UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| In re BRF S.A. SECURITIES LITIGATION | Civil Action No. 1:18-cv-02213-PKC |
| This Document Relates To:<br><br>ALL ACTIONS. | CLASS ACTION<br><br>MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4) |

# TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Page**

**CASES**

**Page**

**Page**

**Page**

**Page**

**Page**



**STATUTES, RULES AND REGULATIONS**

Lead Counsel respectfully submits this memorandum in support of its motion for an award of attorneys' fees and expenses in connection with its representation of the Class, and for an award to Lead Plaintiff in connection with its representation of the Class.

## I. INTRODUCTION

After more than two years of hard-fought litigation, Lead Counsel has secured a $40,000,000 settlement for the benefit of the Class. The Settlement is an outstanding result for the Class given the serious obstacles to recovery; the numerous credible defenses to liability and damages that Defendants have articulated, the fact that the Court might have accepted Defendants' arguments at the motion-to-dismiss stage, the difficulty in obtaining documentary and deposition evidence from Brazil, and the recovery relative to the amount of estimated recoverable damages suffered by the Class.[1] To obtain this Settlement, Lead Plaintiff City of Birmingham Retirement and Relief System ("Lead Plaintiff") and Lead Counsel overcame a number of significant challenges that existed from the filing of the initial complaint. In recognition of these risks and the result obtained, Lead Counsel now respectfully moves this Court for an award of attorneys' fees of 27.5% of the Settlement Amount, and $94,821.84 in expenses that were reasonably and necessarily incurred in prosecuting and resolving the Litigation, plus interest on both amounts. As set forth below, the relevant factors articulated in the Second Circuit's *Goldberger* decision strongly support the requested awards. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In addition, Lead Plaintiff seeks

[1] Capitalized terms used herein are defined and have the meanings contained in the Stipulation of Settlement (ECF No. 157) (the "Stipulation"), the accompanying Declaration of David A. Rosenfeld in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Rosenfeld Declaration"), and in the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted concurrently herewith. Citations are omitted and emphasis is added throughout unless otherwise noted.

a modest award of $2,889.15 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class.

This fee request has the full support of Lead Plaintiff. *See* Declaration of Jay P. Turner on Behalf of City of Birmingham Retirement and Relief System in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Turner Decl."), ¶8, filed herewith. This is significant as the Second Circuit has directed district courts to:

> [G]ive 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.

*In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133-34 (2d Cir. 2008) (emphasis added); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001) ("courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly-selected lead counsel"). In addition, following an extensive Court-ordered notice program in which 61,517 Notices have been mailed to potential Class Members, to date not a single Class Member has objected to the requested fees or the expenses (not to exceed $150,000, as set forth in the Notice).[2]

As detailed below, in the Rosenfeld Declaration, and in the Settlement Memorandum, the Settlement achieved here represents a very good result for Lead Plaintiff and the Class, particularly when judged in the context of the significant litigation risks attendant in this Action. The $40

[2] As of the date of this fee memorandum, which is before the October 2, 2020 deadline for filing objections, Lead Counsel has not received any objections to the fee and expense request. If any timely objections are received from Class Members, Lead Counsel will address them in its reply brief, which will be filed with the Court no later than October 16, 2020.

million Settlement that Lead Counsel obtained provides the Class with an immediate and certain recovery in a case that faced significant risks. In achieving this result, Lead Counsel worked more than 3,200 hours over the course of over two years on this complex litigation, all on a contingency basis, with no guarantee of ever being paid.

Lead Counsel believes that an attorney fee award of 27.5%, together with payment of its litigation expenses, properly reflects the many significant risks taken by Lead Counsel in prosecuting the Action, as well as the result achieved. When examined under either of this Circuit's methods of contingency fee determination (*i.e.*, percentage of the fund or lodestar), it is abundantly clear that an award of fees of 27.5% is reasonable, and well within the range of attorneys' fees awarded in similar complex, contingency cases. In addition, the expenses requested by Lead Counsel are reasonable in amount and were necessarily incurred, and the modest request by Lead Plaintiff adequately reflects its efforts and contributions to the Litigation.

## II. HISTORY AND BACKGROUND OF THE LITIGATION

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

## III. ARGUMENT

### A. Lead Counsel Is Entitled to an Award of Attorneys' Fees and Expenses from the Common Fund

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger*, 209 F.3d at 47; *Fresno Cty. Emples. Ret. Ass'n. v. Isaacson*, 925 F.3d 63, 68 (2d Cir. 2019). The purpose of the common fund doctrine is to fairly and adequately compensate class

counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *10-*11 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *Veeco*, 2007 WL 4115808, at *2. Indeed, the Supreme Court has emphasized that private securities actions, such as this one, provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)); *accord Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308 (2007).

Courts in this Circuit have consistently adhered to this precedent. *See In re Interpublic Sec. Litig.*, No. 02 Civ. 6527 (DLC), 2004 WL 2397190, at *10 (S.D.N.Y. Oct. 26, 2004) ("It is well established that where an attorney creates a common fund from which members of a class are compensated for a common injury, the attorneys who created the fund are entitled to 'a reasonable fee – set by the court – to be taken from the fund.'"); *Fresno Cty.*, 925 F.3d at 68. Fairly compensating Lead Counsel for the risks it took in bringing this Action is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the

settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

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

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. Courts routinely find that the percentage-of-the-fund method, under which counsel is awarded a percentage of the fund that they created, is the preferred means to determine a fee because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("[A]s the district court recognized, the prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."). The percentage approach also recognizes that the quality of counsel's services is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases.[3]

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on

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

the class."). The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-49 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used); *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). Indeed, the Second Circuit has acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart*, 396 F.3d at 121; *see also City of Providence*, 2014 WL 1883494, at *11-*12.[4]

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

> We thus have confidence in the district court as fiduciary of the class and ultimate decisionmaker on a class-action settlement to substantially alleviate the Objector's concerns about class counsel's incentives. Having obtained such reassurance, we hold that, where a class action results in a common-fund settlement for the benefit of the class, the common-fund doctrine applies and permits a district court to use its discretion to award class counsel either an unenhanced lodestar fee or

[4] All federal Courts of Appeal to consider the matter have approved the percentage method, with two circuits requiring its use in common-fund cases. *See In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988); *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits require the use of the percentage method in common-fund cases. *See Faught*, 668 F.3d at 1242; *Swedish Hosp.*, 1 F.3d at 1271.

> a fee calculated as a percentage of the settlement fund. This principle applies even when claims are initiated pursuant to a statute with a fee-shifting provision.

*Id.*

The determination of attorneys' fees using the percentage-of-the-fund method is also supported by the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount" recovered for the class. 15 U.S.C. §78u-4(a)(6) (emphasis added). Courts have concluded that, by drafting the PSLRA in such a manner, Congress expressed a preference for the percentage, as opposed to the lodestar, method of determining attorneys' fees in securities class actions. *See Veeco*, 2007 WL 4115808, at *3; *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002); *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 465-66 (S.D.N.Y. 2004).

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

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

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). An "'ideal proxy' for the award should reflect the fees upon which common fund plaintiffs negotiating in an efficient market for legal services would agree." *In re Colgate-Palmolive Co.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. July 8, 2014). If this were a non-class action, the customary fee arrangement would be contingent and in the

range of 33% of the recovery. *See Blum*, 465 U.S. at 904 ("'In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.'") (Brennan, J., concurring).

Here, the Court does not need an "ideal proxy" for what counsel would receive if it was bargaining for its services in the marketplace, because Lead Plaintiff supports the requested fee percentage. *See* Turner Decl., ¶8. The requested 27.5% fee is well within the range of percentage fees awarded by courts within the Second Circuit in other comparable securities and antitrust cases. *See, e.g., In re BHP Billiton Sec. Litig.*, No. 1:16-cv-01445-NRB, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding fees of 30% of $50 million recovery, plus expenses), *aff'd City of Birmingham Retirement System v. Davis*, No. 19-1378-cv, 2020 U.S. App. LEXIS 8686 (2d Cir. Mar. 17, 2020); *Anwar v. Fairfield Greenwich Ltd.*, No. 1:09-cv-00118 (VM), slip op. at 11-12 (S.D.N.Y. May 6, 2016) (awarding fees of 30% of $55 million recovery, plus expenses); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, No. 1:12-cv-01203-VEC, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 15, 2015) (awarding fees of 30% of $33 million recovery, plus expenses); *In re Intercept Pharms., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB, slip op. at 1 (S.D.N.Y. Sept. 8, 2016) (awarding fees of 28.63% of $55 million recovery, plus expenses); *Citiline Holdings, Inc. v. iStar Fin. Inc.*, No. 1:08-cv-03612-RJS, slip op. at 1 (S.D.N.Y. Apr. 5, 2013) (awarding fees of 30% of $29 million recovery, plus expenses); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758(VM), slip op. at 2 (S.D.N.Y. July 20, 2011) (awarded fees of 27.5% of $70 million recovery, plus expenses).[5]

**D. The Fee Request Is Reasonable Under the Lodestar Method**

When using the percentage-of-the-fund method, courts can also look to "hours as a 'cross check' on the reasonableness of the requested percentage," *Goldberger*, 209 F.3d at 50, "to ensure

[5] All unreported authorities are attached hereto as Exhibits A-E.

that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. When used as a "mere cross-check, the hours documented need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

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

Lead Counsel and its paraprofessionals have spent, in the aggregate, 3,260 hours in the prosecution of this case, producing a total lodestar amount of $1,794,898.00 when multiplied by Lead Counsel's billing rates. *See* accompanying Declaration of David A. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶4 ("Robbins Geller Decl.").[6] The amount of attorneys' fees requested by Lead Counsel herein, $11 million, represents a multiplier of 6.1 to counsel's aggregate lodestar.[7]

In cases of this nature, fees representing multiples above lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See In re FLAG Telecom Holdings, Ltd.*

---

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

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

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

The multiplier of 6.1 reflected here falls within the range of multipliers found reasonable for cross-check purposes by courts in this Circuit and elsewhere and is fully justified here given the effort required, the risks faced and overcome, and the results achieved. Indeed, "'[i]n contingent litigation, lodestar multipliers of over 4 are routinely awarded by courts[.]'" *Spicer v. Pier Sixty LLC*, No. 08 Civ. 10240(PAE), 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (quoting *Telik*, 576 F. Supp. 2d at 590); *see also Athale v. Sinotech Energy Ltd.*, No. 11 Civ. 05831(AJN), slip op. at 17 (S.D.N.Y. Sept. 4, 2013) (awarding multiplier of 5.65, finding it "not unreasonable under the particular facts of this case" and "sufficient to compensate counsel for the work they have put in and the risks they took, as well as to reward them for zealously litigating the dispute and timely resolving the action'"); *Credit Suisse*, slip op. at 4 (awarding fee representing a multiplier of 4.7); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (awarding 21% fee on $272 million settlement representing a 3.9 multiplier); *Davis*, 827 F. Supp. 2d at 185 (awarding fee representing multiplier of 5.3, which was "not atypical" in similar cases); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (4.3 multiplier was appropriate in light of the contingency risk and the quality of the result achieved).

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

The lodestar/multiplier is to be used merely as a cross-check on reasonableness. To find otherwise undermines the principles supporting the percentage approach and encourages needless lodestar building litigation. *See also In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 196 (E.D. Pa. 2000) ("The court will not reduce the requested award simply for the sake of doing so when every other factor ordinarily considered weighs in favor of approving class counsel's request of thirty percent."). Lead Counsel invested substantial time and effort prosecuting this Action against the Defendants to a successful completion. The requested fee, therefore, is manifestly reasonable, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar.

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

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

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

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

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

#### 1. The Time and Labor Expended by Counsel

Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class. Since the Litigation commenced more than two years ago, Lead Counsel and its paraprofessionals devoted in excess of 3,200 hours to prosecuting the Class' claims. As detailed in the Rosenfeld Declaration, submitted herewith, Lead Counsel, among other things:

- conducted an extensive factual investigation into the underlying facts;
- researched the law relevant to the claims asserted and Defendants' potential defenses thereto, and drafted detailed amended complaints;
- translated, reviewed and analyzed documents and evidence from Operation Weak Flesh and other Brazilian civil and criminal proceedings;
- briefed two rounds of motions to dismiss and pre-motion letters;
- retained Brazilian legal experts to assist with obtaining documents and information from Brazil;

- participated in lengthy arm's-length settlement negotiations, including two mediations with the Hon. Layn R. Phillips (Ret.) and follow-up negotiations with the assistance of Judge Phillips; and

- negotiated and drafted the Stipulation and exhibits thereto, as well as the motion for preliminary approval of the Settlement.

*See generally* Rosenfeld Decl.

Moreover, Lead Counsel, with the assistance of its damages consultant, prepared the proposed Plan of Allocation based primarily on an analysis estimating the amount of artificial inflation in the price of BRF American Depository Shares during the Class Period. Throughout the Litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. Additional hours and resources will necessarily be expended assisting Members of the Class with the completion and submission of their Proof of Claim and Release forms, shepherding the claims process, and responding to Class Member inquiries. *See Aponte v. Comprehensive Health Mgmt.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *6 (S.D.N.Y. Apr. 2, 2013). The significant amount of time and effort devoted to this case by Lead Counsel to obtain a $40 million recovery, work that will not end with the Court's approval of the Settlement, confirms that the 27.5% fee request is reasonable.

**2. The Risks of the Litigation**

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

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

> "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had

> agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended."

*Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award"); *In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) ("Numerous courts have recognized that the attorney's contingent fee risk is an important factor in determining the fee award."). This risk encompasses not just the risk of no payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court's fee award where court failed to account for, among other things, risk of underpayment to counsel). When considering the reasonableness of attorneys' fees in a contingency action, the court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 55; *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011).

Lead Counsel undertook this Litigation on a wholly contingent-fee basis, investing a substantial amount of time and money to prosecute a risky action with no guarantee of compensation or even the recovery of expenses. Unlike Defendants' counsel, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began in March 2018, and would have received no compensation or payment of its expenses had this case not been resolved successfully.

From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for investing the time and money

the case would require. In undertaking that responsibility, Lead Counsel was obligated to assure that sufficient attorney and paraprofessional resources were dedicated to prosecuting the Litigation and that funds were available to compensate staff and to pay for the considerable costs that a case such as this entails. Under these circumstances, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

In addition to advancing litigation expenses, Lead Counsel faced the possibility that it would receive no attorneys' fees at all. Indeed, it is possible that, if not for this Settlement, the entire case would have been dismissed in response to Defendants' motion to dismiss.[8]

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

---

[8] Moreover, it is wrong to presume that a law firm handling complex contingent litigation always wins. There are numerous class actions in which lead counsel expended thousands of hours and yet received no remuneration, despite their diligence and expertise. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiff's favor); *In re Oracle Corp. Sec. Litig.*, No. C 01-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (court granted summary judgment for defendants after eight years of litigation, after plaintiff's counsel incurred over $7 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately $40 million); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss-causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities-fraud class-action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on basis of 1994 Supreme Court opinion).

**b. Risks of Establishing Liability**

While Lead Plaintiff remains confident in its claims, its ability to plead liability arising out of the alleged regulatory misconduct in Brazil was far from certain. As detailed in the Rosenfeld Declaration and in the Settlement Memorandum, Defendants raised numerous challenges in their motions to dismiss Lead Plaintiff's complaints, including challenges to the falsity of the misstatements and omissions alleged, whether they were made with scienter, loss causation, and control-person liability. Rosenfeld Decl., ¶¶30, 38. More specifically, Defendants' motions to dismiss argued that BRF's alleged regulatory misconduct in Brazil did not constitute a violation of the federal securities laws. *Id.*, ¶46. Several defendants argued that the Court lacked jurisdiction over them, and the Court partially denied Lead Plaintiff's motion to serve certain defendants by alternate means. Defendants also maintained that Lead Plaintiff had not alleged any actionable misstatements or omissions; that BRF's disclosure of Operation Weak Flesh was not false or misleading; that Lead Plaintiff did not plead a strong inference of scienter against any Defendant; that Lead Plaintiff improperly relied on Brazilian criminal complaints (and not adjudicated findings); and that control person liability claims should be dismissed for failure to state a primary violation. *Id.* Defendants further argued that if the case was not dismissed in its entirety, the proposed Class Period should be shortened. *Id.*[9] Even assuming *arguendo* that Lead Plaintiff was able to overcome Defendants' motion to dismiss, these arguments would no doubt be raised again on summary

[9] Defendants also argued that certain of Lead Plaintiff's allegations should be stricken from the fourth amended complaint because they were available to Lead Plaintiff at the time of the filing of prior complaints, but were previously unpled.

judgment. Therefore, whether Lead Plaintiff ultimately would prove liability under the Securities Exchange Act was far from assured.[10]

**c. Risk of Establishing Causation and Damages**

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

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

**3. The Magnitude and Complexity of the Litigation**

The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys' fees requested by class counsel. *See Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 216 (S.D.N.Y. 1992). It is widely recognized that "shareholder actions are notoriously complex and difficult to prove." *See In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546 (WHP), 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *Christine Asia Co., Ltd. v. Yun Ma*, No.

[10] Conducting fact discovery would be expensive and difficult, as documents and witnesses are located in Brazil. Documents, once obtained (if possible), would have to be translated. And whether Plaintiff could compel the production of documents and deposition testimony from third parties was uncertain.

1:15-md-02631 (CM)(SDA), 2019 WL 5257534, at *18 (S.D.N.Y. Oct. 16, 2019) ("Securities class actions in particular are 'notably difficult and notoriously uncertain.'"). "[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *Ikon*, 194 F.R.D. at 194; *see also In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *9 (S.D.N.Y. Apr. 6, 2006) ("[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages. These challenges are exacerbated . . . where a number of controlling decisions have recently shed new light on the standard for loss causation."). This case was no exception. As described herein, this Litigation involved a number of difficult and complex questions concerning liability and damages against foreign-based defendants that would have required extensive additional efforts by Lead Counsel and consultation with experts.

The trial of liability issues alone would have involved substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested motions, and the considerable expenditures of judicial resources. Because this case revolved around "difficult, complex, hotly disputed, and expert-intensive issues," this factor favors awarding a 27.5% fee. *City of Providence*, 2014 WL 1883494, at *16.

**4. The Quality of Representation Supports the Requested Fee**

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submits that the quality of the representation here is best evidenced by the quality of the result achieved. *See, e.g.*, Settlement Memorandum at §III.C.; *see also FLAG Telecom*, 2010 WL 4537550, at *28; *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007). Lead Counsel demonstrated a great deal of skill to achieve a settlement at this level in this particular case. Lead Counsel are experienced

securities class action and complex litigation practitioners. *See* Robbins Geller Decl., Ex. E. This Settlement is attributable to the diligence, determination, hard work, and reputation of counsel, who developed, litigated, and successfully negotiated the Settlement of this Litigation and a substantial immediate cash recovery in a very difficult case, without the risk of further litigation. *See Teachers' Ret. Sys.*, 2004 WL 1087261, at *6.

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

**5. Public Policy Considerations**

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *7 (S.D.N.Y. Aug. 18, 2017) (fee award was "appropriate, and not excessive, to encourage further securities class actions"); *FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into

account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."). Accordingly, public policy favors granting Lead Counsel's fee and expense application here.

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

To date, the Claims Administrator has sent more than 61,500 copies of the Notice to potential Class Members and nominees informing them, *inter alia*, that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 27.5% of the Settlement Amount, plus expenses not to exceed $150,000, plus interest on both amounts.[11] The time to object to the fee request expires on October 2, 2020. To date, not a single objection to the fee and expense amounts set forth in the Notice has been received. Such a "low level of objection is a 'rare phenomenon.'" *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005). The fact that no objections have been received to date supports the fairness of the fee request.

Additionally, Lead Plaintiff, an institutional investor charged by the Court and the PSLRA with responsibility for monitoring Lead Counsel, supports the fee request. *See* Turner Decl., ¶8. Here, Lead Plaintiff played an active role in the Litigation and closely supervised the work of Lead Counsel. *See id.*, ¶¶5-6. Accordingly, Lead Plaintiff's endorsement of the fee request supports its approval.

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

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

Lead Counsel also respectfully requests an award of $94,821.84 in expenses incurred while prosecuting the Litigation. Lead Counsel has submitted a declaration regarding these expenses, which are properly recovered by counsel. *See* Robbins Geller Decl., ¶¶5-6. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "'for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation"'"); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (court may compensate class counsel for reasonable expenses necessary to the representation of the class).

Counsel's expenses include, for example, the costs of hiring Brazilian law experts to assist in its efforts, consultants, travel, mediating the Class' claims, and computerized research. A complete breakdown by category of the expenses incurred is set forth in the Robbins Geller Declaration. These expenses were critical to Lead Plaintiff's success in achieving the Settlement. *See Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys . . . [f]or this reason, they are properly chargeable to the Settlement fund."). So far, not a single objection to the expense amount set forth in the Notice has been received. Accordingly, Lead Counsel respectfully requests payment for these expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund.

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

Lead Plaintiff City of Birmingham Retirement and Relief System seeks approval for an award of $2,889.15 in recognition of the time and resources it spent representing the Class. The PSLRA allows an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Many courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *Flag Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to lead plaintiff for time spent on the litigation).

As set forth in the Turner Declaration (filed herewith), Lead Plaintiff took an active role in prosecuting the Litigation, including: (1) communicating with Lead Counsel on issues and developments in the Litigation; (2) reviewing documents filed in the case, including the operative complaint; (3) consulting with Lead Counsel on litigation and settlement strategy; and (4) reviewing and approving the proposed Settlement. Turner Decl., ¶5.

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

The Notice informed potential Class Members that Lead Plaintiff may seek approval for up to $10,000 in time and expenses incurred in representing the Class. Murray Decl., Ex. A (Notice) at 6. The time and expenses requested, $2,889.15, are well below that amount. To date, no Class Member has objected to such awards to Lead Plaintiff. Accordingly, Lead Plaintiff's request is reasonable and fully justified under the PSLRA and should be granted.

## VI. CONCLUSION

Based on the foregoing, and the entire record herein, Lead Counsel respectfully requests that the Court award attorneys' fees of 27.5% of the Settlement Amount, plus expenses in the amount of $94,821.84, plus interest on both amounts, and $2,889.15 to Lead Plaintiff, as permitted by the PSLRA.

DATED: September 18, 2020

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD
MARIO ALBA JR.
CHRISTOPHER T. GILROY

**s**/David A. Rosenfeld
DAVID A. ROSENFELD

58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
drosenfeld@rgrdlaw.com
mabla@rgrdlaw.com
cgilroy@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com

Lead Counsel for Plaintiff

**CERTIFICATE OF SERVICE**

I, David A. Rosenfeld, hereby certify that on September 18, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ David A. Rosenfeld
DAVID A. ROSENFELD

# EXHIBIT A

**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(ll) 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 of 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 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: May 6, 2016

The Honorable Victor Marrero
United States District Judge

# EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

DATED: September 8, 2016

THE HON. NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE



1182148_1

# EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

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

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

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

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

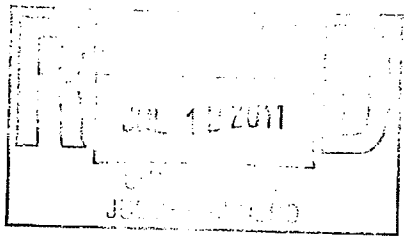
SO ORDERED.

DATED: April 5, 2013
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

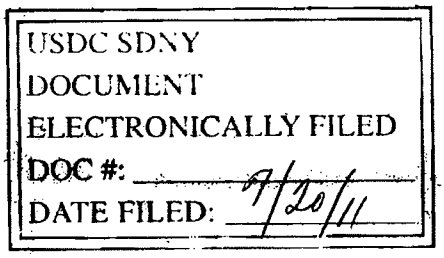
# EXHIBIT D

 Marrero, 5



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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



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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE



635891_1

# EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BHUSHAN ATHALE, ET AL.,
Plaintiff,

-v-

SINOTECH ENERGY LIMITED, ET AL.,
Defendants.

11 Civ. 05831 (AJN)
(consolidated)

MEMORANDUM & ORDER

ALISON J. NATHAN, District Judge:

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

## I. Class Certification

The class is defined as:

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

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

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

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

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

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

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

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

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

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

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

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

## II. NOTICE WAS APPROPRIATE

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

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

## III. SETTLEMENT APPROVAL

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

### A. Procedural Fairness

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

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

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

B. Substantive Fairness

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

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

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

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

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

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

*2. The Reaction of the Class to the Settlement*

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

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

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

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

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

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

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

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

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

*4. The Risks of Establishing Liability and Damages*

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

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

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

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

*5. Risks of Maintaining the Class Action Through Trial*

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

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

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

*6. The Ability of Defendants to Withstand a Greater Judgment*

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

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

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

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

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

C. Conclusion

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

## IV. Attorneys' Fees and Expenses

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

A. Standard of Review

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

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

In the Second Circuit, "both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees in common fund cases." *Goldberger*, 209 F.3d at 50; *see also McDaniel,* 595 F.3d at 417 ("While the *Arbor Hill [Concerned Citizens Neighborhood Ass'n v. County of Albany,* 493 F.3d 110 (2d Cir. 2008)] panel indicated its preference for abandonment of the term 'lodestar' altogether, the approach adopted in that case is nonetheless a derivative of the lodestar method."). Inarguably, "the trend in this Circuit has been

toward the use of a percentage of recovery as the preferred method of calculating the award for class counsel in common fund cases," particularly in complex securities class actions. *In re Beacon Assocs. Litig.*, No. 09 Civ. 777 (CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013); *Chamber*, No. 10 Civ. 7109 (ALJ), Dkt. No. 149 (S.D.N.Y. Apr. 26, 2013); *In re Citigroup Inc.*, 2013 WL 3942951, at *15 (noting that "using the percentage of the fund method to compensate plaintiffs' counsel in major securities fraud class actions is now firmly entrenched in the jurisprudence of this Circuit").

But this does not "render the lodestar irrelevant." *In re Citigroup Inc.*, 2013 WL 3942951, at *15. "No matter which method is chosen, district courts should continue to be guided by the traditional criteria in determining a reasonable common fund fee, including: '(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.'" *Wells Fargo Bank, N.A.*, 2013 WL 2395615, at *1 (quoting *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989)); *see also Wal-Mart Stores, Inc.*, 396 F.3d at 122-23 (("Irrespective of which method is used, the *Goldberger* factors ultimately determine the reasonableness of a common fund fee."). "Recognizing that economies of scale could cause windfalls in common fund cases, courts have traditionally awarded fees for common fund cases in the lower range of what is reasonable." *Wal-Mart Stores, Inc.*, 396 F.3d at 122; *see also In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 521 (E.D.N.Y. 2003) (collecting cases). Ultimately, the "[d]etermination of 'reasonableness' is within the discretion of the district court." *In re Interpublic Sec. Litig.*, No. 02 Civ. 6527 (DLC), 2004 WL 2397190, at * 10 (S.D.N.Y. Oct. 27, 2004) (quoting *Goldberger*, 209 F.3d at 47).

B. Discussion

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

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

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

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

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

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

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

C. Expenses

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

## V. Conclusion

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

This Order resolves Docket Number 101.

SO ORDERED.

Dated: September 4, 2013
New York, New York

ALISON J. NATHAN
United States District Judge