessions were held with Mr. McGowan on November 17 and 18, 2005, in New York, and again on February 7, 2006, in Washington, D.C. *See* Declaration of Gary V. McGowan ("McGowan Declaration"), attached hereto as Exhibit A, ¶¶ 3-5. Representatives from Detroit P&F and LACERA personally attended and participated in these mediation sessions. *See* Joint Declaration of David L. Muir and Ronald Zajac in Support of the Proposed Settlement, Plan of Allocation and Award of Attorneys' Fees and Reimbursement of Expenses ("Joint Declaration"), attached hereto as Exhibit B, ¶¶ 10-11. Extensive communications among the parties, King's insurers and

Mr. McGowan also took place before and after these mediation sessions. McGowan Declaration ¶¶ 3-4. The parties also appeared before the Court as part of the settlement process. As a result of the efforts of the parties, the mediator, and the Court, the parties reached the proposed Settlement.

9. In sum, the Settlement is the product of a comprehensive investigation, an intensive and aggressive litigation, and sophisticated negotiations by experienced counsel.

10. For creating this substantial benefit, Plaintiffs' Counsel seek a fee of 17% of the net Settlement Fund (after subtracting allowed litigation expenses) plus interest earned thereon, plus reimbursement of litigation expenses. This request is below the 25% benchmark for attorneys' fees in common fund cases such as this Action. Indeed, Plaintiffs' Counsel are applying for reimbursement at a discount below the time actually expended litigating the case, in the amount of only 56.5% of Plaintiffs' Counsel's time litigating the case. This substantial discount demonstrates both the substantial amount of effort that Plaintiffs' Counsel put into litigating the case (without any guarantee of recover) and the severe risks and difficulties inherent in this Action. Plaintiffs' Counsel's requested 17% fee is also below the 20-30% fee typically awarded in securities class actions in this Circuit. Further, the fee is the product of arm's-length negotiation between the Class Representatives – sophisticated institutional investors with significant experience in securities class actions and negotiating counsel fees – and Lead Counsel. The Class Representatives approve the fee request and reimbursement of expenses. *See* Joint Declaration ¶¶ 12-14.

11. The favorable reaction of the members of the Class also supports the reasonableness of the Settlement and the fee request. At Lead Counsel's direction, and pursuant to the Preliminary Approval Order, the settlement administrator, A.B. Data Ltd. ("AB Data"),



has effected a notice program that has consisted of: (1) disseminating the Notice of Pendency and Settlement of Class Action and Proposed Class Action Settlement (the “Notice”) and the Proof of Claim and Release Form. AB Data began mailing Notices on October 11, 2006 and, as of December 14, 2006, the Notice has been mailed to 240,001 potential class members or their nominees. *See* Affidavit of Anya Verkhovskaya Regarding the Mailings of the Notices and Proof of Claim, (the “Verkhovskaya Affidavit”) attached hereto as Exhibit C, ¶¶ 8, 19. The Notice (attached as Exhibit 1 to the Verkhovskaya Affidavit) advised Class members of the proposed Settlement, the proposed Plan of Allocation and the request for an award of attorneys’ fees and reimbursement of expenses. The Notice further advised Class members of their right to object or seek exclusion from the Class, and explained that this right needed to be exercised by December 26, 2006. Additionally, a summary notice was published in the national edition of *The Wall Street Journal* on October 13, 2006. *See id.* ¶ 12. The Notice and Proof of Claim form are available on a website set up and maintained by Lead Counsel at [www.kingsecuritiessettlement.com](http://www.kingsecuritiessettlement.com), which was created on October 10, 2006, and on the AB Data website [www.abdatalawserve.com](http://www.abdatalawserve.com). *Id.* ¶¶ 5, 17. From October 11, 2006 through December 14, 2006, the website had 6,596 hits, was visited by 710 unique visitors, and had more than 600 case-specific documents downloaded from it. *Id.* ¶ 18. Further, on or about October 15, 2006, AB Data established a toll-free number with an Interactive Voice Response System and live operators. *Id.* ¶ 14. From October 15, 2006 through December 14, 2006, AB Data received 413 phone calls and 68 voicemail messages. *Id.* ¶ 15.

12. As of December 14, 2006, AB Data has received only four requests for exclusion and no Class member has objected to the Settlement, the Plan of Allocation, or the request for an award of attorneys’ fees and reimbursement of litigation expenses. *See id.* ¶ 21.

### III. FACTUAL BACKGROUND

#### A. General Overview

13. This case arises from King's announcement on March 11, 2003 that the Securities Exchange Commission ("SEC") was conducting an investigation of the Company and had requested certain information about King's compliance with Medicaid and other government pricing programs. On the first day of trading after that announcement, the price of King's stock fell nearly 23%, from \$15.90 per share to \$12.17 per share. Shortly thereafter, a number of class action lawsuits were filed against King and its officers and directors. In the ensuing weeks, multiple lawsuits were filed on behalf of persons who purchased common stock of King during the Class Period, including persons who acquired King stock by virtue of the merger of Jones Merger. By Order dated April 23, 2003, those actions were consolidated as *In re King Pharmaceuticals, Inc. Securities Litigation*, Civil No. 2:03-CV-77.

14. It was subsequently revealed that King's financial statements from at least 1999 through March 2003 had been misstated due to errors in the calculation of Medicaid rebates, which had resulted in King underpaying the government by approximately \$65 million.

15. On August 15, 2003, the Court appointed LACERA, Detroit P&F, and the Teachers Retirement System of Louisiana as Lead Plaintiffs, and approved Bernstein Litowitz as Lead Counsel for the proposed Class. The Court also appointed Kathleen Crews and Jim O'Neil as Lead Plaintiffs for a proposed Jones Subclass, and approved the law firms of Weiss & Lurie and Abbey Spanier Rodd Abrams & Paradis, LLP (formerly Abbey Gardy LLP) (collectively, "Jones Merger Lead Counsel") as lead counsel for the proposed Jones Subclass. (Mr. O'Neil subsequently withdrew, leaving Ms. Crews as the sole lead plaintiff of the Jones Subclass).

**B. The Investigation**

16. In preparation for the filing of the Complaint, Lead Counsel conducted a thorough and extensive investigation into the matter. The investigation included, among other things:

- Contacting and interviewing numerous former King employees;
- Contacting, interviewing, and obtaining documents from former customers of the Company;
- Consulting with in-house and outside forensic accountants;
- Consulting with outside investigators;
- Consulting with specialists and industry experts with knowledge regarding the Medicaid rebate program;
- Reviewing statements made by defendants, including those made in regulatory filings, press releases, conference calls, news articles and analysts' reports.

17. Lead Counsel's in-depth investigation uncovered substantial information about the Company, its business practices and the transactions that formed the bases of the particularized and detailed Complaint, which the Court sustained in substantial measure as satisfying the heightened pleading requirements of the Private Securities Litigation Reform Act (the "PSLRA").

**C. The Complaint and the Allegations Against Defendants**

18. Based on Lead Counsel's investigation, on October 21, 2003, plaintiffs filed a Consolidated Class Action Complaint (the "Complaint") alleging violations of Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act"); and Sections 10(b), 14(a) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act").

19. The Complaint asserts a number of claims against King, its senior officers and certain directors, and certain of the Company's investment banks. Specifically, the Complaint asserts claims under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder based on alleged false statements contained in public filings made with the SEC and in other public statements during the Class Period. The Complaint also asserts claims pursuant to Section 20(a) of the Exchange Act, which seek to hold the certain defendants liable as "control persons" who exercised their power and authority to cause King to engage in wrongful conduct alleged during the Class Period.

20. In addition, the Complaint asserts claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act") based on alleged false statements and omissions contained in two registration statements that King filed during the Class Period. First, the Jones Merger was conducted pursuant to a registration statement filed with the SEC on July 28, 2000, and a prospectus filed on August 11, 2000. The Jones Merger registration statement was signed by Defendants John, Jefferson, and Joseph Gregory, Brian Shrader, Gregory Jordan and R. Charles Moyer. After the merger, Jones became a wholly-owned subsidiary of King. Second, on November 1, 2001, King conducted a public offering of 16 million shares at a price of \$38 per share (the "November Offering"), raising approximately \$780 million. The November Offering was underwritten by the Underwriter Defendants, and conducted pursuant to a registration statement filed with the SEC on July 3, 2001 (as amended on August 10, 2001, September 7, 2001, and September 20, 2001), and a prospectus filed with the SEC on November 1, 2001. These November Offering registration statements were signed by Defendants John, Jefferson, Joseph Gregory, and James Lattanzi, Gregory Jordan and R. Charles Moyer.

21. Finally, the Complaint asserts a Section 14(a) claim under the Exchange Act based on allegations that certain Defendants negligently solicited the vote approving the Jones Merger pursuant to a false and misleading proxy statement.

22. Based on Lead Counsel's investigation, the Complaint alleged that two primary frauds took place at King during the Class Period: (1) Underreporting of Medicaid and other rebates owed to various federal and state government entities; and (2) improper related-party transactions between King and an entity owned and controlled by King's senior officers, the Benevolent Fund.

**1. Underreporting of Medicaid Rebates**

23. As a participant in the Medicaid reimbursement program, King is required to submit pricing information to the government on a regular basis. This information is used by the government to determine the amount of the rebate owed by King. As alleged in the Complaint, throughout the Class Period, King knowingly or recklessly reported false pricing information on the pharmaceuticals it registered under the Medicaid reimbursement program. In doing so, King successfully reduced the amount of money the Company paid to Medicaid at the conclusion of each quarter. The Complaint alleges that this underaccrual in amounts owed to Medicaid, in turn, inflated the Company's revenues and earnings as reported throughout the Class Period, and exposed King to substantial monetary penalties and expulsion from the Medicaid program.

24. The Complaint alleges that King reported false pricing information by inaccurately calculating two pricing metrics required under the Medicaid reimbursement program. First, the Complaint alleges that King inaccurately calculated the metric known as "Best Price." Best Price is supposed to reflect the lowest price that King sold a particular pharmaceutical to any wholesaler, retailer, provider, health maintenance organization ("HMO"),

nonprofit or government entity, excluding prices available to certain governmental organizations. Best Price is required to be reduced for cash discounts, free goods that are contingent upon purchase, volume discounts, and rebates other than Medicare drug rebates. Second, the Complaint alleges that King inaccurately calculated the metric known as average manufacturer price (“AMP”). AMP is the average price paid to a manufacturer by retail pharmacies or wholesalers for drugs distributed to the retail “class of trade.” The transactions used to calculate AMP must include cash discounts, other reductions in the actual price paid, and any other price adjustments that affect actual price.

25. Rebates owed to Medicaid are calculated using AMP and Best Price such that the rebate amount generally equals the greater of (1) 15.1% of the AMP or (2) the difference between AMP and the Best Price. By allegedly reporting inaccurate AMP and BP information throughout the Class Period, King ensured that the amounts of rebates it owed under the program were materially underreported throughout the Class Period. Indeed, King has admitted that it underreported the Medicaid rebates it owed to the government by approximately \$65 million before and during the Class Period.

## **2. The Benevolent Fund Transactions**

26. The Complaint also alleges that King’s publicly-reported financial statements were materially false and misleading during the Class Period because King failed to disclose a number of improper related-party transactions between King and an entity called the Benevolent Fund. While King’s Class Period “sales” to the Benevolent Fund were purportedly legitimate sales of pharmaceuticals conducted through a third-party distributor called Castellon, Inc., the Complaint alleges that in reality, these transactions were manufactured by King to ensure that the Company would beat earnings estimates and realize the full revenue potential of soon to expire

products. Plaintiffs alleged that during the Class Period, the Complaint alleges that King used the Benevolent Fund to manufacture related-party “sales” at or near fiscal and year-ends when a pharmaceutical product was near the end of its life-cycle and/or when the Company needed additional sales to increase its revenues and earnings to meet or exceed consensus Wall Street estimates. As alleged in the Complaint, during the Class Period, there were at least three separate undisclosed related-party “sales” between King and the Benevolent Fund.

27. During its investigation, Lead Counsel identified, located and interviewed a high-ranking executive at Castellon, Inc., who confirmed the details of these transactions. In addition, through its investigative efforts prior to filing the Complaint, Lead Counsel obtained and reviewed the purchase orders and a copy of the checks the Benevolent Fund used to pay Castellon, Inc. in connection with the 1999 related-party “sales.”

#### **D. Motions and Class Certification**

28. On or about October 24, 2003, certain plaintiffs named in an action originally filed in Tennessee State Court but removed to this Court (case number 2:03-CV-347), and consolidated with this Action, moved to remand their case back to State Court. On November 7, 2003, the Lead Plaintiffs filed an opposition to this motion. On November 10, 2003, Defendants also filed an opposition. On February 6, 2004 (after additional supplementary briefing), the Honorable Judge Hull denied the Motion to remand. Defendants filed motions to dismiss the Complaint on January 7, 2004. Lead Counsel filed an opposition on March 8, 2004. Oral argument was held before Judge Inman on June 30, 2004. On July 12, 2004 Judge Inman issued a report and recommendation granting the motion to dismiss in certain respects and denying it in others. On July 29, 2004 certain defendants filed objections to the report and recommendation. On August 12, 2004, Judge Hull sustained the objections in certain respects and denied them in other respects, which left the bulk of the Complaint intact and permitted Lead Plaintiffs’ to

proceed against King, the Individual Defendants and the Underwriter Defendants on the respective Securities Act and Exchange Act claims discussed above, as they relate the alleged Medicaid fraud and Benevolent Fund transactions. Thus, the Court held that the well-pled and detailed allegations of the Complaint satisfied the heightened pleading standards of the PSLRA.

29. On November 19, 2004, Lead Plaintiffs filed a motion requesting that the Court certify a class and subclass. The Defendants conducted extensive class discovery, including serving numerous document requests and interrogatories on Lead Plaintiffs, serving a subpoena on Lead Counsel, and taking the depositions of the Class Representatives. At the conclusion of class discovery, Defendants stipulated to class certification of the larger Class, but contested certification of the Jones Merger Subclass. After oral argument and a hearing before Magistrate Judge Inman in June 2005, the Court approved (1) the certification of a Class comprised of all persons (with certain exclusions) who purchased common stock of King during the Class Period; (2) the appointment of Detroit P&F and LACERA as representatives for that Class, and the appointment of Lead Counsel as lead counsel for that Class; (3) the certification of a Jones Subclass comprised of all persons (with certain exceptions) who acquired King stock through the Jones Merger; and (4) the appointment of Ms. Crews as the representative for the Jones Subclass, and the appointment of Jones Merger Lead Counsel for the Subclass.

#### **E. Discovery**

30. Immediately after motions to dismiss were resolved, Lead Counsel and Jones Merger Lead Counsel began actively pursuing discovery. We requested documents from Defendants, served non-parties with subpoenas, propounded written discovery requests, conducted numerous depositions, moved the Court to compel production when the Defendants refused to voluntarily comply, and began preparing expert reports.



**i. Document Discovery**

31. The Class Representatives served on Defendants numerous requests for the production of documents and things. In response, Defendants produced approximately 700,000 pages of documents. Specifically, the Class Representatives served the following:

- First Request for Production of Documents to King and the Individual Defendants, September 28, 2004;
- First Request for Production of Documents to the Underwriter Defendants, December 14, 2004;
- Second Request for Production of Documents to King, on March 29, 2005;
- Second Request for Production of Documents to the Individual Defendants, on March 29, 2005; and
- Third Request for the Production of Documents to the Individual Defendants, January 12, 2006.

32. The Class Representatives also issued and served subpoenas on numerous non-parties, including, among others:

- Castellon, Inc., on December 13, 2004;
- PricewaterhouseCoopers LLP, King's auditor and consultant in connection with certain system and regulatory compliance issues relevant to the allegations in the Complaint, on December 13, 2004;
- The Benevolent Fund, on December 13, 2004;
- JP Morgan Chase & Co., on December 14, 2004;
- Mylan Laboratories, Inc, a proposed merger partner of King's, on March 23, 2005;
- Edward Bogart, former King Employee, on July 1, 2005;
- James Miller, former King Employee, on July 1, 2005;
- Ernst & Young LLP, consultants to King, on July 1, 2005;

- KPMG LLP, consultants to King, on July 1, 2005;
- Victor Castellon, the proprietor of Castellon, Inc., on July 1, 2005;
- Frank Rapoport, consultant to King, on July 7, 2005; and
- James Passetto, an employee of a Company that sold a significant drug to King, on August 15, 2005.

33. In response to the document requests and subpoenas, Plaintiff's Counsel received and, thereafter, reviewed and analyzed hundreds of thousands of pages of documents. These documents were coded into a computerized database, categorized and analyzed by Lead Counsel and additional teams of lawyers working under the direction of Lead Counsel to assure efficiency and eliminate duplication of effort. These documents including, among others:

- Documents concerning King's Medicaid rebate calculation practices, including operating manuals, Best Price spreadsheet calculations, AMP spreadsheet calculations, training manuals, price lists, coding sheets, correspondence and draft reports prepared by King's consultants concerning King's problems with its computer systems and internal controls, presentations and analysis, and internal e-mails;
- Documents concerning King's corporate governance, including board minutes, executive employment agreements, stock-option grants, and organization charts;
- Documents concerning King's relationship with the Benevolent Fund, including board minutes, contracts, purchase orders, sales information, and documents setting forth donations to the Benevolent Fund;
- Documents concerning the Benevolent Fund, including board minutes, organization charts, donation listings, operating budgets and sales projections;
- Documents relating to King's financial reporting, including internal financial results, reporting packages, consolidated financial results, and draft financial statements;

- Documents concerning King's compliance with FDA regulations, including documents relating to Current Good Manufacturing Practices, Consent Decrees, FDA Form 483's, internal e-mails discussing inspections, draft letters to the FDA, and cease and desist orders;
- Documents concerning King's relationship with Castellon, Inc., including internal e-mails, purchase orders, payment information, letters;
- Documents concerning King's efforts to meet or beat analyst expectations, including analyst reports; market publications, internal sales reports and projections, and memoranda and internal e-mails discussing these issues;
- Documents concerning the Jones Merger and the November Offering, including draft registration statements and prospectuses, due diligence lists, information packets, investment bank presentations, and commitment committee memoranda;
- Documents concerning sales of particular pharmaceutical products, including sales reports on Fluogen, Tigan, Cortisporin and Silvadene (the products that King sold to the Benevolent Fund in December 2002);
- Documents concerning the Audit Committee's investigation into King's accounting practices;
- Documents concerning the SEC's investigations into King's accounting practices;
- Documents relating audits of King's financial statements, including audit work papers, management letters and engagement letters;
- Audit and accounting manuals as they related to the allegations in this Action.

34. In addition to propounding document requests and reviewing documents, Lead Counsel also responded to several document requests served on Lead Plaintiffs by the Defendants, including, among others, those served on December 10, 2004, January 11, 2005, and August 11, 2005.

**ii. Depositions**

35. The Class Representatives took twenty-five depositions in this case, including the depositions of certain of the Individual Defendants, other current and former King employees, Rule 30(b)(6) depositions of King designees and of the Underwriter Defendants. Many of these depositions were conducted on an expedited basis due to delays in receiving documents from Defendants. These depositions included, among others:

- King's former Director of MIS;
- A General Ledger Analyst responsible for calculating Best Price;
- King's former Executive Vice-President of Logistics;
- Defendant and former King Board Member James Gregory;
- King's former Manager of Regulatory Affairs;
- Former Contract Specialist from Jones;
- King's former Vice President of Hospital Sales;
- A 30(b)(6) designee witness who testified concerning King's MIS computer systems;
- King's then-current Corporate Head of Regulatory Affairs;
- King's then-current Corporate Head of Logistics;
- King's former Senior Director of Financial Analysis;
- A former employee responsible for calculating AMP; and
- Representatives from each of the Underwriter Defendants.

**iii. Written Discovery**

36. The Class Representatives propounded numerous written discovery requests over the course of the litigation, including:

- First Set of Interrogatories to King, on June 15, 2005;

- Second Set of Interrogatories to King and the Individual Defendants, on August 8, 2005;
- Second Set of Interrogatories to Brian Shrader, James Gregory, James Lattanzi, Jefferson Gregory, John Gregory, Joseph Gregory, and Kyle Macione, on August 16, 2005;
- Third Set of Interrogatories to King, on August 16, 2005; and
- Third Set of Interrogatories to the Individual Defendants, on January 12, 2006.

37. Lead Counsel also responded to several sets of interrogatories and requests for admission served by Defendants, including on, among other dates, January 4, 2005, March 21, 2005, and August 11, 2005.

38. Throughout the course of eighteen months of extremely active and intense fact discovery, Lead Counsel obtained substantial evidence regarding the claims asserted in the Complaint. In particular, the documents reviewed by Plaintiffs' Counsel (particularly the internal e-mails between King executives) and the depositions of King's current and former executives revealed an immense amount of information that was not available at the time of the filing of the Complaint. Among other things, Lead Counsel learned detailed information regarding (i) King's Best Price and AMP calculations; (ii) King's difficulties with its MIS computer systems; (iii) King's responses to FDA concerns; (iv) King's sales and donations to the Benevolent Fund; (v) the involvement of the Gregory family in the Benevolent Fund; (vi) King's revenue recognition policies; (vii) King's internal evaluations of its Medicaid price calculations; (viii) King's consultation with outside experts regarding MIS and regulatory difficulties and pricing issues; and (iv) King's financial reporting process.

**iv. Additional Motion Practice**

39. Throughout the discovery process, Lead Counsel engaged in vigorous efforts to compel Defendants to produce documents and respond to discovery requests. As described below, Defendants attempted to withhold over 7,200 documents based on various assertions of privilege. Lead Counsel did not accept Defendants' positions, and wrote numerous letters to Defendants and held several meet-and-confers in an attempt to convince Defendants to produce the withheld documents. While the letters and conferences with counsel narrowed the issues in dispute, they did not resolve the issues to the satisfaction of Lead Counsel. Accordingly, Lead Counsel sought the Court's intervention in a formal motion to compel filed on July 14, 2005.

40. For instance, on June 20, 2005, Lead Counsel sent King's counsel an eight-page letter challenging, among other things, Kings' assertion of a "settlement privilege" over certain documents disclosed to various governmental entities. On June 23, 2005, Lead Counsel attempted to schedule a meet-and-confer on these issues. On June 24, 2005, Lead Counsel again wrote to King's counsel seeking a meet-and-confer and also challenging King's assertion of a "common interest" privilege over documents King shared with Mylan Laboratories, Inc. ("Mylan"). Lead Counsel raised additional matters in a June 27, 2005 letter to King. On June 28, 2005, Lead Counsel held a meet-and-confer with King's counsel, which narrowed some issues but left many areas unresolved. On June 29, 2005, Lead Counsel wrote another eight-page letter to King's counsel, again challenging their assertion of a "settlement privilege" and other privileges. On July 1, 2005, Lead Counsel wrote another letter to King making additional specific challenges to King's assertion of a "settlement privilege." On July 12, 2005, King's counsel informed Lead Counsel that they would not produce the documents supposedly protected by a "settlement privilege."

41. Accordingly, on July 14, 2005, Lead Counsel filed with the Court a Motion to Compel and an accompanying fourteen-page memorandum of law seeking production of documents withheld on the purported basis of a “settlement privilege,” the “attorney-client and work product privilege” between King and its accountants, and a “common-interest” privilege over documents King shared with Mylan. Defendants responded on July 28, 2005 and Lead Counsel filed a reply brief on August 4, 2005. On September 21, 2005, Judge Inman issued an Order granting Lead Counsel’s Motion to Compel in its entirety. On October 5, 2005, King filed a Motion for reconsideration of Judge Inman’s Order, which Lead Counsel opposed on October 13, 2005. On October 25, 2005, Judge Inman denied the motion for reconsideration in its entirety.

42. On November 2, 2005, King filed an objection to Judge Inman’s Order and a request for a stay of the order pending the District Court’s review. On November 17, 2005, Lead Counsel filed a response to the objection and motion to stay. Those motions were *sub judice* at the time the Settlement was reached.

**v. Lead Counsel’s Use of Experts**

43. In order to assist in the prosecution of this Action, Lead Counsel retained a Medicaid rebate expert, an accounting expert and a damages expert.

44. Lead Counsel regularly consulted with its Medicaid rebate expert who assisted Lead Counsel in understanding the complex regulatory framework governing the Medicaid reimbursement program, reviewing documents produced by Defendants, tailoring deposition questions and framing areas of inquiry, identifying potential deponents and generally developing evidence regarding King’s failure to comply with the Medicaid reimbursement program. The Medicaid expert evaluated selected documents, prepared written reports to Lead Counsel, reviewed selected deposition transcripts, and attended selected depositions.

45. Lead Counsel consulted with an accounting expert in order to gain a more thorough understanding of how King's related-party transactions violated generally accepted accounting principles ("GAAP") and other relevant standards, and to quantify the impact of those violations on King's financial statements. Lead Counsel's accounting expert also quantified the earnings-per-share effect and financial statement impact of King's underpayment of Medicaid rebates.

46. Lead Counsel consulted with a well-known damages expert in order to gain an understanding of the Class's potential damages. This effort greatly assisted Lead Counsel and Jones Merger Lead Counsel during settlement negotiations and in connection with preparing a Plan of Allocation.

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47. In sum, the discovery process provided the Class Representatives with sufficient information to make an informed decision about whether to settle this Action and on what terms. Although the Class Representatives believe that the claims asserted in the Complaint are meritorious, the knowledge obtained through the depositions and document analysis provided the Class Representatives with more information about the potential defenses that would be asserted by Defendants. Discovery also confirmed the difficulties that the Class Representatives would face in ultimately proving the claims asserted.

**F. Hurdles to Recovery**

48. To establish liability under Section 10(b) of the Exchange Act, the Class Representatives would bear the burden of proving, *inter alia*, that the alleged misrepresentations were (1) material to investors in determining whether to invest in King common stock, that the information inflated the market price of those securities, (2) caused damage to the Class, and (3)



that Defendants acted with scienter. Establishing the elements of materiality, loss causation, and scienter posed substantial hurdles to recovery.

49. First, Defendants have consistently defended this Action on the grounds that the overstatements of King's financial statements stemming from the Company's failure to pay Medicaid rebates were not material as a matter of law. Defendants argued that the overstatements that form the basis of this case were less than 1% of King's total revenues for the Class Period. Defendants have made similar materiality arguments in connection with the Benevolent Fund transactions, and Defendants would no doubt have argued that the small amount of revenue that was achieved by King through the Benevolent Fund transactions was (a) *actually* received by the Company and (b) was in any event not material to King's financial statements when taken as a whole. While the Class Representatives were successful in overcoming Defendants' challenges to materiality at the motion to dismiss stage of this litigation, there was certainly a risk that these arguments would prevail on summary judgment. Indeed, the Court noted that "[i]t may well be that the Court will eventually find that . . . the misstatements made during certain financial reporting periods were immaterial as a matter of law," but this is "the kind of factual analysis normally given to motions for summary judgments rather than to Rule 12(b)(6) motions."

50. Second, Defendants maintained throughout this litigation that there was no loss causation, arguing that King's March 11, 2003 announcement and the concomitant drop in its stock price merely reflected uncertainty over the extent of the overstatements in King's financial results. In Defendants' view, King's March 11, 2003 announcement did not reverse the alleged inflation in King's stock price during the Class Period because, in their view, there was no stock price inflation. In support of this position, Defendants argued that (1) King's stock price

increased in the days following the announcement, demonstrating that the March 11, 2003 drop in the stock price was not a recoverable measure of damages under the federal securities laws; and (2) a more accurate assessment of “damages” is the price when King announced its restatement on July 29, 2003, when the stock traded \$2.60 higher than its price on March 11, 2003.

51. In advancing this argument, Defendants would have relied on the Supreme Court’s decision in *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005), which was decided while the parties were in the midst of conducting fact discovery in this litigation. In *Dura*, the Supreme Court held that a plaintiff in a securities class action must plead and prove “loss causation” by identifying a “causal link” between the alleged corrective disclosure (in this case, the March 11, 2003 announcement) and the damages, or loss, suffered by the Class. *Id.* at 347. Defendants would have advanced a broad interpretation of *Dura* to argue that the Class Representatives could not demonstrate the necessary “causal connection” between the March 11, 2003 announcement and the losses suffered by the Class. While the Class Representatives believe that they could satisfy the requirements for proving “loss causation,” they recognize that the Supreme Court’s decision in *Dura* did alter the litigation landscape. Accordingly, there was some risk that on summary judgment or motions *in limine*, this Court could have concluded that the damages to the Class were far smaller than the Class Representatives’ damage experts would contend. Indeed, Defendants and their damage experts likely would have argued that, under *Dura*, the Class suffered no recoverable damages at all.

52. Third, the Class Representatives would have had to prove that each Exchange Act Defendant acted with scienter in knowingly misrepresenting King’s reported financial results to the public. Throughout this litigation, the Exchange Act Defendants contended they attempted in

good faith to comply with the complex set of governmental regulations relating to Medicaid rebate payments, and that their compliance failures were the result of innocent errors committed by low-level employees and difficulties with certain computer systems that senior level management attempted to remedy. Defendants no doubt intended to present evidence at summary judgment and/or to the jury that King's senior level managers were undertaking steps to ensure that King was correctly reporting its Medicaid information to the Government, including hiring key personnel, asking for advice of outside consultants, and engaging in several upgrades of its computer systems.<sup>2</sup> Similarly, the Defendants would have argued to the Court at summary judgment, and to the jury if necessary, that the Benevolent Fund transactions were motivated not by any effort to manipulate King's financial statements, but by a sincere charitable endeavor aimed at providing North Korea and other impoverished regions across the globe with sufficient vaccine and medicines to combat a particularly virulent flu epidemic and a shortage of appropriate medication.

53. The Class Representatives faced similar issues with respect to their Section 11 claims. While Section 11 does not require a plaintiff to establish scienter, Defendants argued that the Class Representatives would have faced the same issues with respect to proving materiality and overcoming Defendants' "negative" loss causation as they faced with their Section 10(b) claims. As discussed above, Defendants have consistently contended that the misstatements alleged in the Complaint were not material as a matter of law. If Defendants prevailed on this argument, then the Class' Section 11 claims would fail along with their Section 10(b) claims. Similarly, Sections 11 and 12 provide for a reduction of damages if a defendant

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<sup>2</sup> Moreover, the fact that the SEC investigation has concluded against King without resulting in any formal charges, fines or any repercussions whatsoever to any of the Defendants illustrates the significant issues the Class Representatives faced in proving scienter.

can establish that any portion of the claimed damages were caused by factors other than the alleged misstatements in the registration statements and prospectuses. This is simply the flip side of the “loss causation” argument discussed above. Thus, although Defendants – and not the Class Representatives – would have borne the burden of establishing for Section 11 and Section 12 purposes that the Class’s losses were caused by factors other than the March 11, 2003 announcement, for all practical purposes it is the exact same “loss causation” issue relevant to the Class Representatives’ Section 10(b) claims. Therefore, if Defendants prevailed on their loss causation argument under *Dura*, as discussed above, then they likely would have been able to demonstrate that the Class did not suffer any damages for purposes of Sections 11 and 12.

54. In short, while the Class Representatives believe that the claims asserted have substantial merit, if the litigation continued, the Class Representatives and the Class would bear the substantial risks of establishing liability through multiple experts’ testimony and other evidence that would have been challenged by the expert testimony and other evidence introduced by the Defendants. This contest could have devolved into a credibility toss-up to be decided by the jury. By contrast, the amount of the proposed Settlement is large by any measure, and eliminates all of these risks.

#### **G. The Settlement Negotiations**

55. The Settlement is the product of mediated, adversarial, arm’s-length negotiations between Lead Counsel, LACERA and Detroit P&F, and Defendants’ counsel and principals and others. These negotiations extended over a ten-month period, and involved three days of in-person mediation sessions and numerous follow-up communications with respected Mediator Gary V. McGowan. *See* McGowan Declaration ¶¶ 3-5.

56. In the fall of 2005, the Class Representatives and Defendants agreed to non-binding, formal mediation of this dispute with the assistance of mediator Gary V. McGowan.

The parties drafted, exchanged and submitted to the mediator lengthy mediation statements and accompanying exhibits in November 2005. In-person mediation sessions were held with Mr. McGowan on November 17 and 18, 2005, in New York, New York, and again on February 7, 2006, in Washington, D.C.

57. Extensive communications among the parties, King's insurers and Mr. McGowan also took place by telephone before and after these mediation sessions. The parties also appeared before the Court as part of the settlement process. Throughout this negotiation process, counsel for the parties comprehensively negotiated the amount, structure, substance and parameters of the Settlement.

58. During these negotiations, counsel for the parties had numerous discussions regarding disputed critical issues, including the merits of the Action, the likelihood of success at trial, and the appropriate amount at which to settle. Significantly, representatives from LACERA and Detroit P&F – sophisticated public pension funds – actively participated in both the prosecution of this Action and the settlement negotiations. *See* Joint Declaration, ¶¶ 10-14. Congress enacted the PSLRA in part to ensure that sophisticated institutional investors such as Detroit P&F and LACERA participate in and control securities litigation. The fact that these Class Representatives were actively involved in this litigation, participated in the mediation sessions, and approve of the Settlement, further demonstrates that the Settlement is fair, adequate and reasonable. *See id.* ¶¶ 12-14.

59. On July 31, 2006, after extensive negotiations, the parties reached an agreement to resolve this Action and signed the Stipulation, which was filed with the Court on August 28, 2006. On September 27, 2006, following a hearing where counsel for all parties appeared before the Court, the Court signed Preliminary Approval Order preliminarily approving the Settlement

and directing the parties to provide notice to the Class. The Preliminary Approval Order scheduled a fairness hearing for January 9, 2007.

#### IV. CLASS NOTICE

60. The Preliminary Approval Order granted preliminary approval of the Settlement, ordered that notice be disseminated to the Class, and set the deadline for Class members to submit objections to the Settlement, Plan of Allocation and the request for attorneys' fees and reimbursement of litigation expenses, or request exclusion from the Class. The Court also set a final approval hearing date of January 9, 2007.

61. Pursuant to the Preliminary Approval Order, shortly after September 27, 2006, Lead Counsel instructed AB Data, the Claims Administrator for the Settlement, to begin disseminating copies of the Notice. The Notice contains a thorough description of each of the Settlement, the Plan of Allocation and Class members' rights to participate in and object to the Settlement, or exclude themselves from the Class. To distribute the Notice, AB Data obtained the names and addresses of potential Class members from listings provided by King's transfer agent, as well as names provided by banks, brokers and nominees pursuant to the Preliminary Approval Order. *See* Verkhovskaya Affidavit ¶¶ 5, 10

62. AB Data created a "Notice Packet," which consists of Notice of Pendency and Settlement of Class Action and Proposed Class Action Settlement and the Proof of Claim and Release form. *Id.* ¶ 5.

63. On or about October 10, 2006, AB Data established a website at [www.kingsecuritiessettlement.com](http://www.kingsecuritiessettlement.com), which contains the Notice and Proof of Claim form. *Id.* ¶¶ 5, 17. From October 11, 2006 through December 14, 2006, the website had 6,596 hits, was visited by 710 unique visitors, and had more than 600 case-specific documents downloaded from it. *Id.* ¶ 18.

64. On or about October 10, 2006, AB Data received 3,135 shareholders' records from King's transfer agent. *Id.* ¶ 10. On October 11, 2006, AB Data delivered to the United States Postal Service 3,135 Notice Packets to be mailed to these shareholders' addresses. *Id.* ¶ 11.

65. On October 11, 2006, AB Data mailed 2,375 Notice Packets to various brokerage firms, banks and other nominees. *Id.* ¶ 8. In response to the requests of these banks, brokers and nominees, as of December 14, 2006, AB Data had mailed 234,003 additional Notice Packets. *Id.* ¶ 9.

66. On October 13, 2006, in accordance with the Preliminary Approval Order, AB Data caused the publication of the Summary Notice in *The Wall Street Journal* for national distribution. *Id.* ¶¶ 12, 13.

67. On or about October 15, 2006, AB Data established a toll-free number with an Interactive Voice Response System and live operators. *Id.* ¶ 14. From October 15, 2006, through December 14, 2006, AB Data received 413 phone calls and 68 voicemail messages. *Id.* ¶ 15. As of December 14, 2006, AB Data has mailed 488 Notice Packets to potential claimants per requests received via the toll free help line. *Id.* ¶ 16.

68. As of December 14, 2006, AB Data has mailed 240,001 Notice Packets to potential class members. *Id.* ¶ 19.

69. The deadline for Class members to file objections to the Settlement, Plan of Allocation or request for attorneys' fees and reimbursement of expenses is December 26, 2006. Of the 240,001 Notices sent to potential Class members, as of December 14, 2006, no Class members have objected to the Settlement, the Plan of Allocation or to the request for attorneys'

fees or reimbursement of expenses, and only four valid requests for exclusion were received. *See id.* ¶ 21.

## V. PLAN OF ALLOCATION

70. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class members who wish to participate in the distribution of the Settlement Fund must submit a valid Claim Form and all required information postmarked no later than February 8, 2006. As provided in the Notice, after deducting all appropriate taxes, administrative costs, attorneys' fees, and reimbursement of expenses, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation.

71. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class members who submit appropriate Claim Forms. The Plan of Allocation is designed to achieve an equitable distribution of the Net Settlement Fund.

72. The Plan of Allocation is the product of Lead Counsel's investigation and discovery in this Action, as well as its consultation with the Class Representatives' damages expert and Jones Merger Lead Counsel. Indeed, Lead Counsel worked closely with a well-regarded damages expert in establishing the Plan of Allocation, and the expert believes that the Plan of Allocation is a fair, adequate, and reasonable method to allocate the Net Settlement Fund among Class members. *See* Declaration of Bjorn Steinholt (the "Steinholt Declaration") attached hereto as Exhibit D, ¶¶ 6-10.

73. AB Data, as the Claims Administrator for the Settlement, will determine each Authorized Claimant's pro rata share of the Net Settlement Fund based upon each Authorized Claimant's "Loss Amount," calculated in accordance with the Plan of Allocation. Calculation of the Loss Amount will depend upon several factors, including when the stock was purchased or



acquired, and whether the stock was held until the conclusion of the Class Period or sold during the Class Period, and if so, when it was sold.

74. In sum, the Plan of Allocation, developed in consultation with the Class Representative's damages expert, was designed to fairly and rationally allocate the proceeds of the Settlement among Class members based on the strength of the various claims and the resulting damages. Accordingly, Lead Counsel respectfully submits that the Plan of Allocation is adequate, fair, and reasonable and should be approved. Approval of the Plan of Allocation is also supported by the Class Representatives. *See* Joint Declaration ¶ 15.

## **VI. THE FEE APPLICATION**

75. The Notice informed Class members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 17% of the Settlement Fund plus interest, and for reimbursement of Plaintiffs' Counsel's Litigation Expenses in an amount not to exceed \$1.9 million.

76. In this case, Plaintiffs' Counsel's request for fees of 17% of the net Settlement Fund (after subtracting for allowed litigation expenses) plus interest – approximately \$6,230,702.11. Thus, Plaintiffs' Counsel's requested fees are substantially *less* than the hourly lodestar for the time spent litigating the case – indeed, the requested fee is only 56.5% of \$11,032,401.70 lodestar incurred by Plaintiffs' Counsel.

77. Plaintiffs' Counsel achieved an extraordinary result for the Class at great risk and expense to themselves. Throughout this litigation, Lead Counsel were committed to the interests of the Class, and invested the time and resources necessary to resolve the Class' claims. Moreover, Plaintiffs' Counsel took this case on a contingency basis, with no assurance of success, and litigated this case for over two-and-a-half years without any compensation at all.

**A. The Fee Agreement**

78. Lead Counsel’s fee request is being made pursuant to the terms of the Stipulation and a fee agreement that LACERA and Detroit P&F – sophisticated institutional investors with extensive experience in negotiating fees with counsel and in evaluating the results counsel achieve – negotiated and entered into with Lead Counsel prior to the Action. *See* Joint Declaration ¶ 16. As negotiated, the fee agreement takes into account the stage of the litigation at which a settlement is reached by setting forth a sliding scale whereby the fee increases as the litigation progresses from the pleading stage, to discovery, and eventually to trial. *Id.* ¶ 17. The fee agreement provides for a fee of 17% of the Settlement Fund when a settlement, as is the case here, is reached during the discovery stage of the litigation. The Class Representatives support Lead Counsel’s application for an award of attorneys’ fees in an amount not to exceed 17% of the Settlement Fund. *See id.* ¶ 17-18.

**B. Plaintiffs’ Counsels’ Work and Expertise**

79. A Compendium of Declarations of Plaintiffs’ Counsel in Support of Motion for Award of Attorneys’ Fees and Reimbursement of Expenses (the “Compendium of Declarations”) is filed herewith. The schedules attached to the Compendium indicate the amount of time spent by each attorney and professional staff member employed by each firm, and the lodestar calculations based on Plaintiffs’ Counsel’s current billing rates. *See* Compendium of Declarations. The schedules were prepared from contemporaneous daily time records regularly prepared and maintained by Plaintiffs’ Counsel, which are available at the request of the Court. The hourly rates for attorneys and professional staff members included in these schedules are the same as the regular current rates charged for their services in non-contingent matters. In addition, these rates are commensurate with the hourly rates charged by lawyers performing similar services in New York, New York. For attorneys or other professionals who are no longer

employed, the lodestar calculations are based upon the billing rates for such person in his or her final year of employment by Plaintiffs' Counsel.

80. The first page of the Compendium of Declarations is a schedule summarizing the lodestars and expenses of all Plaintiffs' Counsel participating in the request for an award of attorneys' fees and expenses ("Plaintiffs' Counsel Schedule"). It was prepared from the data contained in each of the Plaintiffs' Counsel Declarations that follow. The Plaintiffs' Counsel Declarations outline the experience and qualifications of the attorneys and their respective firms who worked on the Action at the request and under the direction of Lead Counsel, the services rendered and time expended in rendering those services, and the attorneys' normal, current hourly rates in non-contingent matters. Lead Counsel and Jones Merger Lead Counsel will divide fees among Plaintiffs' Counsel based on Lead Counsel's and Jones Merger Lead Counsel's assessment of each firm's contribution to the prosecution of the Action.

81. As set forth in the Plaintiffs' Counsel Schedule, Lead Counsel and other Plaintiffs' Counsel have expended more than 28,788 hours in the prosecution and investigation of this litigation. The resulting lodestar is \$11,032,401.70. Thus, Lead Counsel's fee request, if awarded, would result in Plaintiffs' Counsel receiving substantially *less* (only approximately 56.5%) in compensation than the lodestar that was expended in litigating the case.

82. Plaintiffs' Counsel, as demonstrated by the firm resumes attached as exhibits to each of the Declarations of Plaintiffs' Counsel, are among the most experienced and skilled practitioners in the securities litigation field, and have long and successful track records in such cases. In addition, Plaintiffs' Counsel, as detailed in their respective firm resumes, are willing and able to take complex cases such as this to trial. This willingness and ability added valuable leverage in the settlement negotiations.

83. Lead Counsel supervised every aspect of the prosecution of this Action, including Plaintiffs' Counsels' work, to avoid duplication and to ensure its efficient prosecution.

**C. Standing and Caliber of Opposing Counsel**

84. The quality of the work performed by Plaintiffs' Counsel, under the leadership of Lead Counsel and Jones Merger Lead Counsel, in attaining the Settlement should also be evaluated in light of the quality of the opposition. The defendants were represented by some of the country's most prestigious law firms, Gibson, Dunn & Crutcher LLP, Davis Polk & Wardwell LLP, Alston & Bird LLP and Baker Donelson Bearman Caldwell & Berkowitz. These firms spared no effort in the defense of their clients. In the face of this knowledgeable, formidable, and well-financed opposition, Lead Counsel were nonetheless able to develop a case that was sufficiently strong to persuade the defendants to settle the case on terms that were highly favorable to the Class.

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

85. This prosecution was undertaken by Plaintiffs' Counsel entirely on a contingent-fee basis. The risks assumed by Plaintiffs' Counsel in bringing these claims to a successful conclusion are described above and in the Settlement Memorandum. Those risks are also relevant to an award of attorneys' fees. Here, the risks assumed by Plaintiffs' Counsel, and the time and expenses incurred without any payment, were extensive, and are described in detail above and in the accompanying Attorneys' Fees and Expenses Memorandum.

86. From the outset, Plaintiff's Counsel understood that they were embarking on a complex, expensive and probably lengthy litigation with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Lead Counsel were obligated to ensure that sufficient resources were dedicated to

the prosecution of this litigation, and that funds were available to compensate staff and to cover the considerable out-of-pocket costs that a case such as this requires. With an average lag time of several years for these cases to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel have received no compensation during the course of this litigation and have incurred \$1,598,811.08 in out-pocket-expenses in prosecuting this Action for the benefit of the Class.

87. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed herein and in the Settlement Memorandum, from the outset, this case presented a number of risks and uncertainties that could have prevented any recovery whatsoever. As discussed in detail in the Attorneys' Fees and Expenses Memorandum, despite the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.

88. Lead Counsel firmly believe that the commencement of a class action does not guarantee a settlement. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

89. Moreover, courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private plaintiffs, particularly institutional investors, take an active role in protecting the interests of shareholders. If this important public policy is to be carried out, the courts should award fees that adequately compensate plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action.

90. As a result of extensive and persistent efforts in the face of substantial risks and uncertainties, Plaintiffs' Counsel achieved a significant recovery for the benefit of the Class. In circumstances such as these, and in consideration of Plaintiffs' Counsels' hard work and the extraordinary result achieved, the requested 17% fee, which does not even compensate counsel for the time they expended, is reasonable and should be approved. Indeed, the substantial discount demonstrates the significant effort that Plaintiffs' Counsel put into the litigation of this case and further confirms the substantial risk that Plaintiffs' Counsel were willing to undertake (without any guarantee of recovery) by pursuing this Action.

**E. The Reaction of the Class to the Requested Fee**

91. As set forth above, since October 11, 2006, 240,001 copies of the Notice have been mailed to potential Class members. The Notice advised Class Members that Lead Counsel would apply for an award of attorneys' fees not to exceed 17% of the Settlement Fund (plus interest). *See Verkhovskaya Aff.* ¶ 19. Additionally, a summary notice was published in the national edition of *The Wall Street Journal* on October 13, 2006, and all settlement documents have been available since approximately October 10, 2006 on two websites maintained by Lead Counsel. *See id.* ¶¶ 5, 12, 17. As of the date of this filing, no objection to the fee request has been received.

**VII. REIMBURSEMENT OF THE REQUESTED EXPENSES AND COSTS IS FAIR AND REASONABLE**

92. Lead Counsel seek reimbursement of \$1,598,811.08 in litigation expenses reasonably and actually incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the claims against Defendants. Plaintiffs' Counsel advanced all of the incurred litigation expenses.

93. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced by them to prosecute this Action. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

94. As set forth in the Plaintiffs' Counsel Schedule (the first page of the Compendium of Declarations), Plaintiffs' Counsel have incurred a total of, \$1,598,811.08 in unreimbursed litigation expenses in connection with the prosecution of this Action. These expenses are reflected on the books and records maintained by Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. Plaintiffs' Counsels' expenses are set forth in detail in each firm's Declaration in the Compendium of Plaintiffs' Counsel Declarations, each of which identifies the specific category of expense, *e.g.*, experts' fees, transcripts, travel costs, photocopying, telephone, fax and postage expenses and other costs actually incurred for which Plaintiffs' Counsel seek reimbursement. These expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in the respective firms' billing rates.

95. Lead Counsel maintained strict control over the litigation expenses incurred by Plaintiffs' Counsel. Indeed, many of the litigation expenses were paid out of a litigation fund funded by Plaintiffs' Counsel and maintained by Bernstein Litowitz (the "Litigation Fund"), the schedule attached hereto as Exhibit E, details those contributions and disbursements.

96. The litigation expenses for which Plaintiffs' Counsel seek reimbursement were largely incurred for professional fees. Indeed, of the total amount of expenses, \$644,188.39 or approximately 41% was expended on experts in the Medicaid Rebate program, accounting, and economic damages. As discussed more fully above, the expertise and assistance provided by these experts was critical to the prosecution and successful resolution of this Action.

97. The litigation expenses for which Plaintiffs' Counsel seek reimbursement also include \$358,171.35, or approximately 23% of fees paid to Merrill for the creation, maintenance and management of the electronic database used in connection with document discovery. Lead Counsel received hundreds of thousands of pages of documents from Defendants and non-parties. In order to review and utilize this voluminous production in an organized, efficient and effective manner, Lead Counsel retained Merrill, which provides services that are technologically advanced and designed specifically for reviewing and analyzing documents in large scale productions. Merrill's electronic database was of invaluable assistance to Lead Counsel in preparing its case.

98. The other expenses for which Plaintiffs' Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, long distance telephone and facsimile charges, postage and delivery expenses, computerized research, court reporters for depositions, overtime expenses, filing fees and photocopying.

99. Plaintiffs' Counsel also seek reimbursement for travel expenses, which are also the type of expense that is necessarily incurred in litigation and routinely charged to clients billed by the hour. This Action involved a significant amount of travel for depositions, as well as travel for document review. As set forth above, the depositions in this Action, of which there were



twenty-five, which occurred throughout the United States, including in, among other locations, St. Louis, New York, and Bristol.

100. All of the litigation expenses incurred were necessary to the successful prosecution and resolution of the claims against Defendants. These expenses have been reviewed and approved by the Class Representatives. *See* Joint Declaration ¶ 19. In addition, as with Plaintiffs' Counsel's fee request, as of the date of this filing, no objection has been raised as to Plaintiffs' Counsel's request for reimbursement of litigation expenses not to exceed \$1.9 million.

101. In view of the complex nature of the Action, the litigation expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, Lead Counsel respectfully submits that the expenses incurred by Plaintiffs' Counsel are reasonable in amount and should be reimbursed in full.

### **VIII. CONCLUSION**

102. In view of the very substantial recovery to the Class, the risks of this litigation, the enormous efforts of Lead Counsel and other Plaintiffs' Counsel, the quality of work performed, the contingent nature of the fee, the complexity of the case and the standing and experience of Plaintiffs' Counsel, Lead Counsel respectfully submit that the Settlement of \$38.25 million should be approved as fair, reasonable and adequate; that the Plan of Allocation should be approved as fair and reasonable; that a fee in the amount of 17% of the Settlement Fund (net of Court-Approved litigation expenses) plus interest should be awarded to Lead Counsel; and that the litigation expenses in the amount of \$1,598,811.08 should be reimbursed in full.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 19, 2006

/s/ Jeffrey N. Leibell  
Jeffrey N. Leibell



# **EXHIBIT LL**

# EXHIBIT N

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE DUCTILE IRON PIPE FITTINGS  
("DIPF") INDIRECT PURCHASER  
ANTITRUST LITIGATION

Civ. No. 12-169 (AET) (LHG)

THIS DOCUMENT RELATES TO:

ALL INDIRECT PURCHASER ACTIONS

DECLARATION OF GLANCY PRONGAY & MURRAY LLP  
IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

I, Brian P. Murray, declare as follows:

1. I am a member of the law firm of Glancy Prongay & Murray LLP. I submit this declaration in support of Indirect Purchaser Plaintiffs ("IPP") application for an award of attorneys' fees and reimbursement of expenses in connection with the services rendered, and costs and expenses incurred in *In re Ductile Iron Pipe Fittings ("DIPF") Indirect Purchaser Antitrust Litigation* (the "Action"). I make this declaration on personal knowledge, and if called as a witness I could and would competently testify to the matters set forth herein.

2. My firm is counsel for TC Construction Co. Inc. and has served as one of the Class Counsel for the IPPs in the Action. The background and experience of Glancy Prongay & Murray LLP and its attorneys who worked on this matter are summarized in the *curriculum vitae* attached hereto as Exhibit A.

3. Glancy Prongay & Murray LLP has prosecuted the Action solely on a contingent fee basis, and has been at risk that it would not receive any compensation for prosecuting claims

against Defendants. While Glancy Prongay & Murray LLP devoted its time and resources to this matter, it has foregone other legal work for which it could have been compensated.

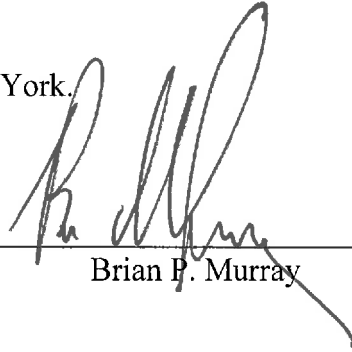
4. During the pendency of the Action, Glancy Prongay & Murray LLP performed the following work: investigate claims of California purchasers, prepared a complaint on behalf of California purchasers, wrote a brief in opposition to the motion to dismiss the claims of California purchasers, reviewed documents of TC Construction and produced them to defendants, defended the deposition of TC Construction, and attended two mediation sessions.

5. The schedule attached as Exhibit B sets forth my firm's total hours and lodestar, computed at historical rates, for the period from May 10, 2012, through and including March 31, 2018. This period reflects the time spent after the appointment of Interim Co-Lead Counsel and Liaison Counsel for IPPs in the Action. The total number of hours spent by my firm during this period of time was 180.9, with a corresponding lodestar of \$130,295.50. This schedule was compiled from contemporaneous, daily time records prepared and maintained by my firm. The lodestar amount reflected in Exhibit B is for work assigned by Co-Lead Counsel, and was performed by attorneys and professional staff at my firm for the benefit of the Settlement Classes. The hourly rates for the attorneys and professional staff in my firm reflected in Exhibit A are the usual and customary hourly rates historically charged by my firm in similar matters.

6. My firm has expended a total of \$2,589.73 in unreimbursed costs and expenses in connection with the prosecution of the Action from inception through and including March 31, 2018. These costs and expenses are set forth in the schedule attached as Exhibit C and are reflected in the books and records of my firm. They were incurred on behalf of IPPs by my firm and have not been reimbursed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 17, 2018, at New York, New York.



A handwritten signature in black ink, appearing to read "Brian P. Murray", is written over a horizontal line. The signature is stylized and cursive.

Brian P. Murray



# EXHIBIT B

**EXHIBIT B**

*In re Ductile Iron Pipe Fittings ("DIPF") Antitrust Litigation, Civ. No. 12-169 (AET)(LHG)*  
**GLANCY PRONGAY & MURRAY LLP**  
 Reported Hours and Lodestar on a Historical Basis  
 May 10, 2012 through March 31, 2018

NAME	STATUS	YEAR	TOTAL HOURS	HISTORICAL HOURLY RATE	LODESTAR
ATTORNEYS					
Brian P. Murray	P	2013	7.90	\$745.00	\$5,885.50
Brian P. Murray	P	2014	93.90	\$745.00	\$69,955.50
Brian P. Murray	P	2015	2.50	\$745.00	\$1,862.50
Brian P. Murray	P	2016	41.50	\$745.00	\$30,917.50
Brian P. Murray	P	2017	1.70	\$825.00	\$1,402.50
Lee Albert	P	2013	2.30	\$725.00	\$1,667.50
Lee Albert	P	2014	10.80	\$725.00	\$7,830.00
Thomas Kennedy	A	2016	13.20	\$550.00	\$7,260.00
Leanne Heine	A	2014	7.10	\$495.00	\$3,514.50
<b>TOTAL:</b>			<b>180.90</b>		<b>\$130,295.50</b>

- (P) Partner
- (A) Associate
- (INV) Investigator

# EXHIBIT C

*In re Ductile Iron Pipe Fittings ("DIPF") Antitrust Litigation, Civ. No. 12-169 (A)*

**EXHIBIT C**

**GLANCY PRONGAY & MURRAY LLP**

Expenses Incurred

May 10, 2012 - March 31, 2018

<b>CATEGORY</b>	<b>AMOUNT INCURRED</b>
Court Fees (filing, etc.)	\$0.00
Computer Research (Lexis, Westlaw, PACER, etc.)	\$160.56
Document Production	\$0.00
Experts / Consultants	\$0.00
Messenger Delivery	\$0.00
Photocopies - In House	\$0.00
Photocopies - Outside	\$0.00
Postage	\$0.63
Service of Process	\$0.00
Overnight Delivery (Federal Express, etc.)	\$27.65
Telephone / Facsimile	\$0.00
Transcripts (Hearings, Depositions, etc.)	\$414.00
Travel (Airfare, Ground Travel)	\$1,072.23
Travel (Meals and Lodging)	\$914.66
<b>TOTAL</b>	<b>\$2,589.73</b>

# **EXHIBIT MM**

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

-----X  
PUERTO RICO GOVERNMENT JUDICIARY :  
EMPLOYEES RETIREMENT SYSTEM :  
ADMINISTRATION, CRAIG B. LAUB, J.D. :  
PISUT and SANDRA REDFERN, :

No. 15 Civ. 01938 (DAB)

Plaintiffs,

-against-

MARCUM, LLP, as successor to STONEFIELD :  
JOSEPHSON, INC., :

Defendant. :  
-----X

**SECOND DECLARATION OF EX KANO S. SAMS II IN SUPPORT OF SETTLEMENT,  
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES, AND  
REIMBURSEMENT AWARDS TO LEAD PLAINTIFFS**

I, Ex Kano S. Sams II, declare as follows:

1. I am a member of the Bar of the State of California and I am a partner at Glancy Prongay & Murray LLP (the “Firm”), one of the Plaintiffs’ Counsel in the above-captioned action (the “Action”). In response to the Court’s January 2, 2018 request, I respectfully submit this second declaration in support of my Firm’s application for an award of attorneys’ fees in connection with services rendered in this Action and the reimbursement of expenses incurred by this Firm in the course of this litigation.

2. I have personal knowledge of all material matters related to the Action based upon my active participation in the prosecution of the Action since its inception.

3. As I indicated in my initial declaration, the Firm represents Craig B. Laub and J.D. Pisut, who, along with the Puerto Rico Government Employees and Judiciary Retirement Systems Administration, and Sandra Redfern, comprise the PR Group, the Court-appointed Lead Plaintiff in the Action. Prior to the commencement of the Action, my Firm did an extensive investigation into possible claims in *In re Fuqi International, Inc., Sec. Litig.* Case No. 10-Civ. 2515 (DAB) (“Fuqi Litigation”). Thereafter, the Firm assisted the Court-appointed Lead Counsel, Abraham, Fruchter & Twersky, LLP (“Lead Counsel”), in actively and vigorously litigating the Fuqi Litigation, as set forth in detail in the Firm’s previously-submitted declaration.

4. Following the settlement of the Fuqi Litigation, Plaintiffs negotiated a settlement of the claims asserted against the Class Period auditor of Fuqi International, Inc. (“Fuqi”), Defendant Marcum, LLP (“Marcum”), including its alleged predecessor Stonefield Josephson, Inc., (“Stonefield”) (collectively “Defendant”) (“Marcum Litigation”). The Firm’s investigation continued with respect to claims asserted against Defendant in the Marcum Litigation, including, but not limited to: (1) assisting in the drafting of a consolidated complaint; (2) assisting in the



preparation of a comprehensive mediation statement with accompanying exhibits supporting Plaintiffs' contentions; (3) participating in a full-day mediation session; (4) assisting in the preparation of the settlement agreement and supporting documents; (5) working with mediator Judge Layn Phillips and his colleagues to prepare a declaration in support of final approval of the Settlement; and (6) preparing and reviewing submissions for preliminary and final approval of the Settlement. All of the work performed by our Firm was done under the direction and supervision of Lead Counsel.

5. The total number of hours spent on the Marcum Litigation for the Firm is at least 147.30. The total lodestar amount for attorney/paralegal time based on the Firm's current rates is at least \$110,475. The hourly rates shown below are the usual and customary rates charged for each individual in our cases. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the Firm.

6. A chart reflecting the time entries that comprise the Firm's lodestar for the Marcum Litigation is attached as Exhibit 1 (which reflects additional time spent after the Firm's initial submission). To the best of my knowledge, the lodestar information previously submitted to the Court in the Fuqi Litigation (attached as Exhibit 2) was not based on duplicative time entries in the Marcum Litigation. The Firm took effort to reconcile and eliminate any duplicative entries based on the description of the activities in those entries. As a result, to the best of my knowledge, no time in the Marcum Litigation has been included for work performed in the Fuqi Litigation, and none of the time previously submitted to the Court in the Fuqi Litigation included time for work performed in the Marcum Litigation.

7. The information in this declaration regarding the Firm's time and expenses is based on time and expense printouts prepared and maintained by the Firm in the ordinary course



of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the Firm's guidelines and policies. As a result of these reviews and adjustments, I believe that the time reflected in the Firm's lodestar calculation and the expenses and charges for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses and charges are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge.

Executed this 3rd day of January, 2018, in Los Angeles, California.

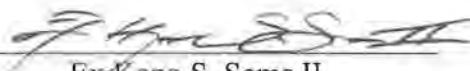
  
Ex Kano S. Sams II

EXHIBIT 1

GLANCY PRONGAY MURRAY

## EXHIBIT

Puerto Rico Government Judiciary Employees Retirement

System Administration, et al. v. Marcum, LLP

15 Civ. 01938 (DAB)

## Time Chart

TIMEKEEPER ALIAS	STATUS	DATE	HRS
Ex Kano Sams	Partner	12/18/2014	2.60
		12/22/2014	1.50
		3/13/2015	2.00
		3/25/2015	2.00
		5/19/2015	1.00
		5/28/2015	4.00
		7/14/2015	2.30
		10/21/2015	0.90
		11/4/2015	2.50
		11/5/2015	4.00
		11/6/2015	6.50
		7/21/2016	0.20
		9/13/2016	0.20
		9/19/2016	0.50
		9/28/2016	6.90
		9/29/2016	5.80
		12/1/2016	0.50
		2/1/2017	2.20
		7/5/2017	1.50
		7/11/2017	0.50
		10/24/2017	0.30
		11/18/2017	4.80
		11/19/2017	3.90
		11/20/2017	3.90
		11/21/2017	3.90
		11/22/2017	2.10
		11/24/2017	6.70
		11/24/2017	6.80
		11/25/2017	7.90
		11/26/2017	6.90
		11/29/2017	4.90
		11/30/2017	2.70
		12/1/2017	5.60
		12/3/2017	3.60
		12/4/2017	4.20
		12/21/2017	3.20
		12/22/2017	2.50
		12/22/2017	5.60
		12/23/2017	3.60
		12/26/2017	6.70
		12/27/2017	5.40
		1/2/2018	4.50
<b>EX KANO SAMS</b>	<b>PARTNER</b>	<b>TOTAL HOURS</b>	<b>147.30</b>

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	x	
In re FUQI INTERNATIONAL, INC.	:	10 Civ. 2515 (DAB)
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	ECF CASE
_____	x	

AMENDED DECLARATION OF EX KANO S. SAMS II

I, Ex Kano S. Sams II, declare as follows:

1. I am a member of the Bar of the State of California and I am admitted to practice *pro hac vice* in this action. I am a partner at Glancy Prongay & Murray LLP (formerly Glancy Binkow & Goldberg LLP) (the "Firm"), one of the Plaintiffs' Counsel in the above-captioned action (the "Action"). I respectfully submit this amended declaration in support of my Firm's application for an award of attorneys' fees in connection with services rendered in this Action and the reimbursement of expenses incurred by this Firm in the course of this litigation.

2. I have personal knowledge of all material matters related to the Action based upon my active participation in the prosecution of the Action since its inception.

3. This Action was commenced in March 2010. The Firm represents Craig B. Laub and J.D. Pisut, who, along with the Puerto Rico Government Employees and Judiciary Retirement Systems Administration and Sandra Redfern, comprise the PR Group, the Court-appointed Lead Plaintiff in the Action. Prior to the commencement of the Action, my Firm did an extensive investigation into possible claims in this litigation. Thereafter, the Firm assisted the Court-appointed Lead Counsel, Abraham, Fruchter & Twersky, LLP ("Lead Counsel"), in actively and vigorously litigating the Action. During the course of this Action, the services that



the Firm provided during the litigation included, but were not limited to, the following: (1) assisting in the drafting of a consolidated complaint; (2) working with Lead Counsel in connection with its investigation of Fuqi International, Inc. (“Fuqi” or the “Company”) in China; (3) working with a consultant to identify persons with knowledge of the claims asserted against Fuqi; (4) researching and working extensively on issues related to service of process for Defendants that were located outside of the country; (5) working with Lead Counsel and an accounting expert retained by Lead Counsel in connection with the Company’s financial restatement and its internal controls issues; (6) assisting in identifying issues to be used in the interviews of approximately two or three dozen former Fuqi employees; (7) assisting in drafting a tolling agreement with Fuqi’s outside auditors; (8) researching and drafting internal memoranda regarding various legal issues; (9) assisting in drafting a confidentiality stipulation with Defendants in connection with an agreement with Fuqi to produce documents; (10) assisting in the review and analysis of more than 230,000 pages of Defendants’ document production; (11) working with an attorney who was a long-time staff attorney in the Enforcement Division of the Securities and Exchange Commission to conduct an extensive and thorough review of the documents produced and to create detailed memoranda that were used throughout the litigation for critical issues and research; (12) working with Lead Counsel and financial experts regarding damages and stock market efficiency; (13) assisting in the preparation of an extensive mediation statement with accompanying exhibits supporting Plaintiffs’ contentions; (14) participating in a full-day mediation session that continued into the evening; (15) participating in the selection of an experienced claims administrator; (16) assisting in Lead Counsel’s consultations with Plaintiffs’ damages expert in devising the Plan of Allocation; and (17) assisting in the preparation of the settlement agreement and supporting documents.

4. All of the work performed by our Firm was done under the direction and supervision of Lead Counsel.

5. The information in this amended declaration regarding the Firm's time and expenses is based on time and expense printouts prepared and maintained by the Firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the Firm's guidelines and policies. As a result of these reviews and adjustments, I believe that the time reflected in the Firm's lodestar calculation and the expenses and charges for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses and charges are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

6. The identification and background of my Firm and its attorneys is attached hereto as Exhibit A.

7. The total number of hours spent on this litigation the Firm through August 31, 2015, is at least 1896.90. The total lodestar amount for attorney/paralegal time based on the Firm's current rates is \$830,117. The hourly rates shown below are the usual and customary rates charged for each individual in our cases. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the Firm. These records are available for review at the request of the Court. A breakdown of the lodestar is as follows:

NAME	TOTAL HOURS	HOURLY RATE	LODESTAR
Ex Kano S. Sams II (P)	354.80	595.00	\$211,106.00
Robert Prongay (P)	154.00	550.00	\$84,700.00
Dale MacDiarmid (A)	42.70	525.00	\$22,417.50
Elaine Chang (A)	4.50	350.00	\$1,575.00
Leanne Heine (A)	20.10	375.00	\$7,537.50
Tia Reiss (PL)	49.00	295.00	\$14,455.00
Harry Kharadjian (PL)	8.25	290.00	\$2,392.50
Ryan Wessels (PL)	75.25	220.00	\$16,555.00
Nan Prongay (OC)	1188.30	395.00	\$469,378.50
<b>TOTALS</b>	<b>1896.9</b>		<b>\$830,117.00</b>

(P) Partner  
(A) Associate  
(PL) Paralegal  
(OC) Of Counsel

8. My Firm also incurred or accrued a total of \$88,676.37 in unreimbursed expenses in connection with the prosecution of this litigation. The document attached as Exhibit B reflects the expenses that the Firm has incurred in prosecuting this Action.

9. The expenses incurred pertaining to this case are reflected in the books and records of this Firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

10. The total amount of fees and expenses incurred by the Firm are appropriate and reasonable considering that the Firm performed the tasks discussed in Paragraph three above.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this, the 31st day of August, 2015, in Los Angeles, California.

  
Ex. Kano S. Sams II

# EXHIBIT B

11:09 AM  
01/06/15  
Cash Basis

Glancy Binkow & Goldberg, LLP  
Transaction Detail By Account  
January 1, 2002 through January 6, 2015

Date	Num	Name	Source Name	Memo	Account	Original Amount	Paid Amount	
<b>5050 · Copy charges</b>								
07/22/2011	66646	Fuqi	Summitt Reprographics					
08/11/2011	66740	Fuqi	Summitt Reprographics		5050 Copy charges	2,416.64	2,416.64	
08/11/2011	66740	Fuqi	Summitt Reprographics		5050 Copy charges	1,458.82	1,458.82	
10/06/2011	66947	Fuqi	Summitt Reprographics		5050 Copy charges	2,645.95	2,645.95	
02/23/2012	67538	Fuqi	Summitt Reprographics		5050 Copy charges	3,934.25	3,934.25	
					5050 Copy charges	297.47	297.47	
Total 5050 · Copy charges							10,753.13	
<b>5100 · Courier/Messenger</b>								
06/24/2011	66526	Fuqi	Federal Express		5100 Courier/Messenger	31.53	31.53	
08/25/2011	66783	Fuqi	Federal Express		5100 Courier/Messenger	37.32	37.32	
09/15/2011	66861	Fuqi	Federal Express		5100 Courier/Messenger	20.71	20.71	
03/15/2013	69015	Fuqi	Federal Express	Lawrence D. Levit	5100 Courier/Messenger	23.04	23.04	
Total 5100 Courier/Messenger							112.60	
<b>5150 · Court/Transcripts/Att Services</b>								
<b>5155 · Attorney Services ((and Service of Process))</b>								
03/01/2011	66056	Fuqi	Aps International		5155 Attorney Service..	192.25	192.25	
03/04/2011	66094	Fuqi	Civil Action Group		5155 Attorney Service..	751.70	751.70	
04/05/2011	66193	Fuqi	Civil Action Group		5155 Attorney Service..	4,244.70	4,244.70	
04/05/2011	66193	Fuqi	Civil Action Group		5155 Attorney Service..	672.20	672.20	
04/05/2011	66193	Fuqi	Civil Action Group		5155 Attorney Service..	627.20	627.20	
05/04/2011	66345	Fuqi	Civil Action Group		5155 Attorney Service..	812.20	812.20	
08/03/2011	66704	Fuqi	Preemptive Process S..		5155 Attorney Service..	140.00	140.00	
01/27/2012	DEP	Fuqi	Fuqi	Atty Fee Refund	5155 Attorney Service..	-65.00	-65.00	
02/02/2012	67448	Fuqi	Civil Action Group	(Recurring)	5155 Attorney Service..	800.00	800.00	
05/23/2012	67910	Fuqi	Civil Action Group		5155 Attorney Service..	823.40	823.40	
07/15/2013	69434	Fuqi	Civil Action Group	Liu, Jeff Haiyong	5155 Attorney Service..	770.40	770.40	
07/15/2013	69434	Fuqi	Civil Action Group	Wong, Ching Wan	5155 Attorney Service..	360.00	360.00	
Total 5155 · Attorney Services ((and Service of Process))							9,929.05	
<b>5165 · Court Filing Fees</b>								
07/28/2011	66673	Fuqi	Clerk USDC Central C..		5165 Court Filing Fees	15.00	15.00	
08/03/2011	66705	Fuqi	Clerk USDC SDNY		5165 Court Filing Fees	200.00	200.00	
12/20/2013	10130	Fuqi	Chase Card Service	LASC	5165 Court Filing Fees	4.75	4.75	
Total 5165 · Court Filing Fees							219.75	
Total 5150 Court/Transcripts/Att Services							10,148.80	
<b>5200 · Litigation fund</b>								
<b>5225 · LA Case Lit Fund</b>								
08/30/2010	65367	Fuqi	Abraham Fruchter & T...		5225 LA Case Lit Fund	10,000.00	10,000.00	
05/23/2011	66409	Fuqi	Abraham Fruchter & T...		5225 LA Case Lit Fund	15,000.00	15,000.00	
09/01/2011	66824	Fuqi	Abraham Fruchter & T...		5225 LA Case Lit Fund	15,000.00	15,000.00	
02/27/2013	68950	Fuqi	Abraham Fruchter & T...		5225 LA Case Lit Fund	25,000.00	25,000.00	
Total 5225 · LA Case Lit Fund							65,000.00	

Case 1:10-cv-02515-DAB Document 109-5 Filed 08/31/15 Page 28 of 30

11:09 AM  
01/06/15  
Cash Basis

Glancy Binkow & Goldberg, LLP  
Transaction Detail By Account  
January 1, 2002 through January 6, 2015

Date	Num	Name	Source Name	Memo	Account	Original Amount	Paid Amount
5200 · Litigation fund - Other							
08/24/2010	65337	Fuqi	FUQI Securities Litigat...	VOID:	5200 · Litigation fund	0.00	0.00
Total 5200 · Litigation fund - Other							0.00
Total 5200 · Litigation fund							0.00
5340 · Research & Investigations (All)							
5350 · Research (Online) (Westlaw, Lexis Nexis, etc)							
05/25/2010	65103	Fuqi	LexisNexis		5350 · Research (Onlin...	2.60	2.60
08/11/2011	66732	Fuqi	LexisNexis		5350 · Research (Onlin...	0.38	0.38
10/25/2011	67037	Fuqi	West Group Payment ...		5350 · Research (Onlin...	29.66	29.66
11/17/2011	67099	Fuqi	Michaela Ligman		5350 · Research (Onlin...	61.25	61.25
02/23/2012	67548	Fuqi	West Group Payment ...		5350 · Research (Onlin...	43.93	43.93
02/24/2012	67563	Fuqi	LexisNexis		5350 · Research (Onlin...	24.48	24.48
05/18/2012	67895	Fuqi	American Express	PACER	5350 · Research (Onlin...	22.40	22.40
08/20/2012	68294	Fuqi	West Group Payment ...		5350 · Research (Onlin...	43.06	43.06
08/20/2012	68256	Fuqi	American Express	PACER	5350 · Research (Onlin...	7.90	7.90
11/26/2012	68566	Fuqi	American Express	PACER	5350 · Research (Onlin...	8.10	8.10
02/18/2013	68936	Fuqi	American Express	PACER	5350 · Research (Onlin...	1.50	1.50
05/24/2013	69321	Fuqi	West Group Payment ...		5350 · Research (Onlin...	2.69	2.69
05/24/2013	69278	Fuqi	American Express	PACER	5350 · Research (Onlin...	4.30	4.30
08/21/2013	69587	Fuqi	American Express	PACER	5350 · Research (Onlin...	4.30	4.30
11/19/2013	69907	Fuqi	American Express	PACER	5350 · Research (Onlin...	6.40	6.40
01/14/2014	10196	Fuqi	LexisNexis		5350 · Research (Onlin...	107.31	107.31
01/14/2014	10206	Fuqi	Thomson Reuters West		5350 · Research (Onlin...	13.76	13.76
02/26/2014	10375	Fuqi	American Express	PACER	5350 · Research (Onlin...	11.80	11.80
08/19/2014	11097	Fuqi	American Express	PACER	5350 · Research (Onlin...	17.10	17.10
11/26/2014	11528	Fuqi	American Express	PACER	5350 · Research (Onlin...	0.40	0.40
Total 5350 · Research (Online) (Westlaw, Lexis Nexis, etc)							413.32
5360 · Experts (Accounting or Damages)							
02/24/2011	DEP	Fuqi	Fuqi		5360 · Experts (Account...	-10,000.00	-10,000.00
Total 5360 · Experts (Accounting or Damages)							-10,000.00
5380 · Investigations							
09/24/2010	65428	Fuqi	David Dees		5380 · Investigations	375.00	375.00
09/24/2010	65437	Fuqi	Dees Research		5380 · Investigations	375.00	375.00
02/11/2011	TRA	Fuqi	Chinaways Company		5380 · Investigations	10,000.00	10,000.00
Total 5380 · Investigations							10,750.00
Total 5340 · Research & Investigations (All)							1,163.32
5400 · Telephone							
05/10/2010	65098	Fuqi	Genesys Conferencing		5400 · Telephone	15.00	15.00
07/01/2010	65225	Fuqi	Michael Goldberg		5400 · Telephone	3.84	3.84
07/30/2010	65301	Fuqi	Michael Goldberg		5400 · Telephone	10.99	10.99
Total 5400 · Telephone							29.83

Case 1:10-cv-02515-DAB Document 109-5 Filed 08/31/15 Page 29 of 30

11:09 AM  
 01/06/15  
 Cash Basis

**Glancy Binkow & Goldberg, LLP**  
**Transaction Detail By Account**  
 January 1, 2002 through January 6, 2015

Date	Num	Name	Source Name	Memo	Account	Original Amount	Paid Amount
5450 - Travel							
5500 - Airfare							
12/28/2011	67253	Fuqi	Chase Card Service	AMERICAN AIR LAX/JFK	5500 - Airfare	535.40	535.40
12/23/2014	11677	Fuqi	American Express	Delta, LAX-JFK-LAX, Ex Karo Sams	5500 - Airfare	378.20	378.20
Total 5500 - Airfare							913.60
5550 - Auto							
12/16/2013	69928	Fuqi	Rob Prongay	Driving to Newport Beach for Mediation	5550 - Auto	30.51	30.51
12/16/2013	69928	Fuqi	Rob Prongay	Driving back from Mediation in Newport Beach	5550 - Auto	30.51	30.51
Total 5550 - Auto							61.02
5650 - Meals							
07/01/2010	65225	Fuqi	Michael Goldberg	WITNESS LUNCH	5650 - Meals	197.86	197.86
09/02/2010	65403	Fuqi	Michael Goldberg	witness lunch	5650 - Meals	137.07	137.07
06/10/2011	66479	Fuqi	Michael Goldberg	WITNESS LUNCH	5650 - Meals	65.42	65.42
10/04/2011	66917	Fuqi	Michael Goldberg		5650 - Meals	53.02	53.02
12/16/2013	69928	Fuqi	Rob Prongay	Breakfast Prior to Mediation	5650 - Meals	8.70	8.70
Total 5650 - Meals							462.07
5750 - Parking							
01/31/2012	67430	Fuqi	Nan Prongay		5750 - Parking	32.00	32.00
Total 5750 - Parking							32.00
Total 5450 - Travel							1,468.69
TOTAL							<u>88,676.37</u>

Case 1:10-cv-02515-DAB Document 109-5 Filed 08/31/15 Page 30 of 30

# **EXHIBIT NN**

# Exhibit 6



Jonathan Gardner (*pro hac vice*)  
Christine M. Fox (*pro hac vice*)  
Guillaume Buell (*pro hac vice*)  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477  
jgardner@labaton.com  
cfox@labaton.com  
gbuell@labaton.com

Eric K. Jenkins (10783)  
**CHRISTENSEN & JENSEN, P.C.**  
257 East 200 South, Suite 1100  
Salt Lake City, UT 84111  
Telephone: (801) 323-5000  
Facsimile: (801) 355-3472

*Counsel for Lead Plaintiff State-Boston Retirement System  
and the Proposed Class*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

IN RE NUSKIN ENTERPRISES, INC., SECURITIES LITIGATION	Master File No. 2:14-cv-00033-JNP-BCW  Hon. Jill Parrish
This Document Related To: ALL ACTIONS	<b>DECLARATION OF JOSHUA L. CROWELL ON BEHALF OF GLANCY PRONGAY &amp; MURRAY LLP IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES</b>



Joshua L. Crowell, Esq., declares as follows, pursuant to 28 U.S.C. § 1746:

1. I am a Partner at the law firm Glancy Prongay & Murray LLP (“GPM”). I submit this declaration in support of Lead Counsel’s motion for an award of attorneys’ fees and payment of litigation expenses on behalf of all Plaintiffs’ counsel who contributed to the prosecution of the claims in the above-captioned action (the “Action”) from inception through August 5, 2016 (the “Time Period”).

2. GPM serves as additional counsel for Plaintiffs in this Action.

3. The schedule attached hereto as Exhibit A is a summary indicating the amount of time spent by each attorney and professional support staff-member of GPM who was involved in the prosecution of the Action, and the lodestar calculation based on GPM’s current billing rates. For personnel who are no longer employed by GPM, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment by GPM. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by GPM, which are available at the request of the Court. Time expended in preparing this application for fees and payment of expenses has not been included in this request.

4. The hourly rates for the attorneys and professional support staff in GPM included in Exhibit A are the same as GPM’s regular rates charged for their services, which have been accepted in other securities or shareholder litigations.

5. The total number of hours expended on this litigation by GPM during the Time Period is 1,034.75 hours. The total lodestar for GPM for those hours is \$580,882.25.

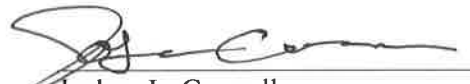
6. GPM's lodestar figures are based upon its billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in GPM's billing rates.

7. As detailed in Exhibit B, GPM has incurred a total of \$38,470.59 in expenses in connection with the prosecution of the Action. The expenses are reflected on the books and records of GPM. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of GPM, attached hereto as Exhibit C is a brief biography of GPM as well as biographies of its partners, of counsels, and associates.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Aug. 23, 2016.

  
Joshua L. Crowell

## **Exhibit A**

**EXHIBIT A*****IN RE NUSKIN ENTERPRISES, INC., SEC. LITIG.***  
**Master File No. 2:14-cv-00033-JNP-BCW (D. Utah)****LODESTAR REPORT****FIRM: Glancy Prongay & Murray LLP****REPORTING PERIOD: INCEPTION THROUGH AUGUST 5, 2016**

<b>PROFESSIONAL</b>	<b>STATUS*</b>	<b>HOURLY RATE</b>	<b>TOTAL HOURS TO DATE</b>	<b>TOTAL LODESTAR TO DATE</b>
Robert Prongay	P	695.00	5.50	3,822.50
Joshua Crowell	P	695.00	507.50	352,712.50
Leanne Heine	A	495.00	107.80	53,361.00
Alexa Mullarky	A	350.00	176.60	61,810.00
Melissa Wright	A	450.00	59.50	26,775.00
Sean Collins	SA	475.00	167.60	79,610.00
Harry Kharadjian	P	290.00	3.00	870.00
Jack Ligman	RA	265.00	7.25	1,921.25
<b>TOTAL</b>			<b>1,034.75</b>	<b>580,882.25</b>

Partner (P)  
Of Counsel (OC)  
Associate (A)  
Staff Attorney (SA)

Paralegal (PL)  
Investigator (I)  
Research Analyst (RA)

## **Exhibit B**

**EXHIBIT B*****IN RE NUSKIN ENTERPRISES, INC., SEC. LITIG.***  
**Master File No. 2:14-cv-00033-JNP-BCW (D. Utah)****EXPENSE REPORT****FIRM: Glancy Prongay & Murray LLP****REPORTING PERIOD: INCEPTION THROUGH AUGUST 5, 2016**

<b>EXPENSE</b>	<b>TOTAL AMOUNT</b>
Duplicating	
Postage	0.96
Telephone / Fax	129.52
Messengers	
Filing & Witness Fees	
Court Hearing & Deposition Transcripts	
Online Legal and Financial Research	8,655.81
Overnight Delivery Services	73.25
Experts/Consultants	
Litigation Support/Electronic Discovery	
Transportation/Meals/Lodging	5,611.05
Litigation Fund Contribution	24,000.00
Miscellaneous	
<b>TOTAL</b>	<b>38,470.59</b>

# **EXHIBIT OO**

## EXHIBIT 8



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

Fond Du Lac Bumper Exchange, Inc., and Roberts  
Wholesale Body Parts, Inc. on Behalf of Themselves  
and Others Similarly Situated,

Plaintiffs,

v.

Jui Li Enterprise Company, Ltd., et al.,

Defendants.

Case No. 2:09-cv-00852-LA

**DECLARATION OF SUSAN G. KUPFER IN SUPPORT OF DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF  
EXPENSES FILED ON BEHALF OF GLANCY PRONGAY & MURRAY LLP**

I, Susan G. Kupfer, declare and state as follows:

1. I am a partner of the law firm of Glancy Prongay & Murray LLP, the successor firm to Glancy Binkow & Goldberg LLP. I submit this declaration in support of Direct Purchaser Plaintiffs' motion for an award of attorneys' fees and reimbursement of expenses in connection with the services rendered in this litigation. I make this declaration based on my personal knowledge and if called as a witness, I could and would competently testify to the matters stated herein.

2. Glancy Binkow & Goldberg LLP, now Glancy Prongay & Murray LLP, served as counsel to the Direct Purchaser Class throughout the course of this litigation. The background and experience of the firm and its attorneys are summarized in the résumé attached as Exhibit 1.

3. The firm has prosecuted this litigation solely on a contingent-fee basis, and has been at risk that it would not receive any compensation for prosecuting claims against the Defendants.

4. During the course of this litigation, the firm has been involved in the following activities on behalf of the Direct Purchaser Class at the request or under the direction of Co-Lead Counsel:

- Investigated factual and legal support of Complaint's allegations
- Represented Plaintiff Robert Johnson and his business, Robert's Wholesale Body Parts
- Participated in written discovery and document production on behalf of Robert's Wholesale Body Parts
- Performed document review and foreign language translation into Chinese of defendants' documents.

5. Attached as Exhibit 2 is a summary of the firm's total hours and lodestar, computed at historical rates, from case inception through April 30, 2015. Excluded from this summary is time expended in preparing this fee and expense declaration. Exhibit 2 provides the names of the attorneys and professional support staff who worked on this case, and each timekeeper's respective hours and lodestar at historical rates. This summary was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm.

6. The total number of hours expended on this litigation by my firm from case inception through April 30, 2015 is 1,779 hours. The total lodestar for my firm is \$650,670.00.

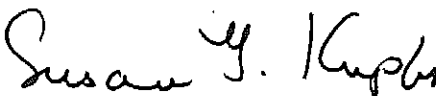
7. The hourly rates for the attorneys and professional support staff in my firm included in Exhibit 2 are the usual and customary hourly rates charged by the firm.

8. The firm has expended a total of \$1,756.68 in unreimbursed costs and expenses in connection with the prosecution of this litigation from case inception through April 30, 2015. These costs and expenses are summarized in the chart attached hereto as Exhibit 3. They were

incurred on behalf of the Direct Purchaser Class by my firm on a contingent basis, and have not been reimbursed. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

9. I have reviewed the time and expenses reported by my firm in this case which are included in this declaration, and I affirm that they are true and accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 27th day of May, 2015 at Berkeley, California.

  
\_\_\_\_\_  
Susan G. Kupfer

**EXHIBIT 2**



**EXHIBIT 3**

**EXHIBIT 3**

**Expense Summary**  
**Case Inception through April 30, 2015**

Disbursements	Total
Computer Research	\$ 54.73
Court Fees	\$ 215.00
Court Reporter	
Food and Beverage	
Photocopying - Inhouse	
Photocopying - Commercial	
Postage/Express Delivery/Messenger	\$ 483.30
Outside Professional Services	
Telephone/Facsimile	
Travel (Air, Ground Travel, Meals, Lodging, etc.)	\$ 1,003.65
Witness/Service Fees	
Misc. (Describe)	
<b>TOTAL</b>	<b>\$ 1,756.68</b>

Assessment Payments to the Litigation Fund	N/A
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# **EXHIBIT PP**



# EXHIBIT R

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

**IN RE DUCTILE IRON PIPE FITTINGS  
("DIPF") INDIRECT PURCHASER  
ANTITRUST LITIGATION**

**Civ. No. 12-169 (AET) (LHG)**

**THIS DOCUMENT RELATES TO:**

**ALL INDIRECT PURCHASER ACTIONS**

**DECLARATION OF DARYL F. SCOTT IN SUPPORT OF CO-LEAD COUNSEL'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**

I, Daryl F. Scott declare as follows:

1. I am a partner with the law firm of Scott+Scott Attorneys at Law LLP. I submit this declaration in support of the Indirect Purchaser Plaintiff's (the "IPPs") application for an award of attorneys' fees and the reimbursement of litigation expenses and charges ("Expenses") incurred in connection with prosecution of *In re Ductile Iron Pipe Fittings ("DIPF") Indirect Purchaser Antitrust Litigation* (the "Action").

2. My firm is a member of the Liaison Class Counsel who represented the IPPs in the Action. The background and experience of my firm and the individual attorneys who worked on the Action are summarized in Exhibit A.

3. My firm has prosecuted this Action on a contingent-fee basis and has been at risk, throughout the pendency of the Action, of not being compensated for the claims against the defendants.

4. My firm has performed the following work in the prosecution of the Action for the benefit of the IPPs:<sup>1</sup> reading Defendants' Answers to Complaint in light of the Court's opinion on Defendants' Motions to Dismiss to determine status of claims, *i.e.*, whether each claim was recognized, answered, and/or alleged to have been dismissed by each Defendant, and advising Co-Lead Counsel and Co-Counsel of the findings of the analysis; analyzing the Court's opinion on Defendants' Motions to Dismiss to determine applicability of the Order on IPP claims and ability to represent the class; reading and reviewing Defendants' responses to discovery to determine the sufficiency of the responses and to prepare a memo to Co-Lead Counsel and Co-Counsel regarding the same; reading and reviewing 30(b)(6) notices, and preparing objections and responses to same; preparing a memorandum to be used by all counsel to prepare IPPs for 30(b)(6) depositions; coordinating the responses to 30(b)(6) deposition notices by all IPPs; preparing and editing responses to interrogatories and coordinating the execution of verifications by all IPPs; preparing and editing discovery requests to be served on Defendants; corresponding and teleconferencing with Co-Lead Counsel and Co-Counsel regarding each of the aforementioned tasks; and reading and coding documents produced to IPPs in the action.

5. Exhibit B sets forth my firm's lodestar, computed at historical rates, for the period from May 10, 2012, through and including March 31, 2018. This is time spent after the appointment of Interim Co-Lead Counsel and Liaison Counsel for the IPPs. As reflected in Exhibit B, the total numbers of hours is 348.40, and the total lodestar is \$157,453.

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<sup>1</sup> In addition to the work performed for the IPP class, Scott+Scott performed the following work that was client-specific, but which informed counsel's work on behalf of the class: preparing case memo updates to clients; reading and analyzing the Court's opinion on dispositive motions to determine applicability of holding regarding our clients and advising client of the same; coordinating with client to respond to discovery; reading and reviewing client's documents for privilege in order to prepare documents for production; preparing and editing objections and responses to Defendants' discovery requests; and preparing client for deposition.

6. Exhibit B was compiled from contemporaneous time records prepared and maintained by my firm. The lodestar represents the work assigned to my firm by Co-Lead Counsel, and was performed by attorneys and professional staff at my firm for the benefit of the class of IPPs. The hourly rates for the attorneys and professional staff as reflected in Exhibit B, are the usual and customary hourly rates charged by my firm in similar matters.

7. Exhibit C sets forth the unreimbursed Expenses my firm incurred during the prosecution of the Action, on behalf of, and for the benefit of, the class of IPPs. The Expenses incurred are from the inception of the litigation through and including March 31, 2018. The Expenses in Exhibit C are also reflected in the accounting records of my firm. The accounting records were prepared from Expense vouchers, check records, and other source materials, and are an accurate record of the Expenses incurred.

I declare under penalty of perjury that the foregoing facts are true and correct.

Executed on April 23, 2018.

  
\_\_\_\_\_

Daryl F. Scott

**EXHIBIT B**

*In re Ductile Iron Pipe Fittings ("DIPF") Antitrust Litigation*, Civ. No. 12-169 (AET)(LHG)

Scott+Scott Attorneys at Law LLP

Lodestar on a Historical Basis

May 10, 2012 through March 31, 2018

ATTORNEYS	STATUS	YEAR	HOURS	HISTORICAL HOURLY RATE	LODESTAR
Christopher Burke	P	2012	1.00	\$775.00	\$775.00
Christopher Burke	P	2013	0.70	775.00	542.50
Christopher Burke	P	2014	0.60	775.00	465.00
Daryl F. Scott	P	2016	0.60	775.00	465.00
Daryl F. Scott	P	2017	1.60	900.00	1,440.00
David R. Scott	P	2015	0.70	775.00	542.50
Joseph Guglielmo	P	2013	8.40	710.00	5,964.00
Joseph Guglielmo	P	2014	3.00	710.00	2,130.00
Joseph Guglielmo	P	2015	0.90	710.00	639.00
Joseph Guglielmo	P	2016	1.00	710.00	710.00
Kristen Anderson	P	2012	0.60	550.00	330.00
Walter Noss	P	2012	0.80	675.00	540.00
Walter Noss	P	2013	6.90	675.00	4,657.50
Walter Noss	P	2014	1.00	675.00	675.00
Anne Box	OC	2013	0.80	680.00	544.00
Joseph Cohen	OC	2012	6.50	680.00	4,420.00
Joseph Cohen	OC	2013	20.50	680.00	13,940.00
Joseph Cohen	OC	2014	17.80	710.00	12,638.00
Joseph Cohen	OC	2015	3.70	710.00	2,627.00
Gary Dustin Foster	OC	2013	58.40	380.00	22,192.00
Gary Dustin Foster	OC	2014	121.90	380.00	46,322.00
Gary Dustin Foster	OC	2016	2.00	380.00	760.00
Ryan Wagenleitner	A	2014	6.20	575.00	3,565.00
Stephen Teti	A	2015	2.40	500.00	1,200.00
Stephen Teti	A	2016	3.90	500.00	1,950.00
Stephanie Hackett	A	2013	39.90	425.00	16,957.50
<b>SUBTOTAL ATTORNEYS</b>			<b>311.80</b>		<b>\$146,991.00</b>

NON-ATTORNEYS	STATUS	YEAR	HOURS	HISTORICAL HOURLY RATE	LODESTAR
Ann Slaughter	PL	2015	3.20	\$325.00	\$1,040.00
Barbara Collazo	PL	2012	3.80	280.00	1,064.00
Ellen Dewan	PL	2013	2.60	210.00	546.00
Ellen Dewan	PL	2014	6.50	325.00	2,112.50
Kaitlin Steinberger	PL	2016	0.30	285.00	85.50
Sam Fein	PL	2013	2.80	280.00	784.00
Tamar Pacht	PL	2013	0.90	270.00	243.00
Tamar Pacht	PL	2014	6.60	275.00	1,815.00
Boris Lamprey	LS	2014	6.10	280.00	1,708.00
Victor Napenas	LS	2016	3.80	280.00	1,064.00
<b>SUBTOTAL NON-ATTORNEYS</b>			<b>36.60</b>		<b>\$10,462.00</b>

<b>GRAND TOTAL</b>			<b>348.40</b>		<b>\$157,453.00</b>
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- (P) Partner
- (A) Associate
- (INV) Investigator
- (OC) Of Counsel
- (PL) Paralegal
- (LS) Litigation Support

**EXHIBIT C**

*In re Ductile Iron Pipe Fittings ("DIPF") Antitrust Litigation*, Civ. No. 12-169 (AET)(LHG)

Scott+Scott Attorneys at Law LLP

Expenses through March 31, 2018

<b>CATEGORY</b>	<b>AMOUNT</b>
Court Fees	\$2,210.00
Computer Research	999.09
Document Production	952.10
Photocopies - In House	862.00
Postage & Overnight Delivery	274.60
Staff Overtime	142.44
Telephone	153.56
Travel (Meals, Lodging & Transportation)	226.05
<b>TOTAL</b>	<b>\$5,819.84</b>

# **EXHIBIT QQ**



## EXHIBIT 16

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

FOND DU LAC BUMPER EXCHANGE, INC., AND  
ROBERTS WHOLESALE BODY PARTS, INC. ON  
BEHALF OF THEMSELVES AND OTHERS  
SIMILARLY SITUATED,

Plaintiffs,

v.

JUI LI ENTERPRISE COMPANY, LTD.,

Defendants.

Case No. 2:09-cv-00852-LA

**DECLARATION OF DARYL F. SCOTT IN SUPPORT OF DIRECT PURCHASER  
PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF  
EXPENSES FILED ON BEHALF OF SCOTT+SCOTT ATTORNEYS AT LAW, LLP**

I, Daryl F. Scott, declare and state as follows:

1. I am a partner with the law firm of Scott+Scott, Attorneys at Law, LLP.
2. I submit this declaration in support of the Direct Purchaser Plaintiffs' motion for an award of attorneys' fees and for the reimbursement of expenses in connection with this litigation.
3. I make this declaration based on personal knowledge and can, if called upon, competently testify to the matters stated in this declaration.
4. My firm has served as counsel to the Direct Purchaser Class during the litigation.
5. My firm's background and experience is summarized in the résumé attached hereto as Exhibit 1.

6. My firm has prosecuted this litigation solely on a contingent-fee basis, and has been at risk that it would not receive compensation for prosecuting claims against the Defendants.

7. My firm has prosecuted this litigation on behalf of the Direct Purchaser Class and under the direction of Co-Lead Counsel.

8. A summary of my firm's lodestar, at historical rates, from the inception of the case through April 30, 2015, is attached hereto as Exhibit 2. The summary excludes time spent preparing this declaration. It was prepared from contemporaneous time records regularly maintained by my firm.

9. The time spent by my firm on this litigation from inception through April 30, 2015 totals 1,458.4 hours and the firm's lodestar totals \$513,251.

10. The hourly rates for the attorneys and professional support staff as set forth in Exhibit 2 are the usual and customary hourly rates charged by my firm.

11. My firm has \$3,179.18 in unreimbursed expenses (excluding the assessments discussed below). The expenses were incurred on behalf of the Direct Purchaser Class from inception through April 30, 2015 and are set forth in the chart attached hereto as Exhibit 3. The expenses are reflected in the books and records of my firm and were prepared from expense vouchers, check records, and other source materials that accurately represent the expenses incurred.

12. My firm paid \$25,000 in assessments to the litigation fund for the prosecution of this litigation.

13. I have reviewed the time and expenses reports in this declaration, and I affirm that they are true and accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 28th day of May, 2015 at Colchester, CT.

A handwritten signature in black ink, appearing to read "D. Scott", written over a horizontal line.

Daryl F. Scott

**EXHIBIT 2**

**Scott+Scott Attorneys at Law, LLP**  
**Lodestar**  
**Case Inception through April 30, 2015**

<b>Name</b>	<b>Title</b>	<b>Bar Date</b>	<b>Hours</b>	<b>Hourly rates (historic)</b>	<b>Lodestar</b>
<b>Attorneys</b>					
Christopher Burke	Partner	1994	73.8	\$775	\$ 57,195
David R. Scott	Partner	1989	3.4	\$775	\$ 2,635
Daryl F. Scott	Partner	1985	2.0	\$675	\$ 1,350
Joseph Guglielmo	Partner	1996	1.2	\$710	\$ 852
Donald Broggi	Partner	2000	3.7	\$675	\$ 2,498
Walter Noss	Partner	2001	5.9	\$635	\$ 3,747
Walter Noss	Partner	2001	1.0	\$675	\$ 675
Kristen Anderson	Partner	2006	2.8	\$550	\$ 1,540
Erin Comite	Partner	2002	1.0	\$660	\$ 660
Penny Abdiel	Associate		223.2	\$425	\$ 94,860
Anne Box	Of Counsel	1989	0.3	\$680	\$ 204
Kenneth Lau	Contract Atty	1997	865.8	\$350	\$ 303,030
Total attorneys			1,184.1		\$ 469,245
<b>Staff</b>					
Ellen DeWan	Paralegal		13.8	\$280	\$ 3,864
Ann Slaughter	Paralegal		0.2	\$320	\$ 64
Tamar Pacht	Paralegal		2.1	\$270	\$ 567
Barbara Collazo	Paralegal		1.9	\$280	\$ 532
Alice Hsieh	Law Clerk		243.5	\$150	\$ 36,525
John Jasnoch	Law Clerk		11.3	\$180	\$ 2,034
Mario Tlatenchi	Litigation Specialist		1.5	\$280	\$ 420
Total staff			274.3		\$ 44,006
Total attorneys and staff			1,458.4		\$ 513,251

**EXHIBIT 3****Scott+Scott Attorneys at Law, LLP  
Expenses  
Case Inception through April 30, 2015**

Disbursements	Total
Computer Research	\$ 701.40
Court Fees	\$ 881.00
Photocopying - In-house	\$ 1,227.25
Postage/Express Delivery/Messenger	\$ 77.08
Telephone/Facsimile	\$ 182.11
Travel (Air, Ground Travel, Meals, Lodging, etc.)	\$ 110.34
Total disbursements	\$ 3,179.18
Payments to the Litigation Fund	\$ 25,000.00
Total disbursements and payments to the litigation fund	\$ 28,179.18

# **EXHIBIT RR**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

MARGARET MURR and DAVID REIGN, on  
behalf of themselves and all others similarly  
situated,

Plaintiff,

v.

CAPITAL ONE BANK (USA), N.A.,

Defendant.

Civil Action No.: 1:13-cv-1091 LMB/TCB

CLASS ACTION

JURY TRIAL DEMANDED

Judge: Hon. Leonie M. Brinkema

Filed: August 30, 2013

**DECLARATION OF DARYL F. SCOTT  
IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**



I, Daryl F. Scott, declare:

1. I am an attorney duly licensed to practice before all courts of the State of Connecticut and admitted *pro hac vice* to practice before this Court. I am a partner of the law firm of Scott+Scott Attorneys at Law, LLP, counsel for Plaintiffs. I have personal knowledge of the matters stated and, if called upon, could and would competently testify to them. I submit this declaration in support of the Motion for Final Approval of Class Action Settlement.

2. My firm participated in the litigation throughout the course of this action. Those litigation activities are generally described in the Declaration of Timothy G. Blood in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement [Dkt. 129-1]. The services rendered and work performed by attorneys, paralegals, and other professionals and paraprofessionals of my firm during the course of this litigation were not duplicative of work done by others. Plaintiffs' counsel endeavored to litigate this case efficiently.

3. The lodestar schedule below is a detailed summary indicating the amount of time spent by each attorney, paralegal, and other professionals and para-professionals of my firm who performed work in this litigation since the inception of the litigation through the present. The schedule includes the name of each person who worked on the case, hourly billing rates, and the number of hours expended. The backgrounds and qualifications of the attorneys who worked on the matter are set forth in the Firm Resume attached as Exhibit A. The lodestar calculation is based on the firm's current billing rates, including for attorneys and employees no longer employed by the firm, at the firm's customary hourly rates charged to our fee-paying clients, and which have been accepted as reasonable by other district courts in numerous other class action litigations.

4. The number of total hours expended on this litigation by my firm through April 23, 2015 is 1,361.5. The lodestar for my firm totals \$705,776.

5. My firm's lodestar, as shown in the schedule below, is based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

<b>Lodestar</b>			
<b>Name</b>	<b>Total Hours</b>	<b>Hourly Rate</b>	<b>Lodestar</b>
<b>Partners</b>			
David Scott	5.4	\$775	\$4,185
Christopher Burke	1.5	\$775	\$1,163
Joseph Guglielmo	349.7	\$710	\$248,287
Walter Noss	5.0	\$675	\$3,375
Total Partners	361.6		\$257,010
<b>Of Counsel</b>			
Joseph Cohen	50.3	\$710	\$35,713
Total Of Counsel	50.3		\$35,713
<b>Associates</b>			
Luis Lorenzana	247.7	\$550	\$136,235
Hal Cunningham	46.0	\$550	\$25,300
Troy Terpening	63.1	\$500	\$31,550
Samantha Smith	86.0	\$380	\$32,680
Alicia Zimmerman	374.6	\$380	\$142,348
Andrea Farah	65.6	\$390	\$25,584
Total Associates	883.0		\$393,697
<b>Paralegals</b>			
Ellen Dewan	18.6	\$325	\$6,045
Sam Fein	19.4	\$285	\$5,529
Tamar Pacht	28.3	\$275	\$7,783
Total Paralegals	66.3		\$19,357
<b>Totals</b>	<b>1,361.2</b>		<b>\$705,776</b>

6. My firm has incurred a total of \$48,267.73 in unreimbursed expenses in connection with the prosecution of this litigation through April 23, 2015. The expenses incurred in this action are listed below and are reflected in the books and records of my firm. These books

and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

<b>Expenses</b>	
Courier & Postage	\$429.57
Court Reporters & Transcripts	\$12,853.59
Document Production & Storage	\$1,840.00
Filing, Witness & Other Fees	\$20.00
On-Line Research	\$3,213.81
Photocopies	\$11,322.75
Staff Overtime	\$109.80
Telephone, Facsimile and Data Charges	\$510.07
Travel (Meals, Hotels & Transportation)	\$17,968.14
Total	\$48,267.73

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed this 23 day of April, 2015, at Colchester, Connecticut.




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Daryl F. Scott

# **EXHIBIT SS**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X
KEVIN CORNWELL, Individually and On	: Civil Action No. 08-cv-03758
Behalf of All Others Similarly Situated,	: <b>(Consolidated)</b>
	: :
Plaintiff,	: <u>CLASS ACTION</u>
	: :
vs.	: DECLARATION OF DARYL SCOTT FILED
	: ON BEHALF OF SCOTT + SCOTT LLP IN
CREDIT SUISSE GROUP, et al.,	: SUPPORT OF APPLICATION FOR
	: AWARD OF ATTORNEYS' FEES AND
Defendants.	: EXPENSES
_____	X

I, Daryl Scott, declare as follows:

1. I am an attorney at the firm Scott + Scott LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is counsel of record for plaintiffs the Louisiana Municipal Employees' Retirement System and John Grady.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 3,742.60. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$2,100,311.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
David Scott	(P)	239.8	\$750.00	\$179,850.00
Beth Kaswan	(P)	948	\$750.00	\$711,000.00
Arthur Shingler	(P)	204.4	\$700.00	\$143,080.00
Christopher Burke	(P)	5.6	\$700.00	\$3,920.00
Joseph Guglielmo	(P)	114.6	\$625.00	\$71,625.00
Judith Scolnick	(P)	4.8	\$700.00	\$3,360.00
Donald Broggi	(P)	162.4	\$575.00	\$93,380.00
Geoff Johnson	(P)	109.4	\$625.00	\$68,375.00
Walter Noss	(A)	7.9	\$575.00	\$4,542.50
Hal Cunningham	(A)	52.7	\$400.00	\$21,080.00
David Goldberger	(A)	5.5	\$400.00	\$2,200.00
Luis Lorenzana	(A)	227.8	\$400.00	\$91,120.00
Daryl Scott	(A)	68.4	\$600.00	\$41,040.00
Mike Burnett	(A)	63.6	\$600.00	\$38,160.00
Mary Blasy	(A)	23.5	\$550.00	\$12,925.00
Jay Burke	(A)	562	\$455.00	\$255,710.00
Amanda Lawrence	(A)	98.8	\$500.00	\$49,400.00

Thomas Laughlin	(A)	472.9	\$400.00	\$189,160.00
Thomas Wilhelm	(A)	166.7	\$450.00	\$75,015.00
Stephanie Hackett	(A)	38.4	\$380.00	\$14,592.00
Cathy Johnson	(PL)	20.5	\$150.00	\$3,075.00
Ellen Dewan	(PL)	17.5	\$250.00	\$4,375.00
Mario Tlatenchi	(PL)	7	\$220.00	\$1,540.00
Cynthia McGowan	(PL)	3.55	\$220.00	\$781.00
Ann Slaughter	(PL)	38.65	\$240.00	\$9,276.00
Erika Mayo	(LC)	70.3	\$150.00	\$10,545.00
Nicole Veno	(LC)	7.9	\$150.00	\$1,185.00
<b>TOTAL:</b>		<b>3742.6</b>		<b>\$2,100,311.50</b>

5. My firm incurred a total of \$170,889.84 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

**EXPENSES**

From Inception to June 10, 2011

<b>EXPENSE CATEGORY</b>	<b>TOTAL</b>
Meals, Hotels & Transportation	\$21,726.51
Photocopies	\$9,262.82
Postage	\$523.44
Telephone, Facsimile	\$1,584.57
Messenger, Overnight Delivery	\$786.51
Filing, Witness & Other Fees	\$3,804.50
Lexis, Westlaw, Online Library Research	\$3,954.93
Class Action Notices/Business Wire	\$175.00
Mediation Fees	\$18,875.00
Experts/Consultants/Investigators	\$110,196.56
<b>TOTAL</b>	<b>\$170,889.84</b>

6. The following is additional information regarding these expenses:

(a) Filing, Witness and Other Fees: \$3,804.50.

<i>DATE</i>	<i>VENDOR</i>
09/18/2008	Legal Language Services
10/30/2009	Class Action Research & Litigation Supp
03/31/2011	Deluxe Delivery Systems, Inc.

(b) Meals, Hotels and Transportation: \$21,726.51. Expenses for meals, hotels and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
John F. Burke	09/17-26/2008	New York, NY	Meeting/Doc Review
Thomas Wilhelm	09/03-04/2008	New York, NY	Meeting/Complaint
Luis Lorenzana	09/28-10/08/2010	New York, NY	Doc Rev/Mediation Project
Arthur Shingler	09/28-29/2010	New York, NY	Mediation Prep
David R. Scott	01/01-05/2010	New York, NY	Mediation
David R. Scott	01/05-07/2011	New York, NY	Mediation

(c) Photocopying:  
 In-House (30,103 copies @ \$0.25 per copy): \$7,525.75  
 Outside Photocopy Expenses: \$1,737.07

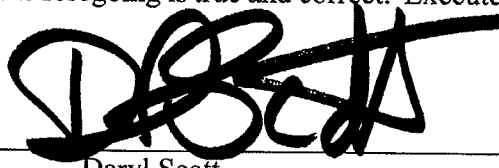
<i>DATE</i>	<i>VENDOR</i>
08/05/2009	IKON Office Solutions
09/13/2010	Itekimaging

(d) Lexis, Westlaw, Online Library Research: \$3,954.93. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis Nexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.



I declare under penalty of perjury that the foregoing is true and correct. Executed this 23rd day of June, 2011, at Richmond, Virginia.

A handwritten signature in black ink, appearing to read "D Scott", written over a horizontal line.

Daryl Scott

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 June 27, 2011.

s/ Ellen Gusikoff Stewart

---

ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN  
& DOWD LLP

655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: [elleng@rgrdlaw.com](mailto:elleng@rgrdlaw.com)

## Mailing Information for a Case 1:08-cv-03758-VM -JCF

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jarrett Scott Charo**  
jcharo@rgrdlaw.com
- **Richard W Clary**  
rclary@cravath.com,lgoldstein@cravath.com,abosse@cravath.com,rleraris@cravath.com
- **Marisa N. DeMato**  
mdemato@rgrdlaw.com
- **Jonathan Gardner**  
jgardner@labaton.com,electroniccasefiling@labaton.com
- **Deborah R Gross**  
debbie@bernardmgross.com
- **Beth Ann Kaswan**  
bkaswan@scott-scott.com,efile@scott-scott.com,aslaughter@scott-scott.com
- **Thomas Livezey Laughlin , IV**  
tlaughlin@scott-scott.com,efile@scott-scott.com
- **William H. Narwold**  
bnarwold@motleyrice.com,imoll@motleyrice.com,vlepine@motleyrice.com,loliver@motleyrice.com,ajanelle@motleyrice.com,bwalker@motleyrice.com
- **Darren J. Robbins**  
drobbins@csgrr.com
- **David Avi Rosenfeld**  
drosenfeld@rgrdlaw.com,e\_file\_ny@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Samuel Howard Rudman**  
srudman@rgrdlaw.com,e\_file\_ny@rgrdlaw.com
- **Paul J. Scarlato**  
pscarlato@labaton.com
- **Elizabeth S. Smith**  
esmith@motleyrice.com
- **John Brandon Walker**  
bwalker@motleyrice.com
- **David C. Walton**  
dwalton@csgrr.com

### Manual Notice List

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

**Bernard M. Gross**  
The Law Office of Bernard M. Gross, P.C.  
100 Penn Square East  
Suite 450  
Juniper and Market Streets  
Philadelphia, PA 19107

**Ellen Gusihoff Stewart**  
Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

**Ellen Gusikoff Stewart**  
Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

# **EXHIBIT TT**

1 STEVE W. BERMAN (*Pro Hac Vice*)  
THOMAS E. LOESER (202724)  
2 HAGENS BERMAN SOBOL SHAPIRO LLP  
1918 Eighth Avenue, Suite 3300  
3 Seattle, WA 98101  
Telephone: (206) 623-7292  
4 Facsimile: (206) 623-0594  
steve@hbsslw.com  
5 toml@hbsslw.com

6 ALI ABTAHI (224688)  
IDENE SAAM (258741)  
7 ABTAHI THIGPEN LLP  
1012 Torney Avenue  
8 San Francisco, CA 94129  
Telephone: (415) 639-9800  
9 Facsimile: (415) 639-9801  
aabtahi@abtahilaw.com  
10 isaam@abtahilaw.com

11 *Attorneys for Plaintiffs*  
12 *and the Proposed Class*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 OAKLAND DIVISION

16 MAUDER and ALICE CHAO;  
17 DEOGENESO and GLORINA PALUGOD;  
18 and MARITZA PINEL, individually and on  
behalf of all others similarly situated,

19 Plaintiffs,

20 vs.

21 AURORA LOAN SERVICES, LLC,

22 Defendant.

Case No.: CV-10-3118-SBA

**CLASS ACTION**

DECLARATION OF T. CHRISTOPHER  
TUCK IN SUPPORT OF PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES AND  
SERVICE AWARDS

Date: January 13, 2015

Time: 1:00 p.m.

Place: Courtroom 210

Judge: Hon. Sandra B. Armstrong

23  
24  
25  
26  
27  
28

1 I, T. Christopher Tuck, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

2 1. This declaration is based upon my personal knowledge.

3 2. I am an attorney currently licensed in good standing to practice law in the states of  
4 South Carolina and Wisconsin. I am a member at the law firm Richardson, Patrick, Westbrook &  
5 Brickman, LLC (“RPWB”), which is Class Counsel in this action.

6 3. I have been actively engaged in the practice of law since 1996. In 1996, I graduated  
7 from Marquette University Law School and worked as an associate at Habush, Habush, Davis &  
8 Rottier, S.C. In 1998, I joined Ness, Motley, Loadholt Richardson & Poole, P.A., as an associate.  
9 I later joined RPWB in July 2002.

10 4. My practice is concentrated in complex litigation, including class actions. My cases  
11 have led to numerous appointments for RPWB as class counsel.

12 5. A copy of my firm’s resume is attached as Exhibit A.

13 6. RPWB has worked on this litigation for four years. My firm’s work on this case has  
14 included all key aspects of the litigation, including research, preparation of pleadings, discovery,  
15 mediation, and settlement.

16 7. RPWB worked extensively with Maritza Pinel to address Aurora’s unfair loan  
17 practices. Ms. Pinel owned a residential property at 220 Valley Oak Lane, in Vallejo, California.  
18 In 2009, Ms. Pinel fell behind on her loan. On or about October 29, 2009, Aurora provided Ms.  
19 Pinel with a form Workout Agreement. It required her to make six monthly payments of \$1,625,  
20 which she did. She also made an extra payment of \$1,625.00 in April 2010. During the Workout  
21 Agreement, the foreclosure was “dual tracked” with the sale date serially postponed.

22 8. Although Aurora had set a foreclosure sale date, it informed Ms. Pinel that a sale  
23 was not pending as it continued to extract additional payments. In a telephone call on April 29,  
24 2010, Aurora told Ms. Pinel to send additional financial documents and a payment of \$1,780.41.  
25 The \$1,780.41 payment brought the total payments to \$13,160.41 – an amount only \$594.89 short  
26 of the arrearage under the Workout Agreement. On May 14, 2009, Ms. Pinel sent \$1,780.41 to  
27 Aurora. She was unaware that Aurora had foreclosed the previous day. Ms. Pinel was not

1 reviewed for a loan modification and was not provided another workout option or cure method  
2 during the term of the workout. She lost her home to foreclosure.

3 9. Ms. Pinel devoted substantial time to assisting RPWB and co-counsel on the  
4 litigation of the claims and the settlement outcome for the class. After testifying at her deposition,  
5 she attended mediation and then worked extensively with counsel throughout the settlement  
6 process.

7 10. Class Counsel's and Ms. Pinel's efforts led to an excellent settlement for the  
8 common benefit of the Class. The risk of non-recovery was substantial, particularly when viewed  
9 against the winding down of Aurora's operations and the heavily litigated nature of this case. This  
10 Court, for example, heard repeated motion practice on the discreet issue of preemption. Resolution  
11 only occurred on the eve of class certification after numerous settlement attempts over the course  
12 of many months.

13 11. RPWB did not use the possibility of an incentive award to pressure Ms. Pinel to  
14 accept the settlement. I am personally aware of the communications and written documents  
15 outlining RPWB's representation of Ms. Pinel, and I have had extensive in-person and telephone  
16 communications with Ms. Pinel to explain the risks of litigation, the proposed settlement relief, and  
17 its fairness to the Class. Based upon these communications and documents, I believe that Ms.  
18 Pinel understood and agreed that her duty as a representative plaintiff was to serve the interests of  
19 the Class as a whole, and that she would receive no special treatment compared to other Class  
20 members.

21 12. Ms. Pinel was informed of the possibility of a modest service award that would  
22 recognize her efforts in bringing this litigation, cooperating with Class Counsel in discovery, and  
23 discussing the best possible resolution of this case when viewed against risk factors. Ms. Pinel was  
24 also informed that any such service award would be subject to the complete discretion of the Court  
25 and that an award of this sort cannot be promised. To my knowledge, Ms. Pinel expected nothing  
26 in particular in exchange for her service as a class representative, other than fair and customary  
27 treatment in recognition of her service.





19. The rates of RPWB professionals who billed on this case are as follows:

<b>Timekeeper</b>	<b>Position</b>	<b>Total Hours</b>	<b>Rate/Hour</b>	<b>Total</b>
T. Christopher Tuck	Member	516.7	\$500-600 <sup>1</sup>	\$269,020
Katie McElveen	Associate	101.1	\$350	\$35,385
Andrea Mangum	Paralegal	157.6	\$120	\$18,912
Margie Brown	Legal Assistant	144.6	\$120	\$17,532
Tracy Willis	Paralegal	22.5	\$120	\$2,700
<b>Total</b>		<b>920</b>	<b>Avg: \$373.22</b>	<b>\$343,369</b>

20. Based on my knowledge and experience, the rates charged by the attorneys and support professionals at my firm are the same as charged for non-contingent legal services by my law firm, and are within the range of rates normally and customarily charged in the Northern District of California by attorneys and support professionals of similar qualifications and experience in cases of this kind, and in my home district in the District of South Carolina. My hourly rate and the hourly rates of the other attorneys and support professionals from RPWB who worked on this case have been approved in multiple class cases throughout the United States.

21. As the primary attorney assigned to this case at RPWB, fees for my time constitute just over 75% of the total fees that RPWB incurred in this case. Only three other billers had fees exceeding \$3,000, and the cumulative total in fees of me and those three billers is over 99% of the total fees charged to this case. Biographies of all billers are provided below.

**T. Christopher Tuck** (Rate: \$500-\$600/hr; \$269,020 in total fees charged to case):

22. A summary of my experience and qualifications are set forth above in Paragraphs 2-5. My representative experience as lead or co-lead counsel in consumer class actions includes: MDL No. 1865, *In re Household Movers Antitrust Litigation* (D.S.C.); *In re: DJK Residential, LLC.*, Case No. 08-10375, (Bankr. S.D. N.Y.); *Masquat v. DaimlerChrysler Corp.*, 195 P.3d 38 (Okla. 2008), and *Hess, et al. v. Volkswagen of America, Inc.*, 221 P.3d 132 (Okla. Ct. App. 2009). I have extensive experience in consumer lending class actions, including *Dundon v. U.S. Bank*, Case No.

<sup>1</sup> Out of this range, 403 of the 516.7 total hours were incurred at the \$550 rate.

1 01-CV-408-GPM (S.D. Ill.); *Bess v. German American Capital Corp.*, Case No. 24-C-04-003-888  
2 (Baltimore Co., MD); and *Cates v. U.S. Bank*, Case No. 04-6202 (Hennepin Co., MN).

3 **Katie McElveen** (Rate: \$350/hr; \$35,385 in total fees charged to this case):

4 23. Katie McElveen works in RPWB's class action and consumer lending group and is  
5 a 7<sup>th</sup> year associate.

6 **Andrea Mangum** (Rate: \$120/hr; \$18,912 total fees charged to this case):

7 24. Andrea Mangum served as a paralegal specializing in document review and coding.

8 **Margie Brown** (Rate: \$120/hr; \$17,532 total fees charged to this case):

9 25. Margie Brown is a legal assistant with 35 years of experience. Her primary support  
10 function on this case included extensive transcription of Aurora audio recordings.

11 **Tracy Willis** (Rate: \$120/hr; \$2,700 total fees charged to this case):

12 26. Tracy Willis served as paralegal handling miscellaneous support issues for the case.  
13 She has 14 years of experience.

14 27. In my judgment, and based on my years of experience, the number of hours  
15 expended and the services performed by the attorneys and support professionals at my firm were  
16 reasonable and expended for the benefit of Plaintiff and the Class in this litigation. **However, in**  
17 **light of the possibility of duplication of effort due to four law firms working on this case (even**  
18 **though I have seen no indications of duplication), Class Counsel has decided to reduce each**  
19 **firm's lodestar by 20% for purposes of determining the reasonableness of Class Counsel's fee**  
20 **request. As a result, for purposes of the lodestar cross-check of the 30% fee sought, RPWB**  
21 **has reduced its lodestar to \$274,695.**

22 28. RPWB also incurred expenses in the amount of \$8,244.19, as of October 29, 2014.  
23 These expenses include: filing fees, facsimile and copying charges, computer research, federal  
24 express and other delivery charges, travel expenses, and other case-related expenses, such as court  
25 reporter costs for depositions, that commonly benefitted Plaintiffs and the Class. Based on my  
26 knowledge and experience, all of these expenses were necessary and reasonable, and incurred for  
27 the benefit of Plaintiffs and the Class in this litigation. At the Court's request, RPWB can provide  
28

1 a detailed report itemizing each expense item charged to the case. The following table sets forth  
2 RPWB's expenses by category:

3 Travel, etc.	\$4,216.04
4 Copies, postage, etc.	\$695.43
5 Legal Research	\$2,243.45
6 Court Filings/Service	\$386.37
7 Other (transcripts)	\$702.90
8 <b>Total</b>	<b>\$8,244.19</b>

9  
10 I declare under penalty of perjury that the foregoing is true and correct.

11  
12 Dated: November 14, 2014

/s/ T. Christopher Tuck  
T. Christopher Tuck



# **EXHIBIT UU**

**EXHIBIT 3**



3. My firm has calculated the amount of time spent by the partners, attorneys and professional support staff of my firm who were involved in this litigation, and the lodestar calculation based on my firm's current billing rates. For personnel who are no longer employed by my firm, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment by my firm. The schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by my firm, which are available at the request of the Court.

4. The hourly rates for the partners, attorneys and professional support staff in my firm are the same as the regular current rates charged for their services in securities or shareholder litigation.

5. The total number of hours expended on this litigation by my firm is 130.50 hours. The total lodestar for my firm is \$42,485.00.

6. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

7. As detailed in Exhibit 1, my firm has incurred a total of \$4,642.01 in unreimbursed expenses in connection with the prosecution of this litigation.

8. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

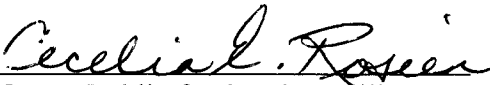
I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 28 day of June, 2011 in Barnwell, South Carolina.



I declare under penalty of perjury that the foregoing is true and correct and that  
this declaration was executed this 28 day of June, 2011 in Barnwell, South Carolina.

  
\_\_\_\_\_  
DANIEL S. HALTIWANGER

SWORN and subscribed before  
me this 28th day of June, 2011

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 5/20/18

## **EXHIBIT 1**



1037 Chuck Dawley Boulevard, Building A  
Mount Pleasant, SC 29465  
843-727-6500  
Fax: 843-881-2898

Prebill

Roth Mr., Darryl K.  
4949 Painted Skey Road  
Reading, PA 19606-3750

---

Re: Roth Mr., Darryl K. (217435-0)

Professional Services Through 06/27/11		
As per Time Exhibit Attached.....		\$0.00
Costs Through 06/27/11		
Filing Fees	1,225.00	
Service of Process	-58.05	
Internal Charges Copies / Prints	190.00	
Internal Charges Postage	118.69	
Internal Charges Scanned Images	3.73	
Online research	3.44	
Total Costs.....		\$1,482.81
Total Invoice.....		\$1,482.81
Receipts.....		\$250.00
Balance Due.....		\$1,232.81

**RPWB** RICHARDSON, PATRICK,  
WESTBROOK & BRICKMAN, LLC

1037 Chuck Dawley Boulevard, Building A  
Mount Pleasant, SC 29465  
843-727-6500  
Fax: 843-881-2898

Prebill

Latham Mr., Robert A.  
510 Second Avenue, South  
Twin Falls, ID 83301

---

Re: Latham Mr., Robert A. (217417-0)

Professional Services Through 06/27/11 As per Time Exhibit Attached.....		\$0.00
Costs Through 06/27/11		
Filing Fees	600.00	
Service of Process	422.25	
Transcripts	760.15	
Travel/Meeting Expense	75.90	
Internal Charges Copies / Prints	1,323.60	
Internal Charges Fax	2.00	
Internal Charges Postage	86.84	
Internal Charges Scanned Images	15.33	
Internal Charges UPS	39.02	
Online research	80.96	
Online Research Lexis Nexis	3.15	
Total Costs.....		\$3,409.20
Total Invoice.....		\$3,409.20

# **EXHIBIT VV**

1 Michael W. Sobol (194857)  
msobol@lchb.com  
2 LIEFF CABRASER HEIMANN & BERNSTEIN LLP  
275 Battery Street, 29th Floor  
3 San Francisco, CA 94111  
Telephone: (415) 956-1000

4 Hank Bates (167688)  
5 hbates@cbplaw.com  
CARNEY BATES & PULLIAM, PLLC  
6 519 West 7th Street  
Little Rock, AR 72201  
7 Telephone: (501) 312-8500  
Facsimile: (501) 312-8505

8 Ray E. Gallo (158903)  
9 rgallo@gallo-law.com  
GALLO LLP  
10 1299 Fourth Street, Suite 505  
San Rafael, CA 94901  
11 Telephone: (415) 257-8800

12 *Attorneys for Plaintiffs and the Settlement Class*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

16 DANIEL MATERA and SUSAN  
RASHKIS, as individuals, and on behalf of  
17 other persons similarly situated,

18 Plaintiffs,

19 v.

20 GOOGLE LLC,

21 Defendant.

Case No. 5:15-cv-04062 LHK

**JOINT DECLARATION OF MICHAEL  
SOBOL, HANK BATES, AND RAY  
GALLO IN SUPPORT OF PLAINTIFFS’  
MOTION FOR AN AWARD OF  
ATTORNEYS’ FEES AND COSTS AND  
SERVICE AWARDS**

Date: February 8, 2018  
Time: 1:30 p.m.  
Judge: Hon. Lucy H. Koh  
Courtroom: 8, Fourth Floor

23 We, Michael Sobol, Hank Bates, and Ray Gallo declare as follows:

24 1. Michael Sobol is a member in good standing of the California State Bar and a  
25 partner in the law firm Lief, Cabraser, Heimann & Bernstein, LLP (“LCHB”), counsel for  
26 Plaintiffs and the Class in this proceeding. He is the LCHB attorney principally responsible for  
27 overseeing LCHB’s work in this proceeding.  
28

1           2.       Hank Bates is a member in good standing of the California and Arkansas State  
2 Bars and a partner in the law firm Carney Bates & Pulliam PLLC (“CBP”), counsel for Plaintiffs  
3 and the Class in this proceeding. He is the CBP attorney principally responsible for overseeing  
4 CBP’s work in this proceeding.

5           3.       Ray Gallo is a member in good standing of the California State Bar and a partner  
6 in the law firm Gallo, LLP (“GALLO”), counsel for Plaintiffs and the Class in this proceeding.  
7 He is the GALLO attorney principally responsible for overseeing GALLO’s work in this  
8 proceeding.

9           4.       We submit this declaration jointly in support of Plaintiffs’ Motion for Attorneys’  
10 Fees and Expenses and for Service Awards for Plaintiffs.

11           5.       Except as otherwise noted, we have personal knowledge of the facts set forth  
12 herein, and if called to testify thereto, could and would do so competently, including with respect  
13 to the information provided regarding our respective law firms.

14                           **SUMMARY OF CLASS COUNSEL’S WORK IN THIS CASE**

15           6.       As summarized below, investigating, litigating, and negotiating a resolution of this  
16 matter required substantial commitments of time and resources from our firms. Throughout the  
17 litigation, all reasonable efforts were made to avoid duplication of efforts and to ensure the most  
18 efficient management and prosecution of this matter reasonably possible.

19           7.       A chronological summary of Class Counsel’s work is provided below.

20 **I.       Case Investigation and Factual Research Prior to Filing (June 2015 to September**  
21 **2015)**

22           8.       Class Counsel began work on this action at the beginning of June, 2015, four  
23 months prior to filing. That pre-filing investigation included extensive review of Google’s  
24 message scanning functionality, legal issues raised in the prior *Gmail* litigation, consultation with  
25 multiple experts, review of Google’s terms of service and privacy policies during the relevant  
26 time period and investigation of publicly available information related to the alleged conduct.

1 **II. Filing of the Action and Successful Opposition to Google’s Motion to Dismiss**  
2 **(September 2015 to August 2016)**

3 9. Plaintiff Daniel Matera, on behalf of himself and a putative class, filed this Action  
4 September 4, 2015. (ECF No. 1). The Complaint alleged that Google’s practices of intercepting,  
5 extracting, reading, and using the email contents of individuals who do not have email accounts  
6 with Google (“non-Gmail” users)—but who exchange email messages with Gmail  
7 accountholders—violated the California Invasion of Privacy Act, Cal. Pen. Code §§ 630, *et seq.*  
8 (“CIPA”) and the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510, *et seq.* (“ECPA”).

9 10. On October 29, 2015, Google concurrently filed a Motion to Dismiss the  
10 Complaint (ECF No. 20) and a Motion to Stay (ECF No. 21) in light of the Supreme Court’s  
11 then-pending opinion in *Spokeo v. Robbins*, 136 S. Ct. 1540 (2016) (“*Spokeo*”). In response, on  
12 December 4, 2015, Plaintiffs filed an Opposition to Google’s Motion to Dismiss (ECF No. 29)  
13 and an Opposition to Google’s Motion to Stay (ECF No. 30). The Court granted Google’s  
14 Motion to Stay on February 5, 2016 (ECF No. 36). Following the issuance of the *Spokeo* opinion  
15 on May 16, 2016, the parties provided additional, supplemental briefing on the opinion’s impact,  
16 if any, on Plaintiff Matera’s Article III standing (ECF Nos. 41-42, 45-46).

17 11. On August 12, 2016, the Court issued an Order Denying Google’s Motion to  
18 Dismiss as to the Merits of Plaintiff’s Claims (ECF No. 49). Separately, on September 23, 2016,  
19 the Court issued an Order Granting in Part and Denying in Part Defendant’s Motion to Dismiss  
20 Based on Lack of Standing (ECF No. 54), which granted, with prejudice, Google’s motion to  
21 dismiss Plaintiff Matera’s claim for an injunction as it relates to Google Apps for Education,<sup>1</sup> but  
22 which denied the remainder of Google’s motion.

23  
24 <sup>1</sup> Plaintiffs initially challenged scanning practices associated with each of Google’s email  
25 platforms: Gmail, Google Apps for Education, and Google Apps for Business. *See*, Complaint  
26 (ECF No. 1). The Court determined that “Google ceased intercepting and scanning, for  
27 advertising purposes, the contents of emails processed via Google Apps for Education” (ECF No.  
28 54 at 27). In addition, although the Court denied Google’s motion as it relates to Google Apps  
for Work, the Court noted that “the Court has learned that Google publicly represents that Google  
no longer intercepts, scan and analyzes for advertising purposes emails transmitted via Google  
Apps for Work.” (*Id.* at 32.) Consequently, as noted above, the Amended Complaint eliminated  
allegations related to Google Apps for Education and Google Apps for Work.



1           12.     Subsequently, on October 17, 2016, Plaintiff Matera filed an Amended Complaint  
2 (ECF No. 58), adding additional Named Plaintiff Susan Rashkis,<sup>2</sup> eliminating allegations  
3 pertaining to Google Apps, and refining and clarifying allegations relating to technical aspects of  
4 Google's challenged practices. On October 21, 2016, Google filed its Answer to the Amended  
5 Complaint (ECF No. 59).

6     **III.    Discovery (June 2016 to August 2017)**

7           13.     Plaintiffs propounded initial sets of Interrogatories and Requests for Production on  
8 June 13, 2016, and Google propounded commensurate discovery on July 27, 2016. Throughout  
9 the summer of 2016, Google produced more than 130,000 pages of documents, which Plaintiffs  
10 carefully reviewed and analyzed. As a starting place, Google agreed to Plaintiffs' request to  
11 produce the relevant deposition testimony, interrogatory answers, and documents produced in the  
12 prior, related multi-district litigation, *In re Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK  
13 (N.D. Cal.) ("*In re Gmail*"). Thereafter, Plaintiffs propounded further, targeted requests for  
14 production and in response Google produced documents which provided a necessary and detailed  
15 understanding of Google's email processing practices, the various servers and devices used to  
16 process emails, points of time during the email delivery process that Google processes emails,  
17 and the purposes for which Google processes emails. After the Court denied preliminary  
18 approval of a prior proposed settlement, Plaintiffs required that Google supplement its production,  
19 resulting in an additional 103,000 pages of documents, bringing Google's total document  
20 production to 233,000 pages as of the end of August 2017. Plaintiffs served Requests for  
21 Admission and a Second Set of Interrogatories on May 17, 2017, to which Google responded on  
22 June 20, 2017, as well as a Third Set of Interrogatories on July 31, 2017, to which Google  
23 responded on August 30, 2017.

24           14.     During July and August 2017, Plaintiffs deposed two separate Google witnesses,  
25 in both their individual and 30(b)(6) capacities. On July 13, 2017 Plaintiffs deposed Om Prakash  
26 Pitta, a Google engineer, on multiple subjects including Google's message-scanning architecture,

27     <sup>2</sup> Subsequent to the filing of this Action, Class Representative Matera moved from California to  
28 New York. Accordingly, Plaintiffs added a California citizen Class Representative for the CIPA  
Class.

1 its current scanning practices, its use of message content in spam/malware prevention, its use of  
2 message content in targeted advertising and user modeling, and proposed changes Google would  
3 make to its systems in order to effectuate the terms of the Settlement. On August 3, 2017,  
4 Plaintiffs deposed Syed Albiz, a Google engineer, on additional subjects related to Google's  
5 messaging architecture and scanning processes for incoming and outgoing emails.

6 **IV. Settlement Discussions, Resuming Litigation, and Renewed Settlement Discussions**  
7 **(August 2016 to July 2017)**

8 15. The parties participated in mediations before highly-respected mediator Randall  
9 Wulff on August 31, 2016 and November 4, 2016. Those mediations resulted in a proposed  
10 settlement, executed on November 22, 2016, which was not granted preliminary approval (ECF  
11 No. 71). Subsequently, with the benefit of guidance from the Court, the parties resumed  
12 discovery, engaged in further negotiations regarding the remaining terms of the Settlement, and  
13 developed a comprehensive revised set of settlement papers, including the Settlement Agreement,  
14 the proposed Notice, and the proposed orders, which were each submitted to the Court as exhibits  
15 to Plaintiffs' Motion for Preliminary Approval filed on July 21, 2017 (ECF No. 79.) The revised  
16 Settlement was executed by all parties on July 21, 2017. Plaintiffs' Motion for Preliminary  
17 Approval was filed on July 21, 2017 (ECF No. 79).

18 **V. Preliminary Approval of the Settlement, Implementation of Class Notice, and**  
19 **Continued Work in This Action (February 2017 to Present)**

20 16. Following the Court's August 31, 2017 Order Granting Preliminary Approval of  
21 Class Action Settlement (ECF No. 89), the Parties conferred with KCC Class Action Services,  
22 LLC ("KCC" or "Settlement Administrator") to implement the Notice Plan set forth in the  
23 Motion for Preliminary Approval. Subsequently, the Parties worked with KCC to develop a  
24 website, and to implement an online ad campaign ("Campaign"), running from September 21,  
25 2017 to October 21, 2017. Over the course of the Campaign, the Parties received multiple,  
26 periodic updates on the number of ad impressions served and the overall progress of the Notice  
27 Program. At the Campaign's conclusion, as stated in the declaration of Lana Lucchesi filed with  
28 Plaintiffs' Motion for Final Approval, 109,356,144 ad impressions were served, resulting in  
596,585 total visitor hits, of which 88,742 were visits linking directly from the banner ads.

1 SUMMARY OF TIME AND COSTS INCURRED

2 **I. Time Incurred By Plaintiffs' Counsel**

3 17. We have spent considerable time working on this case that could have been spent  
4 on other fee-generating matters. The time that we have spent on this case has been completely  
5 contingent on the outcome. We have not been paid for any of our time spent on this case, nor  
6 have we been reimbursed for any of the expenses we incurred in this case.

7 18. In total, from the inception of this litigation in June 2015 through October 27,  
8 2017, the attorneys and staff at our firms have billed approximately 4,046.50 hours on this matter,  
9 for a total combined lodestar (for the three Class Counsel firms combined) of \$2,062,439.50.  
10 Attached hereto as **Exhibit 1** are summaries listing, for each of our firms, each lawyer, paralegal  
11 and other professional for which compensation is sought, the hours each individual has expended  
12 to date (both in aggregate and by individual tasks), their hourly billing rates, and their total  
13 lodestar.

14 19. The amounts included in Exhibit 1 are derived from our respective time records,  
15 which are prepared contemporaneously, describe tasks performed in 0.1 hour increments, and are  
16 maintained in the ordinary course of business. Such amounts do not include many hours of time  
17 that we have written off in the exercise of billing discretion upon review of these time records.

18 20. Our respective firms' billing rates, which were used for purposes of calculating the  
19 lodestar here, have been approved by courts in California and throughout the country, are the  
20 usual and customary rates that our respective firms charge for services in other actions, and are  
21 set in accordance with prevailing market rates. The lodestar calculation provided here is based on  
22 our respective firms' 2017 billing rates. For any personnel who are no longer employed by the  
23 firm in question, their billing rate at the time they left the respective firm is used.

24 21. A sample of California federal courts that have approved LCHB's standard billing  
25 rates and reimbursement of costs as reasonable are:

26 a. *Perkins v. LinkedIn Corp.*, No. 13-cv-04303-LHK, 2016 WL 613255, at  
27 \*15 (N.D. Cal. Feb. 16, 2016) (approving billing rates and granting motion for attorneys' fees);  
28

1           b.     *In re High-Tech Emp. Antitrust Litig.*, No. 11-cv-02509-LHK, ECF. No.  
2 1112 (N.D. Cal. Sept. 2, 2015) (approving billing rates);

3           c.     *Campbell v. Facebook, Inc.*, No. 13-cv-05996-PJH, ECF. No. 253 (N.D.  
4 Cal. Aug. 18, 2017) (approving billing rates and granting requested attorneys' fees);

5           d.     *In re: Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices,*  
6 *and Prods. Liability Litig.*, No. 10-ml-02151-JVS (FMOx), ECF. No. 3933 (C.D. Cal. June 24,  
7 2013) (awarding requested fees and finding that “[c]lass counsel’s experience, reputation, and  
8 skill, as well as the complexity of the case” justified their rates that ranged up to \$950);

9           e.     *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1009  
10 (N.D. Cal. 2015) (awarding requested attorneys' fees);

11           f.     *Steinfeld v. Discover Fin. Servs.*, No. 12-cv-01118-JSW, ECF No. (N.D.  
12 Cal. Mar. 31, 2014) (“Class counsel have submitted declarations that show the hourly rates that  
13 they have requested are reasonable and have provided the Court with information about other  
14 cases that approved their rates.”);

15           g.     *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2014 U.S. Dist. LEXIS  
16 11766, at \*8 (N.D. Cal. Jan. 29, 2014) (“[T]he Court also finds that the rates requested are within  
17 the range of reasonable hourly rates for contingency litigation approved in this District.”);

18           h.     *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013)  
19 (awarding requested attorneys' fees);

20           i.     *In re AXA Rosenberg Investor Litig.*, No. 11-00536-JSW (N.D. Cal. Apr. 2,  
21 2012) (“The Court has also reviewed Lead Counsel’s hourly rates and concludes that these rates  
22 are appropriate for attorneys in this locality of Lead Counsel’s skills and experience.”);

23           j.     *Vedachalam v. Tata Consultancy Servs., Ltd.*, No. C-06-0963-CW (N.D.  
24 Cal. July 18, 2013) (“Class Counsel’s hourly rates are reasonable in light of their experience (as  
25 reflected in their declarations and the declarations of their peers in the field of class action  
26 litigation), and the rates charged are comparable to other attorneys in this field.”);

1 k. *Wehlage v. Evergreen at Arvin, LLP*, No. 10-cv-058390-CW (N.D. Cal.  
2 Oct. 4, 2012) (“[T]he billing rates used by Class Counsel to calculate their lodestar are reasonable  
3 and in line with prevailing rates in this District for personnel of comparable experience.”);

4 l. *Holloway v. Best Buy Co., Inc.*, No. C-05-5056-PJH (MEJ) (N.D. Cal.  
5 Nov. 9, 2011) (“The rates used by Class Counsel are reasonable.”);

6 m. *Fulford v. Logitech, Inc.*, No. 08-cv-02041-MMC, 2010 U.S. Dist. LEXIS  
7 144437, at \*10 (N.D. Cal. Mar. 5, 2010) (“The Court further finds that Plaintiff’s Counsels’  
8 hourly rates are reasonable for their skill and the work they performed.”);

9 22. Courts in this District, and the Central District of California, that have approved  
10 CBP’s requested fees and reimbursement of costs as reasonable include the following:

11 a. *Campbell v. Facebook, Inc.*, No. 13-cv-05996-PJH, ECF No. 253 (N.D.  
12 Cal. Aug. 18, 2017) (approving billing rates and granting requested attorneys’ fees);

13 b. *Smith v. Intuit, Inc.*, No. 12-cv-00222-EJD, ECF No. 105 (N.D. Cal. Oct. 1,  
14 2013) (granting requested attorneys’ fees);

15 c. *In re Bank of Am. Credit Protection Mktg. & Sales Practices Litig.*, No. 11-  
16 md-2269-TEH, ECF No. 96 (N.D. Cal. Jan. 16, 2013) (granting requested attorneys’ fees);

17 d. *In re Nat’l Golf Props., Inc. Sec. Litig.*, No. 02-cv-01383-GHK RZx, ECF  
18 No. 106 (C.D. Cal. Oct. 5, 2004) (granting requested attorneys’ fees);

19 e. *Valuepoint Partners, Inc. v. ICN Pharm., Inc.*, No. 03-cv-00989-DOC-AN,  
20 ECF No. 109 (C.D. Cal. Feb. 28, 2005) (granting requested attorneys’ fees).

21 23. Federal and state courts throughout the country have likewise approved CBP’s  
22 requested fees and reimbursement of costs as reasonable. *See, e.g., In re Liberty Refund*  
23 *Anticipation Loan Litig.*, No. 12-cv-02949-JBG, ECF No. 166 (N.D. Ill. Jan. 7, 2016); *In re*  
24 *Semtech Corp. Sec. Litig.*, No. 07-cv-7114-CAS-FMO, ECF No. 283 (C.D. Cal. June 27, 2011);  
25 *In re Sterling Fin. Corp. Sec. Class Action*, No. 07-cv-02171-LS, ECF No. 126 (E.D. Pa. Sept.  
26 11, 2009); *Nelson v. Wal-Mart Stores, Inc.*, No. 04-cv-00171-BRW, ECF No. 243 (E.D. Ark.  
27 Aug. 12, 2009); *Montalvo v. Triplos, Inc. et al.*, Case No. 4:03CV995SNL (E.D. Mo.); *In re*  
28 *Fleming Corporation Securities Litigation*, No. 5-02-CV-178 (E.D. Tx.).

1           24. Courts in California that have approved GALLO's requested fees and  
2 reimbursement of costs as reasonable include the following:

3           a. *Bottoni v. Sallie Mae, Inc.*, Northern District of California, Case No. C 10-  
4 03602 LB, filed July 13, 2010, final approval granted November 21, 2013 (recovered \$67.5  
5 million in debt relief and \$1 million in refunds for excessive collection charges);

6           b. *Huber v. San Diego Ballpark Funding, LLC*, San Diego Super. Ct., Case  
7 No. 37-2013-00066456-CU-CO-CTL, filed September 11, 2013, final approval granted March 4,  
8 2016;

9           c. *Meier v. Rubios*, Los Angeles Super. Ct., Case No. BC 335793, filed June  
10 28, 2005, final approval granted in 2006;

11           d. *Levinson v. Delivery Drivers, Inc.*, Orange County Super. Ct., Case No.  
12 05CC00022, final approval granted in 2007;

13           e. *Sutton v. Pinkberry*, Los Angeles Super. Ct., Case No. 370909, filed May  
14 10, 2007, final approval granted in 2008;

15           f. *Bienstock v. Ventura Foods*, Los Angeles Super. Ct., Case No. BC 362937,  
16 filed December 5, 2006, final approval granted in 2008;

17           g. *Amador v. California Culinary Academy, Inc., et al.*, San Francisco Super.  
18 Ct., Case No. CGC-07-467710, filed September 27, 2007, final approval granted in 2012  
19 (recovered \$40 million for false advertising).

20           25. In addition to the chronological summary of work provided above, the following  
21 chart shows the number of hours that each of our firms spent, as of October 27, 2017, on each of  
22 fifteen categories of activities related to the action, described as follows:

23           a. Identifying and Communicating with Plaintiffs/Potential Plaintiffs – Tasks  
24 related to client outreach and intake, and discussions with Class Representatives regarding factual  
25 investigation, pleadings, discovery, settlement, and all other case updates.

26           b. Document Review – Tasks related to review of documents produced by  
27 Google in discovery, reports of review results, and establishing coding and reporting protocols.  
28

- 1           c.     Investigations and Factual Research – Tasks related to investigation and  
2 analysis of factual issues, to the extent such issues were not a part of briefing- or pleadings-  
3 related investigation or research (see category 6), or a part of follow-up investigation related to  
4 Document Review (category 2).
- 5           d.     Written Discovery – Tasks related to all formal discovery except  
6 Document Review and disclosures/documents/interrogatory responses for Class Representatives.
- 7           e.     Depositions – Tasks related to depositions of Google’s witnesses, including  
8 identifying and noticing witnesses, and preparation for and conducting of the depositions.
- 9           f.     Pleadings, Briefs, and Pretrial Motions – Tasks related to the drafting of  
10 such documents, including legal and factual research.
- 11          g.     Experts – Tasks related to outreach to, retention of, and working with  
12 experts.
- 13          h.     Court Appearances – Tasks related to appearances before the Court,  
14 including related preparation and travel.
- 15          i.     Litigation Strategy and Analysis – Tasks related to developing litigation  
16 strategy and assessing appropriate steps for the efficient and successful prosecution of the Action.
- 17          j.     Class Certification – Tasks related to class certification briefing, research,  
18 and strategy.
- 19          k.     Settlement – Tasks related to settlement, including negotiations, research,  
20 analysis, drafting and exchanging mediation statements, and participating in meditations.
- 21          l.     Administrative – Tasks including and related to organizing files, creating  
22 exhibits, calendaring, etc.
- 23          m.     Miscellaneous – Tasks not specifically attributable to any other listed  
24 category.
- 25          n.     Case Management – Tasks related general case management.
- 26          o.     Settlement Approval Work – Tasks related to post-settlement work,  
27 including drafting approval papers and accompanying exhibits, working with KCC to effectuate  
28 Class Notice, etc.



1 **Summary of Work by Class Counsel**

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<b>Billing Category</b>	<b>Class Counsel Combined Hours</b>	<b>Class Counsel Combined Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	52.10	\$24,010.50
Document Review	1816.30	\$791,341.50
Investigations and Factual Research	110.00	\$49,691.00
Written Discovery	318.80	\$181,580.50
Depositions	197.20	\$105,735.00
Pleadings, Briefs, and Pretrial Motions	727.80	\$387,316.00
Experts	2.10	\$829.50
Court Appearances	91.10	\$69,954.50
Litigation Strategy and Analysis	202.80	\$114,302.50
Class Certification	12.20	\$8,795.00
Settlement	321.10	\$227,515.50
Administrative	34.90	\$11,399.50
Miscellaneous	2.00	\$826.00
Case Management	93.00	\$57,350.50
Settlement Approval Work	65.10	\$31,792.00
<b>TOTAL</b>	<b>4,046.50</b>	<b>\$2,062,439.50</b>

19 **Summary of Work by Lief Cabraser**

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<b>Billing Category</b>	<b>Lief Cabraser Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	9.0	\$5,454.00
Document Review	494.20	\$205,484.00
Investigations and Factual Research	3.30	\$1,773.00
Written Discovery	88.20	\$53,466.00
Depositions	8.30	\$5,935.00
Pleadings, Briefs, and Pretrial Motions	286.60	\$158,156.00
Experts	0.00	\$0.00



Billing Category	Lieff Cabraser Hours	Lodestar
Court Appearances	76.10	\$58,704.50
Litigation Strategy and Analysis	25.90	\$17,213.50
Class Certification	0.00	\$0.00
Settlement	149.00	\$112,874.50
Administrative	25.80	\$9,352.00
Miscellaneous	1.00	\$360.00
Case Management	28.60	\$21,404.00
Settlement Approval Work	21.20	\$11,114.50
<b>TOTAL</b>	<b>1,217.20</b>	<b>\$661,291.00</b>

#### Summary of Work by Carney Bates & Pulliam

Billing Category	Carney Bates & Pulliam Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	29.30	\$14,626.50
Document Review	226.10	\$89,309.50
Investigations and Factual Research	4.20	\$1,943.00
Written Discovery	175.60	\$102,554.50
Depositions	99.70	\$59,510.00
Pleadings, Briefs, and Pretrial Motions	394.60	\$206,312.50
Experts	2.10	\$829.50
Court Appearances	15.00	\$11,250.00
Litigation Strategy and Analysis	99.30	\$54,879.00
Class Certification	12.20	\$8,795.00
Settlement	148.80	\$97,826.00
Administrative	0.00	\$0.00
Miscellaneous	0.80	316.00
Case Management	28.10	\$17,631.50
Settlement Approval Work	43.30	\$20,227.50
<b>TOTAL</b>	<b>1279.10</b>	<b>\$686,010.50</b>

1 **Summary of Work by Gallo LLP**

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Billing Category	Gallo Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	13.80	\$3,930.00
Document Review	1,096.00	\$496,548.00
Investigations and Factual Research	102.50	\$45,975.00
Written Discovery	55.00	\$25,560.00
Depositions	89.20	\$40,290.00
Pleadings, Briefs, and Pretrial Motions	46.60	\$22,847.50
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	77.60	\$42,210.00
Class Certification	0.00	\$0.00
Settlement	23.30	\$16,815.00
Administrative	9.10	\$2,047.50
Miscellaneous	0.20	\$150.00
Case Management	36.30	\$18,315.00
Settlement Approval Work	0.60	\$450.00
<b>TOTAL</b>	<b>1550.20</b>	<b>\$715,138.00</b>

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26. Based on our experience with other class actions and complex cases, we believe that the time expended in connection with this matter was necessary to ensure the success of the action and reasonable in amount, particularly given the result achieved for the Settlement Class members and the complexity and challenges of the litigation.

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27. The hourly rates utilized in the lodestar calculation include no risk multiplier. This Action involves novel issues predicated on claims involving ECPA's and CIPA's application to electronic messages. The case law in this context is not fully developed, which resulted in the parties advanced conflicting interpretations of certain elements of Plaintiffs' ECPA and CIPA claims during the litigation, including the extent to which an interception of an electronic message occurs "in transit," the contours of the affirmative defense of implied consent, and the extent to which an "ordinary course of business" defense applies to an electronic communications service

1 provider's acquisition and/or use of message content. Further, this Action implicated the (at the  
2 time) entirely novel legal issue of standing under statutorily-codified privacy rights following the  
3 Supreme Court's opinion in *Spokeo v. Robins*, 136 S. Ct. 1540 (2016). The Court's subsequent  
4 order on this discrete issue was one of the first opinions—if not the very first opinion—to  
5 interpret *Spokeo*'s impact on Article III's "injury in fact" requirement as it pertains to ECPA and  
6 CIPA.

7 28. Moreover, these novel legal issues were disputed in a context that required us, our  
8 co-counsel and our retained experts to review highly technical documents. These issues, and  
9 other difficult issues implicated by these claims, required our firms to research and devise  
10 litigation strategies to move the case through class certification towards trial, without the certainty  
11 of ever receiving compensation.

## 12 **II. Costs Incurred By Plaintiffs' Counsel**

13 29. Class Counsel have borne all costs incurred on behalf of Plaintiffs in this litigation.  
14 Attached hereto as **Exhibit 2** is a summary of expenses incurred, including travel for depositions  
15 and hearings, legal research, postage, and other customary litigation expenses. As detailed in this  
16 exhibit, LCHB's expenses incurred in the prosecution of this matter total \$20,209.40; and CBP's  
17 expenses incurred in the prosecution of this matter total \$17,049.84; and GALLO's expenses  
18 incurred in the prosecution of this matter total \$14,162.69. Total unreimbursed expenses are  
19 \$51,421.93.

20 30. The foregoing expenses were incurred solely in connection with this litigation and  
21 are reflected in our respective books and records as maintained in the ordinary course of business.

## 22 **III. Time and Effort by Plaintiffs**

23 31. In addition to the time and costs we incurred in this action, the two Class  
24 Representatives have spent considerable time and effort in their pursuit of this litigation and in  
25 seeking to advance the legal rights and interests of the Settlement Class, including time spent  
26 discussing this litigation with Class Counsel, time spent reviewing all relevant filings and  
27 communications in the Action, and time spent communicating with Class Counsel in the context  
28 of settlement negotiations.



1 of the Joint Declaration of Class Counsel in Support of Plaintiffs’ Motion for Preliminary  
2 Approval of Class Action Settlement. (Dkt. 79-1).

3 36. Nicole Sugnet graduated from the University of California, Hastings College of  
4 the Law in 2006. Following graduation from law school, Ms. Sugnet focused her practice  
5 exclusively on consumer class action litigation. She is the co-author of “Consumer Protection  
6 and Employment Cases after *Concepcion*,” published in the ABA Section of Litigation, Class  
7 Action & Derivative Suits Committee Newsletter (Summer 2011), as well as the California  
8 Section of the ABA State Class Action Survey (2012). Ms. Sugnet was selected by Super  
9 Lawyers as a “Rising Star for Northern California,” each year from 2013-2016, and as a “Super  
10 Lawyer” in 2017.

11 37. Melissa Gardner graduated in 2011 from Harvard Law School. Prior to joining  
12 LCHB, she worked as a law clerk for South Brooklyn Legal Services in their Workers’ Rights  
13 and Government Benefits Unit and at litigation boutique Emery Celli Brinckerhoff & Abady in  
14 New York. Ms. Gardner is currently an associate in LCHB’s San Francisco office, where she  
15 works on consumer protection and personal injury & mass torts. Ms. Gardner was selected by  
16 Super Lawyers as a “Rising Star for Northern California” in 2017.

17 38. Michael Levin-Gesundheit graduated from Stanford Law School in 2013. Prior to  
18 joining LCHB, Michael was a law clerk for Judge Jacqueline Nguyen of the United States Court  
19 of Appeals for the Ninth Circuit in Pasadena, California and Judge Garland Burrell, Jr. of federal  
20 district court in Sacramento.

21 39. Eavon Rolich is employed by LCHB on a contract basis. Mr. Rolich’s resume  
22 shows that he obtained his M.A. in comparative literature from the University of California,  
23 Berkeley, in 2000 and his J.D. from New York University School of Law in 2006 and that Mr.  
24 Rolich has several years of experience with the review and analysis of electronic discovery using  
25 the Relativity platform that was used for reviewing and categorizing the documents produced in  
26 this litigation.

27 40. Cristina Yu is employed by LCHB on a contract basis. Ms. Yu’s resume shows  
28 that she obtained her B.S. in Mathematics from California State University, Hayward, in 1988

1 and her J.D. from Santa Clara University of Law in 1997, and that Ms. Yu has ten years of work  
2 experience in providing network, hardware, and other information technology support in addition  
3 to more than ten additional years of experience reviewing and analyzing electronically stored  
4 information in complex litigation, including in patent and other technology-related disputes.

5 41. In addition to the LCHB attorneys involved in this Action, LCHB has a team of  
6 paralegals that assist in the litigation of its cases, with the level of staffing depending on the size  
7 and needs of the particular case. In this case, Yun Swenson was the primary LCHB paralegal  
8 assigned to this matter. Ms. Swenson is a 2003 graduate of Cornell Law School and a 1998  
9 graduate of University of California, Berkeley.

10 42. LCHB litigation support specialists worked on this matter as well. LCHB's  
11 Litigation Support group consists of an experienced team of litigation support specialists  
12 responsible primarily for: (a) preparing and conducting trial presentations and similar in-court  
13 technical productions; (b) creating, managing, and searching case-specific document and  
14 information databases (e.g., Relativity); and (c) performing certain case-specific data analyses  
15 (e.g., for use in evaluating damages). Because the personnel who make up LCHB's Litigation  
16 Support group have extensive training and experience performing these specific and technical  
17 tasks, it is more efficient and cost-effective, and in my judgment ultimately results in better work  
18 product, for this sort of work to be assigned to these personnel as opposed to paralegals with other  
19 areas of specialization who normally perform less technical work.

20 43. The primary LCHB litigation support specialists who worked on this case were  
21 Anthony Grant, Margie Calangian, and Richard Anthony. Their tasks included creating and  
22 managing the document database dedicated to this case, searching and helping attorneys access  
23 and search the database for materials for use in depositions and for other purposes, and providing  
24 guidance and assistance regarding technical aspects of document production and resolving issues  
25 concerning the format of materials produced by Google.

26 **Carney Bates & Pulliam, PLLC**

27 44. CBP's qualifications were previously detailed at ECF No. 79-1 (filed in support of  
28 Plaintiff's Motion for Preliminary Approval of Class Action Settlement), which filing is

1 incorporated by reference herein. As set forth therein, CBP is a national law firm based in Little  
2 Rock, Arkansas, and is recognized as one of the country's premiere firms in the areas of  
3 consumer protection class actions, data privacy/security, securities fraud, environmental law and  
4 employment discrimination. A copy of CBP's current resume, which describes the firm's  
5 experience in class action and other complex litigation, can be found at  
6 <http://www.cbplaw.com/firm-resume/>.

7 45. The primary CBP attorneys working on this case were partner Hank Bates and  
8 associates David Slade and Kristin Brown. In addition, associate Justin Craig performed discrete  
9 tasks.

10 46. Hank Bates is a partner at CBP with 25 years of litigation experience. He joined  
11 CBP in 2004, and since that time has focused his practice on representing consumers, farmers,  
12 shareholders, small businesses and governmental entities in class actions and complex litigation  
13 involving primarily consumer fraud, computer privacy, environmental law and employment  
14 rights. He received his B.A. from Harvard College in 1987 and his J.D. from Vanderbilt  
15 University School of Law in 1992. Following law school, he was a law clerk for the Honorable  
16 Danny J. Boggs, United State Court of Appeals for the Sixth Circuit. He practiced public-interest  
17 environmental law in San Francisco, California from 1993 to 1997, first with the law firm of  
18 Shute, Mihaly & Weinberger and then with Earthjustice, before returning to his home state of  
19 Arkansas. Mr. Bates's qualifications and experience are discussed in more detail at pages 10-13  
20 of the Joint Declaration of Class Counsel in Support of Plaintiffs' Motion for Preliminary  
21 Approval of Class Action Settlement. (ECF No. 79-1).

22 47. David Slade is an associate at CBP with four years of litigation experience. He  
23 received his B.A. from Yale University in 2001 and his J.D. from the University of Arkansas at  
24 Little Rock in 2013. At CBP, Mr. Slade's focus is on consumer protection, specifically in the  
25 areas of data privacy and data security. He has also organized cyber safety training for Arkansas  
26 law enforcement and victim assistance professionals in conjunction with the National  
27 Organization of Victim Assistance. Additionally, Mr. Slade is a member of the Volunteers  
28



1 Organization, Center for Arkansas Legal Services, an organization committed to pro bono  
2 advocacy.

3 48. Kristin Brown is an associate at CBP with four years of experience. Ms. Brown  
4 entered the University of Arkansas, Little Rock Bowen School of Law in 2010 where she was a  
5 member of the Moot Court Board and overall winner of the 2011 Ben J. Alzheimer Moot Court  
6 Competition. She attended her third year of law school at Villanova School of Law in  
7 Philadelphia and received her J.D. from the University of Arkansas, Little Rock, in May 2013.  
8 She is admitted to practice law in Arkansas, Pennsylvania, and New Jersey. She is a member of  
9 the Arkansas Bar Association, Arkansas Trial Lawyers Association, Pennsylvania Bar  
10 Association, and New Jersey Bar Association.

11 49. Justin Craig is an associate at CBP with three years of litigation experience. Mr.  
12 Craig received his B.A. from the University of Central Florida in 2010 and his J.D. from the  
13 University of Arkansas at Little Rock in 2014. Mr. Craig founded his own law firm, and as a solo  
14 practitioner, focused on serving populations that are historically underserved through providing  
15 family law, estate planning, and expungement services. Since joining CBP in 2015, Mr. Craig  
16 has focused his work on consumer protection.

17 **Gallo LLP**

18 50. GALLO's qualifications were previously detailed at ECF No. 79-1 (filed in  
19 support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement), which filing  
20 is incorporated by reference herein. As set forth therein, GALLO is a nationally-recognized law  
21 firm based in San Rafael, California, specializing in class- and mass action consumer protection  
22 and data privacy litigation.

23 51. The primary GALLO attorneys working on this case were partners Ray Gallo and  
24 Dominic Valerian, associate Warren Stramiello, of counsel attorney Sharon Laveson, and  
25 paralegal Marc Van Anda.

26 52. Ray Gallo graduated from Yale College with a B.A. in Economics and Political  
27 Science in May 1987 and received his J.D. from the University of California, Los Angeles School  
28 of Law in December 1991. He joined the Los Angeles office of Crosby, Heafey, Roach & May



1 (now Reed Smith) in February 1992. After two years at Crosby, he left to start Gallo &  
2 Associates (now Gallo LLP). In or about 1998, as a sixth year lawyer in commercial litigation  
3 practice, Mr. Gallo received Martindale Hubbell's "AV" rating. Mr. Gallo has been actively  
4 involved in the prosecution of consumer fraud class actions since 2004. Most notably, he has led  
5 the nation in obtaining monetary relief for students misled by for-profit schools in both mass and  
6 class action proceedings. Mr. Gallo's qualifications and experience are discussed in more detail  
7 at pages 14-16 of the Joint Declaration of Class Counsel in Support of Plaintiffs' Motion for  
8 Preliminary Approval of Class Action Settlement. (ECF No. 79-1).

9 53. Dominic Valerian is a graduate of University of California, Davis and the  
10 University of Southern California Law Center. Since joining Gallo LLP in 2009, his focus has  
11 been on vindicating the rights of consumers, employees, and businesses in fraud and breach of  
12 contract matters. Before coming to Gallo LLP, Dominic was a litigation associate in the Los  
13 Angeles office of the international law firm Dewey & LeBoeuf, where he defended commercial  
14 cases on behalf of Fortune 500 companies and oversaw his office's pro bono program.

15 54. Warren Stramiello is a computer scientist and attorney, with extensive experience  
16 in both fields. Warren earned a B.S. in Computer Science from the Georgia Institute of  
17 Technology, graduating with highest honors in 2003. Prior to attending law school and during his  
18 undergraduate studies, Warren worked as a System Security Administrator at the Georgia Tech  
19 Research Institute and presented at conferences on computer security topics, including  
20 steganography and watermarking. Warren received his J.D. in 2007 from the University of  
21 California, Los Angeles School of Law, and was elected to the Order of the Coif. After  
22 graduating from law school, Warren worked as an attorney with the firm of Paul, Weiss, Rifkind,  
23 Wharton & Garrison LLP for eight years, litigating technology-related disputes in a broad range  
24 of cases, including patent infringement, copyright infringement, antitrust, contract, securities class  
25 actions, investigations, tort, and fraud, as well as advising clients concerning privacy and data  
26 security, technology-related mergers and acquisitions, and other intellectual property issues. In  
27 2015, Warren joined GALLO as both an attorney and the firm's CISO. At GALLO, Warren  
28 focused his legal practice on clients seeking help with technology-related matters, including

1 compliance, investigations, advisement and litigation. On October 18, 2017, Warren joined  
2 IBM's Cybersecurity Legal team at the corporate headquarters in Armonk, New York.

3 55. Sharon Laveson graduated from the University of Pennsylvania, and is a 2002  
4 graduate of the Columbia University School of Law (with honors). She spent five years as a trial  
5 lawyer with the Manhattan District Attorney's office in New York, trying approximately 20 jury  
6 cases to a verdict before joining GALLO in or about September 2008, working on commercial  
7 litigation and consumer class action matters.

8 56. Marc Van Anda graduated from the University of California, Berkeley with a B.A.  
9 in Political Science in 1983. He obtained his paralegal certificate in April 2011 and joined  
10 GALLO in November 2011.

11  
12 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
13 30th day of October, 2017 in San Francisco, California.

14  
15 /s/ Michael W. Sobol  
16 Michael W. Sobol

17 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
18 30th day of October, 2017 in Little Rock, Arkansas.

19  
20 /s/ Hank Bates  
21 Hank Bates

22 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
23 30th day of October, 2017 in San Rafael, California.

24  
25 /s/ Ray Gallo  
26 Ray Gallo

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**ATTESTATION**

I, Michael W. Sobol, am the ECF user whose identification and password are being used to file this Joint Declaration. I hereby attest that Hank Bates and Ray Gallo have concurred in this filing.

/s/ Michael W. Sobol  
Michael W. Sobol, Esq.

# EXHIBIT 1

**Lodestar Detail for Class Counsel for the Settlement Class**  
*Daniel Matera and Susan Rashkis, et al., v. Google LLC*  
5:15-cv-04062 LHK

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## **I. Timekeeper Status**

(P) = Partner

(A) = Associate

(N) = Non-Attorney Staff

## **II. Category Description**

Identifying and Communicating with Plaintiffs/Potential Plaintiffs: Tasks related to client outreach and intake, and discussions with Class Representatives regarding factual investigation, pleadings, discovery, settlement, and all other case updates.

Document Review: Tasks related to review of documents produced by Google in discovery, reports of review results, and establishing coding and reporting protocols.

Investigations and Factual Research: Tasks related to investigation and analysis of factual issues, to the extent such issues were not a part of briefing- or pleadings-related investigation or research (see category 6), or a part of follow-up investigation related to Document Review (category 2).

Written Discovery: Tasks related to all formal discovery except Document Review and disclosures/documents/interrogatory responses for Class Representatives.

Depositions: Tasks related to depositions of Google's witnesses, including identifying and noticing witnesses, and preparation for and conducting of the depositions.

Pleadings, Briefs, and Pretrial Motions: Tasks related to the drafting of such documents, including legal and factual research.

Experts: Tasks related to outreach to, retention of, and working with experts.

Court Appearances: Tasks related to appearances before the Court, including related preparation and travel.

Litigation Strategy and Analysis: Tasks related to developing litigation strategy and assessing appropriate steps for the efficient and successful prosecution of the Action.

Class Certification: Tasks related to class certification briefing, research, and strategy.

Settlement: Tasks related to settlement, including negotiations, research, analysis, drafting and exchanging mediation statements, and participating in meditations.

Administrative: Tasks including and related to organizing files, creating exhibits, calendaring, etc.

Miscellaneous: Tasks not specifically attributable to any other listed category.

Case Management: Tasks related general case management.

Settlement Approval Work: Tasks related to post-settlement work, including drafting approval papers and accompanying exhibits, working with KCC to effectuate Class Notice, etc.

**III. Grand Total Class Counsel Hours and Lodestar**

<b>Grand Total for Class Counsel for the Settlement Class</b>		
	<b>Hours</b>	<b>Lodestar</b>
Attorney Grand Total	3,870.00	\$2,001,380.50
Non-Attorney Grand Total	176.50	\$61,059.00
<b>GRAND TOTAL</b>	<b>4,046.50</b>	<b>\$2,062,439.50</b>

IV. Lieff Cabraser Heimann & Bernstein, LLP

<b>Lieff Cabraser Heimann &amp; Bernstein, LLP</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Sobol, Michael (P)	272.40	\$900.00	\$245,160.00
Sugnet, Nicole (P)	297.10	\$510.00	\$151,521.00
Gardner, Melissa (A)	79.90	\$455.00	\$36,354.50
Levin-Gesundheit, Michael (A)	47.80	\$415.00	\$19,837.00
Yu, Cristina (A)	192.00	\$415.00	\$79,680.00
Rolich, Eavon (A)	176.80	\$415.00	\$73,372.00
Anthony, Richard (N)	12.00	\$375.00	\$4,500.00
Calangian, Margie (N)	22.80	\$375.00	\$8,550.00
Grant, Anthony (N)	27.50	\$375.00	\$10,312.50
Swenson, Yun (N)	88.90	\$360.00	\$32,004.00
<b>LIEFF CABRASER TOTAL</b>	<b>1217.20</b>		<b>\$661,291.00</b>



A. Michael Sobol

Billing Category	Michael Sobol Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	3.00	\$2700.00
Document Review	4.10	\$3,690.00
Investigations and Factual Research	1.00	\$900.00
Written Discovery	24.80	\$22,320.00
Depositions	5.00	\$4,500.00
Pleadings, Briefs, and Pretrial Motions	50.10	\$45,090.00
Experts	0.00	\$0.00
Court Appearances	52.80	\$47,520.00
Litigation Strategy and Analysis	11.90	\$10,710.00
Class Certification	0.00	\$0.00
Settlement	98.20	\$88,380.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	18.20	\$16,380.00
Settlement Approval Work	3.30	\$2,970.00
<b>TOTAL</b>	<b>272.40</b>	<b>\$245,160.00</b>

**B. Nicole Sugnet**

<b>Billing Category</b>	<b>Nicole Sugnet Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	3.20	\$1,632.00
Document Review	21.10	\$10,761.00
Investigations and Factual Research	0.30	\$153.00
Written Discovery	54.70	\$27,897.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	154.10	\$78,591.00
Experts	0.00	\$0.00
Court Appearances	10.60	\$5,406.00
Litigation Strategy and Analysis	7.30	\$3,723.00
Class Certification	0.00	\$0.00
Settlement	38.90	\$19,839.00
Administrative	0.30	\$153.00
Miscellaneous	0.00	\$0.00
Case Management	6.60	\$3,366.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>297.10</b>	<b>\$151,521.00</b>

C. **Melissa Gardner**

<b>Billing Category</b>	<b>Melissa Gardner Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	1.20	\$546.00
Document Review	11.20	\$5,096.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	0.00	\$0.00
Depositions	2.60	\$1,183.00
Pleadings, Briefs, and Pretrial Motions	28.70	\$13,058.50
Experts	0.00	\$0.00
Court Appearances	12.70	\$5,778.50
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	3.10	\$1,410.50
Administrative	0.20	\$91.00
Miscellaneous	0.00	\$0.00
Case Management	2.30	\$1,046.50
Settlement Approval Work	17.90	\$8,144.50
<b>TOTAL</b>	<b>79.90</b>	<b>\$36,354.50</b>

**D. Michael Levin-Gesundheit**

<b>Billing Category</b>	<b>Michael Levin-Gesundheit Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	0.20	\$83.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	0.30	\$124.50
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	37.90	\$15,728.50
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	6.70	\$2,780.50
Class Certification	0.00	\$0.00
Settlement	1.40	\$581.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>47.80</b>	<b>\$19,837.00</b>

**E. Cristina Yu**

<b>Billing Category</b>	<b>Cristina Yu Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	192.00	\$79,680.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	0.00	\$0.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>192.00</b>	<b>\$79,680.00</b>

**F. Eavon Rolich**

<b>Billing Category</b>	<b>Eavon Rolich Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	176.80	\$73,372.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	0.00	\$0.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>176.80</b>	<b>\$73,372.00</b>

**G. Richard Anthony**

<b>Billing Category</b>	<b>Richard Anthony Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	9.60	\$3,600.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	2.40	\$900.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>12.00</b>	<b>\$4,500.00</b>

**H. Margie Calangian**

<b>Billing Category</b>	<b>Margie Calangian Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	20.50	\$7,687.50
Investigations and Factual Research	0.00	\$0.00
Written Discovery	2.30	\$862.50
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>22.80</b>	<b>\$8,550.00</b>



**I. Anthony Grant**

<b>Billing Category</b>	<b>Anthony Grant Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	25.50	\$9,562.50
Investigations and Factual Research	0.00	\$0.00
Written Discovery	2.00	\$750.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>27.50</b>	<b>\$10,312.50</b>

**J. Yun Swenson**

<b>Billing Category</b>	<b>Yun Swenson Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	1.60	\$576.00
Document Review	33.20	\$11,952.00
Investigations and Factual Research	2.00	\$720.00
Written Discovery	1.70	\$612.00
Depositions	.70	\$252.00
Pleadings, Briefs, and Pretrial Motions	15.80	\$5,688.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0	\$0.00
Class Certification	0	\$0.00
Settlement	7.40	\$2,664.00
Administrative	25.30	\$9,108.00
Miscellaneous	1.00	\$360.00
Case Management	0.20	\$72.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>88.90</b>	<b>\$32,004.00</b>

V. Carney Bates & Pulliam, PLLC

<b>Carney Bates &amp; Pulliam, PLLC</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Bates, Hank (P)	509.20	\$750	\$381,900.00
Slade, David (A)	420.90	\$395	\$166,255.50
Brown, Kristin (A)	328.40	\$395	\$129,718.00
Craig, Justin (A)	20.60	\$395	\$8,137.00
<b>CBP TOTAL</b>	<b>1279.10</b>		<b>\$686,010.50</b>

A. Hank Bates

Billing Category	Hank Bates Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	8.60	\$6,450.00
Document Review	0.00	\$0.00
Investigations and Factual Research	0.80	\$600.00
Written Discovery	93.50	\$70,125.00
Depositions	56.70	\$42,525.00
Pleadings, Briefs, and Pretrial Motions	142.10	\$106,575.00
Experts	0.00	\$0
Court Appearances	15.00	\$11,250.00
Litigation Strategy and Analysis	44.10	\$33,075.00
Class Certification	11.20	\$8,400.00
Settlement	110.00	\$82,500.00
Administrative	0.00	\$0
Miscellaneous	0.00	\$0
Case Management	18.40	\$13,800.00
Settlement Approval Work	8.80	\$6,600.00
<b>TOTAL</b>	<b>509.20</b>	<b>381,900.00</b>

**B. David Slade**

<b>Billing Category</b>	<b>David Slade Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	20.70	\$8,176.50
Document Review	15.70	\$6,201.50
Investigations and Factual Research	3.40	\$1,343.00
Written Discovery	82.10	\$32,429.50
Depositions	43.00	\$16,985.00
Pleadings, Briefs, and Pretrial Motions	113.90	\$44,990.50
Experts	2.10	\$829.50
Court Appearances	0.00	\$0
Litigation Strategy and Analysis	55.20	\$21,804.00
Class Certification	1.00	\$395.00
Settlement	38.80	\$15,326.00
Administrative	0.00	\$0
Miscellaneous	0.80	\$316.00
Case Management	9.70	\$3,831.50
Settlement Approval Work	34.50	\$13,627.50
<b>TOTAL</b>	<b>420.90</b>	<b>\$166,255.50</b>

C. Kristin Brown

Billing Category	Kristin Brown Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0
Document Review	210.40	\$83,108.00
Investigations and Factual Research	0.00	\$0
Written Discovery	0.00	\$0
Depositions	0.00	\$0
Pleadings, Briefs, and Pretrial Motions	118.00	\$46,610.00
Experts	0.00	\$0
Court Appearances	0.00	\$0
Litigation Strategy and Analysis	0.00	\$0
Class Certification	0.00	\$0
Settlement	0.00	\$0
Administrative	0.00	\$0
Miscellaneous	0.00	\$0
Case Management	0.00	\$0
Settlement Approval Work	0.00	\$0
<b>TOTAL</b>	<b>328.40</b>	<b>\$129,718.00</b>

**D. Justin Craig**

<b>Billing Category</b>	<b>Justin Craig Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0
Document Review	0.00	\$0
Investigations and Factual Research	0.00	\$0
Written Discovery	0.00	\$0
Depositions	0.00	\$0
Pleadings, Briefs, and Pretrial Motions	20.60	\$8,137.00
Experts	0.00	\$0
Court Appearances	0.00	\$0
Litigation Strategy and Analysis	0.00	\$0
Class Certification	0.00	\$0
Settlement	0.00	\$0
Administrative	0.00	\$0
Miscellaneous	0.00	\$0
Case Management	0.00	\$0
Settlement Approval Work	0.00	\$0
<b>TOTAL</b>	<b>20.60</b>	<b>\$8,137.00</b>

VI. Gallo, LLP

<b>Gallo, LLP</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Gallo, Ray (P)	63.30	\$750.00	\$47,475.00
Valerian, Dominic (P)	2.50	\$550.00	\$1,375.00
Stramiello, Warren (A)	1,370.20	\$450.00	\$616,590.00
Laveson, Sharon (A)	88.90	\$495.00	\$44,005.50
Van Anda, Marc (N)	25.30	\$225.00	\$5,692.50
<b>GALLO TOTAL</b>	<b>1550.20</b>		<b>\$715,138.00</b>



A. Ray Gallo

Billing Category	Ray Gallo Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.80	\$600.00
Document Review	0.00	\$0.00
Investigations and Factual Research	0.00	\$0.00
Written Discovery	2.70	\$2,025.00
Depositions	0.50	\$375.00
Pleadings, Briefs, and Pretrial Motions	6.70	\$5,025.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	24.10	\$18,075.00
Class Certification	0.00	\$0.00
Settlement	21.10	\$15,825.00
Administrative	0.00	\$0.00
Miscellaneous	0.20	\$150.00
Case Management	6.60	\$4,950.00
Settlement Approval Work	0.60	\$450.00
<b>TOTAL</b>	<b>63.30</b>	<b>\$47,475.00</b>

**B. Warren Stramiello**

<b>Billing Category</b>	<b>Warren Stramiello Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	1.80	\$810.00
Document Review	1,004.20	\$451,890.00
Investigations and Factual Research	101.40	\$45,630.00
Written Discovery	52.30	\$23,535.00
Depositions	88.70	\$39,915.00
Pleadings, Briefs, and Pretrial Motions	37.00	\$16,650.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	52.90	\$23,805.00
Class Certification	0.00	\$0.00
Settlement	2.20	\$990.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	29.70	\$13,365.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>1,370.20</b>	<b>\$616,590.00</b>

C. Marc Van Anda

Billing Category	Marc Van Anda Hours	Lodestar
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	11.20	\$2,520.00
Document Review	2.90	\$652.50
Investigations and Factual Research	0.80	\$180.00
Written Discovery	0.00	\$0.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	1.30	\$292.50
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	9.10	\$2,047.50
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>25.30</b>	<b>\$5,692.50</b>

**D. Sharon Laveson**

<b>Billing Category</b>	<b>Sharon Laveson Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	88.90	\$44,005.50
Investigations and Factual Research	0.00	\$0.00
Written Discovery	0.00	\$0.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	0.00	\$0.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.00	\$0.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>88.90</b>	<b>\$44,005.50</b>

**E. Dominic Valerian**

<b>Billing Category</b>	<b>Dominic Valerian Hours</b>	<b>Lodestar</b>
Identifying and Communicating with Plaintiffs/Potential Plaintiffs	0.00	\$0.00
Document Review	0.00	\$0.00
Investigations and Factual Research	0.30	\$165.00
Written Discovery	0.00	\$0.00
Depositions	0.00	\$0.00
Pleadings, Briefs, and Pretrial Motions	1.60	\$880.00
Experts	0.00	\$0.00
Court Appearances	0.00	\$0.00
Litigation Strategy and Analysis	0.60	\$330.00
Class Certification	0.00	\$0.00
Settlement	0.00	\$0.00
Administrative	0.00	\$0.00
Miscellaneous	0.00	\$0.00
Case Management	0.00	\$0.00
Settlement Approval Work	0.00	\$0.00
<b>TOTAL</b>	<b>2.50</b>	<b>\$1,375.00</b>

# EXHIBIT 2

**Expense Summary for Class Counsel for the Settlement Class***Daniel Matera and Susan Rashkis, et al., v. Google LLC*

5:15-cv-04062 LHK

<b>EXPENSE CATEGORY</b>	<b>CBP, PLLC</b>	<b>GALLO, LLP</b>	<b>LCHB, LLP</b>	<b>TOTAL</b>
Travel (airfare, transportation, lodging & meals)	\$10,578.21	\$1,300.94	\$258.50	\$12,137.65
Long distance/ Facsimile/Teleconference	\$245.35	\$0.00	\$690.06	\$935.41
Postage/Express Delivery/Messenger	\$0.00	\$0.94	\$396.29	\$397.23
Commercial Copies	\$0.00	\$0.00	\$160.50	\$160.50
Internal Reproduction Copies	\$0.00	\$0.00	\$1,878.80	\$1,878.80
Experts/Consultants	\$0.00	\$0.00	\$0.00	\$0.00
Court Fees	\$0.00	\$0.00	\$369.85	\$369.85
Court Reporters/Transcripts	\$2,247.99	\$4,708.57	\$376.40	\$7,332.96
Witness/Service Fees	\$0.00	\$0.00	\$90.00	\$90.00
Electronic Database	\$0.00	\$0.00	\$8,550.00	\$8,550.00
Computer Research/PACER	\$1,144.96	\$67.80	\$3,490.03	\$4,702.79
Mediation Expenses	\$2,833.33	\$7,083.33	\$3,948.97	\$13,865.63
Other Charges	\$0.00	\$1,001.11	\$0.00	\$1,001.11
<b>TOTAL EXPENSES</b>	<b>\$17,049.84</b>	<b>\$14,162.69</b>	<b>\$20,209.40</b>	<b>\$51,421.93</b>

# **EXHIBIT WW**



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18 *Attorneys for Plaintiffs and the Class*

19 UNITED STATES DISTRICT COURT  
 20 NORTHERN DISTRICT OF CALIFORNIA

21 MATTHEW CAMPBELL, MICHAEL  
 22 HURLEY, on behalf of themselves and all  
 others similarly situated,

23 Plaintiffs,

24 v.

25 FACEBOOK, INC.,

26 Defendant.

Case No. 4:13-cv-05996-PJH

**JOINT DECLARATION OF MICHAEL  
 SOBOL AND HANK BATES IN SUPPORT  
 OF PLAINTIFFS' MOTION FOR AN  
 AWARD OF ATTORNEYS' FEES AND  
 COSTS AND SERVICE AWARDS**

Date: August 9, 2017  
 Time: 9:00 a.m  
 Judge: Hon. Phyllis J. Hamilton  
 Place: Courtroom 3, 3rd Floor

1 We, Michael Sobol and Hank Bates, declare as follows:

2 1. Michael Sobol is a member in good standing of the California State Bar and a  
3 partner in the law firm Lief, Cabraser, Heimann & Bernstein, LLP (“LCHB”), counsel for  
4 Plaintiffs and the Class in this proceeding. He is the LCHB attorney principally responsible for  
5 overseeing LCHB’s work in this proceeding.

6 2. Hank Bates is a member in good standing of the California and Arkansas State  
7 Bars and a partner in the law firm Carney Bates & Pulliam PLLC (“CBP”), counsel for Plaintiffs  
8 and the Class in this proceeding. He is the CBP attorney principally responsible for overseeing  
9 CBP’s work in this proceeding.

10 3. We submit this declaration jointly in support of Plaintiffs’ Motion for Attorneys’  
11 Fees and Expenses and for Service Awards for Plaintiffs.

12 4. Except as otherwise noted, we have personal knowledge of the facts set forth  
13 herein, and if called to testify thereto, could and would do so competently, including with respect  
14 to the information provided regarding our respective law firms.

15 **SUMMARY OF CLASS COUNSEL’S WORK IN THIS CASE**

16 5. As summarized below, investigating, litigating, and negotiating a resolution of this  
17 matter required substantial commitments of time and resources from our firms. Throughout the  
18 litigation, all reasonable efforts were made to avoid duplication of efforts and to ensure the most  
19 efficient management and prosecution of this matter reasonably possible.

20 6. A chronological summary of Class Counsel’s work is provided below.

21 **I. Case Investigation and Factual Research Prior to Filing (September 2013 to**  
22 **December 2013)**

23 7. Class Counsel began work on this action at the beginning of September, 2013, four  
24 months prior to filing. That pre-filing investigation included extensive review of Facebook’s  
25 messaging function, consultation with multiple experts, review of Facebook’s terms of service  
26 and privacy policies during the relevant time period and investigation of publicly available  
27 information related to the alleged conduct.  
28

1 **II. Consolidation of Actions and Successful Opposition to Facebook’s Motion to Dismiss**  
2 **(January 2014 to December 2014)**

3 8. Plaintiffs, on behalf of themselves and those similarly situated, commenced this  
4 action (the “Action”) on December 30, 2013. In their initial complaint, Plaintiffs asserted claims  
5 for violations of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.*  
6 (“ECPA”); the California Invasion of Privacy Act, Cal. Penal Code §§ 630 *et seq.* (“CIPA”); and  
7 California’s Unfair Competition Law California Business and Profession Code §§ 17200 *et seq.*  
8 (“UCL”). Therein, Plaintiffs alleged that Facebook, as a routine policy and business practice,  
9 captured and reads its users’ personal, private Facebook messages without their consent for  
10 purposes including, but not limited to, data mining and user profiling, generating ‘Likes’ for web  
11 pages, and targeted advertising.

12 9. On January 21, 2014, David Shadpour filed a related action, which alleged similar  
13 facts and averred identical causes of action against Facebook (*see Shadpour v. Facebook, Inc.*,  
14 Case No. 5:14-cv-00307-PSG (N.D. Cal.), Dkt. 1).

15 10. Class Counsel conferred with counsel for Shadpour and successfully negotiated an  
16 agreement to seek consolidation of the actions. On April 15, 2014, the Court entered an order  
17 granting Plaintiffs’ Motion to Consolidate the Related Actions (the “Consolidation Order”) and  
18 consolidating the related actions for all purposes. (*See* Dkt. 24.) Following entry of the Court’s  
19 Consolidation Order, the Class Representatives filed a Consolidated Amended Complaint on  
20 April 25, 2014, asserting ECPA, CIPA, and UCL claims on behalf of themselves and a proposed  
21 class of “[a]ll natural-person Facebook users located within the United States who have sent or  
22 received private messages that included URLs in their content, from within two years before the  
23 filing of this action up through and including the date when Facebook ceased its practice.” (*See*  
24 Dkt. 25.).<sup>1</sup>

25 11. On June 17, 2014, Facebook filed a Motion to Dismiss Plaintiffs’ Consolidated  
26 Amended Complaint. (*See* Dkt. 29.) Plaintiffs filed an opposition (*see* Dkt. 31), and Facebook, in

27  
28 <sup>1</sup> On October 2, 2015, David Shadpour voluntarily dismissed his claims, with prejudice, pursuant  
to Federal Rule of Civil Procedure 41(a). (*See* Dkt. 123.)

1 turn, filed a reply brief (*see* Dkt. 35). On December 23, 2014, the Court issued an order granting  
2 in part and denying in part Facebook’s Motion to Dismiss Plaintiffs’ Consolidated Amended  
3 Complaint, dismissing the claims under CIPA § 632 and the UCL, but denying dismissal of the  
4 claims under ECPA and CIPA § 631. (*See* Dkt. 43.)

### 5 **III. Discovery and Discovery-Related Motions Practice (January 2015 to October 2015)**

6 12. Following entry of the Court’s order granting in part and denying in part  
7 Facebook’s motion to dismiss the Consolidated Amended Complaint, the parties engaged in  
8 almost two years of extensive discovery, including the production of tens of thousands of pages  
9 of documents, fact and expert depositions of 18 witnesses (spanning 19 days of testimony),  
10 informal conferences and discussions, hundreds of hours reviewing and analyzing Facebook’s  
11 source code and detailed technical documentation, substantial discovery motion practice and the  
12 exchange of hundreds of pages of written discovery requests and responses.

13 13. More specifically, during the ten-month period between the Court’s order on  
14 Facebook’s motion to dismiss and Plaintiffs’ filing of their motion for class certification,  
15 Plaintiffs propounded three sets of requests for Production (totaling 60 Requests), two sets of  
16 Interrogatories (totaling eight Interrogatories), and a Request for Admission. Plaintiffs also  
17 served a third-party subpoena—consisting of three document requests—on one of Facebook’s  
18 outside PR agencies. Similarly, during this time period Plaintiffs took five depositions of  
19 Facebook witnesses, including multiple 30(b) depositions covering numerous highly technical  
20 topics, including the operation of Facebook’s source code.<sup>2</sup>

21 14. Plaintiffs’ review and analysis of Facebook source code was particularly time  
22 consuming, given the complexity of Facebook’s systems, which included over 10 million lines of  
23 code (*see, e.g.*, Dkt. No. 122 at 3; Dkt. No. 130 at 8), and which Facebook characterized as  
24 “complicated and vast” (Dkt. No. 113 at 5), further taking the position that source code review  
25 was extraordinary and “unprecedented...in a consumer class action.” (Dkt. No. 214 at 2; *see also*  
26 Dkt. No. 114 at 1). Indeed, this extensive source code review and analysis was at the core of

27 <sup>2</sup> Broadly, the depositions covered the operation of Facebook architecture related to Private  
28 Message functionality, site security, and Facebook’s creation and use of data and metadata from  
the processing of URLs contained within Private Messages.

1 discovery in this case. It ultimately led to the articulation of the additional practices described in  
2 Plaintiffs' motion for class certification as well as in the Second Amended Complaint, as the  
3 Court recognized. *See, e.g.*, Order Granting in Part and Denying in Part Motion for Class  
4 Certification (Dkt. No. 192 at 4, 6).

5 15. Facebook propounded commensurate discovery, in the form of two sets of  
6 Requests for Production, each, for Plaintiffs Campbell and Hurley (totaling 30 Requests per  
7 Plaintiff), one set of Requests for Production for Plaintiff Shadpour (totaling 22 Requests), two  
8 sets of Interrogatories, each, to Plaintiffs Campbell and Hurley (totaling 15 Interrogatories for  
9 Plaintiff Campbell and 14 for Plaintiff Hurley), one set of Interrogatories to Plaintiff Shadpour  
10 (totaling 11 Interrogatories), and one set of Requests for Admission, each, for Plaintiffs Campbell  
11 and Hurley (totaling four Requests per Plaintiff). Additionally, Plaintiffs defended numerous  
12 depositions: all three Plaintiffs were deposed, while four third-party *acquaintances* of Plaintiffs  
13 (with whom Plaintiffs corresponded via Facebook's private message function) were noticed for  
14 deposition by Facebook, and of these four individuals, three were ultimately deposed.

15 16. In addition, during this same period the parties engaged in substantial letter  
16 briefing before Magistrate Judge Maria-Elena James, on a host of discovery issues ranging, *inter*  
17 *alia*, from incomplete interrogatory responses and document production to 30(b)(6) deposition  
18 topics to regulatory filings with EU agencies. *See*, Dkt. Nos. 77, 95, 112, 113, 122. Moreover,  
19 during this same period, the parties engaged in protracted negotiation over the production of  
20 Facebook's source code, involving an extensive meet and confer process, contested briefing (*see*,  
21 *e.g.*, Dkt. Nos. 84-85), and ultimately a joint stipulation in which Facebook agreed to produce  
22 source code for the time period of September 1, 2009 through December 31, 2012 (Dkt. 90).

23 17. During this time period, the parties also engaged in their first mediation session on  
24 August 19, 2015, before Cathy Yanni of JAMS.

#### 25 **IV. Class Certification Briefing and Expert Discovery (November 2015 to March 2016)**

26 18. During the next portion of the discovery phase, Plaintiffs filed a Motion for Class  
27 Certification. (*See* Dkt. 138.) Defendants filed an opposition (*see* Dkt. 147-4), and Plaintiffs, in  
28 turn, filed a reply brief (*see* Dkt. 167). Over the course of this time period, the parties continued

1 with discovery, with both Plaintiffs and Facebook depositing each others' experts in the class  
2 certification briefing, and Plaintiffs taking additional fact witness depositions. The parties also  
3 continued to encounter, negotiate and brief discovery disputes. *See, e.g.*, Dkt. Nos. 186,<sup>3</sup> 189  
4 190.

5 19. On May 18, 2016, the Court issued an order granting in part and denying in part  
6 Plaintiffs' Motion for Class Certification, denying certification as to a damages class under  
7 Federal Rule of Civil Procedure 23(b)(3), but granting certification of an injunctive-relief class  
8 under Federal Rule of Civil Procedure 23(b)(2). (*See* Dkt. 192.) Specifically, the Court certified  
9 for class treatment three specific alleged uses by Facebook of URLs included in private messages:  
10 (1) Facebook's cataloging URLs share in private messages and counting them as a "like" on the  
11 relevant third-party website, (2) Facebook's use of data regarding URLs shared in private  
12 messages to generate recommendations for Facebook users, and (3) Facebook's sharing of data  
13 regarding URLs in messages (and attendant demographic data about the messages' participants)  
14 with third parties. (Dkt. 192, at pp. 3-5). In addition, the Court directed the Plaintiffs to file a  
15 Second Amended Complaint "(1) revising the class definition to reflect the definition set forth in  
16 the class certification motion, and (2) adding allegations regarding the sharing of data with third  
17 parties." (*Id.* at p.6). In accord therewith, the Plaintiffs filed their Second Amended Complaint on  
18 June 7, 2016. (Dkt. 196).

19 **V. Post-Certification Discovery and Settlement Negotiations (April 2016 to November**  
20 **2016)**

21 20. Subsequent to the filing of Plaintiffs' Second Amended Complaint, discovery in  
22 this Action continued. Facebook propounded a third set of Interrogatories, each, to Plaintiffs  
23 Campbell and Hurley, and Plaintiffs propounded a fourth and fifth set of Requests for Production  
24 and third and fourth set of Interrogatories. Plaintiffs continued with the deposition of additional  
25 fact witnesses, as well. During this time, Plaintiffs filed three motions to compel discovery (Dkt.

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26 <sup>3</sup> Requesting a telephonic conference to compel Facebook to provide portions of four separate  
27 letter briefs related to (1) Plaintiffs' Requests for Production concerning damages; (2) topics to  
28 which produced documents alluded in Facebook's current production; (3) configuration tables;  
and (4) Facebook's "predictive coding" used in the course of document production.

1 Nos. 206, 207, 208),<sup>4</sup> which were opposed by Facebook (Dkt. Nos. 214, 215, 216) and which  
2 were ultimately denied on October 4, 2016 by the Court, who instead ordered Facebook to  
3 provide the alternative discovery described in Facebook's motion papers (Dkt. No. 218).

4 21. Parallel to the above-described discovery, the parties also worked diligently on  
5 exploring the possibility of settlement, beginning with a second mediation session before Cathy  
6 Yanni on July 21, 2016. While not yielding a resolution to the Action, the parties agreed to come  
7 back for a third mediation session, which occurred on July 28, 2016. This third mediation was  
8 also unsuccessful. For months following the parties' third mediation session, the parties continued  
9 to negotiate informally. Eventually, the parties agreed to attend a fourth mediation, which took  
10 place on December 7, 2016 before Randall Wulff.

#### 11 **VI. Mediation and Settlement Agreement (December 2016 to January 2017)**

12 22. As a result of these cumulative efforts, the parties were able to reach an  
13 agreement-in-principle to resolve this Action at the December 7, 2016 mediation, and on  
14 December 23, 2016, the parties filed a Joint Status Report, advising the Court that they had  
15 reached a settlement-in-principle. (*See* Dkt. 222). Thereafter, the parties worked diligently to  
16 memorialize the terms of the settlement, first in a Memorandum of Understanding executed on  
17 February 9, 2017. Prior to that execution, on February 3, 2017, to facilitate agreement on issues  
18 related to the petition for the award of attorney's fees and costs, Class Counsel provided  
19 Facebook with the monthly time summaries.

#### 20 **VII. Work after Execution of Memorandum of Understanding (February 2017 to Present)**

21  
22 23. Subsequent to execution of the Memorandum of Understanding, Class Counsel  
23 negotiated and drafted the Settlement Agreement, executed and filed with this Court on March 1,  
24 2017, drafted the Motion for Preliminary Approval of Class Action Settlement and related filings,  
25 attending the hearing on this motion, implemented the notice requirements ordered by this Court  
26 and conferred with Facebook on issues related to the settlement.

27  
28 <sup>4</sup> Respectively, these motions sought to compel production of source code, configuration tables,  
and further document searches.



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**SUMMARY OF TIME AND COSTS INCURRED**

**I. Time Incurred By Plaintiffs' Counsel**

24. We have spent considerable time working on this case that could have been spent on other fee-generating matters. The time that we have spent on this case has been completely contingent on the outcome. We have not been paid for any of our time spent on this case, nor have we been reimbursed for any of the expenses we incurred in this case.

25. In total, from the inception of this litigation in September 2013 through April 30, 2017, the attorneys and staff at our firms have billed approximately 11,173.50 hours on this matter, for a total combined lodestar (for the two Class Counsel firms combined) of \$6,310,216.30. Attached hereto as **Exhibit 1** are summaries listing, for each of our firms, each lawyer, paralegal and other professional for which compensation is sought, the hours each individual has expended to date, their hourly billing rates, and their total lodestar.

26. The amounts included in Exhibit 1 are derived from our respective time records, which are prepared contemporaneously, describe tasks performed in 0.1 hour increments, and maintained in the ordinary course of business. Such amounts do not include many hours of time that we have written off in the exercise of billing discretion upon review of these time records.

27. Our respective firms' billing rates, which were used for purposes of calculating the lodestar here, have been approved by courts in California and throughout the country, are the usual and customary rates that our respective firms charge for services in other actions, and are set in accordance with prevailing market rates. The lodestar calculation provided here is based on our respective firms' 2017 billing rates. For any personnel who are no longer employed by the firm in question, their billing rate at the time they left the respective firm is used.

28. A sample of California federal courts that have approved LCHB's standard billing rates and reimbursement of costs as reasonable are:

a. *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, Dkt. No. 1112 (N.D. Cal. Sept. 2, 2015) (approving billing rates);

b. *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litig.*, No. 10-ml-02151 JVS (FMOx), Dkt. No. 3933 (C.D. Cal.



1 June 24, 2013) (awarding requested fees and finding that “[c]lass counsel’s experience,  
2 reputation, and skill, as well as the complexity of the case” justified their rates that ranged up to  
3 \$950);

4 c. *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1009  
5 (N.D. Cal. 2015) (awarding requested attorneys’ fees);

6 d. *Steinfeld v. Discover Financial Services*, Case No. 3:12-cv-01118-JSW  
7 (N.D. Cal. Mar. 31, 2014) (“Class counsel have submitted declarations that show the hourly rates  
8 that they have requested are reasonable and have provided the Court with information about other  
9 cases that approved their rates.”);

10 e. *Nwabueze v. AT&T Inc.*, No. C 09-01529 SI, 2014 U.S. Dist. LEXIS  
11 11766, at \*8 (N.D. Cal. Jan. 29, 2014) (“[T]he Court also finds that the rates requested are within  
12 the range of reasonable hourly rates for contingency litigation approved in this District.”);

13 f. *Ross v. Trex Co., Inc.*, No. 09-cv-00670-JSW (N.D. Cal. Dec. 16, 2013)  
14 (awarding requested attorneys’ fees);

15 g. *In re AXA Rosenberg Investor Litigation*, No. 11-00536-JSW (N.D. Cal.  
16 April 2, 2012) (“The Court has also reviewed Lead Counsel’s hourly rates and concludes that  
17 these rates are appropriate for attorneys in this locality of Lead Counsel’s skills and experience.”);

18 h. *Vedachalam v. Tata Consultancy Services, Ltd.*, No. C-06-0963-CW (N.D.  
19 Cal. July 18, 2013) (“Class Counsel’s hourly rates are reasonable in light of their experience (as  
20 reflected in their declarations and the declarations of their peers in the field of class action  
21 litigation), and the rates charged are comparable to other attorneys in this field.”);

22 i. *Wehlage, et al. v. Evergreen at Arvin, LLP, et al.*, No. 4:10-cv-058390-CW  
23 (N.D. Cal. Oct. 4, 2012) (“[T]he billing rates used by Class Counsel to calculate their lodestar are  
24 reasonable and in line with prevailing rates in this District for personnel of comparable  
25 experience.”);

26 j. *Holloway v. Best Buy Co., Inc.*, No. C-05-5056 PJH (MEJ) (N.D. Cal. Nov.  
27 9, 2011) (“The rates used by Class Counsel are reasonable.”);

28

1 k. *Fulford v. Logitech, Inc.*, No. 08-cv-02041 MMC, 2010 U.S. Dist. LEXIS  
 2 144437, at \*10 (N.D. Cal. Mar. 5, 2010) (“The Court further finds that Plaintiff’s Counsels’  
 3 hourly rates are reasonable for their skill and the work they performed.”).

4 29. A sample of California federal courts that have approved CBP’s requested fees and  
 5 reimbursement of costs as reasonable include the following:

6 a. *Smith v. Intuit, Inc.*, No. 5:12-cv-00222 (N.D. Cal Oct. 1, 2013) (Docket  
 7 No. 105) (granting requested attorneys’ fees);

8 b. *In re Bank of America Credit Protection Marketing & Sales Practices*  
 9 *Litig.*, No. 11-md-2269 (N.D. Cal Jan. 16, 2013) (Docket No. 96) (granting requested attorneys’  
 10 fees);

11 c. *In re National Golf Properties, Inc. Securities Litigation*, No. 2:02-cv-  
 12 1383-GHK-RZX (C.D. Cal. Oct. 5, 2004) (Docket No. 106), (granting requested attorneys’ fees);

13 d. *Valuepoint Partners, Inc. v. ICN Pharmaceuticals, Inc. Et al.*, No. 8:03-cv-  
 14 0989 (C.D. Cal. Feb. 28, 2005) (Docket No. 109) (granting requested attorneys’ fees).

15 30. Federal and state courts throughout the country have likewise approved CBP’s  
 16 requested fees and reimbursement of costs as reasonable. *See, e.g., In re Liberty Refund*  
 17 *Anticipation Loan Litig.*, Case No. 1:12-cv-02949 (N.D. Ill.); *Middlesex County Retirement*  
 18 *System v. Semtech Corp. et al*, Case No. 07-Civ-7183 (S.D.N.Y.); *In re Sterling Financial*  
 19 *Corporation Securities Class Action*, Case No. CV 07-2171 (S.D.N.Y.); *Nelson, et al. v. Wal-*  
 20 *Mart Stores, Inc.*, Case No. 04-CV-00171 (E.D. Ark.); *Montalvo v. Triplos, Inc. et al.*, Case No.  
 21 4:03CV995SNL (E.D. Mo.); *In re Fleming Corporation Securities Litigation*, No. 5-02-CV-178  
 22 (E.D. Tx.).

23 31. In addition to the chronological summary of work provided above, the following  
 24 chart shows the number of hours that each of our firms spent, as of April 30, 2017, on each of  
 25 fourteen categories of activities related to the action.

Billing Category	Lieff Cabraser Hours	Lodestar
Pre-Filing Investigation and Drafting Original Complaint	207.70	\$118,818.00

1	Consolidation of Actions & Consolidated Complaint	146.30	\$98,414.50
2			
3	Case Management	180.70	\$108,702.50
4			
5	Case Management Statements & Conferences	94.80	\$66,834.00
6			
7	Dispositive Motions (Motion to Dismiss and Summary Judgment)	417.30	\$241,181.00
8			
9	Written Discovery	721.20	\$421,219.00
10			
11	Document Review	645.40	\$311,176.50
12			
13	Experts and Source Code Review and Analysis	605.20	\$351,914.00
14			
15	Depositions	907.60	\$543,920.00
16			
17	Discovery Motions and Meet and Confers	1,086.40	\$672,208.00
18			
19	Class Certification Motion	1,045.70	\$666,078.00
20			
21	Second Amended Complaint	42.20	\$29,879.50
22			
23	Mediation & Settlement	342.40	\$232,211.50
24			
25	Post-Settlement Motions and Related Actions	25.30	\$15,372.00
26	<b>TOTAL</b>	<b>6,468.20</b>	<b>\$3,877,928.50</b>
27			
28			

	<b>Billing Category</b>	<b>Carney Bates &amp; Pulliam Hours</b>	<b>Lodestar</b>
1			
2			
3	Pre-Filing Investigation and Drafting Original Complaint	206.90	\$112,965.50
4			
5	Consolidation of Actions & Consolidated Complaint	203.40	\$108,068.50
6			
7	Case Management	120	\$78,946.00
8			
9	Case Management Statements & Conferences	53.50	\$38,598.50
10			
11	Dispositive Motions (Motion to Dismiss and Summary Judgment)	382.80	\$196,701.00
12			
13	Written Discovery	491.50	\$265,065.50
14			
15	Document Review	255.20	\$117,345.00
16			
17	Experts and Source Code Review and Analysis	209.30	\$114,090.00
18			
19	Depositions	840.60	\$502,462.00
20			
21	Discovery Motions and Meet and Confers	674.00	\$348,702.50
22			
23	Class Certification Motion	687.20	\$369,274.00
24			
25	Second Amended Complaint	13.30	\$6,673.50
26			
27	Mediation & Settlement	485.80	\$321,720.00
28			
29	Post-Settlement Motions and Related Actions	81.80	\$51,232.50

1	<b>TOTAL</b>	<b>4,705.30</b>	<b>\$2,631,844.50</b>
2			
3			
4	<b>Billing Category</b>	<b>Class Counsel Combined Hours</b>	<b>Class Counsel Combined Lodestar</b>
5	Pre-Filing Investigation and Drafting Original Complaint	414.60	\$231,783.50
6			
7	Consolidation of Actions & Consolidated Complaint	349.70	\$206,483.00
8			
9	Case Management	300.70	\$187,648.50
10			
11	Case Management Statements & Conferences	148.30	\$105,432.50
12			
13	Dispositive Motions (Motion to Dismiss and Summary Judgment)	800.10	\$437,882.00
14			
15	Written Discovery	1,212.70	\$686,284.50
16			
17	Document Review	900.60	\$428,521.50
18			
19	Experts and Source Code Review and Analysis	814.50	\$466,004.00
20			
21	Depositions	1,748.20	\$1,046,382.00
22			
23	Discovery Motions and Meet and Confers	1,760.40	\$1,020,910.50
24			
25	Class Certification Motion	1,732.90	\$1,035,352.00
26			
27	Second Amended Complaint	55.50	\$36,553.00
28			

1	Mediation & Settlement	828.20	\$553,931.50
2			
3	Post-Settlement Motions and	107.10	\$66,604.50
4	Related Actions		
5	<b>TOTAL</b>	<b>11,173.50</b>	<b>\$6,509,773.00</b>
6			

7

8 32. Based on our experience with other class actions and complex cases, we believe

9 that the time expended in connection with this matter was necessary to ensure the success of the

10 action and reasonable in amount, particularly given the result achieved for the Settlement Class

11 members and the complexity and challenges of the litigation.

12 33. The hourly rates utilized in the lodestar calculation include no risk multiplier. This

13 Action involves novel issues predicated on claims involving the ECPA's and CIPA's application

14 to electronic messages. The caselaw in this context is not fully developed, which resulted in the

15 parties advancing conflicting interpretations of certain elements of Plaintiffs' ECPA and CIPA

16 claims during the litigation, including the definition of message "content," the extent to which an

17 interception of an electronic message occurs "in transit," the contours of the affirmative defense

18 of implied consent, and the extent to which an "ordinary course of business" defense applies to an

19 electronic communications service provider's acquisition and/or use of message content.

20 Moreover, these novel legal issues were disputed in a highly technical context that required our

21 firms and our retained experts to review extensive source code and technical documents. These

22 issues, and other difficult issues implicated by these claims, required our firms to research and

23 devise litigation strategies to move the case through class certification towards trial, without the

24 certainty of ever receiving compensation.

## 25 **II. Costs Incurred By Plaintiffs' Counsel**

26 34. At the inception of the litigation, we agreed to establish a common cost fund to be

27 used to pay necessary common expenses, primarily expert and consultant expenses, incurred on

28

1 behalf of Plaintiffs in this litigation. The common cost fund is, and at all times has been,  
2 maintained by LCHB, and has been funded by our respective firms through periodic assessments.

3 35. LCHB has contributed \$196,276.00 to the common cost fund since its inception,  
4 and CBP has contributed \$210,207.00 to the common cost fund since its inception, for a total  
5 contribution of \$406,483.00. In all, a total of \$396,619.19 in necessary common costs have been  
6 paid from the common cost fund.<sup>5</sup> The costs paid from the cost fund are categorized as follows:

Expense Description	Expense Amount
Experts and Code Review	\$338,055.09
Court Reporters and Related Deposition Costs	\$52,322.43
E-Discovery Consultants	\$6,241.67
<b>TOTAL</b>	<b>\$396,619.19</b>

7  
8  
9  
10  
11  
12  
13  
14  
15  
16 36. In addition to our respective cost fund contributions, our respective firms have  
17 incurred other necessary expenses in prosecuting this matter. Attached hereto as **Exhibit 2** is a  
18 summary of expenses incurred in the prosecution of this matter, including travel for depositions  
19 and hearings, legal research, postage, and other customary litigation expenses. As detailed in this  
20 exhibit, LCHB's expenses incurred in the prosecution of this matter total \$374,757.71, inclusive  
21 of cost fund contributions; and CBP's expenses incurred in the prosecution of this matter total  
22 \$288,801.41, inclusive of cost fund contributions. After deduction of the \$9,863.81 not expended  
23 from the cost fund on this action, total unreimbursed expenses are \$653,695.31.

24 37. The foregoing expenses were incurred solely in connection with this litigation and  
25 are reflected in our respective books and records as maintained in the ordinary course of business.

26  
27  
28 <sup>5</sup> Of the total \$406,483.00 contributed to the common cost fund, \$9,863.81 has not been spent in  
this case.





1 practice group. Mr. Sobol has served as plaintiffs' class counsel in numerous nationwide class  
2 action cases. Mr. Sobol's qualifications are detailed at pages 6-9 of the Joint Declaration of Class  
3 Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.  
4 (Dkt. 227-2).

5 43. Nicholas Diamand graduated from Columbia University of Law in 2002, with an  
6 LLM degree as a Stone Scholar. He thereafter clerked for then-Chief Judge Edward R. Korman,  
7 of the U.S District Court, Eastern District of New York. He joined LCHB in 2003 where he was  
8 an associate until 2006. He was a partner from 2007 until July 2008 and has been a partner since  
9 2013. In the intervening period, he was Of Counsel at LCHB. During his time at LCHB, Mr.  
10 Diamand's practice has been focused on consumer, securities fraud, and privacy litigation.

11 44. David Rudolph graduated from University of California at Berkeley, Boalt Hall  
12 School of Law in 2004. From 2007 to 2008 he was a law clerk for the Honorable Sandra Brown  
13 Armstrong, United States District Court for the Northern District of California. Prior to joining  
14 LCHB, Mr. Rudolph worked as an associate at Quinn Emmanuel. Since joining LCHB, Mr.  
15 Rudolph has become a partner in the San Francisco office. He has litigated numerous intellectual  
16 property cases in diverse technology areas, including internet services, storage visualization,  
17 semiconductor design, and handheld mobile devices. Mr. Rudolph has additionally represented  
18 several plaintiffs and defendants in copyright infringement and trade secret matters.

19 45. Rachel Geman graduated from Columbia University of Law in 1997. She then  
20 clerked for Judge Constance Baker Motley, United States District Court for the Southern District  
21 of New York from 1997 to 1998. Ms. German is now a partner in the LCHB New York office and  
22 focuses her work on employment law, consumer protection, and False Claims Act litigation. Her  
23 recent clients consist of whistleblowers in the banking, pharma, and healthcare industries;  
24 consumers in mortgage and short-term health insurance class action matters; and municipalities in  
25 civil rights litigation. She has also previously worked as an adjunct professor at New York Law  
26 School.

27 46. Melissa Gardner graduated in 2011 from Harvard Law School. After graduating,  
28 she worked as a law clerk for South Brooklyn Legal Services and at the law firm Emery Celli

1 Brinckerhoff & Abady in New York. Since joining LCHB as an associate in 2012, Ms. Gardner  
2 has represented plaintiffs in consumer protection, digital privacy, and mass tort litigation.

3 **Carney Bates & Pulliam, PLLC**

4 47. CBP's qualifications were previously detailed at ECF No. 138-1 (filed in support  
5 of Plaintiff's Motion for Class Certification and appointment of CBP as Class Counsel), which  
6 filing is incorporated by reference herein. As set forth therein, CBP is a national law firm based in  
7 Little Rock, Arkansas, and is recognized as one of the country's premiere firms in the areas of  
8 consumer protection class actions, data privacy/security, securities fraud, environmental law and  
9 employment discrimination. A copy of CBP's current resume, which describes the firm's  
10 experience in class action and other complex litigation, can be found at  
11 <http://www.cbplaw.com/firm-resume/>.

12 48. The primary CBP attorneys working on this case were partners Hank Bates and  
13 Allen Carney and associate David Slade. In addition, partner Tiffany Wyatt Oldham, associate  
14 Justin Craig and former associate Mitch Rouse performed discrete tasks.

15 49. Hank Bates is a partner at CBP with 25 years of litigation experience. He joined  
16 CBP in 2004, and since that time has focused his practice on representing consumers, farmers,  
17 shareholders, small businesses and governmental entities in class actions and complex litigation  
18 involving primarily consumer fraud, computer privacy, environmental law and employment  
19 rights. He received his B.A. from Harvard College in 1987 and his J.D. from Vanderbilt  
20 University School of Law in 1992. Following law school, he was a law clerk for the Honorable  
21 Danny J. Boggs, United State Court of Appeals for the Sixth Circuit. He practiced public-interest  
22 environmental law in San Francisco, California from 1993 to 1997, first with the law firm of  
23 Shute, Mihaly & Weinberger and then with Earthjustice, before returning to his home state of  
24 Arkansas. Mr. Bates's qualifications are detailed at pages 10-13 of Joint Declaration of Class  
25 Counsel in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.  
26 (Dkt. 227-2).

27 50. Allen Carney is a partner at CBP with over 20 years of litigation experience. He  
28 concentrates his practice on prosecuting complex litigation on behalf of investors, consumers and

1 employees. Mr. Carney played a key role in litigating the various Payment Protection actions  
2 against the largest credit card issuers, which actions resulted in significant recoveries for injured  
3 consumers. Prior to joining CBP, Mr. Carney was a partner with Jack, Lyon & Jones, P.A. in the  
4 Little Rock, Arkansas office, where he practiced extensively in the areas of complex commercial  
5 litigation, labor and employment litigation, and business transactions. Mr. Carney received his  
6 B.S.B.A. undergraduate degree from the University of Arkansas at Fayetteville in 1991 and his  
7 J.D. from the University of Arkansas at Little Rock in 1994.

8 51. Tiffany Wyatt Oldham is a partner at CBP with 16 years of litigation experience.  
9 She received her B.A. from the University of Arkansas at Fayetteville in 1998 and her J.D. from  
10 the University of Arkansas at Fayetteville in 2001. Prior to joining CBP, Ms Oldham worked as  
11 an intern for the United States Bankruptcy Court, Western Division of Arkansas where she  
12 researched bankruptcy issues and assisted in administrating bankruptcy proceedings. Since  
13 joining CBP in 2002, Ms. Oldham has focused her practice on securities and consumer fraud class  
14 action, and she has gained experience with the full range of litigation issues confronting investors  
15 and consumers in complex litigation.

16 52. David Slade is an associate at CBP with 4 years of litigation experience. He  
17 received his B.A. from Yale University in 2001 and his J.D. from the University of Arkansas at  
18 Little Rock in 2013. At CBP, Mr. Slade's focus is on consumer protection, specifically in the  
19 areas of data privacy and data security. He has also organized cyber safety training for Arkansas  
20 law enforcement and victim assistance professionals in conjunction with the National  
21 Organization of Victim Assistance. Additionally, Mr. Slade is a member of the Volunteers  
22 Organization, Center for Arkansas Legal Services, an organization committed to pro bono  
23 advocacy.

24 53. Justin Craig is an associate with 3 years of litigation experience. He received his  
25 B.A. from the University of Central Florida in 2010 and his J.D. from the University of Arkansas  
26 at Little Rock in 2014. Mr. Craig founded his own law firm, and as a solo practitioner, focused on  
27 serving populations that are historically underserved through providing family law, estate  
28

1 planning, and expungement services. Since joining CBP in 2015, Mr. Craig has focused his work  
2 on consumer protection.

3 54. Mitch Rouse is a former associate of CBP. Mr. Rouse earned his J.D. from the  
4 University of Arkansas at Little Rock William H. Bowen School of Law in 2014. While in law  
5 school, he was selected by the Law Review Editorial Board to serve as the Editor-in-Chief of  
6 the UALR Law Review. Following law school, Mr. Rouse clerked for the Honorable D.P.  
7 Marshall Jr., United States District Judge for the Eastern District of Arkansas.

8 55. Rebecca Kaufman is a former associate of CBP. Ms. Kaufman graduated from the  
9 University of Arkansas-Little Rock Bowen School of Law in 2011. While in law school, Ms.  
10 Kaufman simultaneously pursued a Masters of Public Service Degree at the Clinton School of  
11 Public Service. Ms. Kaufman also holds a Bachelor of Arts degree from the University of  
12 Mississippi.

13  
14 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
15 26th day of May, 2017 in San Francisco, California.

16  
17 /s/ Michael W. Sobol  
18 Michael W. Sobol

19 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
20 26th day of May, 2017 in Little Rock, Arkansas.

21  
22 /s/ Hank Bates  
23 Hank Bates

# EXHIBIT 1

**Lodestar Summary for Class Counsel for the Settlement Class***Matthew Campbell and Michael Hurley, et al., v. Facebook, Inc.*

Case No. 4:13-cv-05996-PJH

**Timekeeper Status**

(P) = Partner

(OC) = Of Counsel

(A) = Associate

(C) = Contract Attorney

(PL) = Paralegal

(R) = Research/Litigation Support

<b>Lieff Cabraser Heimann &amp; Bernstein, LLP</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Sobol, Michael (P)	1092.7	\$900	\$983,430.00
Geman, Rachel (P)	40.4	\$700	\$28,280.00
Diamand, Nicholas (P)	451	\$650	\$293,150.00
Diamand, Nicholas (OC)	47.4	\$550	\$26,070.00
Rudolph, David (P)	1155.4	\$625	\$722,125.00
Rudolph, David (OC)	1334.4	\$575	\$767,280.00
Gardner, Melissa (A)	1605.3	\$455	\$730,411.50
Cronin-Wilson, Seth (C)	405	\$515	\$208,575.00
Anthony, Richard (R)	4.1	\$345	\$1,414.50
Ashlynn, Willow (R)	3.9	\$360	\$1,404.00
Belushko-Barrows, Nikki (R)	12.8	\$345	\$4,416.00
Grant, Anthony (R)	33.0	\$375	\$12,375.00
Mukherji, Renee (R)	7.6	\$375	\$2,850.00
Calangian, Margie (R)	31.5	\$375	\$11,812.50
Ocampo, Erwin (PL)	14.2	\$360	\$5,112.00
Chan, Christian (PL)	9.1	\$350	\$3,185.00
Carnam, Todd (PL)	191.9	\$345	\$66,205.50
Rudnick, Jennifer (PL)	28.5	\$345	\$9,832.50
<b>LCHB TOTAL</b>	<b>6,468.2</b>		<b>\$3,877,928.50</b>

<b>Carney Bates &amp; Pulliam, PLLC</b>			
<b>Timekeeper</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Bates, Hank (P)	1,296.80	\$750	\$979,125.00
Carney, Allen (P)	852.00	\$750	\$639,000.00
Oldham, Tiffany (P)	34.70	\$575	\$19,952.50
Craig, Justin (A)	92.60	\$375	\$34,725.00
Kaufman, Rebecca (A)	18.20	\$375	\$6,825.00
Rouse, Mitch (A)	6.40	\$375	\$2,400.00
Slade, David (A)	2,404.60	\$395	\$949,817.00
<b>CBP TOTAL</b>	<b>4,705.30</b>		<b>\$2,631,844.50</b>

<b>Grand Total for Class Counsel for the Settlement Class</b>		
	<b>Hours</b>	<b>Lodestar</b>
Attorney Grand Total	10,836.9	\$6,391,166.00
Non-Attorney Grand Total	336.6	\$118,607.00
<b>GRAND TOTAL</b>	<b>11,173.5</b>	<b>\$6,509,773.00</b>

# EXHIBIT 2



**Expense Summary for Class Counsel for the Settlement Class***Matthew Campbell and Michael Hurley, et al., v. Facebook, Inc.*

Case No. 4:13-cv-05996-PJH

<b>EXPENSE CATEGORY</b>	<b>CBP, PLLC</b>	<b>LCHB, LLP</b>	<b>Total</b>
Travel (airfare, transportation, lodging & meals)	\$67,906.71	\$17,373.71	\$85,280.42
Long distance/ Facsimile/Teleconference	\$1,075.80	\$4,441.48	\$5,517.28
Postage/Express Delivery/Messenger	\$560.49	\$3,675.65	\$4,236.14
Commercial Copies		\$89.00	\$89.00
Internal Reproduction Copies	\$762.44	\$19,318.60	\$20,081.04
Experts/Consultants		\$90,398.11	\$90,398.11
Court Fees	\$481.00	\$825.39	\$1,306.39
Court Reporters/Transcripts		\$11,223.60	\$11,223.60
Witness/Service Fees	\$75.00	\$279.00	\$354.00
Electronic Database		\$4,350.00	\$4,350.00
Computer Research/PACER	\$7,732.97	\$9,414.67	\$17,147.64
Mediation Expenses		\$16,787.50	\$16,787.50
Other Charges		\$305.00	\$305.00
Common Cost Fund Contributions	\$210,207.00	\$196,276.00	\$406,483.00
<i>Funds Not Expended from Common Cost Fund</i>			(\$9,863.81)
<b>TOTAL EXPENSES</b>	<b>\$288,801.41</b>	<b>\$374,757.71</b>	<b>\$653,695.31</b>

# **EXHIBIT XX**

1 BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.  
2 ANDREW S. FRIEDMAN (AZ005425)  
FRANCIS J. BALINT, JR. (AZ007669)  
3 2325 E. Camelback Road, Suite 300  
Phoenix, AZ 85016  
4 Telephone: 602/274-1100

5 Liaison Counsel for Plaintiffs

6 ROBBINS GELLER RUDMAN  
& DOWD LLP  
7 DARREN J. ROBBINS  
JEFFREY D. LIGHT  
8 SCOTT H. SAHAM  
LUCAS F. OLTS  
9 ASHLEY M. PRICE  
655 West Broadway, Suite 1900  
10 San Diego, CA 92101  
Telephone: 619/231-1058

11 - and -  
SAMUEL H. RUDMAN  
12 DAVID A. ROSENFELD  
58 South Service Road, Suite 200  
13 Melville, NY 11747  
Telephone: 631/367-7100

14 Lead Counsel for Plaintiffs

15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

17 JAMES V. SIRACUSANO, On Behalf of  
18 Himself and All Others Similarly Situated,

19 Plaintiff,

20 vs.

21 MATRIXX INITIATIVES, INC., et al.,

22 Defendants.

Civ. No. 04-0886-PHX-NVW  
(Consolidated)

CLASS ACTION

JOINT DECLARATION OF SCOTT H.  
SAHAM AND JEFFREY D. LIGHT  
FILED ON BEHALF OF ROBBINS  
GELLER RUDMAN & DOWD LLP IN  
SUPPORT OF APPLICATION FOR  
AWARD OF ATTORNEYS' FEES AND  
EXPENSES

DATE: November 13, 2012  
TIME: 9:30 a.m.  
CTRM: The Honorable Neil V. Wake

1 We, SCOTT H. SAHAM and JEFFREY D. LIGHT, declare as follows:

2 1. We are members of the firm of Robbins Geller Rudman & Dowd LLP  
 3 (“Robbins Geller”). We are submitting this declaration in support of our firm’s application  
 4 for an award of attorneys’ fees and expenses in connection with services rendered in the  
 5 above-entitled action.

6 2. This firm is Lead Counsel of record for Lead Plaintiff NECA-IBEW Pension  
 7 Fund (the Decatur Plan).

8 3. The identification and background of our firm and its partners is attached  
 9 hereto as Exhibit A.

10 4. The following information regarding the firm’s time and expenses is taken  
 11 from time and expense printouts prepared and maintained by the firm in the ordinary course  
 12 of business. We are the partners who oversaw and/or conducted the day-to-day activities in  
 13 the Litigation and the Settlement, respectively, and have reviewed these printouts (and  
 14 backup documentation where necessary or appropriate). The purpose of these reviews was  
 15 to confirm both the accuracy of the entries on the printouts as well as the necessity for and  
 16 reasonableness of the time and expenses committed to the Litigation. As a result of these  
 17 reviews, reductions were made to both time and expenses in the exercise of “billing  
 18 judgment.” As a result of these reviews and adjustments, we believe that the time reflected  
 19 in the firm’s lodestar calculation and the expenses for which payment is sought are  
 20 reasonable in amount and were necessary for the effective and efficient prosecution and  
 21 resolution of the Litigation. In addition, we believe that the expenses are all of a type that  
 22 would normally be charged to a fee-paying client in the private legal marketplace.

23 5. The total number of hours spent on this Litigation by our firm is 4,002.45. The  
 24 total lodestar amount for attorney/paraprofessional time based on the firm’s current rates is  
 25 \$2,065,705.00. The hourly rates shown below are the usual and customary rates charged for  
 26 each individual. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Abadou, Ramzi	(P)	24.00	485	11,640.00

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Daley, Joseph	(P)	986.25	650	641,062.50
Dowd, Michael	(P)	21.00	830	17,430.00
Geller, Paul J.	(P)	31.50	790	24,885.00
Isaacson, Eric	(P)	262.00	770	201,740.00
Kowalewski, Catherine	(P)	23.75	600	14,250.00
Light, Jeffrey D.	(P)	61.25	715	43,793.75
Robbins, Darren J.	(P)	51.00	790	40,290.00
Rosenfeld, David	(P)	36.25	620	22,475.00
Rudman, Samuel H.	(P)	31.00	800	24,800.00
Saham, Scott H.	(P)	574.75	660	379,335.00
Steinmeyer, Randall H.	(P)	7.25	510	3,697.50
Fitzgerald, Carolina	(A)	12.00	395	4,740.00
Olts, Lucas	(A)	340.50	480	163,440.00
Price, Ashley	(A)	550.00	300	165,000.00
Lin, David	(PA)	60.25	320	19,280.00
Stickney, Alexis	(PA)	179.20	425	76,160.00
Barhoum, Anthony J.	(EA)	31.50	395	12,442.50
Aronica, Steven	(FA)	4.50	555	2,497.50
Jennette, Heather J.	(FA)	0.50	445	222.50
Rudolph, Andrew	(FA)	43.50	555	24,142.50
Brandon, Kelley T.	(I)	3.00	225	675.00
Freer, Brad	(LS)	32.00	270	8,640.00
Goodwin, Danielle	(LS)	6.50	270	1,755.00
Price, Craig	(LS)	6.50	270	1,755.00
Ulloa, Sergio	(LS)	10.25	270	2,767.50
Young, Donald	(LS)	3.75	270	1,012.50
Kadota, Ryan H.	(RA)	5.50	150	825.00
Roelen, Scott	(RA)	39.00	295	11,505.00
Wilhelmy, David E.	(RA)	2.00	295	590.00
Paralegals		474.50	190-295	129,731.25
Document Clerk		87.50	150	13,125.00
<b>TOTAL</b>		<b>4,002.45</b>		<b>\$2,065,705.00</b>

(P) Partner

(A) Associate

(PA) Project Attorney

(EA) Economic Analyst

(FA) Forensic Accountant

(I) Investigator

(LS) Litigation Support

(RA) Research Analyst

6. Our firm seeks an award of \$196,781.93 in expenses which were reasonably and necessarily committed to the prosecution of the Litigation. This request for an award of expenses does not include the \$432,509.98 our firm paid to Supreme Court specialists Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C. ("Kellogg Huber") for their expertise in handling the proceedings before the U.S. Supreme Court. Kellogg Huber's hours were also not included in the above-referenced lodestar. The expenses are broken down as follows:

***EXPENSES***

From Inception to September 26, 2012

<b><i>EXPENSE CATEGORY</i></b>	<b><i>TOTAL</i></b>
Meals, Hotels & Transportation	\$ 43,068.16
Photocopies	18,942.76
Postage	268.99
Telephone, Facsimile	181.27
Messenger, Overnight Delivery	1,444.60
Filing, Witness & Other Fees	7,721.15
Court Hearing and Deposition Reporting, and Transcripts	16,385.45
Lexis, Westlaw, Online Library Research	13,667.39
Mediation Fees	11,218.00
Experts/Consultants/Investigators	83,636.53
Greg E. Davis M.D., M.P.H.	\$ 2,000.00
L.R. Hodges & Associates, Ltd.	53,136.53
Financial Markets Analysis, LLC	28,500.00
Miscellaneous (publications)	247.63
<b><i>TOTAL</i></b>	<b><i>\$196,781.93</i></b>

7. The following is additional information regarding certain of these expenses:

(a) Meals, Hotels and Transportation: \$43,068.16.

<b><i>NAME</i></b>	<b><i>DATE</i></b>	<b><i>DESTINATION</i></b>	<b><i>PURPOSE</i></b>
Abadou, Ramzi	10/26/04 – 10/27/04	Phoenix, AZ	Prepare for and attend lead plaintiff hearing
Saham, Scott	10/11/05 – 10/12/05	Phoenix, AZ	Prepare for and attend motion to dismiss hearing
Olts, Lucas	10/11/05 – 10/12/05	Phoenix, AZ	Prepare for and attend hearing on motion to dismiss
Daley, Joseph	06/07/09 – 06/09/09	San Francisco, CA	Prepare for and attend oral argument

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Geller, Paul	08/23/10 – 08/25/10	Washington, DC	Prepare for and attend meeting with J. Daley at the Justice Dept.
Daley, Joseph	08/23/10 – 08/24/10	Washington, DC	Prepare for meeting with P. Geller and SEC
Daley, Joseph	01/03/11 – 01/10/11	Washington, DC	Prepare for and attend hearing
Isaacson, Eric	01/05/11 – 01/10/11	Washington, DC	Prepare for and attend Solicitor General Office's moot court of Pratik Shah; attend Supreme Court hearing
Geller, Paul	01/09/11 – 01/10/11	Washington, DC	Prepare for and attend argument before U.S. Supreme Court
Saham, Scott	01/09/11 – 01/10/11	Washington, DC	Attend Supreme Court argument
Robbins, Darren	01/09/11 – 01/10/11	Washington, DC	Meet and confer with counsel; attend court hearing
Saham, Scott	07/20/11 – 07/21/11	Anaheim, CA	Prepare for and attend mediation
Saham, Scott	08/04/11 – 08/05/11	Phoenix, AZ	Prepare for and attend status conference
O'Hara, Patrick	11/09/11 – 11/12/11	San Diego, CA	Attend NECA deposition
Williams, Robert	11/09/11 – 11/13/11	San Diego, CA	Sit for deposition
Saham, Scott	05/16/12 – 05/18/12	Phoenix, AZ	Prepare for and attend Clarot deposition
Price, Ashley	05/16/12 – 05/19/12	Phoenix, AZ	Prepare for and attend Clarot deposition
Saham, Scott	05/23/12 – 05/25/12	Phoenix, AZ	Prepare for and attend Hemelt deposition
Price, Ashley	05/23/12 – 05/25/12	Phoenix, AZ	Prepare for and attend Hemelt deposition
Olts, Lucas	06/20/12 – 06/22/12	New York, NY	Prepare for and attend Murphy deposition
Price, Ashley	06/20/12 – 06/22/12	New York, NY	Prepare for and attend Murphy deposition
Olts, Lucas	06/25/12 – 06/27/12	Denver, CO	Prepare for and attend pre-deposition meetings with Linschoten
Saham, Scott	06/26/12	Newport Beach, CA	Prepare for and attend



<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
			mediation
Price, Ashley	06/26/12	Denver, CO	Prepare for and attend pre-deposition meeting with Linschoten

(b) Photocopying:  
 In-house (56,694 copies @ \$0.25 per copy): \$14,173.50  
 Outside Photocopy: \$4,769.26

<i>DATE</i>	<i>VENDOR</i>
05/14/10	Peake Delancey Printers LLC
09/15/10	San Diego State University – photocopies
01/08/11	Uniguest – Nashville, TN
01/10/11	Uniguest – Nashville, TN
11/04/11	American Legal Copy - CA, LLC (dba Teris)
05/03/12	American Legal Copy - CA, LLC (dba Teris)
05/11/12	American Legal Copy - CA, LLC (dba Teris)
06/23/12	Logiclink

(c) Filing, Witness and Other Fees: \$7,721.15.

<i>DATE</i>	<i>VENDOR</i>
05/06/04	1st Nationwide Legal Services LLC
05/28/04	1st Nationwide Legal Services LLC
07/31/04	Clerk of the Court
10/19/04	Clerk of the Court
12/31/04	1st Nationwide Legal Services LLC
01/19/05	Clerk of the Court
03/15/05	1st Nationwide Legal Services LLC
04/03/05	1st Nationwide Legal Services LLC
05/03/05	1st Nationwide Legal Services LLC
03/31/06	Clerk of the Court
11/30/07	Food and Drug Administration
10/31/11	Food and Drug Administration
01/19/12	State Bar of California
02/13/12	Clerk of the Court
02/14/12	Clerk of the Court
03/08/12	Class Action Research & Litigation Support Services, Inc.
04/11/12	Class Action Research & Litigation Support Services, Inc.
04/20/12	Class Action Research & Litigation Support Services, Inc.
05/23/12	Class Action Research & Litigation Support Services, Inc.
06/18/12	Class Action Research & Litigation Support Services, Inc.
06/29/12	Class Action Research & Litigation Support Services, Inc.
07/17/12	Class Action Research & Litigation Support



<i>DATE</i>	<i>VENDOR</i>
	Services, Inc.
07/19/12	Clerk, U.S. District Court
07/25/12	Clerk, U.S. District Court
08/13/12	Class Action Research & Litigation Support Services, Inc.
08/16/12	Class Action Research & Litigation Support Services, Inc.

(d) Court Hearing and Deposition Reporting, and Transcripts: \$16,385.45.

<i>DATE</i>	<i>VENDOR</i>
11/03/05	Marilyn Sanchez
11/11/11	US Legal Support
05/17/12	Aptus Court Reporting LLC
05/18/12	Aptus Court Reporting LLC
05/25/12	Aptus Court Reporting LLC
06/25/12	Aptus Court Reporting LLC
06/27/12	Aptus Court Reporting LLC
07/13/12	Aptus Court Reporting LLC

(e) Lexis, Westlaw, Online Library Research: \$13,667.39. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis Nexis, CDA Investment Technologies, Pacer Service Center, Thompson Financial, West Publishing Corporation and Choice Point. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

(f) Mediation Fees (JAMS): \$11,218.00. These are plaintiffs' share of the fees of the mediator, William J. Cahill, who conducted 2 mediation sessions leading to the settlement of the Litigation. Judge Cahill is a nationally recognized mediator with extensive experience overseeing the mediation of complex litigation, including securities class action matters. The parties met in Orange County, California twice in separate day-long sessions with Judge Cahill during which extensive discussion and analysis of the evidence uncovered in discovery, the risks of continuing the Litigation, and the parties' respective positions on damages were undertaken.

(g) Experts/Consultants/Investigators: \$83,636.53.

(i) L.R. Hodges & Associates, Ltd. ("LRH"): \$53,136.53. Over a combined 14-month period (November 2004 through March 2005, May 2005, September

1 through November 2005, March 2006, July through August 2011, and April through May  
2 2012) in which LRH provided investigative services to Lead Counsel, LRH expended 277  
3 hours for combined fees of \$49,078.00, and incurred related expenses of \$4,058.53 for a total  
4 of \$53,136.53. LRH's research staff expended 100 hours to research, identify, and confirm  
5 the employment status of prospective witnesses, locating all key targets, as well as  
6 maintaining and updating an evolving witness list to support other investigative team  
7 members. This also involved extensive research, retrieval, and analysis of relevant  
8 documents, including SEC filings, media articles, court filings, consumer complaints, as well  
9 as other materials related to the case issues. The case manager and interviewing  
10 investigators expended a combined 177 hours to research, review, and analyze materials in  
11 preparation for the investigation; contacting and conducting interviews with targeted third-  
12 party witnesses; and thereafter, to prepare comprehensive interview summaries and other  
13 case reports. In addition, these team members were involved in analyzing key case issues, as  
14 well as establishing and executing the joint litigation-investigation team plan, and  
15 participating in numerous strategy sessions and investigation briefings with Lead Counsel.

16 (ii) Greg E. Davis M.D., M.P.H.: \$2,000.00. Dr. Davis is a head and  
17 neck surgeon at The University of Washington who has conducted trials regarding zinc  
18 gluconate and anosmia. He was retained as a consultant and testifying expert. He consulted  
19 with Lead Counsel regarding the Zicam/anosmia issue. This included the physiological and  
20 toxicological effects of zinc gluconate.

21 (iii) Financial Markets Analysis, LLC ("FMA"): \$28,500.00. Bjorn I.  
22 Steinholt of FMA is a damages expert who consulted with Lead Counsel and prepared a  
23 declaration in support of class certification relating to market efficiency. FMA also  
24 conducted a preliminary damage analysis to utilize in the mediation.

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CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2012, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 September 28, 2012.

s/ Jeffrey D. Light  
JEFFREY D. LIGHT

ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: jeffl@rgrdlaw.com

## Mailing Information for a Case 2:04-cv-00886-NVW

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Ramzi Abadou**  
rabadou@btkmc.com
- **Francis Joseph Balint , Jr**  
fbalint@bffb.com,rcreech@bffb.com
- **Maureen Beyers**  
mbeyers@omlaw.com,ljensen@omlaw.com
- **Andrew S Friedman**  
afriedman@bffb.com,rcreech@bffb.com,nvarner@bffb.com
- **Jeffrey D Light**  
jeffl@rgrdlaw.com,jstark@rgrdlaw.com
- **Amy J Longo**  
alongo@omm.com,trodriguez@omm.com
- **Molly J Magnuson**  
mmagnuson@omm.com,levington@omm.com,pmccormick@omm.com
- **Sana Muttalib**  
smuttalib@omm.com,mrodriguez@omm.com
- **Lucas F Olts**  
LOlts@rgrdlaw.com,stremblay@rgrdlaw.com
- **Ashley M Price**  
APrice@rgrdlaw.com
- **David B Rosenbaum**  
drosenbaum@omlaw.com,kdourlein@omlaw.com
- **Scott H Saham**  
ScottS@rgrdlaw.com,E\_File\_SD@rgrdlaw.com,mlittle@rgrdlaw.com
- **Michael G Yoder**  
myoder@omm.com,levington@omm.com

### Manual Notice List

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

- (No manual recipients)

# **EXHIBIT YY**

# Exhibit 6

CARELLA, BYRNE, CECCHI,  
OLSTEIN, BRODY & AGNELLO  
JAMES E. CECCHI  
LINDSEY H. TAYLOR  
5 Becker Farm Road  
Roseland, NJ 07068  
Telephone: 973/994-1700  
973/994-1744 (fax)

Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

In re JOHNSON & JOHNSON  
DERIVATIVE LITIGATION

\_\_\_\_\_  
This Document Relates To:

ALL ACTIONS.  
\_\_\_\_\_

) No. 3:10-cv-02033-FLW-DEA  
)  
) JOINT DECLARATION OF TRAVIS  
) E. DOWNS III AND DAVID W.  
) MITCHELL FILED ON BEHALF OF  
) ROBBINS GELLER RUDMAN &  
) DOWD LLP IN SUPPORT OF  
) APPROVAL OF AWARD OF  
) REQUESTED ATTORNEYS' FEES  
) AND EXPENSES



WE, TRAVIS E. DOWNS III AND DAVID W. MITCHELL, declare as follows:

1. We are members of the firm of Robbins Geller Rudman & Dowd LLP (“Robbins Geller”). We are submitting this Joint Declaration in support of our firm’s application for an award of attorneys’ fees and expenses in connection with services rendered in the above-entitled action.

2. Our firm is counsel of record for plaintiff Hawaii Laborers Pension Fund.

3. The identification and background of our firm and its partners is attached hereto as Exhibit A.

4. The following information regarding the firm’s time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. We are the partners who oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of “billing judgment” or to conform to the firm’s guidelines and policies regarding certain expenses such as charges for hotels, meals, and transportation. As a result of these reviews and adjustments, we believe that the time reflected in the firm’s lodestar calculation and the expenses for which payment is sought are reasonable in

amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, we believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

5. The total number of hours spent on this litigation by our firm is 1,120.00. The total lodestar amount for attorney/paraprofessional time based on the firm's current rates is \$564,067.50. The hourly rates shown below are the usual and customary rates charged for each individual. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Downs III, Travis E.	(P)	144.75	725	104,943.75
Mitchell, David W.	(P)	382.00	630	240,660.00
Robbins, Darren J.	(P)	10.00	790	7,900.00
Alvarado, Darryl	(A)	453.00	380	172,140.00
Roelen, Scott	(RA)	11.00	295	3,245.00
Bacci, Melissa	(PL)	5.25	295	1,548.75
Cook, Karen E.	(PL)	3.00	295	885.00
Deem, Lavar	(PL)	5.25	295	1,548.75
Millan, Hector	(PL)	63.75	295	18,806.25
Mix, Lisa	(PL)	11.00	295	3,245.00
Nielsen, Lee A.	(PL)	12.75	295	3,761.25
Williams, Susan	(PL)	18.25	295	5,383.75
<b><i>TOTAL</i></b>		<b><i>1,120.00</i></b>		<b><i>\$564,067.50</i></b>

- (P) Partner
- (A) Associate
- (RA) Research Analyst
- (PL) Paralegal

6. Attached as Exhibit B is a task-based summary of the work performed and the lodestar incurred by each attorney and professional staff member who performed services in this litigation.

7. Our firm seeks an award of \$94,998.48 in expenses which were reasonably and necessarily committed to the prosecution of the litigation. They are broken down as follows:

***EXPENSES***

From Inception to August 30, 2012

<b><i>EXPENSE CATEGORY</i></b>	<b><i>TOTAL</i></b>
Meals, Hotels & Transportation	\$15,377.79
Photocopies (423 copies @ \$0.25 per page)	105.75
Postage	5.42
Telephone, Facsimile	64.14
Messenger, Overnight Delivery	128.49
Filing, Witness & Other Fees	1,201.00
Lexis, Westlaw, Online Library Research	1,450.86
Investigators (L.R. Hodges & Associates, Ltd.)	76,665.03
<b><i>TOTAL</i></b>	<b><i>\$94,998.48</i></b>

8. The following is additional information regarding certain of these expenses:

(a) Meals, Hotels and Transportation: \$15,377.79.

<b><i>NAME</i></b>	<b><i>DATE</i></b>	<b><i>DESTINATION</i></b>	<b><i>PURPOSE</i></b>
Mitchell, David	10/06/10 – 10/07/10	Philadelphia, PA	Prepare for and attend status conference
Downs, Travis	07/27/11 – 07/28/11	Philadelphia, PA	Prepare for and attend hearing on motion to dismiss
Mitchell, David	07/27/11 – 07/29/11	Philadelphia, PA	Prepare for and attend hearing on motion to dismiss; meet with counsel
Downs, Travis	11/21/11 – 11/22/11	New York, NY	Prepare for and attend settlement meeting with defense counsel

<b>NAME</b>	<b>DATE</b>	<b>DESTINATION</b>	<b>PURPOSE</b>
Mitchell, David	01/17/12 – 01/18/12	New York, NY	Prepare for and attend settlement meeting
Mitchell, David	02/15/12 – 02/17/12	Newark, NJ	Prepare for and attend settlement meeting with Chief Quality Officer and defendants

(b) Filing, Witness and Other Fees: \$1,201.00.

<b>DATE</b>	<b>VENDOR</b>
07/07/10	Cohn Lifland Pearlman Herrmann & Knopf ( <i>pro hac vice</i> application – D. Mitchell)
07/07/10	New Jersey Lawyers Fund (dues)
07/19/10	Cohn Lifland Pearlman Herrmann & Knopf ( <i>pro hac vice</i> application – D. Alvarado)
05/16/11	New Jersey Lawyers Fund (dues)
04/26/12	New Jersey Lawyers Fund (dues)

(c) Lexis, Westlaw, Online Library Research: \$1,450.86. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis Nexis, CDA Investment Technologies, Pacer Service Center, and West Publishing Corporation. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

(d) Investigator (L.R. Hodges & Associates, Ltd.) \$76,665.03. At the request of and in coordination with our co-lead counsel, Robbins Geller engaged outside investigators, who from September through December 2010 conducted an intensive and detailed investigation into, among other things, the Risperdal, Topomax and Natrecor off-label promotion schemes and the product issues and recalls within

the consumer product divisions. Counsel exchanged numerous emails amongst themselves and the investigators, in addition to many phone calls to discuss both the status and progress of the investigation. The investigators contacted many individuals with knowledge about the facts and circumstances underlying Plaintiffs' allegations. The investigators worked tirelessly to assist counsel to better understand both the various divisions within Johnson & Johnson, a massive company with approximately 100,000 employees, where the conduct took place and, more importantly, to appropriately obtain information from individuals with knowledge about the alleged conduct underlying Plaintiffs' claims. These efforts resulted in the identification and successful contact with approximately 20 substantive contacts. The information provided as the result of these contacts, and the investigators efforts in this regard, assisted plaintiffs and enabled them to increase both their knowledge of Johnson & Johnson and the pharmaceutical industry as well as the products, services and conduct at issue in this Action.

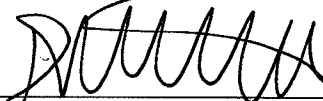
9. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

We declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of August, 2012, at San Diego, California.



TRAVIS E. DOWNS III



DAVID W. MITCHELL

**EXHIBIT B**

**JOHNSON & JOHNSON  
 SHAREHOLDER DERIVATIVE ACTION  
 ROBBINS GELLER RUDMAN & DOWD LLP  
 LODESTAR CATEGORY BREAKDOWN  
 PERIOD: Inception through August 30, 2012**

Name		1	2	3	4	5	6	7	Hours	Rate	Lodestar
Downs III, Travis E.	(P)	7.00	10.75	62.25	5.00	19.25	34.75	5.75	144.75	725	104,943.75
Mitchell, David W.	(P)	55.25	68.75	160.25	9.75	4.25	83.75	-	382.00	630	240,660.00
Robbins, Darren J.	(P)	7.25	-	1.75	0.50	0.50	-	-	10.00	790	7,900.00
Alvarado, Darryl	(A)	-	157.00	234.25	47.25	7.50	7.00	-	453.00	380	172,140.00
Roelen, Scott	(RA)	5.00	6.00	-	-	-	-	-	11.00	295	3,245.00
Bacci, Melissa	(PL)	3.50	-	1.75	-	-	-	-	5.25	295	1,548.75
Cook, Karen E.	(PL)	-	-	3.00	-	-	-	-	3.00	295	885.00
Deem, Lavar	(PL)	-	-	5.25	-	-	-	-	5.25	295	1,548.75
Millan, Hector	(PL)	-	27.25	36.50	-	-	-	-	63.75	295	18,806.25
Mix, Lisa	(PL)	-	-	11.00	-	-	-	-	11.00	295	3,245.00
Nielsen, Lee A.	(PL)	12.25	-	-	-	0.50	-	-	12.75	295	3,761.25
Williams, Susan	(PL)	9.25	-	9.00	-	-	-	-	18.25	295	5,383.75
<b>TOTAL</b>		<b>99.50</b>	<b>269.75</b>	<b>525.00</b>	<b>62.50</b>	<b>32.00</b>	<b>125.50</b>	<b>5.75</b>	<b>1,120.00</b>		<b>564,067.50</b>

**CATEGORIES**

- |  |                       |
|--|-----------------------|
| 1. Investigation, research, drafting original complaints, and demand letters | (P) Partner           |
| 2. Investigation, research, and drafting amended complaint/demand refused co | (A) Associate         |
| 3. Motion practice   | (RA) Research Analyst |
| 4. Discovery and investigation post filing of amended complaint/demand refus | (PL) Paralegal        |
| 5. Governance and compliance analysis, and drafting of settlement proposals  |                       |
| 6. Settlement negotiation process and documentation                          |                       |
| 7. Post settlement documentation and briefing                                |                       |



# **EXHIBIT ZZ**



I, ROBERT M. ROTHMAN, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is counsel of record for plaintiff Gregory H. Smith.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The following information regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by the firm in the ordinary course of business. These time and expense printouts (and backup documentation where necessary or appropriate) were reviewed by two partner(s) in the firm – myself and a partner in my firm's settlement department. The purpose of these reviews was to confirm both the accuracy of the entries on time and expense printouts as well as the necessity for and reasonableness of the time and expenses committed to the Litigation. I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the Litigation.

5. The total number of hours spent on this litigation by my firm is 961.00. The total lodestar amount for time based on the firm's current rates is \$482,548.75. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases.

A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Rothman, Robert	(P)	408.25	685	279,651.25
Rudman, Samuel	(P)	5.25	800	4,200.00
Fitzgerald, Carolina C.	(A)	16.75	395	6,616.25
Kagan, Fainna	(A)	401.00	380	152,380.00
Tierney, John A.	(PA)	54.50	320	17,440.00
Roux, Jeremi	(SA)	10.25	285	2,921.25
Kadota, Ryan H.	(EA)	4.00	295	1,180.00
Roelen, Scott R.	(EA)	7.00	325	2,275.00
Paralegals		54.00	265-295	15,885.00
<b><i>TOTAL</i></b>		<b><i>961.00</i></b>		<b><i>\$482,548.75</i></b>

(P) Partner

(A) Associate

(PA) Project Attorney

(SA) Summer Associate

(EA) Economic Analyst

6. Among others, the tasks undertaken by my firm during the prosecution of this litigation are as follows: conduct factual investigation; conduct legal research; draft the initial complaint and portions of the amended complaint; analyze client trading; analyze Amaranth's market; draft portions of the opposition to defendants' motions to dismiss; review and revise memoranda of law; review and analyze defendant and third party discovery; defend client's deposition; participate in litigation strategy and analysis meetings; and conduct conferences, communications and meetings with Mr. Smith.

7. My firm seeks an award of \$66,218.01 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

***EXPENSES***

From Inception to March 5, 2012

<b><i>EXPENSE CATEGORY</i></b>	<b><i>TOTAL</i></b>
Meals, Hotels & Transportation	3,669.16
Photocopies	962.25
Postage	9.40
Telephone, Facsimile	29.00
Messenger, Overnight Delivery	166.09
Filing, Witness & Other Fees	659.50
Court Reporters/Transcripts	1,370.10
Lexis, Westlaw, Online Library Research	9,234.65
Publications/Subscriptions	2,617.86
Litigation Fund Contributions	47,500.00
<b><i>TOTAL</i></b>	<b><i>\$ 66,218.01</i></b>

8. The expenses pertaining to this case are reflected in the books and records of this firm. I am advised that these books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of March, 2012, at Melville, New York.

s/ Robert M. Rothman  
 \_\_\_\_\_  
 ROBERT M. ROTHMAN

# **EXHIBIT AAA**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re GIANT INTERACTIVE GROUP, INC. SECURITIES LITIGATION	:	Master File No. 1:07-cv-10588-PAE
	:	
	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	<u>ECF Case</u>
	:	
ALL ACTIONS.	:	
		X

DECLARATION OF ELLEN GUSIKOFF STEWART FILED ON BEHALF OF ROBBINS  
GELLER RUDMAN & DOWD LLP IN SUPPORT OF APPLICATION FOR AWARD OF  
ATTORNEYS' FEES AND EXPENSES

I, ELLEN GUSIKOFF STEWART, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is Co-Lead Counsel of record for Arthur Michael Gray.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 6,683.50. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$2,479,767.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Alba, Mario	(P)	14.25	565	8,051.25
Gusikoff Stewart, Ellen	(P)	37.50	705	26,437.50
Kaufman, Evan	(P)	1,080.25	635	685,958.75
Rice, John J.	(P)	37.00	720	26,640.00
Rosenfeld, David	(P)	9.75	595	5,801.25
Rothman, Robert	(P)	3.75	655	2,456.25
Rudman, Samuel H.	(P)	133.75	770	102,987.50
Boardman, Erin	(A)	892.25	360	321,210.00
Chan, Jenny	(TA)	1,278.50	290	370,765.00
Yang, Yantong	(TA)	185.50	290	53,795.00
Ye, Le	(TA)	1,116.00	280	312,480.00
Zhang, Guohui	(TA)	1,316.00	300	394,800.00
Paralegal I		513.50	285-295	149,792.50
Shareholder Relations		64.00	285	18,240.00
Document Clerk		1.50	235	352.50
<b><i>TOTAL</i></b>		<b><i>6,683.50</i></b>		<b><i>\$2,479,767.50</i></b>

(P) Partner

(A) Associate

(TA) Temporary Attorney



5. My firm incurred a total of \$184,645.34 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

**EXPENSES**

From Inception to September 28, 2011

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Meals, Hotels & Transportation	\$ 19,687.46
Photocopies	3,357.75
Postage	137.34
Telephone, Facsimile	924.36
Messenger, Overnight Delivery	535.41
Filing, Witness & Other Fees	1,653.50
Court Reporters	8,245.40
Lexis, Westlaw, Online Library Research	2,404.25
Class Action Notices/Business Wire	3,516.00
Mediation Fees	15,825.00
Experts/Consultants/Investigators	119,715.57
<b>Outside:</b>	
Finnerty Economic Consulting LLC	\$86,324.82
Jared Psigoda	534.00
<b>In-House:</b>	
Economic/Damage Analysts	8,755.00
Investigators	5,190.00
MIS	7,375.00
Litigation Support	11,536.75
Database Management Costs	8,643.30
<b>TOTAL</b>	<b>\$ 184,645.34</b>

6. The following is additional information regarding these expenses:

(a) The firm incurred expenses of \$8,245.40 for amounts paid to court reporters for transcripts of court hearings and depositions.

<i>DATE</i>	<i>VENDOR</i>
06/24/10	Legalink Inc., A Merill Company
06/25/10	Legalink Inc., A Merill Company
07/22/10	Legalink Inc., A Merill Company
02/22/11	Ellen Grauer Court Reporting

(b) Filing, Witness, and Other Fees: \$1,653.50.

<i>DATE</i>	<i>VENDOR</i>
11/27/07	D&D Process Service, Inc.
11/30/07	Clerk of the Court
12/11/07	D&D Process Service, Inc.
12/18/07	D&D Process Service, Inc.
02/20/08	Irma Herron
10/06/08	D&D Process Service, Inc.
06/30/11	State Bar of California
07/08/11	Clerk of the Court
07/08/11	D&D Process Service, Inc.

(c) Meals, Hotels, and Transportation: Expenses for out-of-town meals, hotels, and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Kaufman, Evan	09/10/09	New York, NY	Prepare for and attend court conference
Kaufman, Evan	04/12/10	New York, NY	Prepare for and attend court conference
Kaufman, Evan	06/22/10 – 06/27/10	Hong Kong	Various discovery matters; prepare for and attend deposition of Eric He
Kaufman, Evan	11/10/10	New York, NY	Appeared at court conference
Gray, Arthur	01/18/11 – 01/20/11	New York, NY	Attend deposition
Kaufman, Evan	01/19/11	New York, NY	Prepare for and attend Gray deposition
Kaufman, Evan	02/10/11	Columbus, OH	Attend conference
Rudman, Samuel	03/02/11	New York, NY	Attend mediation
Boardman, Erin	03/02/11	New York, NY	Attend mediation

(d) Lexis, Westlaw, Online Library Research: \$2,404.25. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., LexisNexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point.

These databases were used to obtain access to SEC filings, legal research, and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of October, 2011, at San Diego, California.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 October 5, 2011.

s/ Ellen Gusikoff Stewart  
\_\_\_\_\_  
ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: [elleng@rgrdlaw.com](mailto:elleng@rgrdlaw.com)

## Mailing Information for a Case 1:07-cv-10588-PAE

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Mario Alba , Jr**  
malba@rgrdlaw.com,e\_file\_ny@rgrdlaw.com,drosenfeld@rgrdlaw.com
- **Seth Aronson**  
saronson@omm.com
- **Erin Whitney Boardman**  
eboardman@csgrr.com
- **Vikeena Kimberly Bonett**  
vbonett@sidley.com
- **Arthur J. Chen**  
achen@aftlaw.com
- **Sara May Folchi**  
sfolchi@omm.com,dloffredo@omm.com
- **Jack Gerald Fruchter**  
jfruchter@aftlaw.com
- **Evan Jay Kaufman**  
ekaufman@rgrdlaw.com
- **Lawrence Donald Levit**  
llevit@aftlaw.com
- **Alfred Robert Pietrzak**  
rpietrzak@sidley.com
- **Jonathan Rosenberg**  
jrosenberg@omm.com,#nymanagingattorney@omm.com
- **Samuel Howard Rudman**  
srudman@rgrdlaw.com,e\_file\_ny@rgrdlaw.com
- **Evan J. Smith**  
esmith@brodsky-smith.com
- **Peter Todd Snow**  
psnow@omm.com,kkirk@omm.com
- **Dorothy Jane Spenner**

dspenner@sidley.com

- **Andrew W. Stern**  
astern@sidley.com
- **Ellen Anne Gusikoff Stewart**  
elleng@rgrdlaw.com

## Manual Notice List

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

**Meredith N. Landy**  
O'Melveny & Myers, L.L.P.  
Seven Times Square  
New York, NY 10036

**Lori E. Romley**  
O'Melveny & Myers LLP  
Seven Times Square  
New York, NY 94025-7019

**Ellen Gusihoff Stewart**  
Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

# **EXHIBIT BBB**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	x	
HAROLD KLEIMAN, Individually and On	:	Civil Action No. 1:09-cv-08634-AKH
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	DECLARATION OF ELLEN GUSIKOFF
vs.	:	STEWART FILED ON BEHALF OF
	:	ROBBINS GELLER RUDMAN & DOWD
RHI ENTERTAINMENT, INC., et al.,	:	LLP IN SUPPORT OF MOTION FOR
	:	AWARD OF ATTORNEYS' FEES AND
Defendants.	:	EXPENSES
	x	



I, ELLEN GUSIKOFF STEWART, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is Lead Counsel of record for plaintiffs.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 537.00. The total lodestar amount for attorney/paraprofessional time based on the firm's current rates is \$232,207.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Gusikoff Stewart, Ellen	(P)	41.50	705	29,257.50
O'Mara, Brian O.	(P)	13.00	565	7,345.00
Robbins, Darren J.	(P)	2.25	760	1,710.00
Rosenfeld, David	(P)	38.25	595	22,758.75
Rudman, Samuel H.	(P)	48.75	770	37,537.50
Boardman, Erin	(A)	258.25	360	92,970.00
Charo, Jarrett	(A)	5.25	510	2,677.50
Paralegal I		112.75	285-295	33,141.25
Paralegal II		7.00	280	1,960.00
Shareholder Relations		10.00	285	2,850.00
<b>TOTAL</b>		<b>537.00</b>		<b>\$232,207.50</b>
(P) Partner				
(A) Associate				

5. My firm incurred a total of \$45,204.48 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

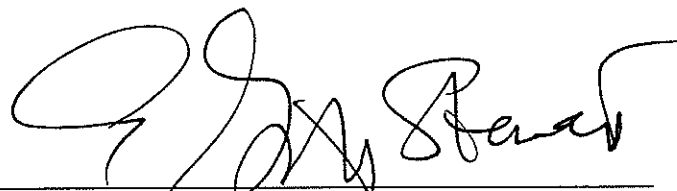
**EXPENSES**

From Inception to September 20, 2011

<b>EXPENSE CATEGORY</b>		<b>TOTAL</b>
Meals, Hotels & Transportation		\$ 3,139.77
Photocopies		992.00
Telephone, Facsimile		104.00
Messenger, Overnight Delivery		419.81
Filing, Witness & Other Fees		1,279.25
Lexis, Westlaw, Online Library Research		3,674.65
Class Action Notices/Business Wire		1,020.00
Mediation Fees		4,750.00
Experts/Consultants/Investigators		29,825.00
Economic/Damage Analysts	\$ 4,485.00	
Investigators	25,340.00	
<b>TOTAL</b>		<b>\$ 45,204.48</b>

6. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of October, 2011, at San Diego, California.



ELLEN GUSIKOFF STEWART

CERTIFICATE OF SERVICE

I hereby certify that on October 4, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 October 4, 2011.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN  
& DOWD LLP

655 West Broadway, Suite 1900

San Diego, CA 92101-3301

Telephone: 619/231-1058

619/231-7423 (fax)

E-mail: [elleng@rgrdlaw.com](mailto:elleng@rgrdlaw.com)

## Mailing Information for a Case 1:09-cv-08634-AKH

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Erin Whitney Boardman**  
eboardman@csgrr.com
- **James Ellis Brandt**  
james.brandt@lw.com,jessica.bengels@lw.com,jason.grossman@lw.com
- **Jarrett Scott Charo**  
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- **Jack Gerald Fruchter**  
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- **Jeff G. Hammel**  
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- **David Avi Rosenfeld**  
drosenfeld@rgrdlaw.com,e\_file\_ny@rgrdlaw.com,e\_file\_sd@rgrdlaw.com
- **Samuel Howard Rudman**  
srudman@rgrdlaw.com,e\_file\_ny@rgrdlaw.com
- **Ellen Anne Gusikoff Stewart**  
elleng@rgrdlaw.com

### Manual Notice List

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

- (No manual recipients)

# **EXHIBIT CCC**





I, KEITH F. PARK, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is Lead Counsel of record for Lead Plaintiffs Cary Alan Luskin and Debbie Luskin.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 13,327.50. The total lodestar amount for attorney/paraprofessional time based on the firm's current rates is \$6,359,811.25. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Alexander, Susan K.	(P)	1,148.50	730	838,405.00
Brooks, Luke O.	(P)	1,390.25	585	813,296.25
Daley, Joseph D.	(P)	13.75	625	8,593.75
Dowd, Michael	(P)	8.75	800	7,000.00
Geller, Paul J.	(P)	3.75	760	2,850.00
Kowalewski, Catherine	(P)	14.25	575	8,193.75
Park, Keith F.	(P)	182.00	775	141,050.00
Svecov, Sandy	(P)	181.50	795	144,292.50
Walton, David C.	(P)	60.75	740	44,955.00
Weaver, Lesley	(P)	282.00	505	142,410.00
Williams, Shawn A.	(P)	747.50	635	474,662.50
Acevedo, Elizabeth A.	(A)	48.50	295	14,307.50
Ahmed, Sayed Ashar	(A)	1,436.25	360	517,050.00
Cheung, Connie M. Y.	(A)	40.50	325	13,162.50
Keller, Sylvia W.	(A)	97.00	500	48,500.00
Ryan, Bing	(A)	987.00	445	439,215.00
Scarlett, Shana E.	(A)	58.75	445	26,143.75
Sum, Sylvia	(A)	970.75	535	519,351.25
Lawrence, Jeffrey W.	(OC)	1,646.25	670	1,102,987.50



<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Anderson, William	(PA)	87.00	295	25,665.00
Waller, Rose M.	(PA)	27.50	345	9,487.50
Winston, Lauren	(PA)	114.25	375	42,843.75
Lee, Jennifer	(I)	482.00	240	115,680.00
Murphy, John A.	(I)	51.50	220	11,330.00
Schneider, Diana	(I)	125.00	325	40,625.00
Smorada, Lynn M.	(I)	28.00	200	5,600.00
Tomalonis, Michelle M.	(I)	20.25	300	6,075.00
Barhoum, Anthony J.	(EA)	17.00	380	6,460.00
Kadota, Ryan H.	(EA)	20.50	295	6,047.50
Roelen, Scott R.	(EA)	23.00	305	7,015.00
Villalovas, Frank E.	(EA)	21.00	380	7,980.00
Wankel, William (Sam)	(EA)	34.00	260	8,840.00
Wilhelmy, David E.	(EA)	17.00	335	5,695.00
Cunningham, Brooke N.	(IT)	55.00	240	13,200.00
Harris, Desiree L.	(IT)	70.00	295	20,650.00
White, L. David	(IT)	16.75	305	5,108.75
Paralegal I		892.00	190-295	250,567.50
Paralegal II		835.50	170-280	208,420.00
Paralegal III		571.00	165-260	140,610.00
Shareholder Relations		66.75	170-285	18,305.00
Document Clerk		434.50	165-235	97,180.00
<b><i>TOTAL</i></b>		<b><i>13,327.50</i></b>		<b><i>\$6,359,811.25</i></b>

(P) Partner

(A) Associate

(OC) Of Counsel

(PA) Project Attorney

(I) Investigator

(EA) Economic Analyst

(IT) Information Technology

5. My firm incurred a total of \$833,605.58 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

***EXPENSES***

From Inception to July 12, 2011

<b><i>EXPENSE CATEGORY</i></b>	<b><i>TOTAL</i></b>
Meals, Hotels & Transportation	\$ 75,555.31
Photocopies	285,460.84
Postage	630.20
Telephone, Facsimile	2,723.34
Messenger, Overnight Delivery	5,393.20
Filing, Witness & Other Fees	10,032.37
Court Reporters	15,202.74
Lexis, Westlaw, Online Library Research	37,287.16
Class Action Notices/Business Wire	795.50
Mediation Fees (JAMS)	2,125.00
Experts/Consultants/Investigators	398,399.92
<b><i>Outside:</i></b>	
Berdon LLP	\$ 44,220.67
Castorani & Crowley, Inc.	5,601.94
EAL Solutions, Ltd.	16,115.00
Elliot Lesser	10,670.00
Financial Markets Analysis, LLC	122,555.00
Lily Haggerty	770.00
L.R. Hodges & Associates, Ltd.	125,864.69
Moxie Investigations	1,500.00
NTI Consulting Services	704.76
Stroz Friedberg, LLC	39,371.61
<b><i>In-House:</i></b>	
Forensic Accountants	\$ 31,026.25
<b><i>TOTAL</i></b>	<b><i>\$ 833,605.58</i></b>

6. The following is additional information regarding these expenses:

(a) The firm incurred expenses of \$15,202.74 for amounts paid to court reporters for transcripts of court hearings and depositions.

<b><i>DATE</i></b>	<b><i>VENDOR</i></b>
11/21/05	Randy M. Wilson
03/17/06	Esquire Deposition Services LLC
03/24/06	Esquire Deposition Services LLC

<i>DATE</i>	<i>VENDOR</i>
08/31/06	Livenote, Inc.
06/26/07	Alpha Reporting Services, Inc.
07/10/07	Elite Video Productions, Inc.
07/31/07	Alpha Reporting Services, Inc.
08/27/07	Randy M. Wilson
09/30/08	Paulson Reporting & Litigation Services, Inc.
12/31/08	Paulson Reporting & Litigation Services, Inc.
01/31/09	Esquire Deposition Services LLC

(b) Filing, Witness, and Other Fees: \$10,032.37.

<i>DATE</i>	<i>VENDOR</i>
06/27/01	Nationwide Legal Services, LLC
09/28/01	Lily Haggerty
04/10/02	Wheels of Justice, Inc.
04/11/02	Wheels of Justice, Inc.
06/11/02	Wheels of Justice, Inc.
06/13/02	Wheels of Justice, Inc.
06/20/02	Wheels of Justice, Inc.
10/08/03	U.S. District Court, Northern District of Texas
03/15/05	Wheels of Justice, Inc.
05/06/05	Wheels of Justice, Inc.
06/30/05	Accurint
07/08/05	Wheels of Justice, Inc.
07/31/05	Accurint
03/31/06	Accurint
06/05/06	Wheels of Justice, Inc.
06/06/06	Wheels of Justice, Inc.
06/19/06	Wheels of Justice, Inc.
10/24/06	Wheels of Justice, Inc.
12/05/06	Wheels of Justice, Inc.
02/01/07	Wheels of Justice, Inc.
04/18/07	Wheels of Justice, Inc.
04/25/07	Wheels of Justice, Inc.
04/30/07	Wheels of Justice, Inc.
05/22/07	Wheels of Justice, Inc.
06/20/07	Wheels of Justice, Inc.
09/05/07	Wheels of Justice, Inc.
07/10/08	Wheels of Justice, Inc.
07/22/08	Wheels of Justice, Inc.
10/02/08	Wheels of Justice, Inc.
12/29/09	Wheels of Justice, Inc.
01/15/10	U.S. District Court, Northern District of Texas
03/24/11	Clerk, U.S. District Court
03/25/11	State Bar of California

(c) Meals, Hotels, and Transportation: \$75,555.31. Expenses for out-of-town

meals, hotels and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Lawrence, Jeffrey	06/04/03 – 06/06/03	Dallas, TX	Attend mediation
Williams, Shawn	06/05/03 – 06/06/03	Dallas, TX	Attend mediation
Alexander, Susan	10/05/04 – 10/07/04	New Orleans, LA	Argue case to Fifth Circuit
Williams, Shawn	10/05/04 – 10/06/04	New Orleans, LA	Fifth Circuit argument
Lawrence, Jeffrey	10/11/05 – 10/12/05	Dallas, TX	Attend hearing
Lawrence, Jeffrey	01/31/06 – 02/01/06	Dallas, TX	Attend settlement conference
Williams, Shawn	01/31/06 – 02/01/06	Dallas, TX	Mediation
Weaver, Lesley	03/05/06 – 03/07/06	West Palm Beach, FL	Meet with client; deposition preparation; attend deposition
Lewis, Martha	08/07/06 – 08/09/06	Dallas, TX	Investigator travel expense
Weaver, Lesley	08/07/06 – 08/09/06	Dallas, TX	Review documents in third party warehouse; prepare for deposition; take deposition re: document preservation
Alexander, Susan	12/05/06 – 12/06/06	New Orleans, LA	Attend Oscar argument in Fifth Circuit; confer with counsel re: 28(j) letter to submit
Brooks, Luke	05/23/07 – 05/24/07	Dallas, TX	Intervoice deposition
Brooks, Luke	05/24/07 – 05/25/07	Las Vegas, NV	Return from deposition
Brooks, Luke	05/25/07 – 05/28/07	Palm Springs, CA	Return from deposition
Sum, Sylvia	06/28/07 – 06/29/07	Dallas, TX	Prepare for and take Mossberg deposition
Brooks, Luke	06/28/07 – 06/29/07	Dallas, TX	Attend Mossberg deposition
Lawrence, Jeffrey	07/31/07 – 08/01/07	Dallas, TX	Attend/argue motions re: discovery, amendment, CMC, Oscar Private Equity
Brooks, Luke	07/31/07 – 08/01/07	Dallas, TX	Status conference and hearing on discovery motions
Alexander, Susan	09/29/07 – 10/01/07	New Orleans, LA	Prepare for oral argument; argue case to Fifth Circuit

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Lawrence, Jeffrey	09/30/07 – 10/01/07	New Orleans, LA	Attend argument
Coughlin, Patrick	09/30/07 – 10/01/07	New Orleans, LA	Work on appeal
Brooks, Luke	08/20/08 – 08/22/08	Dallas, TX	Wills deposition
Ahmed, Sayed Asher	08/21/08 – 08/23/08	Dallas, TX	Wills deposition
Brooks, Luke	11/05/08 – 11/06/08	Dallas, TX	Attend Sutton deposition; Ann Williams deposition preparation
Ahmed, Sayed Asher	11/05/08 – 11/06/08	Dallas, TX	Sutton deposition
Ahmed, Sayed Ashar	11/11/08 – 11/14/08	Dallas, TX	Deposition preparation; Polycn deposition; Williams deposition; Harris deposition; Rob Grohen deposition
Ryan, Bing	11/11/08 – 11/14/08	Dallas, TX	Williams deposition
Brooks, Luke	11/10/08 – 11/14/08	Dallas, TX	Attend Ann Williams deposition; Attend 30(b)(6) deposition; Attend Graham deposition
Lawrence, Jeffrey	11/13/08 – 11/14/08	Dallas, TX	Prepare for and take CFO deposition
Brooks, Luke	09/21/09 – 09/22/09	Dallas, TX	Settlement conference with Magistrate Judge Stickney
Lawrence, Jeffrey	09/21/09 – 09/22/09	Dallas, TX	Attend mediation
Ahmed, Sayed Ashar	09/21/09 – 09/22/09	Dallas, TX	Mediation
Brooks, Luke	03/24/10 – 03/25/10	Dallas, TX	Mediation conducted by Judge Stickney
Mix, Lisa	06/01/10 – 06/04/10	San Francisco, CA	Appellants' opening brief

- (d) Photocopying:  
In-house (124,267 copies @ \$0.25 per copy): \$31,066.75  
In-house Imaging/Scanning/Printing: \$1,282.25  
Outside Photocopy Expenses: \$253,111.84

<i>DATE</i>	<i>VENDOR</i>
09/27/02	Ikon Document Services
02/20/04	Ikon Document Services
06/06/04	Ikon Document Services
03/07/05	Whitmont Legal Technologies, Inc.
03/22/06	Merrill Communications LLC

<i>DATE</i>	<i>VENDOR</i>
07/31/06	Strategic Office Solutions
08/31/06	Encore Legal Solutions
10/13/06	Daegis
10/19/06	Ikon Document Services
11/16/06	Sacramento Municipal Utility District
11/30/06	Daegis
12/30/06	Encore Legal Solutions
01/31/07	Daegis
02/28/07	Encore Legal Solutions
03/01/07	Ikon Document Services
03/15/07	Encore Legal Solutions
05/17/07	Litigation Solution, Inc.
05/18/07	Legal Reprographics, Inc.
05/31/07	Legal Reprographics, Inc.
05/31/07	Litigation Solution, Inc.
06/07/07	Ikon Document Services
06/11/07	Litigation Solution, Inc.
06/18/07	Ikon Document Services
06/29/07	Encore Legal Solutions
07/02/07	Litigation Solution, Inc.
07/30/07	Encore Legal Solutions
10/18/07	Ikon Document Services
10/30/07	Merrill Communications LLC
10/31/07	The LDM Group LLC
11/08/07	Ikon Document Services
11/28/07	Ikon Document Services
11/29/07	Ikon Document Services
01/23/08	Encore Legal Solutions
01/29/08	Ikon Document Services
11/12/08	Business Service Center
11/13/08	Business Service Center
05/27/09	Ikon Document Services
11/06/09	Advanced Discovery Services
06/07/10	Advanced Discovery Services
06/18/10	Advanced Discovery Services
09/17/10	Advanced Discovery Services

(e) Lexis, Westlaw, Online Library Research: \$37,287.16. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., LexisNexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point.

These databases were used to obtain access to SEC filings, legal research, and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of July, 2011, at San Diego, California.

s/ Keith F. Park

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KEITH F. PARK

# **EXHIBIT DDD**



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& DOWD LLP  
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- and -

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17 Co-Lead Counsel for Plaintiffs

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 OAKLAND DIVISION

21 In re ACCURAY INC. SECURITIES  
LITIGATION

) Master File No. 4:09-cv-03362-CW

) CLASS ACTION

22 This Document Relates To:

23 ALL ACTIONS.

) DECLARATION OF JOY ANN BULL  
) FILED ON BEHALF OF ROBBINS GELLER  
) RUDMAN & DOWD LLP IN SUPPORT OF  
) APPLICATION FOR AWARD OF  
) ATTORNEYS' FEES AND EXPENSES

25 DATE: September 1, 2011  
26 TIME: 2:00 p.m.  
27 CTRM: The Honorable Claudia Wilken

1 I, JOY ANN BULL, declare as follows:

2 1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting  
3 this declaration in support of my firm's application for an award of attorneys' fees and expenses in  
4 connection with services rendered in the above-entitled action.

5 2. This firm is Co-Lead Counsel of record for Lead Plaintiff Zhengxu He, Individually  
6 and as Trustee for the He and Fang 2005 Revocable Trust and Zhengxu He Roth IRA.

7 3. Attached hereto as Exhibit A are true and correct copies of receipts for travel  
8 expenses incurred by Lead Plaintiff Zhengxu He, which total \$346.72.

9 4. The identification and background of my firm and its partners is attached hereto as  
10 Exhibit B.

11 5. The total number of hours spent on this litigation by my firm is 2,597.75. The total  
12 lodestar amount for attorney/paralegal time based on the firm's current rates is \$1,228,103.75. The  
13 hourly rates shown below are the usual and customary rates charged for each individual in all of our  
14 cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Bull, Joy A.	(P)	83.50	715	59,702.50
Goodman, Benny C.	(P)	2.25	585	1,316.25
Isaacson, Eric	(P)	4.00	740	2,960.00
Kaufman, Evan	(P)	34.75	635	22,066.25
O'Mara, Brian O.	(P)	44.75	565	25,283.75
Park, Keith F.	(P)	13.00	775	10,075.00
Robbins, Darren J.	(P)	40.25	760	30,590.00
Rudman, Samuel	(P)	2.00	770	1,540.00
Svetcov, Sandy	(P)	3.00	795	2,385.00
Walton, David C.	(P)	4.25	740	3,145.00
Williams, Shawn	(P)	849.00	635	539,115.00
Pfefferbaum, Daniel	(A)	733.50	395	289,732.50
Baker, D. Cameron	(OC)	88.75	535	47,481.25
Paralegal I		262.50	285-295	77,056.25
Paralegal II		198.25	275-280	55,195.00
Paralegal III		9.00	265	2,385.00
Shareholder Relations		104.00	285	29,640.00
Document Clerk		121.00	235	28,435.00
<b>TOTAL</b>		<b>2,597.75</b>		<b>\$ 1,228,103.75</b>

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
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- (P) Partner
- (A) Associate
- (OC) Of Counsel

6. My firm incurred a total of \$222,910.26 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

**EXPENSES**

From Inception to July 11, 2011

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Meals, Hotels & Transportation	\$ 16,694.55
Photocopies	6,399.00
Postage	491.07
Telephone, Facsimile	38.15
Messenger, Overnight Delivery	632.88
Filing, Witness & Other Fees	5,090.00
Court Reporters	84.70
Lexis, Westlaw, Online Library Research	3,404.16
Class Action Notices/Business Wire	1,317.50
Mediation Fees (JAMS, Inc.)	9,064.54
Experts/Consultants/Investigators	179,693.71
<b>Outside:</b>	
Financial Markets Analysis LLC	\$15,750.00
L.R. Hodges & Associates, Ltd.	85,851.23
Lily Haggerty	1,500.00
Mauriello Law Firm, A.P.C.	19,656.23
<b>In-House:</b>	
Forensic Accountants	1,337.50
Forensic Accounting Intern	5,040.00
Economic/Damage Analyst	34,572.50
Investigators	15,300.00
MIS	686.25
<b>TOTAL</b>	<b>\$ 222,910.26</b>

7. The following is additional information regarding these expenses:

(a) The firm incurred expenses of \$84.70 for amounts paid to court reporters for transcripts of court hearings and depositions.

<i>DATE</i>	<i>VENDOR</i>
05/26/11	Diane Skillman

(b) Filing, Witness, and Other Fees: \$5,090.00

<i>DATE</i>	<i>VENDOR</i>
07/23/09	Wheels of Justice, Inc.
07/24/09	Wheels of Justice, Inc.
07/27/09	Wheels of Justice, Inc.
08/10/09	Wheels of Justice, Inc.
08/14/09	Wheels of Justice, Inc.
09/08/09	Courthouse News Service
09/11/09	Wheels of Justice, Inc.
09/22/09	Clerk of the Court
10/30/09	Class Action Research & Litigation Support Services
10/30/09	Wheels of Justice, Inc.
12/08/09	Wheels of Justice, Inc.
12/18/09	Wheels of Justice, Inc.
12/30/09	Wheels of Justice, Inc.
01/01/10	Courthouse News Service
03/25/10	Wheels of Justice, Inc.
04/01/10	Courthouse News Service
04/02/10	Wheels of Justice, Inc.
08/06/10	Wheels of Justice, Inc.
08/09/10	Wheels of Justice, Inc.
09/28/10	Wheels of Justice, Inc.
10/05/10	Wheels of Justice, Inc.
10/28/10	Wheels of Justice, Inc.
01/04/11	Wheels of Justice, Inc.
03/10/11	Wheels of Justice, Inc.
03/31/11	Wheels of Justice, Inc.

(c) Meals, Hotels, and Transportation: \$16,694.55. Expenses for out-of-town meals, hotels, and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Pfefferbaum, Daniel	08/26/09	Rosenville, CA	Prepare for and attend conference with witness
Williams, Shawn	08/26/09	Rosenville, CA	Meeting with witness
Williams, Shawn	09/02/09 – 09/03/09	Vancouver, B.C.	Interview with Steven Kogan
Pfefferbaum, Daniel	09/02/09 – 09/03/09	Vancouver, B.C.	Prepare for and attend meeting with Kogan
Mauriello, Thomas	12/02/09 – 12/05/09	Montreal, Quebec	Meeting with witness
Williams, Shawn	03/02/10	San Jose, CA	Meetings with defense counsel
Robbins, Darren	04/05/10	San Francisco, CA	Meeting with client to discuss updates on case
O'Mara, Brian	04/05/10 – 04/06/10	Reno, NV	Meeting with client
Robbins, Darren	04/05/10 –	Reno, NV	Meetings with client

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
	04/06/10		
Robbins, Darren	07/11/10 – 07/13/10	San Francisco, CA	Prepare for and attend mediation
Robbins, Darren	10/14/10 – 10/15/10	San Francisco, CA	Conference with counsel
Robbins, Darren	01/12/11 – 01/13/11	San Francisco, CA	Mediation
He, John	01/12/11 – 01/13/11	San Francisco, CA	Hotel charge for mediation

(d) Photocopying:  
 In-house (22,285 copies @ \$0.25 per copy): \$5,571.25  
 In-house Imaging/Scanning/Printing: \$100.00  
 Outside Photocopy Expenses: \$727.75

<i>DATE</i>	<i>VENDOR</i>
12/21/09	Advanced Discovery Services

(e) Lexis, Westlaw, Online Library Research: \$3,404.16. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., LexisNexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point. These databases were used to obtain access to SEC filings, legal research, and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

8. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records, and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of July, 2011, at San Diego, California.

s/ Joy Ann Bull  
 JOY ANN BULL

# EXHIBIT A



**John He**

**From:** Southwest Airlines [SouthwestAirlines@luv.southwest.com]  
**Sent:** Saturday, December 18, 2010 10:44 AM  
**To:** ZHE00@HOTMAIL.COM  
**Subject:** Air Confirmation HE/ZHENGXU - XG7RBP



**HE/ZHENGXU** Confirmation Date: December 18, 2010 Confirmation Number: XG7RBP

**Passenger Information**

Passenger(s)	Account Number	Ticket #	Expiration
HE/ZHENGXU	00000290468404	5262143661688	Dec 18, 2011

<sup>1</sup> All travel involving funds from this Confirmation Number must be completed by the expiration date.

**Itinerary**

Depart RENO TAHOE NV (RNO) to SAN JOSE CA (SJC) Travel Time: 1hrs 25mins

Date	Flight	Flight Information
Wed Jan 12	169	Depart RENO TAHOE NV (RNO) at 1:35 PM Arrive in SAN JOSE CA (SJC) at 2:40 PM

Return SAN JOSE CA (SJC) to RENO TAHOE NV (RNO) Travel Time: 1hrs 30mins

Date	Flight	Flight Information
Thu Jan 13	859	Depart SAN JOSE CA (SJC) at 7:35 PM Arrive in RENO TAHOE NV (RNO) at 8:30 PM

**Cost and Payment Summary**

Base Fare	\$162.79
+Excise Taxes	\$12.21
<b>Advertised Fare</b>	<b>\$175.00</b>
+ Segment Fee	\$7.40
+ Passenger Facility Charge	\$9.00
+ Security Fee <sup>2</sup>	\$5.00
<b>Total Payment</b>	<b>\$196.40</b>

**Current Payment(s):**  
 Dec 18, 2010 Mastercard XXXXXXXXXXXX5969 \$196.40

<sup>2</sup> Security Fee is the government-imposed September 11th Security Fee.

**Fare Rule(s)**

**Identity theft has no season**  
 Protect your ID this holiday & all year.  
**Get Protected!**  
 Experian

**EARLY BIRD CHECK-IN**  
 Let us take care of Checkin for you.  
 ONLY \$10 ONE-WAY  
**Purchase EarlyBird**

**Need A Car?**  
  
**Browse All Cars**

**Where to Stay**  
  
**Browse All Hotels**

**What To Do**  
  
**SOUTHWEST.COM TRAVEL GUIDE**  
**Travel Guide**

# FOX RENT A CAR

**Pickup Location:**  
 FOX SAN JOSE AIRPORT  
 1659 AIRPORT BLVD  
 / CAR RENTAL CENTER  
 SAN JOSE, CA, 95110

**Dropoff Location:**  
 FOX SAN JOSE AIRPORT  
 1659 AIRPORT BLVD  
 / CAR RENTAL CENTER  
 SAN JOSE, CA, 95110

**Phone Numbers :**  
 Toll-Free #(800) 225-4369  
 Roadside #(877) 936-9349

**RENTER DETAILS**

Name: ZHENGXU HE  
 DL#: Exp. Date:  
 CC#: XXXXXXXXXX5969

**\*\*ADDITIONAL AUTHORIZED DRIVER(S)\*\***  
 Must be listed on the contract at time of rental and be 21 or older with a valid driver's license. Operation by an unauthorized driver voids any/all coverages.  
 Additional Driver: N O N E Authorized

**UNIT DETAILS**

Vehicle to be assigned upon Exit.

Section: LCAR

**RA#:** FXSJC-200695



CHECKED OUT BY: STEPHEN  
 DATE/TIME OUT: 01/12/2011 02:43 PM  
 DATE/TIME DUE IN: 01/13/2011 07:00 PM  
 DATE/TIME EXT:  
 DATE/TIME IN:

**Important Information :**

- \* RATES DO NOT INCLUDE GAS AND ARE BASED ON A MINIMUM RENTAL OF 24 HOURS PLUS MILEAGE.
- \* Fox Rent A Car has waived uninsured/underinsured motorist coverage and same is not available to renter, operator, or passengers.
- \* Renter must immediately report all damage to the lessor and all accidents to both the police and the lessor. Renter must also complete a lessor accident report.
- \* This vehicle can only be driven in CA, OR, WA, NV, AZ, UT, CO, NM, WY and ID.

**NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER**

You are responsible for all Damage to the vehicle, even if someone caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, storage and impound fees. Your own insurance or the issuer of the credit card you use to pay for the rental may cover all or part of your financial responsibility for damage to, or loss of, the rented vehicle. You should check with your insurance or credit card issuer to find out about your coverage and the amount of deductible, if any, for which you may be liable. If you use a credit card that provides coverage for your responsibility for damage to, or loss of, the vehicle, you should check with the issuer to determine whether you must first exhaust the coverage limits of your own insurance before the credit card coverage applies. We will not hold you responsible for damage caused by collision or upset if you buy Loss Damage Waiver (LDW) but LDW will not protect you if you commit any of the acts listed in paragraph 5 on the reverse side of this agreement. The renter is responsible for any loss of market value to the vehicle, whether Fox repairs the vehicle, or at Fox's own discretion, decides to sell vehicle unrepaid.

DEPOSITS: \$150.32  
 MILES FREE: UNLIMITED MILES

**\*\*CHARGE SUMMARY\*\***  
 Miles Unlimited

2	Day(s)	@	\$55.91	\$111.82
0	Day(s)	@	\$55.91	\$0.00

EST TOTAL TIME & MILEAGE: \$111.82

Fuel	@	\$0.00	/ Gal.	
CA Tourism 3.5%	@	3.50%		\$3.91
SJC Conc 11.11%	@	11.11%		\$12.42
CA Tax SJC 9.25%	@	9.25%		\$11.49

SURCHARGE	@	3.25 %	\$0.00
1 CFC	@	\$10.00	1X \$10.00
2 LCVLF	@	\$0.34	/Day \$0.68

By initialing here I agree to purchase each of the above coverages and that I declined any other coverages I have been offered.

I certify that I did not exit the Airport on Fox Rent A Car shuttle bus and/or I did not use an Airport courtesy phone to arrange the car rental within twenty-four hours(24) of arrival at the airport.

Signature

=====  
**TOTAL ESTIMATED CHARGES:** \$150.32  
**RENTER PAYMENTS:** \$150.32  
**NET DUE FROM RENTER:** \$0.00  
**NET DUE FROM CO:** \$0.00

Minimum 2 Days @ \$55.91 /Day Not To Exceed \$111.82  
 Early Return \$65.91 /Day Not To Exceed \$111.82  
 Late Return \$65.91 /Day After 01/13/2011 07:00 PM

Acknowledges X: \_\_\_\_\_

I hereby authorize FOX Rent A Car to release my rental and credit card charge information to Violation Management Service (VMS) for the exclusive purpose of processing and billing for fines, penalties, plus a service charge up to \$40.00 associated with EACH unpaid parking or toll violation incurred during the term of this rental. FOX can also email me their Promotions via email I provided to rent this vehicle. I may opt out at any time. I authorize lessor or his agent to process a credit card voucher, if any for charges incurred hereunder. I have read the terms and conditions of all pages on this agreement and agree thereto and also to return vehicle to lessor or his agent on or before due back date and at place specified. The rate is only guaranteed for the original duration of the rental as stated in the rental agreement. All charges subject to Final Audit.

CARD SWIPED

X: \_\_\_\_\_  
 Renter's Signature

X: \_\_\_\_\_  
 Additional Renter's Signature



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CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 further certify that I caused this document to be forwarded to the following Designated Internet Site at: <http://securities.stanford.edu>.

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 15, 2011.

s/ Joy Ann Bull  
JOY ANN BULL

ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)  
  
E-mail:joyb@rgrdlaw.com

## Mailing Information for a Case 4:09-cv-03362-CW

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Joy Ann Bull**  
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- **Amanda C. Scuder**  
ascuder@lawssb.com
- **Ralph M. Stone**  
rstone@lawssb.com
- **Stefanie Jill Sundel**  
ssundel@labaton.com
- **Marc M. Umeda**

MUmeda@robbinsumeda.com,notice@robbinsumeda.com

- **Diane Marie Walters**  
dwalters@wsgr.com,smills@wsgr.com
- **Shawn A. Williams**  
shawnw@rgrdlaw.com,khuang@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,e\_file\_sf@rgrdlaw.com

### Manual Notice List

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

**Daniel R Forde**  
Robbins Umeda LLP  
600 B Street  
Suite 1900  
San Diego, CA 92101

**Mark S. Goldman**  
Labaton Sucharow LLP  
140 Broadway  
New York, NY 10005

**Carol C. Villegas**  
Labaton Sucharow LLP  
140 Broadway  
New York, NY 10005

# **EXHIBIT EEE**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

	X	
LEE R. ELLENBURG III, et al., Individually	:	Civil Action No. 1:08-cv-10475-JGK
and On Behalf Of All Others Similarly	:	<b>(Consolidated)</b>
Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiffs,	:	
	:	DECLARATION OF ELLEN GUSIKOFF
vs.	:	STEWART FILED ON BEHALF OF
	:	ROBBINS GELLER RUDMAN & DOWD
JA SOLAR HOLDINGS CO., LTD., et al.,	:	LLP IN SUPPORT OF AN AWARD OF
	:	ATTORNEYS' FEES AND EXPENSES
Defendants.	:	
	X	

I, ELLEN GUSIKOFF STEWART, declare as follows:

1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.

2. This firm is Lead Counsel of record for plaintiffs.

3. The identification and background of my firm and its partners is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 1,111.00. The total lodestar amount for attorney/paraprofessional time based on the firm's current rates is \$456,387.50. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Alba, Mario	(P)	2.25	565	1,271.25
Gusikoff Stewart, Ellen	(P)	35.75	705	25,203.75
O'Mara, Brian O.	(P)	68.00	565	38,420.00
Robbins, Darren J.	(P)	6.00	760	4,560.00
Rosenfeld, David	(P)	136.50	595	81,217.50
Rudman, Samuel H.	(P)	25.25	770	19,442.50
Boardman, Erin	(A)	615.25	360	221,490.00
Capeci, Michael	(A)	17.50	295	5,162.50
Paralegal I		148.50	295	43,807.50
Paralegal II		4.50	280	1,260.00
Shareholder Relations		49.00	285	13,965.00
Document Clerk		2.50	235	587.50
<b><i>TOTAL</i></b>		<b><i>1,111.00</i></b>		<b><i>\$456,387.50</i></b>

(P) Partner

(A) Associate

5. My firm incurred a total of \$92,091.35 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

***EXPENSES***

From Inception to May 20, 2011

<b><i>EXPENSE CATEGORY</i></b>		<b><i>TOTAL</i></b>
Meals, Hotels & Transportation		\$ 3,966.38
Photocopies		2,942.25
Postage		256.91
Telephone, Facsimile		98.65
Messenger, Overnight Delivery		97.30
Filing, Witness & Other Fees		1,520.00
Court Reporters		62.40
Lexis, Westlaw, Online Library Research		16,171.71
Class Action Notices/Business Wire		973.25
Mediation Fees		11,550.00
Experts/Consultants/Investigators		54,452.50
Forensic Accountants	\$ 32,367.50	
Economic/Damage Analysts	20,405.00	
Investigators	1,680.00	
<b><i>TOTAL</i></b>		<b><i>\$ 92,091.35</i></b>

6. The following is additional information regarding these expenses:

(a) The firm incurred expenses of \$62.40 for amounts paid to court reporters for transcripts of court hearings and depositions.

<b><i>DATE</i></b>	<b><i>VENDOR</i></b>
04/30/09	Southern District of New York Business Service

(b) Filing, Witness and Other Fees: \$1,520.00

<b><i>DATE</i></b>	<b><i>VENDOR</i></b>
12/03/08	Clerk of the Court
12/10/08	D&D Process Service, Inc.
12/15/08	D&D Process Service, Inc.
12/31/08	Irma Herron
06/08/09	D&D Process Service, Inc.
11/06/10	D&D Process Service, Inc.
01/03/11	Clerk, U.S. District Court

<i>DATE</i>	<i>VENDOR</i>
01/05/11	Clerk of the Court

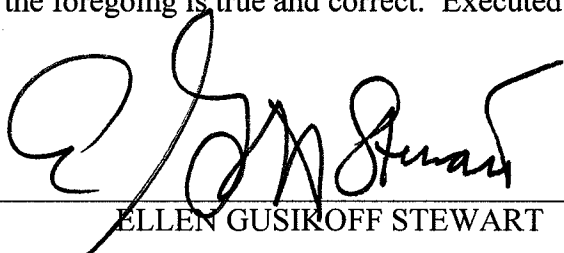
(c) Meals, Hotels and Transportation: \$3,966.38. Expenses for out-of-town meals, hotels and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Rosenfeld, David	07/06/09	New York, NY	Court conference
Rosenfeld, David	09/15/09	New York, NY	Court appearance
Rosenfeld, David	04/26/10	New York, NY	Court appearance
Rosenfeld, David	08/02/10	New York, NY	Attend status conference
Rosenfeld, David	09/20/10	New York, NY	Prepare for and attend mediation
Rosenfeld, David	12/02/10	New York, NY	Prepare for and attend mediation
Gusikoff Stewart, Ellen	02/17/11 – 02/19/11	New York, NY	Prepare for and attend preliminary approval hearing

(d) Lexis, Westlaw, Online Library Research: \$16,171.71. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis Nexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation and Choice Point. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of June, 2011, at San Diego, California.

  
 ELLEN GUSIKOFF STEWART



CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 June 3, 2011.

s/ Ellen Gusikoff Stewart

---

ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN  
& DOWD LLP

655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)

E-mail: [elleng@rgrdlaw.com](mailto:elleng@rgrdlaw.com)

## Mailing Information for a Case 1:08-cv-10475-JGK

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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malba@rgrdlaw.com,e\_file\_ny@rgrdlaw.com,drosenfeld@rgrdlaw.com
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- **Lea Haber Kuck**  
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- **Donna L. McDevitt**  
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- **David Avi Rosenfeld**  
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- **Samuel Howard Rudman**  
srudman@rgrdlaw.com,e\_file\_ny@rgrdlaw.com
- **Ellen Anne Gusikoff Stewart**  
elleng@rgrdlaw.com

### Manual Notice List

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

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**Ryan A. Horning**  
Skadden, Arps, Slate, Meagher & Flom, LLP (IL)  
155 North Wacker Drive  
Suite 2700  
Chicago, IL 60606-1720

**Frances P. Kao**

Skadden, Arps, Slate, Meagher & Flom, LLP (IL)  
155 North Wacker Drive  
Suite 2700  
Chicago, IL 60606-1720

**Ellen Gushoff Stewart**

Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

# **EXHIBIT FFF**

1 ROBBINS GELLER RUDMAN  
 & DOWD LLP  
 2 KEITH F. PARK (54275)  
 DANIEL S. DROSMAN (200643)  
 3 655 West Broadway, Suite 1900  
 San Diego, CA 92101  
 4 Telephone: 619/231-1058  
 619/231-7423 (fax)  
 5 keithp@rgrdlaw.com  
 ddrosman@rgrdlaw.com  
 6 - and -  
 DANIEL J. PFEFFERBAUM (248631)  
 7 Post Montgomery Center  
 One Montgomery Street, Suite 1800  
 8 San Francisco, CA 94104  
 Telephone: 415/288-4545  
 9 415/288-4534 (fax)  
 dpfefferbaum@rgrdlaw.com

10 Lead Counsel for Plaintiffs

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 In re THE PMI GROUP, INC. SECURITIES )  
 14 LITIGATION )

Master File No. 3:08-cv-01405-SI

CLASS ACTION

15 \_\_\_\_\_ )  
 16 This Document Relates To: )

ALL ACTIONS.

DECLARATION OF KEITH F. PARK  
 FILED ON BEHALF OF ROBBINS GELLER  
 RUDMAN & DOWD LLP IN SUPPORT OF  
 APPLICATION FOR AWARD OF  
 ATTORNEYS' FEES AND EXPENSES

DATE: December 16, 2010  
 TIME: 9:00 a.m.  
 COURTROOM: The Honorable Susan Illston

1 I, KEITH F. PARK, declare as follows:

2 1. I am a member of the firm of Robbins Geller Rudman & Dowd LLP. I submit this  
3 declaration in support of my firm's application for an award of attorneys' fees and expenses in  
4 connection with services rendered in the above-entitled action.

5 2. This firm is Lead Counsel of record for Lead Plaintiff Locals 302 and 612 of the  
6 International Union of Operating Engineers-Employers Construction Industry Retirement Trust.

7 3. The identification and background of my firm and its partners is attached hereto as  
8 Exhibit A.

9 4. The total number of hours spent on this Litigation by my firm is 3,535.50. The total  
10 lodestar amount for attorney/para-professional time based on the firm's current rates is  
11 \$1,609,175.00. The hourly rates shown below are the usual and customary rates charged for each  
12 individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Daley, Joseph D.	(P)	0.75	605	453.75
Dowd, Michael	(P)	117.75	775	91,256.25
Drosman, Daniel S.	(P)	264.75	635	168,116.25
Green, Kevin K.	(P)	1.00	615	615.00
Kowalewski, Catherine	(P)	67.00	555	37,185.00
Park, Keith F.	(P)	70.00	750	52,500.00
Robbins, Darren J.	(P)	0.50	735	367.50
Svecov, Sandy	(P)	1.00	775	775.00
Walton, David C.	(P)	2.00	685	1,370.00
Alba, Mario	(A)	1.00	495	495.00
Freemon, P. Gregory	(A)	82.50	410	33,825.00
Llorens, Ryan	(A)	16.00	495	7,920.00
Myers, Danielle S.	(A)	12.75	315	4,016.25
Pfefferbaum, Daniel	(A)	891.75	380	338,865.00
Lawrence, Jeffrey W.	(OC)	427.75	670	286,592.50
Alexander, Susan K.	(SC)	3.25	620	2,015.00
Rogers, Nicholas A.	(PA)	59.00	340	20,060.00
Barhoum, Anthony J.	(EA)	18.50	370	6,845.00
Kadota, Ryan H.	(EA)	9.00	295	2,655.00
Roelen, Scott R.	(EA)	8.00	295	2,360.00
Uralets, Boris	(EA)	13.00	305	3,965.00
Villalovas, Frank E.	(EA)	4.00	370	1,480.00

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Wilhelmy, David E.	(EA)	11.50	325	3,737.50
Feldman, James	(FA)	291.50	430	125,345.00
Koelbl, Terry R.	(FA)	62.00	360	22,320.00
Rudolph, Andrew J.	(FA)	393.75	520	204,750.00
Sader, Brad C.	(FA)	6.00	360	2,160.00
Cody, Ross	(FAI)	8.00	220	1,760.00
Nelson, James	(FAI)	4.00	200	800.00
Trinkle, Kimberly	(FAI)	35.00	200	7,000.00
Brandon, Kelley T.	(I)	1.00	420	420.00
Paralegal I		120.75	290-295	35,298.75
Paralegal II		329.00	265-280	92,075.00
Paralegal III		91.75	75-285	24,441.25
Document Clerk		110.00	220-235	25,335.00
<b>TOTAL</b>		<b>3,535.50</b>		<b>\$1,609,175.00</b>

- (P) Partner
- (A) Associate
- (OC) Of Counsel
- (SC) Special Counsel
- (PA) Project Attorney
- (EA) Economic Analyst
- (FA) Forensic Accountant
- (FAI) Forensic Accountant Intern
- (I) Investigator

5. My firm incurred a total of \$247,924.15 in expenses in connection with the prosecution of this Litigation. They are broken down as follows:

**EXPENSES**

From Inception to September 28, 2010

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Meals, Hotels & Transportation	\$ 20,799.12
Photocopies	61,710.81
Postage	82.09
Telephone, Facsimile	109.61
Messenger, Overnight Delivery	589.68
Filing, Witness & Other Fees	1,576.00
Court Reporters	1,620.55
Lexis, Westlaw, Online Library Research	4,627.81
Class Action Notices/Business Wire	1,310.00
Mediation Fees	16,416.66

<i>EXPENSE CATEGORY</i>		<i>TOTAL</i>
Experts/Consultants/Investigators		139,002.39
All Point Financial, Inc.	\$14,290.00	
Financial Markets Analysis	53,712.50	
Lily Haggerty	840.00	
L.R. Hodges & Associates, Ltd.	69,034.89	
Princeton Advisory Group, Inc.	1,125.00	
Miscellaneous (publication)		79.43
<b>TOTAL</b>		<b>\$ 247,924.15</b>

6. The following is additional information regarding these expenses:

(a) The firm incurred expenses of \$1,620.55 for amounts paid to court reporters for transcripts of court hearings and depositions.

<i>DATE</i>	<i>VENDOR</i>
02/03/09	Katherine Powell Sullivan
06/11/10	US Legal Support
06/18/10	US Legal Support

(b) Filing, Witness and Other Fees: \$1,576.00.

<i>DATE</i>	<i>VENDOR</i>
03/12/08	Wheels of Justice, Inc.
03/17/08	Wheels of Justice, Inc.
04/17/08	Courthouse News Service
04/25/08	Courthouse News Service
08/12/08	Wheels of Justice, Inc.
08/28/08	Wheels of Justice, Inc.
09/05/08	Wheels of Justice, Inc.
11/06/08	Wheels of Justice, Inc.
04/14/09	Wheels of Justice, Inc.
05/13/09	Wheels of Justice, Inc.
06/25/09	Wheels of Justice, Inc.
07/27/09	Wheels of Justice, Inc.
09/30/09	Wheels of Justice, Inc.
10/08/09	Wheels of Justice, Inc.
01/27/10	Wheels of Justice, Inc.



<i>DATE</i>	<i>VENDOR</i>
07/20/10	Wheels of Justice, Inc.

(c) Local and out-of-town meals and out-of-town hotels and transportation: \$20,799.12. Expenses for out-of-town meals, hotels and transportation were incurred for the following purposes:

<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Rudolph, Andrew J.	01/27/10 – 01/28/10	San Francisco, CA	Meet with counsel re: damages; review financial documents
Drosman, Daniel S.	02/19/10	San Francisco, CA	Prepare for and attend case management conference
Rudolph, Andrew J.	05/25/10 – 05/26/10	San Francisco, CA	Assist counsel in second set of document requests; review document production
Drosman, Daniel S.	06/08/10 – 06/09/10	Seattle, WA	Deposition preparation with client Malcolm Auble
Drosman, Daniel S.	06/09/10 – 06/10/10	San Francisco, CA	Attend mediation
Drosman, Daniel S.	06/10/10 – 06/11/10	San Jose, CA	Defend Malcolm Auble deposition
Rudolph, Andrew J.	06/09/10 – 06/11/10	San Francisco, CA	Meet with counsel re: accounting allegations; attend mediation
Dowd, Michael	06/09/10 – 06/10/10	San Francisco, CA	Prepare for and participate in mediation
Auble, Malcolm	06/10/10 – 06/11/10	San Jose, CA	Class Representative deposition
Drosman, Daniel S.	07/12/10 – 07/14/10	New York, NY	Prepare for and attend mediation
Dowd, Michael	07/12/10 – 07/14/10	New York, NY	Prepare for and attend mediation
Drosman, Daniel S.	09/03/10	San Francisco, CA	Preliminary approval hearing
Park, Keith F.	09/03/10	San Francisco, CA	Preliminary approval hearing

(d) Photocopying:  
 In-house (15,234 copies @ \$0.25 per copy): \$3,808.50  
 In-house Imaging/Scanning/Printing: \$152.25  
 Outside Photocopy Expenses: \$57,750.06

<i>DATE</i>	<i>VENDOR</i>
08/07/08	Los Angeles Superior Court
06/14/10	Document Management Solutions, Inc.

1 (e) Lexis, Westlaw, Online Library Research: \$4,627.81. These included vendors  
2 such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., LexisNexis, CDA  
3 Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point.  
4 These databases were used to obtain access to SEC filings, legal research, and cite-checking of  
5 briefs. The charges for these vendors vary depending upon the type of services requested.

6 7. The expenses pertaining to this case are reflected in the books and records of this  
7 firm. These books and records are prepared from expense vouchers, check records, and other  
8 documents and are an accurate record of the expenses.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th  
10 day of October, 2010, at San Diego, California.

11  
12 s/ Keith F. Park  
13 \_\_\_\_\_  
14 KEITH F. PARK  
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2010, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 further certify that I caused this document to be forwarded to the following Designated Internet Site at: <http://securities.stanford.edu>.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 8, 2010.

s/ Keith F. Park  
KEITH F. PARK  
  
ROBBINS GELLER RUDMAN  
& DOWD LLP  
655 West Broadway, Suite 1900  
San Diego, CA 92101-3301  
Telephone: 619/231-1058  
619/231-7423 (fax)  
E-mail: [KeithP@rgrdlaw.com](mailto:KeithP@rgrdlaw.com)

## Mailing Information for a Case 3:08-cv-01405-SI

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Daniel S. Drosman**  
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- **Lawrence Timothy Fisher**  
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- **Catherine J. Kowalewski**  
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- **Alan Roth Plutzik**  
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- **Port Authority of Allegheny County Retirement and Disability Allowance Plan for Employees Represented by Local 85 of the Amalgamated Transit Union**  
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- **George A. Riley**  
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- **Darren Jay Robbins**  
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- **David Conrad Walton**  
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- **Samuel M. Ward**  
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- **Shawn A. Williams**  
shawnw@rgrdlaw.com,khuang@rgrdlaw.com,e\_file\_sd@rgrdlaw.com,jdecena@rgrdlaw.com,e\_file\_sf@rgrdlaw.com

### Manual Notice List

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

**Alan R. Plutzik**  
Barroway Topaz Kessler Meltzer & Check LLP  
2125 Oak Grove Road  
Suite 120  
Walnut Creek, CA 94598

**Dhaivat H. Shah**  
O'Melveny & Myers LLP  
2765 Sand Hill Road  
Menlo Park, CA 94025

# **EXHIBIT GGG**

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

-----X	
<b>PUERTO RICO GOVERNMENT JUDICIARY</b>	:
<b>EMPLOYEES RETIREMENT SYSTEM</b>	:
<b>ADMINISTRATION, CRAIG B. LAUB, J.D.</b>	:
<b>PISUT and SANDRA REDFERN,</b>	:
	:
<b>Plaintiffs,</b>	:
	:
<b>-against-</b>	:
	:
	:
<b>MARCUM, LLP, as successor to STONEFIELD</b>	:
<b>JOSEPHSON, INC.,</b>	:
	:
<b>Defendant.</b>	:
-----X	

**15 Civ. 01938 (DAB)**

**DECLARATION OF LAWRENCE D. LEVIT IN  
SUPPORT OF LEAD PLAINTIFF’S MOTION  
FOR FINAL APPROVAL OF SETTLEMENT AND  
PLAN OF ALLOCATION AND FOR ATTORNEYS’ FEES,  
REIMBURSEMENT OF EXPENSES AND PLAINTIFF AWARDS**

I, Lawrence D. Levit, declare as follows:

1. I am a member of the New York Bar admitted to practice before this Court and of counsel with the firm of Abraham, Fruchter & Twersky, LLP (“AF&T” or “Lead Counsel”), counsel for the PR Group, Lead Plaintiff in the above-captioned action (the “Action”). I submit this Declaration in Support of Lead Plaintiff’s Motion for Final Approval of the Settlement and Plan of Allocation and For Attorneys’ Fees, Reimbursement of Expenses and Plaintiff Awards. I have personal knowledge of the matters set forth herein based on my active participation in all material aspects of the prosecution and settlement of this litigation. If called upon, I could and would competently testify that the following facts are true and correct.

2. Lead Plaintiff, comprised of Puerto Rico Government Employees and Judiciary Retirement Systems Administration, Craig B. Laub, J.D. Pisut, and Sandra Redfern (“Plaintiffs”), has entered into a \$1,100,000 cash settlement on behalf of themselves and members of the Class (defined below) with defendant Marcum, LLP (“Marcum”),<sup>1</sup> the independent auditor of Fuqi International, Inc. (“Fuqi” or “the Company”) during the Class Period (defined below), to resolve this securities class action (the “Settlement”). The Settlement is contained in the Stipulation of Settlement entered into by all parties dated October 6, 2016 (the “Stipulation”) and previously filed with the Court.<sup>2</sup> See Dkt. No. 16-1.

3. The \$1.1 million cash Settlement, along with the prior \$7.5 million settlement with the defendants in *In re Fuqi International, Inc. Securities Litigation*, 10 Civ. 2515 (DAB) (the “Fuqi Litigation”), provides a significant aggregate recovery of \$8.6 for the Class Period purchasers of Fuqi common stock.<sup>3</sup>

4. This Declaration sets forth the nature of claims asserted, the principal proceedings in this Action, the legal services provided by Lead Counsel and others working at its direction, the settlement negotiations, and also demonstrates why the Settlement and Plan of Allocation are fair and in the best interests of the Class, why the application for attorneys’ fees and why reimbursement expenses is reasonable and should be approved by this Court and why the awards to the members of Lead Plaintiff PR Group are reasonable and should be approved by this Court.

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<sup>1</sup> This includes claims against Marcum’s alleged predecessor Stonefield Josephson, Inc. (together, with Marcum, “Defendant”).

<sup>2</sup> The Stipulation contains all material terms of the Settlement, including *inter alia*, the manner and form of notice to the Class and the contingencies or conditions to the Settlement’s final approval.

<sup>3</sup> Defendants in the Fuqi Litigation were Fuqi, Yu Kwai Chong, Ching Wan Wong, Lie Xi Zhuang, Lily Lee Chen, Eileen B. Brody, Victor A. Hollander, Jeff Haiyong Liu, William Blair & Co., Oppenheimer & Co. Inc., and Cowen and Company (collectively, the “Fuqi Defendants”). Neither Marcum nor Stonefield was named as a defendant in the Fuqi Litigation.

## I. PRELIMINARY STATEMENT

5. This case was carefully investigated and has been vigorously litigated since its commencement. The claims against Defendant arise from, and are inextricably intertwined with, the claims in the Fuqi Litigation. In connection with these claims, Plaintiffs' Counsel reviewed and analyzed more than 230,000 pages of non-public documents produced by Fuqi, many of them in Chinese.<sup>4</sup> In addition, Plaintiffs' Counsel reviewed Fuqi's publicly filed documents, financial reports, analysts' reports and press releases. These documents provide detailed factual information concerning the alleged false and misleading statements relating to Fuqi's financial statements and its internal controls, as well as the cash transfers that were alleged to have been improperly approved by its Chief Executive Officer, that were made, audited, reviewed and/or approved by Marcum during the Class Period. Plaintiffs' Counsel also consulted with experts in accounting, loss causation and damages, and thoroughly researched the law pertinent to the claims and defenses asserted.

6. While the document review undertaken by Plaintiffs' Counsel was by itself large, it was made all the more challenging by the fact that many of the documents were in Chinese and required translation. Plaintiffs' efforts were also hindered by the fact that Fuqi did not issue a restatement and did not file any substantive financial documents with the U.S. Securities and Exchange Commission (the "SEC") once it announced that a restatement of certain of its financial statements was required. Defendant asserted defenses to the claims asserted, and contended that they did not do anything wrong or violate the securities laws. Moreover, Defendant asserted that Plaintiffs failed to adequately allege that Marcum made any materially

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<sup>4</sup> Lead Counsel's work on behalf of the Class was performed with the assistance of other plaintiffs' counsel, who appeared in this Action on behalf of members of Lead Plaintiff PR Group. AF&T together with other plaintiffs' counsel are referred to herein as "Plaintiffs' Counsel."



false or misleading statement, or acted with scienter. In the face of these obstacles, the parties engaged in a mediation before retired United States District Court Judge Layn R. Phillips, an experienced mediator. Judge Phillips, who had successfully mediated the Fuqi Litigation, oversaw the parties' face-to-face meeting, and was provided with comprehensive presentations regarding the parties' claims and defenses, including damages, and negotiated settlement terms. During the full day session before Judge Phillips, the parties reached an agreement to resolve the Action.

7. The proposed \$1,100,000 Settlement is a notable achievement, particularly in light of the \$7,500,000 cash settlement previously achieved in the Fuqi Litigation, and is the product of the substantial efforts of Lead Counsel who zealously litigated this case. The proposed Settlement is a superb result for the Class, particularly under the circumstances of this litigation, and is eminently fair, reasonable and adequate based on the numerous impediments to recovery, the legal hurdles and risks involved in proving liability and damages as well as the further risk, delay and expense had this case continued through motion practice, including summary judgment, and/or trial against the Defendant. Plaintiffs and Defendant do not agree on the average amount of damages per share that would be recoverable if Plaintiffs were to have prevailed on the claims asserted, or that Plaintiffs would have prevailed at all. For example, Marcum contends that there were no materially false and misleading statements in the Fuqi SEC filings that it audited which were incorporated by reference in the Registration Statement and Prospectus issued in connection with the 2009 Secondary Offering. In addition, Defendant maintained that the Company's Class Period SEC filings adequately disclosed that Fuqi had material control weaknesses, and that Plaintiffs would not be able to establish either loss causation or scienter. In light of such adamant opposition, a recovery of an additional \$1.1

million to be distributed to the Class, derived solely from Lead Counsel's efforts, represents a highly successful result.

8. The Settlement was negotiated on all sides by experienced counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses. The Settlement confers substantial and immediate benefits to the Class while eliminating the risk of little or no recovery against Defendant. Lead Counsel respectfully submits that under these circumstances, the Settlement is in the best interests of the Class and should be approved as fair, reasonable and adequate. The Court should also approve the Plan of Allocation of settlement proceeds and award attorneys' fees in the amount of one-third of the Settlement Fund, plus expenses incurred in the prosecution of this litigation in the amount of \$24,523.02, which have been incurred or advanced by Plaintiffs' Counsel in connection with this litigation, as a result of Plaintiffs' Counsel's considerable efforts in creating this substantial benefit on behalf of the Class, and as recognition for the risks faced and overcome.

9. The Class appears to overwhelmingly approve the Settlement. Pursuant to this Court's Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement (the "Preliminary Approval Order"), dated May 30, 2017, Angeion Group ("Angeion") was appointed Claims Administrator to supervise and administer the notice procedure as well as the processing of claims in connection with the proposed Settlement of this action. *See* Dkt. No. 17, p. 3. As Angeion has stated, as of November 28, 2017, Angeion delivered 72,129 copies of the Notice and Proof of Claim Form (together, the "Notice") to the United States Postal Service ("USPS") mailed by First-Class mail, post pre-paid, to members of

the Class, and to brokers and other nominees previously identified in the Fuqi Litigation.<sup>5</sup> See Declaration of Brian Manigault re: (1) Mailing of Notice and Proof of Claim; (2) Exclusion Requests and Objections; and (3) Report on Number of Claims Filed (“Manigault Decl.”) (attached as Exhibit 1 hereto), ¶7; see also Dkt. No. 19-1 (Declaration of Brian Manigault, dated November 6, 2017, ¶¶ 3-5). In addition, Angeion caused the Court-approved Summary Notice to be published in the July 10, 2017 edition of Investor’s Business Daily and over PR Newswire, and posted the Notice, Stipulation of Settlement, and information regarding the claims administrator and how to file a claim on the website named [www.fuqiclasssettlement.com](http://www.fuqiclasssettlement.com), which was created for the Settlement. Dkt. No. 19-1, ¶¶6-7. Angeion has monitored all mail that has been received. Manigault Decl., ¶¶10, 13. Angeion thus far has received no requests for exclusion from the Settlement Class (Class members have until December 18, 2017 to request exclusion). *Id.*, ¶10. Settlement Class Members were also initially notified that objections were to be delivered no later December 18, 2017. *Id.*, ¶11. As of November 28, 2018, Angeion has received one objection to the settlement.<sup>6</sup> *Id.*, ¶¶13. In this era of heightened shareholder

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<sup>5</sup> The Notice apprised Class members that if they had previously submitted a Proof of Claim and Release Form in connection with the settlement of the Fuqi Litigation, and they wished to participate in the Settlement, they did not need to submit an additional Proof of Claim and Release.

<sup>6</sup> By letter to the Court, dated September 2, 2017, Class member Harry Wong objected to the amount of the Settlement. ECF No. 18, p. 1. However, as discussed in Lead Plaintiff’s Memorandum of Law in Support of Final Approval of the Settlement and Plan of Allocation filed contemporaneously herewith, Mr. Wong fails to account for the prior \$7.5 million recovered for the Class in the Fuqi Litigation when he states “I want to see at least a ten million dollar total as a minimum settlement claim amount!” *Id.* Likewise, he erroneously concludes that the \$135 million in improper cash transfers (which he incorrectly states is a single \$225 million “overnight cash transfer”), that were returned to the Company, are a component of the class-wide damages (*id.*), as opposed to evidence of the inadequacies of Fuqi’s Class Period internal controls as alleged by Plaintiffs. See Dkt. No. 10, ¶ 8. Because Mr. Wong failed to account for the additional Class recovery afforded by the settlement of the Fuqi Litigation in his challenge to the adequacy of the Settlement, and his objection is based on an erroneous

activism, such a low degree of objection is noteworthy. Angeion has also received 818 paper claims and 78 electronic files containing approximately 1,049 individual claims, for a total of approximately 1,867 claims filed to date. *Id.*, ¶13. In addition, 9,135 claims were filed in the Fuqi Litigation, which are claims submitted in this Action as well. *Id.*, ¶14.

10. Plaintiffs' Counsel has litigated this case on a wholly contingent basis. The fee application for one-third of the total recovery is fair, reasonable and adequate under the circumstances of this case and warrants Court approval. This fee request is well within the range of fees typically awarded in actions of this type and is wholly justified in light of the benefits obtained, the legal time expended (i.e., a lodestar in the amount of \$413,596.75), the substantial risks undertaken, and the quality, nature and extent of the services rendered, as more fully set forth in Lead Plaintiff's Memorandum of Law in Support of Motion for Attorneys' Fees and Reimbursement of Expenses, and Lead Plaintiff Awards, submitted herewith. The fee requested would result in a negative multiplier of 0.88 given the time expended in this Action.

11. In sum, the Settlement is the product of hard-fought litigation and protracted arm's-length negotiation and takes into consideration the risks specific to this case. Lead Counsel respectfully submits that, under these circumstances, the Settlement is in the best interests of the Class and should be approved as fair, reasonable and adequate.

12. The following sets forth the principal proceedings in this matter and the major legal services provided by Lead Counsel, the negotiations of the Settlement, the terms of the Settlement, why the Settlement and the Plan of Allocation are fair and in the best interests of the Class, and the reasonableness of Lead Counsel's fee and expense request and the Lead Plaintiff awards.

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interpretation of Plaintiffs' allegations and claims, Plaintiffs respectfully submit that his objection should be rejected.

## II. STATEMENT OF FACTS

13. This securities class action was brought against Marcum, Fuqi's Class Period auditor, for materially false and misleading statements it made in certain Company public filings, which were incorporated into the Registration Statement and Prospectus issued in connection with the Company's 2009 Secondary Offering. Plaintiffs allege that Defendant violated the Securities Act of 1933 ("Securities Act") and/or the Securities Exchange Act of 1934 ("Exchange Act"). The Action was brought pursuant to the Exchange Act on behalf of a class (the "Class") of all persons, other than Defendant and related persons, who purchased or acquired shares of Fuqi common stock from May 15, 2009 to March 27, 2011, inclusive (the "Class Period"), and/or pursuant to the Securities Act on behalf of all persons, other than Defendant and related persons, who purchased Fuqi common stock in the Company's Secondary Offering on or about July 22, 2009.

14. Fuqi operates or operated through its wholly-owned subsidiary, Fuqi International Holdings, Co., Ltd., a British Virgin Islands corporation, and its wholly-owned subsidiary, Shenzhen Fuqi Jewelry Co., Ltd., established under the laws of the Peoples' Republic of China (the "PRC") ("SZ Fuqi"). Fuqi traded on the Nasdaq during the Class Period. Fuqi, through SZ Fuqi, is a designer and manufacturer of gold and precious metal jewelry, developing and selling a range of products made from gold, platinum and other precious metals. Although Fuqi began by selling its products to wholesale customers, in 2007 the Company began a retail strategy, focusing on diamond and other gemstone jewelry. In August 2008, Fuqi opened and/or acquired 56 retail counters in department stores and seven standalone stores in China (primarily located in Shanghai and Beijing) and started to operate the brand "Temix" store chain that it had acquired for, reportedly, \$11.7 million.

15. In the first quarter of 2009, Fuqi had approximately 70 jewelry retail counters and/or stores in China. Wholesale jewelry accounted for approximately 88% of revenue and the remainder was retail sales. The Company's net revenue and net income doubled from 2007 to 2008. For the year ending December 31, 2007, revenue was \$145.6 million, which increased to \$367.6 million as of December 31, 2008. Fuqi's net income increased from \$13.5 million as of December 31, 2007 to \$27.9 million one year later.

16. On July 22, 2009, Fuqi's Secondary Offering was declared effective by the SEC in which it was to sell 4,855,000 shares of common stock at a price of \$21.50 per share, raising more than \$104.3 million. The Underwriters exercised their over-allotment and purchased and sold an additional 726,395 shares at \$21.50 per share for total proceeds to Fuqi of approximately \$112.4 million.

17. In connection with the Secondary Offering, Defendant consented to the incorporation by reference in Fuqi's Registration Statement of Fuqi's consolidated financial statements for each of the years in the three-year period ended December 31, 2008, as well as Marcum's determinations concerning the effectiveness of the Company's internal control over financial reporting as of December 31, 2008, which was included in Fuqi's Form 10-K for the year ended December 31, 2008 filed with the SEC on March 31, 2009 (the "2008 10-K"). Plaintiffs allege that Marcum provided such consent without conducting proper due diligence from the time of its audit in connection with the 2008 10-K until the time of the Registration Statement, if it conducted any due diligence at all.

18. During the first three quarters of 2009, Fuqi reported significant financial growth and increased profitability. For example, the Company boasted increases in gross profits as a percentage of revenues of 5.15%, 6.60%, and 11.8% for the quarters ended March 31, 2009, June

30, 2009, and September 30, 2009, respectively. Likewise, Fuqi reported increases in net income as a percentage of revenues of 0.59%, 1.93%, and 7.80% for the same periods.

19. Based on the Company's financial performance, various analysts and market commentators repeatedly touted the Company's stock as one of "5 Stocks Approaching Greatness" and one of "China's Undiscovered Gems." As a consequence of Fuqi's publicly reported financial success, the price of the Company's common stock rose dramatically during the Class Period. For example, on May 15, 2009, at the beginning of the Class Period, the Company's common stock closed at \$7.61 per share. During the Class Period, Fuqi's stock closed as high as \$31.86 per share.

20. On November 9, 2009, before the market opened, Fuqi reported its results for the third quarter of 2009. While Fuqi generally reported results in conformity with estimates, it only met those estimates through an unusually high recognition of high margin original design manufacturing revenue, which had gross margins higher than the Company's historical gross margins for its wholesale business. Thus, the quality of Fuqi's earnings was questioned. The Company's announcement resulted in a decline in Fuqi's stock price from \$23.33 per share prior to the announcement to a closing price of \$19.18 per share on November 9, 2009.

21. The full extent of the problems at Fuqi would not be disclosed, however, until the end of the Class Period. Unbeknownst to the investing public, and contrary to the Company's Class Period representations, Fuqi suffered from inadequate internal financial controls that caused the Company to report materially false financial results during the Class Period. In addition, Fuqi's financial control deficiencies were so pervasive that the Company would ultimately disclose that it had engaged in unauthorized cash transfers of approximately \$135 million to unrelated third parties. As a result, the Company shocked the market when, on March

16, 2010, it announced that it was conducting an internal assessment of its internal controls as of December 31, 2009; that it was unable to timely file its annual report for 2009 with the SEC due to certain accounting errors caused by a material weakness in its internal controls during 2009; and that investors should no longer rely upon the Company's previously issued financial statements for the periods ending March 31, 2009, June 30, 2009, and September 30, 2009.

22. Since that announcement about its need to restate, Fuqi has not filed any of its financial statements with the SEC or restated previously filed financial statements (and apparently has not filed complete annual reports with Shenzhen Administration of Industry and Commerce ("AIC")).

23. On the disclosure of the news about the Company's need to restate, Fuqi's share price decreased dramatically.

#### **Nasdaq Delists Fuqi's Stock**

24. Subsequently, while Fuqi announced that it was continuing to work on filing its restatements – after it repeatedly failed to make any filings of its financial statements with the SEC – Nasdaq delisted the Company's stock on March 28, 2011. On July 1, 2013, the SEC revoked the registration of Fuqi's securities pursuant to § 12(j) of the Exchange Act for failure to file periodic reports since the period ended September 30, 2009.

#### **Fuqi Announces Investigation of Its CEO-Approved Cash Transfers**

25. On March 28, 2011, Fuqi announced that the Company had made certain cash transfers beginning in September 2009 to three unrelated companies. The Company further announced that these cash transfers were being investigated by Fuqi's Audit Committee. The transfers, which were approved by Fuqi's CEO, were allegedly requested by Fuqi's bank. Fuqi purportedly received no *quid pro quo* for making the transfers. In total, more than \$135 million



was transferred by Fuqi to the three companies. Fuqi did not receive any interest or other explicit financial compensation for making the transfers. Fuqi claimed that all funds were paid back from the three companies prior to the end of the quarter so that no amount was owed to Fuqi at the end of any quarter.

### **The SEC Announces a Settlement With Fuqi and Its CEO**

26. On July 1, 2013, the SEC announced that Fuqi and defendant Chong had agreed to settle false and misleading statement charges under §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, relating to the above-referenced cash transfers, that had been filed by the SEC in the action *Securities and Exchange Commission v. Fuqi International, Inc. and Yu Kwai Chong*, Case No. 13-cv-995 (RC) (D.D.C.). Fuqi and Chong consented to the entry of a final judgment that: (i) permanently enjoined them from future violations of the federal securities laws; (ii) ordered Fuqi and Chong to pay civil penalties of \$1 million and \$150,000, respectively; and (iii) barred Chong from serving as an officer and director for five years. Final judgments were entered against Fuqi and Chong on August 7, 2013, and a corrected final judgment against Chong on October 3, 2013.

### **The Fuqi Litigation Commences**

27. During March 2010, an initial complaint was filed against Fuqi and others in the Fuqi Litigation, alleging violations of the federal securities laws. Several additional complaints were subsequently filed, alleging similar claims. None of those complaints named Marcum as a defendant. On July 26, 2010, the Court consolidated all similar cases, appointed the PR Group as Lead Plaintiff and approved their selection of AF&T as Lead Counsel. *See* Fuqi Litigation Docket (“Fuqi Dkt.”) No. 47.

28. The Court initially ordered that a consolidated complaint be filed in the Fuqi Litigation 30 days from the date of the consolidation order. The parties, however, agreed that the date of the filing of a consolidated complaint should occur after the restatement was publicly disclosed. Thus, the Court approved the parties' stipulation that any consolidated complaint would be filed 30 days after Fuqi publicly released its restated financial statements for the first three quarters of 2009 and for the fiscal year ended December 31, 2009. *See* Fuqi Dkt. No. 50.

29. Because no consolidated or amended complaint was being filed at that time in the Fuqi Litigation, Plaintiffs were concerned about the running of the statute of limitations as to any claims against Defendant. Thus, Plaintiffs entered into a tolling agreement with Defendant and also determined that a consolidated complaint, combining all claims and all defendants in one pleading in the Fuqi Litigation, was needed. The Court approved the parties' stipulation allowing for the filing of a consolidated complaint, and providing that a response to that complaint by any defendant was not required at the time, pending the release by Fuqi of its financial statements for the year ended December 31, 2009 and its restated financials, and a determination as to whether the Plaintiffs would amend their complaint. *See* Fuqi Dkt. No. 54.

30. Although formal discovery was stayed by the PSLRA and the stipulation that no defendant needed to respond to the complaint, Plaintiffs retained investigators, who conducted interviews of various people, mostly in the PRC, who had contact with or a connection to Fuqi. Many of those people interviewed were former employees of Fuqi during the Class Period and/or who worked in Fuqi's accounting or finance departments.

31. Plaintiffs filed their Consolidated Complaint in the Fuqi Litigation on February 15, 2011, however, Plaintiffs did not name Marcum as a defendant, as the tolling agreement was still in effect. *See* Fuqi Dkt. No. 55. All Fuqi Defendants, except for two individuals who resided

overseas, were served. While the Fuqi Defendants did not have to file a response to the Consolidated Complaint, they have denied all allegations of wrongdoing and insist that they have no liability.

32. In June 2011, Plaintiffs and the Fuqi Defendants engaged in preliminary discussions concerning the possible resolution of the Fuqi Litigation. In connection with those discussions, Fuqi produced approximately 230,000 pages of documents, many of them in Chinese requiring translation. The document product included accounting documents and discussions among internal and external auditors. In addition, Plaintiffs conducted two interviews, one of an outside attorney retained by Fuqi's Audit Committee to investigate the cash transfer issues, and the other was of a member of Fuqi's board of directors, who served on the Audit Committee.

#### **Mediation and Subsequent Negotiations in the Fuqi Litigation**

33. After an agreement to mediate the Fuqi Litigation was postponed for many months, and Plaintiffs were about to attempt to commence formal discovery, the parties restarted discussions about the possibility of resolving that action. Plaintiffs and the Fuqi Defendants agreed to participate in a formal mediation, which was held on December 12, 2013 in Newport Beach, California before the Hon. Layn Phillips. In advance of the mediation, each side submitted comprehensive mediation statements setting forth the strengths and weaknesses of their case. Plaintiffs also submitted a Reply Memorandum responding to the Fuqi Defendants' Mediation Statement. The parties in the Fuqi Litigation, along with the Fuqi Defendants' insurance carriers, met face-to-face, and with Judge Phillips presiding over the session, debated the various issues in the litigation, including liability, damages and loss causation.

34. The parties engaged in a full day of negotiations, which included debates concerning Plaintiffs' ability to collect any judgment and the Plaintiffs' damages analysis. Lead

Counsel zealously advanced the Class' positions and was fully prepared to continue to litigate rather than accept a settlement that was not in the best interests of the Class. The parties, with the assistance of Judge Phillips, subsequently reached agreement at \$7.5 million.

35. In response to Plaintiffs' motion, the Court entered a Preliminary Approval Order of the settlement of the Fuqi Litigation on November 21, 2014, which, among other things, preliminarily certified the Fuqi Litigation Class, which is the same as the Class in this Action. *See* Fuqi Dkt. No. 93.

36. A motion for Final Approval of the Settlement in the Fuqi Litigation was filed with the Court on January 16, 2015, *see* Fuqi Dkt. No. 94, and on August 31, 2015, an amended motion was filed. *See* Fuqi Dkt. No. 108. A hearing on Plaintiffs' motion was held on February 18, 2016, and the Court approved the Fuqi Litigation settlement. *See* Fuqi Dkt. No. 115.

37. After agreement was reached to resolve the Fuqi Litigation, and as the expiration of the tolling agreement with Defendant was approaching, the Settling Parties began having discussions about the possibility of resolving this Action. The Plaintiffs sent a demand letter to Defendant, setting forth a detailed explanation of the basis for their claims of liability and damages, and Defendant provided an equally detailed response as to why it was not liable and Plaintiffs would not be able to establish damages. The Settling Parties held a series of back-and-forth discussions at that time, but did not reach agreement.

### **The Marcum Litigation Commences**

38. On March 13, 2015, Plaintiffs filed a complaint against Defendant alleging violations of the Securities Act and the Exchange Act (the "Complaint"). *See* Dkt. No. 1. The Complaint alleged, *inter alia*, that Defendant knew about Fuqi's lack of internal controls and accounting problems, yet it still gave its consent regarding the Company's financials in Fuqi's

Secondary Offering. The Settling Parties continued to hold periodic discussions after the Complaint was filed, including whether to engage in a mediation to attempt to resolve the Action.

39. On July 13, 2015, Plaintiffs and Defendant entered into a Stipulation in which service of the Complaint was deemed effective as of June 30, 2015; deferring Defendant's need to answer or move with respect to the Complaint, or any amended complaint, until thirty (30) days after either party concluded, upon written notice, that the Action cannot be resolved through mediation. The Court approved that stipulation on August 11, 2015. *See* Dkt. No. 4.

40. The Settling Parties continued discussions and agreed to mediate. On December 15, 2015, Plaintiffs and Defendant participated in a formal mediation in Newport Beach, California, before Judge Phillips, which was also attended by Defendant's insurance carrier. Following a full day of mediation, the Parties, with the assistance of Judge Phillips, ultimately reached agreement to settle the Action for \$1.1 million.

41. Consistent with the parties' hard-fought and aggressive litigation, there were no productive settlement discussions until Lead Counsel had spent many hours investigating the allegations in this Action and the Fuqi Litigation, reviewing scores of pages of documents, consulting with accounting experts, directing an investigation in China whereby more than 30 individuals who had connections to Fuqi were interviewed, interviewing a Fuqi Board member who served on the Audit Committee, interviewing the attorney who conducted the investigation into the cash transfers authorized by Fuqi's CEO and had begun preparing for additional formal discovery, as well as researching and considering damages issues and loss causation, and the prospects of conducting discovery in China. Even after the settlement was reached in the Fuqi Litigation, it took months to reach an agreement-in-principle with the Defendant and agree upon

all the details of the Settlement as reflected in the Stipulation. Lead Counsel and counsel for Defendant debated numerous issues back-and forth as to what was needed by each side in the various settlement documents. Drafts of each of the documents were exchanged repeatedly during those months, and disputed issues arose that needed to be resolved. Only through the persistence of Lead Counsel and counsel for Defendant was an agreement produced that all sides could sign.

42. In connection with the proposed Settlement, on October 27, 2016, Plaintiffs filed an amended class action complaint (the “Amended Complaint”), which set forth the factual allegations concerning the claims Plaintiffs intended to prosecute through trial had the Action not settled. *See* Dkt. No. 10.

### **III. MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT**

43. On October 28, 2016, Plaintiffs filed an unopposed motion for preliminary approval of the Settlement (Dkt. No. 11), and re-filed that motion on May 25, 2017. *See* Dkt. No. 14.

44. This Court entered the Preliminary Approval Order on May 30, 2017 ( Dkt. No. 17), preliminarily certifying the Class. The Court also approved the form and content of the Notice, Proof of Claim and Summary Notice. In the Preliminary Approval Order, the Court set a schedule for mailing the Notice (which included the Proof of Claim and Release (“Proof of Claim”)) to Class Members who could be identified with reasonable effort, and for publishing the Summary Notice in Investor’s Business Daily, and for a press release announcing the Settlement to be disseminated.

45. The Notice provided details about the Settlement and the litigation, and informed members of the Class that they did not need to file an additional Proof of Claim and Release if one had been filed in connection with the Fuqi Litigation Settlement. In addition, Class

members were informed that Lead Counsel will ask the Court for attorneys' fees not to exceed one-third of the Settlement Fund and expenses not to exceed \$100,000.00 to be paid from the Settlement Fund.

46. Angeion, the Claims Administrator, did an initial mailing of the Settlement Notice to Class members or representatives on June 27, 2017 and had the Summary Notice published in on July 10, 2017. *See* Dkt. No. 19-1, at ¶¶3-6. The Notice informed Class members that any objections to the Settlement, the Plan of Allocation or the request for attorneys' fees, reimbursement of expenses needed to be filed by December 18, 2017. Angeion has received communications and claims from Class members and has provided updated information regarding objections, requests for exclusion, claims forms submitted to the Claims Administrator, and other information relevant to the request for final approval. Exhibit 1 hereto (Manigault Decl.), at ¶¶10, 11-14.

47. The facts contained within the Manigault Decl., reflecting the reaction of the Class to the Settlement, support Lead Counsel's conclusion that they obtained an outstanding result for the Class.

#### **IV. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT**

##### **A. The Settlement Was Fairly and Aggressively Negotiated by Counsel**

48. As set forth above, the terms of the Settlement were negotiated by the Parties at arm's-length. The Settlement was reached only after extensive protracted settlement negotiations with the substantial assistance of Judge Phillips after a settlement had been reached in the Fuqi Litigation. Consistent with the Parties' hard-fought and aggressive litigation of this Action, Lead Counsel spent many hours investigating the allegations of wrongdoing and assessing Plaintiffs' claims, while at the same time pursuing settlement discussions.

49. Once settlement discussions commenced, it took months for Lead Counsel to reach agreement, document and present the final terms of the Settlement to the Court for approval.

50. The volume and substance of Lead Counsel's knowledge of the merits and potential weaknesses of Plaintiffs' claims are unquestionably adequate to support the Settlement. This knowledge is based, first and foremost, on Lead Counsel's extensive investigation and discovery during the prosecution of the Fuqi Litigation and this Action, including, *inter alia*: (i) review of more than 230,000 pages of documents produced by Fuqi; (ii) review of Fuqi's press releases, public statements, SEC filings, regulatory filings and reports, and securities analysts' reports and advisories about the Company; (iii) review of media reports about the Company; (iv) implementing and directing a fact-gathering plan, including retention of investigators who interviewed numerous people in China who were involved with various aspects of Fuqi's operations, including former employees; (v) consultation with an accounting expert; (vi) consultation with a damages expert; (vii) interviews with a Fuqi board member who served on the Audit Committee during the time applicable to this Action, and with the attorney who performed the investigation into the CEO's allegedly improper cash transfers; and (viii) research of the applicable law with respect to the claims asserted in this Action and the potential defenses thereto. This information permitted Lead Counsel to be well-informed about the strengths and weaknesses of their case and to engage in an effective mediation.

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

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



52. Throughout the course of the litigation, Defendant asserted that it possessed defenses to Plaintiffs' claims, including, but not limited to, Plaintiffs' failure to plead material misstatements or omissions, loss causation, and that Plaintiffs' damages were dramatically lower than Plaintiffs suggested, if they existed at all. If the case continued, Defendant would have first moved to dismiss and then, if necessary, moved for summary judgment to either defeat the claims completely or significantly limit the scope of the Class' potential damages. Thus, the Settlement is unquestionably better than another distinct possibility – no recovery for the Class in connection with the claims against Marcum.

**1. Defendant Would Argue that Plaintiffs Could Not Prevail on Their Claims**

53. Without this Settlement, Defendant would have continued to argue that Plaintiffs could not prevail on their claims. Defendant would have claimed that the decline in Fuqi's stock price was not related to any materially false or misleading statements in the Registration Statement/Prospectus, and that its actions were contrary to any claim that Marcum had the intent to defraud or mislead anyone. It would have contended that they made all necessary disclosures in the Company's SEC filings about Fuqi's internal controls and that any financial information in the Registration Statement/Prospectus that required restating was only applicable to the first quarter of 2009, which had not been audited by Marcum at the time of the Secondary Offering and was not material and/or did not result in any recoverable loss under the securities laws.

54. Moreover, Defendant would have claimed that it was working diligently with Fuqi to correct the Company's internal control problems. Defendant would have referred to numerous documents which showed that Fuqi executives and board members discussed financial issues with Marcum, and attempted to correct them before they became material problems. Thus, Defendant would have argued that there was no scienter and that Plaintiffs would not have

succeeded on the Exchange Act claims, which comprised the bulk of the alleged damages. Indeed, the Fuqi Defendants had pointed to the settlement Fuqi and Chong entered into with the SEC as support for their claim that scienter did not exist and Marcum would have made a similar argument to show that not only was there no scienter as to Marcum, there was not even scienter as to Fuqi.

55. As to the cash transfer issue, Defendant would have claimed that it was also misled by the Fuqi Defendants and because all funds that were transferred were returned by the end of the fiscal quarter, there were no “red flags” concerning these transfers. Moreover, as stated below, Defendant would have claimed that by the time the cash transfers were disclosed to the public, Fuqi’s stock price was already trading at a low level and any damages attributable to the cash transfer issue were minimal.

56. While Plaintiffs had some evidence to counter Defendant’s arguments, Plaintiffs would have been hard-pressed to establish scienter on the restatement issues, and may not have been able to defeat any summary judgment motion on that issue, even if they defeated a motion to dismiss. In any event, any summary judgment motion would have been hard-fought and extensive, and Plaintiffs would have no guarantee of success. Even if such motions were denied, Lead Counsel recognize that a finding of liability by a jury is never assured, and that Defendant would renew these arguments at trial.

57. Although Plaintiffs had counter-arguments, most of the documents showed the accounting problems involved immaterial amounts and/or were being adequately addressed by the Company.

**2. Defendant Would Argue that Plaintiffs Could Not Establish Loss Causation or Significant Damages**

58. According to Defendant, Plaintiffs could not and would not be able to prove loss causation or damages because there were no disclosures made that led to a significant stock price decline. *See Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). Instead, the Defendant would contend that Fuqi had already disclosed the risks that resulted in the need for restatements and that the stock price decrease was instead caused by other information, such as Fuqi's earnings announcement, which was regarded as bad news by the market. Moreover, Defendant would contend that if loss causation did not eliminate damages, it severely limited them.

59. The risks of establishing liability posed by conflicting testimony and evidence would be exacerbated by risks inherent in all shareholder litigation, including the unpredictability of a lengthy and complex jury trial, the risk that the jury would react to evidence in unforeseen ways, the risk that a jury would find that some or all of the alleged misrepresentations were not material and the risk that the jury would find that the Defendant was also misled by the Fuqi Defendants and reasonably believed in the appropriateness of its actions at the time and that no damages were caused by Marcum's actions.

60. Among other things, this case also involved a number of complex issues including Fuqi's purchase of retail facilities and the impact of those facilities on its accounting, the interaction between accounting standards and financial statement filings in the U.S. as opposed to China, and the interpretation of intentions of Marcum and the Fuqi Defendants. Assuming Plaintiffs survived Defendant's anticipated motions to dismiss and for summary judgment, presenting these complex issues to a jury would pose a particular risk to Plaintiffs' hopes for success at trial. Plaintiffs could not be certain that the jury would be able to understand these matters well enough to reach a factual determination in Plaintiffs' favor. Thus, Plaintiffs faced

the risk that Defendant's arguments may find favor with a jury and result in the Class losing at trial.

61. Plaintiffs also faced the risk that they would not be able to prove damages even if liability was established. Defendant would argue that the decline in stock price and the resulting losses incurred by shareholders were due primarily to the unexpected announcement by Fuqi as to its results and other news rather than any alleged misstatements in the Prospectus/Registration Statement or other SEC filings. Defendant would also have argued that even if Plaintiffs were able to establish their liability, damages were much lower than Plaintiffs estimated because, among other things, the Company's stock price had increased to prices higher than the Secondary Offering price and therefore many investors sold their shares. Given the problems with tracing of shares, Defendant would have argued that any Securities Act damages were significantly limited. As to Exchange Act damages, in addition to the loss causation argument in connection with the restatement announcement, Defendant would have contended that the cash transfer claim provided little or no damages. By the time of the cash transfer disclosure, Fuqi's shares were already trading at a low price. Defendant would have argued that the disclosure of the cash transfer did not reduce the price of Fuqi stock by a material amount, but even if it did, the damages were *de minimus*.

62. The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions. Moreover, the reaction of a jury to such complex expert testimony is highly unpredictable. Expert testimony about damages could rest on many subjective assumptions, any one of which could be rejected by a jury as speculative or unreliable. Conceivably, a jury could find that there were no damages or that damages were only a fraction of the amount that Plaintiffs sought.

63. Although Lead Counsel believe that they would be able to provide convincing expert testimony as to damages, and establish damages, we also realize that in the “battle of the experts,” a jury might disagree with Plaintiffs’ experts. Accordingly, the risk of proving damages could not be eliminated until after a successful trial and the exhaustion of all appeals. Thus, even if Plaintiffs prevailed in establishing liability, additional risks would remain in establishing both loss causation and the existence or amount of damages.

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

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

65. Lead Counsel strongly believe that the Settlement represents an excellent resolution for the Class under the circumstances, particularly in light of the previous settlement achieved in the Fuqi Litigation. As outlined above, the Settlement is fair, reasonable and adequate in all respects and should be approved by the Court.

66. Lead Counsel also strongly believe that the information provided by the Claims Administrator, reflecting the reaction of the Class, supports Lead Counsel’s conclusion that the Class is overwhelmingly satisfied with the result achieved through this Settlement. *See* Manigault Decl., at ¶¶10, 13.

**V. THE PLAN OF ALLOCATION**

67. Pursuant to the Preliminary Approval Order and as set forth in the Notice, all Class Members who already submitted a Proof of Claim and Release in connection with the settlement of the Fuqi Litigation need not submit an additional form to participate in the

distribution of the Settlement Fund in the Action. However, Class members who did not previously submit a Proof of Claim and Release may do so and participate in the distribution of Settlement Fund in this Action. As provided in the Stipulation, after deducting all appropriate taxes, administrative costs, attorneys' fees and expenses and Plaintiff awards, the Net Settlement Fund shall be distributed to Authorized Claimants.

68. The Settlement Fund will be distributed in accordance with the proposed Plan of Allocation. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total of the Recognized Losses of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants. The objective of the Plan of Allocation is to equitably distribute the net proceeds of the Settlement Fund to those Class Members who suffered losses as a result of the alleged violations of the federal securities laws, as opposed to losses caused by factors unrelated to the alleged violations of law. The proposed Plan of Allocation was prepared in consultation with Plaintiffs' financial experts, who were familiar with the factual and legal issues in the Action. There have been no objections filed to the Plan of Allocation.

69. The Plan of Allocation reflects the allegations in the Amended Complaint that Defendant made materially untrue and misleading statements and omissions resulting in violations of the Exchange Act and the Securities Act, and opinions of Plaintiffs' experts on the damages that were caused by the alleged disclosures and omissions of the Fuqi Defendants

and/or Marcum. The Plan of Allocation is based on Plaintiffs' damage theory as well as U.S. Supreme Court decisions that limit recovery for certain purchases and sales during the Class Period and the PSLRA, which prescribes certain limitations on recoveries.

70. The Plan of Allocation is consistent with Plaintiffs' allegations and Plaintiffs' expert's findings that investors who purchased shares of Fuqi stock during the Class Period or on the Secondary Offering were damaged by Defendant's false and misleading statements. An Authorized Claimant's Recognized Loss will be based upon the dates of purchase and sale, if any, in correspondence with the decline in the stock price of Fuqi that was found to be reasonably attributable to the misstatements alleged in the Amended Complaint. The Recognized Loss formula is not intended to be an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is simply the basis upon which the Net Settlement Fund will be proportionately allocated to Authorized Claimants.

71. Lead Counsel respectfully submit that the Plan of Allocation is fair, reasonable and adequate, and should be approved by the Court.

## **VI. FACTORS TO BE CONSIDERED IN SUPPORT OF THE REQUESTED ATTORNEYS' FEE AWARD**

72. The fees requested here represent only fees for the time spent prosecuting this Action and reimbursement of the out-of-pocket expenses incurred in the prosecution of the claims against Marcum in this Action. The Notice provides that Lead Plaintiffs' counsel may apply for an award of attorneys' fees equal to one-third of the proceeds of the Settlement, plus expenses of up to \$100,000, which were incurred in the Action. As set forth in Lead Plaintiff's Memorandum of Law in Support of Motion For Attorneys' Fees and Reimbursement of Expenses and Lead Plaintiff Awards, Lead Counsel are requesting attorneys' fees of one-third of

the proceeds from the Settlement, plus expenses of \$24,523.02. The requested fee award of one-third is well within the range of fees awarded by Courts in this District and in courts throughout the country, particularly in light of the time expended on this Action (*i.e.*, a lodestar of \$413,596.75). While Plaintiffs' Counsel were awarded attorneys' fees in connection with their prosecution of the Fuqi Litigation, that award represented a negative multiplier of 0.79 for their work in that litigation. Similarly, in this Action, the fee award requested represents a negative multiplier of 0.88.

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

74. Indeed, the results obtained by Lead Counsel for the Class are truly extraordinary given the obstacles that existed to obtaining any recovery. Defendant has maintained throughout this litigation that it had no liability and that damages were minimal. Marcum insisted that any losses attributable to the Secondary Offering documents were minimal, if they existed at all, and that it did not engage in any intentional actions that were actionable under the securities laws. Defendant maintained that it too was misled by the Fuqi Defendants, and that it diligently worked to remediate the well documented internal control problems that plagued the Company throughout the Class Period. Had the case proceeded, Defendant would have moved to dismiss, and if any claims went forward, it would have moved for summary judgment, on which Defendant insisted it would prevail.



75. In addition, Defendant maintained that loss causation did not exist. It claimed that any decline in the Company's stock price was not related to any misstatements or omissions that it made, but was caused by their announcement of other negative news. As such, Defendant contended that Plaintiffs would not be able to prove loss causation and would not be able to obtain a recovery. Defendant further claimed that even if some amount of the decline in the Company's price could be attributable to its actions, those damages would be small and any recovery by Plaintiffs would be much lower than the amounts being sought.

76. Lead Counsel's compensation for the services rendered was wholly contingent on its success. Demonstrating Lead Counsel's tremendous commitment to this litigation, we have devoted more than 594 hours litigating this Action. The expenses incurred in the prosecution of the litigation are set forth below and in the accompanying declarations from the other Plaintiffs' Counsel, who contributed to the successful prosecution of the litigation. *See Exhibits 2 and 3 hereto.* Each firm requesting reimbursement of expenses has declared that the expenses are reflected in the books and records maintained by the firm, and are an accurate recordation of the expenses incurred. In total, Plaintiffs' Counsel have incurred reimbursable expenses in the amount of \$24,523.02. These costs and expenses have been reasonably incurred and should be approved by the Court.

**A. Extent of Litigation**

77. As described above, this case was thoroughly investigated and litigated and settled only after settlement was achieved in the Fuqi Litigation, and after extensive settlement negotiations in this Action, including a full day mediation session before Judge Phillips. As Lead Counsel, AF&T has directed this litigation from its inception and has also supervised other Plaintiffs' Counsel. Specifically, AF&T did an extensive investigation into possible claims

against the Defendant, and has actively and vigorously litigated the Action. During the course of this Action (and the Fuqi Litigation), AF&T provided the following services: drafted an initial and then amended complaint; contacted and retained investigation firms to investigate Fuqi and Marcum and provide relevant information concerning their activities, particularly in China,<sup>7</sup> as relating to the claims at issue in the Action; consulted with an accounting expert regarding the restatement and internal control issues relating to the Action; helped to locate relevant witnesses and supervised the interviews of approximately two or three dozen former Fuqi employees; drafted and negotiated a tolling agreement with Marcum; researched and drafted internal memoranda regarding accounting issues and securities law claims against auditors; reviewed and analyzed more than 230,000 pages of documents produced by defendants in the Fuqi Litigation, many of which required translation from Chinese and many of which were accounting documents or involved discussions with internal and external auditors, including representatives from Marcum; conducted numerous internet searches, especially of Chinese Web sites, to locate potential witnesses; assisted with interviews of an outside attorney retained by Fuqi's Audit Committee to investigate the cash transfer issues and a member of Fuqi's board of directors, who served on the Audit Committee; extensively researched the law and drafted memorandum regarding the ability to conduct discovery in China; interviewed, retained, and worked with financial experts as to damages and stock market efficiency; prepared an extensive Mediation Statement with accompanying exhibits supporting Plaintiffs' contentions; participated in a full

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<sup>7</sup> The nature of the claims against Marcum depended upon establishing the existence of materially false and misleading statements in Fuqi's Class Period SEC filings and the Registration Statement and Prospectus issued in connection with the 2009 Secondary Offering. While Plaintiffs note the extensive work done in the Fuqi Litigation, which is relevant to the prosecution of the claims against Marcum, Plaintiffs' Counsel have not included the time for such work in their request for the award of attorneys' fees in this Action. In other words, Plaintiffs' Counsel are not billing twice for the same work.

day mediation session; selected an experienced claims administrator; consulted with Plaintiffs' damages expert in devising the Plan of Allocation; prepared the settlement agreement and supporting documents, including the notice, publication notice, and proposed preliminary and final approval order, and negotiated vigorously with Defendant as to these documents; and have continued to work with the claims administrator to answer Class members' inquiries regarding the Settlement.

78. The information in this declaration regarding AF&T's time and expenses is based on time and expense printouts prepared and maintained by the firm in the ordinary course of business. I oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts. The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies. As a result of these reviews and adjustments, I believe that the time reflected in the AF&T's lodestar calculation and the expenses and charges for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses and charges are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

79. The total number of hours spent on this litigation by AF&T through November 30, 2017, is 275.67. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$185,071.75. The hourly rates shown below are the usual and customary rates charged for each individual attorney in our cases or were the rates last in effect when work was performed with regard to this matter for attorneys no longer employed by the firm. The

identification and background of the attorneys at AF&T is attached hereto as Exhibit A. The schedule below was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm. These records are available for review at the request of the Court. No time has been included for work performed in the Fuqi Litigation, and no time submitted as part of this request is duplicative of any time submitted in connection with the request for the award of attorneys' fees in the Fuqi Litigation. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Lawrence D. Levit	(OC)	264.75	685.00	\$181,353.75
Wei Chen	(A)	3.25	495.00	\$1,608.75
Rachel Goldstein	(PL)	3.92	275.00	\$1,078.00
Grace Palmer	(PL)	3.75	275.00	\$1,031.25
<b>TOTAL:</b>		<b>275.67</b>		<b>\$185,071.75</b>

(OC) Of Counsel

(A) Associate

(PL) Paralegal

80. In total, the 594 hours thus far devoted by Plaintiffs' Counsel in the prosecution of this case represents a total lodestar of \$413,596.75. *See also* Exhibit 2 hereto (Sams Decl.) at ¶7; Exhibit 3 hereto (MacFall Decl.) at ¶8. Plaintiffs' Counsel's work in this case, however, did not cease after preliminary approval of the Settlement and submission of the papers in support of final approval of the Settlement, and will not cease even after final approval of the Settlement. Lead Counsel has spent significant time assisting Class Members with claims administration issues and will continue to work with the Claims Administrator to ensure a prompt distribution of the Net Settlement Fund to the Class.

#### **B. Standing and Expertise of Plaintiffs' Counsel**

81. Plaintiffs' Counsel are among the most experienced and skilled practitioners in the securities litigation field. The attorneys at each of Plaintiffs' Counsel's firms have years of

experience litigating securities class actions, and have been involved in cases that have recovered hundreds of millions of dollars for shareholders. *See* Exhibit A attached hereto; Exhibit A attached to Exhibit 2; and Exhibit A attached to Exhibit 3.

**C. Standing and Caliber of Opposition Counsel**

82. Defendant is represented by outstanding counsel. Defendant's counsel vigorously defended its client, insisted it had no liability and gave every indication it was ready to proceed with the litigation, including to trial if necessary, if a settlement was not reached. In the face of this opposition, Plaintiffs' Counsel developed arguments so as to persuade Defendant to settle the case on a basis favorable to the Class under the circumstances.

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

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

84. While the Fuqi Defendants and Plaintiffs were able to achieve a settlement, it was far from assured that Marcum would agree to compromise this Action. In light of the significant defenses described above, it was entirely possible that this case could have lasted several years. During that time, Plaintiffs' Counsel would not only pay regular overhead, but they also have to advance the expenses of the litigation. With an average lag time of three to four years for these

cases to conclude, the financial burden on contingent counsel is far greater than on a firm that is paid on an ongoing basis.

85. The foregoing does not even take into consideration the possibility of no recovery. As discussed above, from the outset, this litigation presented a number of unique risks and uncertainties which could have prevented any recovery whatsoever. It is wrong to assume that a law firm handling complex contingent litigation such as this always wins. Tens of thousands of hours have been expended in losing efforts. The factor labeled by the courts as “the risks of litigation” is not an empty phrase.

86. There are numerous examples of plaintiffs’ counsel in contingent cases receiving no compensation after the expenditure of thousands of hours of work. It is only the knowledge by defendants and their counsel that the leading members of the plaintiffs’ securities bar are actually prepared to, and will, force a resolution on the merits and go to trial, that permits meaningful settlements in actions such as this.

87. There have been many hard fought lawsuits where, because of the discovery of facts unknown when the case was commenced, or changes in the law during the pendency of the case, or a decision of a judge following a trial on the merits, excellent professional efforts of members of the plaintiffs’ bar produced no fee for counsel.

88. For example, although a motion to dismiss had not yet been filed by Defendant in this Action, there has been a recent trend toward dismissal of actions with prejudice at the pleading stage. Indeed, many recent federal appellate reports are filled with opinions affirming dismissals with prejudice in securities cases. *See, e.g., Dalberth v. Xerox Corp.*, 766 F.3d 172 (2d Cir. 2014); *City of Pontiac Policemen’s and Fireman’s Ret. Sys. v. UBS AG*, 752 F.3d 173 (2d Cir. 2014); *Kleinman v. Elan Corp., Plc*, 706 F.3d 145 (2d Cir. 2013); *ECA & Local 134 IBEW*

*Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009); *Rubke v. Capitol Bancorp Ltd.*, 551 F.3d 1156 (9th Cir. 2009); *Stark Trading v. Falconbridge Limited*, 552 F.3d 568 (7th Cir. 2009); *Public Employees' Retirement Association of Colorado v. Deloitte & Touche LLP*, 551 F.3d 305 (4th Cir. 2009); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981 (9th Cir. 2009); *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230 (11th Cir. 2008); *Employers Teamsters Local Nos. 175 & 505 Pension Trust Fund v. Clorox Co.*, 353 F.3d 1125 (9th Cir. 2004); *In re Read-Rite Corp. Sec. Litig.*, 335 F.3d 843 (9th Cir. 2003); *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Schiller v. Physicians Res. Group, Inc.*, 342 F.3d 563 (5th Cir. 2003); *Gompper v. VISX, Inc.*, 296 F.3d 893 (9th Cir. 2002); *Wilkes v. Versant Object Tech. Corp.*, 56 Fed. Appx. 322 (9th Cir. 2003); *Zishka v. Am. Pad & Paper Co.*, 72 Fed. Appx. 130 (5th Cir. 2003); *Romine v. Acxiom Corp.*, 296 F.3d 701 (8th Cir. 2002); *Seinfeld v. Bartz*, 322 F.3d 693 (9th Cir. 2003); *Abrams v. Baker Hughes, Inc.*, 292 F.3d 424 (5th Cir. 2002); *ABC Arbitrage v. Tchuruk*, 291 F.3d 336 (5th Cir. 2002); *DSAM Global Value Fund v. Altris Software, Inc.*, 288 F.3d 385 (9th Cir. 2002); *Lipton v. PathoGenesis Corp.*, 284 F.3d 1027 (9th Cir. 2002); *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079 (9th Cir. 2002); *Ronconi v. Larkin*, 253 F.3d 423 (9th Cir. 2001); *Phila v. Fleming Cos.*, 264 F.3d 1245 (10th Cir. 2001); *Kalnit v. Eichler*, 264 F.3d 131 (2d Cir. 2001); *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000).

89. The many appellate decisions affirming summary judgments and directed verdicts for defendants show that even surviving a motion to dismiss is no guarantee of recovery. See *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *In re Williams Sec. Litig. – WCG Subclass*, No. 07-5119, 2009 U.S. App. LEXIS 3032 (10th Cir. Feb. 18, 2009); *Shuster v. Symmetricom, Inc.*, 35 Fed. Appx. 705 (9th Cir. 2002); *Gross v. Nuveen Advisory Corp.*, 295 F.3d 738 (7th Cir. 2002); *In re Digi Int'l, Inc. Sec Litig.*, 14 Fed. Appx. 714 (8th Cir. 2001);

*Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001); *Oran v. Stafford*, 226 F.3d 275 (3d Cir. 2000); *Greebel v. FTP Software, Inc.*, 194 F.3d 185 (1st Cir. 1999); *Longman v. Food Lion, Inc.*, 197 F.3d 675 (4th Cir. 1999); *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609 (4th Cir. 1999); *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542 (6th Cir. 1999); *Levitin v. PaineWebber, Inc.*, 159 F.3d 698 (2d Cir. 1998); *Silver v. H&R Block*, 105 F.3d 394 (8th Cir. 1997). Moreover, even plaintiffs who succeed at trial may find their judgment overturned on appeal. *See, e.g., Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (*en banc*) (reversing plaintiffs' verdict for securities fraud and ordering entry of judgment for defendants); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1988) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (same).

90. The foregoing refutes the argument that the commencement of a class action is a guarantee of a settlement and payment of a fee. Indeed, the course of this litigation demonstrates the fact that the mere filing of an action does not ensure that there will be any settlement or fee. There was a demonstrable risk that the Class and its counsel would receive nothing. It took hard and diligent work by skilled counsel, to develop facts and theories which persuaded the Defendant to enter into serious settlement negotiations. If defendants believe they will prevail, experience shows that they will litigate to the end. The risk factor is real.

91. Losses such as those described above are exceedingly expensive. The fees that are awarded are used to cover enormous overhead expenses incurred during the course of the litigation and are taxed by federal, state and local authorities. Moreover, changes in the law



through legislation or judicial decree can be catastrophic, frequently affecting contingent counsel's entire inventory of pending cases. These are real threats.

92. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the securities and corporation laws can only occur if the private plaintiffs can obtain parity in representation with that available to large institutional interests. If this important public policy is to be carried out, the courts should award fees which will adequately compensate private plaintiffs' counsel, taking into account the risks undertaken with a clear view of the economies of a securities class action.

93. When Plaintiffs' Counsel undertook to act for the Plaintiffs in this matter, it was with the knowledge that Plaintiffs' Counsel would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of ever obtaining any compensation for the efforts. The benefits conferred on the Class by this Settlement are particularly noteworthy in that a Settlement Fund worth more than \$1.1 million (in addition to the previous settlement of \$7.5 million in the Fuqi Litigation), was obtained for the Class despite the existence of substantial risks of no recovery in light of the vigorous arguments asserted by Defendant, and the defenses they mounted and would mount.

**E. Lead Counsel's Request for Payment of Expenses Incurred Is Reasonable and Should Be Approved**

94. AF&T also incurred or accrued a total of \$24,164.45 in unreimbursed expenses in connection with the prosecution of this litigation. The total expenses incurred are itemized by category as follows:

**EXPENSES**

From Inception through November 30, 2017

<b>EXPENSE CATEGORY</b>	<b>AMOUNT</b>
Online Legal Research	\$110.77
Meals, Hotels & Transportation	\$2,590.70
Postage, Overnight Delivery & Messengers	\$68.90
Consultants/Experts	\$4,858.75
Mediation Fees	\$16,535.33
<b>TOTAL</b>	<b>\$24,164.45</b>

95. The expenses incurred pertaining to this case are reflected in the books and records of AF&T. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. No expenses have been included for work performed in the Fuqi Litigation, and no expense submitted as part of this request is duplicative of any expense submitted in connection with the request for reimbursement of expenses in the Fuqi Litigation. Attached hereto as Exhibit B is a chart showing the expenses by transaction detail and date incurred. These expenses were necessarily incurred for the successful prosecution of this litigation and are reasonable in amount.

96. Additional Plaintiffs' Counsel have also submitted declarations setting forth the amounts of the expenses incurred over the course of the litigation. These declarations are filed herewith. *See* Exhibit 2 at ¶8 & Exhibit B thereto; Exhibit 3 at ¶5. These expenses were necessarily incurred for the successful prosecution of this litigation and are reasonable in amount.

#### **F. The Requested Reimbursement Awards Are Fair and Reasonable**

97. The members of Lead Plaintiff PR Group seek reimbursement awards for their lost time and efforts in prosecution and oversight of the Action on behalf of the Class. The requested amounts of \$3,000 for Puerto Rico Government Employees and Judiciary Retirement

Systems Administration and \$1,500 each for Craig B. Laub, J.D. Pisut, and Sandra Redfern are reasonable and well within the range of awards typically granted by courts in this Circuit.

98. Based on information provided to me from the members of the PR Group or their counsel, each member was provided with and reviewed the pleadings and filings in the Action, and discussed with Plaintiffs' Counsel the filings, case strategies, and settlement. Each of the Lead Plaintiffs had telephone conferences and email exchanges with Plaintiffs' Counsel in connection with their respective oversight and prosecution of the Action, including settlement negotiations. When settlement negotiations commenced, the PR Group members had discussions with Lead Counsel regarding a possible settlement of the Action; and they communicated, through their counsel, with Lead Counsel about the mediation session held on December 15, 2015, and afterwards as settlement negotiations continued and an agreement was finalized.

99. In the opinion of Plaintiffs' Counsel, the PR Group's members' active participation and efforts expended in prosecuting the Action have materially aided the favorable Settlement achieved for the Class in the Action.

100. The amounts requested are reasonable in light of the each of the Lead Plaintiffs' substantial contributions to the Action and the Class. The reasonableness of the requested awards is further evidenced by the fact that not a single Class Member has objected to the awards, even though they were advised that such awards would be sought.

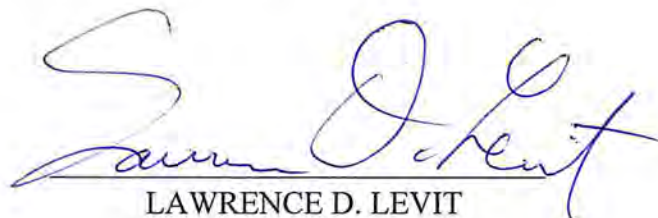
## **VII. CONCLUSION**

96. For the reasons set forth above and in the accompanying Lead Plaintiff's Memorandum of Law in Support of Motion For Final Approval of Settlement and the Plan of Allocation and Lead Plaintiff's Memorandum of Law in Support of Motion for Attorneys' Fees and Reimbursement of Expenses and Lead Plaintiff Awards, I respectfully submit that: (a) the

Settlement is fair, reasonable and adequate and should be finally approved; (b) the Plan of Allocation represents a fair and reasonable method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (c) the application for attorneys' fees of one-third of the proceeds of the Settlement, plus expenses in the amount of \$24,523.02, should be granted and that Lead Plaintiff awards in the amount of \$3,000 to Puerto Rico Government Employees and Judiciary Retirement Systems Administration and \$1,500 each to Craig B. Laub, J.D. Pisut, and Sandra Redfern should be approved.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of our knowledge, information and belief.

Executed on December 4, 2017.



LAWRENCE D. LEVIT

# **EXHIBIT HHH**

## **EXHIBIT 2**

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

_____	x
In re FUQI INTERNATIONAL, INC. SECURITIES LITIGATION	: 10 Civ. 2515 (DAB) : : <u>CLASS ACTION</u>
_____	:
This Document Relates To:	:
ALL ACTIONS.	: <b>ECF CASE</b> :
_____	x

**AMENDED DECLARATION OF MITCHELL M.Z. TWERSKY**

I, Mitchell M.Z. Twersky, declare as follows:

1. I am a member of the Bar of the State of New York admitted to practice in numerous federal courts and have been admitted to this Court. I am a partner at Abraham, Fruchter & Twersky, LLP, Court-appointed Lead Counsel for the Lead Plaintiff the PR Group in the above-captioned action (the “Action”). I respectfully submit this amended declaration in support of my firm’s application for an award of attorneys’ fees in connection with services rendered in this Action and the reimbursement of expenses incurred by this firm in the course of this litigation.

2. I have personal knowledge of all material matters related to the Action based upon my active supervision and participation in the prosecution of the Action since its inception.

3. This Action was commenced in March 2010. On May 18, 2010, Abraham, Fruchter & Twersky, LLP filed a lead plaintiff motion for our client the Puerto Rico Government Employees and Judiciary Retirement Systems Administration and the other members who comprise the PR Group (Craig B. Laub, J.D. Pisut and Sandra Redfern). Prior to the filing of that motion, my firm did an extensive investigation into possible claims. My firm was appointed by the Court as Lead Counsel on July 26, 2010, and has actively and vigorously litigated the

Action since that time. During the course of this Action, my firm provided the following services: drafted a consolidated complaint; contacted and retained investigation firms to investigate Fuqi International, Inc. (“Fuqi” or the “Company”) and provide relevant information concerning the Company, particularly related to its activities in China and the claims at issue in the Action; consulted with an accounting expert regarding the restatement and internal control issues relating to the Action; helped to locate relevant witnesses and supervised the interviews of approximately two or three dozen former Fuqi employees; contacted Fuqi’s outside auditors and negotiated a tolling agreement with them; negotiated an agreement with Defendants to stay the litigation until after the restatement was publicly announced; researched and drafted internal memoranda regarding accounting issues; negotiated a confidentiality stipulation with Defendants in connection with an agreement with Fuqi concerning its production of documents; reviewed and analyzed more than 230,000 pages of Defendants’ document production, many of which required translation from Chinese; conducted numerous internet searches, especially of Chinese Web sites, to locate Defendants in China to serve them, and to locate potential witnesses; interviewed an outside attorney retained by Fuqi’s Audit Committee to investigate the cash transfer issues; interviewed a member of Fuqi’s board of directors, who served on the Audit Committee; extensively researched the law and drafted memorandum regarding the ability to enforce a U.S. judgment in China and the ability to collect on any judgment obtained; interviewed, retained, and worked with financial experts as to damages and stock market efficiency; selected, organized and reviewed documents in preparation for anticipated depositions; prepared an extensive Mediation Statement with accompanying exhibits supporting Plaintiffs’ contentions; participated in a full day mediation session that continued into the evening; selected an experienced claims administrator, which has rates that will provide a substantial savings to the Class; consulted with Plaintiffs’ damages expert in devising the Plan of



Allocation; prepared the settlement agreement and supporting documents, including the notice, publication notice, and proposed preliminary and final approval order, and negotiated vigorously with Defendants as to these documents; and have continued to work with the claims administrator to answer Class members' inquiries regarding the Settlement.

4. As Lead Counsel, my firm has directed this litigation from its inception and has also supervised other Plaintiffs' Counsel.

5. The information in this declaration regarding the firm's time and expenses is based on time and expense printouts prepared and maintained by the firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies. As a result of these reviews and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses and charges for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses and charges are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

6. The identification and background of my firm and its attorneys is attached hereto as Exhibit A.

7. The total number of hours spent on this litigation by Abraham, Fruchter & Twersky, LLP through January 14, 2015, is 3,724.25. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$1,719,061.25. The hourly rates

shown below are the usual and customary rates charged for each individual attorney in our cases or were the rates last in effect when work was performed with regard to this matter for attorneys no longer employed by the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm. These records are available for review at the request of the Court. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Mitchell M.Z. Twersky	(P)	32.5	795.00	\$25,837.50
Lawrence D. Levit	(OC)	921.5	650.00	\$598,975.00
Wei Chen	(A)	684.0	395.00	\$270,180.00
Xiang Li	(A)	2,086.25	395.00	\$824,068.75
<b>TOTAL:</b>		<b>3,724.25</b>		<b>\$1,719,061.25</b>

(P) Partner  
 (OC) Of Counsel  
 (A) Attorney

My firm also incurred or accrued a total of \$216,007.74 in unreimbursed expenses in connection with the prosecution of this litigation. My firm received contributions to its Litigation Fund from other Plaintiffs' counsel in the amount of \$130,000, leaving a balance of \$86,007.74 in unreimbursed expenses related to this litigation for my firm. The total expenses incurred are itemized by category as follows:

#### EXPENSES

From Inception through January 14, 2015

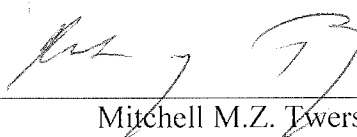
<b>EXPENSE CATEGORY</b>	<b>AMOUNT</b>
Online Legal Research	\$373.95
Meals, Hotels & Transportation	\$2,339.32
Postage, Overnight Delivery & Messengers	\$3,286.57
Consultants/Experts	\$98,106.65
Investigators	\$64,358.33
Filing Fees/Service of Process/Legal Notices	\$750.00
Mediation Fees	\$45,139.17

Data Base Services	\$1,327.00
Telephone	\$93.03
Office Supplies/Materials	\$233.72
<b>TOTAL</b>	<b>\$216,007.74</b>

8. The expenses incurred pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred. Attached hereto as Exhibit B is a chart, as previously requested by and provided to the Court on February 20, 2015, showing the expenses by transaction detail and date incurred.

9. The total amount of fees and expenses incurred by Abraham, Fruchter & Twersky, LLP are appropriate and reasonable considering that Abraham, Fruchter & Twersky, LLP performed the tasks discussed in paragraph 3 above, as further detailed in the Amended Declaration of Lawrence D. Levit in Support of Lead Plaintiff's Amended Motion for Final Approval of Settlement and Plan of Allocation and for Attorneys' Fees, Reimbursement of Litigation Expenses, and Lead Plaintiff Awards.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed this 31<sup>st</sup> day of August, 2015 in New York, New York.




---

Mitchell M.Z. Twersky

# EXHIBIT B

**AF&T**  
**Transaction Detail by Account**  
 All Transactions

Date	Name	Source Name	Memo	Amount
<b>Online Legal Research</b>				
2/28/2013	Fuqi	Lexis		4.78
3/28/2013	Fuqi	Lexis		51.89
7/31/2013	Fuqi	Lexis		10.23
12/31/2013	Fuqi	Lexis		180.38
2/28/2014	Fuqi	Lexis		10.34
03/14/2014	Fuqi	Bloomberg		8.60
4/30/2014	Fuqi	Lexis		2.39
6/30/2014	Fuqi	Lexis		70.19
07/18/2014	Fuqi	Pacer Service Center		3.50
7/31/2014	Fuqi	Lexis		7.23
8/29/2014	Fuqi	Lexis		14.75
9/30/2014	Fuqi	Lexis		9.67
				<b>373.95</b>
<b>Meals, Hotels &amp; Transportation</b>				
10/06/2010	Fuqi	Larry, Levit	Travel Reimb (taxi)	10.25
12/19/2013	Fuqi	American Express	United Airlines (airfare/mediation)	1,735.80
12/19/2013	Fuqi	Wei Chen A/P	Travel Reimb (taxi)	9.50
01/24/2014	Fuqi	American Express	The Island Hotel (mediation)	274.15
01/31/2014	Fuqi	Larry, Levit	Travel Reimb (ground transportation, meals/mediation)	309.62
				<b>2,339.32</b>
<b>Postage, Overnight Delivery &amp; Messengers</b>				
06/22/2010	Fuqi	American Express	Fedex	17.66
07/27/2010	Fuqi	American Express	Fedex	18.96
09/14/2010	Fuqi	Supreme Systems	Messenger	17.60
12/23/2010	Fuqi	American Express	Fedex	17.52
03/09/2011	Fuqi	Supreme Systems	Messenger	39.20
03/18/2011	Fuqi	American Express	Fedex	16.19
03/18/2011	Fuqi	American Express	Fedex	50.22
03/18/2011	Fuqi	American Express	Fedex	18.55
06/16/2011	Fuqi	American Express	Fedex	17.00
06/16/2011	Fuqi	American Express	Fedex	29.95
07/21/2011	Fuqi	American Express	Fedex	30.21
07/21/2011	Fuqi	American Express	Fedex	17.15
07/21/2011	Fuqi	American Express	Fedex	17.15
07/21/2011	Fuqi	American Express	Fedex	23.52

**AF&T**  
**Transaction Detail by Account**

Date	Name	Source Name	All Transactions	Memo	Amount
07/21/2011	Fuji	American Express	Fedex		17.15
07/21/2011	Fuji	American Express	Fedex		30.21
08/17/2011	Fuji	American Express	Fedex		57.43
08/17/2011	Fuji	American Express	Fedex		57.43
08/17/2011	Fuji	American Express	Fedex		57.43
08/17/2011	Fuji	American Express	Fedex		29.82
08/17/2011	Fuji	American Express	Fedex		16.93
08/17/2011	Fuji	American Express	Fedex		16.93
08/17/2011	Fuji	American Express	Fedex		16.93
08/17/2011	Fuji	American Express	Fedex		29.82
09/13/2011	Fuji	Rosanne Balasabas	Certified Mail Reimb		23.01
09/21/2011	Fuji	American Express	Fedex		29.82
09/21/2011	Fuji	American Express	Fedex		16.93
09/21/2011	Fuji	American Express	Fedex		24.10
09/21/2011	Fuji	American Express	Fedex		20.26
10/19/2011	Fuji	American Express	Fedex		82.35
10/19/2011	Fuji	American Express	Fedex		72.14
10/19/2011	Fuji	American Express	Fedex		26.22
12/22/2011	Fuji	American Express	Fedex		49.88
12/22/2011	Fuji	American Express	Fedex		30.22
12/22/2011	Fuji	American Express	Fedex		29.56
12/22/2011	Fuji	American Express	Fedex		19.81
02/02/2012	Fuji	American Express	Fedex		29.56
02/02/2012	Fuji	American Express	Fedex		38.82
03/20/2012	Fuji	American Express	Fedex		34.84
03/20/2012	Fuji	American Express	Fedex		17.71
03/20/2012	Fuji	American Express	Fedex		24.59
03/20/2012	Fuji	American Express	Fedex		34.84
03/20/2012	Fuji	American Express	Fedex		17.71
11/26/2012	Fuji	American Express	Fedex		37.53
11/26/2012	Fuji	American Express	Fedex		70.99
11/26/2012	Fuji	American Express	Fedex		20.21
12/10/2012	Fuji	American Express	Fedex		70.99
04/18/2013	Fuji	American Express	Fedex		51.94
04/18/2013	Fuji	American Express	Fedex		20.98
04/18/2013	Fuji	American Express	Fedex		55.49
04/18/2013	Fuji	American Express	Fedex		20.98
04/18/2013	Fuji	American Express	Fedex		20.98
04/18/2013	Fuji	American Express	Fedex		50.49
04/18/2013	Fuji	American Express	Fedex		86.47
06/18/2013	Fuji	American Express	Fedex		86.47
06/18/2013	Fuji	American Express	Fedex		257.19

**AF&T**  
**Transaction Detail by Account**

<u>Date</u>	<u>Name</u>	<u>Source Name</u>	<u>All Transactions</u>	<u>Memo</u>	<u>Amount</u>
12/19/2013	Fuji	American Express	Fedex		18.39
12/19/2013	Fuji	American Express	Fedex		34.25
12/19/2013	Fuji	American Express	Fedex		18.39
12/19/2013	Fuji	American Express	Fedex		18.39
12/19/2013	Fuji	American Express	Fedex		73.62
12/19/2013	Fuji	American Express	Fedex		85.62
12/19/2013	Fuji	American Express	Fedex		27.64
12/19/2013	Fuji	American Express	Fedex		88.67
12/19/2013	Fuji	American Express	Fedex		78.64
12/19/2013	Fuji	American Express	Fedex		78.64
01/24/2014	Fuji	American Express	Fedex		36.30
01/24/2014	Fuji	American Express	Fedex		36.30
06/23/2014	Fuji	American Express	Fedex		302.22
10/20/2014	Fuji	American Express	Fedex		17.65
10/20/2014	Fuji	American Express	Fedex		28.59
10/20/2014	Fuji	American Express	Fedex		28.59
10/20/2014	Fuji	American Express	Fedex		15.89
10/20/2014	Fuji	American Express	Fedex		12.00
10/20/2014	Fuji	American Express	Fedex		15.89
10/20/2014	Fuji	American Express	Fedex		28.59
10/20/2014	Fuji	American Express	Fedex		15.89
10/20/2014	Fuji	American Express	Fedex		28.59
10/20/2014	Fuji	American Express	Fedex		15.89
10/20/2014	Fuji	American Express	Fedex		15.89
11/07/2014	Fuji	Supreme Systems Inc.	Messenger		32.00
					<b>3,286.57</b>

**Consultants/Experts**

02/14/2011	Fuji	Glancy Binkow & Goldberg Client Trust	Reimb for ChinaWhys Retainer		10,000.00
09/12/2011	Fuji	Forensic Economics Inc	Damages Consultant		5,000.00
03/19/2013	Fuji	Shectman Marks	Accounting Expert		52,512.66
09/16/2013	Fuji	Forensic Economics Inc.	Damages Consultant		16,613.99
04/18/2014	Fuji	Forensic Economics Inc.	Damages Consultant		3,602.50
09/17/2014	Fuji	Forensic Economics Inc	Damages Consultant		10,252.50
12/08/2014	Fuji	Forensic Economics Inc.	Damages Consultant		125.00
					<b>98,106.65</b>

**Investigators**

09/01/2010	Fuji	Spectrum OSO			13,823.00
05/31/2011	Fuji	The Risk Advisory			10,000.00
06/07/2011	Fuji	ChinaWhys company Ltd			11,335.33
07/07/2011	Fuji	The Risk Advisory			10,000.00

**AF&T**  
**Transaction Detail by Account**

Date	Name	Source Name	All Transactions	Memo	Amount
08/17/2011	Fuji	The Risk Advisory			10,000.00
10/11/2011	Fuji	The Risk Advisory			6,000.00
11/18/2011	Fuji	China Intelligence			3,200.00
					<u>64,358.33</u>
<b>Filing Fees/Service of Process/Legal Notices</b>					
04/06/2010	Fuji	Business Wire			750.00
					<u>750.00</u>
<b>Mediation Related Fees</b>					
09/14/2011	Fuji	Irell & Manella, LLP	Mediator		21,100.00
11/07/2011	Fuji	Irell & Manella, LLP	Mediator		17,966.67
01/24/2014	Fuji	Forensic Economics	Mediation Report		6,072.50
					<u>45,139.17</u>
<b>Data Base Services</b>					
06/27/2011	Fuji	Harvey L Yarborough	Database Consultant		780.00
11/18/2011	Fuji	Encore Discovery	Database Provider		547.00
					<u>1,327.00</u>
<b>Telephone</b>					
12/16/2011	Fuji	Conference Call.com			32.12
01/06/2014	Fuji	Conference Call.com			22.54
02/13/2014	Fuji	Conference Call.com			38.37
					<u>93.03</u>
<b>Office Supplies/Materials</b>					
06/01/2010	Fuji	Ximena Skovron	Supplies Reimb		23.01
09/27/2011	Fuji	vDiscovery	Copies/binding		50.00
10/12/2011	Fuji	Christine Einerson	Supplies Reimb		21.78
11/29/2011	Fuji	Christine Einerson	Supplies Reimb		34.57
12/12/2011	Fuji	vDiscovery	Copies/binding		50.00
12/05/2013	Fuji	Jamie Leal	Supplies Reimb		54.36
					<u>233.72</u>
<b>TOTAL</b>					<u><u>216,007.74</u></u>



# **EXHIBIT III**

# EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

CATHERINE ANASTASIO, STEPHEN )  
ANASTASIO, CURTIS WHITAKER, )  
PATRICIA ESPADA and FRED MATISE, )  
Individually and On Behalf of All Others )  
Similarly Situated, )

Plaintiffs, )

vs. )

INTERNAP NETWORK SERVICES )  
CORP., JAMES P. DEBLASIO and DAVID )  
A. BUCKEL, )

Defendants. )

CIVIL ACTION NO.  
1:08-CV-3462-JOF

DECLARATION OF JEFFREY S. ABRAHAM

I, Jeffrey S. Abraham, declare as follows:

1. I am a member of the Bar of the State of New York, am admitted to practice in numerous federal courts and have been admitted to this Court *pro hac vice* with respect to the above-captioned action. I am a partner at Abraham, Fruchter & Twersky, LLP, Court-appointed Lead Counsel and Class Counsel for the Plaintiffs in the above-captioned action (the "Action"). I respectfully submit this declaration in support of my firm's application for an award of attorneys' fees

in connection with services rendered in this Action and the reimbursement of expenses incurred by this firm in the course of this litigation.

2. I have personal knowledge of all material matters related to the Action based upon my active supervision and participation in the prosecution of the Action since its inception.

3. Abraham, Fruchter & Twersky, LLP commenced this Action in November 2008 with the filing of a class action complaint for our clients Catherine Anastasio and Stephen Anastasio. Prior to the filing of that complaint, my firm did an extensive investigation into possible claims. Once the complaint was filed, my firm was appointed by the Court as Lead Counsel on April 7, 2009, and has actively and vigorously litigated the Action since that time. During the course of this Action, my firm provided the following services: drafted the initial complaint, drafted a motion to amend the complaint, drafted subsequent complaints based on the continuing investigation being conducted, culminating with the Fourth Amended Complaint; helped to locate witnesses and interviewed or supervised the interviews of approximately two dozen former Internap Network Services Corp. or VitalStream Holdings, Inc. former employees; investigated a whistleblower complaint that was filed by a former Internap employee with the Occupational Safety and Health Administration (“OSHA”) and attempted to obtain information about OSHA’s investigation by filing several Freedom of Information Act



requests, including appeals and follow-up requests; researched and drafted the papers in opposition to Defendants' multiple motions to dismiss; propounded extensive written discovery on Defendants; conducted numerous lengthy meet-and-confer sessions with Defendants as to Defendants' document production, during which the Parties vehemently disagreed, among other things, as to the custodians who needed to produce documents, the subject matters of production, the search terms necessary to perform an initial selection of documents and the applicable time period for production; even after the Parties reached agreement on the parameters for an initial production of documents, once subsequent settlement discussions proved unfruitful, the Parties needed to hold several additional negotiating sessions, particularly regarding the disputed search terms to be used, before agreement was reached on further productions by Defendants; reviewed and analyzed tens of thousands of documents produced by Defendants; interviewed and retained an entity for data base storage, which had expertise in data searches and organization; responded to Defendants' requests for discovery to Plaintiffs, including preparing responses to interrogatories by Lead Plaintiffs Stephen Anastasio and Catherine Anastasio and producing hundreds of pages of documents by those Lead Plaintiffs and coordinating the responses and production of documents from the other Plaintiffs; preparing the Plaintiffs for their depositions, especially Stephen Anastasio and Fred Matise, and defending the depositions of

Stephen Anastasio and Fred Maise; interviewed, retained, and worked with financial experts as to damages and stock market efficiency; researched and briefed Plaintiffs' motion for class certification, which included the submission of an expert's declaration and analysis; prepared for depositions of Defendants, compiled a list of deponents, selected and organized documents applicable to each deponent and analyzed anticipated testimony from each witness; prepared an extensive Mediation Statement with accompanying exhibits supporting Plaintiffs' contentions; participated in two full mediation sessions and several follow-up negotiations with the assistance of the mediator; participated in discussions with the mediator's independent financial expert regarding the calculation of damages and loss causation; selected an experienced claims administrator, which has rates that will provide a substantial savings to the Class; consulted with Plaintiffs' damages expert in devising the Plan of Allocation; prepared the settlement agreement and supporting documents, including the notice, publication notice, and proposed preliminary and final approval order; and have continued to work with the claims administrator to answer Class members' inquiries regarding the Settlement.

4. As Lead Counsel, my firm has directed this litigation from its inception and has also supervised other Plaintiffs' Counsel.



5. The information in this declaration regarding the firm's time and expenses is based on time and expense printouts prepared and maintained by the firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in the litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies. As a result of these reviews and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses and charges for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses and charges are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

6. The identification and background of my firm and its attorneys is attached hereto as Exhibit A.

7. The total number of hours spent on this litigation by Abraham, Fruchter & Twersky, LLP through October 29, 2013, is 4,980.75. The total lodestar amount for attorney/paralegal time based on the firm's current rates is

\$1,995,135.25. The hourly rates shown below are the usual and customary rates charged for each individual in our cases. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm. These records are available for review at the request of the Court. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Jeffrey S. Abraham	(P)	114.00	795.00	90,630.00
Lawrence D. Levit	(OC)	704.10	685.00	482,308.50
Ximena Skovron	(A)	126.90	495.00	62,815.50
Philip Taylor	(A)	49.50	425.00	21,037.50
Arthur Chen	(A)	1139.75	425.00	484,393.75
Wei Chen	(A)	1298.25	300.00	389,475.00
Xiang Li	(A)	518.00	300.00	155,400.00
Suneet Bawa	(A)	552.25	300.00	165,675.00
Kevin Rozzi	(A)	478.00	300.00	143,400.00
<b>TOTAL:</b>		<b>4,980.75</b>		<b>1,995,135.25</b>

(P) Partner

(OC) Of Counsel

(A) Attorney

8. My firm also incurred or accrued a total of \$107,659.78 in unreimbursed expenses in connection with the prosecution of this litigation. They are broken down as follows:



## EXPENSES

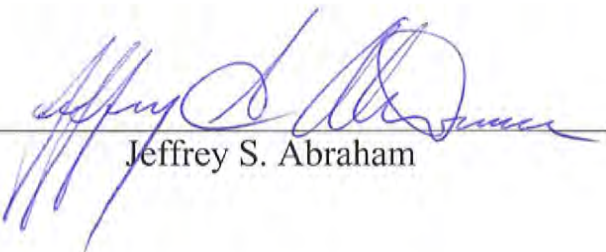
From Inception through October 29, 2013

DISBURSEMENT	TOTAL
Online Legal Research	\$1,266.34
Meals, Hotels & Transportation	1,619.08
Postage, Overnight Delivery & Messengers	339.74
Consultants/Experts	52,168.75
Investigators	14,295.10
Filing Fees/Service of Process/Legal Notices	406.07
Mediation Fees	6,810.80
Deposition Transcripts	1,630.95
Data Base Services	29,122.95
<b>TOTAL</b>	<b>\$107,659.78</b>

9. The expenses incurred pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers and check records and are an accurate record of the expenses incurred.

10. The total amount of fees and expenses incurred by Abraham, Fruchter & Twersky, LLP are appropriate and reasonable considering that Abraham, Fruchter & Twersky, LLP performed the tasks discussed in paragraph 3 above, as further detailed in the Declaration of Lawrence D. Levit in Support of (A) Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (B) Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Reimbursement Awards to Class Representatives.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct. Executed this 30<sup>th</sup> day of October, 2013 in New York, New York.



Jeffrey S. Abraham

# **EXHIBIT JJJ**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

_____	X
In re GIANT INTERACTIVE GROUP, INC. SECURITIES LITIGATION	: Master File No. 1:07-cv-10588-PAE
_____	:
	: <u>CLASS ACTION</u>
	:
This Document Relates To:	: <u>ECF Case</u>
	:
ALL ACTIONS.	:
_____	X

DECLARATION OF JACK G. FRUCHTER FILED ON BEHALF OF ABRAHAM,  
FRUCHTER & TWERSKY, LLP IN SUPPORT OF APPLICATION FOR AWARD OF  
ATTORNEYS' FEES AND EXPENSES

I, JACK G. FRUCHTER, declare as follows:

1. I am a member of the firm of Abraham, Fruchter & Twersky, LLP. I am submitting this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in the above-entitled action.
2. This firm is counsel of record for lead plaintiffs Dunping Qui, Yihua Li, Xie Yong and Linming Shi.
3. The identification and background of my firm and its partners is attached hereto as Exhibit A.
4. The total number of hours spent on this litigation by my firm is 5,921.60. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$2,376,901. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Jeffrey S. Abraham	(P)	34.50	750	25,875.00
Jack G. Fruchter	(P)	143.25	725	103,856.25
Lawrence Levit	(OC)	654.75	600	392,850.00
Arthur Chen	(A)	992.13	425	421,655.25
Philip Taylor	(A)	67.00	375	25,125.00
Wei Chen	(A)	1,118.37	350	391,429.50
Xiang Li	(A)	2,391.85	350	837,147.50
Yi Song	(A)	505.00	350	176,750.00
Rosanne Balasabas	(PL)	14.75	150	2,212.50
<b>TOTAL:</b>		<b>5,921.60</b>		<b>\$2,376,901.00</b>

(P) Partner

(OC) Of Counsel

(A) Associate

(PL) Paralegal

5. My firm incurred a total of \$79,300.20 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

***EXPENSES***

From Inception to August 31, 2011

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Meals, Hotels & Transportation	40,917.47
Photocopies	1,146.00
Postage	
Telephone, Facsimile	462.70
Messenger, Overnight Delivery	685.94
Filing, Witness & Other Fees	
Court Reporters	3,399.43
Lexis, Westlaw, Online Library Research	2,216.16
Class Action Notices/Business Wire	410.00
Mediation Fees	15,825.00
Experts/Consultants/Investigators	8,075.00
Interpreters	6,162.50
<b><i>TOTAL</i></b>	<b><i>79,300.20</i></b>

6. The following is additional information regarding these expenses:

(a) the firm incurred expenses of \$3,399.43 for amounts paid to court reporters for transcripts of court hearings and depositions.

<i>DATE</i>	<i>VENDOR</i>
November 9, 2010	Ellen Grauer Court Reporting
January 19, 2011	Ellen Grauer Court Reporting
January 21, 2011	Ellen Grauer Court Reporting

(b) Interpreter Fees: \$6,162.50.

<i>DATE</i>	<i>VENDOR</i>
-------------	---------------

November 9, 2010	Legalink
January 19, 2011	Legalink
January 21, 2011	Legalink

(c) Meals, Hotels and Transportation: Expenses for out-of-town meals, hotels and transportation were incurred for the following purposes:

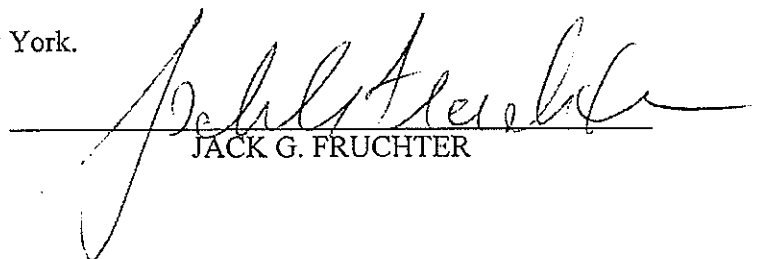
<i>NAME</i>	<i>DATE</i>	<i>DESTINATION</i>	<i>PURPOSE</i>
Arthur Chen	6/22/2010 – 6/25/2010	Hong Kong	Defendant Deposition
Yanhua Li	11/7/2010-11/9/2010	New York	Lead Plaintiff Depo.
Lawrence Levit	1/16/2011-1/23/2011	Hong Kong	Lead Plaintiff's Depo.
Wei Chen	1/16/2011-1/23/2011	Hong Kong	Lead Plaintiff's Depo.
Xie Yong	1/16/2011-1/23/2011	Hong Kong	Lead Plaintiff's Depo.
Linming Shi	1/16/2011-1/23/2011	Hong Kong	Lead Plaintiff's Depo.

(d) Photocopying:  
In-house (11,460 copies @ \$0.10 per copy): \$1,146.00

(e) Lexis, Westlaw, Online Library Research: \$2,216.16. These included vendors such as Disclosure, Inc., Dow Jones Interactive, Dow Jones & Co., Inc., Lexis/Nexis, CDA Investment Technologies, Pacer Service Center, West Publishing Corporation, and Choice Point. These databases were used to obtain access to SEC filings, legal research and cite-checking of briefs. The charges for these vendors vary depending upon the type of services requested.

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22<sup>nd</sup> day of September, 2011, at New York, New York.

  
JACK G. FRUCHTER

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2011, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be 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 October 5, 2011.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

ROBBINS GELLER RUDMAN  
& DOWD LLP

655 West Broadway, Suite 1900

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## Mailing Information for a Case 1:07-cv-10588-PAE

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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malba@rgrdlaw.com,e\_file\_ny@rgrdlaw.com,drosenfeld@rgrdlaw.com
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- **Andrew W. Stern**  
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- **Ellen Anne Gusikoff Stewart**  
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## Manual Notice List

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

**Meredith N. Landy**  
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New York, NY 10036

**Lori E. Romley**  
O'Melveny & Myers LLP  
Seven Times Square  
New York, NY 94025-7019

**Ellen Gusihoff Stewart**  
Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

# **EXHIBIT KKK**

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

_____	x	
In re WARNER CHILCOTT LIMITED	:	Civil Action No. 06-CV-11515 (WHP)
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	ECF Case
	:	
ALL ACTIONS.	:	<b>DECLARATION OF LAWRENCE D. LEVIT FILED ON BEHALF OF ABRAHAM, FRUCHTER &amp; TWERSKY, LLP IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES</b>
_____	x	

I, LAWRENCE D. LEVIT, declare as follows:

1. I am an attorney with the firm of Abraham, Fruchter & Twersky, LLP, co-lead counsel for plaintiffs in the above-captioned action (the "Action"), and a member of the New York Bar. I submit this declaration in support of my firm's application for an award of attorneys' fees and expenses in connection with services rendered in this Action.

2. This firm is counsel of record for lead plaintiff Wesley Ruggles, Ltd. II.

3. My firm's resume, including the identification and background of the partners and attorneys who worked on this Action is attached hereto as Exhibit A.

4. The total number of hours spent on this litigation by my firm is 2,590.25. The total lodestar amount for attorney/paralegal time based on the firm's current rates is \$1,132,123.75. The hourly rates shown below are the usual and customary rates charged for each individual in all of our cases. A breakdown of the lodestar is as follows:

<i>NAME</i>		<i>HOURS</i>	<i>RATE</i>	<i>LODESTAR</i>
Jeffrey S. Abraham	(P)	35.00	\$695	\$24,325.00
Jack G. Fruchter	(P)	105.00	650	68,250.00
Mitchell M.Z. Twersky	(P)	7.00	650	4,550.00
Lawrence D. Levit	(OC)	526.50	595	313,267.50
Jorge Salva	(A)	134.50	395	53,127.50
Elaine L. Lee	(A)	531.50	395	209,942.50
Ilana Deutsch	(A)	123.50	395	48,782.50
Shahriar Kashanian	(A)	368.00	395	145,360.00
Arthur Chen	(A)	536.75	375	201,281.25
Phillip Taylor	(A)	198.50	295	58,557.50
Abey Kenneth	(PL)	24.00	195	4,680.00
<b>TOTAL:</b>		<b>2,590.25</b>		<b>\$1,132,123.75</b>

(P) Partner; (OC) Of Counsel; (A) Associate; (PL) Paralegal

5. The services rendered by my firm in this Action are set-out in detail in the accompanying Joint Declaration of Lawrence D. Levit and Evan J. Kaufman in Support of Motion For Final Approval of Settlement and Application for Award of Attorneys' Fees and Expenses.

6. My firm incurred a total of \$5,634.45 in expenses in connection with the prosecution of this litigation. They are broken down as follows:

**EXPENSES**


From Inception to April 3, 2009

<i>EXPENSE CATEGORY</i>	<i>TOTAL</i>
Service Fees	\$750.00
Meals, Hotels & Transportation	644.00
Photocopies	922.75
Messenger, Overnight Delivery	127.80
Filing, Witness & Other Fees	350.00
Court Reporters	684.90
Lexis, Westlaw, Online Library Research	1,880.00
Class Action Notices/Business Wire	275.00
<b>TOTAL</b>	<b>\$5,634.45</b>

7. The expenses pertaining to this case are reflected in the books and records of this firm. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of April, 2009, at New York, New York.

  
 \_\_\_\_\_  
 LAWRENCE D. LEVIT

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached 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 April 9, 2009.

s/ Ellen Gusikoff Stewart

ELLEN GUSIKOFF STEWART

COUGHLIN STOIA GELLER

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Telephone: 619/231-1058

619/231-7423 (fax)

E-mail:[elleng@csgrr.com](mailto:elleng@csgrr.com)

## Mailing Information for a Case 1:06-cv-11515-WHP

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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rtarnofsky@paulweiss.com

### Manual Notice List

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



- (No manual recipients)

*In re Warner Chilcott Limited Securities Litigation*  
Civil Action No. 06-CV-11515 (WHP)

Mary Eaton  
Sameer Advani  
Wilkie Farr & Gallagher LLP  
787 Seventh Avenue  
New York, NY 10019-6099

Steven F. Marino  
Marino & Conroy LLC  
301 Wharton Street  
Philadelphia, PA 19147

# **EXHIBIT LLL**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SONUS NETWORKS, INC.  
SECURITIES LITIGATION-II

Civil Action No. 06-CV-10040 (MLW)

**DECLARATION OF JAMES A. HARROD IN SUPPORT  
OF FINAL APPROVAL OF PROPOSED SETTLEMENT  
AND AWARD OF ATTORNEY'S FEES AND EXPENSES**

I, James A. Harrod, state the following:

1. I am member of the law firm of Wolf Popper LLP (“Wolf Popper”), Court-appointed Lead Counsel for Lead Plaintiff, the Public Employees’ Retirement System of Mississippi (“MPERS” or “Lead Plaintiff”) in the above-captioned action (the “Action”). I am a member in good standing of the Bar of the State of New York and am admitted to appear before this Court *pro hac vice* in the above-captioned matter. I have been actively involved in the prosecution of this Action and make this Declaration based on personal knowledge of the matters set forth herein.

2. I respectfully submit this Declaration under Rules 23(e), 23(h), and 54(d)(2) of the Federal Rules of Civil Procedure in support of (A) Lead Plaintiff’s Motion For Final Approval of Proposed Settlement and Plan of Allocation of the Net Settlement Fund (the “Final Approval Motion”), pursuant to the terms of the Stipulation of Settlement dated as of January 14, 2009 (the “Stipulation”) previously filed with the Court, and (B) the Petition For (1) An Award of Attorney’s Fees, and (2) a Case Contribution Award to Lead Plaintiff, and (3) Reimbursement of Expenses (the “Petition”).

3. This Action is brought on behalf of all purchasers of the common stock of Defendant Sonus Networks, Inc. (“Sonus” or the “Company”) during the period December 11, 2000 through January 16, 2002, inclusive (the “Settlement Class” and the “Settlement Class Period,” respectively). Lead Plaintiff and the Settlement Class may be referred to herein collectively as “Plaintiffs.”

4. As set forth herein, the proposed settlement (“Settlement”) provides that Sonus will pay, on behalf of all Defendants, \$9.5 million in cash (the “Settlement Fund”), plus an additional cash amount of up to \$100,000 to pay for the costs of publishing, producing and disseminating the Settlement Notice and Publication Notice to the Settlement Class (collectively, the “Settlement Benefit”). The \$9.5 million Settlement Fund has been on deposit and earning interest since February 17, 2009. In addition, I have been informed by Rust Consulting, Inc. (“Rust”), the Claims Administrator, that as of March 13, 2009, the costs of mailing, printing and publishing the Settlement Notice and Publication Notice has already exceeded \$117,000, which amounts will be paid by Sonus pursuant to paragraph 5 of the Stipulation of Settlement. This Declaration is submitted in support of final approval of the Settlement and the Plan of Allocation.

5. This Declaration is also submitted in support of the Petition by my firm, Wolf Popper, and Berman DeValerio, local counsel for Lead Plaintiff (“Local Counsel”) (collectively herein, “Plaintiffs’ Counsel”), for attorney’s fees equal to 17% of the Settlement Benefit (including interest), an amount that is well within the range of reasonable fee awards. The Petition also seeks reimbursement of Plaintiffs’ Counsel’s reasonable out-of-pocket expenses incurred in the prosecution of this Action in the aggregate amount of \$34,506.28.

6. Based on the absence of objections thus far, the Settlement is overwhelmingly supported by the Settlement Class. Over 41,600 copies of the Notice and Proof of Claim form have been mailed to Settlement Class members informing them of the proposed Settlement. *See* April 16, 2009 Affidavit of Peter M. Craig In Connection With Notice By Mailing and Publication (the “Rust Affidavit”), annexed as Exhibit G hereto, at ¶4. As of April 16, 2009, no one has objected to the Settlement, nor has anyone objected to Plaintiffs’ Counsel’s request for attorney’s fees and reimbursement of expenses, or the case contribution award to Lead Plaintiff. *Id.*, ¶12. Moreover, no Settlement Class member has requested exclusion from the Settlement Class. *Id.*, ¶11.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

7. An initial class action, entitled *In re Sonus Networks, Inc. Securities Litigation*, C.A. No. 02CV-11315 (MLW) (hereinafter, “*Sonus-I*”), alleging similar facts, and for the identical putative class period of December 11, 2000 through January 16, 2002, was filed in this Court, and was dismissed by this Court’s Order dated October 5, 2005, for lack of an adequate class representative to pursue the action on behalf of a class. *See also In re Sonus Networks, Inc., Sec. Litig.*, 229 F.R.D. 339 (D. Mass. 2005).

8. On January 6, 2006, a class action complaint alleging violations of the federal securities laws, then captioned as *State Universities Retirement System of Illinois v. Sonus Networks, Inc., et al.*, No. 1:06-CV-10040 (MLW), was filed in this Court, with notice published as required under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §78u-4(a)(3)(A)(i)(II), apprising the investing public of the pendency of such action, and of the right of any class member to move to serve as lead plaintiff of the class. Another, related action

alleging similar claims, *Spinney v. Sonus Networks, Inc.*, 06-CV-10317 (MLW), was filed February 22, 2006.

9. In response to the notice published pursuant to the PSLRA, MPERS, believing it had suffered a substantial loss from its purchases of Sonus common stock during the Settlement Class Period, sought appointment as lead plaintiff under the PSLRA, which provides for a presumption for the appointment as lead plaintiff of the class member with the largest financial stake in the outcome of the litigation. 15 U.S.C. §78u-4(a)(3)(B)(iii). Thereafter, competing motions were filed on March 27, 2006, for consolidation of the two related actions pending in this Court and appointment of Lead Plaintiff and Lead Counsel. Following briefing of said motions, by Order dated December 27, 2006, the Court appointed MPERS as Lead Plaintiff and appointed Wolf Popper LLP as Lead Counsel (“Lead Counsel”) pursuant to the PSLRA. That Order also re-captioned the consolidated case as *In re Sonus Networks, Inc. Securities Litigation-II*, No. 1:06-CV-10040-MLW (the “Action”).

#### **Preparation of the Consolidated Complaint**

10. After entry of the Court’s December 27, 2006 Order, Lead Counsel undertook an extensive investigation in connection with the preparation of a Consolidated Class Action Complaint. In the course of this investigation, Lead Counsel and/or their investigators identified over one hundred (100) witnesses and interviewed approximately thirty (30) witnesses, including numerous former employees of Sonus, its merger partner, Telecom Technologies, Inc. (“TTI”), certain of Sonus’s major customers, including Qwest Communications International (“Qwest”), and others in the industry. Among other things, Lead Counsel and their investigators undertook extensive efforts to identify, locate and interview each of the original source witnesses from the initial *Sonus-I* complaint (as prior plaintiffs’ counsel in *Sonus-I* were reluctant to share

information about the identity and whereabouts of such sources), in order to verify allegations attributed to them in *Sonus-I*. Through these interviews, Lead Counsel was able to corroborate virtually all of the source witness statements relied on in the *Sonus-I* complaint. A few source witnesses, however, could not be located, and certain of the sources could no longer recall with specific detail some of the statements they had previously provided, given the passage of time. Nevertheless, in most of these instances, Lead Counsel was able to identify and interview other sources who corroborated or confirmed such statements (and in the few instances where they could not, any allegations derived from unconfirmed statements were not included in the Complaint).

11. In addition, Lead Counsel was able to identify and interview numerous additional witnesses, who provided statements, documents, and other information that both confirmed Plaintiffs' allegations, and formed the basis of a number of additional allegations, and greatly supported Plaintiffs' claims. Lead Counsel also researched and obtained support for their claims from court filings in litigation involving Qwest, one of Sonus' two largest customers, in particular for their allegation that Sonus' announced contract with Qwest included an undisclosed requirement that Sonus purchase a \$20 million IRU, or "indefeasible right of use," from Qwest, which obligated Sonus to pay for capacity on Qwest's fiber optic network over several years. Lead Counsel also retained an expert consultant in the area of loss causation and damages, who provided valuable input into Plaintiffs' allegations of loss causation in the Complaint.

12. The Consolidated Class Action Complaint, filed in the Action on March 5, 2007 (hereinafter, the "Complaint"), alleges that Defendants issued materially false and misleading statements and failed to disclose material facts in violation of Sections 10(b) and 20(a) of the



Securities Exchange Act of 1934, and SEC Rule 10b-5 promulgated thereunder, during the putative class period of December 11, 2000 through January 16, 2002, inclusive. In particular, the Complaint alleges that Defendants (1) made false and misleading statements representing that Sonus's products were "carrier-class" in transmitting voice data, and were otherwise capable of meeting the requirements of their major telecommunications carrier customers; (2) issued false and inflated guidance and financial projections for the Company's 2001 revenue and income; (3) misrepresented the nature of key customer relationships with BellSouth Corporation ("BellSouth") and Qwest, which were based on significant financial inducements; and (4) misled the investing public about the positive impact of the Company's acquisition of Telecom Technologies Inc. ("TTI") at the outset of the Settlement Class Period.

**Defendants' Motion to Dismiss and Briefing Related Thereto**

13. On April 19, 2007, Defendants filed a motion to dismiss the Complaint and submitted a memorandum of law and affidavit in support of the motion. Defendants argued in that motion, among other things, that (i) Plaintiffs' allegations were time-barred and did not comply with the applicable statute of limitations, and (ii) Plaintiffs failed to adequately allege loss causation as to either Sonus' third quarter or fourth quarter 2001 announcements of earnings shortfalls, particularly under the standards enunciated by the United States Supreme Court in *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336 (2005). On June 11, 2007, Lead Plaintiff filed a detailed memorandum in opposition to the motion to dismiss, and on July 9, 2007, Defendants filed a reply memorandum in further support of their motion. Thereafter, on April 28, 2008, Lead Plaintiff filed a motion for leave to file supplemental authority in further opposition to Defendants' motion to dismiss, which leave was granted by Order dated July 10,

2008, and on September 11, 2008, Lead Plaintiff filed a supplemental affidavit in further opposition to Defendants' motion to dismiss.

14. By Order dated July 10, 2008, the Court set a scheduling conference pursuant to Rule 16(b) of the Federal Rules of Civil Procedure and Local Rule 16.1, for September 18, 2008. In that Order, the Court also notified the Parties that it would hear oral argument on Defendants' motion to dismiss on that date. The Court later rescheduled the scheduling conference and oral argument on the motion to dismiss to September 26, 2008.

15. On September 4, 2008, Lead Plaintiff and Defendants (collectively herein, the "Parties"), filed a joint submission pursuant to Local Rule 16.1, setting forth their positions on scheduling and other matters, as required by the Court's July 10, 2008 Order.

#### **NEGOTIATIONS LEADING TO THE SETTLEMENT**

16. Beginning in July 2008, after briefing of the motion to dismiss was completed but prior to the scheduled Court hearing thereon, the Parties broached the possibility of resolving the Action. These initial informal discussions and exchanges did not bring about immediate progress. However, the Parties continued discussions, and ultimately agreed that Sonus, through a member of its then senior management, would make a presentation to Lead Counsel in an attempt to shed light (from Sonus's perspective) on certain of the key allegations of the case, in particular, Sonus's third quarter and fourth quarter 2001 earnings shortfalls, and the components thereof, and that Lead Counsel would be able to pose questions to Sonus's management representative about those earnings results. Sonus also agreed, to produce certain key documents related to the Company's third quarter and fourth quarter 2001 earnings results, on an informal basis, which it did. This presentation took place in the presence of outside counsel for Sonus and Lead Counsel.

17. The purpose of Sonus's presentation and Lead Counsel's ability to question Sonus's representative in such a forum was for both sides to gain a better appreciation of the underlying facts of the case, and of each other's positions on the merits – assuming the Court denied Defendants' still-pending motion to dismiss. The fact that the motion to dismiss was still pending had a positive effect on settlement discussions as it incentivized both sides to seek a resolution of the Action before either side's position might potentially weaken significantly, and reflected an acknowledgement of significant risk by both sides.

18. While numerous details were discussed during the presentation, the main themes of the discussions were Sonus's explanation of its position that general market forces and the downturn in the telecommunications market generally caused the Company's third quarter as well as fourth quarter 2001 earnings shortfalls, while Lead Counsel continued to press for more detail concerning the alleged product defects and shortcomings, and what portion of the earnings shortfalls was directly or indirectly caused by the alleged product problems.

19. Although the above-described presentation did not by itself produce a settlement, the Parties continued discussions. The Parties also agreed to engage in additional informal merits discovery. Lead Plaintiff consulted further with its damage consultant, Financial Markets Analysis, LLC ("FMA"), which provided Lead Plaintiff with its views as to the theoretical range of possible damages to the putative class based on the allegations in the Complaint. Settlement discussions intensified and developed into extensive, arm's-length settlement negotiations. Lead Counsel was in frequent contact with Lead Plaintiff during this period and consulted with Lead Plaintiff concerning the discussions with Defendants' counsel and the relative merits of the case, and each of the settlement proposals and counter-proposals, as events unfolded. Lead Counsel

prepared analyses concerning the Settlement discussions addressing the strengths and risks to Plaintiffs' case, which were reviewed by Lead Plaintiff and discussed with Lead Counsel.

20. During the third week of September, 2008, after extensive arm's-length negotiations over the course of approximately two months, and after discussions with, and the approval of, Lead Plaintiff, the Parties reached an agreement in principle to resolve the Action, and, on September 24, 2008, filed a joint motion notifying the Court that they had reached an agreement in principle to settle the Action in its entirety.

21. Lead Plaintiff, through Lead Counsel, carefully considered and analyzed the applicable legal precedents governing loss causation, scienter, the statute of limitations applicable to the alleged claims, and class certification, based on the allegations in the Complaint. Lead Plaintiff, through Lead Counsel, reviewed all publicly available information, and information uncovered through the course of its investigation in connection with the preparation of the Complaint, to determine the factual information in support of its claims. Lead Plaintiff further reviewed documents produced informally by Sonus concerning Sonus' operating results and financial performance during the putative class period. In consultation with its financial expert, Lead Plaintiff considered the amount of damages possibly suffered by the putative class and the relative strength of the evidence available in support of its theory of loss causation. Lead Plaintiff then evaluated the legal and factual strengths and weakness of its claims.

22. Lead Plaintiff, through Lead Counsel, also considered other factors, including the risks of continuing to prosecute the case through trial (and possible appeals), and the difficulties in obtaining relevant evidence due to the significant passage of time since the occurrence of the events alleged in the Complaint.

23. Lead Plaintiff has experience serving as the lead plaintiff in a number of class actions alleging violations of the federal securities laws. The Office of the Attorney General of the State of Mississippi (including various duly authorized assistant and special assistant attorneys general) provides legal representation to MPERS in connection with supervising and monitoring the litigation of this matter, consistent with the PSLRA. The text of the Stipulation of Settlement and exhibits thereto have been internally reviewed and approved by representatives of Lead Plaintiff and by the Office of the Attorney General of the State of Mississippi, who strongly recommend and endorse the Settlement as being fair, reasonable and in the best interests of the Settlement Class. *See* Declaration of George W. Neville, Esq. In Support of Final Approval Of Class Action Settlement and Award of Attorneys' Fees, Expenses and a Case Contribution Award (the "MPERS Declaration"), annexed as Exhibit H hereto.

24. The principal terms of the Parties' settlement in principle were embodied in a Memorandum of Understanding dated October 3, 2008 (the "MOU"). The settlement reflected in the MOU was subject to additional document discovery, depositions of witnesses, including certain of the Individual Defendants, and final approval by the Court after notice to the Settlement Class.

#### **Additional Discovery**

25. The additional discovery taken by Lead Plaintiff included the review of approximately 7,500 pages of largely confidential documentary materials (including electronic mail) produced by Defendants. Toward this end, the Parties executed a Stipulation and Confidentiality Agreement on October 16, 2008 governing such additional discovery. The documents produced pursuant to this agreement addressed the key allegations in the Complaint, and were produced on a rolling basis by Defendants.

26. After reviewing those documents, Lead Plaintiff took the sworn deposition testimony of three of Sonus's current and former senior officers: Defendant Hassan M. Ahmed, who during the Settlement Class Period was Sonus's CEO, President and a member of the Board of Directors; Defendant Jeffrey Mayersohn, Sonus's Vice President of Customer Support and Professional Services during the Settlement Class Period; and Stephen Collins, Sonus's Vice President, North American Sales. These three witnesses were, or are, responsible, at the highest levels of the Company, for essentially all of the major areas complained of in Lead Plaintiff's Complaint.

27. The deposition testimony of these three high-level witnesses showed that, while the factual allegations of the Complaint indeed had significant merit, in particular with respect to the alleged problems with the "TTI softswitch" (a/k/a the "INtelligentIP softswitch") acquired through Sonus's acquisition of TTI at the very outset of the Settlement Class Period, nevertheless:

- (i) Sonus lost no customers as a result of such alleged product problems;
- (ii) a substantial portion of the third quarter and fourth quarter 2001 shortfalls, indeed the vast majority thereof, were due to the so-called "telecom nuclear winter" which occurred during those quarters. During those quarters spending by Sonus's major telecom carrier customers all but disappeared virtually overnight because after the "telecom bubble" burst, many such telecom carriers who were customers or projected customers faced bankruptcy, such as Worldcom and Global Crossing, while others cut spending drastically. These problems were only exacerbated by a general economic downturn and market shock after the terrorist attacks of September 11, 2001;

(iii) Plaintiffs would have difficulty showing that these product problems or “bugs” were unusual since products such as next-generation softswitches, which were often co-designed by the manufacturer and customer as technology and customized features demanded by the customer were being perfected, often encountered bugs which do not substantially impede development;

(iv) Sonus replaced the TTI softswitch with its own version of the softswitch, which it manufactured, marketed and sold to customers; and

(v) Sonus had defenses to the alleged IRUs and financial inducements related to the Qwest and BellSouth contracts, based on Defendants’ contention that any other agreements as may have existed with Qwest and BellSouth were either wholly unrelated to Sonus’s primary contract to provide switching equipment to these carriers, or reflected standard customer financing arrangements which were common in the industry.

#### **THE TERMS OF THE SETTLEMENT**

28. In sum, the Settlement provides that defendant Sonus will pay, on behalf of all Defendants, within ten (10) days of the Court’s entry of an Order preliminarily approving the Settlement, \$9.5 million in cash to an account established for the benefit of the Settlement Class. The Court granted preliminary approval of the Settlement on February 4, 2009, by entering the Order for Notice and Hearing (Exhibit A hereto), and on February 17, 2009, Sonus paid \$9.5 million in cash to an escrow account for the benefit of the Settlement Class. That amount, after deducting attorneys’ fees, costs and expenses, and any case contribution award to Lead Plaintiff, as approved by the Court (the “Net Settlement Fund”), will be divided on a pro rata basis in proportion to the Recognized Loss, as determined by the Plan of Allocation set forth in the

Settlement Notice (defined below), of each Settlement Class Member who sends in a valid, timely Proof of Claim form.

29. In exchange for the payments to be made by Sonus, Defendants will receive a release of all “Settled Claims” that Settlement Class Members may have against Defendants and certain other “Released Parties,” as defined in the Stipulation and disclosed in the Notice of Proposed Settlement of Settlement Class Action, Motion for Attorneys’ Fees and Settlement Fairness Hearing (“Settlement Notice”). The Settled Claims are essentially any and all claims concerning the purchase of Sonus common stock (“Sonus Shares”) during the Settlement Class Period, any claims that could have been brought in this Action, any claims relating to the subject matters of the Action, and any claims related to the facts underlying this Action.

#### **REASONS FOR RECOMMENDING THE SETTLEMENT**

30. Based on the factual information obtained prior to the Settlement and in confirmatory discovery, and for the reasons discussed in greater detail in Lead Plaintiff’s Memorandum of Law In Support of Its Motion for Final Approval of the Proposed Settlement and Plan of Allocation of the Net Settlement Fund (the “Final Approval Memorandum”), filed herewith, Lead Counsel and Lead Plaintiff believe that the Settlement Benefit of \$9.6 million is fair and reasonable in light of the all the relevant considerations, including the general risks, burdens and delay of continued litigation. As explained below, the Settlement represents an immediate cash recovery of a material percentage of the likely provable damages suffered by the Settlement Class.

31. Lead Plaintiff and Lead Counsel analyzed the evidence available from their own investigation and from discovery, including document discovery and deposition testimony, concerning the merits of Plaintiffs’ contention that Defendants’ alleged misrepresentations and



omissions misled investors about severe product problems, which Plaintiffs alleged were the true reasons for the reduced earnings guidance, poor third quarter and fourth quarter 2001 financial results, and the elimination of Sonus's "carrier class" designation of its products in the Company's January 16, 2002 press release.

32. Information obtained from the public record, during informal discovery and during confirmatory discovery, indicated that Defendants would likely be able to present significant evidence supporting their contention that, during the Settlement Class Period, market conditions for Sonus's customers suffered a severe and unexpected downturn and caused demand for Sonus's products to decline amidst a general telecommunications industry slump. Lead Plaintiff also concluded, notwithstanding its contentions concerning product problems and deficiencies, that Defendants would be able to present evidence that, despite some obstacles and delays, there were successful customer installations of Sonus's primary products during the Settlement Class Period and that most of the customer losses were due to the customer's own financial problems, including bankruptcies by customers such as Worldcom and Global Crossing, rather than problems with Sonus's product quality.

33. With respect to damages, based on Lead Counsel's analysis of the legal and factual issues pertaining to proof of damages and loss causation, including discussions and analyses provided by its financial consultant, FMA, the \$9.6 million Settlement Benefit represents an immediate recovery of a material percentage of the likely provable damages suffered by the Settlement Class, particularly in light of the difficult loss causation issues presented in this case.

34. In conjunction with FMA, Lead Counsel determined the likely range of aggregate damages to the Settlement Class based on the loss causation allegations in the Complaint. The

Complaint alleges loss causation based on two partial disclosures. The first occurred on September 26, 2001, when Sonus pre-announced that its financial results for the third quarter of 2001 would be materially worse than its prior guidance, and worse than analyst estimates. Plaintiffs alleged that as a result of this disclosure, on September 27, 2001 (the next trading day), Sonus Shares declined by \$3.52 per share (or 55%). The second alleged disclosure occurred on January 16, 2002, when Sonus disclosed its financial results for the fourth quarter and fiscal year 2001, and in the press release announcing these results, omitted certain language concerning Sonus's products being "carrier class," that had been contained in most of the Company's prior Settlement Class Period press releases wherein Sonus described itself or its products. Plaintiffs alleged that as a result of this disclosure, on January 17, 2002 (the next trading day), Sonus shares declined by \$0.51 each (or 10%).

35. Lead Counsel estimated that the most likely aggregate damages to the Settlement Class are approximately \$30 million based on the January 16, 2002 disclosure. Lead Counsel estimated that the cumulative aggregate damages associated with both the September 26, 2001 disclosure and the January 16, 2002 disclosure are approximately \$170 million (with approximately \$140 million attributable to the September 26, 2001 disclosure). In evaluating the likely range of damages, Lead Counsel recognized that there were very significant risks associated with the loss causation allegations relating to the September 26, 2001 disclosure, which were not present concerning the January 16, 2002 disclosure. In particular, Lead Plaintiff alleged that the earning preannouncement and reduced guidance contained in the September 26, 2001 press release were actually manifestations of the (then undisclosed) engineering and customer acceptance problems plaguing Sonus's products. However, the text of the September 26, 2001 release, and explanatory statements made by Defendants concerning that release,

attributed the reduced guidance to a decline in demand and generally difficult market conditions. Nothing in the text of the September 26, 2001 press release made a clear “correction” to any particular prior statement or brought to light a material omission. By contrast, Lead Plaintiff alleged that the January 16, 2002 release modified prior disclosures by eliminating the reference to Sonus’s products being “carrier class.”

36. Lead Plaintiff also considered that Defendants would offer expert evidence suggesting that loss causation could not be proven based on either the September 26, 2001 or the January 16, 2002 disclosures, especially in light of Defendants’ attacks in their motion to dismiss highlighting what they perceived as the insufficiency of the Complaint’s allegations of loss causation related to the January 16, 2002 disclosure. For example, Defendants attacked the loss causation allegations related to the January 16, 2002 disclosure, contending, among other things, that it was not materially different than the September 26, 2001 release, and was consistent with that release in the projecting year-end results; and that while Sonus had omitted the “carrier-class” designation – which Defendants characterized in their motion to dismiss as “mere boilerplate” – from the January 16 release, that release made other similar representations as the prior “carrier class” representation. Lead Counsel and FMA also considered the risk that it could be difficult to demonstrate that the 10% decline on that date was statistically significant, *i.e.*, sufficient to establish loss causation, particularly given the existence of other negative statements in the press release unrelated to the alleged product problems, concerning the general adverse market conditions.

37. Lead Plaintiff and Lead Counsel also considered other risk factors, including the following:

a. The specific difficulty of obtaining evidence sufficient to prevail at summary judgment and trial, particularly where the events at issue in the Action occurred at least six years prior, and as many as eight years ago;

b. The existence of Defendants' affirmative statute of limitations defense, and certain evidence supporting that defense, posed a risk that the Settlement Class's claims would be considered time-barred;

c. The difficulty, time, expense and risk associated with obtaining an order certifying the putative class; and

d. The risk that the Court could grant Defendants' pending motion to dismiss in whole or in part.

38. Given these considerations and the numerous obstacles and risks to be overcome to achieve such a recovery at trial, the \$9.5 million cash Settlement recovery – which amounts to 31% of the \$30 million most likely estimate of provable damages – is well within the range of possible approval and compares favorably to other recoveries in recent securities fraud class action settlements, in the Final Approval Memorandum filed concurrently herewith.

39. As indicated, Lead Plaintiff, MPERS, has significant experience in securities class action litigation, having served or currently serving as a lead plaintiff in at least eight securities class actions (including this one). George W. Neville, a Special Assistant Attorney General in the Office of the Mississippi Attorney General, on behalf of MPERS, has participated in and discussed these considerations related to the Settlement. Mr. Neville has also reviewed and approved the Stipulation and exhibits thereto, and strongly supports the proposed Settlement as being in the best interests of the Settlement Class, in light of the risks of continued litigation and the immediate benefit to be provided by the Settlement. *See* MPERS Decl., ¶¶4-8.

## PLAN OF ALLOCATION

40. Lead Plaintiff also seeks Court approval of the Plan of Allocation of the Net Settlement Fund (the “Plan of Allocation” or “Plan”) as fair and equitable, and believes that it provides a fair method to divide the Net Settlement Fund for distribution among Settlement Class members. The Plan of Allocation attempts to eliminate the effects of market forces unrelated to the alleged misrepresentations and omissions alleged in the Complaint.

41. The Plan of Allocation provides that Settlement Class members who file valid Proof of Claim forms, postmarked on or before July 5, 2009, evidencing a loss in their transactions in shares of Sonus common stock (“Sonus Shares” or “Shares”) during the Settlement Class Period are entitled to a recovery, based upon the true value of Sonus Shares at the time they purchased them. The Plan of Allocation reflects Lead Counsel’s view, in consultation with their retained damages and loss causation consultant, of providing an allocation of the Settlement based on the likely provable per Share damages had this Action proceeded to trial, and is designed to promote ease of claims administration with its attendant reduced costs to the Settlement Class. The Plan of Allocation is similar to numerous other such plans which have been utilized in other securities class action cases.

42. Under the proposed Plan of Allocation, Settlement Class members are required to submit a Proof of Claim form which sets forth all purchasers and sales of Sonus Shares during the Settlement Class Period (December 11, 2000 through January 16, 2002, inclusive). Settlement Class members are also asked to set forth the date(s) on which they purchased and sold their securities, the price paid for the securities, and the net proceeds received from any sales, as well as their position in Sonus Shares at the beginning and at the end of the Settlement Class Period. A claim will be calculated in accordance with the Plan of Allocation described in

the Notice sent to Settlement Class Members. Under this scheme, the amount any individual claimant receives will be represented by the proportion of her Recognized Loss to the aggregate Recognized Losses of all valid claims. Thus, if a Settlement Class member had a Recognized Loss of \$1.00, and the aggregate Recognized Losses of all valid claimants was \$100, such Settlement Class member would be entitled to 1% of the Net Settlement Fund.

The Plan is fundamentally based on Plaintiffs' theory of loss causation, discussed above in detail. *See, supra*, ¶¶33-36. Lead Plaintiff alleged that Sonus shares were inflated at all times during the Settlement Class Period and that such inflation was dissipated as a result of two "partial" disclosures of Defendants' alleged fraud. During the period from December 11, 2000 through September 26, 2002 Lead Plaintiff contends that Sonus Shares were inflated by \$4.03 per share; during the period from September 27, 2001 through January 16, 2002 Lead Plaintiff contends that Sonus Shares were inflated by \$0.51 per share. These inflation amounts correspond to the unadjusted market decline per Share following the two loss causation "events" alleged in the Complaint. The \$4.03 per Share inflation is the sum of the two market declines occurring after the partial disclosures on September 26, 2001 (decline of \$3.52) and January 16, 2002 (decline of \$0.51). Thus, Shares purchased after September 26, 2001, were only inflated by the amount remaining after the September 26, 2001 partial disclosure or \$0.51.

43. The objective of the Plan of Allocation is to provide an equitable basis upon which to distribute the Settlement Fund among eligible Settlement Class members. The Plan of Allocation is rationally based upon Plaintiffs' theory of loss causation and will result in a fair and equitable distribution of the available proceeds among those Settlement Class members who submit valid claims. *See* Final Approval Memorandum, pp. 26-29.

44. Lead Plaintiff and Lead Counsel submit that the Plan of Allocation is fair and equitable to all Settlement Class members and deserves the Court's approval.

#### **NOTICE PROCEDURE AND REQUESTS FOR EXCLUSION**

45. On February 4, 2009, this Court entered a preliminary approval order (the "Order for Notice and Hearing") approving the form of notice to be mailed to members of the Settlement Class informing them of the proposed Settlement, plan of allocation, request for attorneys' fees and reimbursement of expenses, and case contribution award to the Lead Plaintiff. Lead Counsel has been informed by the Court-appointed claims administrator, Rust Consulting, Inc.<sup>1</sup>, that, in compliance with the Order for Notice and Hearing, commencing on March 6, 2009, the Claims Administrator has mailed over 41,600 copies of the Notice, including the Plan of Allocation and Proof of Claim form, to persons identified as potential Settlement Class members, and has caused to be published, on March 16, 2009, in *Investor's Business Daily*, and over *PR Newswire* – a national, business-oriented wire service, the Publication Notice, in the form approved by the Court in the Order for Notice and Hearing, which summarizes the Settlement and provides potential Settlement Class Members with the opportunity to obtain the Settlement Notice and Proof of Claim. See Rust Affidavit, ¶¶4, 5. The Notice was also promptly posted on my firm's website ([www.wolfpopper.com](http://www.wolfpopper.com)).

46. Pursuant to the Order for Notice and Hearing, Settlement Class members have until May 15, 2009 to (i) object to the proposed Settlement, Plan of Allocation or Petition, or (ii) request exclusion from the Settlement Class. As of April 16, 2009, no one has objected to the Settlement, the fee and expense request, or to the case contribution award. Further, as of the same date, none, of the approximately 41,600 potential Settlement Class members, has requested

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<sup>1</sup> Effective February 20, 2009, Complete Claim Solutions ("CCS"), which prior thereto was a subsidiary of Rust Consulting, Inc., became known as Rust Consulting. None of the contact or website information provided in the Notice or elsewhere for CCS is affected thereby.

exclusion from the Settlement Class. This positive response to the proposed Settlement further supports Court approval.

**REQUEST FOR ATTORNEYS' FEES AND REIMBURSEMENT  
OF EXPENSES, AND CASE CONTRIBUTION AWARD**

47. Lead Counsel respectfully seeks an award of attorney's fees in the amount of seventeen percent (17%) of the Settlement Benefit, or one million six hundred thirty two thousand dollars (\$1,632,000.00), plus accrued interest at the same net rates as earned by the Settlement Fund. This fee award is sought with the consent of Lead Plaintiff. *See* MPERS Decl. ¶9. Lead Counsel, as well as the additional counsel who represented Lead Plaintiff in this action, have at all times assumed the responsibility of litigating this action on a contingent-fee basis, such that any attorney's fee would be paid only upon achieving a recovery for the benefit of Lead Plaintiff and the Settlement Class by settlement or judgment. It is Lead Counsel's understanding that Defendants' counsel were compensated on an ongoing basis by their clients throughout the pendency of this action.

48. Collectively, Wolf Popper LLP and Berman DeValerio spent 3,289 hours litigating this Action and securing the settlement, resulting in a cumulative lodestar of \$2,050,689.75. The fee requested represents a negative multiplier of approximately 0.8 to Plaintiffs' Counsel's aggregate lodestar. A master chart of the cumulative lodestar and expenses is annexed hereto as Exhibit B.

49. A detailed discussion itemizing the time spent and work performed in this action follows below and a schedule of Wolf Popper's lodestar, by attorney, and its expenses, by category, is attached as Exhibit C. A similar declaration from Berman DeValerio is annexed hereto as Exhibit D.



50. As Lead Counsel, attorneys, paralegals, and other professionals and para-professionals of my firm were directly involved in all aspects of the prosecution of this action from inception. Services rendered and work performed by Wolf Popper in this action to date include the following: (a) pre-filing research and investigation of the applicable facts and law underlying Plaintiffs' claims, including analysis of public information and interviews of dozens of former employees of Sonus on a confidential basis; (b) drafting of the Consolidated Amended for Violations of the Federal Securities Laws; (c) research and drafting of numerous memoranda of law and other submissions in support of or in opposition to motions filed with the Court, including MPERS' motion for lead plaintiff and lead counsel appointment; submissions in opposition to Defendants' motion to dismiss the Complaint; various notices of supplemental authority and responses to notices of supplemental authority filed by Defendants; and Plaintiffs' motion for preliminary approval of the Settlement and class certification; (d) preparation for and appearances at this Court's January 27, 2009 hearing to consider preliminary approval of the Settlement; (e) discussions and other communications with consulting experts concerning loss causation and damages issues, and Plan of Allocation; (f) discussions and other communications with counsel concerning litigation status and strategy; (g) negotiation with Defendants concerning a mutually acceptable settlement; (h) focused discovery in the interest of confirming the fairness, reasonableness and adequacy of the Settlement, including depositions of the Sonus executives and the review of approximately 7,500 pages of documents produced by Sonus; (i) negotiation of the terms of the Memorandum of Understanding and formal Stipulation of Settlement and related ancillary documents; and (j) attention to various matters relating to notice to the class and settlement administration, including consultations with the claims administrator.

51. As reflected in Exhibit C, the total number of hours expended on this litigation by my firm in connection with the prosecution of this litigation is 3,105.5. The total lodestar of my firm is \$1,974,627.50 consisting of \$1,822,049 for attorney time and \$152,578.50 for non-attorney time.

52. The lodestar calculation reflected in Exhibit C is based on Wolf Popper's current billing rates. For attorneys and employees no longer employed by the firm, the lodestar calculation is based upon the billing rate during his or her last year of employment with the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm.

53. The hourly rates for the attorneys, paralegals, and other professionals and para-professionals at the firm listed in Exhibit C are the same as the regular current rates charged for their services in non-contingent fee matters and/or which have been accepted and approved in other securities or shareholder litigations.

54. The firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the firm's billing rates.

55. The requested fee award is based on a formula that was negotiated at the outset of the litigation by the Lead Plaintiff, a sophisticated investor and litigant. The Notice expressly stated that Lead Counsel would ask the Court, on behalf of all Plaintiffs' Counsel, to award attorneys' fees from the Gross Settlement Fund in an amount of approximately 17% of the amount of the Settlement Benefit, and to award them reimbursement of their litigation expenses incurred in connection with the prosecution of the Action in an amount not to exceed \$60,000. Settlement Class members were apprised in the Notice that the requested fee award is based on a

formula negotiated at the beginning of the litigation by the Lead Plaintiff, and that they may obtain a copy of the retention agreement between Lead Counsel and Lead Plaintiff, which includes that formula for determination of the fee, upon a request to Lead Counsel. As of April 16, 2009, no one has objected to the fee and expense application.

56. The fee requested is well within the range of fees commonly awarded by Courts in this District and Circuit, evaluated either as a percentage of the recovery or as a function (in this case, a negative multiple) of counsel's lodestar. The level of contingency risk was high, and Plaintiffs' Counsel faced the real risk that the Action might be dismissed even at the pleading, much less summary judgment, stage, or at trial. The passage of time since the occurrence of the events at issue in this Action made proving Plaintiffs' case all the more problematic, and Defendants had substantial defenses as to loss causation, statute of limitations, and scienter, as set forth herein and in the accompanying Final Approval Memorandum. The result achieved, after years of litigation, is excellent and justifies the award of fees requested.

57. Lead Counsel also respectfully seeks reimbursement of \$34,506.28 in aggregate out-of-pocket expenses incurred to date. Counsel were required to advance substantial funds in this action for, among other items, consulting expert fees and costs; court reporting for depositions; transportation, meals and lodging; photocopying; on-line legal and court docket research; court filing retrieval services; telephone and facsimile transmission; and court filing fees. My firm's reimbursable expenses, totaling \$31,182.53, are categorized in Exhibit C; the reimbursable expenses of Berman DeValerio are attached to Exhibit D.

58. Lead Counsel engaged a consulting expert during the course of this litigation. This expert was engaged on a non-contingent fee basis.

59. Plaintiffs also respectfully refer the Court to Lead Plaintiff's Memorandum of Law In Support of the Petition For (1) An Award of Attorney's Fees, (2) a Case Contribution Award to Lead Plaintiff, and (3) Reimbursement of Expenses (the "Petition Memorandum"), filed herewith, for additional factors supporting the request for an award of attorneys' fees and reimbursement of expenses.

60. Lead Plaintiff and Lead Counsel also seek a case contribution award of \$9,680 to the Court-appointed Lead Plaintiff, MPERS, for its reasonable costs and expenses directly relating to its representation of the Settlement Class, including its participation in the litigation and supervision of settlement negotiations, with such amount also being awarded from the Gross Settlement Fund. MPERS stepped forward to safeguard the interests of the Settlement Class after the initial *Sonus-I* action was dismissed by the Court for lack of an adequate class representative, and has ably, astutely and diligently overseen the prosecution of this Action and all material aspects thereof. The accompanying MPERS Declaration attests to, among other things, MPERS' work and supervision of counsel in this case, including the negotiation of a fee retention agreement favorable to the Settlement Class; its review and approval of Lead Counsel's work and all significant submissions to this Court on behalf of the Settlement Class, including reviewing case filings, case status reports, and other case-related materials, and participating in conference calls and meetings with Lead Counsel to discuss the overall strategy for the prosecution of the Action; its understanding of its fiduciary duty to the Settlement Class; its involvement in settlement negotiations and the resolution of this Action; its recommendation of the proposed Settlement as well as Plaintiffs' Counsel's request for attorneys' fees and reimbursement of expenses; and the costs (including lost wages for time devoted to the prosecution of this Action, and the diversion of resources away from other compensable

matters), that its counsel, the Mississippi Office of Attorney General, incurred in connection with the prosecution and settlement of the Action. Lead Plaintiff and Lead Counsel respectfully submit that such case contribution is reasonable and fully merited by, among other things, the significance of MPERS' involvement to the recovery ultimately obtained by the Settlement Class; the quality and diligence of MPERS' supervision of the prosecution of this Action in all phases; and the amount of effort and costs expended by MPERS and its counsel, the OAG, on behalf of the Settlement Class, to obtain an excellent result.

61. As with Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of expenses, the Notice also informed Settlement Class members that Lead Counsel would be requesting a case contribution award of up to \$40,000 to Lead Plaintiff, MPERS, for the reasonable costs and expenses directly relating to its representation of the Settlement Class, including its participation in the litigation and supervision of settlement negotiations. As of April 16, 2009, there have been no objections to the request for a case contribution award to the Lead Plaintiff, MPERS.

#### **ADDITIONAL EXHIBITS**

62. Annexed hereto as Exhibit E is a true and correct copy of Theodore Eisenberg and Geoffrey P. Miller, *Attorneys Fees in Class Action Settlements: An Empirical Study*, 1 J. EMPIRICAL LEGAL STUD. 27 (2004).

63. Annexed collectively hereto as Exhibit F are true and correct copies of the following unpublished orders, issued by judges of this District, awarding attorney's fees of at least 22 percent in securities class actions: In re Transkaryotic Therapies, Inc. Sec. Litig., No. 03-10165-RWZ (D. Mass. June 3, 2008) (24%); In re Lernout & Hauspie Speech Products, N.V. Sec. Litig., No. 99-10237 (NG) (D. Mass. Mar. 30, 2009) (33%); Parkside Cap. Ltd. v. Xerium

Tech. Inc., No. 06-10991-RWZ (D. Mass. Feb. 18, 2009) (25%); Bobbitt v. Filipowski, No. 04-12263-PBS (D. Mass. July 1, 2008) (30%); In re American Tower Corp. Sec. Litig., No. 06-CV-10933 (MLW) (D. Mass. June 11, 2008) (22.69%); In re Eaton Vance Corp. Sec. Litig., No. 01 CV 10911 EFH (D. Mass. Apr. 26, 2006) (30%); Deckler v. Ionics, Inc., No. 03-CV-10393-WGY (D. Mass. Apr. 4, 2005) (30%); In re Segue Software, Inc. Sec. Litig., No. 99-10891-RGS (D. Mass. July 31, 2001) (33%); Chalverus v. Pegasystems, Inc., No. 97-12570-WGY (D. Mass. Dec. 19, 2000) (33%); In re V-Mark Software, Inc. Sec. Litig., No. 05-12249-EFH (D. Mass. Nov. 24, 1998) (33- 1/3%); In re Zoll Med. Corp. Sec. Litig., No. 94-11579-NG (D. Mass. Oct. 5, 1998) (33-1/3%); Friedberg v. Discreet Logic Inc., No. 96-11232-EFH (D. Mass. Nov. 25, 1997) (30%); Abato v. Marcam Corp., No. 94-11625-WGY (D. Mass. July 29, 1996) (33-1/3%); In re Cambridge Biotech Corp. Sec. Litig., No. 93-12486-REK (D. Mass. Apr. 4, 1996) (30% of cash and stock); In re Copley Pharm., Inc. Sec. Litig., No 94-11897 (WGY) (D. Mass. Feb. 8, 1996) (33-1/3%).

64. Annexed hereto as Exhibit I is a true and correct copy of a research study published by the NERA Economic Consulting titled NERA 2008 Mid-Year Update.

65. Annexed hereto as Exhibit J is a true and correct copy of a research study published by Cornerstone Research, Inc. titled Securities Class Action Settlements: 2007 Review and Analysis (2008).

## CONCLUSION

66. For the reasons set forth herein, as well as the reasons set forth in the accompanying Lead Plaintiff's Memorandum of Law in Support of Its Motion for Final Approval of Class Action Settlement, and Plan of Allocation of the Net Settlement Fund, and Lead Plaintiff's Memorandum of Law in Support of the Petition for (1) Attorney's Fees, (2) A

Case Contribution Award to Lead Plaintiff, and (3) Reimbursement of Expenses, and upon the full record of this Action, Lead Counsel respectfully submits that the proposed Settlement, and the proposed plan of allocation, are fair, reasonable, and adequate, and should be approved by the Court, and further, that Plaintiffs' Counsel's petition for an award of fees and for reimbursement of expenses t, and the request for a case contribution award to Lead Plaintiff, MPERS, should be granted as requested.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 17<sup>th</sup> day of April, 2009, in New York, New York.

s/ James A. Harrod

F James A. Harrod

# **EXHIBIT MMM**



# EXHIBIT D

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE SONUS NETWORKS, INC.  
SECURITIES LITIGATION-II

Civil Action No. 06-CV-10040 (MLW)

**DECLARATION OF GLEN DEVALERIO OF BERMAN DEVALERIO SUBMITTED IN  
SUPPORT OF LEAD COUNSEL'S PETITION FOR AN AWARD OF ATTORNEY'S  
FEES AND REIMBURSEMENT OF EXPENSES**

Glen Devalerio declares as follows pursuant to 28 U.S.C. § 1746:

1. I am a partner with the law firm of Berman DeValerio, Local Counsel for Lead Plaintiff Public Employees' Retirement System of Mississippi ("MPERS") and the Settlement Class in the above-titled action. I am admitted to practice before this Court.

2. I respectfully submit this declaration in support of my firm's petition for an award of attorneys' fees in connection with services rendered in this action, as well as the reimbursement of expenses reasonably incurred by my firm in connection with this litigation. I have personal knowledge of the matters referred to herein.

3. As Local Counsel, attorneys, paralegals, and other professionals and para-professionals of my firm were directly involved in all aspects of the prosecution of this action from inception. Services rendered and work performed by my Firm in this action to date include the following: (a) assisting with the pre-filing research and investigation of the applicable facts and law underlying Plaintiffs' claims, including analysis of public information and interviews of dozens of former employees of Sonus Networks, Inc. ("Sonus" of the "Company") on a confidential basis; (b) consulting with lead counsel concerning the drafting of the Consolidated

Amended for Violations of the Federal Securities Laws (the "Complaint"); (c) consultations with Lead Counsel concerning, and assistance in submission and or filing of, Lead Plaintiff's motion for lead plaintiff, briefing in opposition to Defendants' motion to dismiss the Complaint, various notices of supplemental authority and responses to notices of supplemental authority filed by Defendants, and Plaintiffs' motion for preliminary approval of the Settlement and class certification; (d) preparation for and appearances at this Court's January 27, 2009 hearing to consider preliminary approval of the Settlement; (e) discussions and other communications with counsel concerning litigation status and strategy; (f) attending and assisting at depositions during the confirmatory discovery phase of the litigation; and (j) assisting in the preparation of Lead Plaintiff's final approval submission.

4. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by each attorney, paralegal, and other professional and para-professional of the firm who performed work in this litigation. The lodestar calculation is based on the firm's current billing rates. For attorneys and employees no longer employed by the firm, the lodestar calculation is based upon the billing rate during his or her last year of employment with the firm. This schedule was prepared from contemporaneous, daily time records regularly prepared and maintained by the firm. These records are available for review at the request of the Court. Time spent in preparing Lead Counsel's petition for attorney's fees and reimbursement of expenses, and this declaration, is not included in the schedule.

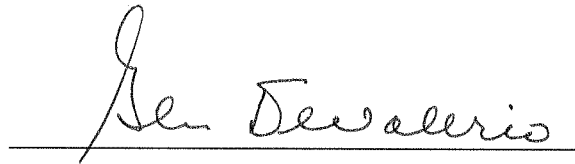
5. As reflected in Exhibit 1, the total number of hours expended on this litigation by my firm in connection with the prosecution of this litigation is 184.05 hours. The total lodestar of my firm is \$76,062.25 consisting of \$60,831.00 for attorney time and \$15,231.25 for non-attorney time.

6. The hourly rates for the attorneys, paralegals, and other professionals and para-professionals at the firm listed in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent fee matters and/or which have been accepted and approved in other securities or shareholder litigations.

7. The firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the firm's billing rates.

8. Attached hereto as Exhibit 2 is a detailed schedule of the unreimbursed expenses incurred by my firm in connection with the prosecution and settlement of this case, totaling \$3,323.75.

9. The expenses incurred in this action are reflected on the books and records of the firm. These books and records are prepared from expense vouchers, checks records and other source materials and are an accurate record of the expenses incurred. These records are available for review at the request of the Court.

  
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# **EXHIBIT 1**

**IN RE SONUS NETWORKS SECURITIES LITIGATION**  
**TIME REPORT**

FIRM: Berman DeValerio

Reporting Period: Inception through April 15, 2009

<u>Timekeepers</u>	<u>Status</u>	<u>Hourly Rate</u>	<u>Total Hours to Date</u>	<u>Total Lodestar to Date</u>
Glen DeValerio	Partner	\$695	21.50	\$14,942.50
Leslie Stern	Partner	\$525	17.70	\$9,292.50
Bryan Wood	Partner	\$485	56.60	\$27,451.00
Abigail Romeo	Associate	\$295	31.00	\$9,145.00
Christopher Szechenyi	Investigator	\$330	32.00	\$10,560.00
Ashleigh Roberts	Paralegal	\$185	25.25	\$4,671.25
<hr/>				
TOTALS			184.05	\$76,062.25

## **EXHIBIT 2**

**IN RE SONUS NETWORKS SECURITIES LITIGATION  
EXPENSE REPORT**

FIRM: Berman DeValerio

Reporting Period: Inception through April 15, 2009

<b>DESCRIPTION</b>	<b>TOTAL TO DATE</b>
Filing Fees	\$ 200.00
Court Reporters/ Transcripts	\$ 296.01
Lexis/Dow Jones/Westlaw/Research	\$ 2,532.45
Photocopying	\$ 178.60
Postage/Express/Delivery	\$ 81.26
Telephone/FAX	\$ 35.43
<hr/>	
TOTAL	\$ 3,323.75



# **EXHIBIT NNN**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

MARY ESPOSITO, Individually and on  
Behalf of All Other Persons Similarly  
Situated,

Plaintiff,

v.

AMERICAN RENAL ASSOCIATES  
HOLDINGS, INC., JOSEPH A. CARLUCCI,  
JONATHAN L. WILCOX, SYED T.  
KAMAL, JONATHAN J. McDONOUGH,  
CENTERBRIDGE CAPITAL PARTNERS  
L.P., MERRILL LYNCH, PIERCE,  
FENNER, & SMITH, INC., BARCLAYS  
CAPITAL INC., GOLDMAN, SACHS &  
CO., WELLS FARGO SECURITIES, LLC,  
SUNTRUST ROBINSON HUMPHREY, and  
LEERINK PARTNERS LLC,

Defendants.

No. 16 Civ. 11797 (ADB)

**CLASS ACTION**

ECF Case

**DECLARATION OF IRA M. PRESS IN SUPPORT OF FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND PLAN OF ALLOCATION, AND AWARD OF  
ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND  
INCENTIVE AWARDS**

I, IRA M. PRESS, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of the law firm of Kirby McInerney LLP, the Court-appointed Lead Counsel<sup>1</sup> for the Lead Plaintiffs and the Settlement Class in the above-captioned action (the

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<sup>1</sup> All capitalized terms not otherwise defined shall carry the meaning set forth in the Stipulation of Settlement (the "Stipulation"), dated January 30, 2018, filed previously with the Court on January 31, 2018. See ECF No. 95-1. "Lead Plaintiffs" refers to Errol Rudman and Rudman

“Action”).

2. I was actively involved in the prosecution of this case, am intimately familiar with its proceedings, and have personal knowledge of the matters set forth herein based upon my close supervision and active participation in the Action.

3. I respectfully submit this Declaration in support of Lead Plaintiffs’ motion, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for Final Approval of the Settlement of this Action and the Plan of Allocation of the Net Settlement Fund (the “Plan of Allocation”). I also submit this Declaration in support of Lead Counsel’s motion, pursuant to Rules 23(h) and 54(d)(2), for an award of attorneys’ fees, reimbursement of Plaintiffs’ Counsel’s expenses incurred during the prosecution of this Action, and request for incentive awards for the two Lead Plaintiffs.

#### **I. BENEFITS OF THE SETTLEMENT TO THE SETTLEMENT CLASS**

4. The Stipulation, filed with this Court on January 31, 2018 and preliminarily approved by the Court by Order dated February 8, 2018, *see* ECF No. 96 (the “Preliminary Approval Order”) (annexed hereto as Exhibit A), provides for the gross payment of \$4 million in cash (the “Settlement Fund”) to the Settlement Class in exchange for a release of the Settled claims brought against Defendants.<sup>2</sup> The Settling Defendants have caused the \$4 million to be deposited into the Settlement Fund. The Settlement Fund is in a money market mutual fund which invests in securities backed by the full faith and credit of the U.S. Government and has

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Partners, L.P. “Plaintiffs’ Counsel” refers to Lead Counsel Kirby McInerney LLP (“Lead Counsel”) and Liaison Counsel, Law Offices of Mark Booker (“Liaison Counsel”).

<sup>2</sup> “Defendants” are all together: American Renal Associates Holdings, Inc. (“ARA”); Joseph A. Carlucci, Jonathan L. Wilcox, Syed T. Kamal, Jonathan J. McDonough (the “Individual Defendants”); Centerbridge Capital Partners, L.P. (“Centerbridge”); Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Capital Inc., Goldman Sachs & Co. LLC (formerly known as Goldman, Sachs & Co.), Wells Fargo Securities, LLC, SunTrust Robinson Humphrey, Inc., and Leerink Partners LLC (the “Underwriter Defendants”).

been earning interest for the benefit of the Settlement Class since February 21, 2018.

5. The Settlement was only reached after extensive investigation including interviews with numerous confidential witnesses, aggressive motion practice, and an intensive, arm's-length mediation process conducted by Jed D. Melnick, Esq. of JAMS (the "Mediator"), followed by additional negotiations and communications to resolve key settlement terms. In the absence of a settlement, the claim would have been subject to numerous challenges and uncertainties. In connection with their motions to dismiss, Defendants challenged the elements of Lead Plaintiffs' claims, including existence of a material misrepresentation, scienter, and loss causation. Specifically, Defendants argued *inter alia* that: (a) Defendants' statements of ARA's sources of revenue and its relationship with a third-party charitable organization were not materially misleading; (b) statements concerning another litigation were immaterial and disclosures concerning that action were not corrective; and (c) all relevant trends, uncertainties or risks were adequately disclosed at the time of ARA's April 2016 Initial Public Offering ("IPO"). Even if Defendants' motions to dismiss<sup>3</sup> were defeated, and the Action proceeded to trial, Lead Plaintiffs understood that their ability to prove the elements of their claims would have become an important jury issues with no guarantee of a favorable outcome.

6. Lead Plaintiffs also understood that, even if they were ultimately successful at trial, they would still be faced with costly appeals.

7. In light of these and other difficulties the Settlement Class faced in seeking to pursue its case, Lead Plaintiffs and Lead Counsel believe that this Settlement represents an excellent recovery for the Settlement Class.

8. After the after deduction of fees and expenses and incentive awards approved by

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the Court, notice and administration costs, and any taxes and tax expenses that may be payable by the Settlement Fund, the Net Settlement fund will be distributed to Authorized Claimants, *i.e.*, Settlement Class Members who submit timely and valid Proof of Claim Forms, in accordance with the Plan of Allocation.

## **II. THE COURT'S PRELIMINARY APPROVAL ORDER AND PLAINTIFFS' DISSEMINATION OF PRE-HEARING NOTICE**

9. Lead Plaintiffs moved for preliminary approval of the Settlement on January 31, 2018 (ECF Nos. 93-95). On February 8, 2018, the Court issued a Preliminary Approval Order, approving the proposed Settlement, certifying the Settlement Class, and approving notice to the Settlement Class. *See* Exhibit A.

10. In the Preliminary Approval Order, the Court made the following findings, determinations, and directives, among others:

- (i) Certifying the Action as a class action for purposes of the Settlement under Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of all persons who purchased or otherwise acquired all Persons that purchased or otherwise acquired ARAH securities between April 20, 2016 and August 18, 2016, inclusive (the "Class Period"), including (b) all Persons that purchased or otherwise acquired ARAH securities pursuant or traceable to ARAH's Form S-1/A, as amended, and the Form 424B Prospectus (together, the "Registration Statement") filed in connection with the Company's April 20, 2016 offering;
- (ii) Granting preliminary approval of the Settlement as sufficiently fair, reasonable, and adequate to warrant dissemination of notice to the Settlement Class and a hearing on the fairness of the Settlement;
- (iii) Scheduling a hearing (the "Settlement Hearing") to consider, among other things: whether the proposed Settlement is fair, reasonable, and adequate, and should be finally approved; whether the proposed Plan of Allocation of the Net Settlement Fund is fair, reasonable, and adequate, and should be approved; whether the Order and Final Judgment as provided under the Stipulation should be entered; and whether Lead Counsel's application for an award of attorneys' fees and reimbursement expenses should be granted;

- (iv) Approving the form and content of the Postcard Notice, the notice of the proposed class action settlement (the “Full Notice”), the Proof of Claim and Release, and the Summary Notice;
- (v) Authorizing Lead Counsel to retain Garden City Group, LLC (“Claims Administrator” or “GCG”) to supervise and administer the Notice and claims procedure, under the supervision of Lead Counsel, and directing that the Notice be disseminated; and
- (vi) Establishing procedures and deadlines for Settlement Class Members to exclude themselves or object to the Settlement, Plan of Allocation, and the attorneys’ fees and reimbursement of expenses requested by Lead Counsel.

11. Annexed hereto as Exhibit B is the Declaration of Jose C. Fraga Regarding Mailing of the Notice; Publication of the Summary Notice; Settlement Website and Telephone Hotline; and Requests for Exclusion dated May 9, 2018 with Exhibits A through E (“GCG Decl.”). The GCG Declaration attests to, among other things, the efforts made to disseminate the Postcard Notice, Full Notice, and Proof of Claim Form (collectively, the “Notice Materials”), and publication of the Summary Notice, all in compliance with the Preliminary Approval Order. *See* GCG Decl. ¶¶ 2-11. The Full Notice and Proof of Claim Forms were also posted in downloadable form on a website created specifically in connection with the Settlement. *See id.* at ¶ 9. The Summary Notice was also published once in *Investor’s Business Daily* and issued once over *PR Newswire*. *Id.* at ¶ 8 & Exs. D-E.

12. As directed by the Court, Lead Counsel has actively monitored the progress of the notice program and administration of the Settlement through telephone conferences and email communications with GCG. This has enabled Lead Counsel to monitor the creation and distribution of Notice Materials by GCG to Settlement Class Members.

13. Since March 8, 2018, after mailing the Postcard Notice to record holders, GCG has also received requests from brokers and other nominees to send a copy of the Postcard Notice directly to the broker or nominee’s customers. *See id.* at ¶¶ 3- 5. Pursuant to Paragraph 7

of the Preliminary Approval Order, as of May 8, 2018, a total of 6,368 Postcard Notices have been disseminated to potential Settlement Class Members. *Id.* at ¶ 6. Additionally, as of May 8, 2018, GCG has mailed 25 Full Notice and/or Claim Form directly to Settlement Class Members that requested copies of those documents to be mailed to them. *See id.* at ¶ 7. The Full Notice set out the essential terms of the Settlement including, *inter alia*, Class Members’ right to exclude themselves from the Settlement Class or object to any aspect of the Settlement. *See* GCG Decl. Ex. B, Full Notice.

### III. SUMMARY OF THE ALLEGATIONS AND CLAIMS

14. ARA is a dialysis provider. Plaintiffs alleged that during the Class Period, Defendants materially misrepresented ARA’s source of its revenues, which involved an improper and undisclosed association with a purported third-party charitable organization, and the risks of that relationship to its business, including in its offering materials issued in connection with its April 2016 IPO.

15. On July 1, 2016, three affiliates of the insurer UnitedHealth Group Inc. commenced an action against ARA styled *UnitedHealthcare of Fla., Inc. v. Am. Renal Assocs. Holdings, Inc.*, No. 16 Civ. 81180 (S.D. Fla.) (the “*United Action*”). When ARA’s patient steering scheme involving a third-party charitable organization, the American Kidney Fund (“AKF”), was disclosed by the *United Action* and related press coverage, ARA’s shares lost approximately 10% of their value on the next trading day, July 5, 2016, declining from \$28.53 to \$25.71 per share.

16. Then on July 27, 2016, continuing the fallout from the *United Action*, the CFO of health insurer Anthem, Inc. announced that the company was investigating the source of higher-than-expected payments for dialysis treatments. That same trading day, ARA’s share price fell

from \$26.59 to \$24.41 per share, a decline of more than 8%.

17. A final material decline in ARA's stock price occurred on August 18, 2016, when The Center for Medicare & Medicaid Services ("CMS") announced its investigation into patient steering and third-party premium assistance, which CMS strongly criticized. Following this news, ARA shares declined from \$22.12 to \$19.81 per share, a decline of over 10%.

#### **IV. PROCEDURAL HISTORY, PROSECUTION OF THE ACTION, AND SETTLEMENT**

18. On August 31, 2016, a putative class action captioned *Gelsleichter v. American Renal Assocs. Holdings, Inc.*, No. 16 Civ. 6841 (S.D.N.Y.) (the "*Gelsleichter* Action"), was filed in the United States District Court for the Southern District of New York. Two days later, on September 2, 2016, the instant action was filed in the United States District Court for the District of Massachusetts. On October 28, 2016, the plaintiff in the *Gelsleichter* Action voluntarily dismissed that case.

19. By Order entered on November 30, 2016, the District Court appointed Errol Rudman and Rudman Partners, L.P. as Lead Plaintiffs, and appointed Kirby McNerney LLP as Lead Counsel (ECF No. 36).

20. Lead Plaintiffs filed their Amended Complaint on February 1, 2017 (ECF No. 40) against ARA, the Individual Defendants, Centerbridge, and the Underwriter Defendants. The Amended Complaint alleged violations of: (i) Section 11 of the Securities Act of 1933 (15 U.S.C. § 77k) against all Defendants<sup>4</sup> except Jonathan J. McDonough; (ii) Section 15 of the Securities Act of 1933 (15 U.S.C. § 77o) against Centerbridge and Individual Defendants, except Jonathan J. McDonough; (iii) Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)),

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<sup>4</sup> Lead Plaintiffs withdrew their Section 11 claim against Centerbridge as Centerbridge was incorrectly named.



and SEC Rule 10b-5 (17 C.F.R. § 240.10b-5), against ARAH and Individual Defendants; and (iv) Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78t(a)) against Centerbridge and Individual Defendants.

21. On May 18, 2017, Centerbridge, Underwriter Defendants, and ARA and the Individual Defendants moved to dismiss the Amended Complaint (ECF Nos. 71, 74, 76, respectively). On July 17, 2017, Lead Plaintiffs filed an omnibus memorandum of law in opposition to all Defendants' motions to dismiss (ECF No. 81), and Defendants filed their replies on August 16, 2017 (ECF Nos. 85-87).

22. On October 23, 2017, Lead Counsel filed a letter with the Court informing the Court that the Parties had agreed to participate in mediation in an attempt to reach an amicable resolution of the Action and requested that the Court hold in abeyance Defendants' motions to dismiss until after the mediation (ECF No. 88).

23. On November 27, 2017, counsel for Lead Plaintiffs and counsel for Defendants participated in a mediation conducted by Jed D. Melnick, Esq. of JAMS. Following the mediation, the Parties were able to reach agreement to settle this Action, which they believe is in the best interests of their respective clients. The Settlement allow both sides to avoid the risks and cost of uncertain litigation and the uncertainty of a trial and appeals, and permits Class Members to be compensated without further delay. Lead Plaintiffs and their counsel believe the Settlement is in the best interest for all Class Members.

24. On November 28, 2017, Lead Counsel filed a letter with the Court informing the Court that the Parties had reached an agreement in principle to resolve the litigation (ECF No. 89).

25. On January 10, 2018, the Court denied the pending motions to dismiss with leave

to renew if necessary (ECF No. 90).

26. The Settling Parties' agreement in principle was formalized in the Stipulation of Settlement, which was executed on January 30, 2018.

27. On January 31, 2018, Lead Plaintiffs moved for preliminary approval of the proposed Settlement, certification of a Settlement Class, and approval of notice to the Settlement Class. *See* ECF No. 93. On February 8, 2018, the Court preliminarily approved the proposed settlement and class notice, and certified the Settlement Class for settlement purposes only. *See* Exhibit A.

28. The Court set May 10, 2018 as the deadline for final approval papers and fee and expense applications, and scheduled the Settlement Hearing for June 14, 2018 at 2:00 p.m. *Id.* at ¶ 11.

29. Lead Counsel has dedicated 989.25 hours prosecuting this Action. Lead Counsel's total lodestar was \$702,597.50 and its total expenses were \$37,914.17. Annexed hereto as Exhibit C is Lead Counsel's lodestar and litigation expense summary.

30. Liaison Counsel, Law Offices of Mark Booker, has dedicated 3.9 hours prosecuting this Action for a total lodestar of \$1,950. Annexed hereto as Exhibit D is Liaison Counsel's Declaration in support of its fee request ("Booker Decl.").

31. Accordingly, Plaintiffs' Counsel (Lead Counsel and Liaison Counsel), dedicated a total of 993.15 hours to the prosecution of this Action. Plaintiffs' Counsel's total lodestar was \$704,547.50, and total litigation expenses were \$37,914.17.

## **V. ASSESSMENT OF THE STRENGTHS AND WEAKNESSES**

32. Lead Counsel's investigation on liability (including causation) enabled Lead Plaintiffs to thoroughly evaluate the strengths and weaknesses of the claims and the risks of

continued litigation. Accordingly, Lead Plaintiffs entered into the Settlement on a fully informed basis.

33. Lead Plaintiffs and Lead Counsel considered, *inter alia*: (i) the benefit to the Settlement Class under the terms of the Stipulation; (ii) the merits of the parties' claims and defenses; (iii) the difficulties and risks involved in achieving class certification, defending likely *Daubert* and/or summary judgment motions, and the likelihood of prevailing at trial; (iv) the likelihood of obtaining, and collecting on, a superior recovery in the event that Lead Plaintiffs were to succeed at trial; and (v) the delays inherent in litigation, including appeals.

## **VI. COMPARISON OF THE SETTLEMENT TO SIMILAR ACTIONS**

34. The view that the Settlement is fair is supported by a comparison to the recent settlements of other securities class actions.

35. According to a 2018 report by Cornerstone Research entitled "Securities Class Action Settlements - 2017 Review and Analysis" ("Cornerstone Report"), in securities class action where estimated damages were between \$25 million and \$74 million, the median recovery was only 6.0% of estimated damages. *See* Cornerstone Report at 8, Fig. 7, annexed hereto as Exhibit E.

36. According to a 2018 report by NERA Economic Consulting entitled "Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review" ("NERA Report"), the "median ratio of settlement to Investor Loss" was 8.4% for cases with investor losses of between \$20 million and \$49 million. *See* NERA Report at 37, Figure 28, annexed hereto as Exhibit F.

37. Accordingly, the \$4 million Settlement here, which represents 13.3% of the estimated class-wide damages of approximately \$30 million, represents a recovery well in excess of the median settlement for securities class actions with comparable estimated class-wide

damages in recent years. Lead Plaintiffs and Lead Counsel submit that it is a very favorable recovery for the Settlement Class.

## **VII. REACTION OF THE CLASS**

38. As of May 9, 2018, Lead Counsel has not received any objections to the Settlement, the Plan of Allocation, the amount of Lead Counsel's fee request or expenses, or Lead Plaintiffs' request for an incentive award. Furthermore, as of May 8, 2018, GCG has not received any requests for exclusion. *See* GCG Decl. ¶ 12.

## **VIII. PLAN OF ALLOCATION**

39. As explained in the Notice, all Settlement Class Members wishing to participate in the Settlement are to file a valid Proof of Claim Form on or before July 6, 2018. *See* GCG Decl. Exs. B and C.

40. As set forth in the Notice, Settlement Class Members who file timely and valid Proof of Claim Forms will receive distributions from the Net Settlement Fund, after deduction of fees and expenses and incentive awards approved by the Court, notice and administration costs, and taxes incurred on interest income earned by the Settlement Fund. The distributions will be made in accordance with the Plan of Allocation set forth and described in detail in the Notice (*see* GCG Decl. Ex. B, Full Notice at 4-6). The Plan of Allocation was developed by Lead Counsel.

41. As explained in the Notice, the Plan of Allocation apportions the recovery among Settlement Class Members who acquired ARA shares during the Class Period and were damaged thereby.

42. The Plan of Allocation reflects an assessment of the damages that may have been recovered in the Action, had liability been successfully established, based on the amount of

inflation that was removed from the price of ARA shares as a result of the corrective disclosures. The Plan of Allocation calculates each Settlement Class Member's total Recognized Losses and allocates recovery based on the timing of each Settlement Class Member's purchases from ARA's April 2016 IPO as well as purchases and sales relative to the ARA share price declines after the disclosures. Specifically, the Recognized Loss is applied to shares that were purchased during the Class Period and held through the time of the alleged corrective disclosures on July 1, 2016, July 27, 2016, and August 18, 2016. Each Settlement Class Member will receive his or her or its *pro rata* share of the Net Settlement based on the calculation of his, her or its Recognized Loss.

43. Lead Plaintiffs and Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved by the Court.

#### **IX. PLAINTIFFS' COUNSEL'S FEE AND EXPENSE REQUESTS ARE REASONABLE**

44. Consistent with the law in the First Circuit, Plaintiffs' Counsel requests an award of attorneys' fees and expenses from the Settlement Fund based on a percentage of the Settlement Fund recovered for the Settlement Class. Lead Counsel is applying for a fee award of \$1,320,000, which is 33% of the Settlement Fund. Plaintiffs' Counsel also requests reimbursement of expenses incurred in connection with the prosecution of this Action in the amount of \$37,914.17 plus any accrued interest.

##### **A. Plaintiffs' Counsel's Qualifications and Work to Date**

45. Lead Counsel is a law firm with extensive experience in plaintiffs' securities class action litigation. Those credentials are set forth in the resume of Kirby McInerney LLP, annexed hereto as Exhibit G. Mark Booker of the Law Offices of Mark Booker has more than 15 years of experience as a litigator, including several years at law firms that specialize in federal securities

class action litigation.

46. Lead Counsel has been responsible for all aspects of this litigation from the time it was appointed on November 30, 2016 to date. The work performed during this period included:

- (i) Researching the legal and factual bases for Lead Plaintiffs' claims;
- (ii) Drafting the Amended Class Action Complaint;
- (iii) Consulting with investigators in connection with an investigation that included reaching out to former American Renal employees who might have knowledge of the circumstances that were at issue in this action;
- (iv) Analyzing the law applicable to the parties' claims and defenses;
- (v) Drafting an omnibus brief in opposition to three Defendants' motions to dismiss;
- (vi) Drafting a detailed mediation statement;
- (vii) Attending an intensive mediation session and engaging in further settlement negotiations thereafter, which ultimately culminated in the \$4 million Settlement agreed to by the parties; and
- (viii) Negotiating the terms of, and drafting, the settlement agreement and related documents such as forms of orders and notices.

47. Throughout the prosecution of this Action, Lead Counsel was very mindful of proceeding in an efficient manner to ensure there was no duplication of effort.

48. Lead Counsel further worked diligently to finalize and document the Settlement through negotiations with Defendants, the motion for preliminary approval, and the motion for final approval. Lead Counsel also oversaw the Claims Administrator and the notice process. Finally, Lead Counsel will be appearing at the final settlement hearing and will continue to oversee the administration of the Settlement.

49. The quality of Plaintiffs' Counsel's work in attaining the Settlement is notable in light of the quality of the opposition. ARA was represented by Milbank, Tweed, Hadley &

McCoy LLP and Greenberg Traurig, LLP; the Underwriter Defendants were represented by Goodwin Procter LLP; the Individual Defendants were represented by Wilmer Cutler Pickering Hale and Dorr LLP; and Centerbridge was represented by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC and Skadden, Arps, Slate, Meagher & Flom LLP. All six of these firms are prominent international defense-oriented firms with thousands of attorneys and offices worldwide, collectively. In the face of this experienced and formidable opposition, Plaintiffs' Counsel was nonetheless able to develop a case that was sufficiently strong to persuade the Defendants to settle the case on terms favorable to the Settlement Class.

**B. Plaintiffs' Counsel's Fee Request**

50. Plaintiffs' Counsel (Lead Counsel together with Liaison Counsel), devoted a total of 993.15 hours in the prosecution of this Action, for a total lodestar of \$704,547.50.

51. The schedule annexed hereto as Exhibit C (Lodestar Report) is a summary that reflects the amount of time spent by each attorney and professional support staff at Kirby McInerney who was involved in this Action, and the lodestar calculation based on Lead Counsel's current billing rates. The Booker Declaration reflects the amount of time spent by Mark Booker on this Action, and the lodestar calculation based on his current billing rate.

52. For attorneys and professional support staff who are no longer employed by Lead Counsel, the lodestar calculations are based upon the billing rates for such attorneys and staff in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by Lead Counsel, which are available at the Court's request. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

53. The hourly rates for the attorneys and professional support staff included in

Exhibits C and D are the same range as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigations. The rates are in-line with the rates of other law firms that specialize in prosecuting or defending complex securities litigations. Annexed hereto as Exhibit H is a table of billing rates for securities class action plaintiffs' firms and defense firms compiled by Lead Counsel from fee applications submitted by such firms.

54. The total number of hours expended on this litigation by Lead Counsel is 989.25 hours. The total lodestar is \$702,597.50, consisting of \$612,797.50 for attorneys' time and \$89,800.00 for professional support staff time.

55. The total number of hours expended on this litigation by Liaison Counsel is 3.9 hours. The total lodestar is \$1,950.00 in attorney time.

56. Lead Counsel's lodestar figures are based upon the firm's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in Lead Counsel's billing rates.

### **C. Plaintiffs' Counsel's Litigation Expenses**

57. As detailed in Exhibit C (Expenses) attached hereto, Lead Counsel has incurred a total of \$37,914.17 in unreimbursed expenses in connection with the prosecution of this Action. The majority of the expenses (more than 95%) were for mediator fees, investigative services and online databases such as Westlaw, LEXIS and PACER.

58. The expenses incurred in this Action are reflected in Lead Counsel's books and records. These books and records are prepared from expense vouchers, check records, and other source materials, and are an accurate record of the expenses incurred.

59. Furthermore, the expenses incurred in the prosecution of this Action do not



include the expenses of the Claims Administrator associated with providing Court-ordered notice to the Settlement Class and administering claims.

60. Lead Counsel believes that its expenses were reasonably and necessarily incurred and were, in fact, critical to Lead Plaintiffs' ability to obtain recovery here. Moreover, because Plaintiffs' Counsel was aware, from the outset of the case, that it might not recoup any of its expenses or, at the very least, would not recover anything until this Action was successfully resolved, Plaintiffs' Counsel was motivated to and did take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the case.

61. The Notice provided to Settlement Class Members informed them that Plaintiffs' Counsel would seek reimbursement of expenses incurred in the prosecution of the Action of no more than \$50,000.00. *See* GCG Decl. Ex. A, Postcard Notice; Ex. B, Full Notice at 2, 7. As of May 9, 2018, no Settlement Class Members have raised an objection to that request. *See* ¶ 38, *supra*.

#### **X. LEAD PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS IS REASONABLE**

62. Lead Plaintiffs seek an incentive award in the amount of \$5,000 each for a total of \$10,000. Lead Plaintiffs' request is reasonable because Lead Plaintiffs have diligently and completely fulfilled their obligations as a representative plaintiff in the action by: (1) reviewing the initial complaint and the amended complaint; (2); reviewing additional filings throughout the litigation; (3) and consulting with Lead Counsel on key decisions including mediation and settlement.

63. The Notice provided to Settlement Class Members informed them that Lead Plaintiffs would seek an incentive award for up to \$10,000 for their respective contributions to

this Action. *See* GCG Decl. Ex. A, Postcard Notice; GCG Decl. Ex. B, Full Notice at 2. As of May 9, 2018, no Settlement Class Members have raised an objection to that request. *See* ¶ 38, *supra*.

#### **XI. SUMMARY LIST OF EXHIBITS**

64. Annexed hereto as Exhibit A is the Preliminary Approval Order dated February 8, 2018 (ECF No. 96).

65. Annexed hereto as Exhibit B is the Declaration of Jose C. Fraga Regarding Mailing of the Notice; Publication of the Summary Notice; Settlement Website and Telephone Hotline; and Requests for Exclusion dated May 9, 2018, with Exhibits A through E.

66. Annexed hereto as Exhibit C is Lead Counsel's lodestar and litigation expenses summary.

67. Annexed hereto as Exhibit D is the Declaration of Mark Booker which contains the lodestar summary for Liaison Counsel, Law Offices of Mark Booker.

68. Attached hereto as Exhibit E is a 2018 report by Cornerstone Research entitled "Securities Class Action Settlements - 2017 Review and Analysis."

69. Annexed hereto as Exhibit F is a 2018 report by NERA Economic Consulting entitled "Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review."

70. Annexed hereto as Exhibit G is the firm resume of Lead Counsel Kirby McInerney LLP.

71. Annexed hereto as Exhibit H is a table of comparable billing rates for securities class action plaintiffs' firms and defense firms compiled by Lead Counsel from fee applications submitted by such firms.

72. Annexed hereto as Exhibit I are two excerpt pages of a billing survey for the law

firms Wilmer, Cutler, Pickering, Hale, and Dorr LLP and Skadden, Arps, Slate, Meagher & Flom LLP from the *National Law Journal's* article titled "Billing Rates Across the Country" dated January 13, 2014.

## **XI. CONCLUSION**

73. In view of the recovery to the Settlement Class, the substantial risks of this Action, the substantial efforts of Plaintiffs' Counsel, the quality of the work performed, the contingent nature of the fee, and the standing and experience of Plaintiffs' Counsel, Plaintiffs' Counsel respectfully submits that: the Settlement should be approved as fair, reasonable, and adequate; the Plan of Allocation should be approved as fair and reasonable; a fee in the amount of 33% of the \$4 million Settlement Fund, or \$1,320,000 plus any accrued interest, should be awarded to Plaintiffs' Counsel; litigation expenses in the amount of \$37,914.17 plus any accrued interest, should be reimbursed in full; and an incentive award of \$5,000 each should be awarded to Lead Plaintiffs.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 10, 2018 in New York, New York.

/s/ Ira M. Press  
IRA M. PRESS

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically on this 10th day of May, 2018, to the registered participants as on the Notice of Electronic Filing (NEF). At this time, I am not aware of any non-registered participants to whom paper copies must be sent.

/s/ Ira M. Press  
Ira M. Press

# **EXHIBIT 000**

# EXHIBIT D

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MARY ESPOSITO, Individually and on  
Behalf of All Other Persons Similarly Situated,

Plaintiff,

vs.

AMERICAN RENAL ASSOCIATES  
HOLDINGS, INC., JOSEPH A. CARLUCCI,  
JONATHAN L. WILCOX, AND SYED T.  
KAMAL, JONATHAN J. MCDONOUGH,  
CENTERBRIDGE CAPITAL PARTNERS  
L.P., MERRILL LYNCH, PIERNCE,  
FENNER, & SMITH, INC., BARCLAYS  
CAPITAL INC., GOLDMAN, SACHS & CO.,  
WELLS FARGO SECURITIES, LLC,  
SUNTRIST ROBINSON HUMPHREY, AND  
LEERINK PARTNERS LLC,

Defendants.

Civil Action No.: 16 Civ. 11797 (ADB)

**CLASS ACTION**

ECF Case

**DECLARATION OF MARK BOOKER ON BEHALF OF LAW OFFICES OF  
MARK BOOKER IN SUPPORT OF APPLICATION FOR AN AWARD OF  
ATTORNEY'S FEES**

I, Mark Booker, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am admitted to practice law before the courts of the Commonwealth of Massachusetts, the State of New York, the United States District Court for the District of Massachusetts, the United States District Court for the Eastern and Southern Districts of New York, and the United States Court of Appeals for the First Circuit.

2. I maintain law offices in Boston and Fall River, Massachusetts. I am the sole member and the sole employee of the Law Offices of Mark Booker, which serves as liaison counsel for plaintiffs in this litigation. I submit this declaration in support of my

firm's application for an award of attorneys' fees for services that I performed in this case.

3. My firm's work on this lawsuit included, *inter alia*: (1) participation in motion practice, including plaintiffs' motion for appointment of lead plaintiff and class counsel and plaintiffs' opposition to defendants' motions to dismiss; and (2) coordination with lead counsel on compliance with local rules and protocols.

4. My review of my contemporaneous daily time records concerning my work on this case disclosed that I spent 3.9 hours working on this case from October 2016 through November 28, 2017. Based upon my firm's current billing rates (\$500 per hour), the lodestar is \$1,950.00. My contemporaneous daily time records are available at the request of the Court. I have not included in the foregoing request for an award of fees any time that I spent in preparing this application for fees.

5. My hourly rate is the same as the regular current rates that I charge for my services in non-contingent fee matters or that have been accepted in other securities or shareholder litigation.

6. My firm incurred no expenses attendant to its work on this case.



I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 4th day of May, 2018 at Boston, Massachusetts.

/s/ Mark Booker

Mark Booker, B.B.O. #659957  
Law Offices of Mark Booker  
33 Mount Vernon Street, 4<sup>th</sup> Floor  
Boston, Massachusetts 02108  
Tel: (617) 248-1650  
[mbooker@mbookerlaw.com](mailto:mbooker@mbookerlaw.com)

# **EXHIBIT PPP**

**TAB A – Declaration of John P. Coffey**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----X	:	
	:	
IN RE: DELPHI CORPORATION	:	MDL No. 1725
SECURITIES, DERIVATIVE & "ERISA"	:	Master Case No. 05-md-1725
LITIGATION	:	Hon. Gerald E. Rosen
	:	
	:	
	:	
	:	
	:	
-----X	:	

**DECLARATION OF JOHN P. COFFEY  
IN SUPPORT OF JOINT PETITION FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES  
FILED ON BEHALF OF BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

JOHN P. COFFEY declares as follows:

1. I am a member of the law firm of Bernstein Litowitz Berger & Grossmann LLP ("BLB&G"). BLB&G is one of the Court-appointed Lead Counsel for the Court-appointed lead plaintiffs, Teachers' Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H., and Stichting Pensioenfonds ABP (hereinafter "Lead Plaintiffs"), and the prospective Class in the above-captioned consolidated securities class action. I submit this affidavit in support of BLB&G's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by BLB&G in connection with this litigation. A detailed description of the work performed by the professionals at BLB&G on behalf of Lead Plaintiffs and the Class is contained in the Joint Declaration of John P. Coffey, Bradley E. Beckworth, Michael K. Yarnoff and Stuart M. Grant in Support of Proposed Partial Settlement, Plan of Allocation and Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed simultaneously herewith.

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the BLB&G attorneys and professional support staff who were involved in this litigation, and the lodestar calculation based on BLB&G's current billing rates. For personnel who are no longer employed by BLB&G, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by BLB&G, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

3. The hourly rates for the BLB&G attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by BLB&G is 12,701.99. The total lodestar for BLB&G is \$4,913,469.20, consisting of \$4,551,068.20 for attorneys' time and \$362,401.00 for professional support staff time.

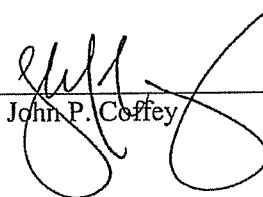
5. BLB&G's lodestar figures are based upon BLB&G's billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in BLB&G's billing rates.

6. As detailed in Exhibit 2, BLB&G has incurred a total of \$276,628.11 in unreimbursed expenses in connection with the prosecution of this litigation.

7. The expenses incurred in this action are reflected in BLB&G's books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

8. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of BLB&G and the BLB&G attorneys who were principally involved in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 5, 2007.

  
\_\_\_\_\_  
John P. Coffey

**EXHIBIT 1**

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**LODESTAR REPORT**  
**Delphi Corporation**

Name	Number of Hours	Rate	Lodestar
<b>Professional Type: Partner</b>			
Max Berger	205.00	850.00	174,250.00
Sean Coffey	552.25	795.00	439,038.75
Jeffrey Leibell	186.75	575.00	107,381.25
Gerald Silk	185.00	595.00	110,075.00
Darnley Stewart	0.25	675.00	168.75
David Stickney	5.50	595.00	3,272.50
<b>Professional Type: Of Counsel</b>			
Tony Gelderman	47.50	650.00	30,875.00
Doug McKeige	82.00	650.00	53,300.00
Elliott Weiss	169.25	650.00	110,012.50
<b>Professional Type: Associate</b>			
Jai Chandrasekhar	153.25	490.00	75,092.50
Mark Debrowski	406.54	330.00	134,158.20
Pat Gillane	26.00	470.00	12,220.00
Hannah Greenwald	2,422.75	490.00	1,187,147.50
Avi Josefson	19.90	425.00	8,457.50
Eric Kanefsky	18.00	395.00	7,110.00
Noam Mandel	132.50	395.00	52,337.50
Niki Mendoza	3.00	490.00	1,470.00
Matthew Moehlman	1,515.75	395.00	598,721.25
Victoria Wilhelm	2.00	440.00	880.00
<b>Professional Type: Director of Financial</b>			
Nick DeFilippis	37.50	330.00	12,375.00
<b>Professional Type: Investigator</b>			
David Kleinbard	86.00	285.00	24,510.00
<b>Professional Type: Litigation Support</b>			
Sheron P. Brathwaite	3.50	225.00	787.50
Wendy Parsons	21.50	195.00	4,192.50

11/2/2007



**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**LODESTAR REPORT**  
**Delphi Corporation**

Name	Number of Hours	Rate	Lodestar
<b>Professional Type: Marketing Coordinator</b>			
Alexander Coxe	8.75	195.00	1,706.25
Seema Desai	1.50	180.00	270.00
<b>Professional Type: Paralegal</b>			
Shirley Chisolm	54.30	195.00	10,588.50
Cathleen Laporte	10.50	205.00	2,152.50
Dawn Larkin-Wallace	8.00	195.00	1,560.00
Lauren LaRocca	5.25	195.00	1,023.75
Naitrani Lugo	24.00	195.00	4,680.00
Dwayne Lunde	11.00	205.00	2,255.00
Eileen McNerney	1,107.00	205.00	226,935.00
Elizabeth Metcalf	131.50	185.00	24,327.50
Sara Genua	44.00	185.00	8,140.00
Andrew Seidenberg	1.00	195.00	195.00
Andrea G. Sharkey	21.25	175.00	3,718.75
Gary Weston	2.00	205.00	410.00
<b>Professional Type: Financial Analyst</b>			
Sara Genua	0.75	225.00	168.75
Adam Weinschel	1.00	275.00	275.00
<b>Professional Type: Financial Analyst</b>			
Kate B. Durant	0.50	250.00	125.00
Ben Heiss	7.00	200.00	1,400.00
Amanda Beth Hollis	26.50	250.00	6,625.00
Rochelle Moses	5.50	250.00	1,375.00
Mithun Sahdev	22.00	195.00	4,290.00
<b>Professional Type: Document Clerk</b>			
Frank Barajas	93.00	165.00	15,345.00
Elysia Menard	3.00	150.00	450.00
<b>Professional Type: Project Associate</b>			

11/2/2007

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
LODESTAR REPORT  
Delphi Corporation**

<b>Name</b>	<b>Number of Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Andrew Afifian	929.75	300.00	278,925.00
Cynthia Gill	1,042.25	300.00	312,675.00
Sarah Johnson	65.25	300.00	19,575.00
Ifeyinwa Oguagha	1,399.00	300.00	419,700.00
Ronald Salley	1,380.75	300.00	414,225.00
<b>Professional Type: Project Paralegal</b>			
Tracy Jordan	9.50	180.00	1,710.00
Bob Manago	4.50	180.00	810.00
<b>Total This Report</b>	<b>12,701.99</b>		<b>4,913,469.20</b>

11/2/2007

## **EXHIBIT 2**

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**  
**TYPE OF EXPENSE SUMMARY**  
**DELPHI CORP.**

<b>Type of Expense</b>	<b>Expense Amount</b>
Court Fees	1,200.00
Service of Process	1,525.00
PSLRA Notice Costs	382.50
On Line Legal Research	53,632.46
Document Management/Litigation Support	660.00
On Line Factual Research	20,851.96
Telephone	5,658.51
Faxes	57.00
Postage & Express Mail	2,332.31
Hand Delivery Charges	119.87
Local Transportation	6,619.34
Internal Copying	22,607.75
Outside Copying	7,310.22
Out of Town travel	8,465.87
Working Meals	12,635.99
Court Reporting & Transcripts	2,926.00
Staff Overtime	4,643.33
Contributions to Plaintiffs' Litigation Fund	125,000.00
<b>Total This Report</b>	<b>276,628.11</b>

# **EXHIBIT QQQ**

**TAB B – Declaration of Bradley E. Beckworth**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----x	:	MDL No. 1725
IN RE: DELPHI CORPORATION	:	Master Case No. 05-md-1725
SECURITIES, DERIVATIVE & "ERISA"	:	Hon. Gerald E. Rosen
LITIGATION	:	
	:	
This Document Relates To: In re Delphi	:	
Corporation Securities Litigation	:	
No. 06-10026	:	
-----x	:	

**DECLARATION OF BRADLEY E. BECKWORTH  
IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

BRADLEY E. BECKWORTH declares as follows:

1. I am a partner of the law firm of Nix, Patterson & Roach, LLP ("NPR"). NPR is one of the Court-appointed Co-Lead Counsel for the Court-appointed lead plaintiffs, Teachers' Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H., and Stichting Pensioenfonds ABP (hereinafter "Lead Plaintiffs"), and the Class in the above-captioned consolidated securities class action. I submit this affidavit in support of Co-Lead Counsel's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by Co-Lead Counsel in connection with this litigation. A detailed description of the work performed by the professionals at Co-Lead Counsel on behalf of Lead Plaintiffs and the Class is contained in the Joint Declaration of John P. Coffey, Bradley E. Beckworth, Michael K. Yarnoff and Stuart M. Grant in Support of Proposed Partial Settlement, Plan of Allocation and Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed simultaneously herewith.

2. The schedule attached hereto as Exhibit 1 is a detailed summary of the amount of time spent by the NPR attorneys, NPR professional support staff and contract attorneys who were involved in this litigation, and the straight time lodestar calculation based on NPR's current billing rates. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by NPR, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

3. The hourly rates for the NPR attorneys, NPR professional support staff and contract attorneys included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by NPR is 9,416. The total lodestar for NPR is \$3,924,325.00, consisting of \$3,591,775.00 for attorneys' time and \$332,550.00 for professional support staff time.

5. NPR's lodestar figures are based upon NPR's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in NPR's billing rates.

6. As detailed in Exhibit 2, NPR has incurred a total of \$336,474.77 in unreimbursed expenses in connection with the prosecution of this litigation.

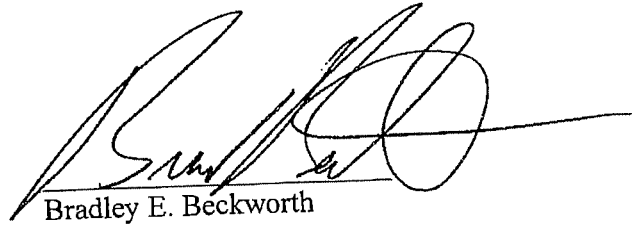
7. The expenses incurred in this action are reflected on NPR's books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.



8. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of NPR and the NPR attorneys who were principally involved in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 2, 2007.



Bradley E. Beckworth

**EXHIBIT 1**

**Lodestar Calculation**

Attorney/Professional	Hours Worked	Hourly Rate	Total Lodestar
C. Cary Patterson	14.0	\$650.00	\$9,100.00
Nelson J. Roach	9.0	\$650.00	\$5,850.00
Jeffrey J. Angelovich	1143.5	\$650.00	\$743,275.00
Bradley E. Beckworth	1503.0	\$650.00	\$976,950.00
Keith L. Langston	27.5	\$450.00	\$12,375.00
Susan Whatley	1236.0	\$450.00	\$556,200.00
Brad E. Seidel	657.0	\$450.00	\$295,650.00
Contract Attorneys (0-4 years experience)	1206.0	\$275.00	\$331,650.00
(5-10 years experience)	1417.0	\$300.00	\$425,100.00
(11+ years experience)	725.0	\$325.00	\$235,625.00
<b>TOTAL ATTORNEYS</b>	<b>7938.0</b>		<b>\$3,591,775.00</b>
Professional Support	1478.0	\$225.00	\$332,550.00
<b>TOTAL LODESTAR</b>	<b>9416.0</b>		<b>\$3,924,325.00</b>

**EXHIBIT 2**

**Litigation Expenses**

NPR has incurred unreimbursed reasonable and necessary expenses in the prosecution of this litigation in the amount of \$336,474.77. These expenses were incurred in the following categories:

1. Contributions to the Delphi Securities Litigation Fund: \$125,000.00;
2. Postage, copy and/or document duplication, operator assisted conference calls; Federal Express/United Parcel Service delivery: \$30,948.23;
3. Computer assisted legal research (Lexis/Nexis and/or Westlaw); access and printing charges for PACER; subscription to Delphi Bankruptcy Reports; and charges for online document/publication retrieval: \$101,198.21; and
4. Travel expenses for lodging, meals, air and ground transportation: \$79,328.33.

# **EXHIBIT RRR**

**TAB C – Affidavit of Andrew L. Barroway**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

DELPHI CORP.  
SECURITIES LITIGATION

Case No. 05md1725

**AFFIDAVIT OF ANDREW L. BARROWAY  
IN SUPPORT OF JOINT PETITION FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF  
SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP**

COMMONWEALTH OF PENNSYLVANIA

cc.

COUNTY OF DELAWARE

ANDREW L. BARROWAY, being first duly sworn, deposes and says:

I am a senior partner of the law firm of Schiffrin Barroway Topaz & Kessler, LLP. I submit this affidavit in support of my firm's application for an award of attorneys' fees in connection with services rendered in this case from inception through October 30th, 2007 (the "Time Period"), as well as the reimbursement of expenses incurred by my firm in connection with this litigation.

1. My firm acted as co-lead counsel in this class action, and participated in a direct fashion in every aspect of the prosecution and settlement of this action.
2. The schedule attached hereto as Exhibit "1" is a summary indicating the amount of time spent by each attorney and paralegal of my firm who was involved in this litigation during the Time Period, and the lodestar calculation based on my firm's current billing rates. For attorneys and paralegals who are no longer employed by my firm, the lodestar calculation is based upon the billing rates for such attorneys and paralegals in his or her final year of employment by my firm. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by my firm, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not

been included in this request.

3. The hourly rates for the attorneys and paralegals in my firm included in Exhibit "1" are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by my firm during the Time Period is 9,408.72 hours. The total lodestar for my firm is \$3,475,202.95, consisting of \$3,329,115.95 for attorneys' time and \$146,087.00 for paralegals' time.

5. My firm's lodestar figures are based upon the firm's billing rates, which rates do not include charges for expenses items. Expense items are billed separately and such charges are not duplicated in my firm's billing rates.

6. As detailed in Exhibit "2", my firm has incurred a total of \$242,300.78 in unreimbursed expenses in connection with the prosecution of this litigation during the Time Period.

7. The expenses incurred in this action are reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

8. With respect to the standing of my firm, attached hereto as Exhibit "3" is a brief biography of my firm and attorneys in my firm who were principally involved in this litigation.

*Andrew L. Barroway*  
ANDREW L. BARROWAY

SWORN TO BEFORE ME THIS  
1<sup>st</sup> day of November, 2007

*Kathy L. VanderVeur*  
NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Kathy L. VanderVeur, Notary Public  
Radnor Twp., Delaware County  
My Commission Expires Jan. 25, 2009  
Member, Pennsylvania Association of Notaries

## Exhibit "1"

Delphi Corp. Securities Litigation**SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP**

LODESTAR REPORT: Inception through October 30, 2007

Name	Total Hrs.	Hourly Rate	Total Lodestar
<b>PARTNERS:</b>			
Richard S. Schiffrin	75.0	\$675	50,625.00
Andrew L. Barroway	15.5	\$625	9,687.50
Marc A. Topaz	22.65	\$595	13,476.75
David Kessler	54.4	\$595	32,368.00
Stuart L. Berman	73.6	\$550	40,480.00
Michael Yarnoff	1032.25	\$550	567,737.50
Darren J. Check	81.5	\$475	38,712.50
Sean Handler	1252.0	\$475	594,700.00
Kay Sickles	203.71	\$475	96,762.25
<b>ATTORNEYS:</b>			
Ian Berg	81.0	\$395	31,995.00
Jennifer Enck	22.75	\$395	8,986.25
John Gross	165.9	\$395	65,530.50
Benjamin J. Hinerfeld	850.11	\$395	335,793.45
Richard Maniskas	38.7	\$425	16,447.50
Jodi Murland	676.4	\$300	202,920.00
Robin Winchester	21.5	\$425	9,137.50
<b>CONTRACT ATTORNEYS:</b>			
Max Bailis	765.25	\$275	210,443.75
Tamara Berg	268.0	\$275	73,700.00



Karen Connelly	845.25	\$300	253,575.00
Jeffrey Davidson	553.25	\$300	165,975.00
Robert Guarino	52.5	\$275	14,437.50
Jeffry Herman	696.75	\$325	226,443.75
Kurt Weiler	828.25	\$325	269,181.25
<b>PROFESSIONAL SUPPORT STAFF</b>			
Jean Chuba	32.5	\$225	7,312.50
Kleopatra Dargakis	26.0	\$215	5,590.00
Dielas Dixon	110.9	\$225	24,952.50
Benjamin Eng	64.0	\$225	14,400.00
Kathleen Guaracino	20.0	\$225	4,500.00
Myrna Kessler	36.1	\$225	8,122.50
Joan Piavis	36.5	\$215	7,847.50
Noah Wortman	22.0	\$215	4,730.00
Amy Cashwell	111.9	\$205	22,939.50
Mark Paladino	77.5	\$195	15,112.50
Corinne Schauffelle	20.5	\$195	3,997.50
Melinda Black	14.8	\$155	2,294.00
Dawn DeRito	31.4	\$150	4,710.00
Gayle Dickinson	13.5	\$155	2,092.50
Deborah Griffin	38.2	\$155	5,921.00
Kimberly Lucas	64.7	\$150	9,705.00
Brenda Stanford	12.0	\$155	1,860.00
<b>TOTALS:</b>	<b>9,408.72</b>		<b>\$3,475,202.95</b>

Exhibit "2"

Delphi Corp. Securities Litigation

**SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP**

EXPENSE REPORT: Inception through October 30, 2007

Meals, Hotels & Transportation.....	49,083.02
Photocopying .....	30,959.88
Telephone & Fax.....	833.57
Messenger, Courier & Federal Express .....	962.69
Postage .....	725.87
Lexis, Westlaw, Dow Jones, Bloomberg Research .....	10,724.35
Press Releases .....	90.00
Litigation Fund Contributions.....	125,000.00
Local Counsel .....	1,411.40
Document Review Storage and Retrieval .....	22,500.00
Notary Services .....	10.00
TOTAL: .....	<u>\$242,300.78</u>

# **EXHIBIT SSS**

**TAB D – Declaration of James J. Sabella**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----X	:	
	:	
IN RE: DELPHI CORPORATION	:	MDL No. 1725
SECURITIES, DERIVATIVE & "ERISA"	:	Master Case No. 05-md-1725
LITIGATION	:	Hon. Gerald E. Rosen
	:	
	:	
	:	
	:	
	:	
-----X		

**DECLARATION OF JAMES J. SABELLA IN SUPPORT OF JOINT  
PETITION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF  
LITIGATION EXPENSES FILED ON BEHALF OF GRANT & EISENHOFER P.A.**

JAMES J. SABELLA declares as follows:

1. I am a director of the law firm of Grant & Eisenhofer P.A. ("G&E"). G&E is one of the Court-appointed Lead Counsel for the Court-appointed lead plaintiffs, Teachers' Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H., and Stichting Pensioenfonds ABP (hereinafter "Lead Plaintiffs"), and the prospective Class in the above-captioned consolidated securities class action. I submit this declaration in support of G&E's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by G&E in connection with this litigation. A detailed description of the work performed by the professionals at G&E on behalf of Lead Plaintiffs and the Class is contained in the Joint Declaration of John P. Coffey, Bradley E. Beckworth, Michael K. Yarnoff and Stuart M. Grant in Support of Proposed Partial Settlement, Plan of Allocation and Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed simultaneously herewith.

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the G&E attorneys and professional support staff who were involved in this litigation, and the lodestar calculation based on G&E's current billing rates. For personnel who are no longer employed by G&E, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by G&E, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

3. The hourly rates for the G&E attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by G&E is 6,164.80. The total lodestar for G&E is \$2,733,444.75, consisting of \$2,702,326.00 for attorneys' time and \$31,118.75 for professional support staff time.

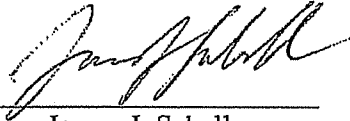
5. G&E's lodestar figures are based upon G&E's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in G&E's billing rates.

6. As detailed in Exhibit 1, G&E has incurred a total of \$406,195.99 in unreimbursed expenses in connection with the prosecution of this litigation.

7. The expenses incurred in this action are reflected on G&E's books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

8. With respect to the standing of counsel in this case, attached hereto as Exhibit 2 is a brief biography of G&E and the G&E attorneys who were principally involved in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 5, 2007.

  
\_\_\_\_\_  
James J. Sabella

**EXHIBIT 1**



<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Fees</u>
Stuart M. Grant	253.90	\$ 825.00	\$ 209,467.50
Jay W. Eisenhofer	117.00	\$ 825.00	\$ 96,525.00
Jacqueline Bryks	70.00	\$ 525.00	\$ 36,750.00
James J. Sabella	606.80	\$ 775.00	\$ 470,270.00
Sidney S. Liebesman	3.20	\$ 650.00	\$ 2,080.00
Geoffrey C. Jarvis	141.00	\$ 725.00	\$ 102,225.00
S. Lee Sobocinski	61.75	\$ 175.00	\$ 10,806.25
Michelle N. Peterson	654.10	\$ 250.00	\$ 163,525.00
Naumon Amjed	5.25	\$ 425.00	\$ 2,231.25
Lindsay Roseler	740.80	\$ 300.00	\$ 222,240.00
Jonathan D. Margolis	30.20	\$ 545.00	\$ 16,459.00
Sharan Nirmul	1,492.15	\$ 445.00	\$ 664,006.75
Valarie Ziminsky	11.30	\$ 125.00	\$ 1,412.50
Benjamin Hinerfeld	451.65	\$ 360.00	\$ 162,594.00
Matthew Hartman	90.00	\$ 210.00	\$ 18,900.00
Talyana Bromberg	805.10	\$ 375.00	\$ 301,912.50
Domenico Minerva	2.00	\$ 300.00	\$ 600.00
Joseph Gulino	628.60	\$ 400.00	\$ 251,440.00
	6,164.80		\$ 2,733,444.75

<u>Description</u>	
Duplication Services	47,813.00
Expert Services	88,748.00
Fax	32.25
Filing Fee	7.90
Litigation Fund Contribution	125,000.00
Meeting Expense	308.29
Outside Counsel	14,226.98
Postage & Delivery	660.01
Research - Computer Outside	111,204.32
Telephone	38.42
Transcription Services	1,411.85
Travel	16,744.97
	\$ 406,195.99
	<u>\$ 3,139,640.74</u>

# **EXHIBIT TTT**

**TAB E – Declaration of Michael S. Etkin**



Beckworth, Michael K. Yarnoff and Stuart M. Grant in Support of Proposed Partial Settlement, Plan of Allocation and Award of Attorneys' Fees and Reimbursement of Litigation Expenses filed simultaneously herewith.

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the LS attorneys and professional support staff who were involved in this litigation, and the lodestar calculation based on LS's current billing rates. For personnel who are no longer employed by LS, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by LS, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

3. The hourly rates for the LS attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by LS through October 31, 2007 is 1,782. The total lodestar for LS through October 31, 2007 is \$756,898.50, consisting of \$724,000.00 for attorneys' time and \$32,898.50 for professional support staff time.

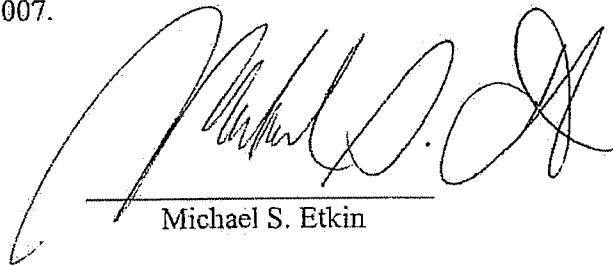
5. LS's lodestar figures are based upon LS's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in LS's billing rates.

6. As detailed in Exhibit 2, LS has incurred a total of \$17,760.61 in un-reimbursed expenses in connection with the prosecution of this litigation.

7. The expenses incurred in this action are reflected on LS's books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

8. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of LS and the undersigned who was principally involved in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 2, 2007.



Michael S. Etkin

**EXHIBIT "1"**

## EXHIBIT 1

IN RE DELPHI CORPORATION SECURITIES, DERIVATIVE  
& "ERISA" LITIGATION

LOWENSTEIN SANDLER, PC

INCEPTION THROUGH OCTOBER 31, 2007

Name	Status	Total Hours	Hourly Rate	Total Lodestar
Michael S. Etkin	P	562.20	\$625.00	\$351,375.00
Ira M. Levee	OC	589.90	\$425.00	\$250,070.50
Bruce Buechler	P	1.20	\$495.00	\$ 594.00
Jeffrey D. Proh	P	15.80	\$495.00	\$ 7,821.00
Eric H. Horn	A	9.00	\$350.00	\$ 3,150.00
Wojciech F. Jung	A	20.00	\$300.00	\$ 6,000.00
Alison E. Kowalski	A	32.60	\$250.00	\$ 8,150.00
Karina Pia Lucid	A	28.10	\$325.00	\$ 9,135.50
Thomas A. Pitta	A	12.90	\$360.00	\$ 4,644.00
S. Jason Teele	A	238.10	\$350.00	\$ 83,335.00
Joseph M. Yar	A	1.00	\$225.00	\$ 225.00
Gina C. Buccellato	PL	35.00	\$150.00	\$ 5,250.00
LaAsia Canty	PL	52.80	\$100.00	\$ 5,280.00
Lorraine D'Alessio	PL	10.70	\$100.00	\$ 1,070.00
Christine E. Deacon	PL	.90	\$150.00	\$ 135.00
Waldemar Jelinski	PA	1.10	\$ 95.00	\$ 104.50
Francine Koliopoulos	PA	1.40	\$140.00	\$ 196.00
Lisa Marie Sowinski	PL	0.20	\$150.00	\$ 30.00
Denise Toulson	PA	98.60	\$ 95.00	\$ 9,367.00
Markis M. Abraham	SA	22.30	\$120.00	\$ 2,676.00
Dawn M. Conover	SA	8.80	\$120.00	\$ 1,056.00
Lloyd Jeglikowski	SA	5.70	\$120.00	\$ 684.00
Aliza Reicher	A	10.60	\$175.00	\$ 1,855.00
Allison N. Sawyer	A	22.80	\$205.00	\$ 4,674.00
Katherine E. Taggart	L	.30	\$ 80.00	\$ 24.00
Total Lodestar		1,782.00		\$756,898.50



STATUS:

P	Partner
OC	Of Counsel
A	Associate
PL	Paralegal
SA	Summer Associate
PA	Project Assistant
L	Librarian

**EXHIBIT "2"**

EXHIBIT 2

IN RE DELPHI CORPORATION SECURITIES, DERIVATIVE  
& "ERISA" LITIGATION

LOWENSTEIN SANDLER, PC

DISBURSEMENTS

INCEPTION THROUGH OCTOBER 31, 2007

CATEGORY	AMOUNT
Messenger and Delivery Charges	\$ 556.60
Printing and Duplicating Services--Internal	\$4,339.37
Facsimile	\$ 402.30
Filing Fees	\$ 505.00
Miscellaneous	\$ 37.43
Secretarial Overtime	\$ 316.25
Bulk Rate/Special Postage	\$ 131.29
Computerized Legal Research	\$6,412.89
Telecommunications	\$ 731.99
Travel	\$4,327.49
TOTAL	\$17,760.61

# **EXHIBIT UUU**

**TAB F – Declaration of Debra Beth Pevos**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----X	:	
	:	
IN RE: DELPHI CORPORATION	:	MDL No. 1725
SECURITIES, DERIVATIVE & "ERISA"	:	Master Case No. 05-md-1725
LITIGATION	:	Hon. Gerald E. Rosen
	:	
	:	
	:	
	:	
	:	
	:	
-----X	:	

**DECLARATION OF DEBRA BETH PEVOS  
IN SUPPORT OF JOINT PETITION FOR  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES  
FILED ON BEHALF OF SULLIVAN, WARD, ASHER & PATTON, P.C.**

DEBRA BETH PEVOS declares as follows:

1. I am a shareholder of the law firm of Sullivan, Ward, Asher & Patton, P.C. ("SWA&P"). SWA&P was retained as Liaison Counsel for the Court-appointed lead plaintiffs, Teachers' Retirement System of Oklahoma, Public Employees' Retirement System of Mississippi, Raiffeisen Kapitalanlage-Gesellschaft m.b.H., and Stichting Pensioenfonds ABP (hereinafter "Lead Plaintiffs"), and the prospective Class in the above-captioned consolidated securities class action. I submit this affidavit in support of SWA&P's application for an award of attorneys' fees in connection with services rendered in this case, as well as the reimbursement of expenses incurred by SWA&P in connection with this litigation. As Liaison Counsel, SWA&P advised Lead Counsel with respect to local practices and procedures, and provided strategic guidance to Lead Counsel with respect to a variety of issues.

2. The schedule attached hereto as Exhibit 1 is a detailed summary indicating the amount of time spent by the SWA&P attorneys who were involved in this litigation, and the

lodestar calculation based on SWA&P's current billing rates. For personnel who are no longer employed by SWA&P, the lodestar calculation is based upon the billing rates for such personnel in his or her final year of employment. The schedule was prepared from contemporaneous daily time records regularly prepared and maintained by SWA&P, which are available at the request of the Court. Time expended in preparing this application for fees and reimbursement of expenses has not been included in this request.

3. The hourly rates for the SWA&P attorneys and professional support staff included in Exhibit 1 are the same as the regular current rates charged for their services in non-contingent matters and/or which have been accepted and approved in other securities or shareholder litigation.

4. The total number of hours expended on this litigation by SWA&P through October 31, 2007 is 175.90. The total lodestar for SWA&P is \$56,367.50, consisting of 175.90 for attorneys' time.

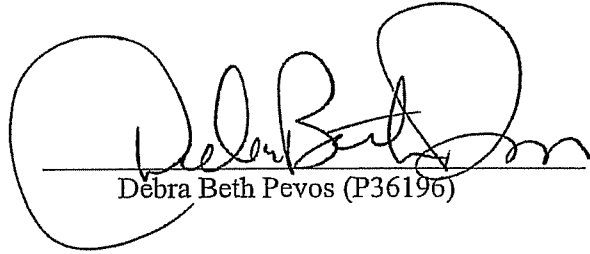
5. SWA&P's lodestar figures are based upon SWA&P's billing rates, which rates do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in SWA&P's billing rates.

6. As detailed in Exhibit 2, SWA&P has incurred a total of \$14,007.26 in expenses in connection with the prosecution of this litigation through October 31, 2007.

7. The expenses incurred in this action are reflected on SWA&P's books and records. These books and records are prepared from expense vouchers, check records and other source materials and represent an accurate recordation of the expenses incurred.

8. With respect to the standing of counsel in this case, attached hereto as Exhibit 3 is a brief biography of SWA&P Firm statement from website and the SWA&P attorneys who were principally involved in this litigation.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on November 1, 2007.



Debra Beth Pevos (P36196)

W0566864



**SUMMARY STATEMENT OF HOURS  
OF SERVICES RENDERED**

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Debra Beth Pevos ("DBP")	159.90	325.00	\$51,967.50
William H. Thompson ("WHT")	1.20	275.00	\$330.00
Kevin S. Toll ("KST")	13.30	275.00	\$3,657.50
Jennifer R. Moran ("JRM")	1.50	275.00	\$412.50
	<u>175.90</u>		<u>\$56,367.50</u>

**EXHIBIT 1**

W0566867

**SUMMARY STATEMENT OF EXPENSES**

6/15/06	Exhibit Tabs	\$42.00
	Postage	329.71
	Messenger Charges	25.50
	Photocopies	<u>2,270.80</u>
	<b>TOTAL</b>	<b>\$2,668.01</b>
7/17/06	Photocopies	\$46.40
	Postage	51.66
	Messenger Charges	<u>17.00</u>
	<b>TOTAL</b>	<b>\$115.06</b>
8/11/06	Pacer	\$16.72
	Messenger Charges	8.50
	Photocopies	92.20
	Postage	<u>71.19</u>
	<b>TOTAL</b>	<b>\$188.61</b>
9/15/06	Photocopies	\$364.60
	Postage	107.07
	Messenger Charges	<u>37.00</u>
	<b>TOTAL</b>	<b>\$508.67</b>
10/12/06		-0-
11/10/06	Pacer	<u>\$1.20</u>
	<b>TOTAL</b>	<b>\$1.20</b>
12/12/06	Lexis	\$62.80
	Postage	140.45
	Photocopies	727.80
	Messenger Charges	18.50
	Exhibit Tabs	<u>1.00</u>
	<b>TOTAL</b>	<b>\$950.55</b>
1/9/07		-0-
2/8/07	Photocopies	\$120.80
	Messenger Charges	37.00
	Postage	<u>29.58</u>
	<b>TOTAL</b>	<b>\$187.38</b>

3/12/07	Overnight Mail	\$15.36
	Photocopies	1,004.00
	Postage	<u>238.74</u>
	<b>TOTAL</b>	<b>\$1,258.10</b>
4/16/07	Long Distance Calls	\$3.15
	Photocopies	<u>2.60</u>
	<b>TOTAL</b>	<b>\$5.75</b>
5/11/07	Photocopies	\$97.60
	Messenger Charges	18.50
	Overnight Mail	15.36
	Pacer	.80
	Postage	28.47
	Lexis	<u>40.63</u>
	<b>TOTAL</b>	<b>\$201.63</b>
6/7/07		-0-
7/10/07	Photocopies	\$904.60
	Postage	<u>191.90</u>
	<b>TOTAL</b>	<b>\$1,096.50</b>
8/6/07	Pacer	\$4.08
	Photocopies	137.00
	Postage	<u>47.16</u>
	<b>TOTAL</b>	<b>\$188.24</b>
9/10/07	Messenger Charges	\$18.50
	Photocopies	1,512.20
	Postage	<u>17.62</u>
	<b>TOTAL</b>	<b>\$1,548.32</b>
10/9/07	Photocopies	\$36.80
	Postage	.41
	Overnight Mail	<u>988.79</u>
	<b>TOTAL</b>	<b>\$1,026.00</b>

EXHIBIT 2 (Page 2 of 3)

11/1/07	Messenger Charge	\$18.50
	Photocopies	3,632.60
	Postage	412.14
	<b>TOTAL</b>	<b>\$4,063.24</b>
	<b>TOTAL EXPENSES</b>	<b><u>\$14,007.26</u></b>

**EXHIBIT 2 (Page 3 of 3)**

W0563420