

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

\_\_\_\_\_)  
)  
IN RE SALIX PHARMACEUTICALS, LTD. ) Case No. 14 Civ. 8925 (KMW)  
) CLASS ACTION  
)  
\_\_\_\_\_)

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

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Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP (“Lead Counsel”), respectfully submits this memorandum of law in support of its motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys’ fees in the amount of \$44,613,850, or approximately 21.24% of the Settlement Fund, plus interest earned at the same rate as the Settlement Fund.<sup>1</sup> Lead Counsel also seeks reimbursement of \$1,930,744.24 in litigation expenses that were reasonably and necessarily incurred in prosecuting and resolving the Action, and reimbursement of \$29,800.00 in costs incurred by Plaintiffs directly related to their representation of the Settlement Class.

### **PRELIMINARY STATEMENT**

The proposed Settlement, which provides for payment of \$210 million in cash in exchange for the resolution of the Action, is an excellent result for the Settlement Class. The Settlement represents a substantial percentage of the likely recoverable damages in this case. In undertaking this litigation, counsel faced numerous challenges to proving both liability and damages that posed the serious risk of no recovery, or a substantially lesser recovery than the Settlement, for the Settlement Class. The significant monetary recovery was achieved through the skill, tenacity and effective advocacy of Lead Counsel, which litigated this Action on a fully contingent fee basis against highly skilled defense counsel. Lead Counsel had to devote a vast amount of time and resources to the Action, litigating through an extensive and hard-fought fact discovery process before the Settlement could be obtained.

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<sup>1</sup> Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated March 24, 2017 (ECF No. 216-1) (the “Stipulation”) or in the Declaration of Salvatore J. Graziano 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 (the “Graziano Declaration” or “Graziano Decl.”), filed herewith. Citations to “¶” in this memorandum refer to paragraphs in the Graziano Declaration.



As detailed in the accompanying Graziano Declaration,<sup>2</sup> Lead Counsel vigorously pursued this litigation from its outset by, among other things: (i) conducting an extensive investigation into Defendants' alleged misstatements, which included a thorough review of SEC filings, analyst reports, conference call transcripts, press releases, company presentations, media reports and other public information; (ii) drafting a detailed consolidated complaint based on this investigation; (iii) successfully opposing Defendants' motions to dismiss; (iv) engaging in substantial and highly contested fact discovery efforts, which included obtaining and reviewing more than 2.7 million pages of documents produced by Defendants and third parties; taking, defending, or participating in 13 depositions; and litigating a number of significant discovery disputes; (v) moving for class certification, including conducting related discovery, preparing an expert report on market efficiency, and opposing a motion by Defendants to exclude the testimony of Lead Plaintiff's expert; (vi) consulting extensively with experts concerning loss causation and damages, accounting issues, and the pharmaceutical industry; and (vii) negotiating the Settlement with Defendants. ¶¶ 5, 17-48.

The Settlement achieved through Lead Counsel's efforts is a particularly favorable result when considered in light of the significant risks of proving the Defendants' liability and establishing damages, which are set forth in detail in the Graziano Declaration at paragraphs 50 to 68. With respect to liability, Defendants would contend that their alleged misstatements concerning Salix's wholesale inventory levels were not actionable or false, because they were

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<sup>2</sup> The Graziano Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action (¶¶ 14-49); the nature of the claims asserted (¶¶ 10-13, 19-20); the negotiations leading to the Settlement (¶¶ 46-48); the risks and uncertainties of continued litigation (¶¶ 50-68); and a description of the services Lead Counsel provided for the benefit of the Settlement Class (¶¶ 5, 14-48).

general estimates or targets, rather statements of present fact, and that their statements about product revenues were accurate and were not misleading because they had not engaged in any improper “channel stuffing.” ¶¶ 51-53. Lead Plaintiff would have faced even more meaningful hurdles in proving that Defendants acted with scienter. Defendants would argue that they did not know the precise inventory levels for Salix’s products, which were held by third-party wholesalers, and that calculation of these inventory levels was imprecise and based on uncertain, judgmental estimates regarding future sales patterns, and, thus, any errors in their statements concerning the inventory levels were not intended. ¶ 54.

Moreover, Defendants also disputed loss causation and damages in the Action. Defendants would have contested the amount of damages that could be attributed to the revelation of allegedly false statements, as opposed to new information about Salix that was unrelated to the alleged fraud, and would have challenged Plaintiffs’ ability to prove what part of the damages were caused by the disclosure of the fraud. ¶¶ 61-63. Defendants also would have argued that a large portion of the class was not harmed because the price of Salix common stock quickly rebounded from its price following the corrective disclosure, and because the Company was acquired relatively shortly after the revelation of the fraud at a price that significantly exceeded the share price at the end of the Class Period. ¶ 64. Given these risks, Lead Counsel respectfully submits that the Settlement achieved is a testament to its hard work and the quality of its representation.

As compensation for their efforts on behalf of the Settlement Class and the risks of non-payment they faced in bringing the Action on a contingent basis, Lead Counsel seeks an award of \$44,613,850 in attorneys’ fees, and reimbursement of reasonable litigation expenses. The requested fee amounts to approximately 21.24% of the Settlement Amount, which is well within

the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries on a percentage basis. Further, the requested fee represents a multiplier of 3.1 of Plaintiffs' Counsel's lodestar, which is within the range of multipliers typically awarded in class actions with significant contingency risks such as this one.

Moreover, the fee is requested pursuant to a written retainer agreement entered into between Lead Plaintiff the Pentwater Funds and Lead Counsel at the outset of the litigation. ¶ 87. Lead Plaintiff is a sophisticated institutional investor that actively supervised the Action and has endorsed the requested fee as consistent with its agreement and as fair and reasonable in light of the quality of the result obtained, the work counsel performed and the risks of the litigation. *See* Declaration of Francis J. Strezo, attached as Exhibit 2 to the Graziano Declaration ("Strezo Decl."), at ¶¶ 8-10.

In addition, pursuant to the Preliminary Approval Order, 68,694 copies of the Notice have been mailed to potential Settlement Class Members and their nominees through June 16, 2017, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. *See* Declaration of Stephanie A. Thurin Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, attached as Exhibit 1 to the Graziano Decl. ("Thurin Decl."), at ¶ 7, 8. The Notice advised potential Settlement Class Members that Lead Counsel would apply for an award of attorneys' fees in amount not to exceed 22% of the Settlement Fund and reimbursement of litigation expenses (including reimbursement of the reasonable costs and expenses of Plaintiffs) in an amount not to exceed \$2.5 million. *See* Thurin Decl. Exh. A at ¶¶ 5, 77. The fees and expenses sought by Lead Counsel do not exceed the amounts set forth in the Notice. While the deadline set by the Court for Settlement Class Members to object to the

requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 74, 98.<sup>3</sup>

In light of the recovery obtained, the time and effort devoted by Lead Counsel, the work performed, the skill and expertise required, and the risks that counsel undertook, Lead Counsel submits that the requested fee award is reasonable. In addition, the expenses for which Lead Counsel seeks reimbursement were reasonable and necessary for the successful prosecution of the Action.

### **ARGUMENT**

#### **I. LEAD COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND**

The Supreme Court has long recognized that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); see *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys’ fees from a common fund “serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons,” and therefore “to discourage future misconduct of a similar nature.” *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at \*23 (S.D.N.Y. Nov. 8, 2010) (citation omitted); see *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at \*2 (S.D.N.Y. Nov. 7, 2007) (same).

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<sup>3</sup> The deadline for the submission of objections is July 5, 2017. Should any objections be received, Lead Counsel will address them in reply papers, which will be filed with the Court on or before July 17, 2017.

Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are “an essential supplement to criminal prosecutions and civil enforcement actions” brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); accord *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide “a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [SEC] action.’”) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). Compensating plaintiffs’ counsel for the risks they take in bringing these actions is essential, because “[s]uch actions could not be sustained if plaintiffs’ counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class.” *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at \*9 (S.D.N.Y. Oct. 24, 2005).

## **II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND**

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. The Second Circuit has expressly approved the percentage method, recognizing that “the lodestar method proved vexing” and had resulted in “an inevitable waste of judicial resources.” *Goldberger*, 209 F.3d at 48-50 (holding that either the percentage of fund method or lodestar method may be used to determine appropriate attorneys’ fees); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the “percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases”). More recently, the Second Circuit has reiterated its approval of the percentage method, stating that it “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation,” and has noted that the “trend in this Circuit is toward the percentage

method.” *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citations omitted); *see also In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at \*2 (E.D.N.Y. June 24, 2010); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010).

### **III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD**

#### **A. The Requested Attorneys’ Fees Are Reasonable Under the Percentage-of-the-Fund Method**

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and typically in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984) (“In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.”) (Brennan, J., concurring).

The fee of approximately 21.24% requested by Lead Counsel pursuant to its retainer agreement with Lead Plaintiff is well within the range of percentage fees that have been awarded in the Second Circuit in securities class actions and other similar litigation with comparable recoveries. *See, e.g., Anwar v. Fairfield Greenwich Ltd.*, 1:09-cv-00118 (S.D.N.Y.) (awarding total fees of 28.8% on \$235.25 million aggregate settlement)<sup>4</sup>; *NECA-IBEW Health & Welfare*

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<sup>4</sup> Four separate fee orders were entered in *Anwar v. Fairfield Greenwich Ltd.*, 1:09-cv-00118 (S.D.N.Y.) on March 28, 2013, November 22, 2013, November 20, 2015 and May 6, 2016 (ECF Nos. 1099, 1233, 1457, 1569) (all attached hereto as Exhibit 1).

*Fund v. Goldman Sachs & Co.*, No. 08-cv-10783, 2016 WL 3369534, at \*1 (S.D.N.Y. May 2, 2016) (awarding 21% of \$272 million settlement); *In re Bank of New York Mellon Corp. Forex Transactions Litig.*, 148 F. Supp. 3d 303, 305 (S.D.N.Y. 2015) (awarding 25% of \$180 million settlement); *Bd. of Trustees of the AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686 (SAS), 2012 WL 2064907, at \*3 (S.D.N.Y. June 7, 2012) (awarding 25% of \$150 million settlement); *Comverse*, 2010 WL 2653354, at \*6 (awarding 25% of \$225 million settlement); *In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475 (NRB), 2005 WL 7984326, at \*4 (S.D.N.Y. June 9, 2005) (awarding 28% of \$120 million settlement); *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222, 2003 U.S. Dist. LEXIS 26795, at \*13 (S.D.N.Y. June 12, 2003) (awarding 28% of \$300 million settlement).<sup>5</sup>

The requested fee is also consistent with fee awards in similarly sized securities class actions in other circuits. *See, e.g., In re Genworth Fin. Inc. Sec. Litig.*, No. 3:14-cv-00682-JRS, 2016 WL 7187290, at \*1-\*2 (E.D. Va. Sept. 26, 2016) (awarding 28% of \$219 million settlement); *Schuh v. HCA Holdings Inc.*, No. 3:11-cv-01033, slip op. at 1 (M.D. Tenn. Apr. 14, 2016), ECF No. 563 (awarding 30% of \$215 million settlement) (attached hereto as Ex. 2); *In re Merck & Co., Inc. Vytarin/Zetia Sec. Litig.*, No. 08-2177 (DMC)(JAD), 2013 WL 5505744, at \*3, \*46 (D.N.J. Oct. 1, 2013) (awarding a 28% of \$215 million settlement); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519 (AET), slip op. at 2 (D.N.J. Jan. 30, 2013), ECF No. 405

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<sup>5</sup> Indeed, percentage fees of this amount and higher have often been awarded in much larger settlements in the Southern District. *See, e.g., In re Pfizer Inc. Sec. Litig.*, No. 04-cv-09866 (LTS) (HBP), slip op. at 2 (S.D.N.Y. Dec. 21, 2016), ECF No. 727 (awarding 28% of \$486 million settlement) (attached hereto as Ex. 3); *N.J. Carpenters Health Fund v. Residential Capital LLC*, No. 08-cv-8781-HB, slip op. at 2 (S.D.N.Y. July 31, 2015), ECF No. 353 (awarding 20.75% of \$335 million settlement) (attached hereto as Ex. 4); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at \*3 (S.D.N.Y. Nov. 16, 2006) (awarding 21.4% of \$455 million settlement), *aff'd*, 272 F. App'x 9 (2d Cir. 2008).

(awarding 27.5% of \$164 million settlement) (attached hereto as Ex. 5); *In re Apollo Grp. Inc. Sec. Litig.*, No. 04-2147, 2012 WL 1378677, at \*9 (D. Ariz. Apr. 20, 2012) (awarding 33.3% of \$145 million settlement); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at \*4 (N.D. Ill. May 7, 2012) (awarding 27.5% of \$200 million settlement), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *In re Schering-Plough Corp. Sec. Litig.*, No. 01-829, 2009 WL 5218066, at \*5-\*6 (D.N.J. Dec. 31, 2009) (awarding 23% of \$165 million settlement fund); *In re CMS Energy Sec. Litig.*, No. 02-cv-72004, 2007 WL 9611274, at \*4 (E.D. Mich. Sept. 6, 2007) (awarding 22.5% of \$200 million settlement); *Schwartz v. TXU Corp.*, No. 02-2243, 2005 WL 3148350, at \*24-\*34 (N.D. Tex. Nov. 8, 2005) (awarding 22% of \$149.75 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 589 (E.D. Pa. Mar. 24, 2005) (awarding 25% of \$126.6 million settlement); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), slip op. at 1 (D. Del. Feb. 5, 2004), ECF No. 971 (awarding 22.5% of \$300 million settlement) (attached hereto as Ex. 6); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 130-35 (D.N.J. 2002) (awarding 21.6% of \$194 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (awarding 25% of \$193 million settlement).

In sum, the fee requested here is well within the range of fees awarded on a percentage basis in comparable actions.

**B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method**

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50.



Here, Plaintiffs' Counsel<sup>6</sup> spent a total of 34,402.35 hours of attorney and other professional support time prosecuting the Action for the benefit of the Settlement Class. ¶ 89. Plaintiffs' Counsel's lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, is \$14,185,499.25.<sup>7</sup> *See id.* The requested fee of \$44,613,850 (before interest), therefore represents a multiplier of 3.1 of the total lodestar.

The requested 3.1 multiplier in this Action is within the range of multipliers commonly awarded in securities class actions and other comparable litigation. In cases of this nature, fees representing multiples above the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors. *See FLAG Telecom*, 2010 WL 4537550, at \*26 (“a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors”); *Comverse*, 2010 WL 2653354, at \*5 (“Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar”).

Indeed, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded. *See, e.g., Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as

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<sup>6</sup> In addition to Lead Counsel, Plaintiffs' Counsel includes Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), counsel for named plaintiff Fort Lauderdale; and Hach Rose Schirripa & Cheverie, LLP (“Hach Rose”). These firms performed work under the direction of Lead Counsel that assisted in the prosecution of this Action and provided a benefit to the Settlement Class by, among other things, assisting in the drafting and review of pleadings and motion papers and assisting with the review of documents produced in discovery. In addition, Robbins Geller assisted in the production of documents by Fort Lauderdale and prepared for and defended the Rule 30(b)(6) deposition of Fort Lauderdale.

<sup>7</sup> The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflationary losses, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. at 284; *Veeco*, 2007 WL 4115808 at \*9; *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 2d 160, 163 (S.D.N.Y. 1989).

reasonable on appeal); *NECA-IBEW v. Goldman*, 2016 WL 3369534, at \*1 (awarding 21% fee on \$272 million settlement representing a 3.9 multiplier); *Deutsche Telekom*, 2005 WL 7984326, at \*4 (awarding 25% of \$120 million settlement representing a 3.96 multiplier); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011), ECF No. 117 (awarding fee representing a 4.7 multiplier) (attached hereto as Ex. 7); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, which was “well within the range awarded by courts in this Circuit and courts throughout the country”).<sup>8</sup>

In sum, Lead Counsel’s requested fee award is well within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage of the fund or in relation to Lead Counsel’s lodestar. Moreover, as discussed below, each of the factors established for the review of attorneys’ fee awards by the Second Circuit in *Goldberger* also strongly supports a finding that the requested fee is reasonable.

#### **IV. THE FEE REQUEST IS ENTITLED TO A PRESUMPTION OF REASONABLENESS BECAUSE IT IS BASED ON AN A FEE AGREEMENT ENTERED INTO WITH LEAD PLAINTIFF AT THE OUTSET OF THE LITIGATION**

The requested fee should be afforded a presumption of reasonableness because it is based on an agreement Lead Counsel entered into with a sophisticated institutional Lead Plaintiff at the outset of the litigation. And, even if a formal presumption of reasonableness is not afforded to the fee based on the pre-litigation agreement, the existence of the agreement and the approval of

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<sup>8</sup> See also *AremisSoft*, 210 F.R.D. at 135 (awarding 21.6% of \$194 million settlement representing a 4.3 multiplier); *Rite Aid*, 362 F. Supp. 2d at 589-90 (awarding 25% of \$126.6 million settlement representing a 6.96 multiplier); *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 980, 999 (D. Minn. 2005) (awarding fee representing a 4.7 multiplier).

the requested fee by Lead Plaintiff, which was actively involved in the prosecution and settlement of the Action, strongly support approval of the fee.

The PSLRA was intended to encourage institutional investors like the Pentwater Funds to assume control of securities class actions in order to “increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff’s counsel.” H.R. Conf. Rep. No. 104-369, at \*32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the ongoing prosecution of the litigation and to assess the reasonableness of counsel’s fee request.

A number of courts have found, in light of Congress’s intent to empower lead plaintiffs under the PSLRA to select and supervise attorneys on behalf of the class, that a fee agreement entered into by a PSLRA lead plaintiff and its counsel at the outset of the litigation should be considered presumptively reasonable. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001) (*ex ante* fee agreements in securities class actions enjoy “a presumption of reasonableness”); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at \*15 (S.D.N.Y. Dec. 23, 2009) (“Since the passage of the PSLRA, courts have found such an agreement between fully informed lead plaintiffs and their counsel to be presumptively reasonable”). While the Second Circuit has not directly ruled on whether a formal presumption of reasonableness should be afforded to a fee agreement entered into between counsel and a lead plaintiff appointed under the PSLRA, *see In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133-34 (2d Cir. 2008) (“We leave open the question of how much weight should be given to fees agreed upon by PSLRA Lead Plaintiffs”); *DeValerio v. Olinski*, 673 F. App’x 87, 91 (2d Cir.

2016) (declining to consider the issue because it had been waived), it has indicated that the Court should, at least, give “serious consideration” to such agreements, *see Nortel*, 539 F.3d at 133-34.

Even if no formal presumption of reasonableness is adopted, Lead Counsel respectfully submits that the fact that the fee is based on the *ex ante* agreement with Lead Plaintiff should be given substantial weight when evaluating the reasonableness of Lead Counsel’s fee request. For example, the Second Circuit has stated that:

We expect . . . that district courts will give serious consideration to negotiated fees because PSLRA Lead Plaintiffs often have a significant financial stake in the settlement, providing a powerful incentive to ensure that any fees resulting from that settlement are reasonable. In many cases, the agreed-upon fee will offer the best indication of a market rate, thus providing a good starting position for a district court’s fee analysis.

*Nortel*, 539 F.3d at 133-34; *see also Comverse*, 2010 WL 2653354, at \*4 (“an *ex ante* fee agreement is the best indication of the actual market value of counsel’s services”).

Here, Lead Plaintiff is a classic example of the type of sophisticated and financially interested investor that Congress envisioned serving as a fiduciary for the class when it enacted the PSLRA. Lead Plaintiff took a very active role in the litigation and closely supervised the work of Lead Counsel. *See* Strezo Decl. ¶¶ 4-6. Accordingly, the endorsement of the fee as reasonable by Lead Plaintiff supports approval of the fee. *See Veeco*, 2007 WL 4115808, at \*8 (“public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request”).

**V. OTHER FACTORS CONSIDERED BY COURTS IN THE SECOND CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE**

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys’ fees in a common fund case:

(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

*Goldberger*, 209 F.3d at 50 (internal quotes and citation omitted). Consideration of these factors, together with the analyses above, demonstrates that the fee requested by Lead Counsel is reasonable.

**A. The Time and Labor Expended Support the Requested Fee**

The substantial time and effort expended by Lead Counsel in prosecuting the Action and achieving the Settlement also support the requested fee. The Graziano Declaration details the efforts of Lead Counsel in prosecuting Lead Plaintiff's claims over the course of the litigation.

As set forth in greater detail in the Graziano Declaration, Lead Counsel, among other things:

- conducted an extensive investigation into Defendants' alleged misstatements, which included a thorough review of the SEC filings of Salix and other related companies, analyst reports, conference call transcripts, press releases, company presentations, media reports and other public information, and analysis of the movement and pricing data associated with Salix publicly traded common stock and options with the assistance of a damages expert (¶¶ 17-18);
- researched and drafted a detailed consolidated complaint based on this investigation (¶¶ 19-20);
- successfully opposed Defendants' motions to dismiss following thorough briefing (¶¶ 21-24);
- conducted extensive and highly contested fact discovery efforts, which included obtaining and reviewing more than 2.7 million pages of documents produced by Defendants and third parties (¶¶ 26-33);
- took, defended, or participated in 13 depositions, and had substantially completed preparations for four additional depositions, including those of the two Individual Defendants (Salix's CEO and CFO during the Class Period) (¶¶ 34-35);
- moved for class certification, which included detailed briefing, related discovery, and preparation of an expert report on market efficiency (¶¶ 39-43);
- opposed Defendants' motion to exclude the testimony of Lead Plaintiff's market efficiency expert on *Daubert* grounds (¶¶ 42-43);

- litigated a number of significant discovery disputes, including over the production of documents concerning Salix's internal investigation and the scope of Plaintiffs' obligations to produce pre- and post-Class Period transaction data (¶¶ 36-38, 40);
- consulted extensively with experts concerning loss causation and damages, accounting issues, and the pharmaceutical industry (¶¶ 18, 38, 44-45); and
- engaged in extensive settlement negotiations with Defendants' Counsel (¶¶ 46-48).

As noted above, Lead Counsel and the other Plaintiffs' Counsel expended more than 34,000 hours prosecuting this Action with a lodestar value of over \$14 million. ¶ 89. Throughout the litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. ¶ 90. The time and effort devoted to this case by Lead Counsel was critical in obtaining the favorable result achieved by the Settlement, and confirms that the fee request here is reasonable.

**B. The Risks of the Litigation Support the Requested Fee**

The risk of the litigation is one of the most important *Goldberger* factors. See *Goldberger*, 209 F.3d at 54; *Comverse*, 2010 WL 2653354, at \*5. The Second Circuit has recognized that the risks associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

*City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at \*5 (citation omitted); see also *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is

“appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award”).

While Lead Counsel believes that the claims of Lead Plaintiff in this Action are meritorious, Lead Counsel recognized that there were a number of substantial risks in the litigation from the outset and that Lead Plaintiff’s ability to succeed at trial and obtain a substantial judgment was far from certain.

As discussed in greater detail in the Graziano Declaration and in the memorandum of law in support of the Settlement, there were substantial risks here with respect to establishing both liability and damages in the Action. Lead Counsel faced the risks that the statements made by Salix and the Individual Defendants concerning Salix’s wholesaler inventory levels might be found not to be actionable or false by the Court or a jury. ¶¶ 51-53. Defendants contended that their statements about Salix’s inventory levels were general estimates or targets that were not actionable because they were forward-looking statements or expressions of corporate optimism, and because the wholesaler inventory levels was imprecise and based on uncertain estimates. ¶¶ 52, 54. Lead Counsel also faced the risk that Defendants’ statements concerning quarterly product revenues might be found not misleading if Lead Counsel could not prove that Defendants had not engage in improper “channel stuffing” to increase its revenues. ¶ 53.

Lead Counsel also faced substantial challenges in establishing that Defendants acted with scienter. Defendants asserted that they lacked reliable information on the precise amount of the inventory levels (which were maintained by third-party wholesalers, not Salix), that those inventory levels were based on uncertain estimates of future sales of Salix products, and that the levels fluctuated and rose significantly during the Class Period. Thus, they contended that any inaccuracies in their statements concerning the wholesaler inventory levels were due to their

failure to promptly detect those changes, not the result of any intent to deceive investors. ¶ 54. Moreover, Defendants would have argued that there was no concrete motive for them to engage in fraud. ¶ 55.

Lead Counsel also recognized that there would be significant challenges in proving loss causation and damages in the Action. While the price of Salix common stock dropped sharply following the disclosures made after the close of trading on November 6, 2014, Defendants had powerful arguments that a substantial portion of that price decline was attributable to the market's reaction to other (non-fraud related) information about Salix that was released at the same time, including the news that Salix's quarterly earnings would be well below market projections. ¶¶ 61-62. Lead Counsel faced the risk that Plaintiffs might not carry their burden of proving what portion of Salix's price decline was attributable to revelation of the allegedly false statements as opposed to the other news, and therefore might not be able to recover any of those damages. ¶ 63.

Lead Counsel also faced the risks that damages could be substantially reduced because Salix common stock quickly rebounded from its price following the alleged corrective disclosure, and the Company was acquired relatively shortly afterwards at a price that significantly above the share price at the end of the Class Period. Defendants argued that class members who retained their shares after the end of the Class Period and who benefited from the price rebound by selling the shares they purchased during the Class Period for a gain had no recoverable damages in the Action. ¶ 64.

In the face of the many uncertainties regarding the outcome of the case, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years and would require the devotion of a substantial amount of time and a significant expenditure of



litigation expenses with no guarantee of compensation. ¶ 94. Lead Counsel’s assumption of this contingency fee risk strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at \*27 (“Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award.”); *Marsh ERISA*, 265 F.R.D. at 148 (“There was significant risk of non-payment in this case, and Plaintiffs’ Counsel should be rewarded for having borne and successfully overcome that risk.”).

**C. The Magnitude and Complexity of the Action Support the Requested Fee**

The magnitude and complexity of the Action also support the requested fee. Courts have long recognized that securities class action litigation is “notably difficult and notoriously uncertain.” *FLAG Telecom*, 2010 WL 4537550, at \*27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This case was no exception. As noted above and in the Graziano Declaration, the litigation raised a number of complex questions concerning liability and loss causation that would have required extensive efforts by Lead Counsel and consultation with experts to bring to resolution. To build the case, Lead Counsel had to dedicate a substantial amount of time to conducting an extensive factual investigation, obtaining extensive discovery from Salix and its wholesalers, through a hard fought and contested process, and working extensively with Lead Plaintiff’s experts to analyze the claims and the evidence obtained. Accordingly, the magnitude and complexity of the Action supports the conclusion that the requested fee is fair and reasonable.

**D. The Quality of Lead Counsel’s Representation Supports the Requested Fee**

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submits that the quality of its representation is best evidenced by the quality of the result achieved. *See, e.g., Veeco*, 2007 WL

4115808, at \*7; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Here, the Settlement provides a very favorable result for the Settlement Class in light of the serious risks of continued litigation, and represents a substantial portion of likely recoverable damages. *See* ¶¶ 50-68. Lead Counsel respectfully submits that the quality of its efforts in the litigation to date, together with its substantial experience in securities class actions and its commitment to this litigation, provided it with the leverage necessary to negotiate the Settlement.

Courts have repeatedly recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of the counsel's performance. *See, e.g., Veeco*, 2007 WL 4115808, at \*7 (among factors supporting 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"); *Adelphia*, 2006 WL 3378705, at \*3 ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work") (citation omitted), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Defendants were represented by able counsel from Cadwalader, Wickersham & Taft LLP, Cahill Gordon & Reindel LLP; Williams & Connolly LLP; and Buckley Sandler LLP, who zealously represented their clients throughout this Action. *See* ¶ 92. Notwithstanding this capable opposition, Lead Counsel's thorough investigation, ability to present a strong case, successful opposition of Defendants' motion to dismiss, and demonstrated willingness to vigorously prosecute the Action through a lengthy and highly contested discovery process enabled it to achieve the favorable Settlement.

**E. The Requested Fee in Relation to the Settlement**

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees

awarded in similar securities class-action settlements of comparable value.” *Comverse*, 2010 WL 2653354, at \*3 (citation omitted). As discussed in detail in Part III above, the requested fee is well within the range of percentage fees that courts in the Second Circuit have awarded in comparable cases. Accordingly, the fee requested is reasonable in relation to the Settlement.

**F. Public Policy Considerations Support the Requested Fee**

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at \*29 (if the “important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook”); *Maley*, 186 F. Supp. 2d at 373 (“In considering an award of attorney’s fees, the public policy of vigorously enforcing the federal securities laws must be considered.”); *Hicks*, 2005 WL 2757792, at \*9 (“To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”) (citation omitted). Accordingly, public policy favors granting Lead Counsel’s fee and expense application here.

**G. The Reaction of the Settlement Class to Date Supports the Requested Fee**

The reaction of the Settlement Class to date also supports the requested fee. Through June 16, 2017, Epiq has disseminated the Notice to 68,694 potential Settlement Class Members and nominees informing them, among other things, that Lead Counsel intended to apply to the Court for an award of attorneys’ fees in an amount not to exceed 22% of the Settlement Fund and up to \$2.5 million in expenses. *See* Thurin Decl. ¶¶ 7 and Ex. A thereto. While the time to object to the Fee and Expense Application does not expire until July 5, 2017, to date, no objections have been received. ¶¶ 74, 98. Should any objections be received, Lead Counsel will address them in its reply papers.

**VI. LEAD COUNSEL’S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED**

Lead Counsel’s fee application includes a request for reimbursement of Plaintiffs’ Counsel’s litigation expenses, which were reasonably incurred and necessary to the prosecution of the Action. *See* ¶¶ 101-109. These expenses are properly recovered by counsel. *See In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at \*6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated “for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were ‘incidental and necessary to the representation’”) (citation omitted); *FLAG Telecom*, 2010 WL 4537550, at \*30 (“It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class”). As set forth in detail in the Graziano Declaration, Plaintiffs’ Counsel incurred \$1,930,744.24 in litigation expenses in the prosecution of the Action. ¶ 100. Reimbursement of these expenses is fair and reasonable.

The expenses for which reimbursement are sought 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, expert fees, on-line research, court reporting and transcripts, photocopying, travel costs, and postage expenses. The largest expense is for retention of Lead Plaintiff’s experts, in the amount of \$1,665,617.61, or 86% of the total litigation expenses. ¶ 103. Another significant expense was the cost for electronic discovery vendor in managing the enormous database of documents received, which came to \$111,696.89, or 5.8% of the total amount of expenses. ¶ 104. The combined costs for on-line legal and factual research, in the amount of \$65,912.53, represented 3.4% of the total amount of expenses. *Id.* A complete breakdown by category of the expenses incurred by Plaintiffs’ Counsel is set forth in Exhibit 4 to

the Graziano Declaration. These expense items are billed separately by Lead Counsel, and such charges are not duplicated in the firm's hourly billing rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for reimbursement of litigation expenses in an amount not to exceed \$2.5 million, which might include the reasonable costs and expenses of Plaintiffs directly related to their representation of the Settlement Class. The total amount of expenses requested by Lead Counsel is \$1,960,544.24, which includes \$1,930,744.24 in reimbursement of litigation expenses incurred by Plaintiffs' Counsel and \$29,800.00 in reimbursement of costs and expenses incurred by Plaintiffs, an amount well below the amount listed in the Notice. To date, there has been no objection to the request for expenses.

**VII. PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. §78u-4(a)(4)**

In connection with its request for reimbursement of Litigation Expenses, Lead Counsel also seeks reimbursement of \$29,800 in costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4).

Here, while several employees of the Pentwater Funds dedicated time to the Action by reviewing significant pleadings and briefs in the Action, communicating regularly with Lead Counsel, searching for and gathering their internal documents for production in response to Defendants' document requests, and monitoring the progress of settlement negotiations, Lead Plaintiff seeks reimbursement only for the value of the time spent by its portfolio manager, Frank Strezo. *See* Strezo Decl. ¶¶ 4, 12. Mr. Strezo devoted a total of 44 hours to assisting in the

prosecution of this Action including, by among other things, communicating with Lead Counsel; reviewing pleadings; gathering and reviewing documents in response to discovery requests; and preparing for and sitting for his deposition. *Id.* ¶ 12. The time that Mr. Strezo spent on these activities was time that he otherwise would have expected to spend on other work for Lead Plaintiff and, thus, represented a cost to Lead Plaintiff. Mr. Strezo's time is valued at \$500 per hour and, accordingly, Lead Plaintiff seeks reimbursement of \$22,000. *Id.*

Additional Plaintiff Fort Lauderdale seeks reimbursement of \$7,800 for time spent on the Action by its Plan Administrator, which included reviewing pleadings, responding to discovery requests, and preparing for and participating in his deposition. *See* Declaration of Nicholas Schiess, attached as Exhibit 5 to the Graziano Declaration, at ¶¶ 4-6.

Numerous courts have approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. In *Marsh & McLennan*, the court awarded \$144,657 to the New Jersey Attorney General's Office and \$70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class." 2009 WL 5178546, at \*21. As the court noted, their efforts in communicating with lead counsel, reviewing submissions to the court, responding to discovery requests, providing deposition testimony and participating in settlement discussions were "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *Id.*; *see also In re Bank of Am. Corp. Sec., Derivative, & Employee Ret. Income Sec. Act (ERISA) Litig.*, 772 F.3d 125, 133 (2d Cir. 2014) (affirming award of over \$450,000 to representative plaintiffs for time spent by their employees on the action); *Flag Telecom*, 2010 WL 4537550, at \*31 (approving award of \$100,000 to Lead Plaintiff for time spent on the litigation); *Veeco*, 2007 WL 4115808, at \*12 (awarding institutional lead plaintiff \$15,900 for

time spent supervising litigation, and characterizing such awards as “routine” in this Circuit); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at \*19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, “the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation”).

The awards sought by Plaintiffs are reasonable and justified under the PSLRA based on the active involvement of Plaintiffs in the Action, and should be granted.

### **CONCLUSION**

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys’ fees in the amount of \$44,613,850, plus interest at the same rate as earned by the Settlement Fund; \$1,930,744.24 in reimbursement of the reasonable litigation expenses that Lead Counsel incurred in connection with the prosecution of the Action; and \$29,800.00 in reimbursement of Plaintiffs’ costs and expenses.

Dated: June 19, 2017

Respectfully submitted,

**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**

*/s/ Salvatore J. Graziano* \_\_\_\_\_

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*Counsel for Lead Plaintiff the Pentwater Funds  
and Lead Counsel for the Settlement Class*

# **Exhibit 1**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*,

Plaintiffs,

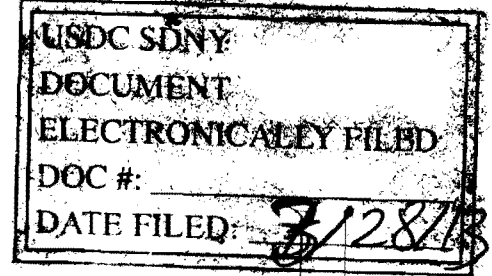
Master File No. 09-cv-118 (VM) (FM)

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: 09-cv-118 (VM)



**FINAL JUDGMENT AND ORDER AWARDING FEES AND EXPENSES**

This matter came before the Court for hearing on March 22, 2013 pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement (“Preliminary Approval Order”), dated November 30, 2012 (Dkt. No. 1008), on the application of the Representative Plaintiffs for approval of the Settlement set forth in the Stipulation of Settlement dated as of November 6, 2012 (Dkt. No. 996), as modified by the Amendment to Stipulation of Settlement dated December 12, 2012, so ordered on December 13, 2012 (Dkt. No. 1012), and the letter to the Court dated January 23, 2013 from counsel for the Settling Parties, so ordered on January 24, 2013 (Dkt. No. 1022) (collectively, the “Stipulation”), and the petition, on behalf of Plaintiffs’ Counsel, for an award of attorneys’ fees and reimbursement of expenses, and awards to the Representative Plaintiffs. Due and adequate notice having been given to the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Judgment and Order Awarding Fees and Expenses (the “Final Fee and Expense Judgment”) incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.

2. This Court has previously entered a Final Judgment and Order of Dismissal With Prejudice, among other things, approving the Settlement set forth in the Stipulation and finding that said Settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the Settlement Class and each of the Settlement Class Members.

3. The Court hereby grants Plaintiffs’ Lead Counsel attorneys’ fees of 25% of the \$50,250,000 Initial Settlement Amount and expenses in an amount of \$1,279,242, together with the interest earned thereon for the same time period and at the same rate as that earned on the Initial Settlement Amount. Said fees shall be allocated by Plaintiffs’ Lead Counsel in a manner which, in their good-faith judgment, reflects each Plaintiff’s Counsel’s contribution to the institution, prosecution and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable under the percentage-of-recovery method and the factors described in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Those factors include the following: the (i) time and labor expended by Plaintiffs’ Counsel; (2) the magnitude and complexities of the Action; (3) the risk of continued litigation; (4) the quality of representation; (5) the requested fee in relation to the Settlement; (6) the experience and ability of the attorneys; (7) awards in similar cases; (8) the contingent nature of the representation and the result obtained for the Settlement Class; and (9) public policy considerations. *See Goldberger*, 209 F.3d at 50.

4. The Court hereby grants the Representative Plaintiffs reimbursement of their reasonable costs and expenses (including lost wages) directly related to their representation of the Settlement Class (including, where applicable, an incentive award), together with the interest earned

thereon for the same time period and at the same rate as that earned on the Initial Settlement Amount:

- i. Pacific West Health Medical Center Employees Retirement Trust (in the amount of \$50,000);
- ii. Harel Insurance Company Ltd. (in the amount of \$30,000);
- iii. Martin and Shirley Bach Family Trust (in the amount of \$25,000);
- iv. Natalia Hatgis (in the amount of \$25,000);
- v. Securities & Investment Company Bahrain (in the amount of \$45,000);
- vi. Dawson Bypass Trust (in the amount of \$25,000); and
- vii. St. Stephen's School (in the amount of \$25,000).

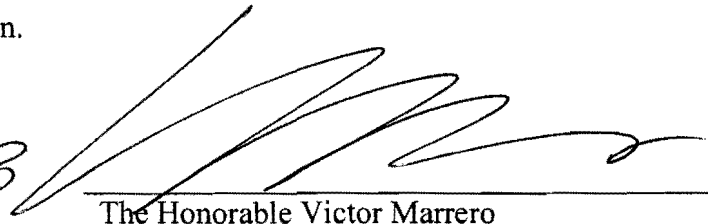
5. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Lead Counsel and the Representative Plaintiffs from the Initial Settlement Amount, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the Initial Settlement Amount, subject to the terms, conditions, and obligations of the Stipulation.

6. The Court expressly determines that there is no just reason for delay in entering this Final Judgment and directs the Clerk of the Court to enter this Final Judgment pursuant to Fed. R. Civ. P. 54(b).

7. Without affecting the finality of this Final Judgment in any way, exclusive jurisdiction is hereby retained over the Settling Parties, the FG Defendants, and the Settlement Class Members for all matters relating to the Action, including (i) the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Judgment, (ii) disposition of the Initial Settlement Amount and/or Escrow Fund; and (iii) the award of attorneys' fees, costs, interest, and

reimbursement of expenses in the Action.

DATED: 27 March 2013



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The Honorable Victor Marrero  
United States District Judge

DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/22/13

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PASHA ANWAR, *et al.*,  
  
Plaintiffs,  
  
v.  
  
FAIRFIELD GREENWICH LIMITED, *et al.*,  
  
Defendants.  
  
This Document Relates To: 09-cv-118 (VM)

Master File No. 09-cv-118 (VM) (FM)

**FINAL JUDGMENT AND ORDER AWARDING FEES AND EXPENSES**

This matter came before the Court for hearing on November 22, 2013 pursuant to the GlobeOp Preliminary Approval Order (“Preliminary Approval Order”), dated September 10, 2013 (Dkt. No. 1189), on the application of the Representative Plaintiffs for approval of the Settlement set forth in the GlobeOp Stipulation of Settlement (“GlobeOp Stipulation”) (Dkt. No. 1184), and the petition, on behalf of Plaintiffs’ Counsel, for an award of attorneys’ fees and reimbursement of expenses. Due and adequate notice having been given to the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Judgment and Order Awarding Fees and Expenses (the “GlobeOp Final Fee and Expense Judgment”) incorporates by reference the definitions in the GlobeOp Stipulation, and all terms used herein shall have the same meanings as set forth in the GlobeOp Stipulation.
2. This Court has previously entered the GlobeOp Final Judgment and Order of Dismissal With Prejudice, among other things, approving the \$5,000,000 cash GlobeOp

Settlement Amount set forth in the GlobeOp Stipulation and finding that said GlobeOp Settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the GlobeOp Settlement Class and each of the GlobeOp Settlement Class Members.

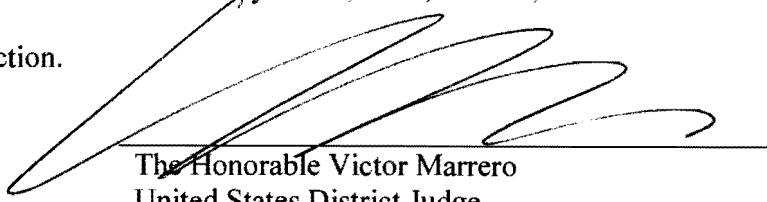
3. The Court hereby grants Plaintiffs' Lead Counsel attorneys' fees of 25% of the GlobeOp Settlement Amount and expenses in an amount of \$19,825.42, together with the interest earned thereon for the same time period and at the same rate as that earned on the GlobeOp Settlement Amount. The Court finds that the amount of fees awarded is fair and reasonable under the percentage-of-recovery method and the factors described in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Those factors include the following: the (i) time and labor expended by Plaintiffs' Counsel; (2) the magnitude and complexities of the Action; (3) the risk of continued litigation; (4) the quality of representation; (5) the requested fee in relation to the Settlement; (6) the experience and ability of the attorneys; (7) awards in similar cases; (8) the contingent nature of the representation and the result obtained for the Settlement Class; and (9) public policy considerations. *See Goldberger*, 209 F.3d at 50.

4. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Lead Counsel from the GlobeOp Settlement Amount, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the GlobeOp Settlement Amount, subject to the terms, conditions, and obligations of the GlobeOp Stipulation. Said attorneys' fees shall be allocated by Plaintiffs' Lead Counsel in a manner which, in their good-faith judgment, reflects each Plaintiff's Counsel's contribution to the institution, prosecution and resolution of the GlobeOp Action.

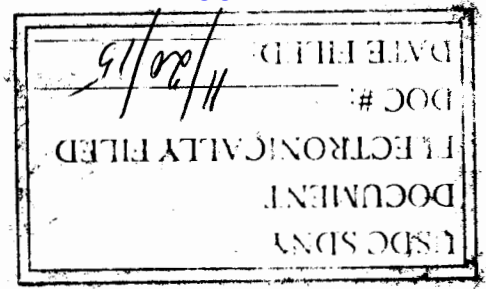
5. The Court expressly determines that there is no just reason for delay in entering this Final Judgment and directs the Clerk of the Court to enter this Final Judgment pursuant to Fed. R. Civ. P. 54(b).

6. Without affecting the finality of this Final Judgment in any way, exclusive jurisdiction is hereby retained over the Settling Parties, and the GlobeOp Settlement Class Members for all matters relating to the Action, including (i) the administration, interpretation, effectuation or enforcement of the GlobeOp Stipulation and this Final Judgment, (ii) disposition of the GlobeOp Settlement; and (iii) the award of attorneys' fees, costs, interest, and reimbursement of expenses in the Action.

DATED: 22 November 2013



The Honorable Victor Marrero  
United States District Judge



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

PASHA ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

Master File No. 09-cv-118 (VM) (FM)

**FINAL JUDGMENT AND ORDER OF DISMISSAL  
WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement (“Preliminary Approval Order”), dated August 13., 2015 (Dkt No. 1402), on the application of the Representative Plaintiffs for approval of the Settlement set forth in the Stipulation of Settlement dated August 12, 2015 (the “Stipulation”) (Dkt No. 1398). Due and adequate notice having been given of the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (the “Final Judgment”) incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.



2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.

3. The distribution of the Notice and the publication of the Summary Notice, as provided for in the Preliminary Approval Order, constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said notices fully satisfied the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. ¶78u-4(a)(7)), the requirements of due process, and any other applicable law.

4. The Court finds that the Settling Defendants have provided notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715.

5. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied for purposes of this Settlement in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) the Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of this Action.

6. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies the Action as a class action for purposes of this Settlement only, and certifies as the Settlement Class all Persons who were Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or

limited partner account of record), and who suffered a Net Loss of principal invested in the Funds, excluding (i) those Persons who timely and validly requested exclusion from the Settlement Class; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice or who is barred by prior judgment or settlement from asserting any of the claims against the Citco Defendants set forth in the SCAC; and (v) the Defendants and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, attorneys, immediate family members (as defined in 17 C.F.R. 240.16a-1(e)), heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such (except for any of the Citco Defendants in their role as nominee or record shareholder for any investor). The Citco Defendants solely in their capacity as nominee or record shareholder for any investors in the Funds shall act in that capacity on behalf of Beneficial Owners who participate in the Settlement.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the Settlement Class and each of the Settlement Class Members. This Court further finds the Settlement set forth in the Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of the Representative Plaintiffs, Settlement Class Members and the Citco Defendants. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in accordance with its terms and provisions. The Settling Parties are hereby directed to perform the terms of the Stipulation.

8. In accordance with Paragraph A.1(g) of the Stipulation, for purposes of this Final Judgment, the term "Claims" shall mean: any and all manner of claims, demands, rights, actions,

potential actions, causes of action, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys' fees, expert or consulting fees, debts, expenses, costs, sanctions, judgments, decrees, matters, issues and controversies of any kind or nature whatsoever, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, or heretofore or previously existed, or may hereafter exist (including, but not limited to, any claims arising under federal, state or foreign law, common law, bankruptcy law, statute, rule, or regulation relating to alleged fraud, breach of any duty, breach of any contract, negligence, fraudulent conveyance, avoidance, violations of the federal securities laws, or otherwise), whether individual, class, direct, derivative, representative, on behalf of others, legal, equitable, regulatory, governmental or of any other type or in any other capacity.

9. In accordance with Paragraph A.1(kk) of the Stipulation, for purposes of this Final Judgment, the term "Settling Party" shall mean any one of, and "Settling Parties" means all of, the parties to the Stipulation, namely the Citco Defendants and the Representative Plaintiffs on behalf of themselves and the Settlement Class.

10. In accordance with Paragraph A.1(bb) of the Stipulation, for purposes of this Final Judgment, the term "Released Parties" shall mean: (i) each of the Citco Defendants, their respective past, present and future, direct or indirect, parent entities, subsidiaries, and other affiliates, predecessors and successors of each and all such entities, and each and all of their foregoing entities' respective past, present, and future directors, officers, employees, partners, alleged partners, stockholders, members and owners, attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns, including but not limited to Brian Francoeur and Ian Pilgrim; (ii) to the extent not included in (i) above, any and all persons, firms, trusts, corporations, and other

entities in which any of the Citco Defendants has a financial interest or was a founder, settler or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, agents, or representatives of any such person, firm, trust, corporation or other entity; and (iii) in their capacity as such, the legal representatives, heirs, executors, and administrators of any of the foregoing. For avoidance of doubt, "Released Parties" does not include the PwC Defendants.

11. In accordance with Paragraph A.1(cc) of the Stipulation, for purposes of this Final Judgment, the term "Releasing Parties" shall mean: the Representative Plaintiffs, each and every member of the Settlement Class and each of their respective predecessors, successors, assigns, parents, subsidiaries and other affiliates, officers, directors, employees, partners, members, managers, owners, trustees, beneficiaries, advisors, consultants, insurers, reinsurers, stockholders, investors, nominees, custodians, attorneys, heirs, representatives, administrators, executors, devisees, legatees, and estates.

12. In accordance with Paragraph A.1(aa) of the Stipulation, for purposes of this Final Judgment, the term "Released Claims" shall mean: any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, tribunal, forum or proceeding by on or behalf of any of the Releasing Parties against any one or more of the Released Parties, whether any such Released Parties were named, served with process, or appeared in the Action, which have arisen, could have arisen, arise now, or hereafter arise out of or relate in any manner to the allegations, facts, events, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, at issue, or set forth in, or referred to or otherwise related in any way, directly or indirectly, to: (i) the Action, and the allegations, claims, defenses, and

counterclaims asserted in the Action, (ii) marketing and/or selling of the Funds by one or more of the Citco Defendants and/or the Released Parties, (iii) any disclosures or failures to disclose, by one or more of the Citco Defendants and/or the Released Parties, with respect to one or more of the Funds and/or the Citco Defendants and/or BLMIS, (iv) any fiduciary, contractual, or other obligations of one or more of the Citco Defendants and/or the Released Parties (to the extent such duties existed) related to the Funds and/or the Settlement Class Members, (v) any administrative, custodial, or other services provided to any of the Funds and/or BLMIS by one or more of the Citco Defendants and/or the Released Parties, (vi) due diligence by one or more of the Citco Defendants and/or the Released Parties related to the Funds and/or BLMIS, (vii) purchases of, sales of (or decisions not to sell), or fees paid in relation to, direct or indirect investments in one or more of the Funds, (viii) any direct or indirect investment in BLMIS, or (ix) any claims in connection with, based upon, arising out of, or relating to the Settlement (but excluding any claims to enforce the terms of the Settlement).

13. In accordance with Paragraph A.1(II) of the Stipulation, for purposes of this Final Judgment, the term “Unknown Claims” shall mean: all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to opt-out or object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Representative Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Representative Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state, territory, country or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any fiduciary, contractual, or other duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

14. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto), who pursuant to the Notice, timely requested exclusion from the Settlement Class before the

October 16, 2015, deadline, as well as three additional Persons whose Requests for Exclusion were received by the Claims Administrator on October 19, 2015, one business day after the deadline, and one additional Person whose Request for Exclusion was received by the Claims Administrator on November 5, 2015, who this Court, in its discretion, has determined should be treated (and the Citco Defendants have not opposed their treatment) as valid opt-outs, the Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against each and all of the Citco Defendants. The parties are to bear their own costs, except as otherwise provided in the Stipulation.

15. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund or Escrow Fund, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including Unknown Claims) against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

16. This release does not include any claims asserted or which may be asserted by the Funds in the proceedings entitled (i) *New Greenwich Litigation Trust, LLC, as Successor Trustee*

of *Greenwich Sentry, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk's Index No. 600469/2009; and (ii) *New Greenwich Litigation Trust, LLC, as Successor Trustee of Greenwich Sentry Partners, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk's Index No. 600498/2009; provided, however, that to the extent that any such claims have been or may be asserted, nothing in this paragraph or any provision herein shall prevent the Released Parties from asserting any defenses or raising any argument as to liability or damages with respect to such claims or, with the exception of the provisions of ¶ 4 of the Stipulation, prevent the Released Parties from asserting any rights, remedies or claims against the Funds or in the pending (though dismissed) derivative litigation.

17. The Released Parties, on behalf of themselves, their heirs, executors, predecessors, successors and assigns, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel from all Claims which arise out of, concern or relate to the institution, prosecution, settlement or dismissal of the Action (the "Citco Defendant Released Claims"), and shall be permanently enjoined from prosecuting the Citco Defendant Released Claims against the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel. Nothing contained herein shall, however, bar the Citco Defendants and the Released Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

18. To the fullest extent permitted by law, all Persons, including without limitation the PwC Defendants, FG Defendants and GlobeOp, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as



damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum.

19. To the fullest extent permitted by law, the Released Parties shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the PwC Defendants, FG Defendants, and GlobeOp, seeking as damages or otherwise, the recovery of all or any part of any liability, judgment or settlement, which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. The Released Parties shall further waive all rights to seek recovery on claims for contribution or indemnity that they hold or may hold against the Funds or any party indemnified by the Funds, the FG Defendants, GlobeOp, and the PwC Defendants for any expenses incurred or amounts paid in settlement or otherwise in connection with the Action. Nothing in this paragraph precludes the Citco Defendants from arguing that the settlement proceeds in this case are an offset against claims that may be made against them in other

proceedings. Any final verdict or judgment that may be obtained by one or more of the Representative Plaintiffs or one or more of the other Settlement Class Members, whether individually or on behalf of a class, against one or more of the PwC Defendants or other Persons barred from seeking contribution pursuant to this Final Judgment (a “Non-Dismissed Defendant Judgment”) shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Stipulation.

20. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members and directs that Plaintiffs’ Lead Counsel implement the Plan of Allocation in accordance with the terms of the Stipulation.

21. The Court hereby grants Plaintiffs’ Lead Counsel attorneys’ fees of 30 % of the \$125,000,000 Settlement Fund and expenses in an amount of \$4,438,320 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund. Said fees shall be allocated by Plaintiffs’ Lead Counsel in a manner which, in their good-faith judgment, reflects each Plaintiff’s Counsel’s contribution to the institution, prosecution and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable under the percentage-of-recovery method and the factors described in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50. (2d Cir. 2000). Those factors include the following: the (1) time and labor expended by Plaintiffs’ Counsel; (2) the magnitude and complexities of the Action; (3) the risk continued litigation; (4) the quality of representation; (5) the requested fee in relation to the

Settlement; (6) the experience and ability of the attorneys; (7) awards in similar cases; (8) the contingent nature of the representation and the result obtained for the Settlement Class; and (9) public policy considerations. *See Goldberger*, 209 F.3d at 50.

22. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Settlement Class.

23. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Lead Counsel from the Settlement Fund, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the Settlement Fund, subject to the terms, conditions, and obligations of the Stipulation.

24. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by the Representative Plaintiffs, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of the Citco Defendants, the Released Parties, or any of them; (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by any of the Citco Defendants or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (c) is or may be deemed to be or shall be used, offered or received against the Settling Parties or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the

Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Representative Plaintiffs, Named Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action; and/or (d) is or may be deemed to be or shall construed as or received in evidence as an admission or concession against the Settling Parties or the Released Parties, or each or any of them, that any of Representative Plaintiffs' or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable under the SCAC would have been greater or less than the Settlement Fund and Escrow Fund or that the consideration to be given pursuant to the Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

25. The Settling Parties may file the Stipulation and/or this Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

27. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Settling Defendants in accordance with the terms of the Stipulation, then this Final Judgment shall be vacated and rendered null and void to the extent provided by and in accordance with the Stipulation and, in such event, all orders entered and releases

delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

28. The foregoing orders solely regarding ¶¶ 17-19, the Plan of Allocation (¶ 20) or request for payment of fees and reimbursement of expenses (¶¶ 21-22), shall in no way disturb or affect this Final Judgment and shall be separate and apart from this Final Judgment.

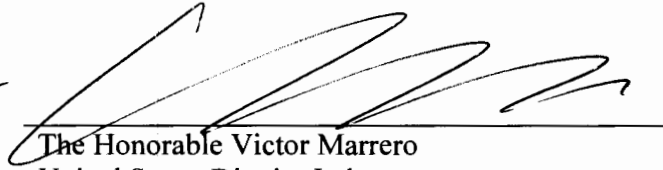
29. Any Settlement Class Member who has submitted a Request for Exclusion shall not be deemed to have submitted to the jurisdiction of any Court in the United States for any matter on account of such submission, and any Settlement Class Member who has submitted or submits a Proof of Claim thereby submits to the jurisdiction of this Court with respect only to the subject matter of such Proof of Claim and all determinations made by this Court thereon and shall not be deemed to have submitted to the jurisdiction of this Court or of any court in the United States for any other matter on account of such submission.

30. Except where a Settlement Class Member who has submitted a Request for Exclusion commences or otherwise prosecutes a Released Claim against a Released Party, all information submitted by a Settlement Class Member in a Request for Exclusion or a Proof of Claim shall be treated as confidential protected information and may not be disclosed by the Claims Administrator, its affiliates or the Setting Parties to any third party absent a further order of this Court upon a showing of necessity, and any such information that is submitted to the Court shall be filed under seal.

31. The Court expressly determines that there is no just reason for delay in entering this Final Judgment and directs the Clerk of the Court to enter this Final Judgment pursuant to Fed. R. Civ. P. 54(b).

32. Without affecting the finality of this Final Judgment in any way, exclusive jurisdiction is hereby retained over the Settling Parties and the Settlement Class Members for all matters relating to the Action, including (i) the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Judgment, (ii) disposition of the Settlement Fund; and (iii) any application for attorneys' fees, costs, interest, and reimbursement of expenses in the Action.

DATED: 20 November 2015

  
The Honorable Victor Marrero  
United States District Judge

**EXHIBIT 1**

**List of Persons and Entities Excluded from the Citco Settlement Class in  
PASHA ANWAR, *et al.*, v. FAIRFIELD GREENWICH LIMITED, *et al.*  
Master File No.: 09-cv-118 (VM) (FM)**

The following persons and entities, and only the following persons and entities, properly excluded themselves from the Citco Settlement Class by the October 16, 2015 deadline pursuant to the Court's Preliminary Approval Order dated August 13, 2015 (Dkt. No. 1402) in response to the Notice of Proposed Partial Settlement of Class Action (Dkt No. 1424-1):

**TO BE FILED UNDER SEAL**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 5/6/16

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

This Document Relates To: 09 cv 118 (VM)

Master File No. 09 CV 118 (VM)

**FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE**

This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement (“Preliminary Approval Order”), dated January 7, 2016 (Dkt No. 1537), on the application of the Representative Plaintiffs for approval of the Settlement set forth in the Stipulation of Settlement dated January 6, 2016 (the “Stipulation”) (Dkt No. 1533). Due and adequate notice having been given of the Settlement Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (the “Final Judgment”) incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Settlement Class Members.



3. The distribution of the Notice and the publication of the Summary Notice, as provided for in the Preliminary Approval Order, constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said notices fully satisfied the requirements of Federal Rule of Civil Procedure 23, Section 21D(a)(7) of the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995 (15 U.S.C. ¶78u-4(a)(7)), the requirements of due process, and any other applicable law.

4. The PwC Defendants provided notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1715, on March 4, 2016 (the “CAFA Notice”). The recipients of the CAFA Notice shall have the right to be heard with respect to the Settlement for 90 days from that date, through June 2, 2016, when this Final Judgment shall become effective if no such recipient has requested to be heard.

5. The Court finds that the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied for purposes of this Settlement in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law or fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Representative Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) the Representative Plaintiffs fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of this Action.

6. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court hereby certifies the Action as a class action for purposes of this Settlement only, and certifies as the Settlement Class all Persons who were Beneficial Owners of shares or limited

partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), and who suffered a Net Loss of principal invested in the Funds, excluding (i) those Persons who timely and validly requested exclusion from this PwC Settlement Class; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice or who is barred by prior judgment or settlement from asserting any of the claims against the PwC Defendants set forth in the SCAC; and (v) the Defendants and any entity in which the Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, attorneys, immediate family members (as defined in 17 C.F.R. 240.16a-1(e)), heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such (except for any of the Citco Defendants in their role as nominee or record shareholder for any investor). The Citco Defendants solely in their capacity as nominee or record shareholder for any investors in the Funds shall act in that capacity on behalf of Beneficial Owners who participate in the Settlement.

7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable and adequate to, and is in the best interests of, the Representative Plaintiffs, the Settlement Class and each of the Settlement Class Members. This Court further finds the Settlement set forth in the Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of the Representative Plaintiffs, Settlement Class Members and the PwC Defendants. Accordingly, the Settlement embodied in the Stipulation is hereby approved in all respects and shall be consummated in

accordance with its terms and provisions. The Settling Parties are hereby directed to perform the terms of the Stipulation.

8. In accordance with Paragraph A.1(g) of the Stipulation, for purposes of this Final Judgment, the term “Claims” shall mean: any and all manner of claims, demands, rights, actions, potential actions, causes of action, liabilities, duties, damages, losses, diminutions in value, obligations, agreements, suits, fees, attorneys’ fees, expert or consulting fees, debts, expenses, costs, sanctions, judgments, decrees, matters, issues and controversies of any kind or nature whatsoever, whether known or unknown, contingent or absolute, liquidated or not liquidated, accrued or unaccrued, suspected or unsuspected, disclosed or undisclosed, apparent or not apparent, foreseen or unforeseen, matured or not matured, which now exist, or heretofore or previously existed, or may hereafter exist (including, but not limited to, any claims arising under federal, state or foreign law, common law, bankruptcy law, statute, rule, or regulation relating to alleged fraud, breach of any duty, breach of any contract, negligence, fraudulent conveyance, avoidance, violations of the federal securities laws, or otherwise), whether individual, class, direct, derivative, representative, on behalf of others, legal, equitable, regulatory, governmental or of any other type or in any other capacity.

9. In accordance with Paragraph A.1(kk) of the Stipulation, for purposes of this Final Judgment, the term “Settling Party” shall mean any one of, and “Settling Parties” means all of, the parties to the Stipulation, namely the PwC Defendants and the Representative Plaintiffs on behalf of themselves and the Settlement Class.

10. In accordance with Paragraph A.1(bb) of the Stipulation, for purposes of this Final Judgment, the term “Released Parties” shall mean: (i) each of the PwC Defendants and PricewaterhouseCoopers International Limited, their respective past, present and future, direct or

indirect, parent entities, subsidiaries, and other affiliates, predecessors and successors of each and all such entities, and each and all of their foregoing entities' respective past, present, and future directors, officers, employees, partners (in the broadest concept of that term), alleged partners, stockholders, members and owners, attorneys, advisors, consultants, trustees, insurers, co-insurers, reinsurers, representatives, and assigns; (ii) to the extent not included in (i) above, any and all persons, firms, trusts, corporations, and other entities in which any of the PwC Defendants has a financial interest or was a founder, settler or creator of the entity, and, in their capacity as such, any and all officers, directors, employees, trustees, beneficiaries, settlers, creators, attorneys, consultants, agents, or representatives of any such person, firm, trust, corporation or other entity; and (iii) in their capacity as such, the legal representatives, heirs, executors, and administrators of any of the foregoing.

11. In accordance with Paragraph A.1(cc) of the Stipulation, for purposes of this Final Judgment, the term "Releasing Parties" shall mean: the Representative Plaintiffs, each and every member of the Settlement Class and each of their respective predecessors, successors, assigns, parents, subsidiaries and other affiliates, officers, directors, employees, partners, members, managers, owners, trustees, beneficiaries, advisors, consultants, insurers, reinsurers, stockholders, investors, nominees, custodians, attorneys, heirs, representatives, administrators, executors, devisees, legatees, and estates.

12. In accordance with Paragraph A.1(aa) of the Stipulation, for purposes of this Final Judgment, the term "Released Claims" shall mean: any and all Claims, including Unknown Claims, that have been, could have been, or in the future can or might be asserted in any federal, state or foreign court, tribunal, forum or proceeding by on or behalf of any of the Releasing Parties against any one or more of the Released Parties, whether any such Released Parties were

named, served with process, or appeared in the Action, which have arisen, could have arisen, arise now, or hereafter arise out of or relate in any manner to the allegations, facts, events, matters, acts, occurrences, statements, representations, misrepresentations, omissions, or any other matter, thing or cause whatsoever, or any series thereof, embraced, involved, at issue, or set forth in, or referred to or otherwise related in any way, directly or indirectly, to: (i) the Action, and the allegations, claims, defenses, and counterclaims asserted in the Action, (ii) auditing or reviewing the financial statements of any of the Funds, (iii) marketing and/or selling of the Funds by one or more of the PwC Defendants and/or the Released Parties, (iv) any disclosures or failures to disclose, by one or more of the PwC Defendants and/or the Released Parties, with respect to one or more of the Funds and/or the PwC Defendants and/or BLMIS, (v) any fiduciary, contractual, common law or other obligations of one or more of the PwC Defendants and/or the Released Parties (to the extent such duties existed) related to the Funds and/or the Settlement Class Members, (vi) any other services provided to any of the Funds and/or BLMIS by one or more of the PwC Defendants and/or the Released Parties, (vii) due diligence by one or more of the PwC Defendants and/or the Released Parties related to the Funds and/or BLMIS, (viii) purchases of, sales of (or decisions not to sell), or fees paid in relation to, direct or indirect investments in one or more of the Funds, (ix) any direct or indirect investment in BLMIS, or (x) any claims in connection with, based upon, arising out of, or relating to the subject matter of the Settlement (excluding only claims to enforce the terms of the Settlement).

13. In accordance with Paragraph A.1(II) of the Stipulation, for purposes of this Final Judgment, the term “Unknown Claims” shall mean: all claims, demands, rights, liabilities, and causes of action of every nature and description which any Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties

which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision not to opt-out or object to this Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Representative Plaintiffs shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived, and by operation of the Final Judgment shall have waived, the provisions, rights and benefits of California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Representative Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state, territory, country or principle of common law, which is similar, comparable or equivalent to California Civil Code § 1542. Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly fully, finally and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any fiduciary, contractual, or other duty, law or rule, without regard to the subsequent

discovery or existence of such different or additional facts. The Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

14. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto), who pursuant to the Notice, timely requested exclusion from the Settlement Class before the April 1, 2016, deadline, the Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against each and all of the PwC Defendants. The parties are to bear their own costs, except as otherwise provided in the Stipulation.

15. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims (including Unknown Claims) against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims, and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

16. This release does not include any claims asserted or which may be asserted by the Funds, or the Trustee or Liquidator of the Funds, or in the proceedings entitled (i) *New Greenwich Litigation Trustee, LLC, as Successor Trustee of Greenwich Sentry, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk's Index No. 600469/2009; (ii) *New Greenwich Litigation Trustee, LLC, as Successor Trustee of Greenwich Sentry Partners, L.P. Litigation Trust v. Citco Fund Services (Europe) BV, et al.*, New York County Clerk's Index No. 600498/2009; (iii) *Krys et al. v PricewaterhouseCoopers Accountants N.V. et al., Rb. Amsterdam HA ZA 2012/0863*, Case No. 521460; and (iv) *Fairfield Sentry et al. v. PricewaterhouseCoopers LLP et al.*, Ontario Superior Court of Justice, Court File No. CV-12-454648; provided, however, that to the extent that any such claims have been or may be asserted, nothing in this paragraph or any provision herein shall prevent the Released Parties from asserting any defenses or raising any argument as to liability or damages with respect to such claims or, with the exception of the provisions of ¶ 4 of the Stipulation, prevent the Released Parties from asserting any rights, remedies or claims against the Funds or in the pending (though dismissed) derivative litigation.

17. The Released Parties, on behalf of themselves, their heirs, executors, predecessors, successors and assigns, shall be deemed to have, and by operation of this Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and all of the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel from all Claims which arise out of, concern or relate to the institution, prosecution, settlement or dismissal of the Action (the "PwC Defendant Released Claims"), and shall be permanently enjoined from prosecuting the PwC Defendant Released Claims against the Representative Plaintiffs, Settlement Class Members and Plaintiffs' Counsel. Nothing contained herein shall,



however, bar the PwC Defendants and the Released Parties from bringing any action or claim to enforce the terms of the Stipulation or this Final Judgment.

18. To the fullest extent permitted by law, all Persons, including without limitation the Citco Defendants, FG Defendants and GlobeOp, shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum.

19. To the fullest extent permitted by law, the Released Parties shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Citco Defendants, FG Defendants, and GlobeOp, seeking as damages or otherwise, the recovery of all or any part of any liability, judgment or settlement, which they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other

proceeding or forum. The Released Parties shall further waive all rights to seek recovery on claims for contribution or indemnity that they hold or may hold against the Funds or any party indemnified by the Funds, the FG Defendants, GlobeOp, and the Citco Defendants for any expenses incurred or amounts paid in settlement or otherwise in connection with the Action. Nothing in this paragraph precludes the PwC Defendants from arguing that the settlement proceeds in this case are an offset against claims that may be made against them in other proceedings. Any final verdict or judgment that may be obtained by one or more of the Representative Plaintiffs or one or more of the other Settlement Class Members, whether individually or on behalf of a class, against one or other Persons barred from seeking contribution pursuant to this Final Judgment (a “Non-Dismissed Defendant Judgment”) shall be reduced, to the extent permitted by applicable law, by the greater of (i) the amount that corresponds to the percentage of responsibility attributed to the Released Parties under the Non-Dismissed Defendant Judgment; and (ii) the gross monetary consideration provided to such Representative Plaintiff or other Settlement Class Member or Members pursuant to this Stipulation.

20. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members and directs that Plaintiffs’ Lead Counsel implement the Plan of Allocation in accordance with the terms of the Stipulation.

21. The Court hereby grants Plaintiffs’ Lead Counsel attorneys’ fees of 30% of the \$55,000,000 Settlement Fund and expenses in an amount of \$1,810,819 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund. Said fees shall be allocated by Plaintiffs’ Lead Counsel in a manner which, in their good-

faith judgment, reflects each Plaintiff's Counsel's contribution to the institution, prosecution and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable under the percentage-of-recovery method and the factors described in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). Those factors include the following: the (1) time and labor expended by Plaintiffs' Counsel; (2) the magnitude and complexities of the Action; (3) the risk of continued litigation; (4) the quality of representation; (5) the requested fee in relation to the Settlement; (6) the experience and ability of the attorneys; (7) awards in similar cases; (8) the contingent nature of the representation and the result obtained for the Settlement Class; and (9) public policy considerations. *See Goldberger*, 209 F.3d at 50.

22. The Court finds that the amount of fees awarded is fair and reasonable in light of the time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Settlement Class.

23. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Plaintiffs' Lead Counsel from the Settlement Fund, together with interest accrued on such amount from the date of such order to the date of payment at the same rate as earned on the Settlement Fund, subject to the terms, conditions, and obligations of the Stipulation.

24. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by the Representative Plaintiffs, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or

fault of the PwC Defendants, the Released Parties, or any of them; (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by any of the PwC Defendants or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (c) is or may be deemed to be or shall be used, offered or received against the Settling Parties or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by the Representative Plaintiffs, Named Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action; and/or (d) is or may be deemed to be or shall construed as or received in evidence as an admission or concession against the Settling Parties or the Released Parties, or each or any of them, that any of Representative Plaintiffs' or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable under the SCAC would have been greater or less than the Settlement Amount or that the consideration to be given pursuant to the Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

25. The Settling Parties may file the Stipulation and/or this Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

26. The Court finds that during the course of the Action, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11.

27. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Settling Defendants in accordance with the terms of the Stipulation, then this Final Judgment shall be vacated and rendered null and void to the extent provided by and in accordance with the Stipulation and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

28. The foregoing orders solely regarding ¶¶ 17-19, the Plan of Allocation (¶ 20) or request for payment of fees and reimbursement of expenses (¶¶ 21-22), shall in no way disturb or affect this Final Judgment and shall be separate and apart from this Final Judgment.

29. Any Settlement Class Member who has submitted a Request for Exclusion shall not be deemed to have submitted to the jurisdiction of any Court in the United States for any matter on account of such submission, and any Settlement Class Member who has submitted or submits a Proof of Claim thereby submits to the jurisdiction of this Court with respect only to the subject matter of such Proof of Claim and all determinations made by this Court thereon and shall not be deemed to have submitted to the jurisdiction of this Court or of any court in the United States for any other matter on account of such submission.

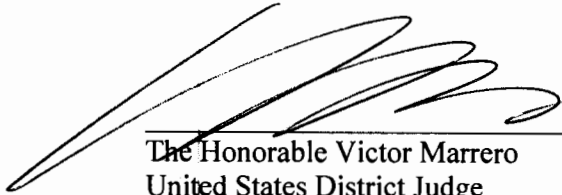
30. Except where a Settlement Class Member who has submitted a Request for Exclusion commences or otherwise prosecutes a Released Claim against a Released Party, all information submitted by a Settlement Class Member in a Request for Exclusion or a Proof of

Claim shall be treated as confidential protected information and may not be disclosed by the Claims Administrator, its affiliates or the Settling Parties to any third party absent a further order of this Court upon a showing of necessity, and any such information that is submitted to the Court shall be filed under seal.

31. The Court expressly determines that there is no just reason for delay in entering this Final Judgment and directs the Clerk of the Court to enter this Final Judgment pursuant to Fed. R. Civ. P. 54(b).

32. Without affecting the finality of this Final Judgment in any way, exclusive jurisdiction is hereby retained over the Settling Parties and the Settlement Class Members for all matters relating to the Action, including (i) the administration, interpretation, effectuation or enforcement of the Stipulation and this Final Judgment, (ii) disposition of the Settlement Fund; and (iii) any application for attorneys' fees, costs, interest, and reimbursement of expenses in the Action.

DATED: May 6, 2016

  
The Honorable Victor Marrero  
United States District Judge

# **Exhibit 2**

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

KARSTEN SCHUH, Individually and on Behalf of All Others Similarly Situated,	)	Civil Action No. 3:11-cv-01033
	)	<b>(Consolidated)</b>
	)	
Plaintiff,	)	Chief Judge Kevin H. Sharp
	)	
vs.	)	Magistrate Judge Barbara D. Holmes
	)	
HCA HOLDINGS, INC., et al.,	)	<u>CLASS ACTION</u>
	)	
Defendants.	)	ORDER AWARDING ATTORNEYS' FEES AND EXPENSES
_____	)	



This matter having come before the Court on April 11, 2016, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated December 18, 2015 (the "Stipulation"). Dkt. No. 534.

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

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 30% of the Settlement Amount, and litigation expenses in the amount of \$2,016,508.52, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated amongst counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the Settlement; that the Lead Plaintiff appointed by the Court to represent the Class approved the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit authority and consistent with other fee awards in cases of this size.

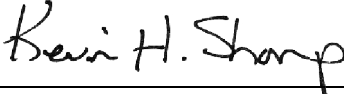
4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §77z-1(a)(4), Lead Plaintiff New England Teamsters & Trucking Industry Pension Fund is awarded \$6,081.25 as payment for its time spent in representing the Class.

6. The Court has considered the objection to the fee award filed by Class Members Mathis and Catherine Bishop, and finds it to be without merit. The objection is therefore overruled in its entirety.

IT IS SO ORDERED.

DATED: April 14, 2016

  
\_\_\_\_\_  
THE HONORABLE KEVIN H. SHARP  
CHIEF UNITED STATES DISTRICT JUDGE

# **Exhibit 3**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 2-2-2016

IN RE PFIZER INC. SECURITIES LITIGATION

No. 04-cv-9866 (LTS)(HBP)

ECF CASE

**ORDER GRANTING LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES**

**WHEREAS:**

A. On December 21, 2016, a hearing was held before this Court to consider, among other things: (1) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”); and (2) the fairness and reasonableness of the Fee and Expense Application;

B. All interested Persons were afforded the opportunity to be heard;

C. The maximum amount of fees and litigation expenses that would be requested by Lead Counsel, including the maximum amount of costs and expenses to Plaintiffs incurred in connection with representing the Class, was set forth in the Notice of Proposed Settlement of Securities Class Action, Application for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing (the “Notice”) that was disseminated to the Class in accordance with the Court’s September 16, 2016 Order Preliminarily Approving Settlement, Directing Notice to Class Members, and Setting Hearing for Final Approval of Settlement (ECF No. 703, the “Preliminary Approval Order”);

D. The Notice advised Class Members of their right to object to the Fee and Expense Application and that any objections to the Fee and Expense Application were required to be filed with the Court no later than November 28, 2016, and served on designated counsel for the Parties;

E. On November 11, 2016, Lead Counsel filed its Fee and Expense Application;

F. All objections relating to the Fee and Expense Application have been considered, and the Court has overruled all such objections; and

G. This Court has duly considered Lead Counsel's Fee and Expense Application, the declarations and memoranda of law submitted in support thereof, and all the submissions and arguments presented with respect thereto.

**NOW, THEREFORE**, after due deliberation and for the reasons stated on the record of the December 21, 2016 hearing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

1. This Order hereby incorporates by reference the definitions in the Stipulation and Agreement of Settlement (*see* ECF No. 700, Ex. 1) (the "Settlement Agreement"), and all initial capitalized terms, unless otherwise defined herein, shall have the same meanings as set forth in the Settlement Agreement.

2. Lead Counsel is hereby awarded 28% of the \$486 million Settlement Amount, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

3. Lead Counsel is hereby awarded the sum of \$20,005,879.33 in litigation expenses, plus interest at the same rate earned by the Settlement Fund, to be paid from the Settlement Fund.

4. Lead Counsel shall allocate the attorneys' fees and expenses awarded amongst Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contribution of such counsel to the prosecution and settlement of the Action.

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

(a) The Settlement has created a fund of \$486 million in cash that has been funded into escrow pursuant to the terms of the Settlement Agreement, and that numerous Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Court-appointed Class Representatives, including the institutional investor Lead Plaintiff, that oversaw the prosecution and resolution of the Action;

(c) Copies of the Notice were mailed to over 4.1 million potential Class Members and nominees stating that Lead Counsel, on behalf of Plaintiffs' Counsel, would ask the Court for an award of attorneys' fees not to exceed 30% of the Settlement Fund and expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against Defendants in an amount not to exceed \$25 million, plus interest, to be paid from the Settlement Fund;

(d) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted more than 290,000 hours, with a lodestar value of over \$120 million, to achieve the Settlement; and

(h) The amount of attorneys' fees and expenses awarded from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Teachers' Retirement System of Louisiana is hereby awarded \$4,015, Class Representative Christine Fleckles is hereby awarded \$7,500, Class Representative Julie Perusse is hereby awarded \$5,000, and Class Representative Alden Chace is hereby awarded \$5,000, for reimbursement of their costs and expenses directly related to their representation of the Class, to be paid from the Settlement Fund.

7. The Notice provided the best notice practicable under the circumstances. Said Notice provided due and adequate notice of these proceedings and the matters set forth herein, including the fee and litigation expense request, to all Persons entitled to such Notice, and said Notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the United States Constitution, §21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995, and all other applicable law and rules.

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

9. There is no just reason for delay in entry of this Order Granting Lead Counsel's Motion for an Award of Attorneys' Fee and Reimbursement of Expenses, and immediate entry of this Order by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: New York, New York  
December 21, 2016



---

LAURA TAYLOR SWAIN  
United States District Judge



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

**New Jersey Carpenters Health Fund, et al.,**

**Plaintiffs,**

**v.**

**Residential Capital, LLC, et al.,**

**Defendants.**

**No. 08-cv-8781 (KPF)**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: July 31, 2015

*KPF*  
**~~PROPOSED~~ ORDER ON LEAD COUNSEL'S MOTION FOR AN AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

Lead Counsel's Motion For An Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Fee Application") duly came before the Court for a hearing on July 31, 2015. The Court has considered the Fee Application and all supporting and other related materials, including the matters presented at the July 31, 2015 hearing. Due and adequate notice having been given to the Class as required by the Court's February 19, 2015 Order Preliminarily Approving the Proposed Settlement And Providing For Notice ("Preliminary Approval Order, ECF No. 344), and the Court having considered all papers and proceedings had herein and otherwise being fully informed in the proceedings and good cause appearing therefor:

NOW, THEREFORE, THE COURT FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement (the "Underwriter Settlement Stipulation," ECF No. 343), and all capitalized terms used, but not defined herein, shall have the same meanings as in the Underwriter Settlement Stipulation.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Members of the Underwriter Settlement Class and ResCap Settlement Class.

3. Notice of the Fee Application was directed to ResCap Settlement Class Members and Underwriter Settlement Class Members in a reasonable manner and complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure, due process, and Section 27 of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995.

4. ResCap Settlement Class Members and Underwriter Settlement Class Members have been given the opportunity to object to the Fee Application in compliance with Rule 23(h)(2) of the Federal Rules of Civil Procedure.

5. The Fee Application is hereby GRANTED

6. Lead Counsel are hereby awarded attorneys' fees in the amount of 20.75% (or \$69,512,500.00) of the Global Settlement Fund and \$3,922,092.49 in reimbursement of Lead Counsel's litigation expenses (which fees and expenses shall be paid to Lead Counsel from the Global Settlement Fund), which sums the Court finds to be fair and reasonable, plus interest earned at the same rate and for the same period as earned by the Global Settlement Fund.

7. Pursuant to paragraph 21 of the Underwriter Settlement Stipulation, the fees and expenses awarded herein shall be paid to Lead Counsel as of the entry of this Order, notwithstanding the existence of any timely filed objections thereto, if any, or potential for appeal therefrom, or collateral attack on the Underwriter Settlement or any part thereof, subject to Lead Counsel's obligation to repay all such amounts with interest should such action be ordered by the courts.

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

- a. The Underwriter and ResCap Settlements have created a fund of \$335 million in cash that has been funded into escrow accounts for the benefit of the ResCap

Settlement Class and Underwriter Settlement Class pursuant to the terms of the Underwriter Settlement Stipulation and the ResCap Settlement Stipulation (Dkt. No. 226, June 14, 2013), and that Members of those Settlement Classes who submit acceptable Proof of Claim Forms will benefit from the Settlements that occurred because of the efforts of Lead Counsel;

- b. The fee sought by Lead Counsel has been reviewed and approved as fair and reasonable by the Court-appointed Lead Plaintiff, a sophisticated institutional investor that was substantially involved in all aspects of the prosecution and resolution of the Action;
- c. Copies of the Notice were mailed to over 5,865 potential Class Members or their nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 20.75% of the Global Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed \$5.5 million, plus interest earned at the same rate and for the same period as earned by the Global Settlement Fund.
- d. Lead Counsel has conducted the litigation and achieved the Underwriter Settlement and ResCap Settlement with skill, perseverance and diligent advocacy;
- e. The Action involves complex factual and legal issues and was actively prosecuted for over six years;
- f. Had the Underwriter and ResCap Settlements not been achieved, there would remain a significant risk that Lead Plaintiff and the other members of the ResCap Settlement Class and Underwriter Settlement Class may have recovered less or nothing from Defendants;
- g. Lead Counsel devoted over 84,500 hours, with a lodestar value of over \$39 million, to achieve the Settlement; and
- h. The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

9. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees or expenses application shall in no way disturb or affect the finality of the Order and Final Judgment entered with respect to the Underwriter Settlement.

10. Jurisdiction is hereby retained over the parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Underwriter Stipulation and this Order.

11. In the event that the Underwriter Settlement is terminated or the Effective Date of the Underwriter Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with terms of the Stipulation.

IT IS SO ORDERED.

**Dated:** New York, New York

July 31, 2015



HONORABLE KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE

*kn*

# **Exhibit 5**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ALASKA ELECTRICAL PENSION  
FUND, et al., On Behalf of Themselves  
and All Others Similarly Situated,

Plaintiffs,

vs.

PHARMACIA CORPORATION, et al.,

Defendants.

No. 03-1519 (AET)  
(Consolidated)

CLASS ACTION

ORDER AWARDING PLAINTIFFS'  
COUNSEL'S ATTORNEYS' FEES  
AND EXPENSES

DATE: January 30, 2013

TIME: 10:00 a.m.

CTRM: The Honorable  
Anne E. Thompson

RECEIVED

JAN 30 2013

AT 8:30 \_\_\_\_\_ M  
WILLIAM T. WALSH CLERK

THIS MATTER having come before the Court on January 30, 2013, on the motion of Lead Counsel for an award of attorneys' fees and expenses; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Litigation to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of October 5, 2012 (the "Stipulation").

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

3. Class Counsel are entitled to a fee paid out of the common fund created for the benefit of the Class. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits when a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is proper. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Third Circuit expressly recognizes that a percentage-of-the-fund is the preferred method of determining fees in a common fund case. *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d. Cir. 1995). Moreover, the Private Securities Litigation Reform Act of 1995 ("PSLRA") embodies a clear

policy preference for awarding fees through the percentage-of-the-fund method. *See In re Cendant Sec. Litig.*, 404 F.3d 178, 188 n.7 (3d Cir. 2005).

4. Lead Counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Amount, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Amount, plus expenses of \$3,439,536.90, plus any interest on said amounts at the same rate as earned on the Settlement Amount. The Court finds the amount of the fees and expenses to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Amount is consistent with awards made in similar cases and in accordance with guidance provided by the Third Circuit.

7. The Court further finds that the amount of fees awarded is fair and reasonable when cross checked under the lodestar/multiplier method, given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class.

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



9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set forth in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000). In evaluating the *Gunter* factors, the Court finds that:

(a) Class Counsel expended considerable effort and resources over the course of the Litigation researching, investigating, and prosecuting Lead Plaintiffs' claims. The services provided by Class Counsel were efficient and highly successful, resulting in an outstanding recovery for the Class without the substantial expense, risk, and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *See, e.g., In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at \*31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). This case was not aided by any governmental investigation. Despite the novelty and difficulty of the issues raised, Class Counsel secured a very good result for the Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Class Counsel's representation of the Class supports the requested fee. Class Counsel demonstrated

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

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

(e) Plaintiffs' counsel's total lodestar is \$27,071,101.50. A 27.5% fee represents a multiplier of 1.67 to their aggregate lodestar.

10. The awarded attorneys' fees and expenses, and any interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund pursuant to the

terms, conditions and obligations of the Stipulation, and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

11. The Court finds that, pursuant to 15 U.S.C. §78u-4(a)(4), an award of reasonable costs and expenses (including lost wages) to Lead Plaintiffs in connection with their representation of the Class is appropriate. Lead Plaintiffs Alaska Electrical Pension Fund, PACE Industry Union-Management Pension Fund and New England Health Care Employees Pension Fund, are hereby awarded \$6,608.92, \$15,941.98 and \$10,500.00, respectively.

12. The Court has considered the objection to the fee award submitted by William T. Zorn, and finds that it is without merit, and overrules it in its entirety.

IT IS SO ORDERED.

DATED: 1/30/13

  
THE HONORABLE ANNE E. THOMPSON  
UNITED STATES DISTRICT JUDGE

# **Exhibit 6**

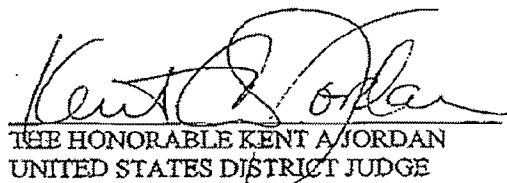


(less expenses), together with the interest earned thereon for the same period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among plaintiffs' counsel by Lead Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel subject to the terms, conditions and obligations of the Stipulation and in particular ¶¶ 22-24 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

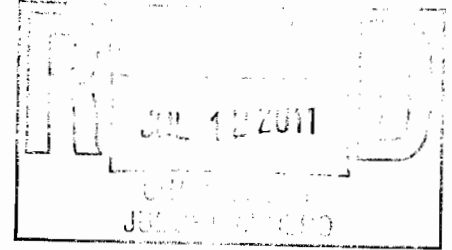
DATED: Feb. 5, 2004

  
THE HONORABLE KENT A. JORDAN  
UNITED STATES DISTRICT JUDGE

(511966)

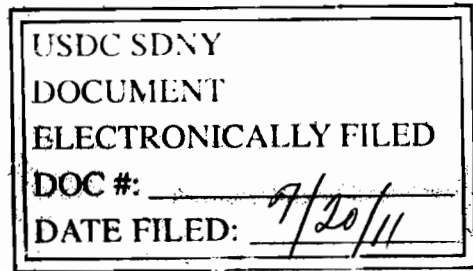
# **Exhibit 7**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



\_\_\_\_\_  
KEVIN CORNWELL, Individually and On :  
Behalf of All Others Similarly Situated, :  
  
Plaintiff, :  
  
vs. :  
  
CREDIT SUISSE GROUP, et al., :  
  
Defendants. :  
\_\_\_\_\_ X

Civil Action No. 08-cv-03758(VM)  
**(Consolidated)**  
  
CLASS ACTION  
  
ORDER AWARDING  
ATTORNEYS' FEES AND EXPENSES





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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

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

IT IS SO ORDERED.

Dated: New York, NY

18 July, 2011

  
\_\_\_\_\_  
THE HONORABLE VICTOR MARRERO  
UNITED STATES DISTRICT JUDGE



CERTIFICATE OF SERVICE

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

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

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

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