UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE NII HOLDINGS INC. SECURITIES LITIGATION	Civ. No. 1:14-cv-00227-LMB-JFA

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES AND CLASS REPRESENTATIVES' REQUESTS FOR REIMBURSEMENT OF EXPENSES

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Labaton Sucharow LLP and Kessler Topaz Meltzer & Check, LLP, Court-appointed Class Counsel for Class Representatives Danica Pension, Livsforsikringsaktieselskab, Industriens Pensionsforsikring A/S, Pension Trust Fund for Operating Engineers Pension Plan, IBEW Local No. 58 / SMC NECA Funds, and Jacksonville Police & Fire Pension Fund (collectively, "Lead Plaintiffs" or "Class Representatives"), respectfully submit this memorandum of law in support of (i) their motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, on behalf of all Plaintiffs' counsel in the Action, for an award of attorneys' fees and payment of litigation expenses incurred during the course of the Action; and (ii) Class Representatives' application for reimbursement of their reasonable costs and expenses directly related to representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(4).[1]

PRELIMINARY STATEMENT

After two years of dedicated litigation efforts, involving preparation of the case through the completion of fact discovery and to the eve of the close of expert discovery, a bankruptcy proceeding that completely altered the landscape of the litigation, certification of a litigation class, and successful opposition to Defendants' Rule 23(f) petition, Class Counsel have successfully negotiated a settlement of this class action with Defendants Steven P. Dussek, Steven M. Shindler, and Gokul Hemmady (the "Defendants" or "Individual Defendants") in the amount of $41,500,000.

The proposed Settlement represents a recovery for the Class that exceeds both the median ($6.1 million) and the average ($37.9 million) settlement recoveries in securities class actions in

[1] All capitalized terms used and not otherwise defined in this Memorandum have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated as of April 18, 2016 (the "Stipulation"), previously submitted to the Court. ECF No. 247-1.

2015, and is an excellent result that will bring to a close contentious and challenging litigation. For Plaintiffs' counsel's substantial efforts in achieving this result, Class Counsel seek a fee of 25% of the Settlement Fund. Class Counsel also seek payment of $1,476,286.22 in litigation expenses incurred in prosecuting the Action and $37,361.00, in the aggregate, to reimburse Class Representatives for the time they devoted to representing the Class. Both amounts are less than the maximums reported in the Notice disseminated to potential Class Members.

As set forth in detail in the accompanying Joint Declaration of Gregory M. Castaldo, Joel H. Bernstein and Susan R. Podolsky in Support of Proposed Class Action Settlement, Plan of Allocation and Award of Attorneys' Fees and Expenses, dated August 12, 2016 (the "Joint Declaration" or "Joint Decl."),[2] it is respectfully submitted that the recovery obtained for the Class was achieved through the skill, diligence, experience, and effective advocacy of Plaintiffs' counsel. Counsel's compensation has been contingent upon the result achieved and the Court's approval. The attorneys' fee request is fair and reasonable when one considers, among other things, (i) the very favorable result achieved for the Class; (ii) the quality, skill, and efficiency of the attorneys involved; (iii) the unique complexities in the case and the substantial amount of litigation effort involved; (iv) the risks and challenges faced by counsel; (v) the endorsement of the request by Class Representatives, sophisticated institutional investors; and (vi) the amount of fees awarded by courts within the Fourth Circuit and within other circuits in comparable and larger cases.

[2] The Joint Declaration describes the history of the litigation, the claims asserted in the Action, the investigation and discovery undertaken, and the risks of the litigation, among other things. All exhibits referenced herein are annexed to the Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Exh. ___-___." The first numerical reference is to the designation of the entire exhibit attached to the Joint Declaration, and the second reference is to the exhibit designation within the exhibit itself.

The numerous factors supporting Class Counsel's fee request are discussed in detail below, but a few factors merit separate mention here. To begin, as the Court knows, this litigation was complex and time-consuming, particularly because the original corporate defendant, NII Holdings, Inc., filed under Chapter 11 of the Bankruptcy Code in the midst of the motion-to-dismiss briefing. This development significantly expanded and complicated prosecution of the case because it severely adversely impacted discovery, trial strategy, and counsel's ability to bring this case to a timely resolution. The Settlement of $41.5 million – an excellent result by any measure – is an even stronger result given this complication. In addition, several of the claims asserted in the Action involved events occurring outside the United States, which further complicated prosecution of the case.

Notwithstanding these obstacles, Plaintiffs' counsel devoted the necessary resources – in terms of their time and financial resources – to this matter in order to achieve a strong result for the Class. Indeed, unlike most cases in which counsel seek a fee that exceeds their lodestar, the requested fee here is actually ***about half*** of the lodestar.

As for the expenses requested, they are reasonable in amount and were necessarily incurred for the successful prosecution of the Action. Finally, the costs and expenses requested by Class Representatives, reflecting compensation for employees' time spent on the Action that would otherwise have been devoted to their ordinary duties, are reasonable and should be awarded as provided by the PSLRA.

ARGUMENT

I. A REASONABLE PERCENTAGE OF THE FUND RECOVERED IS THE APPROPRIATE METHOD FOR 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,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class . . ."). Additionally, the PSLRA provides 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 of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6).

While the Fourth Circuit has not definitively addressed 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 Berry v. LexisNexis Risk & Info. Analytics Grp., Inc.*, No. 11-cv-754, 2014 WL 4403524, at *15 (E.D. Va. Sept. 5, 2014) ("Where there is a common fund, the percentage method of awarding attorneys' fees is favored by the Supreme Court, the Fourth Circuit, and district courts within this Circuit.")[3]; *In re 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"); *Jones v. Dominion Res. Servs., 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, many courts in this district also apply the lodestar method as a cross-check. *See Kirven v. Cent. States Health & Life Co.*, No. 11-2149, 2015 WL 1314086, at *12 (D.S.C.

[3] All internal citations are omitted and emphasis added, unless otherwise indicated.

Mar. 23, 2015) ("Many district courts within the Fourth Circuit employee a modified form of the lodestar method to 'cross-check' to ensure that the percentage-of-the-fund method award is fair and reasonable."); *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").

Under either method, it is respectfully submitted that the requested fee here, which would not provide *any multiplier* on Plaintiffs' counsel's time in the case, is eminently reasonable.

II. THE REQUESTED FEE WAS NEGOTIATED WITH CLASS REPRESENTATIVES 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 to 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 Class Counsel's fee request by Class Representatives, who were appointed Lead Plaintiffs 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).

Here, Class Representatives are institutional investors that collectively manage billions in assets held in trust. *See* Exhs. 1-4 & 18. Their relationships with Class Counsel or Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz"), as applicable, are long-standing. *See*

Joint Decl. ¶ 141. As discussed in more detail below, Class Representatives actively supervised the prosecution of the Action from its commencement through settlement. Based on Class Representatives' involvement in the Action, they evaluated the Fee and Expense Application and believe that it is fair and reasonable and warrants approval by the Court. *Id*.

III. ANALYSIS OF THE RELEVANT FACTORS SUPPORTS THE FEE REQUEST

In determining the proper percentage of recovery to award as attorneys' fees, many district courts in the Fourth Circuit consider seven primary 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; *see also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014) (same). Each factor is discussed below.

A. Plaintiffs' Counsel Achieved Excellent Results for the Class

The result achieved is recognized as the most important factor in considering an attorneys' fee request. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("[T]he most critical factor is the degree of success obtained."); *McKnight v. Circuit City Stores, Inc*., 14 F. App'x.

[4] These seven factors overlap substantially with those used by some courts within the Fourth Circuit when applying the lodestar method. These lodestar factors (often referred to as the *Barber* 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. *See Mills*, 265 F.R.D. at 261 n.6 (citing *Barber v. Kimbrell's Inc*., 577 F.2d 216, 226 (4th Cir. 1978)). Other courts rely on the twelve *Barber* factors in determining a reasonable fee under either method. *See In re Royal Ahold, N.V. Sec. & ERISA Litig.* 461 F. Supp. 2d 383, 385 (D. Md. 2006) (noting that "under both methods" there are "numerous factors that may be considered in determining a reasonable fee" and listing the twelve *Barber* factors).

147, 149 (4th Cir. 2001) (same); *Loudermilk Servs., Inc. v. Marathon Petroleum Co.*, 623 F. Supp. 2d 713, 718 (S.D. W. Va. 2009) ("The result achieved should . . . be the most prominent factor considered in the analysis."); *Barber*, 577 F.2d at 226 n.28 (eighth *Barber* factor). Here, the Settlement Amount – $41.5 million – is an excellent result for investors that will provide a guaranteed all-cash recovery despite NII's bankruptcy and the many complexities and risks of the litigation.

The Settlement exceeds both the median ($6.1 million) and the average ($37.9 million) settlement recoveries in securities class actions nationwide in 2015, as well as the median reported settlement amounts nationwide between the passage of the PSLRA (1996) and 2014, which was approximately $8.2 million (adjusted for inflation).[5] In addition, based on Class Counsel's analysis of data compiled by Institutional Shareholder Services Inc. ("ISS"), the Settlement, if approved, would rank as the fifteenth largest securities class action settlement in the Fourth Circuit and the sixth largest in this District.[6]

In addition, according to analyses prepared by Chad Coffman, CFA, Class Representatives' loss-causation and damages expert, the Settlement Amount equates to 5.4% to 7.5% of Mr. Coffman's estimate of *maximum* recoverable damages (which ranged from $550 million to $775 million), assuming that liability and loss causation for each of the six alleged corrective disclosures were proven and based on various assumptions and modeling. *See* Joint Decl. ¶119. (Of course, if fewer than all six of the alleged corrective disclosures were established at trial or if Class Representatives' evidence concerning disaggregation was rejected, as would be vigorously pressed by Defendants, the recovery would be much less or could be nothing.)

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[5] *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2015 Review and Analysis* (Cornerstone Research 2016), at 1, 6 (Exh. 5).

[6] *See* www.issgovernance.com.

Courts have regularly approved other settlements in PSLRA cases recovering a comparable or 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"); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (settlement yielding 6% of potential damages was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *Int'l Brotherhood of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving settlement recovering about 3.5% of the maximum damages that plaintiffs believed could be recovered at trial and noting that the amount was within the median recovery in securities class actions settled in the last few years). Accordingly, the result obtained supports approval of the fee request here.

B. There Are Currently No Objections

Pursuant to the Court's Preliminary Approval Order, the Court-approved Notice and Proof of Claim have been mailed to 172,482 potential Class Members and the Court-approved Summary Notice was published in *The Wall Street Journal* and transmitted over PR Newswire. *See* Exh. 6 ¶¶2-11. The Notice advised Class Members of the procedures and deadlines for objecting to any aspect of the Settlement, including the Fee and Expense Application. *See* Exh. 6-A at 1. It specifically advised that Class Counsel intended to seek an award of attorneys' fees that would not exceed 25% of the Settlement Fund, and payment of expenses not to exceed $1.75 million. *Id*. at 2. In addition, the Notice informed Class Members that Class Counsel's Fee and Expense Application may include a request for reimbursement to Class Representatives of their reasonable costs and expenses not to exceed $50,000 in the aggregate. *Id*.

The deadline for objecting to the Fee and Expense Application is August 26, 2016. To date, there have been no objections. After the deadline has passed, Class Counsel will address the substance of any objections in their reply papers, which will be filed with the Court by September 9, 2016.

C. Plaintiffs' Counsel Skillfully and Efficiently Litigated the Action

The quality of the representation of plaintiffs' counsel is an important factor that similarly supports the reasonableness of the fee request. *See Mills*, 265 F.R.D. at 261 (third factor); *Barber*, 577 F.2d at 226 n.28 (third and ninth factors). Here, it took strong advocacy to achieve a settlement at this level in this particular case. Specifically, this Action required precision during its investigation, the mastery of nuanced factual circumstances, ability to develop compelling legal theories, and skill to respond to a host of legal defenses under compressed timelines.

Class Counsel are nationally known as leaders in the field of securities class action litigation and have substantial experience litigating securities class actions in courts throughout the country with success. *See* Joint Decl. ¶153; Exhs. 7-C and 8-D. Class Counsel had the able assistance of, among others, The Law Office of Susan R. Podolsky and Bernstein Litowitz, which are firms with highly experienced litigators that have not only used their aptitude and knowledge from past cases here, but have also developed specific expertise in the unique issues presented here to overcome significant obstacles raised by Defendants. *See* Exhs. 9 - 10.

Plaintiffs' counsel's abilities were critical to the resolution of this Action. As discussed herein and throughout the Joint Declaration, Plaintiffs' counsel relied on their expertise to respond to NII and Defendants' attacks in the motion to dismiss the Second Amended Class Action Complaint for Violations of the Federal Securities Laws, protect the Class's interests in connection with the bankruptcy proceeding, succeed on a contested class-certification motion,

and overcome a 23(f) petition to the Fourth Circuit Court of Appeals. Furthermore, in only eighteen weeks of discovery, Class Representatives took 14 depositions, received and analyzed almost two million pages of discovery materials, and extensively analyzed their claims and Defendants' defenses (with the assistance of experienced experts). *See* Joint Decl. ¶¶22-102. Given the complexity of the issues presented in this litigation, it is respectfully submitted that only 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 deposing numerous witnesses)*; Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 684 (D. Md. 2013) (finding fee request supported by counsel's experience, engagement in discovery, mediation efforts, motion-to-dismiss briefing, and efficiency in reaching a settlement approximately two years after initiation of action).

Likewise, courts often evaluate the quality of the work performed by plaintiffs' counsel in light of the quality of the representation of the opposition. *See Mills*, 265 F.R.D. at 262 (noting that counsel reached a favorable settlement against "experienced and sophisticated defense attorneys"); *see also Singleton*, 976 F. Supp. 2d at 683. Here, Plaintiffs' counsel faced formidable opposition from a nationally recognized law firm representing Defendants – Sidley Austin LLP. NII was also represented by a top-tier defense firm, Jones Day. In the face of this skilled opposition, Plaintiffs' counsel were able to develop a case that was sufficiently strong to survive a motion to dismiss, obtain class certification, defeat a 23(f) petition, and settle on terms that are favorable to the Class. In sum, it is respectfully submitted that Plaintiffs' counsel's hard work strongly supports the award of the fee requested.

D. The Complexity and Duration of the Litigation

As the Court is well aware, this Action was litigated for two years and, given its complexity, the trial and post-trial proceedings would have continued to be difficult over the span of many months, if not years. *See Mills*, 265 F.R.D. at 263 (fourth factor); *Barber*, 577 F.2d at 226 n.28 (second and tenth factors). Courts have long recognized that securities class actions are among the most difficult type of litigation. *See Mills*, 265 F.R.D. at 263 ("The very nature of a securities fraud case demands a difficult level of proof to establish liability. Elements such as scienter, reliance, and materiality of representation are notoriously difficult to establish.").

As detailed in the Joint Declaration, the Action alleges violations of the Securities Exchange Act of 1934 (the "Exchange Act"), raising a panoply of claims against Defendants arising from, among other things: (i) NII's efforts to attract and retain "high quality" subscribers, (ii) NII's development, testing, and launch of a new push-to-talk ("PTT") technology on the Company's newly developed 3G wireless network ("3G-PTT"), and (iii) the effect of the shutdown in the U.S. of Sprint's second generation ("2G") integrated digital enhanced network ("iDEN") on NII's Mexican network and subscribers. Joint Decl. ¶¶12-17. At every turn, the Action raised issues that required sophisticated analysis. As the Court is familiar, the Action was hotly contested from the motion to dismiss and class certification through exhaustive fact discovery. Since the Court entered its Order on Defendants' motion to dismiss in October 2014, the Parties swiftly engaged in full discovery, while navigating through proceedings in the Bankruptcy Court that made usually straightforward discovery obligations murky and contentious. *Id*. ¶¶30-102. Settlement negotiations included two formal mediations and multiple informal discussions and were successfully concluded in January 2016. These discussions were complicated in terms of both the liability and damages analyses at issue. *Id*. ¶¶122-127.

Although Plaintiffs' counsel believe that Class Representatives have a strong case of liability, the claims against Defendants presented significant challenges in the face of tenacious opposition from Defendants. To prevail at trial, Class Representatives would have needed to prove that NII (i) implemented marketing and sales promotions that were either intended to or had the obvious effect of attracting and retaining lower-quality subscribers and (ii) launched a 3G-PTT product that did not meet NII's or its subscribers' expectations for a high-performance PTT experience. Class Representatives would then have needed to prove that statements by NII and Defendants regarding the Company's efforts to attract and retain "high-quality" subscribers and the fact that 3G-PTT met or exceeded NII's and its customers' expectations during testing and at the time of launch were materially false and misleading when made. Finally, Class Representatives would have been required to show that Defendants knew or consciously disregarded the reality of the quality of NII's subscriber base and the failure of 3G-PTT to meet or exceed expectations, while making false statements and omissions to the market, resulting in economic loss to investors. *Id*. ¶¶103-115.

All elements of liability were vigorously disputed by Defendants. Specifically, Defendants likely would have argued that the alleged misstatements were immaterial aspirational or forward-looking statements or statements of opinion or belief that require higher levels of proof—including, in some cases, evidence that Defendants had actual knowledge of the material falsity of their statements when the statements were made. *Id*. Defendants would likely have tried to marshal evidence that NII's subscriber base was substantially higher in quality than its competitors in Brazil and that any allegedly concealed information regarding the purported decline in customer quality was belied by NII's public disclosure of average revenue per user and subscriber churn rates in Brazil. Further, Defendants would be expected to try to show that

they and NII adequately warned investors regarding the technical and business risks of the launch of its 3G-PTT service and that when performance issues arose, they promptly reported to investors that NII was halting the launch so that the issues could be addressed. Last, regarding the decommissioning of Sprint's U.S. iDEN network, Defendants would be expected to argue that they and NII timely warned investors of potential service disruptions and that the expected financial impact of the shutdown was disclosed to investors in NII's guidance. Defendants also likely would focus the jury on the absence of insider-trading allegations in this Action to prove that Defendants had no motive to profit from the alleged fraud. *Id.* The risk that Defendants could prevail on these issues was appreciable.

Additionally, there were significant obstacles to establishing loss causation and damages, which were particularly complex here given the allegations of six corrective disclosure events and confounding news. First, Class Representatives had the burden of disaggregating the portion of losses attributable to NII and Defendants' misstatements and omissions concerning the quality of the Company's subscriber base, the development and launch of 3G-PTT, and the effect of the shutdown of the U.S. iDEN network from losses attributable to other "confounding information," *e.g.*, other issues the Company was experiencing as it transitioned all five of its Latin American markets to new 3G networks. Indeed, for certain of the corrective events identified by Mr. Coffman, Class Representatives faced the very real risk at summary judgment and trial that a significant portion of the alleged losses would be attributable to other negative events unrelated to the alleged fraud. *Id.* ¶¶116-119.

Second, even if Class Representatives could establish at summary judgment and trial that NII and Defendants' alleged misstatements were a substantial factor in causing the price declines in NII securities, Class Representatives still faced a significant risk that the Court or a jury would

find that only a small fraction of the total damages was attributable to these misrepresentations and omissions, thus significantly reducing any recovery for the Class. If the Court or jury had determined that Mr. Coffman's analysis was incorrect, any damages awarded could have been significantly reduced to as little as zero. *Id*. ¶118.

Moreover, given the factually intricate nature of the claims, Class Representatives intended to rely heavily on their industry and financial expert witnesses to present critical testimony about the wireless industry, NII's business, loss causation, and damages. Had Defendants prevailed in excluding any of the experts' testimony or had the jury discounted their testimony, the presentation of many aspects of Class Representatives' case would have been more difficult. Moreover, presenting this complex evidence persuasively to a jury created its own significant challenges, in addition to the risks inherent in the "battle of the experts" that would have ensued. *Id*. ¶¶106-109.

Accordingly, the novel and difficult nature of the issues encountered, as well as the effort that was expended over the past two years, strongly support the requested attorneys' fee.

E. Plaintiffs' Counsel Faced a Substantial Risk of Non-Payment

Plaintiffs' counsel undertook this Action on a 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"); *see also Barber*, 577 F.2d at 226 n.28 (fourth and sixth factors).

Unlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Plaintiffs' counsel have not been compensated for their time or expenses since this case began in 2014. (During the course of the litigation, Class Counsel and Bernstein Litowitz advanced a portion of Liaison Counsel Susan Podolsky's fees, which would be unreimbursed if there were ultimately no recovery for the Class.) From the outset, Class Counsel understood that they were embarking on a complex, expensive, and lengthy endeavor with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Class Counsel were obligated to ensure that sufficient attorney and other professional resources were dedicated to the prosecution of the Action and that funds were available to compensate staff and to pay for the costs entailed. Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingent basis, expended thousands of hours and hundreds of thousands of dollars in expenses, and received nothing for their efforts.[7] Indeed, this case could have resulted in absolutely no recovery for the Class or Plaintiffs' counsel if Defendants' 23(f) petition to the Fourth Circuit had succeeded or if Defendants had prevailed at summary judgment or trial. There was also no related governmental or regulatory investigation or proceeding that

[7] *See, e.g., Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict after 19-day trial and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *In re Apple Comput. Sec. Litig*., No. C-84-20148, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *In re Oracle Corp. Sec. Litig*., No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009) (granting summary judgment to defendants after eight years of litigation, and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately $48 million), *aff'd*, 627 F.3d 376 (9th Cir. 2010).

could have assisted with proving the allegations. The contingency risk here was very significant and fully supports the requested fee.

F. Public Policy Supports the Fee Request

The federal securities laws are remedial in nature and, to effectuate their purpose of protecting investors, the courts should encourage private lawsuits such as this one. *See Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988). The Supreme Court has emphasized that private securities actions 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); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007) (noting that the Court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions). This is particularly true here where—without any governmental inquiry—the only action seeking to hold Defendants liable was this litigation.

Courts in the Fourth Circuit have held that "[t]he public benefits when capable and seasoned counsel undertake private action to enforce the securities laws." *Mills*, 265 F.R.D. at 263 (citing *In re MicroStrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 787-88 (E.D. Va. 2001)). 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 plaintiffs in class actions are to be zealously and effectively represented, courts should 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.

G. Awards in Similar Cases Support the Fee Request

District courts within the Fourth Circuit have stated that while there is no fee 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*.; *see also Barber*, 577 F.2d at 226 n.28 (fifth and twelfth factors). "[T]he reasonableness inquiry is necessarily case-specific, and thus the percentage actually awarded varies from case to case." *Id*.

In looking at such cases, courts within the Fourth Circuit frequently award fees of between 18% and 30% in class actions.[8]

Case	Court	Settlement Amount	Fee Percentage Awarded
In re Mills Corp. Sec. Litig., 265 F.R.D. 246 (2009)	E.D. Va. (J. O'Grady)	$202.75 million	18%
In re MicroStrategy, Inc. Sec. Litig., 172 F. Supp. 2d 778 (2001)	E.D. Va. (J. Ellis)	$152.5 million-$192.5 million	18%
In re Computer Sciences Corp. Sec. Litig., Civ. No. 11-610-TSE-IDD, slip op. (Sept. 20, 2013)	E.D. Va. (J. Ellis)	$97.5 million	19.5%
In re Krispy Kreme Doughnuts, Inc. Sec. Litig., No. 1:04CV00416, slip op. (Feb. 15, 2007)	M.D.N.C.	$75 million	23.5%
Jones v. Dominion Res. Servs., Inc., 601 F. Supp. 2d 756 (Mar. 6, 2009)	S.D.W. Va	$40-$50 million	20%
In re Force Protection, Inc. Sec. Litig., No. 08-cv-845-CWH, slip op. (Mar. 9, 2011)	D.S.C.	$24 million	25%

[8] All slip opinions are being provided to the Court as part of a compendium of unreported cases. *See* Exh. 17.

Case	Court	Settlement Amount	Fee Percentage Awarded
In re ECI Telecom Ltd. Sec. Litig., Case No. 01-913-A, ECF No. 115 (Nov. 18, 2002)	E.D. Va. (J. Brinkema)	$21.75 million	28.5%
In re Red Hat Inc. Sec. Litig., No. 5:04-CV-473-BR(3), slip op. (Dec. 10, 2010)	E.D.N.C.	$20 million	30%
Klugman v. Am. Capital Ltd., 09-CV-00005-PJM, slip op. (June 12, 2012)	D. Md.	$18 million	33 1/3%
In re PSINet Inc. Sec. Litig., Civil Action No. 00-1850, ECF No. 259 (July 2, 2003)	E.D. Va. (J. Brinkema)	$17.833 million	30%
City of Ann Arbor Emps.' Ret. Sys. v. Sonoco Prods. Co., et. al, No. 4:08-cv-02348-TLW-KDW, slip op. (Sept. 7, 2012)	D.S.C.	$13 million	30%

An examination of fee decisions in other federal jurisdictions in securities class actions with comparable or even greater settlements also shows that an award of 25% would be reasonable.

Case	Court	Settlement Amount	Fee Percentage Awarded
In re Rite Aid Corp. Sec. Litig. No. 99-1349, slip op. (Mar. 24, 2005)	E.D. Pa.	$126.6 million	25%
In re Mercury Interactive Corp. Sec. Litig., No. 5:05-CV-3395-JF (PVT), slip op. at 2 (Sept. 26, 2008)	N.D. Cal.	$117.5 million	25%
In re Sunbeam Sec. Litig., 176 F. Supp.2d 1323, 1326 (2001)	S.D. Fla.	$110 million	25%
In re CVS Corp. Sec. Litig., No. 01-11464 (JLT), slip op. at 7 (Sept. 8, 2005)	D. Mass.	$110 million	25%
In re Am. Express Fin. Adv. Sec. Litig., No. 04-Civ.173 (DAB), slip op. at 8 (July 19, 2007)	S.D.N.Y.	$100 million	27%
In re Fleming Cos. Inc. Sec. Litig., No. 5-03-MD-1530-(TJW), slip op. at 15 (Nov. 30, 2005)	E.D. Tex.	$93.95 million	23.75%

Case	Court	Settlement Amount	Fee Percentage Awarded
In re Boeing Sec. Litig., No. C97-1715Z, slip op. at 13 (Apr. 11, 2002)	W.D. Wa.	$92.5 million	25%
In re Int'l Rectifier Corp. Sec. Litig., No. CV 07-02544-JFW (VBKx), slip op. at 1-2 (Feb. 8, 2010)	C.D. Cal.	$90 million	25%
Scheiner v. i2 Techs. Inc., No. 3:01-CV418-H, slip op. at 7 (Oct. 1, 2004) ($84.85 million settlement) and slip op. at 8 (May 26, 2005) ($2.9 million settlement)	N.D. Tex.	$87.75 million	25%
In re Aetna Inc. Sec. Litig., No. CIV. A. MDL 121, 2001 WL 20928, at *16 (Jan. 4, 2001)	E.D. Pa.	$82.5 million	30%
In re Xcel Energy Inc. Sec., Derivative & "ERISA" Litig. 364 F. Supp. 2d 980 (2005)	D. Minn.	$80 million	25%
In re Priceline.com, Inc. Sec. Litig., No. 3:00-CV-1884(AVC), 2007 WL 215592, at *5 (July 20, 2007)	D. Conn.	$80 million	30%
In re Moneygram Int'l Inc. Sec. Litig. No. 08-883 (DSD/JJG), slip op. at 18 (June 18, 2010)	D. Minn.	$80 million	23.75%
In re Philip Servs. Corp. Sec. Litig., No. 98 Civ. 835(AKH), 2007 WL 959299, at *3 (Mar. 29, 2007)	S.D.N.Y.	$79.750 million	26%
In re Tycom Ltd. Sec. Litig., No. 03-CV-03540 (GEB)(DEA), slip op. at 8 (Aug. 25, 2010)	D.N.J.	$79 million	33 1/3%
In re Verisign, Inc. Sec. Litig., No. C-02-2270-JWC(PVT), slip op. at 1 (Apr. 24, 2007)	N. D. Cal.	$78 million	25%
In re St. Paul Travelers Sec. Litig. II, No. 04-CV-4697-JRT-FLN, slip op. at ¶ 6 (July 24, 2008)	D. Minn.	$77 million	23.5%
In re Regions Morgan Keegan Closed-End Fund Litig., No. 07-cv-02830 SHM dkv, slip op. at 21 (Aug. 5, 2013)	W.D. Tenn.	$62 million	30%
Central Laborers' Pension Fund v. Sirva, No. 04 C-7644, slip op. at 10 (Oct. 31, 2007)	N.D. Ill.	$53.3 million	29.85%

Case	Court	Settlement Amount	Fee Percentage Awarded
In re Monster Worldwide, Inc. Sec. Litig., 07-cv-2237 (JSR), 2008 WL 9019514, at *1-2 (Nov. 25, 2008)	S.D.N.Y.	$47.5 million	25%
In re BP Prudhoe Bay Royalty Trust Sec. Litig., No. C06-1505 MJP, slip op. at 2 (June 30, 2009)	W.D. Wash.	$43.5 million	27%
City of Roseville Emps.' Ret. Sys. v. Micron Tech., Inc., No. 06-cv-00085-WFD, 2011 WL 1882515, at *1,7 (Apr. 28, 2011)	D. Idaho	$42 million	25%
South Ferry LP #2 v. Killinger, No. C04-1599-JCC, slip op. at 9 (June 6, 2012)	W.D. Wash.	$41.5 million	29%

Accordingly, Class Counsel respectfully submit that the attorneys' fee request of 25% of the Settlement Fund is consistent with fee awards granted in similar actions.

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

As mentioned above, Plaintiffs' counsel have expended substantial time and effort pursuing the claims on behalf of the Class. *See generally* Joint Decl. and Exhs. 7 – 14, 15 (Summary Tables). The Settlement follows two years of litigation that included, *inter alia*:

- conducting a significant legal and factual investigation into NII, including developing numerous sources of nonpublic information that were critical in enabling Class Representatives to overcome the Individual Defendants' motion to dismiss;
- drafting and amending a detailed consolidated amended complaint and a second amended complaint;
- navigating the bankruptcy proceeding to protect the Class's interests and obtain crucial discovery in an efficient manner;
- defeating the Individual Defendants' motion to dismiss;
- successfully moving for class certification;
- defeating Defendants' Rule 23(f) petition to the Fourth Circuit Court of Appeals;

- conducting discovery, including receiving and analyzing approximately 1.8 million pages of documents produced by Defendants and third parties, deposing 13 fact witnesses over 29 deposition days (i.e., excluding weekends and holidays) in Virginia and in London, England, and defending five fact-witness depositions;

- engaging in extensive expert analysis and discovery, including working with consultants and experts to analyze damages, causation, the telecommunications industry, market efficiency, and materiality issues throughout the course of the litigation; taking the deposition of Defendants' market-efficiency expert and defending the deposition of Class Representatives' market-efficiency expert; and preparing two expert reports concerning subjects fundamental to the trier of fact's ability to resolve the case; and

- thoroughly vetting both sides' damages assumptions, methodologies, and calculations during expert discovery and additionally through the settlement discussions referenced herein.

The legal work in the Action will not end with the Court's approval of the proposed Settlement. Additional hours and resources necessarily will be expended assisting members of the Class with their Proof of Claim forms, shepherding the claims process, responding to Class Member inquiries, and moving the Court for a distribution order. Importantly, counsel do not include this time in their lodestars.

As noted above, district courts within the Fourth Circuit consider the amount of time and labor expended by counsel, *Barber*, 577 F.2d at 226 n.28 (first factor), and apply a lodestar cross-check to a percentage fee request. *See, e.g.*, *Mills*, 265 F.R.D. at 261; *In re Royal Ahold N.V. Sec.*, 461 F. Supp. 2d at 385. 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.

The time devoted to this Action by Plaintiffs' counsel is set forth in the individual firm declarations submitted herewith as Exhibits 7 through 14, and the schedules annexed thereto. In total, from the inception of this Action through July 8, 2016, Plaintiffs' counsel have expended

more than 39,000 hours on the investigation, prosecution and resolution of the claims against Defendants for an aggregate lodestar of $19,191,280.25. *See also* Exh. 15 (Summary Tables). Class Counsel worked diligently to coordinate the efforts of all Plaintiffs' counsel in order to eliminate duplication and efficiently meet the various Court-ordered deadlines.

Plaintiffs' counsel's hourly billing rates here ranged from $500 to $995 for Partners, $600 to $900 for Counsel, and $275 to $725 for other attorneys. *See* Exhs. 7 through 14. We respectfully suggest that these rates are reasonable. Indeed, defense-firm billing rates, including those of the firm representing Defendants in this Action, analyzed and gathered by Class Counsel from bankruptcy-court filings nationwide in 2015 in many cases exceeded these rates. *See* Exh. 16; *see also MicroStrategy*, 172 F. Supp. 2d at 789 n. 33 ("[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.").

It is also important to note that Class Counsel's request for 25% of the $41.5 million Settlement Fund would amount to a *negative* lodestar multiplier of 0.54, which further supports 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."). This negative multiplier means that counsel are seeking to be paid for only a fraction of the hours actually expended on the Action. In other words, whereas in most cases, counsel seek a multiplier that is *more than the lodestar*, the fee request here is a significant *discount* from counsel's lodestar. *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"); *see also In re Marsh & McLennan Cos. 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.").

In sum, it is respectfully submitted that the time and effort devoted to this case by Plaintiffs' counsel to obtain this $41.5 million Settlement confirm that the 25% fee request is reasonable.

IV. PLAINTIFFS' COUNSEL'S REQUEST FOR LITIGATION EXPENSES IS REASONABLE

In addition to a reasonable attorneys' fee, Class Counsel respectfully seek payment in the amount of $1,476,286.22 for litigation expenses reasonably incurred in connection with prosecuting the claims against Defendants. *See* Exh. 15. (This is less than the maximum amount reported in the Notice, Exh. 6-A at 2.) These expenses are set forth in the declarations from counsel submitted to the Court herewith as Exhibits 7 through 14 and are of the type generally approved by courts.

"There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund." *MicroStrategy*, 172 F. Supp. 2d at 791. "Such costs include reasonable out-of-pocket expenses that are normally charged by an attorney to a fee-paying client for the provision of legal services." *Decohen*, 299 F.R.D. at 469, 483; *see also Singleton*, 976 F. Supp. 2d at 689 (approving payment of travel costs, deposition and transcript costs, computer research, postage, court costs, and photocopying). Counsel's declarations itemize the various categories of expenses incurred (*see* Exhs. 7-B, 8-B & C, 9-B, 10 at ¶7, 11-B to 14-B)

and confirm that these expenses were reasonable and necessary to prosecute the claims and achieve the Settlement. The majority of the expenses, totaling $1,201,271.25, were incurred by the joint Litigation Expense Fund maintained by Labaton Sucharow and created to fund the primary litigation expenditures. *See* Exh. 8-C.

The most significant expenses fall into the following categories: (1) expert and consultant fees; (2) travel and transportation; (3) mediation; (4) computerized research; and (5) discovery. Each of these categories of expenses is discussed below.

The largest expense was the cost of experts and consultants, which totaled $987,512.03 (or 67% of the total expense request). Joint Decl. ¶159. Class Counsel retained experts to opine on damages and loss causation and on issues pertaining to the Latin American telecommunications market, the telecommunications industry, and NII's business and products. Class Counsel received crucial advice and assistance from these experts throughout the course of the Action. Their expertise allowed Class Counsel to fully frame the issues, gather relevant evidence, make a realistic assessment of provable damages, and structure resolution of the claims. *See, e.g., Jones,* 601 F. Supp. 2d at 767 (approving costs incurred for 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…").

Another substantial component of the expenses, $142,000, related to travel, business transportation, and working meals. Plaintiffs' counsel were required to work long-hours and travel frequently to Virginia to attend hearings, status conferences, and depositions. Specifically, Plaintiffs' counsel took or defended 20 depositions in several cities, including London (where Defendant Hemmady resides), and seek payment for the costs of this travel. Joint Decl. ¶162; *see, e.g., MicroStrategy,* 172 F. Supp. 2d at 791 (approving costs which include expenditures for

"travel, meals, and lodging"); *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). Plaintiffs' Counsel have guidelines concerning such expenses to limit costs, which were applied here. *See, e.g.*, Exhs. 7 ¶7, 8 ¶7, 9 ¶7, 10 ¶8.

Courts also routinely approve reimbursement for the expenses associated with mediation (here $20,048). *See, e.g.*, *Mills*, 265 F.R.D. at 265. As detailed in the Joint Declaration, the work performed by the two mediators was crucial to the resolution of the Action.

Plaintiffs' counsel's expenses also include the costs of computerized research (approximately $34,000 in total). These are the charges for computerized factual and legal research services such as Lexis/Nexis, PACER, Courtlink, Thomson Financial, Bloomberg, 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. 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*.

Another area of expense relates to discovery (totaling approximately $211,900 or 14% of total expenses) and, in particular, establishing and utilizing an electronic database for document review and production, which totals approximately $118,306, significantly less than even one hardcopy set of the 1.8 million page production. An outside vendor, Evolve Discovery, provided

discovery software and created a database, which was crucial for collecting, organizing, and efficiently reviewing the electronic discovery. Using the database allowed Plaintiffs' Counsel to coordinate and expedite the review of almost two million pages of documents among attorneys, consultants, and experts. *See* Joint Decl. ¶¶60- 70, 160, Ex. 8-C.

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

V. CLASS REPRESENTATIVES' REQUESTS FOR REIMBURSEMENT ARE APPROPRIATE UNDER THE PSLRA

The PSLRA 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." 15 U.S.C. §78u-4(a)(4). Congress specifically acknowledged the importance of awarding appropriate reimbursement to class representatives. *See* H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. (1995) ("The Conference Committee recognized that lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages, and grants the court discretion to award fees."). As detailed in their respective declarations, attached as Exhibits 1-4 & 18 to the Joint Declaration, Class Representatives are seeking the collective amount of $37,361 in expenses related to their active participation in the Action.[9] *See also* Exh. 15 (Summary Tables).

[9] This total is broken down as follows: Industriens Pensionsforsikring A/S Decl. at ¶12 (requesting reimbursement of $6,795.00); IBEW Local No. 58 / SMC NECA Funds Decl. at ¶10

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 Comput. Scis. Corp. Sec. Litig.*, 11-cv-0610-TSE-IDD, slip op. at 2 (E.D. Va. Sept. 20, 2013) (awarding $60,905 to institutional plaintiff) (Exh. 17); *In re Satyam Comput. Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip op. at 3-4 (S.D.N.Y. Sept. 13, 2011) (awarding $193,111 to four institutional lead plaintiffs) (Exh. 17).

Here, Class Representatives, through some eight employees, have collectively devoted 280 hours to the Action, which included time spent, *inter alia*: (i) conferring with Plaintiffs' counsel on case developments and the overall strategy for the case, among other subjects; (ii) reviewing the pleadings and motion papers; (iii) reviewing Defendants' requests for production of documents and producing responsive documents; (iv) preparing for and attending depositions conducted by Defendants' counsel; and (v) analyzing and responding to Defendants' settlement proposals. *See* Exhs. 1-4 & 18. This is time that these employees were unable to devote to their regular duties on behalf of their respective retirement plans. Class Counsel and Class Representatives therefore respectfully submit that the $37,361.00 sought, based on Class Representatives' active involvement in the Action from inception to settlement, is eminently reasonable and should be granted.

CONCLUSION

For all the foregoing reasons, Class Counsel respectfully request that the Court award fees in the amount of 25% of the Settlement Fund, with accrued interest, and the payment of litigation expenses in the amount of $1,476,286.22, with accrued interest. Class Counsel also request that Class Representatives be reimbursed in total $37,361.00 for the costs and expenses

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(requesting reimbursement of $8,720.00); Jacksonville P&F Decl. at ¶10 (requesting reimbursement of $6,696.00); Danica Pension Decl. at ¶10 (requesting reimbursement of $15,150.00).

of their participation in the Action. A proposed order will be submitted with Class Counsel's reply papers, after the August 26, 2016 deadline for objections has passed.

Dated: August 12, 2016

By: /s/ Susan R. Podolsky

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 12, 2016.

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