

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____	x	
In re CHEMBIO DIAGNOSTICS, INC.	:	Civil Action No. 2:20-cv-02706-ARR-JMW
SECURITIES LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	MEMORANDUM OF LAW IN SUPPORT
	:	OF MOTION FOR AN AWARD OF
ALL ACTIONS.	:	ATTORNEYS' FEES AND LITIGATION
_____	x	EXPENSES AND AN AWARD TO LEAD
		PLAINTIFF PURSUANT TO 15 U.S.C. §78u-
		4(a)(4)

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

I. INTRODUCTION

Through their efforts, Lead Counsel secured an \$8.1 million settlement for the benefit of the Class. The Settlement is a very good result given the serious obstacles to recovery, the numerous credible defenses to liability and damages that Defendants have articulated, the procedural posture of the case, the fact that the Court might have accepted Defendants' arguments at summary judgment following the completion of fact and expert discovery, and the recovery relative to the amount of estimated recoverable damages suffered by the Class.¹ To obtain this Settlement, Lead Plaintiffs and Lead Counsel overcame a number of significant challenges that existed from the filing of the initial complaint. The risk of losing was real, and that risk was enhanced by the fact that Lead Counsel would be litigating the action against a corporate defendant, represented by seasoned, highly skilled defense counsel, under the heightened standards of the Private Securities Litigation Reform Act of 1995 ("PSLRA") and additional hurdles to recovery imposed by the law. Accordingly, there was a strong possibility that this case would yield a significantly smaller recovery, or none at all, after years of costly and difficult litigation. The risks that Lead Counsel's work on behalf of the Class

¹ Capitalized terms used herein are defined and have the meanings contained in the Stipulation and Agreement of Settlement (ECF 117-2) (the "Stipulation"), the accompanying Joint Declaration of Lawrence M. Rolnick and David A. Rosenfeld in Support of (A) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses and an Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Joint Declaration"), and in the Memorandum of Law in Support of Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), submitted concurrently herewith. Internal citations are omitted and emphasis is added throughout unless otherwise noted.

would be for naught were heightened by Chembio’s deteriorating financial position, as well as the Chembio Defendants’ limited and wasting directors’ and officers’ (“D&O”) insurance. In recognition of these risks and the result obtained, Lead Counsel now respectfully moves this Court for an award of attorneys’ fees of 24% of the Settlement Amount,² and \$16,339.68 in expenses that were reasonably and necessarily incurred in prosecuting and resolving the Action, 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 Municipal Employees’ Retirement System of Michigan (“MERS”) seeks an award of \$3,600 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its time and unreimbursed expenses incurred in its representation of the Class.

This fee request has the full support of Lead Plaintiffs. *See* Declaration of Brian LaVictoire (“LaVictoire Decl.”), ¶9, Declaration of David Greenhouse, ¶4, submitted herewith. In addition, following an extensive Court-ordered notice program in which over 33,100 Settlement 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 \$50,000, as set forth in the Notice).

As detailed below, in the Joint Declaration, and in the Settlement Memorandum, the Settlement achieved here represents a very good result for Lead Plaintiffs and the Class, particularly when judged in the context of the significant litigation risks in this Action. The \$8.1 million Settlement that Lead Counsel obtained provides the Class with an immediate and certain recovery in a case that faced significant risks. *See* Opinion & Order, ECF 121 at 14 (“In short, the settlement

² The aggregate requested fee of 24% (which is less than the 27.5% maximum fee provided in the Notice) represents a blended fee of 27.5% of the \$5.09 million allocation to investors with Securities Act claims and approximately 18% of the \$3.01 million allocation to investors with Exchange Act claims.

offers benefits in the form of a quick cash payment to class members upon entry of a judgment, rather than an uncertain payout in the future.”). In achieving this result, Lead Counsel worked more than 2,100 hours over the course of more than two years on this complex litigation, all on a contingent basis, with no guarantee of ever being paid.

Lead Counsel believe that an attorney fee award of 24%, together with payment of their modest 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 24% 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 Lead Plaintiff MERS’s request adequately reflects its efforts and contributions to the litigation.

II. HISTORY AND BACKGROUND OF THE LITIGATION

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

III. ARGUMENT

A. Lead Counsel Are Entitled to an Award of Attorneys’ Fees and Expenses from the Common Fund

The Supreme Court has long recognized that “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger*, 209 F.3d at 47; *Fresno Cnty. Emps’ Ret. Ass’n. v. Isaacson/Weaver Family Tr.*, 925 F.3d 63, 68 (2d Cir. 2019), *cert denied*, ___U.S.___, 140 S. Ct. 385 (2019). The purpose of the

common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, 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.*, 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.*, 2004 WL 2397190, at *10 (S.D.N.Y. Oct. 26, 2004) ("It is well established that where an attorney creates a common fund from which members of a class are compensated for a common injury, the attorneys who created the fund are entitled to 'a reasonable fee – set by the court – to be taken from the fund.'"); *Fresno Cnty.*, 925 F.3d at 68. Fairly compensating Lead Counsel for the risks they took in bringing this Action is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

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

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained. Most courts 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 percentage-of-the-fund method is the preferred method to compensate contingency fee counsel in these types of matters. The Supreme Court has indicated that attorneys’ fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (“[U]nder the ‘common fund doctrine,’ . . . a reasonable fee is based on a percentage of the fund bestowed on the class.”). The Second Circuit has expressly approved the

³ *See also, 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”).

percentage method, recognizing that “the lodestar method proved vexing” and had resulted in “an inevitable waste of judicial resources.” *Goldberger*, 209 F.3d at 48-49 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys’ fees, although the lodestar method may also be used); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the “percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases”). The Second Circuit has acknowledged that the “trend in this Circuit is toward the percentage method.” *Wal-Mart Stores*, 396 F.3d at 121; *City of Providence*, 2014 WL 1883494, at *11-*12; *see also Nichols v. Noom, Inc.*, 2022 WL 2705354, at *10 (S.D.N.Y. July 12, 2022) (“The trend in this circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.”) (citing *In re Parking Heaters Antitrust Litig.*, 2019 WL 8137325, at *7 (E.D.N.Y. Aug. 15, 2019)).⁴

And indeed, the Second Circuit reaffirmed these principles in rejecting an objection to the percentage approach for awarding attorneys’ fees in PSLRA cases. *See Fresno Cnty.*, 925 F.3d at 72 (confirming the propriety of the percentage approach for awarding attorneys’ fees in PSLRA cases).

⁴ All federal Courts of Appeal to consider the matter have approved the percentage method, with two circuits requiring their 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., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988); *Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2011); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits require the use of the percentage method in common-fund cases. *See Faught*, 668 F.3d at 1242; *Swedish Hosp.*, 1 F.3d at 1271.

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 Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 465-66 (S.D.N.Y. 2004).

Given the Supreme Court's indication that the percentage method is proper in this type of case, the Second Circuit's explicit approval of the percentage method in *Goldberger* and *Fresno*, as well as the trend among the district courts in this Circuit and the language of the PSLRA, the Court should award Lead Counsel attorneys' fees based on a percentage of the Settlement 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). If this were a non-class action, the customary fee arrangement would be contingent and in the range of 33% of the recovery. *See Blum*, 465 U.S. at 903 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

The requested 24% fee is consistent with – and indeed in many instances below – the percentage fees awarded by courts within the Second Circuit in other comparable complex cases.

See, e.g., Jenkins v. Nat'l Grid USA Serv. Co., 2022 WL 2301668, at *3-*5 (E.D.N.Y. June 24, 2022) (awarding fee of approximately 30% on \$38.5 million settlement); *Noom*, 2022 WL 2705354, at *10 (awarding fee of one-third of \$56 million settlement fund, finding “fee equal to one-third of a settlement fund is routinely approved in this Circuit”); *In re Perrigo Co. PLC Sec. Litig.*, 2022 WL 500913, at *1-*2 (S.D.N.Y. Feb. 18, 2022) (awarding 33-1/3% fee on \$31.9 million settlement); *Hawaii Structural Ironworkers Pension Tr. Fund v. AMC Entm't Holdings, Inc.*, 2022 WL 4136175, at *1 (S.D.N.Y. Feb. 14, 2022) (awarding 33-1/3% fee of \$18 million settlement); *In re PPDAl Grp. Inc. Sec. Litig.*, 2022 WL 198491, at *16-*17 (E.D.N.Y. Jan. 21, 2022) (noting a one-third fee “constitutes a proportion routinely approved as reasonable”); *Xiang v. Inovalon Holdings, Inc., et al.*, No. 1:16-cv-04923-VM-KNF, ECF 191 (S.D.N.Y. July 15, 2019) (awarding 27% fee on \$17 million settlement) (Ex. A hereto); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 15, 2015) (awarding 30% fee on \$33 million settlement); *In re Deutsche Bank AG Sec. Litig.*, 2020 WL 3162980, at *1 (S.D.N.Y. June 11, 2020) (awarding one-third of \$18.5 million settlement); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *6 (S.D.N.Y. Sept. 23, 2019) (awarding one-third of \$75 million recovery); *Strougo v. Barclays PLC, et al.*, No. 1:14-cv-05797-VM-DCF, ECF 146 at ¶15 (S.D.N.Y. June 3, 2019) (awarding 30% of \$27 million settlement) (Ex. B hereto); *In re BHP Billiton Ltd. Sec. Litig.*, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding fees of 30% of \$50 million recovery); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *9 (S.D.N.Y. Nov. 9, 2015) (awarding 33% of \$26.5 million settlement), *aff'd*, 674 F. App'x 37 (2d Cir. 2016).⁵

⁵ All unreported authorities are attached hereto.

As this clear line of authority demonstrates, 24% of the fund is an eminently reasonable fee request and well in line with numerous recent fee awards in complex securities class action matters in the Second Circuit. It should be approved here.

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

Lead Counsel’s requested fee is reasonable when cross-checked against the lodestar incurred to secure the settlement. When using the percentage-of-the-fund method, courts can also look to “hours as a ‘cross check’ on the reasonableness of the requested percentage,” *Goldberger*, 209 F.3d at 50, “to ensure that an otherwise reasonable percentage fee would not lead to a windfall.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). When used as a “mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Goldberger*, 209 F.3d at 50.

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

Lead Counsel and their paraprofessionals have spent, in the aggregate, 2,105.3 hours in the prosecution of this case, producing a total lodestar amount of \$1,688,936.50 when multiplied by counsel’s billing rates. See accompanying Declaration of David A. Rosenfeld Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys’ Fees, ¶4 (“Robbins Geller Decl.”), and Declaration of Lawrence M. Rolnick in Support of Lead Counsel’s

Motion for an Award of Attorneys' Fees and Litigation Expenses on behalf of Rolnick Kramer Sadighi LLP ("Rolnick Decl.").⁶ The amount of attorneys' fees requested by Lead Counsel herein, \$1,944,000, represents a slight 1.15 multiplier to Lead Counsel's lodestar.⁷

In cases of this nature, fees representing positive multiples above lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("a positive multiplier is typically applied"); *In re Comverse Tech., Inc. Sec. Litig.*, 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 modest multiplier of 1.15 reflected here is far below 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.*

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 paraprofessionals are experienced securities practitioners with track records of success, and among the most prominent and well-regarded securities practitioners in the nation. Lead Counsel's billing rates are reasonable and have recently been judicially approved. *Fleming v. Impax Labs. Inc.*, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) ("The Court finds [Robbins Geller's] billing rates in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation."); Hr'g Tr. at 160:22-24, *In re Am. Realty Cap. Props., Inc. Litig.*, No. 15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2020) ("I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable.") (relevant portions are attached as Ex. C hereto); Hr'g Tr. at 25:12-16, *Kaess v. Deutsche Bank AG*, No. 09-cv-01714 (GHW) (RWL) (S.D.N.Y. June 11, 2020) ("I find that these billable rates [for Robbins Geller] based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields . . . to be reasonable in this context.") (relevant portions are attached as Ex. D hereto).

⁷ The Supreme Court and courts in this Circuit 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; *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9.

Pier Sixty LLC, 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (quoting *Telik*, 576 F. Supp. 2d at 590); *see also Lopez v. Fashion Nova*, 2021 WL 4896288, at *3 (S.D.N.Y. Oct. 19, 2021) (referencing “multipliers of up to eight times the lodestar, and in some cases, even higher”); *Wal-Mart Stores*, 396 F.3d at 123 (upholding multiplier of 3.5); *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *19 (S.D.N.Y. Oct. 16, 2019) (awarding a 2.15 multiplier, which court found to be “well within the range commonly awarded in securities class actions of this complexity and magnitude”); *BHP Billiton*, 2019 WL 1577313, at *1-*2 (awarding fee representing 2.7 multiplier); *Athale v. Sinotech Energy Ltd.*, 2013 WL 11310686, at *9 (S.D.N.Y. Sept. 4, 2013) (awarding multiplier of 5.65, finding it “not unreasonable under the particular facts of this case” and “sufficient to compensate counsel for the work they have put in and the risks they took, as well as to reward them for zealously litigating the dispute and timely resolving the action”); *Cornwell v. Credit Suisse Grp.*, 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (awarding fee representing a multiplier of 4.7); *Davis*, 827 F. Supp. 2d at 185 (awarding fee representing multiplier of 5.3, which was “not atypical” in similar cases).

As detailed in the Joint Declaration, based on their efforts in litigating this case and producing an excellent result, Lead Counsel believe the requested fee is manifestly reasonable, whether calculated as a percentage of the fund or in relation to Lead Counsel’s lodestar. 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 expended substantial time and effort pursuing the Action on behalf of the Class. Their efforts included an extensive and thorough investigation necessary to prepare the filed complaints. Joint Decl., ¶¶23-27, 36-38. Lead Counsel also opposed Defendants' motion to dismiss, researched and filed a motion for partial reconsideration of the Court's order on the motion to dismiss, and prepared and filed a Second Amended Complaint. *Id.*, ¶¶30-35. Lead Counsel also retained and consulted with a damages expert and conducted exhaustive settlement negotiations, which included preparing a detailed mediation brief with exhibits. *Id.*, ¶¶39-48, 50.

In total, Lead Counsel spent 2,105 hours prosecuting this case. *See* Robbins Geller Decl., ¶4; Rolnick Decl., ¶9. This significant time and expense expenditure was incurred despite Lead Counsel having staffed the matter efficiently, to avoid unnecessary duplication of efforts.

Moreover, 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., Inc.*, 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 an \$8.1 million

recovery – work that will not end with the Court’s approval of the Settlement – confirms that the 24% 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), *abrogated by Goldberger*, 209 F.3d at 43. “Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.” *Tchrs.’ Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004); *Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is “appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award”); *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) (“Numerous courts have recognized that the attorney’s contingent fee risk is an important factor in determining the fee award.”). This risk encompasses not just the risk of no payment, but also the risk of underpayment. *See In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court’s fee award where court failed to account for, among other things, risk of underpayment to counsel). When considering the reasonableness of attorneys’ fees in a contingency action, the court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 55;

Parker v. Time Warner Entm't Co., L.P., 631 F. Supp. 2d 242, 276 (E.D.N.Y. 2009) (the court should consider “the contingent nature of the expected compensation” and the “risk of non-payment viewed as of the time of the filing of the suit”).

Lead Counsel undertook this litigation on a wholly contingent-fee basis, investing a substantial amount of time and money to prosecute a risky action with no guarantee of compensation or even the recovery of expenses. Unlike Defendants’ counsel, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses since this case began in 2020, and would have received no compensation or payment of their expenses had this case not been resolved successfully.

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

In addition to advancing litigation expenses, Lead Counsel faced the possibility that they would receive no attorneys’ fees at all. Indeed, it is possible that, if not for this Settlement, Lead Counsel would have recovered nothing. The Court has dismissed all claims except the Securities Act claims against the Underwriter Defendants. Though leave to amend was granted on the Securities Act claims with respect to the other defendants, success on a subsequent motion to dismiss was far from assured. Had the case proceeded only against the Underwriter Defendants – who had a statutory due diligence defense and were represented by a leading securities defense firm – and those

defendants prevailed at summary judgment or following trial, the case would have ended with no recovery at all.⁸

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

b. Risks of Establishing Liability

While Lead Plaintiffs remain confident in their claims, their ability to prove liability was far from certain. As detailed in the Joint Declaration and in the Settlement Memorandum, Defendants raised numerous challenges to the falsity of the misstatements and omissions alleged, whether they were made with scienter, and loss causation. Joint Decl., ¶¶59-61. More specifically, Defendants argued that the omission of contrary data regarding the DPP COVID-19 Test's performance was not false and misleading, and, even if they were so, it was not material. Joint Decl., ¶55. Defendants

⁸ 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 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.*, 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.*, 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (jury verdict of \$81 million for plaintiffs against an accounting firm reversed on appeal on loss-causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on basis of 1994 Supreme Court opinion).

would have also raised standing and traceability issues with respect to the May 2020 Offering. Moreover, the Underwriter Defendants possess their “due diligence” defense with respect to the Registration Statement. *Id.*, ¶57. And any surviving allegations would no doubt be challenged again on summary judgment. Therefore, whether Lead Plaintiffs ultimately would prove liability was far from certain.

c. Risk of Establishing Causation and Damages

With respect to proving causation and damages, Defendants would continue to attack the causal link between the alleged misstatements and Lead Plaintiffs’ losses as well as the damages calculations of Lead Counsel’s expert which, if accepted, would severely limit, or entirely eliminate, the amount of damages that could be recovered. *Id.*, ¶¶62-63. Defendants would never concede these points and would continue to press their defenses at summary judgment and trial.

There is no way to know how the Court or 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 the Court or a jury could be swayed by experts for Defendants to minimize the Class’s losses or to show that the losses were attributable to factors other than the alleged misstatements and omissions. Thus, even if Lead Plaintiffs 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. Inc.*, 805 F. Supp. 209, 216 (S.D.N.Y. 1992). It is widely recognized that “shareholder actions are notoriously complex and difficult to prove.” *In re Bayer AG Sec. Litig.*, 2008 WL 5336691, at

*5 (S.D.N.Y. Dec. 15, 2008); *see also Christine Asia*, 2019 WL 5257534, at *18 (“Securities class actions in particular are ‘notably difficult and notoriously uncertain.’”). Indeed, “securities actions have become more difficult from a plaintiff’s perspective in the wake of the PSLRA.” *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000); *see also In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, 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.”). This case was no exception. As described herein, this Action involved a number of difficult and complex questions concerning liability and damages that required, and would have continued to require, extensive 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 24% fee. *City of Providence*, 2014 WL 1883494, at *16.

4. The Quality of Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submit that the quality of the representation here was high and 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.*, 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007). Lead Counsel are experienced securities class action and complex litigation practitioners. *See Robbins Geller Decl., Ex. A, Rolnick Decl., Ex. 1.* This Settlement is attributable to the diligence, determination, hard work, and reputation of counsel,

who developed, litigated, and successfully negotiated the Settlement of this Action and a substantial immediate cash recovery in a very difficult case, without the risk of further litigation. *See Tchrs. ' Ret. Sys.*, 2004 WL 1087261, at *6.

Finally, courts repeatedly recognize that the quality of the opposition faced by plaintiff's counsel should also be taken into consideration in assessing the quality of counsel's performance. *See, e.g., Marsh ERISA*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."); *Veeco*, 2007 WL 4115808, at *7 (among the factors supporting an 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 international firms (and securities defense specialists) K&L Gates LLP and Latham & Watkins LLP, who presented very skilled defenses and spared no effort in representing their clients. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and to demonstrate their willingness to continue to vigorously prosecute the Action 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

Public policy supports rewarding firms for bringing successful securities litigation. *See Woburn Ret. Sys. v. Salix Pharms., Ltd.*, 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"). This is because 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." *FLAG Telecom*, 2010 WL 4537550, at *29; *see also 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’s Reaction to the Fee Request to Date Supports the Requested Fee

To date, the Claims Administrator has sent over 33,100 copies of the Settlement 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 \$50,000, plus interest on both amounts.⁹ The time to object to the fee request expires on May 15, 2023. To date, not a single objection to the fee and expense amounts set forth in the Settlement Notice was 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 reaction of the Class supports the fairness of the fee request.¹⁰

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

IV. COUNSEL’S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS ACTION

Counsel for Lead Plaintiffs also respectfully request an award of \$16,339.68 in expenses incurred while prosecuting the Action.¹¹ Counsel has submitted a detailed declaration regarding these expenses, which are properly recovered by counsel. *See* Rolnick Decl., ¶¶10-12. In these circumstances, and in light of Lead Counsel’s submission, these expenses are properly recovered.

⁹ *See* accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (“Murray Decl.”), Ex. A (Settlement Notice).

¹⁰ Lead Counsel will respond to any objections to the fee and expense request in their reply brief, on May 26, 2023.

¹¹ Robbins Geller is not seeking an award for its expenses in this Action, which will inure to the benefit of the Class.

See, e.g., In re China Sunergy Sec. Litig., 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 legal and financial research, and mediating the Class’s claims. A complete breakdown by category of the expenses incurred is set forth in the accompanying Rolnick Declaration. These expenses were critical to Lead Counsel’s success in achieving the Settlement. *See Glob. Crossing*, 225 F.R.D. at 468 (“The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which ‘the paying, arms’ length market’ reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund.”). Not a single objection to the expense amount set forth in the Settlement Notice was received. Accordingly, Lead Counsel respectfully request payment for these expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund.

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

Lead Plaintiff MERS seeks approval of an award of \$3,600 in time and expenses incurred in 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 Nielsen Holdings Plc Sec. Litig., No. 1:18-cv-07143-JMF, ECF 156 at ¶¶7-8 (S.D.N.Y. July 21, 2022) (awarding \$17,750 and \$5,625 to plaintiffs) (Ex. E hereto); *In re Qudian Inc. Sec. Litig.*, 2021 WL 2328437, at *2 (S.D.N.Y. June 8, 2021) (awarding lead plaintiff \$25,000 and class representative \$12,500); *City of Warren Police & Fire Ret. Sys. v. World Wrestling Entm't, Inc.*, 2021 WL 2736135, at *1 (S.D.N.Y. June 30, 2021) (awarding \$6,286.40 to lead plaintiff); *Kinross Gold*, 2015 WL 13639234, at *4 (awarding \$16,800.11 to lead plaintiff and additional named plaintiffs “to compensate them for their reasonable costs and expenses directly related to their representation of the Class”).

As set forth in the LaVictoire Declaration, Lead Plaintiff MERS took an active role in prosecuting the Action, including: (1) communicating with Lead Counsel on issues and developments in the Action; (2) reviewing documents filed in the case; (3) consulting with Lead Counsel on litigation and settlement strategy; and (4) reviewing and approving the proposed Settlement. LaVictoire Decl., ¶¶6-7.

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 Settlement Notice informed potential Class Members that Lead Plaintiffs may seek approval for up to \$4,000 for their time and expenses incurred in representing the Class. Murray Decl., Ex. A (Settlement Notice at 2). The time and expenses requested, \$3,600, is below that

amount. To date, no Class Member has objected to such awards. Accordingly, Lead Plaintiff MERS's request is reasonable and fully justified under the PSLRA and should be granted.

VI. CONCLUSION

Based on the foregoing, and the entire record herein, Lead Counsel respectfully request that the Court award attorneys' fees of 24% of the Settlement Amount, plus expenses in the amount of \$16,339.68, plus interest on both amounts, and \$3,600 to Lead Plaintiff MERS, as permitted by the PSLRA.

DATED: April 24, 2023

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
DAVID A. ROSENFELD

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
drosefeld@rgrdlaw.com

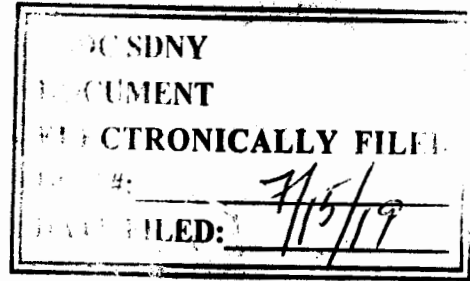
ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com

ROLNICK KRAMER SADIGHI LLP
LAWRENCE M. ROLNICK
MARC B. KRAMER
BRANDON FIERRO
1251 Avenue of the Americas
New York, NY 10020
Telephone: 212/597-2838
lrolnick@rkssl.com
mkramer@rkssl.com
bfierro@rkssl.com

Co-Lead Counsel for Lead Plaintiffs

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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

Plaintiff,

vs.

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

Defendants.

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

CLASS ACTION

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation of Settlement dated February 19, 2019 (the "Stipulation"), and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.
3. Notice of Lead Counsel's Fee Motion was given to all Class Members who could be located with reasonable effort. The form and method of notifying the Class of the Fee Motion met the requirements of Rule 23 of the Federal Rules of Civil Procedure and 15 U.S.C. §77z-1(a)(7), the Securities Act of 1933, as amended by the Private Securities Litigation Reform Act of 1995, due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.
4. The Court hereby awards Lead Counsel attorneys' fees of 27% of the Settlement Amount (or \$4,590,000), plus expenses in the amount of \$623,811.79, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is fair, reasonable, and appropriate under the "percentage-of-recovery" method.

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

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

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

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

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

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

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

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

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

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

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

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

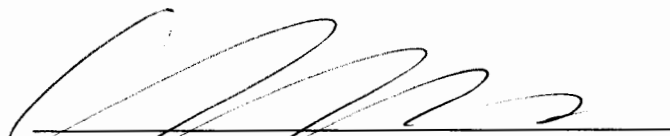
7. Any appeal or any challenge affecting this Court's approval regarding the Fee Motion shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

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

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

SO ORDERED.

DATED: 15 July 2019



THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BARBARA STROUGO, Individually and on :
Behalf of All Others Similarly Situated, :
 : Case No. 1:14-cv-05797-VM-DCF
 :
 : Plaintiff(s), :
 :
 : v. : ECF CASE
 :
 :
 : BARCLAYS PLC, BARCLAYS CAPITAL :
 : INC., ROBERT DIAMOND, ANTONY :
 : JENKINS, CHRISTOPHER LUCAS, TUSHAR :
 : MORZARIA, and WILLIAM WHITE, :
 :
 : Defendants. :
----- X

FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 6/3/19

This matter came before the Court pursuant to the Order Preliminary Approving Settlement and Providing for Notice (“Order”) dated February 4, 2019, on the application of the parties for approval of the Settlement set forth in the Stipulation of Settlement dated January 28, 2019 (“Stipulation”). Due and adequate notice having been given to the Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation annexed as Exhibit 1 hereto, unless otherwise set forth herein.

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

3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby approves the Settlement set forth in the Stipulation and finds that:

(a) the Stipulation and the Settlement described therein, are, in all respects, fair, reasonable, and adequate, and in the best interest of the Class;

(b) there was no collusion in connection with the Stipulation;

(c) the Stipulation was the product of informed, arm’s-length negotiations among competent, able counsel; and

(d) the record is sufficiently developed and complete to have enabled the Class representatives and Defendants to adequately evaluate and consider their positions.

4. Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with

prejudice as against Defendants and the Released Parties. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Stipulation.

5. In accordance with the Court's Preliminary Approval Order, the Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Settlement Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all Settlement Class Members are bound by this Final Judgment and Order except those persons listed on Exhibit 2 to this Final Judgment and Order.

6. 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 Lead Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

7. Upon the Effective Date, the Class Representatives shall, and each of the Class Members shall be deemed to have, and by operation of this Judgment shall have, fully, finally,

and forever released, relinquished, and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim and Release or shares in the Settlement Fund. Claims to enforce the terms of the Stipulation are not released.

8. Upon the Effective Date, all Class Members, and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting the Released Claims against any of the Released Persons.

9. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Class Representatives, each and all of the Class Members, and Class Representatives' counsel, including Lead Counsel, from all Defendants' Claims. Defendants' Claims do not include claims to enforce the terms of the Stipulation or any order of the Court in the Litigation.

10. The Settling Parties may file the Settlement Stipulation and/or this Order and Final Judgment in any proceedings that may be necessary to consummate or enforce the Settlement Stipulation, the Settlement, or this Order and Final Judgment.

11. The finality of this Final Judgment and Order shall not be affected, in any manner, by rulings that the Court may make on Lead Counsel's application for an award of attorneys' fees and expenses or an award to the Class Representatives.

12. 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: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants or their respective Related Parties; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of Defendants or their respective Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (iii) is or may be deemed to be or may be used as an admission, or evidence, that any claim asserted by the Class Representatives was not valid in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal or (iv) is or may be deemed to be or may be used as an admission of, or evidence of, the appropriateness of treating the Litigation as a class action for any other purpose than the Settlement. Defendants and/or their respective Related Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (i) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (ii) disposition of the Settlement Fund; (iii) hearing and determining applications for attorneys' fees, expenses, and interest in the Litigation; and (iv) all parties herein for the purpose of construing, enforcing, and administering the Stipulation.

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

15. Lead Counsel is awarded attorneys' fees in the amount of \$8,100,000.00, and expenses in the amount of \$791,680.21, plus any applicable interest, such amounts to be paid out of the Settlement Fund immediately following entry of this Order. Class Counsel shall thereafter be solely responsible for allocating the attorneys' fees and expenses among other Plaintiff's counsel in the manner in which Class Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Actions. In the event that this Judgment does not become Final, and any portion of the Fee and Expense Award has already been paid from the Settlement Fund, Class Counsel and all other plaintiffs' counsel to whom Class Counsel has distributed payments shall within ten (10) business days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated or precludes the Effective Date from occurring, refund the Settlement Fund the Fee and Expense Award paid to Class Counsel and, if applicable, distributed to other counsel.

16. Class Representative Mohit Sohni is awarded \$20,000 and Class Representative Joseph Waggoner is awarded \$15,000, as a Compensatory Award for reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

17. In the event that the Settlement is terminated as provided in the Stipulation, or the Effective Date otherwise does not occur, then this Judgment, and all orders entered and releases delivered in connection herewith, shall be vacated, rendered null and void to the extent provided by and in accordance with the Stipulation, and this Judgment shall be without prejudice to the rights of the Class Representatives, the other Class Members, and Defendants, and the Settling


Parties shall revert to their respective positions in the Litigation as of December 11, 2018, as provided in the Stipulation.

18. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. The Court directs immediate entry of this Judgment by the Clerk of the Court.

IT IS SO ORDERED.

DATED: 31 May 2019



THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

Exhibit 1

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

----- X
BARBARA STROUGO, Individually and on :
Behalf of All Others Similarly Situated, :
 : Case No. 1:14-cv-05797-VM-DCF
 :
 : Plaintiff(s), :
 :
 : v. : ECF CASE
 :
 :
 : BARCLAYS PLC, BARCLAYS CAPITAL :
 : INC., ROBERT DIAMOND, ANTONY :
 : JENKINS, CHRISTOPHER LUCAS, TUSHAR :
 : MORZARIA, and WILLIAM WHITE, :
 :
 : Defendants. :
 :
----- X

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of January 28, 2019 (“Stipulation”), is made and entered into by and among: (i) Class Representatives Joseph Waggoner and Mohit Sahni (together, “Class Representatives”) on behalf of themselves and each of the Class Members, by and through their counsel of record in the Litigation; and (ii) Defendants Barclays PLC and Barclays Capital Inc. (together “Barclays”) and William White (with Barclays, “Defendants”) by and through their counsel of record in the Litigation. The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and the terms and conditions set forth in this Stipulation.¹

I. THE LITIGATION

This is a federal securities class action on behalf of the Class. For purposes of this Settlement only, the Class is defined in § IV.1 herein, and the Settling Parties intend that the provisions herein concerning certification of the Class shall have no effect whatsoever in the event that the Settlement does not become Final.

1. Commencement of the Litigation and Appointment of the Class Representatives

The Litigation is pending before the Honorable Victor Marrero in the United States District Court for the Southern District of New York. An initial complaint was filed by Barbara Strougo on July 28, 2014. The Class Representatives were jointly appointed lead plaintiffs on October 2, 2014. The Class Representatives filed an amended complaint on December 15, 2014.

¹ All capitalized terms not otherwise defined shall have the meanings ascribed to them in § IV.1 herein.

2. Defendants' Motion to Dismiss

Defendants moved to dismiss the Complaint, and the motion was fully briefed as of March 2, 2015. On April 24, 2015, Judge Scheindlin granted in part and denied in part Defendants' Motion to Dismiss. Judge Scheindlin held that statements about Barclays' general business practices and risk controls, as well as statements concerning a report drafted by Sir Anthony Salz addressing Barclays' values and culture were inactionable "puffery." *See Strougo v. Barclays PLC*, 105 F. Supp. 3d 330, 343-47 (S.D.N.Y. 2015). Judge Scheindlin also held that, although statements concerning Barclays' alternative trading system, LX, were not quantitatively material because LX generated only a small portion of Barclays' overall revenue, such statements could be qualitatively material because they implicated the integrity of the company as a whole. *Id.* at 347-49. Accordingly, Judge Scheindlin denied Defendants' motion to dismiss claims based upon certain statements regarding LX that Plaintiffs allege were false or misleading. *Id.* at 353. Judge Scheindlin also dismissed claims against Dismissed Defendants Chris Lucas and Tushar Morzaria, and held that the Class Representatives could not plausibly allege loss causation with respect to the market's reaction to a June 27, 2014 article in the *Telegraph*. *Id.* at 352.

3. The Class Representatives' Motion for Certification of a Litigation Class and Defendants' Appeal

On July 17, 2015, the Class Representatives moved the Court to certify the Litigation as a class action and appoint themselves as class representatives and their counsel, Pomerantz LLP ("Pomerantz") as class counsel. Defendants opposed this motion. The Class Representatives' class certification motion was fully briefed as of October 26, 2015 and the Court held an evidentiary hearing and oral argument on November 5, 2015. On February 2, 2016, the Court issued an order granting the Class Representatives' motion, certifying the

Litigation as a class action, appointing the Class Representatives, and appointing Pomerantz as class counsel.

On February 16, 2016, Defendants filed a petition with the U.S. Court of Appeals for the Second Circuit pursuant to Federal Rule of Civil Procedure 23(f) seeking review of the February 2, 2016 order granting the Class Representatives' motion for class certification. The petition was fully briefed as of March 7, 2016. On June 15, 2016, the Second Circuit granted Defendants' petition for leave to appeal.

On September 7, 2016, the Second Circuit granted Defendants' July 11, 2016 motion seeking a stay of the District Court proceedings pending resolution of Defendants' appeal. Defendants' Rule 23(f) appeal was fully briefed as of September 12, 2016, and the Second Circuit held oral argument on November 11, 2016. On August 3, 2017, the Second Circuit sought additional briefing from the parties regarding the impact of the Court's decision in *In re Petrobras Securities*, No. 16-1914, which the parties provided on August 24, 2017. On November 6, 2017, the Second Circuit affirmed the District Court's February 2, 2015 order certifying the Litigation as a class action. On November 20, 2017, Defendants submitted to the Second Circuit a petition for panel rehearing or rehearing *en banc*, which was denied by the Second Circuit on January 5, 2018.

On February 26, 2018, Defendants submitted a petition for a writ of *certiorari* with the U.S. Supreme Court. The petition was fully briefed as of April 10, 2018. The Court denied Defendants' petition on April 30, 2018, and the case was returned to the District Court for further proceedings.

On May 9, 2018, pursuant to the Court's individual practices, Defendants submitted letters requesting a pre-motion conference regarding their anticipated motions for

summary judgment. The Class Representatives opposed Defendants' requests by letters dated May 11, 2018. On July 17, 2018, the Court issued an order denying Defendants' request for a pre-trial conference and ordering the parties to prepare for trial, which the order set to commence on March 18, 2019. On July 31, 2018, former Defendants Robert Diamond and Antony Jenkins made a motion for reconsideration of the Court's summary judgment order. After a conference on August 8, 2018 and further letters from the parties, the Court granted the motion and granted summary judgment as to the claims against former Defendants Diamond and Jenkins on September 21, 2018. The remaining parties are still scheduled to commence trial on March 18, 2019.

4. Settlement Negotiations

In September 2015, the Settling Parties participated in a mediation with the assistance of the Hon. John S. Martin. The Settling Parties did not reach an agreement to settle the litigation at that time but continued to confer periodically to discuss potential settlement of the Litigation. In October, November, and December 2018, the Settling Parties resumed settlement discussions and conferred periodically in an effort to resolve the Litigation. After extended negotiations, the Settling Parties executed a Memorandum of Understanding setting forth their agreement in principle to settle the Litigation ("MOU"). Subsequently, the Settling Parties continued negotiations resulting in the terms and conditions set forth in this Stipulation.

II. CLASS REPRESENTATIVES' CLAIMS AND THE BENEFITS OF THE SETTLEMENT

The Class Representatives believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. However, the Class Representatives and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial and

through appeals. The Class Representatives and their counsel have also taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. The Class Representatives and their counsel also are mindful of the inherent problems of proof to prosecute, and of possible defenses to, the securities law violations asserted in the Litigation. The Class Representatives and their counsel believe that the Settlement set forth in the Stipulation confers substantial benefits upon the Class. Based on their evaluation, the Class Representatives and their counsel have determined that the Settlement set forth in the Stipulation is in the best interests of the Class Representatives and the Class.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied, and continue to deny, that they have committed any act or omission giving rise to any liability or violation of the law. Specifically, Defendants have denied, and continue to deny, each and all of the claims and contentions alleged by the Class Representatives in the Litigation, along with all of the charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants further have denied, and continue to deny, that the Class Representatives suffered any damages or were harmed by the conduct alleged in the Litigation. Defendants have asserted, and continue to assert, that their conduct was at all times proper and in compliance with all applicable provisions of law. In addition, Defendants maintain that they have meritorious defenses to all of the claims alleged in the Litigation.

As set forth below, neither the Settlement nor any of the terms of this Stipulation shall constitute an admission or finding of any fault, liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have, asserted in the Litigation. Defendants are entering into this Stipulation solely to eliminate the burden and

expense of further litigation. Defendants have determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

Now, therefore, it is hereby stipulated and agreed by and among the Class Representatives (for themselves and on behalf of the Class Members) and Defendants, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Litigation and Released Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows:

1. Definitions

As used in the Stipulation and its Exhibits, the following terms shall have the meanings specified below. Terms used in the singular shall be deemed to include the plural and vice versa.

1.1 “Authorized Claimant” means any Class Member whose claim for recover is allowed pursuant to the terms of the Stipulation.

1.2 “Barclays” means Barclays PLC and Barclays Capital Inc.

1.3 “Claims Administrator” means JND Legal Administration.

1.4 “Class” means all Persons who purchased, held, or otherwise acquired American Depositary Shares (“ADS”) of Barclays PLC during the Class Period. The members of the class shall not include Defendants or Dismissed Defendants, members of the immediate families of each of the Defendants or Dismissed Defendants, any person, firm, trust, corporation, officer,

director, or other individual or entity in which any of the Defendants or Dismissed Defendants has a controlling interest, or which is related to or affiliated with any of the Defendants or Dismissed Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any excluded party. Also excluded from the Class are those Persons who are found by the Court to have timely and validly requested exclusion from the Class.

1.5 “Class Member” means any Person who falls within the definition of the Class as set forth in ¶ 1.4 above.

1.6 “Class Period” means the period between August 2, 2011 and June 25, 2014, inclusive.

1.7 “Class Representatives” means Joseph Waggoner and Mohit Sahni.

1.8 “Court” means the United States District Court for the Southern District of New York.

1.9 “Defendants” means Barclays and individual defendant William White.

1.10 “Defendants’ Claims” means any and all claims and causes of action of every nature and description (including Unknown Claims) whether arising under federal, state, common or foreign law, that have been or could have been asserted in the Litigation or any forum by the Released Persons or any of them against the Class Representatives, the Class Members, and the Class Representatives’ counsel, which arise out of or are related in any way to the institution, prosecution, or settlement of the Litigation. Defendants’ Claims do not include claims to enforce this Stipulation or any order of the Court in the Litigation.

1.11 “Effective Date” or the date upon which this Settlement becomes “effective,” means three (3) business days after the date by which all of the events and conditions specified in ¶ 7.1 herein have been met and have occurred.

1.12 “Escrow Accounts” mean, collectively the Notice Administration Fund and the Settlement Fund, described in ¶ 2.1 herein.

1.13 “Escrow Agent” means Huntington National Bank.

1.14 “Fee and Expense Application” means the application(s) for an award of attorneys’ fees and expenses to the Class Representatives’ counsel described in ¶ 6.1 herein.

1.15 “Fee and Expense Award” means the award of attorneys’ fees and expenses of the Class Representatives’ counsel described in ¶ 5.2 herein.

1.16 “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of the time to file any motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time to appeal from the Judgment without any such appeal having been filed; and (iii) if a motion to alter or amend is filed or if an appeal is filed, immediately after the determination of that motion or appeal so that the Judgment is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of appeal, or otherwise, and in such a manner as to permit the consummation of the Settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of *certiorari* or

other writ that may be filed in connection with the approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of the Class Representatives' counsel's attorneys' fees and expenses, payments to the Class Representatives for their expenses, the Plan of Allocation of the Settlement Fund, or the procedures for determining Authorized Claimants' recognized claims.

1.17 "Dismissed Defendants" means the former defendants who have been dismissed from the Litigation: Robert Diamond, Antony Jenkins, Christopher Lucas, and Tushar Morzaria.

1.18 "Judgment" means the Final Judgment and Order of Dismissal with Prejudice to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.19 "Lead Counsel" means the law firm of Pomerantz LLP or its successor.

1.20 "Litigation" means the action captioned *Strougo v. Barclays PLC et al.*, Case No. 1:14-cv-05797-VM-DCF (S.D.N.Y.)

1.21 "Net Settlement Fund" means the net settlement fund described in ¶ 5.2 herein.

1.22 "Notice" means the notice described in ¶ 3.1 herein.

1.23 "Notice Administration Fund" means an interest bearing escrow account established by the Claims Administrator to receive funds pursuant to ¶ 2.1.

1.24 "Notice and Administration Expenses" means the costs and expenses described in ¶ 2.8 herein.

1.25 "Person" means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited

liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

1.26 “Plan of Allocation” means a plan or formula of allocation of the Net Settlement Fund whereby the Net Settlement Fund shall be distributed to Authorized Claimants. Any Plan of Allocation is not part of the stipulation and neither Defendants nor their Related Parties shall have any responsibility or liability with respect thereto.

1.27 “Preliminary Approval Order” means the order described in ¶3.1 herein.

1.28 “Related Parties” means each of a Defendant’s respective former, present, or future parents, subsidiaries, divisions and affiliates, and the respective employees, members, partners, principals, officers, directors, controlling shareholders, attorneys, advisors, accountants, auditors, and insurers of each of them; and the predecessors, successors, estates, spouses, heirs, executors, trusts, trustees, administrators, agents, legal or personal representatives and assigns of each of them, in their capacity as such.

1.29 “Released Claims” means any and all claims and causes of action of every nature and description (including Unknown Claims) whether arising under federal, state, common, or foreign law, whether class or individual in nature, that the Class Representatives or any Class Member asserted or could have asserted against any Person in the Litigation or any other forum, which (i) were asserted in any Complaint filed in the Litigation, or (ii) could have been asserted or could in the future be asserted in any court or forum that arise out of or relate to any of the allegations, transactions, facts, matters, or occurrences, representations, or omissions involved,

set forth, or referred to in any complaint filed in the Litigation and that relate in any way, directly or indirectly, to the purchase, holding, or sale of Barclays' ADS during the Class Period. Released Claims do not include claims to enforce this Stipulation.

1.30 "Released Persons" means each and all of Defendants and Dismissed Defendants and each and all of their Related Parties.

1.31 "Settlement" means the settlement of the Litigation as set forth in this Stipulation.

1.32 "Settlement Amount" means Twenty Seven Million United States Dollars (US\$27,000,000.00) in cash to be paid to the Escrow Agent pursuant to ¶ 2.1 of this Stipulation.

1.33 "Settlement Fund" means an interest-bearing escrow account established by the Escrow Agent to receive the amounts of funds payable pursuant to ¶ 2.1.

1.34 "Settlement Hearing" means the hearing required by Federal Rule of Civil Procedure 23(e), at which time the Settling Parties will request that the Court approve the fairness, reasonableness, and adequacy of the proposed Settlement embodied by this Stipulation and enter the Judgment. Lead Counsel will also request that the Court approve the Plan of Allocation and the Fee and Expense Application.

1.35 "Settling Parties" means, collectively, each of Defendants and the Class Representatives on behalf of themselves and each of the Class Members.

1.36 "Supplemental Agreement" means the supplemental agreement between the Settling Parties described in ¶ 7.3 herein.

1.37 “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority and arising with respect to income earned by the Settlement Fund as described in ¶ 2.9.

1.38 “Tax Expenses” means expenses and costs incurred in connection with the calculation and payment of taxes or the preparation of tax returns and related documents including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs relating to filing (or failing to file) the returns described in ¶ 2.9 herein.

1.39 “Unknown Claims” means (i) any Released Claims which the Class Representatives or any Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement or seek exclusion from the Class; and (ii) any Defendants’ Claims that any Defendant does not know or suspect to exist in his, her or its favor at the time of the release of the Class Representatives, the Class Members, and the Class Representatives’ counsel, which, if known by him, her or it might have affected his, her or its settlement with and release of the Class Representatives, the Class Members, and the Class Representatives’ counsel, or might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representatives and Defendants shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by 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 Class Representatives and Defendants shall expressly waive, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. The Class Representatives, Defendants and 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 or Defendants' Claims, but the Class Representatives shall expressly, fully, finally, and forever settle and release, and each Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, and Defendants shall expressly, fully, finally, and forever settle and release any and all Defendants' Claims, in each case known or unknown, suspected or unsuspected, contingent or non-contingent, disclosed or undisclosed, matured or unmatured, 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 duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement of which these releases are a part.

2. The Settlement

a. The Settlement Amount

2.1 On or before fifteen (15) days after the later of: (i) entry of the Preliminary Approval Order, as defined in ¶ 3.1 herein, and (ii) provision to Defendants of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number, and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund, Barclays shall cause the Settlement Amount to be deposited into the interest bearing Settlement Fund escrow account controlled by the Escrow Agent. The Escrow Agent shall cause \$500,000 from the Settlement Amount to be deposited into the interest bearing Notice Administration Fund escrow account controlled by the Escrow Agent.

2.2 Barclays shall pay the Settlement Amount on behalf of all Defendants and Dismissed Defendants. Such amount is paid as consideration for full and complete settlement of all Released Claims. In the event that the entire Settlement Amount is not funded when due, the Class Representatives shall have the right to terminate the Settlement.

2.3 Other than the obligation of Barclays to pay or cause to be paid the Settlement Amount into the Settlement Fund, Defendants and Dismissed Defendants shall have no obligation to make any other payment into the Settlement Fund pursuant to this Stipulation.

b. The Escrow Agent

2.4 The Escrow Agent shall invest the Settlement Amount deposited pursuant to ¶ 2.1 herein in United States Agency or Treasury Securities or other instruments backed by the Full Faith & Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks

related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund, and the Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent, or any transactions executed by the Escrow Agent.

2.5 The Escrow Agent shall not disburse the Settlement Fund except as provided in the Stipulation, by an order of the Court, or with the written agreement of counsel for Defendants.

2.6 Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of the Stipulation. The Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or for any transaction executed by the Escrow Agent.

2.7 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

2.8 The Notice Administration Fund shall be used by the Escrow Agent to pay the reasonable fees and expenses incurred by, and the reasonable fees charged by, the Claims Administrator upon presentation of customary invoices therefor, which invoices have been approved by Lead Counsel, including, without limitation: the cost of identifying and locating members of the Class; mailing Notice and Proof of Claim and publishing the Publication Notice (such amounts shall include, without limitation, the actual costs of publication in national

newswires, printing and mailing the Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting Class claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund (as defined below) to Authorized Claimants, processing Proof of Claim and Release forms, and paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims (“Notice and Administration Expenses”). Any residual monies held in the Notice Administration Fund upon the completion of notice administration for the Settlement shall be transferred to the Settlement Fund. The Released Persons shall have no responsibility for or liability whatsoever with respect to the Notice and Administration Expenses, nor shall they have any responsibility for or liability whatsoever for any claims with respect thereto. Notwithstanding the foregoing, Barclays shall be responsible for the costs and expenses of providing to Lead Counsel and/or the Claims Administrator pertinent transfer records for purposes of mailing notice to the Class.

c. Taxes

2.9 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.9, including the “relation-back election” (as defined in Treas. Reg. §1.468B- 1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.9(a) herein) shall be consistent with this ¶ 2.9 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 2.9(c) herein.

(c) All (i) Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Released Persons or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 2.9 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 2.9) (“Tax Expenses”), shall be paid out of the Settlement Fund; in all events the Released Persons and their counsel shall have no responsibility or liability whatsoever for Taxes or Tax Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court,

and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(l)(2)); neither the Released Persons nor their counsel are responsible nor shall they have any liability for any Taxes or Tax Expenses. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.9.

d. Termination of the Settlement

2.10 In the event that the Stipulation is not approved, the Stipulation is terminated or canceled, or the Effective Date otherwise fails for any reason to occur, the Settlement Funds less Notice and Administration Expenses or Taxes or Tax Expenses paid, incurred, or due and owing in connection with the Settlement provided for herein, shall be refunded pursuant to written instructions for counsel for Defendants in accordance with ¶ 7.4 herein.

3. Preliminary Approval Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, the Class Representatives shall submit the Stipulation together with its Exhibits to the Court and shall apply for entry of an order (“Preliminary Approval Order”), substantially in the form of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation, certification of the Class for settlement purposes, and approval of the mailing of a settlement notice (“Notice”) and publication of a summary notice, substantially in the forms of Exhibits A-1 and A-3 attached hereto. The Notice shall include the general terms of the Settlement set forth in

the Stipulation, the proposed Plan of Allocation, the general terms of the fee and Expense Application, as defined in ¶ 6.1 herein, and the date of the Settlement Hearing, as defined below.

3.2 Lead Counsel shall request that after notice is given, the Court hold a hearing (“Settlement Hearing”) and finally approve the Settlement of the Litigation as set forth herein. At or after the Settlement Hearing, Lead Counsel also will request that the Court approve the proposed Plan of Allocation, the Fee and Expense Application, and the Class Representatives’ request for payment of time and for their expenses, if any.

4. Releases

4.1 Upon the Effective Date, the Class Representatives shall, and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Persons, whether or not such Class Member executes and delivers a Proof of Claim and Release or shares in the Settlement Fund. Claims to enforce the terms of this Stipulation are not released.

4.2 The Proof of Claim and Release to be executed by Class Members shall release all Released Claims against the Released persons and shall be substantially in the form contained in Exhibit A-2 attached hereto.

4.3 Upon the Effective Date, all Class Members, and anyone claiming through or on behalf of any of them, will be forever barred and enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting the Released Claims against any of the Released Persons.

4.4 Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged the Class Representatives, each and all of the Class Members, and Class Representatives counsel, including Lead Counsel, from all Defendants' Claims. Claims to enforce the terms of this Stipulation or any order of the Court in the Litigation are not released.

5: Administration and Calculation of Claims, Final Awards and Supervision and Distribution of the Settlement Fund

5.1 The Claims Administrator, subject to such supervision and direction of the Court as may be necessary or as circumstances may require, shall administer and calculate the claims submitted by Class Members and shall oversee distribution of the Net Settlement Fund (defined below) to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

- (a) To pay all the Notice and Administration Expenses described in ¶ 2.8 herein;
- (b) To pay the Taxes and Tax Expenses described in ¶ 2.9;
- (c) To pay attorneys' fees and expenses of counsel for the Class Representatives ("Fee and Expense Award"), and to pay the Class Representatives for their time and expenses, if and to the extent allowed by the Court; and
- (d) After the Effective Date, to distribute the balance of the Settlement Fund ("Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

(a) Each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim and Release, substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release.

(b) All Proofs of Claim and Releases must be submitted within seven (7) days of the date of the Settlement Hearing or such other time as may be set by the Court. Except as otherwise ordered by the Court, all Class Members who fail to timely submit a valid Proof of Claim and Release within such period, or such other period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the Stipulation and the Settlement set forth herein, but shall in all other respects be subject to and bound by the provisions of the Stipulation and the Settlement, including the terms of the Judgment and the releases provided for therein and herein, and will be barred and enjoined from bringing any action against the Released Persons concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion (but not an obligation) to accept late-submitted claims for processing by the Claims Administrator so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby. Lead Counsel shall have no liability for not accepting late-submitted claims.

5.4 Persons who otherwise would be Class Members but desire to be excluded from the Settlement shall be required to provide a written statement that the Person wishes to be excluded from the Class for receipt by the Claims Administrator no later than twenty one (21) days prior to the Settlement Hearing or such other time as may be set by the Court. Unless otherwise ordered by the Court, any Person who is a Class Member and who does not submit a timely and valid request for exclusion from the Class shall be bound by this Stipulation. Copies of all requests for exclusion received shall be sent to counsel for Defendants and to Lead Counsel within a reasonable time of receipt by the Claims Administrator and in any event not less than fourteen (14) calendar days prior to the Settlement Hearing. Copies of all written retractions of requests for exclusion received, shall be sent to counsel for Defendants and to Lead Counsel within a reasonable time of receipt by the Claims Administrator and in any event not less than three (3) calendar days prior to the Settlement Hearing.

5.5 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the date of the initial distribution of the Net Settlement Fund, Lead Counsel shall, if feasible, reallocate (which reallocation may occur on multiple occasions) such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any *de minimis* balance which still remains in the Net Settlement Fund shall be donated to an appropriate non-profit organization selected by Lead Counsel. This is not a claims-made settlement. There will be no reversion to Defendants.

5.6 Except for Barclays' obligation to pay or cause payment of the Settlement Amount into the Settlement Fund as set forth herein, Defendants and their Related Parties shall

have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of Class claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claim of any kind against Defendants, their Related Parties, or counsel for Defendants with respect to the matters set forth in ¶¶ 5.1-5.8 herein; and the Class Members, Class Representatives, and Class Representatives' counsel, including Lead Counsel, release Defendants, Dismissed Defendants, and their Related Parties from any and all liability and claims arising from or with respect to the administration, investment or distribution of the Settlement Fund.

5.7 No Person shall have any claim against Defendants, Dismissed Defendants, or their Related Parties, counsel for Defendants, the Class Representatives, Lead Counsel, the Claims Administrator or any other Person designated by Lead Counsel based on determinations or distributions made substantially in accordance with the Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

5.8 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund, including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of the Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the Settlement of the Litigation set forth therein. Defendants will take no position with respect to such proposed Plan of Allocation or such plan as may be approved by the Court.

6. The Class Representatives' Counsel's Attorneys' Fees and Expenses

6.1 Lead Counsel may submit an application or applications ("Fee and Expense Application") to the Court for distributions from the Settlement Fund for: (i) an award of attorneys' fees; plus (ii) expenses or charges in connection with prosecuting the Litigation; plus (iii) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. The Class Representatives may also submit an application for an award for their time and expenses in connection with the prosecution of the Litigation. Lead Counsel reserve the right to make additional applications for fees and expenses incurred.

6.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses, notwithstanding the existence of any objections thereto or potential for appeal therefrom. Lead Counsel may thereafter allocate the attorneys' fees among Class Representatives' other counsel, if any, in a manner in which they in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Litigation.

6.3 In the event that the Effective Date fails for any reason to occur, or the Judgment or the order making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes final and not subject to review, and in the event that the Fee and Expense Award has been paid to any extent, then Lead Counsel, and such other Class Representatives' counsel who have received any portion of the Fee and Expense Award, shall, within fifteen (15) calendar days from receiving notice from Defendants' counsel or from a court of appropriate

jurisdiction, be severally and jointly obligated to refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund, plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal, modification, cancellation or termination. Each such Class Representatives' counsel's law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

6.4 The procedure for and the allowance or disallowance by the Court of any applications by any Class Representatives' counsel for attorneys' fees and expenses, or the time and expenses of the Class Representatives, to be paid out of the Settlement Fund, are not part of the Settlement set forth in the Stipulation, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Fee and Expense Application, or the Class Representatives' time and expense application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay the finality of the Judgment approving the Stipulation and the Settlement of the Litigation set forth therein.

6.5 Any fees and/or expenses awarded by the Court shall be paid solely from the Settlement Fund. Defendants, Dismissed Defendants, and their Related Parties shall have no responsibility for any payment of attorneys' fees and/or expenses to Lead Counsel, Class Representatives' other counsel, the Class Representatives, or any other counsel or Person who receives payment from the Settlement Fund.

6.6 Defendants, Dismissed Defendants, and their Related Parties shall have no responsibility or liability whatsoever for the allocation among Lead Counsel, Class Representatives' other counsel, or any other counsel or Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all the following events:

- (a) The Court has entered the Preliminary Approval Order, as required by ¶ 3.1 herein;
- (b) The Settlement Amount has been deposited into the Escrow Account;
- (c) Defendants have not exercised their option to terminate the Stipulation pursuant to ¶ 7.3 herein;
- (d) The Court has entered the Judgment, or a judgment substantially in the form of Exhibit B attached hereto; and
- (e) The Judgment has become Final, as defined in ¶ 1.16 herein.

7.2 Upon the Effective Date, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If all of the conditions specified in ¶ 7.1 herein are not met, then the Stipulation shall be canceled and terminated subject to ¶ 7.4 herein, unless Lead Counsel and counsel for Defendants mutually agree in writing to proceed with the Settlement.

7.3 Defendants shall have the unilateral right to terminate the Settlement in the event that Class Members who or which, pursuant to timely and valid requests for exclusion from the Class, meet the conditions set forth in a confidential supplemental agreement (“Supplemental Agreement”) between the Settling Parties. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein, to the extent necessary, or as otherwise provided in the Supplemental Agreement), unless and until the Court otherwise directs or a dispute arises between the Settling Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will undertake to have the Supplemental Agreement submitted to the Court *in camera* or filed under seal.

7.4 In the event that the Stipulation is not approved, the Stipulation is terminated or canceled, or the Effective Date otherwise fails for any reason to occur, then:

(a) Within fifteen (15) calendar days after written notification of such event is sent by counsel for Defendants or Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less any expenses which have either been disbursed pursuant to ¶¶ 2.8 or 2.9 herein, or are chargeable to the Settlement Fund pursuant to ¶¶ 2.8 or 2.9 herein, shall be refunded by the Escrow Agent to Barclays pursuant to written instructions from Defendants’ counsel. The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to Barclays, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written instructions from Defendants’ counsel;

(b) Neither the Class Representatives nor any of their counsel shall have any obligation to repay any amounts disbursed pursuant to ¶¶ 2.8 or 2.9 herein, and any expenses already incurred pursuant to ¶¶ 2.8 or 2.9 herein, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶¶ 2.10 and 7.4(a) herein;

(c) The Settling Parties shall revert to their respective positions in the Litigation as of December 11, 2018; and

(d) The terms and provisions of the Stipulation, with the exception of this ¶ 7.4(d) and ¶¶ 1.1-1.39, 2.8-2.10, 6.3, 8.3, and 8.6 herein, shall have no further force and effect with respect to the Settling Parties and shall not be enforceable, or used in this Litigation or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court, or modification or reversal on appeal of any order of the Court, concerning the Plan of Allocation, or the amount of any attorneys' fees, expenses, and interest awarded by the Court to any of the Class Representatives' counsel or the Class Representatives, shall operate to terminate or cancel this Stipulation or constitute grounds for cancellation or termination of this Stipulation.

8. Miscellaneous Provisions

8.1 The Settling Parties: (i) acknowledge that it is their intent to consummate this Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

8.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Class Representatives and Defendants agree that all Settling Parties and their respective counsel have complied with Federal Rule of Civil Procedure 11. The Judgment will contain a finding that, during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Federal Rule of Civil Procedure 11. The Settling Parties agree that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made by any of the Settling Parties in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

8.3 Neither this Stipulation nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of Defendants or their respective Related Parties; (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of Defendants or their respective Related Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal; (iii) is or may be deemed to be or may be used as an admission, or evidence, that any claim asserted by the Class Representatives was not valid in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal or (iv) is or may be deemed to

be or may be used as an admission of, or evidence of, the appropriateness of treating the Litigation as a class action for any other purpose than the Settlement. Defendants and/or their respective Related Parties may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

8.4 Defendants shall provide notice under the provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, as appropriate, at their own expense.

8.5 Except as otherwise provided for herein, all agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

8.6 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

8.7 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

8.8 The Stipulation, the Exhibits attached hereto, and the Supplemental Agreement constitute the entire agreement among the Settling Parties hereto. No representations, warranties or inducements have been made to any party concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than the representations, warranties, and covenants contained and memorialized in such documents.

8.9 Except as otherwise provided for herein, each Settling Party shall bear his, her or its own costs.

8.10 Lead Counsel, on behalf of the Class, are expressly authorized by the Class Representatives to take all appropriate action required or permitted to be taken by the Class pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Stipulation on behalf of the Class which they deem appropriate.

8.11 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto warrants that such Person has the full authority to do so.

8.12 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or e-mail shall be deemed originals.

8.13 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

8.14 The waiver by one party of any breach in this Stipulation by any other party shall not be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this Stipulation.

8.15 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties hereto.

8.16 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation and matters related to the Settlement.

8.17 Pending approval of the Court of the Stipulation and its Exhibits, other than by agreement of the Settling Parties, all proceedings in this Litigation shall be stayed and the Class Representatives and all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against any of the Released Persons.

8.18 This Stipulation, the Exhibits attached hereto, and the Supplemental Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles.

8.19 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties, and the Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be executed by their duly authorized attorneys, dated January 28, 2019.

By: 

POMERANTZ LLP
Jeremy A. Lieberman
Tamar A. Weinrib
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (917) 463-1044
jalieberman@pomlaw.com
taweinrib@pomlaw.com

Patrick V. Dahlstrom
10 South La Salle Street, Suite 3505
Chicago, Illinois 60603
Telephone: (213) 377-1181
Facsimile: (312) 377-1184
pdahlstrom@pomlaw.com
*Lead Counsel for the Lead Plaintiffs and Class
Representatives*

By:



SULLIVAN & CROMWELL LLP

Jeffrey T. Scott

Matthew A. Schwartz

Andrew H. Reynard

125 Broad Street

New York, New York 10004

Telephone: (212) 558-4000

Facsimile: (212) 291-9138

scottj@sullcrom.com

schwartzmatthew@sullcrom.com

reynarda@sullcrom.com

Counsel for Barclays PLC and Barclays Capital Inc.

By: John Del Monaco J.L. 112812019
KIRKLAND & ELLIS LLP
John P. Del Monaco
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
john.delmonaco@kirkland.com
Counsel for William White

SOUTHERN DISTRICT OF NEW YORK

----- X

BARBARA STROUGO, Individually and on	:	
Behalf of All Others Similarly Situated,	:	
	:	Case No. 1:14-cv-05797-VM-DCF
Plaintiff(s),	:	
v.	:	ECF CASE
	:	
BARCLAYS PLC, BARCLAYS CAPITAL	:	
INC., ROBERT DIAMOND, ANTONY	:	
JENKINS, CHRISTOPHER LUCAS, TUSHAR	:	
MORZARIA, and WILLIAM WHITE,	:	
	:	
Defendants.	:	

----- X

EXHIBIT 2
From Declaration of Luiggy Segura – Exhibit C
Docket 144-1, filed April 12, 2019
List Of Persons Requesting Exclusion From The Settlement

1. Neil Harold M. Hauser
2. Stanley J. Chimahusky
3. Charles Anthony Belotte
4. Ong Chao Ying Eunice
5. Lynette Grants
6. Gloria Pettersen, representative for James C. Pettersen
7. Lucile E. Einess
8. Victor Manuel Cruz Cuellar
9. Rachel Foster (FKA Rachel Harris)
10. Anatole Vernon Kung

EXHIBIT C

K1NAARCHps

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 In Re:

15-MC-40 (AKH)

4 AMERICAN REALTY CAPITAL
5 PROPERTIES, INC. LITIGATION,

6 Fairness Hearing

7 -----x
8 New York, N.Y.
9 January 23, 2019
10:15 a.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN

12 District Judge

13 APPEARANCES

14 ROBBINS GELLER RUDMAN & DOWD LLP
15 Attorneys for TIAA and Class Plaintiffs
16 BY: DEBRA J. WYMAN, ESQ.
17 MICHAEL J. DOWD, ESQ.
18 ROBERT M. ROTHMAN, ESQ.
ELLEN GUSIKOFF-STEWART, ESQ.

19 GLANCY PRONGAY & MURRAY LLP
Attorneys for the Witchko Derivative
20 BY: MATTHEW M. HOUSTON, ESQ.

21 MILBANK LLP
Attorneys for Defendant ARCP
22 BY: SCOTT A. EDELMAN, ESQ.

K1NAARCHps

1 about the SEC regulatory framework as well.

2 THE COURT: No, I did not.

3 MR. DOWD: I think you did, your Honor.

4 And, you know, your Honor, a lot of Mr. Pitt's bill is
5 because the defendant showed up with between 15 and 20 lawyers
6 in Washington, D.C., to take his deposition for two days. At
7 the end of the first day, I walked out, because I said, this is
8 a waste of time. And then defendants filed a letter brief
9 complaining that I had walked out. And we had to go back for a
10 second day.

11 I didn't want to have Harvey Pitt get deposed twice to
12 talk about stuff that, you know, frankly I thought was not that
13 remarkable.

14 THE COURT: You have almost \$50,000 paid to John
15 Barron and \$384,000 to the firm that Barron went to.

16 MR. DOWD: Correct. Barron.

17 THE COURT: Barron.

18 MR. DOWD: We could have had several experts on
19 accounting. And we found a REIT auditor and accountant who was
20 going to testify to both, as to the company and as to Grant
21 Thornton. I think his expenses are very reasonable.

22 THE COURT: I find your lodestar reasonable, the rates
23 appropriate and, in relationship to the work that you did,
24 reasonable. I'll go into lodestar a bit later.

25 The next firm I want to hear from is Lowey Dannenberg.

EXHIBIT D

K6BKDEUC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 NORBERT G. KAESS, et al,

4 Plaintiffs,

5 v.

09 CV 1714 (GHW) (RWL)
Telephone Conference

6 DEUTSCHE BANK AG, et al.,

7 Defendants.

8 -----x
New York, N.Y.
9 June 11, 2020
4:30 p.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13 APPEARANCES

14 GLANCY PRONGAY & MURRAY LLP
15 Attorneys for Plaintiffs

16 BY: BRIAN P. MURRAY
-and-

17 ROBBINS GELLER RUDMAN & DOWD LLP

18 BY: THEODORE J. PINTAR
ERIC NIEHAUS
KEVIN LAVELLE

19 CAHILL GORDON & REINDEL LLP
20 Attorneys for Deutsche Bank Defendants

21 BY: DAVID JANUSZEWSKI
SAMUEL MANN

22 SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Attorneys for Underwriter Defendants

23 BY: WILLIAM J. O'BRIEN
ANDREW BEATTY

K6BKDEUC

1 expended over 26,000 hours in total in this case, resulting in
2 a total lodestar of \$16,069,646. Niehaus fee declaration
3 paragraph 4, Exhibit A; Murphy fee declaration, Exhibit A.
4 Robbins Geller expended 17,356.85 hours with a lodestar of
5 \$12,021,477, Glancy Prongay & Murray LLP expended 8,097.8 hours
6 with a lodestar of \$3,639,826.50, the Frank Murray LLP expended
7 562.2 hours with a lodestar of \$355,902.50. Id. Plaintiffs'
8 counsel submitted declarations and time reports in support of
9 their motion for attorneys' fees. Id. Counsel submitted a
10 summary time records detailing the billable rate and hours
11 worked by each attorney and professional support staff in this
12 case. I find that these billable rates based on the
13 timekeeper's title, specific years of experience, and market
14 rates for similar professionals in their fields nationwide and
15 in New York, where Robbins Geller LLP is based, to be
16 reasonable in this context.

17 Based on plaintiffs' counsel's requested
18 fee - one-third of the settlement, or by the Court's
19 calculation, \$6,166,666.67 - the lodestar yields a negative
20 "cross-check" multiplier of about 0.38; therefore, the fee is
21 well below the typically awarded multipliers in this circuit.
22 "Courts regularly award lodestar multipliers from 2 to 6 times
23 lodestar in this circuit." *Fleisher v. Phoenix Life Insurance*
24 *Company*, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9,
25 2020) (quotation omitted) (collecting cases). Thus, the lodestar

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NIELSEN HOLDINGS PLC
SECURITIES LITIGATION

Civil Action No. 1:18-cv-07143-JMF

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

WHEREAS, this matter came on for hearing on July 20, 2022 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and payment of expenses, including awards to Plaintiffs pursuant to the Private Securities Litigation Reform Act of 1995. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and litigation expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement, dated as of March 15, 2022 (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.
2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all Parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort, and they were given the opportunity to object by June 29, 2022. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and payment of expenses satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due, adequate, and sufficient notice to all Persons entitled thereto.

4. There have been two objections to Lead Counsel's request for attorneys' fees. *See* ECF Nos. 146-9, 147, 155. One was submitted by Mr. Larry Killion. ECF Nos. 146-9 and 147. He does not object to the expense requests. Additionally, the Court received a letter from Ms. Monica Bohlman, objecting to the proposed fee award. ECF No. 155. The Court has considered the arguments raised by Mr. Killion, as well as his proposed fee schedule, and the arguments raised by Ms. Bohlman, but for the reasons stated on the record during the fairness hearing, and under the circumstances of this case, their objections are overruled.

5. Lead Counsel is hereby awarded, on behalf of Plaintiffs' Counsel, attorneys' fees in the amount of \$18,037,433.00, plus interest at the same rate earned by the Settlement Fund (*i.e.*, 25% of the Settlement Fund, minus litigation expenses of \$850,266.93) and \$850,266.93 in payment of litigation expenses, plus accrued interest, which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel.

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

(a) The Settlement has created a substantial fund of \$73,000,000 in cash that

has been paid into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit valid Claim Forms will benefit from the Settlement that occurred because of the efforts of counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by Plaintiffs, sophisticated institutional investors that oversaw the prosecution and resolution of the Action;

(c) 273,687 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 25% of the Settlement Fund and litigation expenses in an amount not to exceed \$1,100,000, and they were given an opportunity to object;

(d) The Action required the navigation of highly challenging and complex issues spanning Nielsen's business, the data analytics industry, accounting practices, privacy regulations, and complicated falsity, market efficiency and loss causation issues;

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

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

(g) The attorneys' fees awarded and litigation expenses to be paid from the Settlement Fund are fair and reasonable under the circumstances of this case and consistent with awards made within this District;

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

(i) Plaintiffs' Counsel expended slightly more than 17,200 hours with a lodestar value of \$10,382,315.75, to achieve the Settlement, representing a substantial effort.

7. Lead Plaintiff the Public Employees' Retirement System of Mississippi is hereby awarded \$17,750 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class, pursuant to §21D(a)(4) of the PSLRA, 15 U.S.C. §78u-4(a)(4).

8. Named plaintiff Monroe County Employees' Retirement System is hereby awarded \$5,625 from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class, pursuant to §21D(a)(4) of the PSLRA, 15 U.S.C. §78u-4(a)(4).

9. Any appeal or any challenge affecting this Court's approval of any attorneys' fees and expense application, including that of Lead Counsel, shall in no way disturb or affect the finality of the Judgment.

10. Exclusive jurisdiction is hereby retained over the Parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

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

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED this 20th day of July, 2022



HONORABLE JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE