

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

PASHA ANWAR, *et al.*,

Plaintiffs,

v.

FAIRFIELD GREENWICH LIMITED, *et al.*,

Defendants.

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

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

**MEMORANDUM IN SUPPORT OF MOTION FOR AN AWARD
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

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INTRODUCTION

Boies, Schiller & Flexner LLP, Wolf Popper LLP, and Lovell Stewart Halebian Jacobson LLP, Interim Co-Lead Counsel for Plaintiffs and Lead Counsel for PSLRA Plaintiffs (“Lead Counsel”)¹ in this putative class action (the “Action”),² respectfully submit this memorandum in support of the Representative Plaintiffs’ motion (i) pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys’ fees and reimbursement of litigation expenses to be paid out of the Settlement Fund; and (ii) for reimbursement to Representative Plaintiffs of reasonable costs and 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) and/or for an incentive award.

Lead Counsel (with the assistance of non-lead counsel) have achieved a significant partial Settlement for the benefit of the Settlement Class under which the Settling Defendants, funded by the FG Individual Defendants,³ will pay \$80,250,000, including a minimum of \$50,250,000

¹ On January 27, 2009, Lead Counsel were appointed Interim Co-Lead Counsel for the putative class and on July 7, 2009 the firms were appointed Lead Counsel for the PSLRA Plaintiffs.

² The “Representative Plaintiffs” are Pacific West Health Medical Center Employees Retirement Trust, Harel Insurance Company Ltd., Martin and Shirley Bach Family Trust, Natalia Hatgis, Securities & Investment Company Bahrain, Dawson Bypass Trust, and St. Stephen’s School. Unless otherwise noted, all initial capitalized terms are defined in the Stipulation of Settlement dated as of November 6, 2012.

³ The “Settling Defendants” are Fairfield Greenwich Limited (“FGL”) and Fairfield Greenwich (Bermuda) Ltd. (“FGBL”). The “FG Defendants” are the Settling Defendants as well as Fairfield Greenwich Group, Fairfield Greenwich Advisors LLC, Fairfield Risk Services Ltd., Fairfield Heathcliff Capital LLC, and Fairfield Greenwich (UK) Limited (collectively, the “FG Entity Defendants”); and Walter M. Noel, Jr., Jeffrey H. Tucker, Andrés Piedrahita, Lourdes Barreneche, Robert Blum, Cornelis Boele, Gregory Bowes, Vianney d’Hendecourt, Yanko Della Schiava, Harold Greisman, Jacqueline Harary, David Horn, Richard Landsberger, Daniel E. Lipton, Julia Luongo, Mark McKeefry, Charles Murphy, Corina Noel Piedrahita, Maria Teresa Pulido Mendoza, Santiago Reyes, Andrew Smith, Philip Toub, and Amit Vijayvergiya (collectively, the “FG Individual Defendants”).

that will be distributed to the Settlement Class (the “Settlement Fund”) upon final approval and an additional \$30,000,000 that will be distributed if not used to resolve other claims.

The Settlement Agreement provides for an additional amount, up to \$5 million dollars, to be paid into the Settlement Fund by the Settling Defendants if they enter into a cash settlement with the Trustee of the BLMIS liquidation (the “Trustee”) that exceeds \$50,125,000.⁴

The proposed partial Settlement resolves the claims asserted in this Action against all defendants associated with Fairfield Greenwich Group, which established and managed the Funds.⁵ As additional consideration, the Settling Defendants have agreed to waive (i) indemnification claims they hold against the Funds for the \$80,250,000 payments that they will make under the Settlement; and (ii) \$20,000,000 of indemnification claims they hold against the Funds for legal fees and expenses incurred in defending the Action.⁶ *See* Stipulation, ¶ 6.

The Stipulation also contains provisions barring the remaining defendants in the Action, including without limitation various PricewaterhouseCoopers, Citco and GlobeOp entities (the “Non-Dismissed Defendants”), from asserting claims against the FG Defendants for contribution and indemnification and providing for reduction of any judgment that may be entered against the Non-Dismissed Defendants to account for Plaintiffs’ recovery under the instant Settlement. *See* Stipulation, ¶¶ 26-27. Further, in connection with the Settlement, Plaintiffs’ Lead Counsel conducted informational interviews of FG Individual Defendants on matters relevant to the

⁴ This additional payment will be equal to 50% of any amount of such a settlement with the Trustee in excess of \$50,125,000, up to a total of \$5 million. Because the payment of \$50,125,000 to the Trustee would exhaust the Escrow Fund, the total consideration under this Settlement may be enhanced either by the net amount of the Escrow Account or the supplemental payment up to five million (or neither), but not both.

⁵ The settlement does not resolve Plaintiffs’ claims against Defendants PwC Netherlands, PwC Canada, the Citco entities, or GlobeOp, which Plaintiffs continue to litigate vigorously.

⁶ This waiver of contribution and indemnity claims against the Funds may increase the amounts ultimately distributed by the Funds to investors in the Funds, the vast majority of whom are Class Members.

Settlement and to Plaintiffs' continued prosecution of claims against the remaining Non-Dismissed Defendants.⁷ This is an excellent result achieved through Lead Counsel's persistent and creative efforts.

Lead Counsel respectfully seek attorneys' fees of 25% of the Settlement Fund and reimbursement of \$1,279,242 in expenses that were advanced by Lead Counsel, plus interest from the date of funding at the same rate earned by the Settlement Fund. The requested attorneys' fees represent approximately 46% of Lead Counsel's lodestar of \$27,299,521 (for 49,606 hours of work by attorneys and other professionals) (and an even lower percentage of all Plaintiffs' Counsel's lodestar). *See* Joint Declaration of Lead Counsel in Support of the Proposed Settlement and Fee and Expense Request ("Joint Decl."), filed herewith, at ¶ 136. Further, reimbursement is sought to Representative Plaintiffs of reasonable costs and expenses (including lost wages) directly related to the representation of the class totaling \$225,000.

In light of (i) the result obtained for the Settlement Class⁸, (ii) the amount and quality of work done by Lead Counsel over the past three and a half years, (iii) the risks involved in this

⁷ The Stipulation also provides that if, at any time up to the earlier of the Effective Date or July 1, 2013, Plaintiffs determine that any FG Individual Defendant's "net worth was materially greater than disclosed to Plaintiffs' Lead Counsel" then the Representative Plaintiffs "may, at their sole and absolute discretion, revoke the releases provided" to such defendant. Stipulation, ¶ 12.

⁸ The proposed Settlement Class consists of:

All Beneficial Owners of shares or limited partnership interests in the Funds as of December 10, 2008 (whether as holders of record or traceable to a shareholder or limited partner account of record), who suffered a Net Loss of principal invested in Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Greenwich Sentry L.P. or Greenwich Sentry Partners, L.P.

Stipulation, ¶ 1(ss). Excluded from the Settlement Class are (i) those individuals who timely and validly opt out of the Settlement; (ii) Fairfield Sigma Limited, (iii) Fairfield Lambda Limited, (iv) any Settlement Class Member who has been dismissed from this Action with prejudice; and (v) the FG Defendants and any entity in which the FG Defendants have a controlling interest, and the officers, directors, affiliates, legal representatives, immediate family members, heirs, successors, subsidiaries and/or assigns of any such individual or entity in their capacity as such. *Id.* Fairfield Sigma Limited and Fairfield Lambda Limited are excluded to avoid potential double recovery because their shareholders are included as members of the Settlement Class.

litigation, (iv) the complexity of the Action, (v) and the size of the fee in relation to the Settlement achieved, the fee request of 25% of the Settlement Fund is both fair and reasonable under the standards applied in this Circuit. The notice distributed to Class Members (“Notice”)⁹ advised that Lead Counsel would seek an award of up to 25% of the Settlement Fund and, to date, one Settling Class Member has objected to such an award.¹⁰ The requested expenses are also reasonable, as they are the type that are regularly reimbursed by courts in this Circuit, and they were necessary for the effective prosecution of the Action. The requested award in the aggregate amount of \$225,000 for Representative Plaintiffs for their representation of the Settlement Class is also reasonable. The Notice advised that Lead Counsel would seek reimbursement of their expenses and reimbursement of Representative Plaintiffs’ actual costs and expenses (including lost wages), not to exceed \$1,450,000 and \$225,000, respectively.

ARGUMENT

I. Lead Counsel’s Petition for an Award of Attorneys’ Fees is Reasonable and Should be Granted

A. Legal Standard

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); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation

⁹ A copy of the Notice is attached as Exhibit A to the Affidavit of Daniel J. Polizzi, dated January 31, 2013 (“Polizzi Aff.”). The Polizzi Aff. is attached as Ex. E to the Joint Declaration.

¹⁰ Pursuant to this Court’s Preliminary Approval Order dated November 30, 2012, objections to the Settlement or fee request must be filed on or before February 15, 2013.

pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (McMahon, J.). Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund should serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See, e.g., Hicks v. Morgan Stanley*, No. 01-cv-10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) (Holwell, J.) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (McMahon, J.) ("Courts recognize that such awards serve the dual purposes of encouraging representatives to seek redress for injuries caused to public investors and discouraging future misconduct of a similar nature").

B. The Requested Fee is Fair Under the Percentage-of-Recovery Method

Although there are two methods that are appropriate for calculating a reasonable fee in a class action, the lodestar method and the percentage method, the Supreme Court has suggested that in cases 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). The Second Circuit also has noted that district courts in the Circuit have favored awarding fees according to the percentage method because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citation omitted). Indeed, the "trend in this Circuit is toward the

percentage method.” *Id.*; *Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194 (SAS), 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011) (Scheindlin, J.); *In re Comverse Tech. Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (Garaufis, J.). *See also In re Blech Sec. Litig.*, No. 94 Civ. 7696 (RWS), 2002 WL 31720381, at *1 (S.D.N.Y. Dec. 4, 2002) (Sweet, J.) (“This court ... continues to find that the percentage of the fund method is more appropriate than the lodestar method for determining attorney’s fees in common fund cases.”). This Court has recently applied the percentage-of-recovery method in awarding attorneys’ fees in common fund cases. *See Anwar v. Fairfield Greenwich Ltd (Da Silva Ferreira v. EFG Cap. Int’l Corp.*, 11-cv-813), No. 09-cv-118 (VM), 2012 WL 1981505 (S.D.N.Y. June 1, 2012); and *Rubin v. MF Global, Ltd. et al.*, 08-cv-2233 (VM), Order dated Nov. 18, 2011. *See also* Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(6) (“Total 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.”).

C. The Requested Fee is Supported by the Second Circuit’s *Goldberger* Factors

“[T]he fees awarded in common fund cases may not exceed what is ‘reasonable’ under the circumstances.” *In re Bear Stearns Cos. Sec., Deriv. & ERISA Litig.*, No. 08 MDL 1963, 2012 U.S. Dist. LEXIS 161269, at *9 (S.D.N.Y. Nov. 9, 2012), citing *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011) (quoting *Goldberger*, 209 F.3d at 47 (2d Cir. 2000)) (footnote and quotation marks omitted). In determining a reasonable attorneys’ fee, district courts are guided by the factors first articulated by the Second Circuit in *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). As summarized more recently in *Goldberger*, these factors include:

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

Goldberger, 209 F.3d at 50. As set forth below and in the Joint Declaration, application of these criteria to the facts now before this Court shows that Lead Counsel's fee request is clearly reasonable and warranted.

1. Time and Labor Expended by Counsel

As detailed in the declarations submitted herewith, Lead Counsel have devoted substantial time and effort to the prosecution of the claims and to the settlement of the claims on terms very favorable to the Settlement Class. *See* Joint Decl. and Exs. A-C. *See also* accompanying Memorandum of Law In Support of Settlement dated Jan. 31, 2013 ("Settlement Br.").

Agreement to the substantive terms of the Settlement followed three-and-one-half years of litigation in this exceedingly complex and difficult case. During this time, Lead Counsel have, *inter alia*: (i) conducted an extensive investigation of public and non-public information with respect to the Class' claims; (ii) prepared initial complaints, a Consolidated Amended Complaint, and the subsequent Second Consolidated Amended Complaint ("SCAC"), which were the subject of extensive briefing; (iii) overcome in large part Defendants' motions to dismiss the SCAC; (iv) secured entry of a case management plan and scheduling order; and (v) conducted extensive discovery including serving and responding to demands, including third party subpoenas, and obtaining and producing documents. In all, Plaintiffs have produced approximately 75,000 pages of documents and have received and reviewed over nine million pages of documents; (vi) responded to detailed interrogatories served on the Representative Plaintiffs and some 20 additional named plaintiffs, (vii) conducted over forty depositions of

persons affiliated with Defendants to date, with many more scheduled, and defended 20 depositions of Representative and other Named Plaintiffs; (vii) filed a Memorandum and Reply Memorandum in Support of Plaintiffs' motion for class certification, accompanied by 14 opening and reply certifications of foreign law experts and a compendium of 62 factual exhibits; (viii) briefed and defeated in part two motions by the PwC Defendants and others to reargue the denial of dismissal of the SCAC; (ix) participated with defense counsel in dozens of meet and confer sessions with respect to document, deposition, and other aspects of merits discovery; (x) prepared letter-briefs and argued to Magistrate Judges Katz and Maas multiple discovery disputes; (xi) retained and consulted with experts on investment fund auditing and administration; (xii) protected the interests of putative class members even outside the confines of this Action by, among other things, initiating proceedings for the liquidation of Fairfield Sentry Fund in the British Virgin Islands, succeeding in a motion before the High Court of the Eastern Caribbean to appoint a Liquidator for Sentry, and actively participating in the liquidation process through the Sentry Liquidation Committee; and (xiii) otherwise vigorously represented the interests of putative class members in this extraordinarily complex dispute.¹¹

In total, Lead Counsel expended over 49,000 hours of attorney and paralegal time in prosecuting the Action through July 31, 2012, resulting in a combined "lodestar" amount of \$27,299,521 at Lead Counsel's current regular billing rates. *See* Joint Decl. ¶ 136 and Exhs. A-C. As explained by the Second Circuit in *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998), "current rates, rather than historical rates, should be applied in order to compensate for the delay in payment." Since July 31, 2012 to date, Lead Counsel have devoted substantial additional effort to conducting due diligence with respect to the FG Defendants' financial assets

¹¹ A more complete description of the procedural and litigation history of the Action is set forth in the Joint Declaration.

and knowledge of facts relevant to Plaintiffs' claims against the Non-Dismissed Defendants; drafting and negotiating the Stipulation of Settlement and exhibits submitted to the Court on November 6, 2012; drafting and filing the motion for preliminary approval of the Settlement; presenting the Settlement at the Preliminary Approval Hearing on November 30, 2012; coordinating the mailing and publication of notice and administration with the Claims Administrator (Rust Consulting, Inc.); negotiating and submitting amendments to the Stipulation that have been "so ordered" by this Court; communicating with owners of record and Class Members concerning the terms of the Settlement and claims procedures; and opposing the Madoff Trustee's adversary proceeding seeking to enjoin the Settlement by first filing a motion to withdraw the reference of that proceeding to the Bankruptcy Court, and then by filing papers in opposition to the Trustee's motion for a preliminary injunction.

With respect to billing rates, the standard hourly rates of Co-Lead Counsel here range from \$485 to \$990 for partners, \$375 to \$846 for counsel, and \$423 to \$540 for associates. *See* Exs. A-C. Similar or higher billing rates have been approved by other courts in this District. *See e.g. In re Lehman Bros. Sec. & ERISA Litig.*, No. 1:08-cv-05523 (LAK) (GWG) (S.D.N.Y. Mar. 2012) (approving billing rates up to \$975 per hour); *In re Wachovia Sec. Litig.*, No. 09-civ. 6351 (RJS) (S.D.N.Y.) (same).

With respect to the hours worked, Lead Counsel submit that the substantial time devoted to litigating the claims against FG Defendants reflects the tremendous effort needed to prosecute those claims and to bring them to a favorable resolution. There are a number of core attorneys on the case who have devoted large amounts of their time to the litigation in order to ensure continuity and to build on their knowledge base. As summarized above and set forth in detail in the Joint Declaration, substantial effort went into investigating the claims against FG

Defendants; drafting the initial consolidated class action complaint and subsequent SCAC; responding to motions to dismiss; reviewing and analyzing the nine million page document production; filing the class certification motion; and preparing for and taking depositions. Lead Counsel allocated the work among them and worked closely to avoid duplication of effort and to ensure efficient prosecution. Joint Decl. ¶¶ 134-141.

As further supported by the lodestar cross-check, Lead Counsel submit that the first *Goldberger* factor weighs strongly in favor of the requested attorneys' fee.

2. The Magnitude and Complexities of the Litigation

Courts have long recognized that shareholder class actions are notoriously complex and difficult to prosecute. *See, e.g., Fogarazzo*, 2011 WL 671745, at *3 (“securities actions are highly complex.”) (citation omitted); *Merrill Lynch Research Reports Sec. Litig.*, 246 F.R.D. 156, 172 (S.D.N.Y. 2012) (“Securities class litigation ‘is notably difficult and notoriously uncertain.’”) (citation omitted); *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *6 (S.D.N.Y. Nov. 7, 2007) (noting complexity of legal and factual accounting issues in settlement with defendant auditor and others).

Although the Madoff Ponzi scheme was a major news event, Lead Counsel had to navigate a minefield of legal issues any one of which would have severely limited the Plaintiffs' claims or potential damages in this action. Complex, fact-intensive pleadings were prepared, which involved, *inter alia*, a comprehensive review and analyses of public documents, the Massachusetts Securities Division proceedings, interviews of persons with personal knowledge of material facts (including Jan Naess, Peter Schmid, and Gil Berman), and the SEC's Report of Investigation on Madoff. *See* Joint Decl. ¶¶ 46-50. Lead Counsel also needed to address complex legal issues including the application of the Martin Act, in which we were successful in

persuading this Court to reach a precedent-setting decision that was eventually cited with approval by the New York Court of Appeals; the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”); *Morrison v. Nat’l Australia Bank*, 130 S. Ct. 2869 (2010); *Credit Alliance Corp. v. Arthur Andersen & Co.*, 65 N.Y.2d 536, 493 N.Y.S.2d 435 (1985); and *Janus Capital Grp. Inc. v. First Deriv. Traders*, 131 S. Ct. 2296 (2011); bankruptcy law; a number of foreign law issues, including interpretation of British Virgin Islands law and insolvency law; and many other complex legal issues. To compound the difficulties facing the Class, Plaintiffs recently have had to address efforts by the SIPA Trustee to bar or stay the assertion of claims by the Class against the FG Defendants.

Moreover, efforts to resolve the claims that ultimately led to the Settlement were protracted and required tremendous amount of skill and tenacity on the part of Lead Counsel, who were fully prepared to litigate the settled claims to judgment. Considering the magnitude and complexity of this case, the 25% fee request is entirely warranted.

3. The Risks of the Litigation

The Second Circuit has identified “‘the risk of success as “perhaps the foremost” factor to be considered in determining’” a reasonable award of attorneys’ fees.” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (quoting *Goldberger*, 209 F.3d at 54); *see also In re Telik, Inc. Sec. Litig.*, 576 F.Supp. 2d 570, 592 (S.D.N.Y. 2008) (McMahon, J.) (“Courts have repeatedly recognized that ‘the risk of the litigation’ is a pivotal factor in assessing the appropriate attorneys’ fees to award to plaintiffs’ counsel in class actions.”). Courts continue to recognize that “[l]ittle about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.” *Teachers’ Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (Pollack, J.).

Although Representative Plaintiffs and Lead Counsel believe that the claims against the FG Defendants have substantial merit, the contingency risk here was very significant and thus fully supports the requested fee. Lead Counsel undertook this action on a strictly contingent-fee basis, and prosecuted the claims with no guarantee of compensation or recovery of any litigation expenses. *See In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) (Pollack, J.) (class counsel not only undertook risks of litigation, but advanced its own funds and financed the litigation). As discussed in the Joint Declaration, Plaintiffs faced numerous challenges. The FG Defendants vigorously maintain that they did not know about wrongdoing at BLMIS until it was revealed to the public in December 2008. Joint Decl. ¶ 128.¹²

If the claims against the FG Defendants were to go to trial, there is no guarantee that a jury will find the evidence compelling enough to warrant a verdict in favor of the Class. Moreover, the FG Entity Defendants assert that they lack assets to fund a judgment in excess of the Settlement – indeed, they essentially are out-of-business and could not be a source of substantial recovery by judgment or settlement.

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

4. The Quality of Representation

Lead Counsel respectfully submit that the quality of their representation supports the reasonableness of the requested fee. Lead Counsel have many years of experience in complex federal civil litigation, particularly securities litigation and other class actions. *See* Declarations

¹² Although Plaintiffs do not believe that the resolution of damages on investor claims is a complex issue, proving holder claims presents legal and factual hurdles, as noted by this Court on the motion to dismiss. *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 448 (S.D.N.Y. 2010). Among other things, Plaintiffs have subpoenaed records of Madoff's bank accounts at JPMorgan Chase and have consulted with experts in this regard.

attached as Exhibits B, C, and D to Plaintiffs' Memorandum of Law in Support of Motion for Consolidation of All Actions and Appointment of Interim Co-Lead Counsel dated January 27, 2009 [ECF No. 22].

The Settlement represents a favorable result for the Settlement Class in the face of difficult legal and factual circumstances and can be attributed to the diligence, determination, and hard work of Lead Counsel. *See Veeco*, 2007 WL 4115808, at *7 ("Plaintiffs' Counsel's skill and expertise contribute to the favorable settlement for the class") (citation and internal quotation marks omitted).

The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. *See In re Adelpia Commc'ns Sec. & Deriv. Litig.*, No. 03 MDL 1529 (LMM), 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 F. App'x 9 (2d Cir. 2008) ("The fact that the settlements were obtained from defendants represented by formidable opposing counsel from some of the best defense firms in the country also evidences the high quality of lead counsels' work."). The skill, tenacity, experience and resources of Simpson Thacher & Bartlett LLP, counsel for the Settling Defendants, are well known. Other outstanding firms represented individual FG Defendants, including White & Case LLP, Dechert, LLP, Kasowitz, Benson, Torres & Friedman, LLP, Debevoise & Plimpton, LLP, Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, PC, and Covington & Burling, LLP. These highly skilled attorneys zealously fought Plaintiffs' claims at every turn, but notwithstanding this formidable opposition, Lead Counsel were able to develop Plaintiffs' case so as to resolve the litigation in a Settlement that requires the FG Defendants to contribute substantial portions of their assets.

5. The Requested Fee in Relation to the Settlement

The fifth *Goldberger* factor, the relation of the requested fee to the Settlements, also supports the requested attorneys' fee. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3 (quoting *In re Marsh & McLennan Co. Inc. Sec. Litig.*, No. 04-cv-08144, 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23, 2009) (McMahon, J.)). As discussed above, the Settlement provides the Settlement Class with a cash benefit that was achieved despite many complexities and risks. Fees in the amount of 25% of settlements of this size are within the range of fees that have regularly been awarded by the courts. *See, e.g., Anwar v. Fairfield Greenwich Ltd. (Da Silva Ferreira v. EFG Cap. Int'l Corp., 11-cv-813)*, No.09-cv-118 (VM), 2012 WL 1981505 (S.D.N.Y. June 1, 2012) (awarding 33% of a \$7.8 million settlement); *Cornwell v. Credit Suisse Grp.*, 08-cv-03758 (VM), Order dated July 20, 2011 (awarding 27.5% of a \$70 million settlement); *Comverse*, 2010 WL 2653354, at *6 (awarding 25% of \$225 million settlement); *Merrill Lynch Research Reports*, 246 F.R.D. at 178 (awarding 24% of \$133 million settlement); *In re CIT Grp. Inc. Sec. Litig.*, No. 08-cv-06613-BSJ-DCF, Order dated Jun. 13, 2012 (awarding 26.5% of \$75 million settlement); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *29, at *70 (S.D.N.Y. Nov. 8, 2010) (awarding 30% of \$24.4 million settlement) (S.D.N.Y. Nov. 8, 2010); *In re Oxford Health Plans, Inc. Sec. Litig.*, No. MDL 1222 (CLB), 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28% of \$300 million settlement); *Bd. of Trs. of Aftra Ret. Fund v. JP Morgan Chase*

Bank, No. 09 Civ. 686 (SAS), 2012 U.S. Dist. LEXIS 79418, at *8 (S.D.N.Y. Jun. 7, 2012) (awarding 25% of \$159 million settlement).

Indeed, fees of up to one-third of the settlement amount also have been frequently awarded to class counsel in this district. *Flag Telecom*, 2010 WL 4537550, at *29 (citing *Veeco*, 2007 WL 4115808, at *4 n.5). *See, e.g., Anwar*, WL 1981505, at *3 (Marrero, J.) (awarding 33% of \$7.78 million settlement); *In re IMAX Sec. Litig.*, No. 06 Civ. 6128 (NRB), 2012 U.S. Dist. LEXIS 108516, at *36 (S.D.N.Y. Aug. 1, 2012) (awarding 33% of \$12 million settlement).

Moreover, a fee award of 25% would amount to only 46% of Lead Counsel's lodestar, a negative multiplier of 54%. *See* Point E below. Lead Counsel submit that given these factors, the results achieved support the requested fee.

6. Public Policy Considerations

Courts in the Second Circuit have held that “[p]ublic policy concerns favor the award of reasonable attorneys’ fees in class action securities litigation.” *Flag Telecom*, 2010 WL 4537550, at *29. Specifically, “[i]n order to attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.” *In re WorldCom Inc., Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005). Moreover, attorneys’ fees must be sufficient “‘to encourage plaintiffs’ counsel to bring securities class actions that supplement the efforts of the SEC.’” *In re Am. Int’l Group Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2012 WL 345509, at *5 (S.D.N.Y. Feb. 2, 2012) (Batts, J.) (citation omitted); *see also Maley*, 186 F. Supp. 2d at 373 (“In considering an award of attorney’s fees, the public policy of vigorously enforcing the federal securities laws must be considered.”).

As a practical matter, lawsuits such as this one can be maintained only if competent counsel can be retained to prosecute them. This will occur if courts award reasonable and adequate compensation for such services where successful results are achieved, often after years of litigation. As Judge Brieant noted:

A large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken.

In re Union Carbide Corp. Cons. Prods. Bus. Sec. Litig., 724 F. Supp. 160, 169 (S.D.N.Y. 1989).

Lead Counsel's willingness to assume the risks of this litigation resulted in a substantial benefit to the Settlement Class. Public policy supports awarding Lead Counsel's reasonable attorneys' fees and expenses.

D. The Reaction of the Settlement Class to the Fee Request

"The reaction by members of the Class," while not one of the formal *Goldberger* factors, "is entitled to great weight by the Court." *Maley*, 186 F. Supp. 2d at 374; *see also Telik*, 576 F. Supp. 2d at 594 ("That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable.").

Pursuant to this Court's Preliminary Approval Order, Lead Counsel caused more than 2,145 copies of the Notice of Pendency of Class Action and Proposed Settlement and Proof of Claim forms ("Proof of Claim") to be disseminated to potential Settlement Class Members. *See Polizzi Aff.* ¶ 7. A Summary Notice of Pendency of Class Action and Proposed Settlements with FGG Defendants and Motion for Attorneys' Fees and Expenses ("Summary Notice") regarding the Settlements and the Settlement Hearing was published in the international, North American and South American editions of *The Wall Street Journal* during the period of December 21 through and including December 28, 2012. *Id.* ¶ 9. The Notice and Proof of Claim

were also posted on the websites of Lead Counsel and the website dedicated to the Settlements created by the Claims Administrator, for easy downloading by potential claimants. *Id.* ¶ 10. The Notice advised Settlement Class Members of the procedures and deadlines for objecting to any aspect of the Settlements. *See Polizzi Aff. Ex. A.* It specifically advised that Lead Counsel intended to seek an award of attorneys' fees that would not exceed 25% of the Settlement Fund, and reimbursement of expenses not to exceed \$1,450,000. *Id.* at pg. 5. In addition, the Notice informed Settlement Class Members that Representative Plaintiffs may request an award for reimbursement of their costs and expenses up to \$225,000. *Id.*

Although the deadline to object to the fee request is not until February 15, 2013, to date only one objection has been submitted by a putative Settlement Class Member. Following the objection deadline, Lead Counsel will address the substance of this and any other objections in its reply papers.

E. The Requested Fee is Reasonable Under the Lodestar "Cross-Check"

“The Second Circuit has authorized district courts to employ a percentage-of-the-fund method when awarding fees in common fund cases, [and] has encouraged district courts to cross-check the percentage fee against counsel’s ‘lodestar’ amount of hourly rate multiplied by hours spent.” *In re Bear Stearns Cos.*, 2012 U.S. Dist. LEXIS 161269, at *9 quoting *Giant Interactive Grp.*, 279 F.R.D. at 163 (quoting *Goldberger*, 209 F.3d at 47) (internal citation and quotation marks omitted). The lodestar is calculated by multiplying the number of hours expended on the litigation by a particular timekeeper times his or her current hourly rate. The hourly billing rate to be applied is the attorney’s normal hourly billing rate, so long as that rate conforms to the billing rate charged by attorneys with similar experience in the community where the counsel practices, *i.e.*, the “market rate.” *See Blum*, 465 U.S. at 896; *Luciano v. Olsten Corp.*, 109 F.3d

111, 115 (2d Cir. 1997) (“The ‘lodestar’ figure should be ‘in line with those rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.’”) (quoting *Blum*, 465 U.S. at 896 n.11). As discussed above (*see* pgs.14-15 *supra*), the current rates of Lead Counsel here are in accord with the competitive market hourly rates in their legal community for cases of this sort.

“Under the lodestar method of fee computation, a multiplier is typically applied to the lodestar.” *Global Crossing*, 225 F.R.D. at 468. An appropriate multiplier represents the “litigation risk, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.” *Id.* (citing *Goldberger*, 209 F.3d at 50; *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999); *see also Flag Telecom*, 2010 WL 4537550, at *26 (“Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.”) (citation omitted).

The total lodestar of Lead Counsel related to prosecuting the claims against Defendants, derived by multiplying their hours by each firm’s currently hourly rates, is \$27.3 million. This represents more than 49,600 hours spent by attorneys, paralegals, investigators, and professional analysts furthering the prosecution of the claims. *See* Exs. A-C. Lead Counsel compiled these hours from contemporaneous time records¹³.

Here, the lodestar “cross-check” fully supports the requested percentage fee. The requested 25% fee (or \$12,562,500) divided by Lead Counsel’s total lodestar (\$27.3 million) (without even considering the lodestar of other Plaintiffs’ counsel), yields a fee equivalent to

¹³ In addition, the three non-lead counsel, who have assisted in the prosecution of this action, recorded over 7800 hours, comprising a lodestar of in excess of \$3,900,00 with respect to this Action.

46% of Lead Counsel's lodestar. In short, Lead Counsel are requesting far less than the value of the time they spent litigating the claims prior to agreement to settle with the FG Defendants. The reasonableness of the requested fee is readily confirmed by the lodestar multiplier. *In re Bear Stearns Co. Inc. Sec. Litig.*, No. 08 MDL 1963, 2012 WL 5465381, at *9 (S.D.N.Y. Nov. 9, 2012) (Sweet, J.) (citing *In re Blech Sec. Litig.*, No. 94 Civ. 7696(RWS), 2002 WL 31720381, at *1 (S.D.N.Y. Dec.4, 2002)) (a lodestar cross-check that results in a negative multiplier is "a strong indication of the reasonableness of the fee application.") Lead Counsel acknowledge that a significant portion of the work of which lodestar calculation is based will be useful in pursuing the claims against the remaining Defendants. If those claims are successfully litigated or settled, Counsel anticipate applying for additional fee award(s), for that same time which may increase the lodestar multiplier for that time from the current fractional level.

II. Plaintiffs' Counsel's Request for Reimbursement of Expenses Should Be Granted

In addition to a reasonable attorneys' fee, Plaintiff's Counsel respectfully seek reimbursement in the amount of \$1,279,242 for litigation expenses reasonably incurred in connection with prosecuting the claims against Defendants. Joint Decl., Exhs. A-D. Lead Counsel have submitted declarations attesting to the accuracy of their expenses and it is well-established that such expenses are properly recovered by counsel. *See, e.g., Am. Int'l Grp.*, 2012 WL 345509, at *6 ("Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the Representation" of those clients.") (citing *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (Scheidlin, J.)).

The declarations submitted by Lead Counsel fully itemize the various categories of expenses incurred. *See* Joint Decl. ¶¶ 136-147 and Exs. A-C. Lead Counsel submit that these

expenses were reasonable and necessary to prosecuting the claims and achieving the Settlement. Lead Counsel further submit that these expenses are the type for which “the paying, arms’ length market” reimburses attorneys and should therefore be reimbursed from the Settlement Fund. *Global Crossing*, 225 F.R.D. at 468.¹⁴ The Notice advised potential Settlement Class Members that Lead Counsel would seek reimbursement of expenses of up to \$1,450,000.

III. Representative Plaintiffs’ Request for Reimbursement of Expenses Including Lost Wages Should Be Granted

With respect to payments to the Representative Plaintiffs, PSLRA §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.” *See Am. Int’l Grp.*, 2012 WL 345509, at *6 (“Courts in [the Second] Circuit routinely award ... costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.”) (citing *Hicks*, 2005 WL 2757792, at *10). Here, Representative Plaintiffs are seeking reimbursement of \$225,000 in lost wages and expenses related to their active participation in this Action. *See* Joint Decl., Exhs. F-L.

Numerous cases have approved reasonable payments to compensate class representatives for the time and effort they devoted. *See, e.g., Merrill Lynch*, No. 08-cv-10841, slip op. at 4

¹⁴ Lead Counsel have reviewed the affidavits of the three non-lead counsel, who are requesting reimbursement, in the aggregate, of \$56,630 in expenses. Lead Counsel consider that expense reimbursement to be appropriate and have included those expenses within the \$1,279,242 of expense reimbursement sought. Those separate affidavits will be submitted on request to the Court.

(awarding a combined \$62,434 to four institutional lead plaintiffs); *Am. Int'l Grp.*, 2012 WL 345509, at *6 (awarding \$71,910 to institutional lead plaintiff); *Satyam Computer Servs.*, slip op. at 3-4 (awarding a combined \$193,111 to four institutional lead plaintiffs) (*Id.*); *Marsh & McLennon*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding a combined \$214,657 to two institutional lead plaintiffs); *Gen. Motors*, No. 06-md-1749, slip op. at 3 (awarding \$184,205 to two institutional representatives and \$1,000 to each named plaintiff) (*Id.*).

Indeed, given that the central objective of the PSLRA is to “protect[] investors who join class actions against lawyer-driven lawsuits by . . . increasing 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) (citation omitted), it would be unreasonable to penalize institutional class plaintiffs, like Lead Plaintiffs here, for devoting time to the litigation by denying them reimbursement. *See also In re Xcel Energy, Inc. Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (recognizing the important public policy role of lead plaintiffs).

As detailed in the declarations of Representative Plaintiffs submitted herewith, Representative Plaintiffs have devoted hundreds of hours to the litigation, which included time spent: (i) reviewing pleadings and case materials; (ii) corresponding and speaking with Lead Counsel about the status and strategy of the case; (iii) responding to document requests and producing documents; and (iv) preparing for and participating in depositions. Lead Counsel and Representative Plaintiffs therefore respectfully submit that the \$225,000 sought, based on Representative Plaintiffs’ extensive involvement in litigating the claims against FG Defendants, is eminently reasonable and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that this Court award attorneys' fees of 25% of the Settlement Fund; reimbursement of litigation expenses in the amount of \$1,279,242; and reimbursement of Representative Plaintiffs' expenses in the amount of \$225,000.

Dated: January 31, 2013

Respectfully submitted,

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