

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PASHA ANWAR, et al., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
FAIRFIELD GREENWICH LIMITED, et al., ) Master File No. 09-CV-118 (VM)  
 )  
Defendants. )  
 )  
This Document Relates to: )  
*Da Silva Ferreira v. EFG Capital International* )  
*Corp., et al., 11-CV-813(VM)* )  
-----X

**PLAINTIFFS' PETITION FOR AN AWARD OF ATTORNEYS' FEES  
AND REIMBURSEMENT OF EXPENSES, AND INCORPORATED  
MEMORANDUM OF LAW**

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Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), Plaintiffs, Lorrene Da Silva Ferreira and Arlete Da Silva Ferreira, respectfully petition this Court for an award of attorneys' fees and reimbursement of expenses as well as Plaintiffs' request an incentive award for their representation of the Settling Class.

## I. INTRODUCTION

Having achieved a significant \$7,783,843.00 cash benefit for the Settling Class,<sup>1</sup> Plaintiffs' Counsel seek attorneys' fees of 33% of the Gross Settlement Fund and reimbursement of expenses incurred in representing the Settling Class.<sup>2</sup> The requested attorneys' fees award represents a lodestar multiplier of 2.42 based on Plaintiffs' Counsel's actual fees incurred of \$1,063,149.50 (for 3,448.1 hours of work by attorneys and other professionals). *See* Fees and Expenses Summary, attached hereto as **Exhibit 1**; *see also* Declarations of Lawrence A. Kellogg, attached hereto as **Exhibit 2**; Kevin M. Kinne, attached hereto as **Exhibit 3**; and Daniel R. Solin, attached hereto as **Exhibit 4** (collectively, "Plaintiffs' Counsel's Declarations").

In light of the risks faced, the complexity of the case, the quality of legal work performed, the amount of time and effort expended by Plaintiffs' Counsel and the size of the fee in relation to the Settlement achieved, the fee request of 33% of the Gross Settlement Fund is both fair and reasonable. The previously filed Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees, Expenses, and Incentive Payments, and Settlement Fairness Hearing

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as set forth in the Stipulation of Settlement (the "Stipulation"), and filed with this Court on January 23, 2012 (ECF. 229-1).

<sup>2</sup> Plaintiffs' Counsel means, collectively, Levine, Kellogg, Lehman Schneider + Grossman, LLP; Cohen, Kinne, Valicente & Cook, LLP; and attorney Daniel R. Solin, Esq.

(the “Notice”) advised that Plaintiffs’ Counsel would seek a fee award of 33% and, to date, no Settling Class Member has objected to such an award.

Plaintiffs’ Counsel also seek reimbursement for their total out-of-pocket litigation expenses incurred in connection with the prosecution of this Action totaling \$114,100.05. *See* Plaintiffs’ Counsel’s Declarations. These expenses were necessary for the successful prosecution and resolution of claims against EFG Capital International Corporation (“EFG Capital”) and the Released Persons. Plaintiffs’ Counsel also seek for Plaintiffs an aggregated \$25,000 incentive award to the Plaintiffs for their representation of the Settling Class. The Notice advised the Putative Class that Plaintiffs’ Counsel would seek reimbursement of their expenses and an incentive award for the Plaintiffs. To date, there have been no objections.

## II. BACKGROUND

A detailed description of the procedural history, settlement negotiations and consideration leading to the Settlement of this Action is set forth in Plaintiffs’ motion for final approval of the Settlement, filed contemporaneously.

## III. ARGUMENT

### A. Plaintiffs’ Counsel’s Petition for an Award of Attorneys’ Fees Is Reasonable and Should be Granted

#### 1. Legal standard for award of attorneys’ fees

The Supreme Court has long recognized that where counsel’s efforts have created a “common fund” for the benefit of a class, counsel should be compensated from that fund. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The award of attorneys’ fees from a common fund serves the dual purpose of encouraging representatives to seek redress for damages caused to an entire class of persons, as well as discouraging future misconduct of a similar nature. *Dolgow v. Anderson*, 43 F.R.D. 472, 481-84 (E.D.N.Y. 1968).

Similarly, the Second Circuit has long held that a party that secures a benefit on behalf of a class of individuals is entitled to recover its costs, including reasonable attorneys' fees, from the common fund created as part of a settlement agreement. *See Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999). The common fund doctrine is designed to prevent the unjust enrichment of class members who benefit from a lawsuit without paying for its costs. *See Boeing Co.*, 444 U.S. at 478.

**2. The requested fee is fair under the percentage-of-recovery method and the Second Circuit's *Goldberger* factors**

The Supreme Court consistently has held that the percentage of recovery approach is a correct method for determining attorneys' fees in common fund cases. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). In *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), the Second Circuit examined the history of the alternative methods for calculating attorneys' fees and expressly approved use of the percentage of recovery method in awarding fees from a common fund. *Id.* Indeed, the clear trend within the Second Circuit and the Southern District of New York is to utilize the percentage of recovery approach when awarding attorneys' fees in common fund cases. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (stating that "the trend [is] in favor of the percentage of recovery approach . . . within this district").

In determining a reasonable fee under the percentage of recovery approach, courts look to the following factors: (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. *Johnson v. Brennan*, 10 CIV. 4712 CM, 2011 WL 4357376, at \*15 (S.D.N.Y. Sept. 16, 2011) (citing

*Goldberger*) (supporting an award of 33% of the settlement fund). Each of these factors supports the fee request here.

**a. Time and labor expended by counsel**

Plaintiffs' Counsel expended 3,448.1 hours (totaling \$1,063,149.50 in fees) to litigate this Action. *See* Plaintiffs' Counsel's Declarations, attached as Exhibits 2, 3 and 4. Plaintiffs' Counsel, among other things: (i) conducted an extensive factual investigation into the events and circumstances underlying this Action; (ii) thoroughly researched the law regarding the claims brought against EFG Capital and EFG Bank f/k/a EFG Private Bank SA ("EFG Bank") and the potential defenses thereto; (iii) filed a complaint against EFG Capital and EFG Bank for breach of fiduciary duty, gross negligence, unjust enrichment, and violation of Florida's Deceptive and Unfair Trade Practices Act ("FDUPTA"); (iv) engaged in extensive discovery on the merits of the claims, including analysis of over 125,000 pages of document production in response to multiple requests for production, interrogatories, requests for admission (and responses thereto); (v) researched and drafted oppositions to both EFG Bank's Motion to Dismiss and EFG Capital's Motion to Dismiss; (vi) conducted certification discovery and drafted a motion for class certification; (vii) took the depositions of six present and former officers and employees of EFG Capital, including its President and Chairman of the Board; (viii) defended the deposition of Plaintiff Lorrene da Silva Ferreira; (ix) engaged in extensive settlement negotiations, including two days of mediation; (x) prepared a comprehensive multi-media presentation in conjunction with the mediation sessions; and (xi) negotiated and drafted all of the critical settlement documents including the Memorandum of Settlement, the Settlement Stipulation, a proposed Preliminary Approval Order and the Notice. *See* Plaintiffs' Counsel's Declarations. Moreover, Plaintiffs' Counsel will spend additional time and resources in preparing reply papers in further



support of final approval of the Settlement, if necessary, and preparing for and attending the final approval hearing. Accordingly, the time and labor expended by Plaintiffs' Counsel here amply supports the requested fee.

**b. The magnitude and complexities of the litigation**

This was not an ordinary case. Settling Class Members were customers of EFG Capital, a small Florida-based brokerage firm affiliated with Switzerland-based EFG Bank, which offered non-U.S. residents the opportunity to invest with Madoff through Fairfield Sentry Limited ("Fairfield Sentry"). Over the years, Fairfield Sentry (and Madoff) was EFG Capital's largest hedge fund offering, earning it millions of dollars in fees from its customers as well as from Fairfield Sentry. EFG Capital purported to have conducted substantial due diligence analysis of Fairfield Sentry, as well as ongoing monitoring of its performance.

When the Madoff fraud was revealed, EFG Capital's customers, the Settling Class Members, lost substantial money. Recovery from the Madoff bankruptcy estate was impossible, as the Settling Class Members were not individual customers of Madoff. Recovery from Fairfield Sentry was problematic, as its assets fell woefully short of the aggregate losses of its limited partners worldwide, and it was not only subject to off-shore liquidation proceedings but also was a "clawback" target of the Madoff Trustee.

The Settling Class' broker, EFG Capital, denied any responsibility for its customers' losses, maintaining that any recovery for them must come from Fairfield Sentry. Two customers, Lorrene Da Silva Ferreira and Arlete Da Silva Ferreira, decided to challenge EFG Capital's disclaimer of any responsibility. Plaintiffs' Counsel, one of whom previously represented them in another (non-class action) matter, were retained to analyze EFG Capital's potential liability and to prosecute an action if warranted.

Plaintiffs' Counsel undertook the task. It immediately became apparent that the case, if brought, would be highly complex. Plaintiffs' Counsel conducted substantial research of the numerous legal issues raised: whether a duty existed from EFG Capital to its customers in this factual scenario; whether the duty had been breached; whether EFG Capital was responsible for the losses; whether SLUSA would bar the Action; whether class treatment of EFG Capital's customer claims was appropriate; and numerous other legal issues and hurdles. Plaintiffs' Counsel also consulted with and ultimately retained experts in the area of the due diligence required of financial advisors and banks in situations where the advisor or bank is sponsoring and selling hedge fund investments. Plaintiffs' Counsel also retained and consulted with experts regarding the standard for monitoring such hedge fund investments, and the appropriate response or action that should be taken when such monitoring reveals problems or potential problems.

Plaintiffs' Counsel was faced with an adversary that retained highly skilled counsel who aggressively defended the Action, thereby making the legal issues and factual discovery highly complex. The factual discovery included hundreds of hours spent reviewing EFG Capital's records, days of depositions, litigation of Swiss bank secrecy laws, and combating efforts of EFG Bank to slow discovery and delay the trial.

Plaintiffs' Counsel were successful in pursuing merits discovery at the same time as class discovery, and in obtaining a year 2011 discovery cut-off and trial date from the District Court Judge handling the case in the Southern District of Florida. As the discovery deadline approached, however, EFG Capital obtained an MDL transfer of the Action to this Court.

**c. The risks of the litigation**

Although Plaintiffs believe that this Action has significant merit, the risks of any litigation and the particular risks here make the prospect of a favorable verdict far from certain.

Also, as detailed in Plaintiffs' Motion for Final Approval of the Settlement, Plaintiff faced numerous challenges including, but certainly not limited to, the legal duties of EFG Capital to its customers, class certification, and EFG Capital's Motion to Dismiss on SLUSA grounds. Indeed, cases far less complex than this Action, including several Madoff related class actions, have been lost on motion, at trial, or on appeal. As stated in *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970):

It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs; in one case they recovered nothing and in the other they recovered less than the amount which had been offered in settlement.

The Second Circuit explicitly recognized that contingent counsel's "risk of litigation" is an important factor to be considered in making an appropriate fee award. As the Second Circuit explained in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470-71 (2d Cir. 1974):

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Here, victory certainly is not assured. Substantial legal and factual hurdles exist. While this Court previously held that SLUSA does not apply to similar common law claims arising from investments in Fairfield Sentry, other district courts have gone the other way, and the Second Circuit is considering the issue in another Madoff related case.<sup>3</sup> See *Backus v. Conn.*

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<sup>3</sup> The Second Circuit heard oral argument in *Barron v. Igochnikov* on March 1, 2011. Second Circuit Appellate Case Number: 10-1387.

*Cnty. Bank, N.A.*, 2009 WL 5184360, at \*5-\*6 (D. Conn. Dec. 23, 2009) (Dorsey, J.); *Barron v. Igolnikov*, 2010 WL 882890 (S.D.N.Y. March 10, 2010) (Griesa, J.); *In re Beacon Assocs. Litig.*, 2010 WL 3895582 (S.D.N.Y. Oct. 5, 2010) (Sand, J.); *In re J.P. Jeanneret Assocs., Inc.*, 2011 WL 335594, at \*33-\*34 (S.D.N.Y. Jan. 31, 2011) (McMahon, J.).

The outcome of the issue of whether EFG Capital had duties to the Settling Class is also less than clear. EFG Capital contends that the scope of any fiduciary duty depends upon the relationship of each Settling Class Member to EFG Capital -- which it also contends destroys the “commonality” element necessary to class treatment of the claims. Plaintiffs’ Counsel has developed a factual record showing that EFG Capital had undertaken several duties to those customers investing in Madoff through Fairfield Sentry, and treated its customers uniformly with respect to the Fairfield Sentry. The ultimate outcome of these -- and other -- legal issues cannot be predicted.

If the case goes to trial, there is no guarantee that a judge will not direct a verdict in EFG Capital’s favor, and no assurance that a jury will find the evidence compelling enough to warrant a verdict in favor of the Class.

The risks of prosecuting this Action are, therefore, substantial.

**d. The quality of representation**

The result achieved and the quality of the services provided are also important factors to be considered in determining the amount of reasonable attorneys’ fees under a percentage of the fee analysis. *See Goldberger*, 209 F.3d at 50. Despite the significant risk of no recovery in this Action, a substantial cash settlement, representing 16.7% of the Settling Class Members’ net losses, was secured for the Settling Class as a result of the legal representation provided by Plaintiffs’ Counsel.

From the outset of this Action, Plaintiffs' Counsel aggressively prosecuted it – pushing for merits discovery, pursuing it expeditiously with a number of motions to compel, obtaining and maintaining a trial date, and fully briefing class certification issues. As a result, Plaintiffs' Counsel uncovered facts relating to EFG Capital's knowledge of “red flags” that went far deeper than what had been alleged in other Madoff-related cases.

While Plaintiffs' Counsel were able to develop a factual record supporting the knowledge of red flags commonly alleged in other Madoff actions -- such as EFG Capital's knowledge of the publications questioning Madoff's supposed “split strike conversion” investment strategy, knowledge of Madoff's custody of the securities he was supposedly purchasing, and knowledge of the limitations of his two-person auditing firm -- Plaintiffs' Counsel also developed evidence of EFG Capital's knowledge of additional issues implicating Fairfield Sentry and Madoff. For example, through painstaking analysis of records and depositions, Plaintiffs' Counsel uncovered a very pointed and prescient internal analysis of Fairfield Sentry and Madoff by an EFG Bank employee, provided to EFG Bank's President, as well as to EFG Capital's Chairman. Plaintiffs' Counsel also discovered facts suggesting that EFG Bank was so wary of the Fairfield Sentry/Madoff investment that it placed worldwide limitations on the amount that it would lend to its customers using Fairfield Sentry as security. Plaintiffs' Counsel also learned that affiliates of EFG Capital attempted to limit their customers' exposure to Fairfield Sentry and Madoff. Without hesitation, Plaintiffs' Counsel believe their discovery efforts were critical to Settling Class Members recovering anything from EFG Capital.

The standing and prior experience of Plaintiffs' Counsel is relevant in determining fair compensation. *See, e.g. Grinnell*, 495 F.2d at 470. Plaintiffs' Counsel has extensive experience and expertise in complex litigation proceedings and class actions throughout the United States,

and were amply qualified to conduct this litigation. Plaintiffs' Counsel and their experiences include:

- (1) Lawrence A. Kellogg: Mr. Kellogg is a partner at Levine Kellogg Lehman Schneider + Grossman LLP. For over 31 years, Mr. Kellogg has acted as lead trial counsel in numerous complex commercial and securities cases tried to juries, judges and arbitrators. He has represented both plaintiffs and defendants in class actions, including the following:
  - (a) Culverhouse v. Paulson and Co., Inc.: Co-lead counsel in nationwide class action against hedge fund pending in U.S. District Court for the Southern District of Florida for breach of fiduciary duty and gross negligence.
  - (b) Cash 4 Titles: Co-lead counsel for Plaintiffs in class action against Bank of Bermuda in the U.S. District Court for the Southern District of Florida arising from the collapse of a Ponzi scheme. Net class recovery after settlement was over \$60 million.
  - (c) Cash 4 Titles II: Co-lead counsel for Plaintiffs in class action in the U.S. District Court for the Southern District of Florida against Leadenhall Bank & Trusts arising out of the collapse of a Ponzi scheme. Final judgment in favor of class in the amount of \$325 million.
  - (d) Hunter, et al. v. Citibank, N.A.: Lead defense counsel in a class action pending in the U.S. District Court for the Northern District of California. Case settled.
  - (e) Muscletech: Co-lead defense counsel in class action in Florida Circuit Court in Palm Beach County. Judgment in favor of Defendants.
  - (f) FPA Securities Litigation: Lead defense counsel in class action in Federal District Court in San Diego. Case settled.
  - (g) Smuckers: Lead defense counsel in three class actions in Florida Circuit Court in Miami-Dade County. Cases Settled.
- (2) Jason Kellogg: Mr. Kellogg practices complex commercial litigation at Levine Kellogg Lehman Schneider + Grossman LLP. Since 2004, Mr. Kellogg has edited the Florida section of the ABA's annual *Class Action Survey*, which is published as a

supplement to the *Newberg on Class Actions* treatise. He has represented both plaintiffs and defendants in class actions, including the following:

- (a) Culverhouse v. Paulson and Co., Inc.: Counsel in nationwide class action against hedge fund pending in U.S. District Court for the Southern District of Florida for breach of fiduciary duty and gross negligence.
- (b) Martinez v. Publix Super-Markets, Inc., Guerrero v. Target Corporation, Paugh v. Walgreen Co., Paugh v. Aldi, Inc.: Co-lead counsel in consumer class actions against honey retailers for false and deceptive trade practices.
- (3) Kevin Kinne: Mr. Kinne has 19 years of experience in complex commercial litigation and is a named partner at the Massachusetts law firm of Cohen Kinne Valicenti & Cook LLP. Mr. Kinne has successfully represented numerous investors, both in the United States and internationally, with respect to the types of claims being asserted in this case. Mr. Kinne also has been lead trial counsel on many commercial cases that have been successfully tried to juries.
- (4) Daniel Solin: Mr. Solin has extensive experience in complex domestic and international litigation matters. He has engaged in the practice of law in New York since 1966. Mr. Solin is a well known investor advocate and the author of a number of books about investing, including *The Smartest Investment Book You'll Ever Read*, *The Smartest 401(k) Book You'll Ever Read*, *The Smartest Retirement Book You'll Ever Read*. He testified before a congressional sub-committee on the unfairness of the mandatory arbitration system imposed on investors who do business with brokers who are members of FINRA.

As their resumes demonstrate, Plaintiffs' Counsel are highly experienced in complex litigation and class action proceedings. Plaintiffs' Counsel utilized and relied on this significant experience in achieving the Settlement.

The quality and vigor of opposing counsel is also important in evaluating the services rendered by plaintiffs' counsel. *See, e.g., In re Warner Communication Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985). Here, EFG Capital and EFG Bank were represented by experienced and aggressive counsel. The fact that Plaintiffs' Counsel achieved this Settlement for the

Settling Class in the face of substantial legal opposition further evidences the quality of their work.

**e. The requested fee in relation to the Settlement**

The fee request of 33% of the Gross Settlement Fund, with a resulting multiple of 2.42, is well within the percentage range that courts within the Second Circuit have awarded in other complex litigations. See, e.g., *Maley v. Del Global Technologies Corp.*, 186 F. Supp. 2d, 358, 370 (S.D.N.Y. 2002) (awarding 33.3% of \$11.5 million settlement fund); *Becher v. Long Island Lighting Co.*, 64 F. Supp. 2d 174, 182 (E.D.N.Y. 1999) (one-third of \$7.8 million is “well within the range accepted by courts in this circuit”); *In re Blech Sec. Litig.*, 94 Civ. 7696, 2002 WL 31720381 (S.D.N.Y. Dec. 4, 2002) (awarding 33.3% of \$2,795,000 settlement fund); *Berchin v. Gen. Dynamics Corp.*, No. 93 Civ. 1325, 1996 WL 465752, at \*2 (S.D.N.Y. Aug. 14, 1996) (awarding one third of first \$3 million); *Cohen v. Apache Corp.*, No. 89 Civ. 0076, 1993 WL 126560, at \*1 (S.D.N.Y. Apr. 21, 1993) (awarding 33.3% of \$6.75 million settlement fund). Under the percentage of recovery approach, the fee that Plaintiffs’ Counsel seek is fair and reasonable in litigation of this kind and consistent with the decisions of courts in this Circuit.

**f. Public policy considerations**

The Supreme Court has recognized that absent a class action, small claimants individually may lack the economic resources to vigorously litigate their rights. *Eisen v. Carlisle & Jacqueline*, 417 U.S. 156, 161 (1974). Attorneys, who take on class action matters (on a contingent fee basis) enabling litigants to pool their claims, provide a service to the judicial process. Public policy therefore supports the award of the attorneys’ fees requested.

For all of the reasons above, including the result achieved for the Settling Class, as well as the substantial efforts undertaken and considerable expenses advanced on a contingent basis in



a case with high risk, Plaintiffs' counsel respectfully request that the Court grant the request for an attorneys' fee award of 33% of the Gross Settlement Fund.

**3. The requested fee is reasonable under the lodestar "crosscheck"**

The Court may also consider, as a "cross-check," whether the requested fee determined under the percentage approach is consistent with an award that would result under the lodestar/multiplier approach. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) ("As a 'cross-check' to a percentage award, courts in this Circuit use the lodestar method").

The Second Circuit encourages the practice of performing this lodestar cross-check on the reasonableness of a fee award based on the percentage of recovery approach. When doing so, however, the hours documented "need not be exhaustively scrutinized." *Goldberger*, 209 F.3d at 50. The lodestar/multiplier method involves calculating the product of the number of hours worked and counsel's respective hourly rate, *i.e.*, the "lodestar," and adjusting the lodestar for contingency, risk and other factors by applying a "multiplier" to the lodestar. *Id.* at 47.

As set forth in Plaintiffs' Counsel's Declarations, Plaintiffs' Counsel in the aggregate expended 3,448.1 hours, resulting in total fees of \$1,063,149.50 in this Action.<sup>4</sup> The lodestar multiplier – the requested \$2,568,664.56 fee divided by Plaintiffs' Counsel lodestar -- is 2.42. A multiplier of 2.42 is well within the range of lodestar multipliers approved by courts in the

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<sup>4</sup> In computing the lodestar, the hourly billing rate to be applied is the "market rate," *i.e.*, the hourly rate that is normally charged in the community where counsel practices. *See, e.g., In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568 (7th Cir. 1992) ("[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order.") (holding that district court committed legal error by placing "a ceiling of \$175 on the hourly rates of all lawyers for the class, including lawyers whose regular billing rates were almost twice as high"). Here, the hourly rates charged by Plaintiffs' Counsel are consistent with the hourly rates charged in South Florida. *See* Declaration of Harvey W. Gurland, Jr., Esq. attached as **Exhibit 5**.

Second Circuit and further demonstrates the reasonableness of the requested fee. As Judge McMahan explained, “[l]oadstar multipliers of nearly 5 have been deemed ‘common’ by courts in this District.” *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 05 CIV 10240 CM, 2007 WL 2230177 (S.D.N.Y. 2007); *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (approving fee representing 14% of \$1.027 billion settlement representing a multiplier of 3.97, and noting that lodestar multiples between 3 and 4.5 are common); *In re Sumintomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y.1999) (awarding a 27.5% fee and finding multipliers of 3 to 4.5 to be common).

**B. Plaintiffs’ Counsel’s Request for Reimbursement of Expenses and Plaintiffs’ Request for an Incentive Award Should Be Granted**

Plaintiffs’ Counsel further request that the Court grant reimbursement of \$114,100.05 in litigation costs and expenses incurred by them in connection with the prosecution of this Action. *See* Plaintiffs’ Counsel’s Declarations, attached as Exhibits 2, 3, and 4. Likewise, Plaintiffs’ Counsel request an incentive award to Plaintiffs in the aggregate amount of \$25,000 for Plaintiffs’ representation of the Settling Class. *See* Lorrene Da Silva Ferreira’s Declaration (**Exhibit 6**). To date, no Settling Class Member has objected to the request for reimbursement of Plaintiffs’ Counsel’s or Plaintiffs’ expenses set forth in the Notice. The expenses incurred by Plaintiffs’ Counsel are detailed by category in the attachments accompanying Plaintiffs’ Counsel’s Declarations.

Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses. *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987). Plaintiffs’ Counsel further submits that these expenses, which include costs such as mediation fees, expert witness fees, electronic legal research, photocopying, postage, and travel expenses are the type for which “the paying, arms’ length market” reimburses

attorneys and should therefore be reimbursed from the Gross Settlement Fund. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004).

Plaintiffs' Counsel also seek an award to Plaintiffs in the aggregate amount of \$25,000 as an incentive award directly related to representation of the Settling Class. Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation. *See, e.g. Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y.2001) ("An incentive award is meant to compensate the named plaintiff for any personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit.") (internal citation omitted); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at \*6 (E.D. Pa. Dec. 1, 2004) (granting special award of \$20,000 to each named plaintiff for their work as class representatives); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming award of \$25,000 to named plaintiff).

Here, Plaintiffs are a mother and daughter residing in Uruguay. They were the only customers of EFG Capital with the fortitude to seek recovery of their losses from EFG Capital on behalf of the entire Settling Class, thereby subjecting themselves to the jurisdiction of the U.S. Court system. They also subjected themselves to intrusive discovery requests, including deposition. Their backgrounds, sophistication, intelligence, honesty and truthfulness were investigated and criticized. Lorrene Da Silva Ferreira regularly communicated with Plaintiffs' Counsel concerning the prosecution of this Action, reviewed and commented on important pleadings, consulted with Plaintiffs' Counsel regarding discovery, and traveled to the United States on multiple occasions for deposition and mediation. *See* Lorrene Da Silva Ferreira's Declaration. In sum, Plaintiffs performed an admirable duty, yet will share the recovery equally with the other EFG customers who did not lead this Settling Class or even participate in the

prosecution of this Action. As such, this reimbursement and compensation to the Plaintiffs is justified in light of Plaintiffs' devotion, on behalf of the Settling Class, to successfully prosecuting this Action and providing an overall benefit to the Settling Class.

Accordingly, Plaintiffs' Counsel's request for reimbursements of \$114,100.05 in litigation expenses and for awards to Plaintiffs in the aggregate amount of \$25,000, as compensation for Plaintiffs' services for the benefit of the Settling Class, should be granted.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Counsel's petition for an award of attorneys' fees and reimbursement of expenses and Plaintiffs' request for reimbursement of their expenses.

Dated: May 2, 2012.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 2, 2012, I served a true and correct copy of the foregoing via the CM/ECF system on all counsel or parties of record on the Service List below.

By /s/ Jason Kellogg  
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