UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANCO BRADESCO S.A. SECURITIES LITIGATION	Civil Case No. 1:16-cv-04155 (GHW) ECF CASE

NOTICE OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure 23(e) and 23(h) and this Court's Order Preliminarily Approving Settlement and Providing for Notice entered July 24, 2019 (ECF No. 197), and upon (i) the Declaration of Johnston de F. Whitman, Jr. in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and Certification of Settlement Class to Effectuate the Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses and the exhibits thereto ("Whitman Declaration"); (ii) the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Memorandum"); and (iii) all other papers and proceedings herein, Court-appointed Lead Counsel Kessler Topaz Meltzer & Check, LLP, on behalf of Plaintiffs' Counsel, will and do hereby move this Court, before the Honorable Gregory H. Woods, on November 13, 2019 at 4:15 p.m., in Courtroom 12C of the Daniel Patrick Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007, or at such other location and time as set by the Court, for entry of an Order awarding attorneys' fees and expenses. A proposed Order granting the requested relief will be submitted with Lead Counsel's reply submissions after the deadline for objecting to the motion has passed.

As explained in more detail in the accompanying Whitman Declaration and Memorandum, Lead Counsel respectfully requests that the Court approve an award of attorneys' fees in the amount of 25% of the $14.5 million Settlement Amount, plus interest. That requested amount would be allocated as follows: (i) 72% to Lead Counsel Kessler Topaz Meltzer & Check, LLP; (ii) 18% to Liaison Counsel Labaton Sucharow LLP; and (iii) 10% to Gadow Tyler, PLLC. Lead Counsel further requests that the Court award reimbursement of Plaintiffs' Counsel's expenses in the amount of $743,507.30. Finally, Lead Counsel respectfully requests reimbursement to Lead Plaintiff and Boilermaker-Blacksmith National Pension Trust as follows: $37,638.75 to Lead Plaintiff Public Employees' Retirement System of Mississippi; and $7,605.61 to Boilermaker-Blacksmith National Pension Trust, for an aggregate of $45,244.36.

Dated: October 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Johnston de F. Whitman, Jr.
Johnston de F. Whitman, Jr.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE BANCO BRADESCO S.A. SECURITIES LITIGATION	Civil Case No. 1:16-cv-04155 (GHW) ECF CASE

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

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure ("Rules"), Court-appointed Lead Counsel Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz" or "Lead Counsel"), on behalf of Plaintiffs' Counsel,[1] respectfully submits this memorandum of law in support of its motion for: (i) an award of attorneys' fees in the amount of 25% of the Settlement Fund;[2] (ii) payment from the Settlement Fund of $743,507.30 for Litigation Expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving the Action; and (iii) awards of $37,638.75 to Court-appointed Lead Plaintiff Public Employees' Retirement System of Mississippi ("MPERS" or "Lead Plaintiff") and $7,605.61 to additional proposed class representative Boilermaker-Blacksmith National Pension Trust ("Boilermaker-Blacksmith") for their respective costs, as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA").

I. PRELIMINARY STATEMENT

After nearly three years of dedicated litigation efforts, Lead Counsel has successfully negotiated a settlement of this securities class action with defendants Banco Bradesco S.A. ("Bradesco" or the "Company"), Luiz Carlos Trabuco Cappi ("Trabuco"), and Luiz Carlos

[1] References herein to "Plaintiffs' Counsel" are to Kessler Topaz, along with Court-appointed Liaison Counsel, Labaton Sucharow LLP ("Labaton"), and additional counsel for Lead Plaintiff, Gadow Tyler PLLC ("Gadow Tyler"). All other capitalized terms used herein have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated July 1, 2019 (ECF No. 189-1) ("Stipulation") or in the Declaration of Johnston de F. Whitman, Jr. in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Whitman Declaration" or "Whitman Decl."), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Whitman Declaration and citations to "Ex. __" herein refer to exhibits to the Whitman Declaration. Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[2] The requested amount would be allocated as follows: (i) 72% to Lead Counsel Kessler Topaz; (ii) 18% to Liaison Counsel Labaton; and (iii) 10% to Gadow Tyler.

Angelotti ("Angelotti") (collectively, "Defendants").[3] The proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for $14.5 million in cash for the Settlement Class. As discussed in Lead Plaintiff's accompanying submissions, the Settlement provides meaningful compensation to the Settlement Class while avoiding the substantial risks and delays of continued litigation. Indeed, the Settlement represents a substantial portion of the Settlement Class's alleged damages as estimated by Lead Plaintiff's damages consultant—ranging from $34.3 million to $179.1 million under various potential litigation outcomes.[4]

The benefits of the Settlement are clear when weighed against the risks that the Settlement Class might recover less than the Settlement Amount (or nothing) after further litigation. Lead Plaintiff faced significant risks to overcoming Defendants' anticipated challenges to liability and damages at summary judgment and trial. For example, had the Action continued, Defendants would have argued, as they did throughout the case, that Lead Plaintiff would be unable to demonstrate that Defendants knowingly or recklessly negotiated and/or offered bribes to Brazilian

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[3] In instances where the term "defendants" is not capitalized, it refers to Bradesco, Trabuco, Angelotti and Domingos Figueiredo de Abreu ("Abreu") and in instances were Defendant is capitalized, the term refers to Bradesco, Trabuco and Angelotti. Similarly, in instances where the term "parties" is not capitalized, it refers to Lead Plaintiff, Bradesco, Trabuco, Angelotti and Abreu and in instances where Parties is capitalized, the term refers to Lead Plaintiff, Bradesco, Trabuco and Angelotti.

[4] More specifically, Lead Plaintiff's damages consultant estimated aggregate damages to be $130 million to $179.1 million based upon Lead Plaintiff's ability to prove damages for *all* four corrective disclosures alleged in the Action, and $34.3 million to $65.5 million when taking into consideration certain hurdles to establishing damages and loss causation at summary judgment and/or trial. The Settlement represents a sizable percentage of both damages ranges when compared to the median recovery amounts in other recent securities class actions. *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, Jan. 29, 2019, https://www.nera.com/content/dam/nera/publications/2019/PUB_Year_End_Trends_012819_Final.pdf, at 35 (finding median settlement between 1996 and 2018 in securities cases with investor losses between $20 million and $49 million recovered 8.4% of investor losses; between $50 million and $99 million recovered 4.7% of investor losses; and between $100 million and $199 million recovered 3.1% of investor losses).

tax officials in exchange for tax benefits to Bradesco. Relatedly, if Lead Plaintiff was unable to obtain sufficient admissible evidence to demonstrate that Defendants knowingly or recklessly negotiated and/or offered bribes in exchange for tax benefits to Bradesco, then Lead Plaintiff would have been unable to prove that Defendants' statements about Bradesco's code of ethics and anti-corruption policies were materially false or misleading. ¶¶ 122-30.

Lead Plaintiff also faced challenges to proving the Settlement Class's full amount of damages. In opposing Lead Plaintiff's motion for class certification (ECF Nos. 137-38) ("Motion to Certify"), Defendants contended that the misrepresentations and omissions alleged by Lead Plaintiff did not impact (or artificially inflate) the price of Bradesco PADS at the time that they were made, and that the price declines in Bradesco PADS following the alleged corrective disclosures on March 26, 2015, May 20, 2015, May 31, 2016, and July 27, 2016 could not have removed any inflation attributable to the alleged fraud. Defendants further argued that the declines in the price of Bradesco PADS following the alleged disclosures on March 26, 2015, May 20, 2015, and July 27, 2016 were not statistically significant and that the price decline following the alleged disclosure on May 31, 2016, while statistically significant, resulted from uncertainty concerning Defendant Trabuco's future tenure with Bradesco in light of the criminal charges announced against him that day and not from the correction of previous misstatements. If Lead Plaintiff were to lose one or more of the alleged corrective disclosures as the litigation progressed, the Settlement Class's potentially recoverable damages would be severely reduced. ¶¶ 131-36. Additionally, at the time the Settlement was reached, the Parties were preparing for an evidentiary hearing to inform the Court's decision of the Motion to Certify. In opposing this motion, Defendants also advanced multiple arguments to rebut the fraud-on-the-market presumption of

reliance in this case that could have significantly narrowed the Settlement Class Period or precluded class certification altogether. ¶ 120.

In the face of these risks—as well as the fully contingent nature of the case—Lead Counsel devoted substantial resources to prosecuting the Action against highly-skilled opposing counsel in order to achieve the Settlement. As detailed in the Whitman Declaration, Lead Counsel, along with the other Plaintiffs' Counsel firms, vigorously pursued the Action by, among other things: (i) conducting an extensive investigation into the Settlement Class's claims; (ii) researching and drafting the detailed Amended Complaint; (iii) opposing Defendants' motion to dismiss; (iv) engaging in hotly-contested discovery, which included numerous negotiations with Defendants regarding the scope and volume of discovery and the review of more than 68,000 pages of documents and 79 audio recordings produced by Defendants; (v) seeking documents from multiple Brazilian authorities and entities by means of Court-authorized Letters of Request pursuant to the Hague Convention; (vi) retaining and consulting with an economic expert in connection with class certification proceedings; (vii) briefing the Motion to Certify and a related motion for leave to add Boilermaker-Blacksmith as an additional class representative; (viii) defending depositions of the proposed class representatives; (ix) deposing Defendants' class certification expert and defending the deposition of Lead Plaintiff's class certification expert; (x) commencing preparation for a two-day evidentiary hearing and oral argument related to the Motion to Certify; (xi) engaging in a hard-fought, arm's-length mediation session facilitated by Jed D. Melnick, Esq. of JAMS and The Weinstein Melnick Team, including pre-mediation briefing and expert damages analyses; (xii) negotiating the final terms of the Settlement with Defendants; and

(xiii) drafting, finalizing, and filing the Stipulation and related Settlement documents. ¶¶ 6, 25-114.[5] *See also* Section II.C.1 below.

Through July 19, 2019, Plaintiffs' Counsel have devoted over 10,485 hours, with a resulting lodestar of $5,687,442.25, to the investigation, prosecution, and resolution of the Action. ¶¶ 152, 163. Here, unlike in most cases where counsel seek a fee which exceeds their lodestar, *see, e.g., Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2015) ("[c]ourts regularly award lodestar multipliers from 2 to 6 times lodestar in this Circuit"), Lead Counsel's fee request is *substantially less than* the total lodestar value of the time that Plaintiffs' Counsel dedicated to the Action.[6] It is against this backdrop that Lead Counsel respectfully submits its request for a fee award of 25% of the Settlement Fund pursuant to a written retainer agreement entered into with Lead Plaintiff at the outset of the litigation. Lead Plaintiff MPERS—a sophisticated institutional investor that actively supervised the Action—has endorsed Lead Counsel's fee request.[7]

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[5] The Whitman Declaration is an integral part of this submission and, for the sake of brevity in this Memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the nature of the claims asserted (¶¶ 13-23); the procedural history of the Action (¶¶ 24-107); the Settlement negotiations (¶¶ 108-14); the risks of continued litigation (¶¶ 118-36); and the services Plaintiffs' Counsel provided for the benefit of the Settlement Class (¶¶ 24-107, 160-63).

[6] *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("a positive multiplier is typically applied to the lodestar in recognition of the risk of litigation, the complexity of the issues, the contingent nature of the engagements, the skill of the attorneys, and other factors"); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

[7] *See* Declaration of Jacqueline Ray, Esq. on behalf of MPERS ("Ray Declaration"), attached as Exhibit 1 to the Whitman Declaration, ¶ 12. *See also In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *8 (S.D.N.Y. Nov. 7, 2007) ("public policy considerations support the award in this case because Lead Plaintiff . . . —a larger public pension fund—conscientiously supervised the work of lead counsel and has approved the fee request"); *Comverse*, 2010 WL 2653354, at *4 ("an *ex ante* fee agreement is the best indication of the actual market value of counsel's services").

Pursuant to the Court's Preliminary Approval Order, more than 47,300 Postcard Notices have been disseminated to prospective Settlement Class Members and nominees as of October 7, 2019, and the Summary Notice was published in *Investor's Business Daily* and transmitted over *PR Newswire*.[8] The Postcard Notice, along with the long-form Notice posted on the Settlement Website, advised recipients that Lead Counsel would be applying to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund, and payment of Litigation Expenses in an amount not to exceed $1.1 million. The fees and expenses that Lead Counsel now request do not exceed these amounts. The notices further inform Settlement Class Members that they can object to the requests for attorneys' fees and expenses until October 23, 2019. Ex. 3, Exs. A & B. While the deadline to object has not yet passed, to date, no objections to the amount of attorneys' fees and expenses set forth in the Postcard and long-form Notices have been received. ¶ 151.[9]

For the reasons discussed herein, Lead Counsel respectfully submits that the requested fee is fair and reasonable, particularly in light of the favorable recovery obtained for the Settlement Class and the fact that such an award is considerably less than the lodestar incurred by Plaintiffs' Counsel in litigating the Action. In addition, Lead Counsel also respectfully submits that the Litigation Expenses for which it seeks payment were reasonable and necessary for the successful prosecution of the Action and that the requests for reimbursement to Lead Plaintiff and Boilermaker-Blacksmith pursuant to the PSLRA for the time they dedicated to the Action on behalf of the Settlement Class are likewise reasonable and appropriate.

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[8] *See* Declaration of Ed Barrero on behalf of the Court-authorized Claims Administrator Epiq Class Action & Claims Solutions, Inc. ("Epiq") attached as Exhibit 3 to the Whitman Declaration, ¶¶ 16-17.

[9] Lead Counsel will address any objections received after this submission in its reply submissions to be filed on November 6, 2019.

Accordingly, Lead Counsel respectfully submits that its motion for attorneys' fees and expenses should be granted in full.

II. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES IS REASONABLE AND SHOULD BE APPROVED

A. Counsel Is Entitled to a Reasonable Fee Award from the Common Fund

The propriety of awarding attorneys' fees from a common fund is well established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) ("the attorneys whose efforts created the [common] fund are entitled to a reasonable fee – set by the court – to be taken from the fund"). This Circuit has noted that "[t]he rationale for the [common fund] doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." *Goldberger*, 209 F.3d at 47.

Further, courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future misconduct of a similar nature." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014), *aff'd, Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015). The Supreme Court has emphasized that private securities actions, such as this Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" by the DOJ and SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Compensating plaintiffs' counsel for their risks is crucial, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

In the Second Circuit, courts "may award attorneys' fees in common fund cases under either the lodestar method or the percentage of the fund method." *McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("*Visa*"). Ultimately, the determination of a reasonable fee award from a common fund rests in the sound discretion of the Court, acting as a fiduciary for the class. *Goldberger*, 209 F.3d at 47, 52.

B. The Requested Fee is Reasonable Under Either the Percentage of the Fund or Lodestar Method

Here, whether assessed under the percentage of the fund or lodestar method, Lead Counsel's 25% fee request—which, if approved, would yield a negative "multiplier" on Plaintiffs' Counsel's lodestar—is fair and reasonable and warrants approval by the Court.

1. The Fee Request is Reasonable Under the Percentage Method

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. As noted above, the Second Circuit has approved the percentage method for awarding fees, recognizing that the "trend in this Circuit is toward the percentage method" and that this method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Visa*, 396 F.3d at 121; *see also Goldberger*, 209 F.3d at 48-50 (holding either percentage of fund method or lodestar method may be used to determine fees, but "lodestar method proved vexing" and results in "inevitable waste of judicial resources"); *Fleisher*, 2015 WL 10847814, at *14 ("[T]he percentage method continues to be the trend of district courts in this Circuit and has been adopted in the vast majority of circuits.") (alteration in the original).[10]

[10] Other circuits have also endorsed the percentage method. *See, e.g., In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir.

Lead Counsel's present request for attorneys' fees is fair and reasonable under the percentage method. Courts in the Second Circuit routinely award attorneys' fees of 25% of the settlement fund or greater. *See In re BioScrip, Inc. Secs. Litig.*, 273 F. Supp. 3d 474, 496 (S.D.N.Y. 2017) (25% fee request "falls within the range of percentages regularly awarded in analogous common fund cases"); *Velez v. Novartis*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (noting trend of awarding 20-50 percent of recovery and finding fee of one-third to be "fair and reasonable in relation to the recovery and compares favorably to fee awards in other risky common fund cases in this Circuit and elsewhere"). Indeed, ample precedent exists in this Circuit for granting fees in securities class actions and other similar litigation that are equal to or greater than the fee requested here, where the recovery obtained is of comparable size. *See, e.g.*, *Merryman et al. v. Citigroup, Inc. et al.*, Civil Action No. 1:15-cv-09185-CM-KNF, slip op. at 3 (ECF No. 158) (S.D.N.Y. July 12, 2019) (awarding 33⅓% of $14.75 million fund); *Xiang v. Inovalon Holdings, Inc. et al.*, Civil Action No. 1:16-cv-04923, slip op. at 4 (ECF No. 190) (S.D.N.Y. July 15, 2019) (awarding 27% of $17 million fund); *Bernacchi v. Investment Technology Group, Inc. et al.*, No. 15 Civ. 6369 (JFK), slip op. at 4 (ECF No. 128) (S.D.N.Y. Feb. 21, 2019) (awarding 25% of $18 million fund); *In re China Media Express Holdings, Inc. S'holder Litig.*, 2015 WL 13639423, at *1 (S.D.N.Y.

1995); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988). The Eleventh and District of Columbia Circuits require the use of the percentage method in common fund cases. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). In *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984), the Supreme Court recognized that under the "common fund doctrine" a reasonable fee may be "based on a percentage of the fund bestowed to the class."

Sept. 18, 2015) (awarding 33.3% of $12 million fund); *City of Providence*, 2014 WL 1883494, at *20 (awarding 33% of $15 million fund); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2011) (awarding 33% of $13 million fund); *Taft v. Ackermans*, 2007 WL 414493, at *1, 11 (S.D.N.Y. Jan. 31, 2007) (awarding 30% of $15.175 million fund); *In re Ashanti Goldfields Sec. Litig.*, 2005 WL 3050284, at *6 (E.D.N.Y. Nov. 15, 2005) (awarding 27.5% of $15 million fund).[11]

2. The Fee Request is Reasonable Under the Lodestar Method

To ensure the reasonableness of a fee awarded under the percentage of the fund method, district courts may cross check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50; *see also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019) (employing cross-check and noting "Second Circuit encourage[s] the practice of requiring documentation of hours as a cross check on the reasonableness of the requested percentage") (alteration in original); *Novartis*, 2010 WL 4877852, at *22 (employing lodestar cross-check and noting "if a percentage of fund figure compares favorably with a lodestar that uses reasonable hourly rates and a reasonable multiplier, it tends to validate the percentage of funds figure").

The work undertaken by Plaintiffs' Counsel wholly supports the requested fee. As detailed herein and in the Whitman Declaration (and the exhibits attached thereto), Plaintiffs' Counsel devoted substantial effort to advancing this Action in the face of highly-skilled defense attorneys over the course of nearly three years. ¶¶ 6, 25-114. Further, should the Court approve the Settlement, Lead Counsel will continue to perform legal work on behalf of the Settlement Class.

[11] Additionally, a recent analysis by NERA Economic Consulting of securities class action settlements found that between 2012 and 2017, the median attorneys' fee award was 25% for settlements between $10 million and $25 million. *See* Svetlana Starykh and Stefan Boettrich, *Recent Trends in Securities Class Action Litigation*: 2017 Full-Year Review, at 42 (NERA Jan. 29, 2018).

Lead Counsel will expend additional resources assisting Settlement Class Members with their Claim Forms and related inquires and working with the Claims Administrator, Epiq, to ensure the smooth progression of claims processing and distribution of the Net Settlement Fund. ¶ 163 n.22. No additional legal fees will be sought for this work. *See Willix v. Healthfirst, Inc*., 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward also supports their fee request.").[12]

Plaintiffs' Counsel spent over 10,485 hours of attorney and other professional support time prosecuting the Action on behalf of the Settlement Class through July 19, 2019. ¶¶ 152, 163. Based on these hours, Plaintiffs' Counsel's lodestar as of July 19, 2019 is $5,687,442.25. *Id*.; *see also* Fee and Expenses Declarations submitted on behalf of Kessler Topaz, Labaton, and Gadow Tyler attached to the Whitman Declaration as Exhibits 4, 5 and 6, respectively. Accordingly, the 25% fee request represents a negative "multiplier" of approximately 0.64 on the lodestar value of Plaintiffs' Counsel time. ¶¶ 152, 163.

Pursuant to the lodestar method, after an analysis of counsel's lodestar, a positive multiplier may be awarded to account for the contingency-fee risk incurred by counsel and other relevant factors, including the quality of the representation. *See, e.g., In re IndyMac Mortg.-Backed Sec. Litig*., 94 F. Supp. 3d 517, 521 (S.D.N.Y. 2015), *aff'd, Devalerio v. Olinski*, 673 F. App'x. 87 (2d Cir. 2016). Fee awards in class actions with substantial contingency risks generally represent

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[12] *See also In re Facebook, Inc. IPO Sec. and Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) (in awarding fee of 33% of a $26.5 million settlement fund, amounting to a lodestar multiplier of 1.02, court observed that "the work in [the] matter [was] not yet concluded for [p]laintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims" supported the reasonableness of the award).

positive multipliers of counsel's lodestar, and lodestar multipliers between 2 and 6 are commonly awarded. *See, e.g., Fleisher*, 2015 WL 10847814, at *18; *Visa*, 396 F. 3d at 123 (upholding a multiplier of 3.5 as reasonable on appeal); *BioScrip*, 273 F. Supp. 3d at 497 ("There is no question that Lead Counsel's lodestar multiplier of 1.39 is at the lower range of comparable awards in common fund cases."); *Pepsi*, 363 F. Supp. 3d at 411 (approving 1.94 multiplier). Here, the resulting *negative* multiplier is below the parameters used throughout district courts in the Second Circuit and is additional evidence that the requested fee is reasonable. *See, e.g., In re Bear Stearns Cos. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (approving fee with a negative multiplier and noting that the negative multiplier was a "strong indication of the reasonableness of the [requested] fee"); *In re Marsh & McLennan, Inc. Sec. Litig.*, 2009 WL 5178546, at *20 (S.D.N.Y. Dec. 23, 2009) (reasoning that where the multiplier is negative, the lodestar cross-check "unquestionably supports the requested percentage fee award"); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 515 (S.D.N.Y. 2009) (finding "no real danger of over-compensation" given that requested fee represented discount to counsel's lodestar).

Moreover, in conducting a lodestar analysis, the appropriate hourly rates to use are those rates that are "normally charged in the community where the counsel practices, i.e., the market rate." *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *17 n.6 (S.D.N.Y. July 27, 2007); *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("[t]he 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") (second alteration in original).[13] The

[13] The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *In re HiCrush Partners LP Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) ("the use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the

accompanying Fee and Expense Declarations set forth the hourly rates Plaintiffs' Counsel utilized in calculating their lodestar. Plaintiffs' Counsel's hourly rates range from: (i) $500 to $975 per hour for partners; (ii) $325 to $690 per hour for other attorneys; (iii) $275 to $340 per hour for paralegals and law clerks; and (iv) $285 to $465 per hour for in-house investigators. ¶ 162; *see also* Ex. 4-A; Ex. 5-A; and Ex. 6-A. Courts in this District have found similar rates to be fair and reasonable market rates for complex litigations. *See, e.g., Woburn Ret. Sys. v. Salix Pharm., Ltd.*, 2017 WL 3579892, at *5 (S.D.N.Y. Aug. 18, 2017) (approving partner hourly rates up to $995); *Rudman v. CHC Grp. Ltd.*, 2018 WL 3594828, at *3 (S.D.N.Y. July 24, 2018) (finding hourly rates ranging from $210 to $985 appropriate for class counsel); *In re Platinum & Palladium Commodities Litig.*, 2015 WL 4560206, at *3-4 (S.D.N.Y. July 7, 2015) (approving hourly rates ranging from $250 to $950).[14]

In sum, Lead Counsel's requested fee award is reasonable, justified, and within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage of the fund or as a cross-check on counsel's lodestar. As discussed below, each of the factors considered by courts in the Second Circuit also weighs in favor of finding that the requested fee is reasonable.

Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation").

[14] Plaintiffs' Counsel's hourly rates are also reasonable when compared to prevailing rates of defense firms specializing in complex litigation. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 589 (S.D.N.Y. 2008) ("[p]erhaps the best indicator of the 'market rate' in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that defend class actions on a regular basis") (emphasis omitted). Indeed, Defendants' counsel in this Action, Sullivan & Cromwell LLP, reported hourly rates ranging from $350+ per hour (for paraprofessionals) to $1,435 per hour (for partners) in a recent bankruptcy filing. *See In re Ascent Resources Marcellus Holdings, LLC, et al.*, Case No. 18-10265 (LSS), ECF No. 144 (Bankr. Del. April 10, 2018).

C. The *Goldberger* Factors Confirm that the Requested Fee is Reasonable

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (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 demonstrated below, each of these factors confirms that the requested fee is fair and reasonable.

1. The Time and Labor Expended Support the Requested Fee

The substantial time and effort expended by Plaintiffs' Counsel in prosecuting this Action and achieving the Settlement supports the requested fee. As set forth in greater detail in the Whitman Declaration, Lead Counsel and the other Plaintiffs' Counsel firms, among other things:

- conducted a significant legal and factual investigation into the Settlement Class's claims, which included review of: (i) the Criminal Complaint and related criminal court filings with the assistance of a Portuguese-language document reviewer and Brazilian Counsel; (ii) Bradesco's public filings with the SEC and its Brazilian counterpart, CVM; (iii) press releases and other public statements by defendants; (iv) securities analysts' reports about Bradesco; (v) media and news reports related to Bradesco; and (vi) data and other information regarding Bradesco PADS (¶ 33);

- researched and drafted the detailed Amended Complaint based on Lead Counsel's investigation (¶ 34);

- opposed Defendants' motion to dismiss the Amended Complaint, which included additional briefing in response to defendants' letter informing the Court of the Brazilian Court of Appeal's dismissal of the criminal charges against Defendant Trabuco (¶¶ 35-46);

- engaged in hotly-contested discovery, which included participating in numerous negotiations with Defendants regarding the scope and volume of discovery and the review and analysis of more than 68,000 pages of documents and 79 audio recordings, predominantly in Portuguese, produced by Defendants (¶¶ 54-62);

- sought documents from multiple Brazilian authorities and entities by means of Court-authorized Letters of Request pursuant to the Hague Convention (¶¶ 63-75);

- assisted Plaintiffs in responding to Defendants' discovery requests (¶¶ 80-82);
- retained and consulted with an economic expert in connection with class certification proceedings (¶¶ 88-89);
- briefed the Motion to Certify and a related motion for leave to add Boilermaker-Blacksmith as an additional class representative (¶¶ 90-107);
- defended depositions of the proposed class representatives (¶¶ 83-87);
- deposed Defendants' class certification expert and defended the deposition of Lead Plaintiff's class certification expert (¶ 88);
- commenced preparation for a two-day evidentiary hearing and oral argument related to the Motion to Certify (¶¶ 6, 160);
- engaged in a hard-fought, arm's-length mediation facilitated by Jed D. Melnick, Esq., including pre-mediation briefing and expert damages analyses (¶¶ 108-12); and
- negotiated the final terms of the Settlement with Defendants and drafted, finalized, and filed the Stipulation and related Settlement documents (¶¶ 113-16).

As noted above, Plaintiffs' Counsel have expended over 10,485 hours prosecuting this Action with a lodestar value of $5,687,442.25. This time and effort was critical in obtaining the favorable result represented by the Settlement and confirms that the fee request here is reasonable.

2. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the litigation is another factor that courts examine when evaluating the reasonableness of attorneys' fees requested by class counsel. Courts have recognized that securities class action litigation is "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27. Indeed, "[t]he very nature of a securities fraud case demands a difficult level of proof to establish liability" and "[e]lements such as scienter, reliance, and materiality of misrepresentation are notoriously difficult to establish." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009). This case was no exception.

As the Court is aware, this Action involved a number of complex and disputed questions of law and fact that placed the ultimate outcome of the case in doubt. As detailed below and in the Whitman Declaration, Lead Counsel and Lead Plaintiff faced significant risks to obtaining class certification as well as to proving Defendants' liability, loss causation and damages. ¶¶ 118-36. Moreover, to build Lead Plaintiff's case, Lead Counsel dedicated substantial time to its investigation into the Settlement Class's claims in order to gain a firm understanding of the underlying facts in this matter, including the intricacies of Brazilian tax laws and court proceedings, as well as to obtaining valuable discovery (including seeking documents pursuant to the Hague Convention) and consulting with experts. ¶¶ 33, 63-75, 88-89. *See City of Providence*, 2014 WL 1883494, at *16 (finding the second *Goldberger* factor to favor settlement where case involved "difficult, complex, hotly-disputed and expert-intensive issues"). Thus, the magnitude and complexity of this Action clearly supports the requested fee.

3. The Risk of the Litigation Supports the Fee Request

"Courts have repeatedly recognized that 'the risk of litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions." *Telik*, 576 F. Supp. 2d at 592. For this reason, the Second Circuit has found "[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of the multiplier." *McDaniel*, 595 F.3d at 424; *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 361 (E.D.N.Y. 2010) ("[t]he risk of the litigation is often cited as the first, and most important, Goldberger factor"). While Lead Counsel believes that Lead Plaintiff's claims are meritorious, Lead Counsel recognized that there were a number of significant risks inherent in this Action from the outset and that Lead Plaintiff's ability to succeed at trial and obtain a substantial judgment was far from certain.

As discussed in detail in the Whitman Declaration and the Settlement Memorandum, and as summarized herein, there were real risks to Lead Plaintiff's ultimate success in the Action. ¶¶ 118-36. *First*, Lead Plaintiff faced substantial challenges to establishing liability. To this end, Lead Plaintiff would be required to show that Defendants' statements were materially false or misleading when made. The primary basis upon which Lead Plaintiff alleged that the statements at issue were false or misleading was that the statements were made at the very same time that Bradesco personnel, including Defendants Trabuco and Angelotti, were allegedly offering and/or negotiating bribe payments to Brazilian tax officials—conduct that directly violated Bradesco's code of ethics and anti-corruption policies. If, however, Lead Plaintiff was unable to obtain, through discovery, sufficient admissible evidence to demonstrate that Defendants knowingly or recklessly negotiated and/or offered bribe payments in exchange for tax benefits flowing to Bradesco, then Lead Plaintiff would be unlikely to prove that Defendants' statements about Bradesco's code of ethics and anti-corruption policies were materially false or misleading. ¶¶ 128-30. Further, with respect to scienter, Defendants vigorously argued that Lead Plaintiff would be unable to establish that any of the alleged misstatements was made with the requisite intent. In support, Defendants would argue, among other things, that: (i) no regulator in the United States had found that Bradesco or any of the other Defendants had engaged in wrongdoing; (ii) the Brazilian authorities, in conducting Operation Zealots, did not obtain directly any documents or intercept telephone or e-mail communications from any Bradesco personnel; and (iii) the alleged 2014 scheme to pay bribes to CARF officials was never consummated, as no bribe was ever paid. ¶¶ 122-27.

Second, Lead Plaintiff faced formidable challenges with respect to proving loss causation and damages. ¶¶ 131-36. On these issues, Lead Plaintiff would ultimately have to prove (through

expert testimony) that the revelation of the alleged fraud through the partial corrective disclosures made on March 26, 2015, May 20, 2015, May 31, 2016, and July 27, 2016 proximately caused the substantial declines in the price of Bradesco PADS on each of those days (and/or the following days), and that other information released and absorbed by the market on those days played little or no role in the price declines. ¶ 131. Defendants, on the other hand, would have argued (with the assistance of their experts) that Lead Plaintiff could not prove that the declines in the price of Bradesco PADS upon the alleged partial corrective disclosures were statistically significant and/or resulted from the disclosure of any previously misrepresented or concealed fact. ¶ 132. Clearly, loss causation and damages would be hotly contested and these issues would ultimately come down to a battle of the experts. *See City of Providence*, 2014 WL 1883494, at *9 ("Undoubtedly, the Parties' competing expert testimony on damages would inevitably reduce the trial of these issues to a risky 'battle of the experts' and the 'jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable.'"); *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 665 (S.D.N.Y. 2015) ("On the issue of damages, a trial would likely have turned heavily on a 'battle of the experts' between the parties' respective economists. It is impossible to predict which party's model of damages—if either—the jury would credit.").

Finally, when the Parties reached their agreement-in-principle to resolve the Action, Lead Plaintiff's Motion to Certify was set for an evidentiary hearing. An adverse ruling on this motion could have precluded Lead Plaintiff from obtaining any recovery for other members of the Settlement Class. ¶ 120.

In addition to the litigation risks unique to this case, courts also consider the risks associated with attorneys undertaking a case on a contingency fee basis in determining a fee award. *Comverse*,

2010 WL 2653354, at *5 ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation."); *see also In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take [contingent-fee] risk into account in determining the appropriate fee.").[15] Here, Plaintiffs' Counsel have received no compensation during the three years this Action has been ongoing, while investing $5,687,442.25 in time and $743,507.30 in expenses. ¶¶ 152, 156. Additional work in connection with the Settlement and administration will still be required. Further, any fee award to Plaintiffs' Counsel has always been at risk, and completely contingent on the result achieved and on this Court's discretion in awarding fees and expenses. And, unlike defense counsel—who typically receive payment of their fees and expenses on a timely basis whether they win or lose—Plaintiffs' Counsel bore the entire risk that they would have to fund the expenses of this Action and that, unless the Action was successful, they would not be entitled to any compensation whatsoever.[16]

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[15] "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." *City of Detroit v. Grinnell Corp*., 495 F.2d 448, 470 (2d Cir. 1974).

[16] The commencement of a class action is no guarantee of success; these cases are not always settled, nor are a plaintiff's lawyers always successful. "Indeed, the risk of non-payment in complex cases, such as this one, is very real. There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. There is no guarantee of reaching trial, and even a victory at trial does not guarantee recovery." *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *22 (S.D.N.Y. Mar. 24, 2014); *see e.g., In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009); *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight years of litigation, and after plaintiffs' counsel had incurred over $6 million in expenses and a lodestar of approximately $48 million (based on over 100,000 hours of time)); *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501, 504 (2d Cir. 2010) (affirming summary judgment in favor of defendants on loss causation grounds); *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (granting defendants' judgment as a matter of law following plaintiff verdict); *In re JDS Uniphase Corp. Sec. Litig.*, No. 4:02-cv-01486-CW (N.D. Cal. Nov. 27, 2007), ECF No. 1883 (verdict for defendants); *Robbins v. Koger Props. Inc.*, 116 F.3d 1441, 1443 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal).

4. The Quality of Counsel's Representation Supports the Fee Request

The quality of counsel's representation is another important factor that supports the reasonableness of Lead Counsel's fee request. This factor "is best measured by results," which "may be calculated by comparing the extent of possible recovery with the amount of actual verdict or settlement." *Goldberger*, 209 F.3d at 55. Here, Plaintiffs' Counsel prosecuted the Action vigorously, provided high-quality legal services, and obtained a favorable result for the Settlement Class. Notably, the Settlement represents a substantial portion of the Settlement Class's damages as estimated by Lead Plaintiff's damages consultant—i.e., between approximately 8% and 11% of aggregate damages based on Lead Plaintiff's ability to prove damages for *all* four corrective disclosures alleged in the Action ($130 million to $179.1 million), and between approximately 22% and 42% of a more conservative estimate that takes into account certain hurdles to establishing damages and loss causation at trial ($34.3 million to $65.5 million). ¶ 154.

Moreover, the effort and skill of Lead Counsel in surviving, in part, Defendants' motion to dismiss, navigating through highly-contested (and foreign) discovery, and presenting a strong case at the class certification stage and at the Parties' mediation was essential to achieving a meaningful resolution to the Action. Plaintiffs' Counsel's substantial experience in complex federal civil litigation, particularly the litigation of securities class actions (*see* Ex. 4-C; Ex. 5-C; Ex. 6-C) benefitted the Settlement Class in this Action.

Similarly, "[t]he quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work." *Seijas v. Republic of Argentina*, 2017 WL 1511352, at *13 (S.D.N.Y. Apr. 27, 2017); *see also Marsh ERISA Litig.*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). In this Action, Defendants were vigorously represented by able counsel from the prominent defense firm Sullivan & Cromwell LLP. In the face of this formidable

opposition, Lead Counsel was able to persuade Defendants to settle the case at both a point in the Action and on terms that were highly favorable to the Settlement Class.

5. The Requested Fee in Relation to the Settlement

"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. As discussed in detail in Section II.B.1 above, the requested fee is in line with fee percentages awarded by courts in the Second Circuit in comparable cases.

6. Public Policy Considerations Support the Requested Fee

The requested fee furthers the policy goal of "providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. The public interest was well served by this Action, which sought to hold Defendants accountable for allegedly violating the federal securities laws. A necessary component of encouraging attorneys to undertake the risk of bringing actions (like this Action), however, is adequate compensation. *See Fleisher*, 2015 WL 10847814, at *22 ("Public policy considerations strongly favor incentivizing skilled private attorneys to undertake this type of litigation, especially since the action is on behalf of small claimants who lack the financial incentive to obtain a recovery on their own behalf."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). Accordingly, public policy favors granting Lead Counsel's fee request.

7. The Reaction of the Settlement Class

The reaction of the Settlement Class to date also supports the requested fee. Through October 7, 2019, over 47,300 Postcard Notices have been mailed to prospective Settlement Class Members and nominees informing them of, among other things, Lead Counsel's intent to apply to

the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and up to $1.1 million in Litigation Expenses. Ex. 3, ¶ 16 & Ex. A thereto. This information was also contained in the long-form Notice posted on the Settlement Website. While the time to object to the Fee and Expense Application does not expire until October 23, 2019, to date, no objections have been received. ¶¶ 12, 151. Should any objections be received, Lead Counsel will address them in their reply submissions.

III. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Lead Counsel also requests payment of the expenses that Plaintiffs' Counsel reasonably incurred in prosecuting and resolving the Action in the total amount of $743,507.30. ¶ 166. "Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses." *See Fleisher*, 2015 WL 10847814, at *23. The expenses for which Lead Counsel seeks payment are set forth by category in the Fee and Expense Declarations (*see* Ex. 4-B; Ex. 5-B; and Ex. 6-B), and are the type of expenses that courts typically approve. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys . . . [and] [f]or this reason, they are properly chargeable to the Settlement fund."); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should 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"); *In re Facebook, Inc. IPO Sec. and Deriv. Litig.*, 343 F. Supp. 3d 394, 418 (S.D.N.Y. 2018) (same).

The largest component of Plaintiffs' Counsel's expenses was the cost of Lead Plaintiff's experts and consultants in the amount of $525,587.66, or approximately 71% of total expenses. ¶ 169. The next largest component of Plaintiffs' Counsel's expenses was for document production and management (i.e., $102,291.11, or approximately 14% of total expenses). *Id*. This amount includes charges for an outside vendor retained by Lead Counsel to host the document database utilized to effectively and efficiently review and analyze the documents produced in this Action. *Id*. Plaintiffs' Counsel also incurred the cost of formal mediation with Jed D. Melnick, Esq. of JAMS and The Weinstein Melnick Team ($12,406.70), the cost of travel—airline/train tickets, meals, and lodging—required to prosecute this Action ($19,775.88), and the cost of translation services ($29,476.91). ¶ 170. The other expenses for which Lead Counsel seeks payment include, among others, online research, court fees, court reporters and transcripts, process servers, document-reproduction costs, telephone charges, and postage and delivery expenses. ¶ 171.

All of the foregoing costs and expenses were necessarily incurred for the effective prosecution of the matter and thus, payment of Plaintiffs' Counsel's expenses is reasonable and appropriate. In addition, the amount of Plaintiffs' Counsel's expenses requested for payment, a total of $743,507.30, combined with the $45,244.36 being requested for Lead Plaintiff and Boilermaker-Blacksmith discussed below, is substantially less than the $1.1 million maximum amount stated in the Postcard and long-form Notices. Ex. 3, Exs. A & B. As set forth above, to date, there have been no objections to the maximum expense amount set forth in the Notice. ¶¶ 151.

IV. LEAD PLAINTIFF AND BOLILERMAKER-BLACKSMITH SHOULD BE AWARDED THEIR REASONABLE COSTS UNDER THE PSLRA

The PSLRA provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative

party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Consistent with that statute, Lead Plaintiff and Boilermaker-Blacksmith seek awards based on the time dedicated by their employees and representatives in furthering and supervising the Action. Specifically, Lead Plaintiff MPERS seeks an award of $37,638.75 and proposed additional class representative Boilermaker-Blacksmith seeks an award of $7,605.61. *See* Ex. 1, ¶ 18; Ex. 2, ¶ 15.

Lead Plaintiff and Boilermaker-Blacksmith each took an active role in the Action and each has been fully committed to pursuing the claims on behalf of the Settlement Class since becoming involved in the Action. During the course of the litigation, each communicated regularly with counsel regarding strategy and developments, reviewed pleadings and briefs filed in the Action, assisted in responding to discovery requests, and representatives for each prepared for, traveled to, and testified at depositions in connection with Lead Plaintiff's Motion to Certify. *See* Ex. 1, ¶¶ 5-7; Ex. 2, ¶¶ 4-6. In addition, Lead Plaintiff MPERS consulted with Lead Counsel and Gadow Tyler regarding settlement negotiations and a representative for MPERS attended the April 2019 mediation. *See* Ex. 1, ¶ 8. MPERS also evaluated and approved the Settlement. Ex. 1, ¶ 6. A representative for MPERS plans to attend the Settlement Fairness Hearing at no cost to the Settlement Class. The foregoing efforts required employees and representatives of Lead Plaintiff and Boilermaker-Blacksmith to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties.

Numerous courts have approved reasonable awards to compensate representative parties for the time their employees have spent supervising and participating in the litigation on behalf of the class. *See, e.g., In re Bank of America Corp. Secs., Deriv., and ERISA Litig.*, 2013 WL 12091355, at *1-2 (S.D.N.Y. April 8, 2013), *aff'd*, 772 F.3d 125, 133 (2d Cir. 2014) (awarding over $450,000 to public pension plans and other institutional investors as reimbursement for the

time spent by their employees on that action); *Marsh & McLennan*, 2009 WL 5178546, at *21 (awarding $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class"); *FLAG Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to Lead Plaintiff for time spent on the litigation); *Veeco*, 2007 WL 4115808, at *12 (awarding institutional lead plaintiff $15,900 for time spent supervising litigation, and characterizing such awards as "routine" in this Circuit); *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, "the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation"). Accordingly, the awards sought by Lead Plaintiff and Boilermaker-Blacksmith are reasonable and justified under the PSLRA.

V. CONCLUSION

For the reasons stated herein and in the Whitman Declaration, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 25% of the Settlement Fund and approve payment of Plaintiffs' Counsel's Litigation Expenses in the amount of $743,507.30, as well as the proposed awards in the aggregate amount of $45,244.36 (i.e., $37,638.75 to MPERS and $7,605.61 to Boilermaker-Blacksmith).

Dated: October 8, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

/s/ Johnston de F. Whitman, Jr.
Johnston de F. Whitman, Jr.