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

[PROPOSED] MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, PAYMENT OF LITIGATION EXPENSES, AND PAYMENT OF SERVICE AWARDS TO PLAINTIFFS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

Labaton Sucharow LLP ("Labaton Sucharow"), attorneys for Plaintiff Arkansas Teacher Retirement System ("ARTRS") and Court-appointed Lead Counsel[1] for the Settlement Class, respectfully submits this memorandum of law on behalf of all Plaintiffs' Counsel[2] in support of its motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees, payment of Litigation Expenses, and payment of Service Awards to Plaintiff ARTRS as well as Plaintiffs Arnold Henriquez, Michael T. Cohn, William R. Taylor, Richard A. Sutherland, The Andover Companies Employee Savings and Profit Sharing Plan, and James Pehoushek-Stangeland (collectively, the "ERISA Plaintiffs," and together with ARTRS, "Plaintiffs") in connection with the proposed Settlement of these consolidated Class Actions.

Preliminary Statement

The efficient, focused efforts of Plaintiffs' Counsel, pursuant to an innovative mediation and discovery program endorsed by this Court, have produced an extraordinary Settlement in which State Street Bank and Trust Company ("State Street") has agreed to pay $300,000,000 in cash for the benefit of the Settlement Class. The Settlement, which equals approximately 20% of estimated damages, is by far the largest common fund settlement in any case brought under Chapter 93A, and is the third-largest common fund settlement, excluding federal securities actions, to be filed within the First Circuit.

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[1] Unless otherwise indicated, capitalized terms have the same meanings as in the Stipulation and Agreement of Settlement, dated as of July 26, 2016 (the "Settlement Agreement," ECF No. 89).

[2] In addition to Labaton Sucharow, Plaintiffs' Counsel includes Thornton Law Firm LLP ("TLF"), Lieff Cabraser Heimann & Bernstein LLP ("Lieff Cabraser"), Keller Rohrback L.L.P. ("Keller Rohrback"), McTigue Law LLP ("McTigue Law"), and Zuckerman Spaeder LLP ("Zuckerman Spaeder"). Labaton Sucharow, TLF, and Lieff Cabraser are counsel in the *ARTRS* Action, which asserted class claims on behalf of all otherwise eligible custody clients of State Street (including ERISA plans) for violations of the Massachusetts Consumer Protection Act, Mass. Gen. Laws ch. 93A ("Chapter 93A"), §§ 9, 11, and for breach of fiduciary duty and negligent misrepresentation. Keller Rohrback and McTigue Law/Zuckerman Spaeder are counsel in the *Andover Companies* and *Henriquez* Actions, respectively, which asserted federal statutory claims under ERISA solely for the benefit of ERISA plan custody clients of State Street.

Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully seeks an attorneys' fee of $74,541,250, or approximately 24.85% of the Class Settlement Fund, plus any accrued interest.[3] Lead Counsel also respectfully seeks payment of Litigation Expenses in the amount of $1,257,697.94, and Service Awards to Plaintiffs totaling $85,000.

The 24.85% requested fee falls comfortably within the range of fees that courts within this Circuit generally award in class action settlements, and have awarded in "megafund" settlements of $100 million or more. The fee aligns with the mean and median of percentage fees awarded in 444 settlements in all federal courts in 2006 and 2007. The fee is comparable to the 25% fee awarded in the similar Bank of New York Mellon indirect FX class action ("*BNYM FX*"), which recently settled for $335 million in customer class recovery.

Further, the requested fee is reasonable given the risk assumed by Plaintiffs' Counsel in undertaking this factually and legally complex case, before *BNYM FX* was commenced and before the SEC, DOL, and DOJ arrived on the scene; the large average recovery per-Class member achieved here for an atypically small Settlement Class; the time invested in the mediation and discovery process and preparation for potential litigation; and the challenges of negotiating a fair, reasonable and adequate Settlement Agreement and Plan of Allocation acceptable to State Street, DOL, and the SEC as well as Plaintiffs.

Comparison of the requested fee to Plaintiffs' Counsel's lodestar confirms that the fee is reasonable. A lodestar "cross-check" yields a multiplier of 1.8, which is relatively low and appropriate in view of the risk undertaken, the work performed, and the results achieved.

[3] The requested fee is equivalent to 25% of the Class Settlement Fund after deduction of the maximum Litigation Expenses disclosed in the Notice ($1,750,000) and the maximum Service Awards disclosed in the Notice ($85,000). Lead Counsel seeks this fee despite the fact that actual Litigation Expenses are substantially less than $1.75 million (*see* Part III below), and regardless of whether Service Awards are granted in full.

ARGUMENT

I. STANDARDS GOVERNING ATTORNEYS' FEE AWARDS IN COMMON FUND CLASS ACTIONS

A. The Common Fund Doctrine

This Court, having certified the Settlement Class in the Preliminary Approval Order (ECF No. 97, ¶ 3), has discretion to award Lead Counsel "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h).

Under the common fund doctrine, where counsel succeeds in obtaining a fund that benefits the class, they are entitled to "a reasonable attorney's fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The doctrine is rooted in "the equitable principle that those who have profited from litigation should share its costs." *In re Thirteen Appeals Arising Out of the San Juan DuPont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 n.6 (1st Cir. 1995).

B. The Percentage-of-Fund Method of Determining Attorneys' Fees Prevails in This Circuit

In a common fund case, this Court retains discretion to calculate attorneys' fees either by the percentage-of-fund ("POF") method or the lodestar method. *See Thirteen Appeals*, 56 F.3d at 307. The First Circuit recognized that "use of the POF method in common fund cases is the prevailing praxis," however, and noted the "distinct advantages" of the POF method over the lodestar method. *Id.*

The court explained that because the POF method is result-oriented, whereas the lodestar method is process-oriented, the POF method is less burdensome for the court, it enhances the

efficiency of plaintiffs' counsel, and it "better approximates the workings of the marketplace." *Id.*; *see also Missouri v. Jenkins*, 491 U.S. 274, 285 (1989) (reasonable percentage fee generally should emulate what counsel would receive had they been bargaining for services in the marketplace); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007) ("The POF method is appropriate in common fund cases because it 'rewards counsel for success and penalizes it [counsel] for failure.'") (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995)).

Thus, at least since *Thirteen Appeals*, courts within this Circuit overwhelmingly have applied the POF method in common fund class actions. *See, e.g., In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 11-MD-02208-MAP, 2014 WL 6968424, at *6-7 (D. Mass. Dec. 9, 2014) (collecting cases); *In re Puerto Rican Cabotage Antitrust Litig.*, 815 F. Supp. 2d 448, 458 (D.P.R. 2011) (POF "methodology is favored in this Circuit"); *cf. Tyler v. Michaels Stores, Inc.*, 150 F. Supp. 3d 53, 66 (D. Mass. 2015) (using lodestar method in coupon settlement "because using the percentage-of-recovery method would result in a substantial reduction of attorneys' fees from what class counsel has requested, which is unwarranted here").[4]

C. Factors Commonly Considered By Courts Within This Circuit

Although the First Circuit has not set forth a specific list of factors for use in assessing the reasonableness of a fee request, courts within this Circuit generally consider:

> (1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity and duration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the case by counsel; (6) awards in similar cases; and (7) public policy considerations, if any.

[4] In *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819 (D. Mass. 1987) (Wolf, J.), which predates *Thirteen Appeals*, this Court awarded a fee calculated using the lodestar method because it was paid by defendants directly to plaintiffs' counsel. The settlement was not a common fund settlement. *Id.* at 825-26.

E.g., *Medoff v. CVS Caremark Corp.*, No. 09-cv-554-JNL, 2016 WL 632238, at *8 (D.R.I. Feb. 17, 2016) (quoting *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833, at *3 (D. Mass. Aug. 17, 2005)); *In re Neurontin Mktg. & Sales Practices Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014); *Puerto Rican Cabotage*, 815 F. Supp. 2d at 458.

As discussed below, each of these factors supports the requested fee.

II. THE REQUESTED ATTORNEYS' FEE IS REASONABLE AND SHOULD BE AWARDED FROM THE CLASS SETTLEMENT FUND

A. The Requested Fee Is Reasonable When Assessed Under the Relevant Factors

1. The Requested Fee Aligns With the "Benchmark" Fee in This Circuit and Awards in Comparable Settlements

An attorneys' fee of 24.85% falls comfortably within the range of fees regularly awarded by courts within this Circuit. "Within the First Circuit, courts generally award fees 'in the range of 20-30%, with 25% as the benchmark.'" *Bezdek v. Vibram USA, Inc.*, 79 F. Supp. 3d 324, 349-50 (D. Mass.) (quoting *Latorraca v. Centennial Techs. Inc.*, 834 F. Supp. 2d 25, 27 (D. Mass. 2011) (collecting cases)), *aff'd*, 809 F.3d 78 (1st Cir. 2015); *see id.* at 350 ("The plaintiffs' request for 25% of the settlement fund in fees falls squarely within what is recognized in this circuit as the range of reasonable POF amounts."); *Prudential*, 2014 WL 6968424, at *6 ("[T]he requested fees are 24.8% of the total settlement, a percentage that is reasonable in this matter and in line with the general range in this Circuit.").[5] The Court's remarks during the June 23, 2016

[5] *See also, e.g.*, *In re Lupron Mktg. & Sales Practices Litig.*, No. 01-CV-10861-RGS, 2005 WL 2006833, at *5 (D. Mass. Aug. 17, 2005) ("Courts in the First Circuit have recognized that fee awards in common fund cases typically range from 20 to 30 percent.") (citing cases); *Puerto Rican Cabotage*, 815 F. Supp. 2d at 463 (adopting lead counsel's "concession" that "[c]ourts in this Circuit frequently have recognized that fee awards in common fund cases typically range from 20 to 30 percent"); *Kingsborough v. Sprint Commc'ns Co. L.P.*, Civ. No. 14-12049-NMG, 2015 WL 1605506, at *2 (D. Mass. Apr. 8, 2015) ("At 25% of the common fund, the fee and expense request is reasonable.") (citing cases); *Mazola v. May Dep't Stores Co.*, No. 97 CV 10872-NG, 1999 WL 1261312, at *4 (D. Mass. Jan. 27, 1999) ("The normal percentage awarded by federal courts is 20-30% of the value of the settlement,

Status Conference in this action appear to be in accord.[6]

A fee short of 25% is further shown to be reasonable when compared to POF fees awarded in common fund settlements of comparable size within this Circuit. *See Puerto Rican Cabotage*, 815 F. Supp. 2d at 462 (investigating "fees awarded in other, similar, individual cases within the First Circuit"); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 685 (D. Md. 2013) ("In considering awards in similar cases, courts look to cases of similar size, rather than similar subject matter."). For this purpose, Lead Counsel defines "comparable size" as any settlement of $100 million or more. *See Neurontin*, 58 F. Supp. 3d at 170 (referring to class actions yielding settlement funds exceeding $100 million as "megafund" cases).

The following chart sets forth the eight (8) such settlements in descending percentage fee order, with this proposed Settlement and fee added for illustration:

with 25% being a 'benchmark.' [D]istrict court cases . . . show that, in this circuit, percentage fee awards range from 20% to 35% of the fund. This approach mirrors that taken by the federal courts in other jurisdictions.").

[6] *See* June 23, 2016 Status Conf. Transcript, Exhibit 26 to accompanying Declaration of Lawrence A. Sucharow in Support of (A) Plaintiffs' Assented-to Motion for Final Approval of Proposed Class Settlement and Plan of Allocation and Final Certification of Settlement Class and (B) Lead Counsel's Motion for an Award of Attorneys' Fees, Payment of Litigation Expenses, and Payment of Service Awards to Plaintiffs ("Counsel Declaration" or "Counsel Decl."), at 15:18-16:2. Throughout this brief, citations to "Ex. ___" refer to exhibits to the Counsel Declaration.

Class Action	POF Fee Awarded	Settlement Amount	Lodestar Multiplier
DuPont Plaza (D.P.R. 1995) (mass tort)	**30.9%**	$220 million	n/a[7]
Neurontin (D. Mass. 2014) (drug marketing and sales)	**26.65%**[8]	$325 million	3.32
CVS (D. Mass. 2005) (securities)[9]	**25%**	$110 million	3.27
State Street *(D. Mass. 2016) (unfair and deceptive acts and practices/ERISA)*	***24.85%***	***$300 million***	***1.8***
Lupron (D. Mass. 2005) (drug marketing and sales)	**23.79%**[10]	$150 million	1.41
First Databank (D. Mass. 2009) (drug marketing and sales)[11]	**20%**	$350 million	8.3
Lernout & Hauspie (D. Mass. 2004) (securities)[12]	**20%**	$120.52 million	1.4
Tyco (D.N.H. 2007) (securities)	**14.5%**	$3.2 billion	2.7
Raytheon **(**D. Mass. 2004) (securities)[13]	**9%**	$460 million	3.15

[7] The lodestar multiplier is unknown because fees were reallocated on appeal between two groups of plaintiffs' counsel. *See Thirteen Appeals*, 56 F.3d at 312.

[8] The total award in *Neurontin* was 28% of the common fund, including $4.38 million in expenses. 56 F. Supp. 3d at 170, 172-73.

[9] Order and Final Judgment, *In re CVS Corp. Sec. Litig.*, Civ. No. 01-11464 JLT (D. Mass. Sept. 8, 2005), ¶ 13 (Ex. 27).

[10] The total award in *Lupron* was 25% of the common fund, including $1.82 million in expenses. 2005 WL 2006833, at *2, 7.

[11] *New England Carpenters Health Benefits Fund v. First Databank, Inc.*, Civ. No. 05-11148-PBS, 2009 WL 2408560 (D. Mass. Aug. 3, 2009).

[12] Order and Final Judgment, *In re Lernout & Hauspie Sec. Litig.*, No. 01-CV-11589 PBS (D. Mass. Dec. 22, 2004), ¶ 14 (Ex. 28).

[13] Order and Final Judgment, *In re Raytheon Co. Sec. Litig.*, Civ. No. 99-12142-PBS (D. Mass. Dec. 6, 2004), ¶ 14 (Ex. 29).

The requested 24.85% fee is facially reasonable in comparison with those awarded in the *DuPont Plaza* action and in *Neurontin*, *CVS*, and *Lupron*, and, as further discussed in Part II.B below, yields a lodestar multiplier far lower than those approved in *Neurontin* and *CVS* and comparable to the multiplier approved in *Lupron*.

The percentage fees awarded in *First Databank*, *Raytheon*, and *Tyco* do not undermine the reasonableness of the fee sought. In *First Databank*, plaintiffs' counsel requested a fee that represented a multiplier of 10.05. 2009 WL 2408560, at *1. The court, while agreeing that "several factors militate in favor of a significant multiplier," found that multiplier too high under the circumstances and awarded a fee that reduced the multiplier to 8.3. *Id.* at *2. The multiplier yielded by the requested fee here is far smaller than 8.3. *See also Bezdek*, 79 F. Supp. 3d at 351 (similarly citing *First Databank* in awarding 25% fee).

The 9% fee requested and granted in *Raytheon* was a plainly a function of plaintiffs' counsel's *ex ante* retainer agreement with the lead plaintiff New York State Common Retirement Fund, one of the nation's largest public pension funds.[14] Even so, the 3.15 lodestar multiplier reflected in the fee granted in *Raytheon* far exceeds the multiplier sought here.

Tyco is an outlier given that the $3.2 billion gross recovery there is more than nine times larger than this Settlement. *See Tyco*, 535 F. Supp. 2d at 266 (referring to $1 billion-plus settlements as "super mega-fund" cases). At the time, *Tyco* was the second-largest securities class action settlement in history, and it remains the fourth-largest today. Plaintiffs' counsel in *Tyco* requested a 14.5% fee after that percentage was recommended by two retired federal judges, and the court granted the fee because it fell within the range of POF fees awarded in the

[14] *See* Declaration of Alan P. Lebowitz, General Counsel to the Comptroller of the State of New York, *In re Raytheon Co. Sec. Litig.*, Civ. No. 99-12142-PBS (D. Mass. Nov. 23, 2004), ¶ 9 (Ex. 30).

16 largest securities settlements, with recoveries from $400 million to $6.13 billion. *Id.* at 266 & n.13, 267-68. That analysis supports the approach taken above and the reasonableness of the requested 24.85% fee.

Some courts, at least in "megafund" cases, have "lower[ed] the fee award percentage as the size of the settlement increases to avoid giving attorneys a windfall at the plaintiffs' expense." *Neurontin*, 58 F. Supp. 3d at 170 (citing *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 374-75 (S.D.N.Y. 2013) (awarding 16% of $730 million settlement)). Other courts have disfavored this practice, however, and courts in this Circuit resist it.

In *Lupron*, for example, the court adopted the Ninth Circuit's conclusion that "the argument for a reduction of the percentage award as the size of a settlement fund increases reflects neither reality nor sound judicial policy," and granted the requested 25% fee and expense award. 2005 WL 2006833, at *6 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 n.4, 1052 (9th Cir. 2002)).[15] In *In re Relafen Antitrust Litigation*, 231 F.R.D. 52, 81 (D. Mass. 2005), the court granted the requested fee of 33-1/3% of $67 million in class recovery, finding that despite "several cases that suggest that the standard percentage is generally lower as the common fund increases . . . , the requested fee is not out of proportion with large class actions."

In *Neurontin*, Chief Judge Saris reduced fees and expenses from the requested 33-1/3% of the $325 million settlement fund to 28%. That was based, however, on an empirical study of class action fee awards (discussed below), not the declining percentage principle, which "[s]ome courts have rejected[.]" 58 F. Supp. 3d at 171-72. Indeed, the 26.65% fee awarded in *Neurontin*

[15] *See also In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 174 (3d Cir. 2006) ("[T]here is no rule that a district court must apply a declining percentage reduction in every settlement involving a sizable fund.") (quoting *In re Rite-Aid Corp. Sec. Litig.*, 396 F.3d 294, 303 (3d Cir. 2005)); *In re Cendant Corp. Litig.*, 264 F.3d 201, 284 n.55 (3d Cir. 2001) (recognizing that declining percentage principle is "criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply").

is higher the 24.85% fee sought here. The fee and $1,257,697.94 in Litigation Expenses requested here together equals 25.27% of the Class Settlement Fund, a percentage that similarly is below the 28% reduced combined award in *Neurontin* and is comparable to the 25% combined award in *Lupron.*[16]

One recent common fund settlement is not only of similar size, but also of the same essential subject matter: *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y.) ("*BNYM FX*"). Following the unsealing of several *qui tam* lawsuits, BNYM's custody clients asserted claims for, *inter alia*, unfair and deceptive acts and practices, violations of ERISA, and breach of fiduciary duty premised on a broadly similar alleged practice of excessive concealed markups on indirect FX transactions. *See International Union of Operating Eng'rs v. The Bank of N.Y. Mellon Corp.*, No. C 11-03620 WHA, 2012 WL 476526 (N.D. Cal. Feb. 14, 2012) ("*IUOE*").

In March 2015, the parties in *BNYM FX*, and various government agencies including the DOJ, SEC, DOL, and New York Attorney General, announced settlements totaling $714 million. This omnibus relief included a $335 million payment by BNYM specifically to settle the private customer class cases. The plaintiffs' counsel sought, and received, a fee of 25% of the $335 million recovery ($83.75 million), plus expenses.[17] The percentage fee requested here is slightly lower, on a comparable class settlement amount. *See* Counsel Decl. ¶¶ 34, 173-174.

Empirical studies also support the requested fee. An in-depth review of all 688 class action settlements in federal courts during 2006 and 2007 found that the mean and median fees

[16] In *Lernout & Hauspie*, Chief Judge Saris reduced the 25% fee requested by plaintiffs' counsel to 20%. The court did not issue an opinion, however, and the record does not otherwise reveal the court's reasoning.

[17] Order Awarding Attorneys' Fees, Service Awards, and Reimbursement of Litigation Expenses, *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12-MD-2335 (LAK) (JLC) (S.D.N.Y. Sept. 24, 2015), ¶ 5 (Ex. 14).

awarded in the 444 settlements where the POF method was used (either with or without a lodestar cross-check) were 25.7% and 25.0%, that the mean and median fees awarded in securities cases (233 of 444) were 24.7% and 25.0%, and that the mean and median fees awarded in consumer cases (39 of 444) were 23.5% and 24.6%. Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL STUD. 811, 835 (2010) (Ex. 31); *see also Neurontin*, 58 F. Supp. 3d at 172 (favorably citing this study).[18] The 24.85% fee requested is right in line with Professor Fitzpatrick's findings.

2. Plaintiffs' Counsel Have Achieved a "Mega" Settlement for a "Mini" Class

The result achieved is among the most important factors to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("[T]he most critical factor is the degree of success obtained."). The $300 million Settlement—which equals approximately 20% of total estimated damages—is by far the largest common fund settlement in any case brought under Chapter 93A,[19] and is the third-largest common fund settlement, excluding federal securities actions, to be filed within the First Circuit. *See First Databank*, 2009 WL 2408560, at *2 ("Several factors militate in favor of a significant multiplier. Plaintiffs point out that they successfully achieved a mega-amount of $350,000,000 . . . ."); Counsel Decl. ¶¶ 6, 122-125.

The requested fee is further supported by the atypically small size of the Settlement Class, which numbers roughly 1,300 custody clients of State Street. Whereas in most megafund

[18] Professor Fitzpatrick also found, consistent with the in-Circuit cases cited above, that the mean and median fees awarded in settlements in the First Circuit (23 of 444) were 27.0% and 25.0%. *Id.* at 836.

[19] *Cf. In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516 (3d Cir. 2004) ($44.5 million settlement in class action asserting claims under all 50 States' deceptive acts and practices and antitrust statutes); Final Order Approving Class Action Settlement, *In re Reebok Easytone Litig.*, No. 10-CV-11977 FDS (D. Mass. Jan. 19, 2012) ($25 million settlement in class action asserting Chapter 93A and other state-law claims) (Ex. 32); *Commonwealth Care Alliance v. Astrazeneca Pharms. L.P.*, Civ. A. No. 05-0269 BLS 2, 2013 WL 6268236 (Mass. Super. Ct. Aug. 5, 2013) ($20 million settlement in Chapter 93A class action).

settlements, the average recovery per class member is modest owing to a "class of not insignificant size," *Medoff*, 2016 WL 632238, at *8, Plaintiffs' Counsel here have obtained a megafund Settlement that, as disclosed in the Notice, will provide each Settlement Class member an average gross recovery of $200,000.

The Plan of Allocation, which is discussed more fully in Plaintiffs' concurrently filed brief in support of final approval of the Settlement, includes certain terms that merit attention here. The Plan divides, or allocates, the $300 million Class Settlement Fund into three necessarily unequal parts, including the ERISA Settlement Allocation, which is $60 million and goes to Class members that are ERISA Plans and eligible Group Trusts. Group Trusts are the 55 Class members that have custodied assets that are governed by ERISA and also assets that are not. The claims of other Class Members are satisfied from the RIC Settlement Allocation and Public and Other Settlement Allocation. *See* Counsel Decl. ¶¶ 132, 134, 140, 142.

ERISA Plans and eligible Group Trusts will receive greater settlement recovery per dollar of Indirect FX Trading Volume than other Class members. This premium results from two provisions of the Plan.

First, ERISA Plans and eligible Group Trusts represent 9%-15% of the total Indirect FX Trading Volume (depending on what portion of the Group Trusts' volume actually falls under ERISA), but they are being allocated 20% ($60 million) of the $300 million gross Class Settlement Fund.

Second, no more than $10.9 million of the attorneys' fees awarded by the Court will be deducted from the ERISA Settlement Allocation. The remainder of the fee will be applied to the RIC Settlement Allocation and Public and Other Settlement Allocation proportionately by volume. If, for example, the Court awards the requested 24.85% fee, ERISA Plans and eligible

Group Trusts will pay fees at a lower percentage rate than other Class members. *See* Counsel Decl. ¶¶ 135-138.

These allocation provisions do not relate to the $300 million common fund created by the efforts of Plaintiffs' Counsel. Nor do they bear on the reasonableness of the requested fee as a percentage of the $300 million Settlement produced as a result of those efforts. Both allocation provisions, the $60 million ERISA Settlement Allocation and the $10.9 million fee cap, were agreed-to after Plaintiffs and State Street had already reached their agreement-in-principle on the $300 million Class Settlement Fund. *See* Declaration of Jonathan B. Marks, Ex. 5, ¶¶ 20-21; Counsel Decl. ¶ 139. Indeed, the fee cap was not even raised by DOL until weeks after the agreement-in-principle. *Id.*

Both allocation provisions, moreover, are (1) the product of arm's-length bargaining and agreement among Lead Counsel, ERISA Counsel, and DOL; (2) reflect the exclusive availability of remedies to ERISA Plans and eligible Group Trusts under the federal ERISA laws (not available to other Class Members); and (3) are necessary conditions of DOL's assent to the entire Settlement. Counsel Decl. ¶¶ 138-139. Without these provisions, DOL would not have resolved its investigation of State Street, and without a resolution of that regulatory matter, State Street would not have proceeded with the Settlement. Counsel Decl. ¶¶ 140-141.

3. Plaintiffs' Counsel Assumed Substantial Contingency Risk

"Many cases recognize that the risk assumed by an attorney is 'perhaps the foremost factor' in determining an appropriate fee award." *Lupron*, 2005 WL 2006833, at *4 (quoting *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000)).

Plaintiffs' Counsel undertook this litigation with no assurance of compensation or recovery of costs, and faced substantial risk from the outset. These Class Actions are atypical

with respect to the nature of the defendant, the subject matter, and the application of the statutory claims, and are in many respects hybrids between consumer, securities, and ERISA actions. Besides State Street, there are only four major U.S. custody banks: BNYM, JPMorgan Chase, Citibank, and Northern Trust. These banks were rarely, if ever, sued in relation to their custody businesses before these indirect FX pricing issues first began to surface. Counsel Decl. ¶¶ 164-166.

This action was the first indirect FX case. The *ARTRS* Action has its origin in an April 2008 *qui tam* complaint filed under seal by Associates Against FX Insider Trading, a Relator represented by Plaintiffs' Counsel TLF and Lieff Cabraser, on behalf of California public pension funds. That lawsuit was unsealed in October 2009 by the intervention of the Attorney General of California, revealing for the first time that State Street was charging its custody clients allegedly large undisclosed markups on Indirect FX transactions. ARTRS retained Lead Counsel to investigate potential claims against State Street shortly thereafter. The first of several sealed *qui tam* complaints against BNYM was not filed until October 2009, and the first government intervention and unsealing occurred in January 2011. *See* Counsel Decl. ¶¶ 24-25, 33, 35-36.

ARTRS's initial Class Action Complaint, filed on February 10, 2011 (ECF No. 1), was thus the first complaint filed publicly against a custody bank concerning indirect FX. The Class Action Complaint preceded the many class action complaints filed against BNYM, all of which were later centralized in the Southern District of New York in 2012 as the *BNYM FX* litigation. ARTRS's operative Amended Complaint, filed April 15, 2011 (ECF No. 10), similarly was filed before all but one of the constituent *BNYM FX* complaints, and predated all the rulings on

motions to dismiss those complaints. *E.g.*, *IUOE*, 2012 WL 476526, at *4, 6-7; *see* Counsel Decl. ¶¶ 34, 37, 39, 43.

Thus, when Plaintiffs' Counsel investigated ARTRS's claims and commenced this action, they were working essentially from a clean slate in terms of analyzing (1) ARTRS's FX trades for *prima facie* evidence of excessive markups, (2) and researching the applicability of Chapter 93A to the alleged Indirect FX Methods, (3) whether a custody bank owes a fiduciary duty to its clients in connection with indirect FX services, and (4) whether a nationwide class of custody clients can be certified and on what claims. Counsel Decl. ¶¶ 35, 166.

Equally important, "[t]his is not a case where plaintiffs' counsel can be cast as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Servs. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992). Private plaintiffs led the charge against State Street. The investigations of State Street by the SEC, DOL, and DOJ have not resulted in any public allegations, factual findings, or consent orders that might have benefitted Plaintiffs in their efforts. To the contrary, DOL and the SEC have benefitted significantly from Plaintiffs' Counsel's efforts in achieving the $300 million Settlement, as key terms of the Plan of Allocation are central to these agencies' settlements with State Street. *See* Counsel Decl. ¶¶ 8, 38, 139-141, 167; *cf. Puerto Rican Cabotage*, 815 F. Supp. 2d at 460-61 (court reduced requested 33-1/3% fee to 23% in part because case followed DOJ investigation and FBI raid).

Further, as discussed in the Counsel Declaration and Plaintiffs' brief for final approval of the Settlement, Plaintiffs faced an array of litigation risks after the Court denied State Street's motion to dismiss ARTRS's Amended Complaint. *See Relafen*, 231 F.R.D. at 80 ("Class Counsel alone bore the risk of the case being dismissed at the pretrial stage, of not prevailing at

trial, or even losing on appeal"); *Medoff*, 2016 WL 632238, at *9 ("significant risk of non-payment" weighed in favor of 30% fee); Counsel Decl. ¶¶ 107-130.

These risks did not evaporate once Plaintiffs entered into mediation. To the contrary, State Street brought these substantive issues to bear throughout the extended process, pressing its contentions on, for example, the individualized nature of Class Members' written agreements and oral communications with State Street; the implicit (and in some cases explicit) awareness and acceptance of indirect FX pricing practices by Class Members and their investment managers; cost accounting issues that supported the markups applied to Indirect FX Transactions; and the changing "real" interbank FX rates on a given currency pair at a given point in time. *See Bezdek*, 79 F. Supp. 3d at 351 (noting favorably that documents and other discovery materials "were used during the course of litigation and settlement preparation"); Counsel Decl. ¶¶ 94-95, 168; Marks Decl., Ex. 5, ¶¶ 23-25.

Moreover, as State Street pointed out at the time, a similar indirect FX class action against JPMorgan, asserting claims under New York's consumer-protection law, was dismissed in its entirety on the ground that the statute did not apply to contracts between sophisticated financial institutions. *See Louisiana Mun. Police Emps. Ret. Sys. v. JPMorgan Chase & Co.*, No. 12 Civ. 6659 (DLC), 2013 WL 3357173, at *17 (S.D.N.Y. July 3, 2013).[20]

The settlement negotiations here were complicated and extended by State Street's tandem discussions with the DOJ, DOL, and SEC. State Street had little interest in settling these Class Actions unless it could secure global peace. *See* Counsel Decl. ¶¶ 100-101. Had the mediation

[20] In ruling on State Street's motion to dismiss, the Court reserved judgment as to whether Plaintiffs' Chapter 93A claims could proceed under Section 9 or Section 11 pending development of a factual record on whether ARTRS was a "consumer" or a "business" for purposes of the statute. Section 11 likely requires a greater showing than Section 9 to establish a violation. *See* May 8, 2012 Hearing Tr., Ex. 3, at 97:3-99:6; *see also In re Pharmaceutical Indus. Average Wholesale Price Litig.*, 491 F. Supp. 2d 20, 80 (D. Mass. 2007), *aff'd*, 582 F.3d 156 (1st Cir. 2009).

process broken down (as it very nearly did), the Parties would have reverted to a traditional litigation posture. The prospects for Settlement would have become remote and the risk of non-payment would have increased considerably. The contingency risk assumed by Plaintiffs' Counsel supports the fee requested.

4. Plaintiffs' Counsel Devoted Substantial Time to This Case While Controlling Costs and Avoiding Judicial Intervention

The Settlement, as further described in the Counsel Declaration and the accompanying individual firm declarations, is the product of considerable time, labor, and resources expended overall by Plaintiffs' Counsel. After the California *qui tam* action was unsealed on October 20, 2009, ARTRS retained Lead Counsel to investigate potential class and individual claims ARTRS might have against State Street. Counsel Decl. ¶¶ 25-26; Declaration of George Hopkins, Executive Director of ARTRS ("Hopkins Decl."), Ex. 1, ¶ 7. Lead Counsel chose to associate with TLF and Lieff Cabraser given, among other considerations, their unique knowledge arising from their representation of the Relator in the *qui tam* lawsuit, and began an investigation. *See* Counsel Decl. ¶ 26.

This investigation, including further substantive research for ARTRS's operative Amended Complaint, comprised numerous tasks. ARTRS's counsel had to educate themselves about the essentials of currency trading, and the nature of negotiated (or direct) and non-negotiated (or standing-instruction or indirect) FX trades, and how they work in the context of custody banking. Counsel engaged FX Transparency LLC, a Massachusetts-based currency trading expert, to consult regarding the FX markets and to assist in extracting and analyzing ARTRS's global trading data. FX Transparency conducted several preliminary and final analyses as counsel's investigation proceeded. Ultimately, FX Transparency identified more than 4,200 indirect FX trades executed by State Street for ARTRS's account during 2000-2010,

with an aggregate trading volume of more than $1.2 billion. FX Transparency compared these trades to other FX trades logged and tracked in a comprehensive database of more than 2 million buy-side currency trades. By comparing ARTRS's trades in certain currencies with the same currency pair trades in the database, FX Transparency estimated the trading cost of ARTRS's indirect FX trades in relation to trades made worldwide. *See* Counsel Decl. ¶¶ 27-28.

Further, counsel for ARTRS reviewed and analyzed an array of pertinent documents, including ARTRS's Custodian Contracts and Fee Schedules, the monthly custodial reports and invoices received from State Street, other communications from State Street, and State Street's periodically updated Investment Manager Guides. Counsel researched the applicable law on Chapter 93A, fiduciary duty, and negligent misrepresentation, and reviewed the *qui tam* indirect FX lawsuits against BNYM that had been unsealed. *See* Counsel Decl. ¶¶ 29-30.

Additionally, on September 9, 2010, Lead Counsel, TLF, and George Hopkins, Executive Director of ARTRS, met in Chicago with representatives of Ennis Knupp, a consultant engaged by ARTRS to oversee its investment managers, to discuss FX issues and potential claims against State Street. *See* Counsel Decl. ¶ 31; Hopkins Decl., Ex. 1, ¶ 9.

Because ARTRS has been a custody client of State Street since 1998, and commencing litigation against one's custodian is not a routine matter, ARTRS sought to meet with State Street before filing suit. On December 20, 2010, Mr. Hopkins, Lead Counsel, and TLF met in Boston with State Street's outside counsel and in-house legal and business representatives. *See* Counsel Decl. ¶ 32; Hopkins Decl., Ex. 1, ¶ 10.

The meeting was ultimately unproductive, and counsel for ARTRS commenced this action on February 10, 2011. On April 15, 2011, counsel filed a broader and more detailed Amended Complaint, a centerpiece of which was the analysis conducted by FX Transparency,

asserting class claims for violations of Chapter 93A, §§ 9, 11, breach of fiduciary duty, negligent misrepresentation, and an individual breach of contract claim. *See* Counsel Decl. ¶¶ 33, 39, 43.

ARTRS filed a 65-page brief in opposition to State Street's motion to dismiss. The May 8, 2012 hearing on the motion, including the Court's recitation of its ruling upholding the claims as against State Street Bank and Trust Company, lasted nearly three hours. During a lobby conference immediately following the hearing, and in an ensuing Order, the Court directed ARTRS and State Street to meet to discuss the possibility of settlement and whether they may wish to engage in mediation. *See* Counsel Decl. ¶¶ 46, 52-53, 169-170.

ARTRS and State Street did so and, together with the ERISA Plaintiffs who had filed actions in November 2011 and September 2012, subsequently attended a two-day mediation session in October 2012. Counsel Decl. ¶ 91. Lead Counsel believed that a practical, "business-like" approach to resolving these Class Actions—assuming State Street's cooperation—would ultimately produce an excellent settlement while controlling litigation costs and saving party, third-party, and judicial resources. Counsel Decl. ¶ 86. No settlement was reached in October 2012, but the Parties agreed, subject to the Court's approval, on an innovative framework for exchanging certain discovery and other information and managing the cases with the mediator's assistance. *See* Counsel Decl. ¶¶ 63-64.

During a status conference held on November 15, 2012, the Parties presented their proposed plan for exchanging certain document discovery and other information, having the mediator resolve any disputes, and continuing mediated settlement negotiations. The Court

endorsed this approach, and issued stays of the proceedings followed by an Order of Administrative Closing to enable the Parties' efforts.[21] *See* Counsel Decl. ¶¶ 67-68.

The mediation process was comprehensive and protracted, involving 15 in-person negotiation sessions before Mr. Marks before an agreement-in-principle was reached in June 2015. Numerous sessions included presentations by the Parties on class certification, merits or damages issues. State Street produced, and counsel for ARTRS reviewed and closely analyzed, more than nine million pages of nonpublic documents in response to requests made by Plaintiffs' Counsel. Counsel for ARTRS produced more than 73,000 pages of documents to State Street. Counsel for the ERISA Plaintiffs collectively produced more than 3,600 pages of documents to State Street. Counsel's overall work in preparing for mediation and negotiating the Settlement was coupled with substantial additional work preparing for litigation, including contested discovery, depositions and motion practice, in the event the mediation process broke down. Counsel Decl. ¶¶ 88-99, 171.

Recently, in *Bezdek v. Vibram USA*, Judge Woodlock awarded plaintiffs' counsel's requested 25% fee in a consumer class action asserting claims under Chapter 93A, § 9 and other provisions. An objector "assert[ed] with some specificity her concerns that plaintiffs' counsel did not do enough to earn the percentage they have requested[.]" 79 F. Supp. 3d at 351 n.23. There is no indication that the court considered or approved an alternative dispute process. Regardless, Judge Woodlock's reasoning is apt here:

> This action began . . . with Plaintiff Bezdek, and has expanded to include other plaintiffs and other counsel over time. The case has involved some significant motion practice, including motions to dismiss in each of the three actions, as well as an attempt at

[21] *See* Nov. 15, 2012 Lobby Conference Tr., Ex. 4, at 13:18-14:21, 22:2-10, 25:6-16; ECF Nos. 63, 70, 72, 73; *see also* Fed. R. Civ. P. 1 (rules "should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding").

> mediation . . . . I acknowledge counsels' representations that the parties engaged in extensive fact discovery, which led to Vibram's production of over 40,000 pages of documents as well as other discovery materials which were used during the course of litigation and settlement preparation. Although a proposed settlement was reached prior to identification to the court of a class certification expert or a motion to certify the class, prior to the deposition of any witnesses including the named plaintiffs themselves, and prior to the more substantial summary judgment motion practice that I often see in a case such as this, I find that plaintiffs' counsel engaged in intensive efforts to move the case forward to a favorable result for the class members, without incurring the additional expense and time of conducting depositions and expert discovery.

Id. at 350-51. The First Circuit soundly rejected the objectors' appeal. *Bezdek*, 809 F.3d at 85.

After the agreement-in-principle was reached, negotiating the Settlement Agreement and exhibits took more than a year, and was complicated considerably by State Street's ongoing discussions with the SEC, DOL, and DOJ. In sum, Lead Counsel submits that the time spent litigating these Class Actions and bringing about the Settlement supports the requested fee.[22]

5. These Actions Were Complex and Challenging to Settle

The complexity of these Class Actions also supports the requested attorneys' fee. State Street's alleged unfair and deceptive acts and practices, breaches of fiduciary duty, negligent misrepresentations, and violations of ERISA occurred over a 12-year Class Period in multiple locations, and concerned an opaque market and a little-understood area of the financial services industry.

[22] To be sure, all Plaintiffs support the requested attorneys' fee as well as the Litigation Expenses for which Plaintiffs' Counsel seek payment. *See* Hopkins Decl., Ex. 1, ¶¶ 19-21; Declaration of Michael T. Cohn ("Cohn Decl."), Ex. 7, ¶ 10; Declaration of Arnold Henriquez ("Henriquez Decl."), Ex. 8, ¶ 10; Declaration of James Pehoushek-Stangeland ("Pehoushek-Stangeland Decl."), Ex. 9, ¶¶ 5-6; Declaration of Richard A. Sutherland ("Sutherland Decl."), Ex. 10, ¶ 10; Declaration of William R. Taylor ("Taylor Decl."), Ex. 11, ¶ 10; Declaration of Janet A. Wallace, Trustee of The Andover Companies Employee Savings and Profit Sharing Plan ("Wallace Decl."), Ex. 12, ¶¶ 6-7.

The motion to dismiss ARTRS's Amended Complaint raised thorny and sharply disputed factual and legal questions over, among other things, the nature and extent of State Street's duties to its custody clients in providing indirect FX services; whether State Street acted as a fiduciary, and whether custody clients that are sophisticated institutional investors but not-for-profit are "consumers" entitled to recover under Chapter 93A. The complexity of these issues was generally reflected in the raft of documents reviewed and analyzed in discovery. *See Medoff*, 2016 WL 2016 WL 632238, at *9 ("extensive discovery" and "some complex issues of law and fact" supported 30% fee); *cf. Puerto Rican Cabotage*, 815 F. Supp. 2d at 459 (23% reduced fee awarded in part because case "settled fully without necessitating any discovery").

Many of these issues were hotly debated during the extended mediation process, and absent this Settlement, most if not all of them, plus others raised in further discovery, would come before the Court on summary judgment and at trial. Class certification was also discussed by the Parties during the mediation process, and, as explained in Plaintiffs' brief in support of the Settlement, would have raised a host of additional challenging issues. *See also* Counsel Decl. ¶¶ 94-95.

An additional complexity was the presence of the federal agencies, particularly the SEC and DOL, conducting their own pre-filing investigations. The financial terms of State Street's separate settlement with the SEC will be satisfied in part through the RIC Settlement Allocation within the overall Plan of Allocation. Because the financial terms of State Street's separate settlement with DOL will be satisfied through the ERISA Settlement Allocation, Plaintiffs' Counsel had to negotiate and coordinate with DOL with respect to the Settlement Agreement, the Notice, and the Plan of Allocation. Negotiating the Plan of Allocation and other aspects of the

Settlement with State Street and DOL simultaneously was a challenging and often complicated task. *See* Counsel Decl. ¶¶ 100-101, 106, 172.

6. Plaintiffs' Counsel Have Represented the Settlement Class Skillfully and Efficiently, Against Capable Defense Counsel

Lead Counsel submits that it, and all Plaintiffs' Counsel, have represented the Settlement Class skillfully and efficiently in prosecuting the claims and achieving this valuable Settlement. *See Bezdek*, 79 F. Supp. 3d at 350 ("Weighing in favor of the requested fee is the skill of the attorneys involved . . . . I also credit the efforts that plaintiffs' counsel has made during the course of this litigation."); *Relafen*, 231 F.R.D. at 80 (noting excellent lawyering and results produced by class counsel).

Moreover, State Street was ably represented here by one of Boston's (and the nation's) largest law firms. Defendants' counsel benefited from State Street's considerable resources, and mounted an aggressive, vigorous defense from the outset that permeated the extended settlement negotiations. *See Lupron*, 2005 WL 2006833, at *4 (noting that "[c]ounsel are among the most experienced lawyers the national bar has to offer in the prosecution and defense of significant class actions").

7. Public Policy Considerations Support the Requested Fee

Finally, the requested attorneys' fee furthers the important policy goal of encouraging common fund cases asserting claims in the public interest. The public interest is well-served here by State Street's disgorgement of proceeds of its alleged unfair and deceptive Indirect FX practices to its custody clients. Many of these custody clients in particular, like ARTRS, are public pension funds in Massachusetts and other States that provide retirement benefits to tens of thousands of public employees. Many other custody clients, like the ERISA Plaintiffs, are company savings and retirement plans in Massachusetts and elsewhere that similarly benefit tens

of thousands of private-sector employees. *See Feeney v. Dell Inc.*, 454 Mass. 192, 200 (2009) ("[T]he public policy of the Commonwealth strongly favors G.L. c. 93A class actions."); *Lupron*, 2005 WL 2006833, at *6 ("The public interest is . . . served by the defendants' disgorgement of the proceeds of predatory marketplace behavior.").[23]

B. A Lodestar Cross-Check Supports the Reasonableness of the Requested Fee

The Court is not required to cross-check the requested fee against Plaintiffs' Counsel's lodestar in determining whether the fee is reasonable. *See Relafen*, 231 F.R.D. at 81 (citing *Thirteen Appeals*, 56 F.3d at 307). When a lodestar is used for a cross-check, however, the focus is not on the "necessity and reasonableness of every hour" of the lodestar, but rather on whether the fee broadly reflects the degree of time and effort expended by counsel. *Tyco*, 535 F. Supp. 2d at 270 (quoting *Thirteen Appeals*, 56 F.3d at 307); *see also In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 299-300, 306 (3d Cir. 2005) (no abuse of discretion in awarding fee with "fairly common" multiplier of 4.07: "The lodestar cross-check calculation need entail neither mathematical precision nor bean counting."). The use of current rather than historical billing rates is appropriate in examining the lodestar because current rates more adequately compensate for inflation and loss of use of funds. *See Jenkins*, 491 U.S. at 283-84.

Plaintiffs' Counsel collectively devoted 86,113.70 hours to the prosecution and settlement of this litigation as of the date hereof, resulting in a total lodestar of $41,323,895.75. *See* Master Chart, Ex. 24, and Firm Declarations, Exs. 15-23. This lodestar yields a multiplier of 1.8. Counsel Decl. ¶¶ 177-178. Given the number of hours invested by counsel at competitive

[23] Courts also consider the reaction of the class. *See, e.g.*, *Medoff*, 2016 WL 632238, at *9 (noting lack of objections to fee request); *Relafen*, 231 F.R.D. at 79-80 (overruling objections). To date, no Settlement Class member has objected to the requested fee, Litigation Expenses or Service Awards. The deadline for objections is October 7, 2016. Lead Counsel will file a response to any objections no later than October 21, 2016. *See* Preliminary Approval Order (ECF No. 97) ¶¶ 16, 19.

billing rates, the risks undertaken and the results achieved, this multiplier is reasonable and well within (if not below) the range of multipliers found reasonable for "cross-check" purposes in common fund cases within this Circuit.

A 1.8 lodestar multiplier is significantly lower than the multipliers found reasonable in most of the First Circuit "megafund" settlements in the chart in Part II.A.1 above—namely, *Neurontin* (3.32), *CVS* (3.27), *First Databank* (8.3), *Tyco* (2.7), and *Raytheon* (3.15). These courts had little difficulty approving fees yielding these multipliers. In *Neurontin*, the court found that a reduced fee of 28% "would yield a multiplier of 3.32, which is well within the range." 58 F. Supp. 3d at 172 (citing *In re Federal Nat'l Mortg. Ass'n Sec., Derivative, and "ERISA" Litig.*, 4 F. Supp. 3d 94, 113 n.20 (D.D.C. 2013) ("Generally, multipliers from 1-3 are the norm.") (quoting treatise)). In awarding a $70 million fee in *First Databank*, "which represent[ed] a multiplier of about 8.3 times lodestar," the court cited, *inter alia*, *In re Rite Aid Corp. Securities Litigation*, 146 F. Supp. 2d 706, 736 n.44 (E.D. Pa. 2001), which concluded that a cross-check multiplier of 4.5-8.5 was "unquestionably reasonable." The court in *Tyco* referred to a 2.7 multiplier as "relatively low." 535 F. Supp. 2d at 271; *see also Relafen*, 231 F.R.D. at 82 (2.02 multiplier on 33-1/3% fee "appropriate"). A 1.8 multiplier is also comparable to the multipliers yielded by the fees awarded in *Lupron* (1.41) and *Lernout & Hauspie* (1.4).

Plaintiffs' Counsel have achieved an excellent result for the Class through a focused and efficient litigation and settlement strategy that, with the Court's imprimatur, avoided unnecessary expenditure of judicial and private resources. Lead Counsel respectfully submits that the enhancement of Plaintiffs' Counsel's lodestar represented by a 24.85% fee is well-supported by the results obtained and fees awarded in comparable cases, and should be approved.

III. THE LITIGATION EXPENSES INCURRED BY PLAINTIFFS' COUNSEL ARE REASONABLE

In addition to an award of attorneys' fees, counsel who create a common fund for the benefit of a class are entitled to payment of reasonable litigation expenses. *See In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 737 (1st Cir. 1999) ("[L]aw firms are not eleemosynary institutions, and lawyers whose efforts succeed in creating a common fund are entitled not only to reasonable fees, but also to recover from the fund, as a general matter, expenses, reasonable in amount, that were necessary to bring the action to a climax.").

Lead Counsel respectfully seeks payment in the amount of $1,257,697.94 for litigation expenses reasonably incurred in connection with the prosecution and settlement of this action. These expenses are set forth in the individual firm declarations from counsel submitted herewith as Exhibits 15-23 to the Counsel Declaration, and are of the type generally approved by courts. These declarations itemize the categories of expenses incurred, which collectively include, among others, expert fees, mediation fees, document hosting fees, electronic legal research, and travel. Lead Counsel submits that these expenses were reasonable and necessary to prosecuting the claims and achieving the Settlement. *See Medoff*, 2016 WL 632238, at *9; *Bezdek*, 79 F. Supp. 3d at 351-52.

The Notice advised the Settlement Class that Lead Counsel would seek payment of Litigation Expenses of no more than $1,750,000. The expenses sought are below that amount, and there have been no objections to the expenses to date. Lead Counsel respectfully requests that the Litigation Expenses be awarded.

IV. THE REQUESTED SERVICE AWARDS TO PLAINTIFFS ARE APPROPRIATE

Lead Counsel respectfully requests that the Court grant Service Awards of $25,000 to Plaintiff ARTRS and $10,000 to each of the six ERISA Plaintiffs—totaling 0.028% of the Class Settlement Fund—in view of their service as class representatives. "Incentive awards serve to promote class action settlements by encouraging named plaintiffs to participate actively in the litigation in exchange for reimbursement for their pursuits on behalf of the class overall." *Bezdek*, 79 F. Supp. 3d at 352; *see also Lupron*, 2005 WL 2006833, at *7 ("Courts 'routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.'") (quoting *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002)); *Neurontin*, 58 F. Supp. 3d at 173 (granting $25,000 each to four named plaintiffs).

Service Awards to the Plaintiffs are justified here. Plaintiff ARTRS, after conducting appropriate due diligence, stepped forward and took a risk to sue its custody bank, and consistently worked thereafter to support the prosecution of this case and the mediation process. ARTRS's Executive Director, for example, attended the hearing on Defendants' motion to dismiss and subsequent lobby conference as well as multiple mediation sessions in Boston and elsewhere. ARTRS also made a complete document production in response to State Street's requests. Hopkins Decl., Ex. 1, ¶¶ 11-16; Counsel Decl. ¶ 97.

The ERISA Plaintiffs also produced documents and monitored and supported the litigation and mediation process. Cohn Decl., Ex. 7, ¶¶ 3-6, 9-10; Henriquez Decl., Ex. 8, ¶¶ 3-6, 9-10; Pehoushek-Stangeland Decl., Ex. 9, ¶¶ 3-4, 6; Sutherland Decl., Ex. 10, ¶¶ 3-6, 9-10; Taylor Decl., Ex. 11, ¶¶ 3-6, 9-10; Wallace Decl., Ex. 12, ¶¶ 3-4, 7; *see also Relafen*, 231 F.R.D.

at 82 (granting service awards where plaintiffs, among other things, reviewed complaints and other litigation documents and provided requested discovery).

The Notice advised the Settlement Class that Lead Counsel would seek Service Awards to Plaintiffs of no more than $85,000, and there have been no objections to the proposed Service Awards to date. Lead Counsel respectfully requests that the Service Awards be granted.

Conclusion

For the foregoing reasons, Lead Counsel Labaton Sucharow LLP, on behalf of all Plaintiffs' Counsel, respectfully requests that this Court (a) award attorneys' fees in the amount of $74,541,250.00, plus any accrued interest; (b) order payment of Litigation Expenses in the amount of $1,257,697.94; (c) grant a Service Award of $25,000.00 to Plaintiff ARTRS; and (d) grant Service Awards of $10,000.00 to each of the six ERISA Plaintiffs.

Dated: September 15, 2016

Respectfully submitted,

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