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)

PLAINTIFFS' MEMORANDUM IN SUPPORT OF FINAL APPROVAL OF THE PROPOSED GLOBEOP SETTLEMENT AND PLAN OF ALLOCATION AND AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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The Representative Plaintiffs,[1] on behalf of themselves and the GlobeOp Settlement Class[2], respectfully move for final certification of the GlobeOp Settlement Class and final approval of the $5,000,000 GlobeOp Settlement and Plan of Allocation.[3] Plaintiffs also seek an award of attorneys' fees and reimbursement of expenses directly relating to the prosecution of the claims against GlobeOp.

I. INTRODUCTION

This Action arises from Plaintiffs' investment in the Domestic Funds (Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P.), which funneled those investments into what turned out to be the largest Ponzi scheme in history operated by Bernard Madoff. GlobeOp was the administrator of the Domestic Funds during the period October 31, 2003 through August 31, 2006. Plaintiffs contend that as the administrator of the Domestic Funds, GlobeOp had fiduciary and professional responsibilities (among other things) to verify the existence of the Funds' assets from an independent (non-Madoff) source. Plaintiffs contend (among other things) that GlobeOp's failure to verify the existence of those assets contributed to Plaintiffs' losses.

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[1] Unless otherwise indicated, capitalized terms are defined in the GlobeOp Stipulation of Settlement dated as of August 27, 2013 (Dkt. No. 1184).

[2] The Stipulation defines as the GlobeOp Settlement Class to include "all Persons who purchased or held interests in the Domestic Funds from October 31, 2003 through September 1, 2006, who were investors in the Domestic Funds as of December 10, 2008 and who suffered a Net Loss of principal invested in the Domestic Funds, excluding (i) those Persons who timely and validly requested exclusion from the GlobeOp Settlement Class and who did not validly revoke such exclusion; (ii) those Persons who have been dismissed from this Action with prejudice; and (iii) the FG Defendants, GlobeOp, and the Non-Settling Defendants, and any entity in which those Persons have a controlling interest, and their officers, directors, affiliates, employees, legal representatives and immediate family members, and heirs successors, subsidiaries and assigns of such Persons."

[3] The GlobeOp Settlement is the second partial settlement in this Action, separate from the previously approved settlement of Plaintiffs' claims against the Fairfield Greenwich ("FG") Defendants (the "FG Settlement"). The FG Settlement provided for a minimum cash payment of $50,250,000 and additional contingent cash consideration of up to $30,000,000, as well as other consideration. The Court approved the FG Settlement by Final Judgment and Order dated March 25, 2013 (Dkt. No. 1097). The Final Judgment is now on appeal to the Second Circuit Court of Appeals.

The GlobeOp Settlement was reached after four and one-half years of hard-fought litigation, which included comprehensive legal briefing on the pleadings and class certification motion, extensive investigation and discovery efforts, and intense, arm's-length settlement negotiations. In the Second Consolidated Amended Complaint ("SCAC"), Plaintiffs asserted claims against GlobeOp under common-law theories for breach of fiduciary duty (Count 29), gross negligence (Count 30), and negligent misrepresentation (Count 31). See SCAC, ¶¶ 344-47 and 541-56 (Dkt. No. 273). By order of the Court dated August 18, 2010, the Court granted GlobeOp's motion to dismiss Count 30 (gross negligence), and denied GlobeOp's motion to dismiss Counts 29 and 31 (breach of fiduciary duty and negligent misrepresentation). *See* 728 F. Supp. 2d 372, 446-49 (S.D.N.Y. 2010).

Thereafter, the parties engaged in extensive merits and class discovery, and the District Court certified against GlobeOp a class of investors who had purchased shares in the Domestic Funds. *Anwar v. Fairfield Greenwich*, 289 F.R.D. 105 (S.D.N.Y. Feb. 25, 2013). The parties also engaged in two days of mediation.

After those extensive proceedings, the Insurance Carriers agreed, on behalf of GlobeOp, to pay $10,000,000 to obtain a global settlement fully resolving all claims asserted against GlobeOp in both this Action and a state court action. Of this amount, $5,000,000 was allocated to the GlobeOp Settlement Class and $5,000,000 to the Litigation Trustee prosecuting the Domestic Funds' direct claims against GlobeOp in state court. Each settlement is subject to the condition that the other settlement be consummated.

As discussed in detail in the accompanying GlobeOp Joint Declaration of Lead Counsel ("Joint Decl."), the proposed GlobeOp Settlement is fair, reasonable and adequate to the GlobeOp Settlement Class. In proposing that the Court approve the GlobeOp Settlement, Plaintiffs have considered, among other factors, their ability to prevail on the contested factual

and legal issues summarized below (at pp. 6-7). In addition, Plaintiffs' Lead Counsel considered that, by reducing the number of defendants and defense counsel in the litigation, and the factual and legal issues in dispute, the GlobeOp Settlement will have a beneficial effect on Plaintiffs' ability to successfully litigate the remaining claims against the PwC and Citco Non-Settling Defendants.[4]

Lead Counsel have identified approximately fifty-five investors who are members of the GlobeOp Settlement Class. Notice of the GlobeOp Settlement was mailed to those GlobeOp Settlement Class Members on September 24, 2013, and a press release with respect to the Settlement was issued over *PR Newswire* on September 30, 2013. *See* accompanying Affidavit of Daniel Polizzi ("Polizzi Aff.") dated October 11, 2013. Pursuant to 28 U.S.C. § 1715, GlobeOp sent notice of the settlement to the appropriate State and Federal officials on the same day. The last date for Class Members to file objections to the proposed Settlement or fee and expense request is October 25, 2013. To date, there have been no objections filed to the proposed Settlement or to the fee and expense request.

Plaintiffs' Lead Counsel strongly believe that the proposed Settlement is fair, reasonable, and adequate, and that the fee and expense request are appropriate, and that both warrant approval by this Court.

[4] Plaintiffs' claims against (i) the PwC Defendants (PricewaterhouseCoopers LLP Canada and PricewaterhouseCoopers Accountants N.V.) (Netherlands) (collectively, "PwC"); and (ii) the Citco Defendants (Citco Fund Services (Europe) B.V., Citco (Canada) Inc., Citco Bank Nederland N.V. Dublin Branch, Citco Global Custody N.V., Citco Fund Services (Bermuda), and The Citco Group Limited) (collectively, "Citco") are not resolved by the GlobeOp Settlement and will continue to be prosecuted.

II. STATEMENT OF FACTS

The Court is respectfully referred to the accompanying Joint Declaration for a full statement of the relevant facts supporting the proposed Settlement and the fee and expense request.

III. ARGUMENT

A. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS

In a Decision and Order dated February 25, 2013 (289 F.R.D. 105), this Court certified a litigation class pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) consisting of investors who had asserted claims against GlobeOp and the other defendants including "[a]ll shareholders/limited partners in Fairfield Sentry Limited, Fairfield Sigma Limited, Greenwich Sentry, L.P. and Greenwich Sentry Partners, L.P. (the "Funds") as of December 10, 2008 who suffered a net loss of principal invested in the Funds." *Id.* at 110.

The Court's Preliminary Approval Order conditionally certified the GlobeOp Settlement Class pursuant to the Stipulation. The GlobeOp Settlement Class consists of a subset of those class members covered by the Court's February 25, 2013, certification order that invested in the Domestic Funds and had claims against GlobeOp. The bases for certification of a settlement class are clearly present here. *See* Plaintiffs' opening and reply memoranda in support of class certification, with supporting Declarations (Dkt. Nos. 776-84 and 865), and Plaintiffs' Memorandum in Support of Preliminary Approval (Dkt. No. 1185),

Because this Action fully satisfies the relevant provisions of Rule 23, this Court should fully and finally certify the Settlement Class for settlement purposes.

B. THE PROPOSED PARTIAL SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD BE APPROVED

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class action settlement must be approved by a court. Courts in the Second Circuit realize the "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (internal quotation marks and citation omitted).

A district court's approval of a settlement is contingent on a finding that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85-86 (2d Cir. 2001). In *Detroit v. Grinnell Corp.* 495 F.2d 448 (2d Cir. 1974), the Court of Appeals held that the following factors should be considered in evaluating a class action settlement:

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

Id. at 463 (citations omitted).

This Court recently approved the FG Settlement after finding that settlement terms were fair, reasonable and adequate, and in the best interest of class members pursuant to the *Grinnell* factors. *See* Dkt. No. 1097 (Final Approval Order, March 25, 2013) and March 22, 2013 Final Settlement Hearing Tr., pg. 89, ln. 2 – 12 ("I find under the *Grinnell* factors that the parties, plaintiffs particularly, have satisfied the standards on the burden to indicate that the settlement overall, in light of all the circumstances, is fair and reasonable, in light of the complexity of the case … the costs involved, the costs of further litigation, the risks entailed of further litigation, the time of pursuing further disputes in litigation, the merits and the various issues that remain

unclear …"). *See also, e.g.*, *Rubin v. MF Global, Ltd.*, No. 08 Civ. 2233 (VM), Dkt. No. 200 (Final Approval Order, Nov. 18, 2011).

Here, the Settlement clearly satisfies the *Grinnell* criteria for approval.

C. THE *GRINNELL* FACTORS SUPPORT APPROVAL OF THE SETTLEMENT

1. The Complexity, Expense, and Likely Duration of the Action

This class action is complex. Litigating the claims against GlobeOp through completion of merits and expert discovery, summary judgment, trial, post-trial appeals and judgment enforcement proceedings was and would continue to be protracted and expensive. Beyond its inherent complexities, this Action posed many challenges particular to Plaintiffs' claims against GlobeOp. The substantive issues in dispute between the Settling Parties are set out in detail in the Joint Decl. and include whether, *inter alia*:

(i) Plaintiffs' claims are derivative and owned by the Domestic Funds, which are in bankruptcy, and that the Domestic Funds, through a litigation trust, were actively prosecuting those claims against GlobeOp,

(ii) GlobeOp acted with due care and did not act negligently,

(iii) GlobeOp did not owe fiduciary duties to investors in the Domestic Funds,

(iv) the administrative agreements between GlobeOp and the Domestic Funds absolved GlobeOp of liability except in cases of "fraud, gross negligence, or willful misconduct,"

(v) as stated on account statements disseminated to investors, GlobeOp was entitled to rely on the accuracy of investment information provided to it by the FG Defendants, the Funds, and Madoff and had no duties to make further inquiries,

(vi) Plaintiffs' exclusively state law claims against GlobeOp were barred by the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"),

(vii) class certification was not warranted, among other things, because Plaintiffs had failed to establish numerosity on their claims against GlobeOp, and individual issues of reliance predominated over common issues of law or fact,

(viii) GlobeOp had no liability to any investor who acquired shares in the Domestic Funds before or after GlobeOp acted as administrator of those Funds,

(ix) investors had conducted their own due diligence and were contributorily negligent in failing to recognize the Madoff Ponzi scheme,

(x) other persons, including Madoff, the FG Defendants, the Domestic Funds' auditors, and Citco had a much greater percentage of culpability for Plaintiffs' losses than GlobeOp, and

(xi) Plaintiffs' losses were mitigated by the recovery in the FG Settlement, tax benefits and the anticipated recovery in bankruptcy proceedings.[5]

The firms and the individual attorneys representing GlobeOp (including Michael Kim, Jonathan Cogan and David McGill of Kobre & Kim LLP) and its insurers are among the most respected and accomplished lawyers in the defense bar and were sure to continue their diligent and comprehensive defense through the remainder of the case, which would have added to the challenges and complexity of continuing to prosecute Plaintiffs' claims.

2. The Settlement Class's Reaction to the Settlement Favors Final Approval

Settlement Class Members have until October 25, 2013 to file objections to the GlobeOp Settlement. To date, no objections have been received. Objections, if any, will be addressed by Lead Counsel after the October 25, 2013 deadline.

[5] Plaintiffs estimate, based on information available on the Bankruptcy Court's docket, that investors in the Domestic Funds may recover 15% or more of their losses through the liquidation of the Domestic Funds.

3. The Stage of the Proceedings and the Amount of Information Reviewed and Analyzed Favor Final Approval of the Settlement

Lead Counsel have conducted an extensive factual investigation and legal analysis of Plaintiffs' claims against GlobeOp. The investigation included, among other things, pre-discovery analyses in connection with preparation of two consolidated amended complaints, and extensive merits discovery, including a review of over nine million pages of documents (of which 230,000 were produced by GlobeOp and much of the FG Defendants' production related to the claims against GlobeOp) and depositions of over 90 witnesses (of which four specifically related to GlobeOp). *See* Joint Decl., ¶¶ 13, 78.

4. The Risks of Establishing Liability and Damages Favor Final Approval of the Settlement

While the claims asserted against GlobeOp had great merit, there were considerable risks involved in pursuing those claims that could have led to a substantially smaller recovery or no recovery at all. *See supra* at 6-7. GlobeOp vigorously maintained that it did not know about wrongdoing at BLMIS until it was revealed to the public in December 2008 and was among many financial firms and regulators that were fooled by Madoff, including the Securities and Exchange Commission.

The Representative Plaintiffs and Plaintiffs' Lead Counsel (who have extensive experience in securities and complex shareholder class-action litigation), believe that the GlobeOp Settlement provides the GlobeOp Settlement Class with significant and certain benefits now and eliminates the risk of no recovery following what would be years of further uncertain litigation, including motions for summary judgment, and if Plaintiffs prevail on summary judgment, a contested trial and appeals with the possibility of no recovery at all.

In addition, Plaintiffs' Counsel considered that, by reducing the number of defendants and defense counsel in the litigation, and the factual and legal issues in dispute, the GlobeOp

Settlement may have a beneficial effect on Plaintiffs' ability to successfully litigate the remaining claims against the Non-Settling Defendants.

5. The Risk of Maintaining the Action as a Class Action Through Trial Favors Final Approval of the Settlement

GlobeOp had filed a Petition with the Second Circuit Court of Appeals to review this Court's February 25, 2013 Class Certification Order. In June 2013, GlobeOp requested that the Court of Appeals hold its petition in abeyance after the Settling Parties reached the preliminary agreement on the Settlement of Plaintiffs' claims against GlobeOp. In the meantime, similar Petitions filed by PwC and GlobeOp were granted by the Second Circuit, and briefing on those appeals is ongoing.

The GlobeOp Settlement avoids any uncertainty with respect to whether a litigation class could be maintained against GlobeOp. The presence of that risk and uncertainty weighed in favor of the Settlement. *See e.g. In re Marsh & McLennan Cos., Inc. Sec.*, No. 04 Civ. 8144, 2009 WL 5178546, at *6 (S.D.N.Y. Dec. 23, 2009) ("Although Defendants have stipulated to certification of the Class for purposes of the Settlement, there would have been no such stipulation had Lead Plaintiffs brought this case to trial."). *See also In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, MDL No. 1500, 02 cv. 5575 (SWK), 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) (finding that risk of Plaintiffs not succeeding in certifying class supported approval of settlement), and *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (same).

6. The Amount of the Settlement

The last three substantive factors courts consider are (i) the ability of the defendants to withstand a greater judgment; (ii) the range of reasonableness of the settlement fund in light of the best possible recovery and (iii) litigation risks. *Grinnell*, 495 F.2d at 463. Representative

Plaintiffs and Lead Counsel carefully considered the risks of continued litigation, including the likely difficulty of obtaining a significantly larger recovery from GlobeOp, and determined that a $5,000,000 recovery, and the added recovery $5,000,000 recovery through the Domestic Funds' bankruptcy proceedings, was in the best interests of the Class. Joint Decl. ¶71.[6]

Plaintiffs estimate that the Recognized Losses of Class Members under the Plan of Allocation is approximately $46 million assuming that all GlobeOp Settlement Class Members file Proofs of Claim. Based on the $46 million estimate, Plaintiffs approximate that GlobeOp Settlement Class Members will receive from the Settlement Fund, before deduction of Court-awarded attorneys' fees and expenses, approximately 11% of their Recognized Loss computed pursuant to the Plan of Allocation (excluding the benefits achieved from the separate FG Settlement, the $5,000,000 settlement of the State Court Action and other distributions from bankruptcy, and any tax benefits or other recoveries from third parties).

In analyzing the reasonableness of the GlobeOp Settlement, the issue for the Court is not whether the settlement represents the best possible recovery, but how the settlement relates to the strengths and weaknesses of the case. In *Grinnell*, the Second Circuit said to "'consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.'" *Id.* at 462 (citation omitted). Courts agree that the determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 130 (S.D.N.Y. 1997) (Stein, J.) (citations and internal quotation marks omitted). Instead, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). "'The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself,

[6] GlobeOp's ability to satisfy a larger judgment was not a relevant factor.

mean that the proposed settlement is grossly inadequate and should be disapproved.'" *In re Marsh & McLennan Cos.* 2009 WL 5178546, at *7, *quoting Grinnell*, 495 F.2d at 455 & n.2 ("In fact there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.")

For all the foregoing reasons, Plaintiffs submit that the $5 million settlement is fair reasonable and adequate.

D. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE AND WARRANTS APPROVAL

"'To warrant approval, the plan of allocation must also meet the standards by which the … settlement was scrutinized – namely, it must be fair and adequate.'" *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (citation omitted). "'When formulated by competent and experienced counsel,' a plan for allocation of net settlement proceeds 'need have only a reasonable, rational basis.'" *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012) *citing In re Telik Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 580 (S.D.N.Y. 2008) (quoting *In re Global Crossing*, 225 F.R.D. at 462). This Court recently approved proposed allocation plans put forth by experienced counsel as being fair and reasonable, and directed the defendant to implement the allocation plan according to the terms of the stipulation. *See Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-00118-VM (S.D.N.Y. March 25, 2013) (Dkt. No. 1097), and *Anwar v. Fairfield Greenwich Ltd (Da Silva Ferreira v. EFG Cap. Int'l Corp.*), ("EFG Order") 2012 WL 1981505 (S.D.N.Y. Jun 01, 2012). *Anwar v. Fairfield Greenwich Ltd.* (*Da Silva Ferreira v. EFG Cap. Int'l Corp.*) 2012 WL 2273332 (S.D.N.Y. Jun 01, 2012) (Marrero, J.).

Here, the Plan, contained in the Notice (and described at ¶¶ 72-75 in the Joint Declaration) includes a Recognized Loss formula, which is intended to equitably apportion the

Settlement Fund among Settlement Class Members. Plaintiffs submit that the Plan of Allocation is fair and reasonable and should be approved.

IV. LEAD COUNSEL'S PETITION FOR AN AWARD OF ATTORNEYS' FEES IS REASONABLE AND SHOULD BE GRANTED

Plaintiffs seek an attorneys' fee award of 25% of the $5,000,000 Settlement plus reimbursement of $19,825.42 in expenses directly relating to prosecution of the claims against GlobeOp. This is the same fee percentage awarded by this Court in the March 28, 2013 Final Judgment and Order Awarding Fees and Expenses ("FG Fee Order" (Dkt. No. 399)).

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 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.).

A. THE REQUESTED FEE IS FAIR UNDER THE PERCENTAGE-OF-RECOVERY 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, 122 (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.). This Court, in the March 28, 2013 Fee Order, recently applied the percentage-of-recovery method in awarding attorneys' fees of 25% with respect to the FG Settlement. *See also EFG* Order (awarding 33% fee; and *Rubin v. MF Global, Ltd. et al.*, 08-cv-2233 (VM), Order dated Nov. 18, 2011 (Dkt. No. 198 (18% fee)). *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.").

B. THE REQUESTED 25% 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.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 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 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 (citation omitted). As set forth below and in the GlobeOp 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

Lead Counsel have devoted well in excess of $30 million of attorneys' time to the prosecution of the claims in this Action, including the claims against GlobeOp. *See* Joint Decl. ¶79. Agreement to the substantive terms of the GlobeOp Settlement followed four-and-one-half years of litigation in this exceedingly complex and difficult case. Because the legal and factual issues with respect to Plaintiffs' claims were litigated in a single consolidated action, Plaintiffs' Counsel did not keep separate time records by defendant. Lead Counsel believe, however, that a substantial percentage of the work expended on the Action since its inception contributed to the resolution of the claims against GlobeOp. As set forth in detail in the GlobeOp Joint Declaration, substantial effort went into investigating the claims against GlobeOp; drafting the initial consolidated class action complaint and subsequent SCAC asserting the GlobeOp claims; responding to GlobeOp's motion to dismiss; reviewing and analyzing the nine million page document production, including the documents relevant to GlobeOp; filing the class certification motion; and preparing for and taking depositions (including six depositions specifically relating to the claims against GlobeOp). Lead Counsel allocated the work among them and other Plaintiffs' Counsel and worked closely to avoid duplication of effort and to ensure efficient prosecution. Joint Decl. ¶83.

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. 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).

The substantial time devoted to litigating the claims against GlobeOp reflects the 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 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

Lead Counsel were required to navigate a minefield of complex legal issues any one of which would have severely limited the Plaintiffs' claims or potential damages in this action. *See, e.g,* pp. 6-7, *supra.* For example, Lead Counsel were initially required to address the application of the Martin Act, and 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 Court's opinion denying in large part motions to dismiss, including GlobeOp's motion, spanned some 198 pages, and there have been many additional opinions, including on motions for reconsideration, class certification and discovery issues. 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,* 225 F.R.D. at 467 (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.).

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).

Although Plaintiffs and Lead Counsel believe that the claims against GlobeOp have substantial merit, the contingency risk here was very significant and thus fully supports the requested fee.

4. The Quality of Representation

Lead Counsel's quality of 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 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 (Dkt. No. 22). The GlobeOp Settlement represents a favorable result in the face of difficult legal and factual circumstances and can be attributed to the diligence 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").

The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. *See In re Adelphia 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.") (citation omitted). The skill, tenacity, experience and resources of Kobre & Kim LLP, counsel for GlobeOp, are well known.

5. The Requested Fee in Relation to the Settlement

The fifth *Goldberger* factor, the relation of the requested fee to the settlement, 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 Cos.*, 2009 WL 5178546, at *19). 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., FG Settlement* Fee Order (awarding 25% fee of $50.25 million settlement); *EFG* Order (awarding 33% of a $7.8 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); *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); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 178 (S.D.N.Y. 2007) (awarding 24% of $133 million settlement).

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." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8,

2010) (citation omitted). 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.").

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.

C. 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 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. ¶ 6. A Summary Notice of Pendency of Class Action ("Summary Notice") regarding the GlobeOp Settlement and Hearing was disseminated over *PR Newswire* on September 30, 2013. *Id.* ¶ 9. The Notice and Proof of Claim were also posted on the websites of Lead Counsel and the website dedicated to

the Settlement 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 the Settlement. *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 $25,000. Although the deadline to object to the fee request is not until October 25, 2013, to date no objections have been submitted by a putative Settlement Class Member. Following the objection deadline, Lead Counsel will address the substance of any objections in its reply papers.

D. 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.*, 909 F. Supp. 2d at 271 *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).

"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*. at 466 (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).

Here, the lodestar "cross-check" fully supports the requested percentage fee. A fee award of 25% would amount to only 6.7% of Lead Counsel's unreimbursed lodestar of $18.6 million through June 14, 2012, a negative multiplier of greater than 90%. *See* Joint Declaration, ¶80. Since June 14, 2013 to date, Lead Counsel have devoted substantial additional effort to drafting and negotiating the Stipulation of Settlement and exhibits submitted to the Court on August 29, 2013; drafting and filing the motion for preliminary approval of the GlobeOp Settlement; coordinating the mailing and publication of notice and administration with the Claims Administrator (Rust Consulting, Inc.); and communicating with Class Members concerning the terms of the Settlement and claims procedures.

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 GlobeOp. Thus, the reasonableness of the requested fee is readily confirmed by the lodestar multiplier. *In re Bear Stearns*, 909 F. Supp. 2d at 271 (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 the 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.

V. 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 $19,825.42 for litigation expenses reasonably incurred in connection with prosecuting the claims against Defendants. Joint Decl. ¶ 82. These expenses relate primarily to mediation expenses, deposition costs, and electronic research.

Lead Counsel have attested 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) (Scheindlin, J.)).

Lead Counsel submit that these expenses were necessary to prosecuting the claims against GlobeOp 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.

VI. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court approve the Settlement and enter the Final Judgment annexed as Exhibit B to the Stipulation filed August 29, 2013 (Dkt. No. 996-5), subject to any modifications that may be requested by the Settling Parties in advance of the hearing before the Court scheduled for November 22, 2013.

Dated: October 11, 2013

Respectfully submitted,

By: /s/ Robert C. Finkel

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