UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

DAVID HOPPAUGH, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. K12 INC., RONALD J. PACKARD, and HARRY T. HAWKS, Defendants.	)	Civ. A. No. 1:12-cv-00103-CMH-IDD

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

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PRELIMINARY STATEMENT

Labaton Sucharow LLP, Court-appointed Lead Counsel for Arkansas Teacher Retirement System ("Lead Plaintiff" or "Arkansas") in this securities class action, respectfully submits this memorandum of law in support of, *inter alia*: (i) its motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees and payment of litigation expenses to be paid out of the Settlement Fund; and (ii) Lead Plaintiff's application for reimbursement of its reasonable costs expenses (including lost wages) directly related to the representation of the Class, pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. §78u-4(a)(4).[1]

As set forth in the Stipulation, Defendants K12 Inc. ("K12 or the Company") and the Individual Defendants (together with K12, the "Defendants") and Lead Plaintiff agreed to a settlement of $6,750,000 in cash, which has been accruing interest (the "Settlement Fund"). The Settlement is a very favorable result for the Class when evaluated in light of all the relevant circumstances – most notably the complicated nature of the Litigation and the risks of pursuing the Litigation through summary judgment and trial. The Settlement was achieved following vigorous investigative efforts that allowed Lead Plaintiff's claims to survive a motion to dismiss and the development of Lead Plaintiff's claims to a point where Lead Counsel could engage in meaningful settlement negotiations and a mediation with Defendants and ultimately obtain a favorable recovery for the Class.

Lead Counsel respectfully seeks an award of attorneys' fees in the amount of 25% of the Settlement Fund, and payment of $519,174.98 in expenses reasonably incurred in the course of

[1] Capitalized terms not otherwise defined herein shall have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated March 4, 2013 (ECF No. 138-2, the "Stipulation").

pursuing the claims against Defendants. Further, Lead Plaintiff, supported by the Declaration of George Hopkins, Executive Director of Arkansas Teacher Retirement System, in Support of (I) Lead Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for Attorneys Fees and Payment of Litigation Expenses ("Hopkins Declaration") (Ex. 1)[2], respectfully seeks payment of an award, pursuant to the PSLRA, totaling $4,032 in reimbursement of costs and expenses, including lost wages, as a result of the time expended in representing the Class.

The attorneys' fees request is fair and reasonable when one considers: (i) the results obtained for the Class; (ii) the quality, skill, and efficiency of the attorneys involved; (iii) the complexity and duration of the Litigation; (iv) the risk of nonpayment; (v) public policy; and (vi) fees awarded by courts in the Fourth Circuit and in other circuits in similar cases. The reasonableness of the requested fee is also supported by comparing it to plaintiffs' counsel's lodestar of $8,026,516.07, which, if the fee is approved, would result in a negative multiplier of .21. The requested expenses are also reasonable, as they are the type that are regularly reimbursed by courts within the Fourth Circuit and were necessary for the thorough prosecution of the Litigation.[3]

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[2] All exhibits referenced herein are annexed to the Declaration of Jonathan Gardner in Support of Lead Plaintiff's Motion for Final Approval of Proposed Class Action Settlement and Plan of Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Gardner Declaration" or "Gardner Decl."). For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as "Ex.__-__." The first numerical reference refers to the designation of the entire exhibit attached to the Gardner Declaration and the second reference refers to the exhibit designation within the exhibit itself.

[3] For the sake of brevity, the Court is respectfully referred to the Gardner Declaration for, *inter alia*, the nature of the claims asserted against Defendants; a detailed history of the Litigation; the investigation undertaken by Lead Counsel; the risks of continued litigation faced by the Class; the negotiation of the Settlement; and a description of services provided by Lead Counsel.

ARGUMENT

I. LEAD COUNSEL IS ENTITLED TO THE REASONABLE ATTORNEYS' FEE REQUESTED HEREIN

A. The Common Fund Doctrine and the Percentage of Fund Method of Awarding Attorneys' Fees in Common Fund Cases

The Supreme Court has long recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Although there are two methods for calculating attorneys' fees in a class action, the lodestar method and the percentage of the fund method, the Supreme Court has suggested that in the case of a common fund, the attorneys' fee should be determined on a percentage of recovery basis. *See Blum v. Stenson*, 465 U.S. 886, 900 n. 16 (1984) ("[U]nder the 'common fund doctrine,' where a reasonable fee is based on a percentage of the fund bestowed on the class . . .") (citation omitted).

While the Fourth Circuit has not definitively addressed the issue of which method must be applied to the evaluation of attorneys' fees in common fund cases, most district courts within the Fourth Circuit use the percentage of the fund method. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009) ("other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method for calculating attorneys' fees in common fund cases"); *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 785-86 (E.D. Va. 2001) ("the trend in securities class actions and other common fund cases has been toward use of the percentage method"); *Jones v. Dominion Res. Serv., Inc.*, 601 F. Supp. 2d 756, 761 (S.D. Va. 2009) ("The percentage method has overwhelmingly become the preferred method for calculating attorneys' fees in common fund cases."). In employing the percentage of the fund method, some courts in this district also apply the lodestar method as a

cross-check. *See, e.g., Mills*, 265 F.R.D. at 261 ("using the percentage of fund method and supplementing it with the lodestar cross check . . . take[s] advantage of the benefits of both methods"); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (courts within the Fourth Circuit "have suggested a flexible analysis that uses the percentage of recovery method but applies the lodestar method as a cross-check").

B. Analyses Under the Relevant Factors Support the Fee Request

In determining the proper percentage of recovery, many district courts in the Fourth Circuit apply seven factors[4]: "(1) the results obtained for the Class; (2) objections by members of the Class to the settlement terms and/or fees requested by counsel; (3) the quality, skill, and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) public policy; and (7) awards in similar cases." *Mills*, 265 F.R.D. at 261.[5]

[4] These seven factors overlap substantially with the factors used by some district courts within the Fourth Circuit when applying the lodestar method. *See Mills*, 265 F.R.D. at 261 ("Because the lodestar is employed as a 'cross-check' and because these factors are so similar to the seven factors analyzed within, each of the twelve *Barber* factors will not be laid out and analyzed separately."). These lodestar factors include: (1) time and labor expended; (2) novelty and difficulty of the questions raised; (3) skill required to properly perform the legal services; (4) attorney's opportunity costs in pressing the litigation; (5) customary fee for like work; (6) attorney's expectations at the outset of litigation; (7) time limitations imposed by the client or circumstances; (8) amount in controversy and results obtained; (9) experience, reputation, and ability of the attorney; (10) undesirability of the case within the legal community in which the suit arose; (11) nature and length of the professional relationship between the attorney and client; and (12) fee awards in similar cases. *Id*. (citing *Barber v. Kimbrell's Inc*., 577 F.2d 216, 226 (4th Cir. 1978)). Some courts rely on the twelve *Barber* factors in determining a reasonable fee under both methods. *See Royal Ahold,* 461 F. Supp. 2d at 385 (noting that "under both methods" there are "numerous factors that may be considered in determining a reasonable fee" and listing the twelve *Barber* factors); *Microstrategy*, 172 F. Supp. 2d at 786 (listing the twelve *Barber* factors as the "factors to be considered in determining a reasonable attorneys' fee in common fund cases").

[5] As noted by the Court in *Mills*, these seven factors are modeled after the factors applied in the Third Circuit in *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 733 (3d Cir. 2001). *See Mills*, 265 F.R.D. at 261.

1. The Results Obtained for the Class

The result achieved is the most important factor in considering an attorneys' fee request. *See In McDonnell v. Miller Oil Co*., 134 F. 3d 638, 640 (4th Cir. 1998) ("the most critical factor in calculating a reasonable fee award is degree of success obtained") (internal citation omitted); *Jones*, 601 F. Supp. 2d at 761 ("The result achieved by the attorneys for the class is often cited as one of the most significant factors in determining the reasonableness of a fee award."); *Loudermilk Servs., Inc. v. Marathon Petroleum Co. LLC*, 623 F. Supp. 2d 713, 718 (S.D. W. Va. 2009) ("The result achieved should, therefore, be the most prominent factor considered in the analysis."). Here, the result achieved - $6,750,000 – is an excellent result for the Class that will provide the Class with an all-cash recovery that was achieved despite many complexities and risks. According to an analysis prepared by Lead Plaintiff's loss causation and damages expert, assuming 100% of the stock drop on both alleged corrective disclosure dates are entirely attributable to correction of the alleged fraud, the maximum aggregate damages Lead Plaintiff could have obtained at trial is approximately $100 million. *See* Gardner Decl. ¶ 59.

The $6.75 million gross settlement represents 6.75 percent of this total estimated damages amount. *Id*. Courts have generally approved other settlements in PSLRA cases that recover a comparable or far smaller percentage of maximum damages. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig*., No. 02 MDL 1484, 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (settlement representing approximately 6.25% of estimated damages is "at the higher end of the range of reasonableness of recovery in class action securities litigations"). Indeed, a recent statistical study published by NERA found that in 2012, court-approved class action settlements recovered a median of 1.8% of estimated damages. *See* Dr. Renzo Comolli, Sukaina Klein, Dr. Ronald I. Miller, and Svetlana Starykh, *Recent Trends in*

Securities Class Action Litigation: 2012 Full-Year Review, at 33 (NERA Jan. 29, 2013) (Ex. 8).[6] Likewise, a recent statistical study published by Cornerstone Research found that where, as here, maximum estimated damages are between $50 million and $124 million, settlements during 1996-2011 and 2012 recovered a median of only 3.6% and 1.5% of such damages, respectively. *See* Ellen M. Ryan and Laura E. Simmons, *Securities Class Action Settlements: 2012 Review and Analysis*, at 8 (Cornerstone Research 2013) (Ex. 9).

Accordingly, the results obtained support approval of the fee request.

2. Objections by Members of the Class

Pursuant to the Court's Preliminary Approval Order, the Court-approved Notice and Proof of Claim was sent to 27,111 potential Class Members and the Court-approved Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire*. *See* Ex. 3 ¶¶6-7. The Notice advised Class Members of the procedures and deadlines for objecting to any aspect of the Settlement. *See* Ex. 3-A at 7. It specifically advised that Lead Counsel intends to seek an award of attorneys' fees that would not exceed 25% of the Settlement Fund, and payment of expenses not to exceed $600,000. *Id*. at 2, 6. In addition, the Notice informed Class Members that Lead Plaintiff may request an award for payment of its reasonable costs and expenses not to exceed $10,000. *Id*.

The deadline to object to the Fee and Expense Application is June 10, 2013. To date, there have been no objections by putative Class Members. After the deadline has passed, Lead Counsel will address the substance of any objections in its reply papers, which will be filed with the Court by July 5, 2013.

[6] NERA also reported, that between January 1996 and December 2012, median settlement amounts in securities class actions ranged from $3.7 million to $12.0 million. *Id*. at 4.

3. The Quality, Skill, and Efficiency of Attorneys Involved

Lead Counsel submits that it, Local Counsel, and additional plaintiffs' counsel have demonstrated skill in representing the Class during this Litigation and achieving the Settlement. As reflected in the firm resumes submitted to the Court, *see* Exs. 4-C, 5-C and 6-C, counsel possess significant experience and expertise in class action securities litigation.

For example, Lead Counsel, Labaton Sucharow, is among the nation's preeminent law firms in this area of practice and has served as lead or co-lead counsel on behalf of major institutional investors in numerous class litigations since the enactment of the PSLRA, including *In re American International Group, Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements exceeding $1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); and *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than $600 million). *See* Ex. 4-C.

Lead Counsel's skill and experience were critical to the resolution of this Litigation. As discussed above and throughout the Gardner Declaration, Lead Counsel relied on its skill and expertise to respond to, *inter alia*, Defendants' attacks in its motion to dismiss the Amended Complaint. Furthermore, in only seventeen weeks of discovery, Lead Plaintiff took multiple depositions, reviewed over one million pages of discovery materials, and extensively analyzed its claims and defenses (with the assistance of experienced experts). *See* Gardner Decl. ¶¶ 8, 44, 73. Given the complexity of the issues presented in this Litigation, it is respectfully submitted that no less than highly skilled counsel could have successfully represented the Class and obtained such

a favorable recovery. *See, e.g., Mills*, 265 F.R.D. at 262 (noting that lead counsel "achieved here a very favorable result for the Class" where lead counsel conducted extensive fact discovery, including a review of four million pages of documents and depositing numerous witnesses, among other things).

Likewise, the quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of the representation of the opposition. *See Id*. (noting that counsel reached a favorable settlement against "experienced and sophisticated defense attorneys"). Lead Counsel faced formidable opposition from a prominent law firm representing Defendants – Latham & Watkins LLP. In the face of this skilled opposition, Lead Counsel was able to develop a case that was sufficiently strong to survive a motion to dismiss, obtain class certification and persuade the Defendants to settle on terms that were favorable to the Class.

In sum, counsel's hard work strongly support the award of the fee requested.

4. The Complexity and Duration of Litigation

Courts have long recognized that securities class actions are notoriously complex and difficult to prosecute. *See, e.g., Id*. at 263 ("The very nature of a securities fraud case demands a difficult level of proof to establish liability."). The Litigation presented serious challenges and raised a number of complex issues that required extensive efforts by Lead Counsel and consultation with experts.

Since the Court entered its Order on Defendants' motion to dismiss in September 2012, the Parties swiftly engaged in full discovery. As described in the Gardner Declaration, while Lead Plaintiff uncovered compelling evidence in support of its churn related claims, including internal presentations and emails that discussed high churn rates and the effect those churn rates had on K12's revenues, Defendants' experts opined that K12 had disclosed sufficient

information to allow a reasonable investor to calculate high churn rates during the Class Period, and that any alleged omissions regarding particular churn rates were therefore immaterial. Gardner Decl. ¶57. Therefore, although the Court found that Lead Plaintiff adequately pled materiality of Defendants' statements, there were real risks that Lead Plaintiff would not have been able to prove materiality of Defendants' misstatements at summary judgment or trial.

Additionally, Defendants tenaciously challenged in their motion to dismiss Lead Plaintiff's ability to establish materiality by invoking a truth-on-the market defense. *See Id*. ¶54. While the Court rejected Defendants' truth-on-the market defense at the motion to dismiss stage, since such a defense is intensely fact-specific, there was no doubt that Defendants would raise it at summary judgment and at trial. *See, e.g., Freedland v. Iridium World Commc'ns, Ltd*., 545 F. Supp. 2d 59, 79 (D.D.C. 2008) ("[d]ue to the fact-intensive nature of the truth-on-the market defense, especially in this case, its resolution is best left to the jury").

Defendants would have also presented evidence that Lead Plaintiff could not establish that Defendants' alleged misstatements and omissions caused damages to the Class. The Court could find as a matter of law that, as Defendants' expert opined, the drop in K12's stock price following Packard's acknowledgement on November 16, 2011 that K12 only retained 60% of its students per year was not statistically significant, and that Lead Plaintiff's expert erred in including the stock drop on the following day, November 17, 2011. *Id*. ¶60. Additionally, the Court could find as a matter of law that, as Defendants' expert opined, the drop in K12's stock price following the *New York Times* disclosure reflected only a negative characterization of previously disclosed information, and was not a reaction to new information regarding K12's churn rates. *Id*. ¶61. Even if the Court did not find for Defendants on summary judgment, Lead Plaintiff would face significant obstacles proving specific damages to a jury, taking into account

significant negative press regarding K12 and its student retention problems prior to the alleged disclosure of the truth. *Id*.

Likewise, any resolution of both (i) calculations of churn rates for student enrollment figures as well as (ii) damages issues, necessarily would involve a "battle of the experts" with the concomitant risk that the jury could credit Defendants' experts over those of Lead Plaintiff. *See, e.g*., *In re Microstrategy, Inc. Sec. Litig.,* 148 F. Supp. 2d 654, 667 (E.D. Va. 2001) ("the damages issue would have become a battle of experts at trial, with no guarantee of the outcome in the eyes of the jury") (internal citation omitted).

Accordingly, Lead Counsel submit that an analysis of the complexities faced by the Class strongly support the requested fee.

5. The Risk of Non-Payment

Lead Counsel undertook this action on an entirely contingent-fee basis, and prosecuted the claims with no guarantee of compensation or recovery of any litigation expenses. Courts within the Fourth Circuit have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., Mills*, 265 F.R.D. at 263 ("counsel bore a substantial risk of nonpayment . . . [t]he outcome of the case was hardly a foregone conclusion, but nonetheless counsel accepted representation of the plaintiff and the class on a contingent fee basis, fronting the costs of litigation") (internal citation and quotation omitted). The contingency risk here was very significant and fully supports the requested fee.

6. Public Policy

"The public benefits when capable and seasoned counsel undertake private action to enforce the securities laws." *Mills*, 265 F.R.D. at 246 (citing *Microstrategy*, 172 F. Supp. 2d at 787-88). As set forth by the Court in *Microstrategy*:

> [T]he process of setting a proper fee in a PSLRA case must include an incentive component to ensure that competent, experienced counsel will be encouraged to undertake the often risky and arduous task of representing a class in a securities fraud case. The percentage method aids in meeting this objective as it is based on the contingent fee concept and PSLRA cases are essentially contingent fee cases; there is no fee unless there is a recovery and the fee awarded must bear a reasonable relation to the size of the recovery.

172 F. Supp. 2d at 788. If the vigorous prosecution of representing plaintiffs in a class action is to be carried out, courts must award fees that adequately compensate plaintiffs' counsel. *See, e.g., Jones*, 601 F. Supp. 2d at 765 ("public policy generally favors attorneys' fees that will induce attorneys to act and protect individuals who may not be able to act for themselves but also will not create an incentive to bring unmeritorious actions."). Public policy therefore favors the fees requested here.

7. Awards in Similar Cases

District courts within the Fourth Circuit have stated that while there is no real benchmark, "it is worth noting as a starting point that percentage awards are often between 25% and 30% of the Fund." *Mills*, 265 F.R.D. at 264. "Courts look to fee awards in analogous cases to determine the reasonableness of the percentage requested." *Id*. "[T]he reasonableness inquiry is necessarily case-specific, and thus the percentage actually awarded varies from case to case." *Id*.

Courts within the Fourth Circuit frequently award fees at or above 25% in class actions involving comparable settlement funds. *See, e.g., In re Landamerica 1031 Exch. Servs., Inc.,* No. 3:09-cv-0054, 2012 WL 5430841, at *7 (D.S.C. Nov. 7, 2012) (awarding 25% of $4 million settlement); *In re SPX Corp. ERISA Litig*., No. 3:04 cv 192, 2007 U.S. District LEXIS 28072, *10-11 (W.D.N.C. Apr. 13, 2007) (awarding 28% of $3.6 million settlement); *Smith v. Krispy Kreme Doughnut Corp*., No. 1:05CV00187, 2007 WL 119157, at *3 (M.D.N.C. Jan. 10, 2007) (awarding 26% of $4.75 million settlement); *Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) (awarding 25% of $1.15 million settlement).

An examination of fee decisions in securities class actions with comparable settlements in other federal jurisdictions also shows that an award of 25% and above is typically awarded. *See, e.g., In re Beckman Coulter Inc. Sec. Litig.*, No. 8:10-cv-1327-JST (RNBx), slip op. at 3 (C.D. Cal. March 1, 2012) (awarding 25% of $5.5 million settlement) (submitted herewith as part of compendium of unpublished opinions, Ex. 10); *In re Spectranetics Corp. Sec. Litig.*, No. 08-cv-0208-REB-KLM, slip op. at 3 (D. Col. Apr. 4, 2011) (awarding 28% of $8.5 million settlement) (Ex. 10); *Kevin D. Ramsey v. MRV Commc'n Inc.*, Case No. CV 08-04561 GAF (RCx), slip op at 16 (C.D. Cal. Nov. 16, 2010) (awarding 25% of $10 million settlement) (Ex. 10); *In re Zale Corp. Sec. Litig.*, No. 3:06-cv-01470-N, slip op. at 1 (N.D. Tex. July 10, 2008) (awarding 25% of $5.9 million settlement) (Ex. 10). Accordingly, Lead Counsel respectfully submits that the attorneys' fee request of 25% of the Settlement Fund is consistent with fee awards granted in similar actions.

8. The Requested Fee was Negotiated with Lead Plaintiff and Is Presumptively Reasonable

In enacting the PSLRA, Congress intended to encourage sophisticated institutional investors with substantial financial stakes in a litigation to serve as plaintiffs and play an active role in supervising and directing the litigation, including selecting and monitoring counsel. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 261-62, 282 (3d Cir. 2001). Approval of Lead Counsel's fee request by Lead Plaintiff, who was appointed under the PSLRA to represent the interests of the Class, strongly supports approval of the requested fee. *See, e.g., Mills*, 265 F.R.D. at 261 ("a PSLRA case in which a fee request has been approved and endorsed by properly-appointed lead plaintiffs . . . . enjoys a presumption of reasonableness"); *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05-cv-10240 (CM), 2007 WL 2230177, at *16 (S.D.N.Y. July 27, 2007) (public policy considerations support fee awards in cases in which

large public pension funds, serving as lead plaintiffs, "conscientiously" supervise the work of lead counsel and give their endorsement to the fee request) (internal citation omitted).

Here, Lead Plaintiff is an institutional investor that manages more than $12 billion in assets held in trust. *See* Ex. 1 ¶1. As set forth in more detail below, Lead Plaintiff was substantially involved in the prosecution of the Litigation and has had direct involvement from its commencement through settlement. Based on Lead Plaintiff's involvement in the Litigation, Lead Plaintiff evaluated the Fee and Expense Application and believes that it is fair and reasonable and warrants approval by the Court. *Id*. ¶6.

9. A Lodestar Cross-Check Also Supports the Fee Request

As noted above, district courts within the Fourth Circuit apply a lodestar cross-check. *See, e.g.*, *Mills*, 265 F.R.D. at 261; *Royal Ahold*, 461 F. Supp. 2d at 385; *Jones*, 601 F. Supp. 2d at 765. The lodestar is calculated by "multiplying the number of hours reasonably worked by a reasonable hourly billing rate for such services given the geographical area, the nature of the services provided, and the experience of the lawyer." *Mills*, 265 F.R.D. at 264. *See also Microstrategy*, 172 F. Supp. 2d at 786 ("the number of compensable hours is multiplied by a reasonable hourly rate for the attorneys' services to produce a lodestar figure"). The hourly billing rates used by Lead Plaintiff's Counsel are commensurate with rates used by securities class action attorneys nationwide litigating matters of a similar magnitude. *See Id.* at 789 ("[T]he range generally corresponds to the rates charged by the group of experienced securities class action counsel in cases brought in this and other districts. These rates are also not inconsistent with the rates charged by lawyers in . . . law firms that typically represent defendants in securities class actions.").

Here, the total lodestar of all plaintiffs' counsel related to the prosecution of the claims against Defendants, derived by multiplying their hours by each firms' current hourly rates, is

$8,026,516.07. *See* Ex. 7. This represents more than 17,000 hours spent by attorneys, staff attorneys, paralegals, investigators, and professional analysts furthering the prosecution of the claims. *See* Exs. 4-6. Lead Counsel's request for 25% of $6.75 million amounts to a negative lodestar multiplier of .21, which indicates the reasonableness of the fee request. *See, e.g.*, *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request."). Moreover, a negative multiplier, like the negative multiplier here, means that counsel are seeking to be paid for only a fraction of the hours expended on the Litigation. *See In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 (SAS), 2011 WL 2732563, at *9 (S.D.N.Y. July 8, 2011) (noting that, with a negative multiplier, "every firm . . . was thus compensated for a small fraction of the time spent on the case", *citing* 671 F. Supp. 2d 467, 515-16 (S.D.N.Y. 2009)); *see also In re Marsh & McLennan Cos. Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009) ("The percentage fee requested represents a negative multiplier of 0.44 to the lodestar. Thus, not only are Lead Counsel not receiving a premium on their lodestar, their fee request amounts to a deep discount from their lodestar."). Thus, the lodestar "cross-check" fully supports the requested fee.

II. LEAD COUNSEL SHOULD BE REIMBURSED FOR LITIGATION EXPENSES REASONABLY INCURRED IN CONNECTION WITH THIS LITIGATION

In addition to a reasonable attorneys' fee, Lead Counsel respectfully seeks payment in the amount of $519,174.98 for litigation expenses reasonably incurred in connection with prosecuting the claims against Defendants. These expenses are set forth in the declarations from counsel submitted to the Court herewith as Exhibits 4 through 6 and are of the type generally approved by courts for reimbursement. *See Microstrategy*, 172 F. Supp. 2d at 91 ("There is no

doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."). Counsel's declarations itemize the various categories of expenses incurred (*see* Exs. 4-B, 5-B, and 6-B) and state that these expenses were reasonable and necessary to prosecuting the claims and achieving the Settlement.

One of the most significant expenses was the cost of experts, which totaled $311,039.40. Lead Counsel retained experts to opine on damages and loss causation and issues pertaining to the education field such as the academic performance of K12 students compared to students at brick and mortar schools. Lead Counsel received crucial advice and assistance from these experts throughout the course of the Litigation. Their expertise allowed Lead Counsel to fully frame the issues, gather relevant evidence, make a realistic assessment of provable damages, and structure resolution of claims. *See*, *e.g.*, *Jones*, 601 F. Supp. 2d at 767 (approving costs incurred by experts and consultants who "were necessary to the thorough development and effective settlement of the Class Claims, especially in light of the complicated subject matter").

Lead Counsel was also required to travel between New York and Virginia in connection with this case, and thereby seeks payment for the costs of this travel. For instance, counsel traveled to Virginia on numerous occasions to attend hearings, status conferences and depositions. Counsel also traveled to California and Colorado in connection with the depositions. *See, e.g., Mills*, 265 F.R.D. at 265 ("traveling to depositions, reviewing documents provided by class counsel, and attending mediation sessions and court hearings" are the type of expenses expected or previously approved by other courts). Courts also routinely approve reimbursement for the expenses associated with mediation. *See, e.g., Mills*, 265 F.R.D. at 265. As detailed in the Gardner Declaration, the work performed by Judge Weinstein was crucial to the resolution of the Litigation.

Expenses here also include the costs of computerized research. These are the charges for computerized factual and legal research services such as LEXIS/Nexis and Westlaw. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues and reimbursement is proper. Indeed, courts recognize that these tools create efficiencies in litigation and, ultimately, save clients and the class money. *See In re Cont'l Ill. Sec. Litig*., 962 F.2d 566, 570 (7th Cir. 1992). In approving expenses for computerized research, the court in *Gottlieb v. Wiles*, 150 F.R.D. 174, 186 (D. Colo. 1993), *rev'd and remanded on other grounds sub nom, Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994), underscored the time-saving attributes of computerized research as a reason reimbursement should be encouraged. The court also noted that fee-paying clients (unlike class members) reimburse counsel for computerized legal and factual research. *Id*.

In sum, Lead Counsel respectfully submits that the expenses incurred were reasonable and necessarily incurred in connection with prosecuting the Litigation and achieving the proposed Settlement for the benefit of the Class.

III. LEAD PLAINTIFF IS ENTITLED TO REIMBURSEMENT OF REASONABLE COSTS AND EXPENSES, INCLUDING LOST WAGES, PURSUANT TO THE PSLRA

The PSLRA, 15 U.S.C. §78u-4(a)(4), limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the 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." Here, as explained in the Hopkins Declaration, Lead Plaintiff is seeking reimbursement of $4,032 in lost wages related to its active participation in this Litigation. Ex. 1 ¶¶7-8.

Numerous cases have approved reasonable payments to compensate class representatives for the time and effort devoted by them. *See, e.g.*, *Mills*, 265 F.R.D. at 265 (awarding lead plaintiffs $42,419.50); *In re Gilat Satellite Networks, Ltd*., No. CV-02-1150 (CPS) (SMG), 2007 WL 2743675, at *18-19 (E.D.N.Y. Sept. 18, 2007) (awarding lead plaintiff $10,000); *In re WorldCom, Inc. Sec. Litig*., 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (awarding $11,063.54 to lead plaintiff). Indeed, given that the central objective of the PSLRA was to "protect[] investors who join class actions against lawyer-driven lawsuits by . . . increas[ing] the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel,'" (*In re Cavanaugh*, 306 F.3d 726, 737 (9th Cir. 2002)), it would be unreasonable to penalize institutional class plaintiffs, like Lead Plaintiff here, for devoting time to the litigation by denying them reimbursement. *See also In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (recognizing the important public policy role of lead plaintiffs).

Here, Lead Plaintiff has devoted at least 42 hours to the Litigation, which included time spent: (i) conferring with Lead Counsel on the overall strategy for the case; (ii) reviewing the Amended Complaint and motion papers; (iii) evaluating regular status reports from Lead Counsel; (iv) reviewing Defendants' requests for production of documents and producing responsive documents; (v) preparing for and attending a deposition conducted by Defendants' counsel; (vi) attending the January 8, 2013 mediation; (vii) analyzing and responding to Defendants' settlement proposals; and (viii) communicating with Lead Counsel regarding the status of settlement negotiations. *See* Ex. 1 ¶¶4, 8. Lead Counsel and Lead Plaintiff therefore

respectfully submit that the $4,032 sought, based on Lead Plaintiff's extensive involvement in the Litigation from inception to settlement, is eminently reasonable and should be granted.

CONCLUSION

Lead Counsel respectfully requests that the Court award fees in the amount of 25% of the Settlement Fund, together with accrued interest, and the payment of litigation expenses in the amount of $519,174.98, together with accrued interest. Lead Counsel also request that Lead Plaintiff be reimbursed in the amount of $4,032 for lost wages in connection with its participation in the Litigation.

Dated: May 17, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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