UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	Lead Case No. 4:14-cv-3428 (NFA)

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

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Court-appointed Lead Counsel, Entwistle & Cappucci LLP ("E&C") and Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") (together, "Lead Counsel") hereby move for an award of attorneys' fees on behalf of Plaintiffs' Counsel,[1] as well as reimbursement of litigation expenses incurred by Plaintiffs' Counsel and expenses and costs incurred by Plaintiffs directly related to their representation of the Settlement Class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[2]

PRELIMINARY STATEMENT

Plaintiffs' Counsel have vigorously litigated this case for four years on an entirely contingent-fee basis against numerous prominent defense firms. As a result of Plaintiffs' Counsel's efforts, the Settlement Class secured a favorable recovery of $173.8 million so far, and up to $335.3 million through additional recovery from Plaintiffs' $220 million settlement with the Debtor and Cobalt Defendants which is funded solely from Cobalt's available insurance proceeds which, for the most part, remain subject of an ongoing

[1] Plaintiffs' Counsel are Lead Counsel, Liaison Counsel Ajamie LLP, and other counsel who performed services on behalf of the Settlement Class in the Action at the direction of Lead Counsel. The Plaintiffs' Counsel firms are listed in Exhibit 4 to the Joint Declaration of Andrew J. Entwistle and David R. Stickney in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation and (II) Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration") filed herewith. In this memorandum, citations to "¶" refer to paragraphs in the Joint Declaration.

[2] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the (i) Stipulation and Agreement of Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC, dated October 9, 2018 (the "Sponsor/GS&Co. Stipulation") (ECF No. 334-1); (ii) Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (the "Cobalt Stipulation") (ECF No. 337-1); and/or (iii) Stipulation and Agreement of Settlement Between Plaintiffs and Underwriter Defendants Other Than Goldman Sachs & Co. LLC, dated November 28, 2018 (the "Underwriter Stipulation") (ECF No. 352-1) (collectively, the "Stipulations").

insurance coverage dispute. This outcome is particularly remarkable in light of Cobalt's December 2017 bankruptcy, which compounded the significant litigation risks already present in this case. As discussed below, Defendants advanced powerful defenses to Plaintiffs' claims, and there was considerable uncertainty throughout the litigation as to whether the Class would achieve a meaningful recovery.

To achieve this recovery for the Settlement Class, Plaintiffs' Counsel devoted substantial resources pursuing this litigation by, among other things, (i) conducting a thorough and wide-ranging factual investigation concerning the claims; (ii) preparing and filing a detailed Amended Complaint based on this investigation; (iii) investigating, researching, and filing the subsequent Operative Complaint based on documents produced during fact discovery that supported a claim under Section 20A of the Exchange Act, the settlement of which ultimately resulted in the bulk of the recovery for the Settlement Class; (iv) successfully opposing Defendants' motions to dismiss the Complaints; (v) successfully moving for class certification; (vi) briefing and arguing in opposition to Defendants' appeal from the order granting class certification; (vii) engaging in extensive discovery, which included 34 depositions and a review and analysis of over 1.3 million pages of documents produced by Defendants and non-parties; (viii) consulting with experts on the oil and gas industry, the Foreign Corrupt Practices Act ("FCPA"), market efficiency, damages, and loss causation; and (ix) engaging in extensive settlement negotiations, including a mediation process facilitated by former United States District Judge Layn R. Phillips that involved preparing detailed mediation briefs, attending a full-day mediation, and lengthy follow-up negotiations. *See* ¶¶ 18-95.

Plaintiffs' Counsel undertook these substantial efforts and achieved the proposed Settlements without compensation for four years and in the face of substantial litigation risks. For example, as explained in detail in the accompanying Joint Declaration at ¶¶ 103-122 and summarized below, Plaintiffs faced challenges in establishing falsity, scienter, and loss causation. Among other things, Defendants contend: (i) that they never misrepresented or omitted information regarding the ownership of Cobalt's Angolan business partners by Angolan government officials; (ii) that they fully disclosed the results of Cobalt's tests and analyses on its Angolan wells and any alleged misstatements regarding the wells are non-actionable as puffery or forward-looking statements; (iii) that any alleged misstatements were not made with scienter; (iv) that Cobalt's stock price declines were caused by factors other than the correction of the misstatements identified by Plaintiffs; and (v) that the Class should not certified because various individual issues such as reliance (for Section 10(b) claims) and traceability of common stock or the location of purchases of Cobalt notes (for Securities Act claims) predominated over common issues. In addition, Plaintiffs faced substantial risks to recovery from Defendants' pending appeal of the Court's class-certification order, as well as from Cobalt's bankruptcy in late 2017, which limited the sources of any recovery.

As compensation for their efforts on behalf of the Settlement Class, Lead Counsel now request a fee award for all Plaintiffs' Counsel of 25% of the current $173.8 million amount of the Settlement Fund (*i.e.*, $43.45 million, plus accrued interest) and any future recovery from the settlement with the Debtor and the Cobalt Defendants that may be obtained through the coverage litigation. Such a request is consistent with fee percentages

awarded by courts in this District and elsewhere. "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery." *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *27 (N.D. Tex. Nov. 8, 2005). As discussed further below, the requested fee here is also well within the reasonable range of fees awarded when considered on a lodestar/multiplier basis.

Moreover, Plaintiffs, all of which are sophisticated institutional investors, have approved the requested fees and reimbursement of expenses as fair and reasonable. ¶ 140. The reaction of the Settlement Class to date further supports the request. Pursuant to the Court's Preliminary Approval Orders, more than 85,000 copies of the Notice have been mailed to potential Settlement Class Members and nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*.[3] The Notice advised potential Settlement Class Members that Lead Counsel would seek fees of up to 25% of the Settlement Fund and reimbursement of litigation expenses in an amount not to exceed $5,000,000. *See* Notice at ¶¶ 5, 45. Although the deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the attorneys' fees or expenses set forth in the Notice have been received. Joint Decl. ¶ 166.

For all of the reasons set forth below, Lead Counsel respectfully request that the Court approve their application for an award of attorneys' fees and expenses.

[3] *See* Declaration of Alexander Villanova Regarding: (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Villanova Decl."), attached as Exhibit 2 to the Joint Decl., at ¶¶ 2-9.

ARGUMENT

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court and the Fifth Circuit have long recognized that "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). Courts recognize that awards of fair attorneys' fees from a common fund serve the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 306 (S.D. Miss. 2014) (citation omitted); *see also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010) (awards to counsel from a common fund "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature").

The Supreme Court has also emphasized that private securities actions, like this Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, 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).

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD

Fees awarded to counsel from a common fund may be evaluated under either a percentage-of-the-fund method or the lodestar method. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012) ("*Dell*") (district courts have "the flexibility to choose between the percentage and lodestar methods in common fund cases"). Under either method, the requested fee in this Action is fair and reasonable.

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has endorsed the percentage method, stating that "under the 'common fund doctrine'. . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Fifth Circuit has also approved of the percentage method, noting that it "brings certain advantages . . . because it allows for easy computation" and "aligns the interests of class counsel with those of the class members." *Dell*, 669 F.3d at 643 ("district courts in this Circuit regularly use the percentage method"); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (the percentage 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").

The requested fee of 25%, which has been approved by Plaintiffs, is well within the range of percentage fees awarded in the Fifth Circuit in comparable cases. "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method." *Schwartz*, 2005 WL 3148350, at *27; *see also Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . attorneys' fees in the range from twenty-five percent (25%) to [33%] have been routinely awarded in class actions").

A review of attorneys' fees awarded in class actions with comparably sized settlements in this Circuit strongly supports the reasonableness of the 25% fee request. *See, e.g., The Erica P. John Fund, Inc. v. Halliburton Co.,* 2018 WL 1942227, at *7 (N.D. Tex. Apr. 25, 2018) (awarding 33.3% of $100 million settlement fund); *Billitteri v. Sec. Am., Inc.,* 2011 WL 3585983, at *4, *9 (N.D. Tex. Aug. 4, 2011) (awarding 25% of $80 million settlement fund); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 678-81 (N.D. Tex. 2010) (awarding 30% of a settlement between $90 million and $110 million); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403, 448 (S.D. Tex. 1999) (awarding 25% of $190 million settlement); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1141-42 (W.D. La. June 4, 1997) (awarding 36% of $127.4 million settlement). The requested fee is also well within the

range of percentage fees that have been granted in comparable securities class actions in other Circuits.[4] In sum, the percentage requested is reasonable.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

The requested fee is also reasonable by considering counsel's lodestar and the other considerations set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) ("*Johnson*"). In this case, the lodestar method – whether used directly or as a "cross-check" on the percentage method – strongly demonstrates the reasonableness of the requested fee.

Under the lodestar method, "the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Dell*, 669 F.3d at 642-43. In securities class actions and other complex cases with substantial contingency risks, fees

[4] *See, e.g.*, *In re Pfizer Sec. Litig.*, No. 04-cv-09866, slip op. at 2 (S.D.N.Y. Dec. 21, 2016), ECF No. 727 (awarding 28% of $486 million settlement); *Schuh v. HCA Holdings Inc.*, No. 11-cv-01033, slip op. at 1 (M.D. Tenn. Apr. 14, 2016), ECF No. 563 (awarding 30% of $215 million settlement); *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 148 F. Supp. 3d 303, 305 (S.D.N.Y. 2015) (awarding 25% of $180 million settlement); *In re Merck & Co. Vytorin/Zetia Sec. Litig.*, 2013 WL 5505744, at *3, *46, *51 (D.N.J. Oct. 1, 2013) (awarding 28% of $215 million settlement); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, No. 03-1519, slip op. at 4 (D.N.J. Jan. 30, 2013), ECF No. 405 (awarding 27.5% of $164 million settlement); *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement fund), *aff'd*, 739 F.3d 956, 958-59 (7th Cir. 2013); *In re Brocade Sec. Litig.*, No. 05-cv-2042, slip op. at 13 (N.D. Cal. Jan. 26, 2009), ECF No. 496-1 (awarding 25% of $160 million settlement); *In re Williams Sec. Litig.*, No. 02-cv-72, slip op. at 2 (N.D. Okla. Feb. 12, 2007), ECF No. 1638 (awarding 25% of $311 million settlement); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153006, at *4 (C.D. Cal. Sept. 12, 2005) (awarding 25% of $150 million settlement); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1337 (S.D. Fl. Nov. 29, 2001), No. 98-cv-08258, slip op. at 3 (S.D. Fla. Aug. 5, 2002), ECF No. 897; and slip op. at 11 (S.D. Fla. Aug. 9, 2002), ECF No. 907 (collectively awarding 25% of $141 million settlement fund).

representing multiples above the lodestar are typically awarded to reflect contingency risks and other relevant factors. *See, e.g.*, *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 333 (W.D. Tex. 2007) ("The range of multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5.") (citation omitted); *Klein*, 705 F. Supp. 2d at 680 (awarding fee representing a 2.5 multiplier and noting that "[m]ultipliers in this range are not uncommon in class action settlements" and that the 2.5 multiplier was warranted "due to the risks entailed in this lawsuit and the zealous efforts of the attorneys that resulted in a significant recovery for the class").

Here, Plaintiffs' Counsel spent a total of 59,831.10 hours of attorney and other professional support time prosecuting this Action through December 31, 2018. *See* ¶ 142 Based on Plaintiffs' Counsel's 2018 hourly rates, their total lodestar is $36,061,893.25.[5] *See id*. This lodestar is a function of the vigorous prosecution of the case as described in the Joint Declaration, which included a detailed investigation, two amended complaints, extensive motion practice, a thorough class certification motion, litigation of an interlocutory appeal of the class certification decision, litigation in Cobalt's bankruptcy proceedings, and the extensive efforts undertaken during fact discovery.

[5] 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. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Leroy v. City of Houston*, 831 F.2d 576, 584 (5th Cir. 1987) ("current rates may be used to compensate for inflation and delays in payment"); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 763 (S.D. Tex. 2008) ("One accepted method of compensating for a long delay in paying for attorneys' services is to use their current billing rates in calculating the lodestar").

The requested 25% fee, which amounts to $43.45 million (before interest), on funded recoveries represents a multiplier of 1.2 on Plaintiffs' Counsel's total lodestar to date. As noted above, Plaintiffs' Counsel continues to pursue recovery of insurance proceeds to satisfy the Cobalt Settlement. Potential additional funding under the Cobalt Settlement will range between $0 and $161.5 million (or more if there is a finding of insurance bad faith) depending on the resolution of issues raised by the carriers. Even assuming resolution of the coverage dispute without any further expenditure of time by Plaintiffs' Counsel, the lodestar multiplier would range between 1.2 and 2.3 — well within the range of lodestar multipliers of 2 to 4.5 that are commonly awarded in complex class actions with substantial contingency risks like this case.

The hourly rates, which are Plaintiffs' Counsel's 2018 rates and have been accepted by other courts in other securities and shareholder litigation, are reasonable in light of prevailing market rates for lawyers with comparable levels of experience and expertise in securities litigation and other complex class action litigation. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087-88 (S.D. Tex. 2012) (an attorney's hourly rates should be judged in relation to "'prevailing market rates for lawyers with comparable experience and expertise' in complex class action litigation," and "[a]n attorney's requested hourly rate is prima facie reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not contested"). Plaintiffs' Counsel's rates are comparable to the rates charged by defense counsel, as reflected in Cobalt's bankruptcy filings. *See In re Cobalt Int'l Energy, Inc.*, No. 17-36709 (MI), Application for Retention

of Baker Botts L.L.P. (Bankr. S.D. Tex. Jan. 9, 2018), ECF No. 181 (application showing that the standard hourly rates for Baker Botts, which was retained as special litigation counsel in Cobalt's bankruptcy, range from $725 to $1320 for partners, $580 to $950 for special counsel, and $360 to $825 for associates).

In sum, whether calculated as a percentage of the fund or under the lodestar method, the requested fee is within the range of fees awarded by courts in securities class actions.

III. OTHER FACTORS CONSIDERED BY COURTS IN THE FIFTH CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Fifth Circuit has set forth the following additional criteria to consider when reviewing a request for attorneys' fees in a common fund case:

> (1) The time and labor required…[;] (2) The novelty and difficulty of the questions…[;] (3) The skill requisite to perform the legal service properly…[;] (4) The preclusion of other employment by the attorney due to acceptance of the case…[;] (5) The customary fee…[;] (6) Whether the fee is fixed or contingent…[;] (7) Time limitations imposed by the client or the circumstances…[;] (8) The amount involved and the results obtained…[;] (9) The experience, reputation, and ability of the attorneys…[;] (10) The "undesirability" of the case…[;] (11) The nature and length of the professional relationship with the client…[; and] (12) Awards in similar cases.[6]

Johnson, 488 F.2d at 717-19; *see also Dell*, 669 F.3d at 642 n.25 (reiterating *Johnson* factors); *Billitteri*, 2011 WL 3585983, at *3 (same). In addition, courts may consider other factors, such as (1) public policy considerations, (2) plaintiffs' approval of the fee, and (3)

[6] Two of the *Johnson* factors – the "time limitations imposed by the client or the circumstances" and the "nature and length of [counsel's] professional relationship with the client" are not relevant in this case. *See Klein*, 705 F. Supp. 2d at 676 ("not every factor need be necessarily considered"); *Schwartz*, 2005 WL 3148350, at *28 ("The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court's discretion to apply those factors in view of the circumstances of a particular case.").

the reaction of the class. Consideration of these factors here provides further confirmation that the fee requested is reasonable.

A. The *Johnson* Factors Confirm that the Requested Fee Is Reasonable

Under either the percentage or lodestar method, the *Johnson* factors confirm that the requested fee award is reasonable. *See Dell*, 669 F.3d at 643-44.

1. The Time and Labor Required

The time and effort required by Plaintiffs' Counsel to effectively prosecute this Action and achieve the Settlements further establish that the requested fee is justified. *See Billitteri*, 2011 WL 3585983, at *5. The Joint Declaration details the substantial efforts of Plaintiffs' Counsel to prosecute the claims over four years of litigation. Among other things, Plaintiffs' Counsel:

- conducted a comprehensive factual investigation, which included a thorough review of publicly available information, research of the applicable law, and identifying, locating, and interviewing dozens of witnesses around the globe, including in Angola and the United Kingdom (¶¶ 10, 18, 146);
- drafted and filed a detailed Consolidated Amended Class Action Complaint (¶¶ 18-25);
- after uncovering new facts and supporting documents during extensive discovery, filed the subsequent Operative Complaint alleging a claim under Section 20A of the Exchange Act, the settlement of which provided the bulk of the recovery for the Settlement Class (¶¶ 61-62);
- conducted two rounds of detailed briefing on Defendants' motions to dismiss and defeated Defendants' motions for an interlocutory appeal of the denial of their motions to dismiss (¶¶ 26-29, 30, 33);
- engaged in extensive fact discovery, including preparing and serving document requests and interrogatories on Defendants and issuing numerous subpoenas to non-parties; participating in extensive correspondence and numerous meet-and-confers between the Parties; reviewing and analyzing over 1.3 million pages of documents; preparing and arguing motions on

disputed discovery issues; and conducting 20 depositions of key expert and fact witnesses (¶¶ 34-60);

- successfully moved for class certification which included preparing and submitting an expert report regarding market efficiency and Class-wide damages methodologies; defending nearly a dozen class certification depositions, including the depositions of Plaintiffs' representatives, investment advisors, and the class certification expert (¶¶ 67-74);
- opposed Defendants' Rule 23(f) petition for an interlocutory appeal of the order certifying the Class and, when the petition was granted, briefed and argued in opposition to the appeal seeking to overturn the certification of the Class (¶¶ 75-76, 82-86);
- consulted with experts concerning the oil and gas industry, the FCPA, and the issues of market efficiency and Class-wide damages (¶¶ 92-93); and
- drafted mediation statements and engaged in extensive mediation efforts facilitated by former United States District Judge Layn R. Phillips (¶¶ 94-95).

In total, as noted above, Plaintiffs' Counsel expended a total of more than 59,800 hours investigating, prosecuting and resolving this Action without compensation for four years. ¶ 142. The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical in obtaining the favorable result achieved by the Settlements and, as a result, this factor supports the fee request.

2. The Novelty and Difficulty of the Issues

The difficulty of questions presented by the litigation are also considered in determining the reasonableness of the requested fee. *See Johnson*, 488 F.2d at 718. Courts have long recognized that securities class actions are complex and challenging, and that "Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult." *In re OCA, Inc. Sec. & Derivative Litig.*, 2009 WL 512081, at *21 (E.D. La. Mar. 2, 2009). This case was no exception.

From the outset of this Action, Plaintiffs' Counsel faced very significant challenges to establishing liability and damages. *See* Joint Declaration at ¶¶ 103-122. The Cobalt Defendants contended and would have continued to argue at summary judgment and trial that they made no false statements or omissions in violation of Section 10(b) of the Exchange Act. The Cobalt Defendants consistently maintained that they never misrepresented or omitted information regarding the ownership of their Angolan partners, and that the alleged misstatements and omissions concerning the oil content of the Lontra and Loengo wells were not actionable because Cobalt fully disclosed the results of its tests and analyses on those wells and adequately informed investors of the risk that they might not contain revenue-generating amounts of oil. ¶¶ 105-106. Moreover, Cobalt repeatedly pointed to the fact that neither the SEC nor the United States Department of Justice pursued claims against the Cobalt Defendants, dropping their investigations without ever bringing charges. ¶ 113.

Based on these same grounds, the Underwriter Defendants and Sponsor Defendants also contested the falsity of the alleged misrepresentations in the Offering Materials. ¶ 107. A ruling or verdict in their favor on that element would cause the Securities Act claims to fail. *Id*. In addition, a finding for Defendants on falsity would eliminate any liability for the control person claims brought under Section 20(a) of the Exchange Act and Section 15 of the Securities Act since both require a primary violation based on false or misleading statements. *Id*. The failure to prove falsity might also have undermined the Section 20A claims given Defendants' assertion that a fraudulent statement in violation of Section 10(b) is a necessary predicate to liability under Section 20A. *Id*.

The Cobalt Defendants and Sponsor Defendants also contend that there is no evidence that the alleged misstatements were made with scienter. They argue that the speaking Defendants sincerely believed in the accuracy of the statements regarding the ownership of the Angolan partners and Cobalt's compliance with the FCPA given the Company's due diligence and the legal advice it received. ¶ 108. Similarly, these Defendants would argue that they genuinely viewed the Lontra and Loengo wells to have great oil potential based on pre-drill estimates and that they disclosed any specific risks they were aware of, and thus any alleged misstatements about those wells were not intentional or reckless. ¶ 109. A finding for Defendants on scienter would eliminate any liability on the Exchange Act claims (*i.e.*, Sections 10(b) and 20(a)) and possibly the insider trading claim under Section 20A. *Id*.

Even if Plaintiffs defeated all those arguments and established liability, they faced substantial hurdles in establishing loss causation and damages. As previewed in their class certification opposition, Defendants vigorously contended that Cobalt's stock price declines were caused by factors other than the information revealed in the corrective disclosures identified in the Operative Complaint. ¶¶ 111-114. Defendants' expert at class certification asserted that *none* of the alleged corrective disclosures had an impact on the price of Cobalt's stock or notes and the news articles that caused the price declines were not corrective of Defendants' alleged misstatements (arguing, for example that the market reacted to news about Cobalt's FCPA compliance or the revelation of a formal SEC investigation, not the disclosure of previously concealed facts about ownership of the Angolan wells). ¶¶ 112-113. Although Plaintiffs had responses to each of these

arguments, if the Court at summary judgment or a jury at trial were to accept any of Defendants' loss causation or damage arguments the Class's potential recovery would be significantly diminished.

Significantly, during discovery Plaintiffs' Counsel uncovered facts and documents that supported a novel and complex insider trading theory against the Sponsor Defendants, and the settlement of the resulting Section 20A claim provided the bulk of the current recovery by the Settlement Class ($146.85 million of the $173.8 million in recovery). Specifically, during review of millions of pages of documents, Plaintiffs' Counsel discovered documents that supported allegations that the Sponsor Defendants possessed insider information that: (i) Nazaki was owned by Angolan officials at the time they sold Cobalt common stock in a February 2012 secondary offering; and (ii) Loengo was a non-commercial prospect at the time they sold Cobalt common stock in January and May of 2013. The Section 20A claim uncovered, investigated, and developed by Plaintiffs' Counsel (and that ultimately drove the Sponsor Settlement) involved novel arguments concerning the necessity for underlying Exchange Act violations and concerning damages. The Sponsor Defendants challenged Plaintiffs' theories on both of these issues. There was no guarantee that the Court or jury would adopt Plaintiffs' arguments concerning predicate violations or Plaintiffs' damages methodology for the Section 20A claim, thereby raising an additional risk to Class-wide recovery. ¶¶ 107, 115-116.

Cobalt's bankruptcy in late 2017 also posed additional risks to a meaningful recovery for the Class. Cobalt, as a bankrupt entity, had no ability to pay any significant monetary damages obtained against it at trial. In addition, none of the Cobalt Individual

Defendants has personal assets adequate to pay a judgment that is even a fraction of Class-wide damages. ¶¶ 118-119. Meanwhile, a jury may have assigned to Cobalt most or all of the fault for the alleged misrepresentations, thereby reducing or eliminating the liability of the other defendants. *Id*. Particularly given the Company's bankruptcy, Plaintiffs and Lead Counsel submit that the Settlements represent an outstanding recovery for the Settlement Class. *Id*.

There were also substantial risks in maintaining certification of the Class on appeal in this case. The Fifth Circuit granted Defendants' petition for an interlocutory appeal of the order certifying the Class. With respect to the Section 10(b) claim, Defendants asserted that the Court erred in finding that Plaintiffs are entitled to a Class-wide presumption of reliance. ¶¶ 83, 120. With respect to Securities Act claims, Defendants contended that no class could be certified for purchasers of Cobalt common stock because it is purportedly impossible to trace share purchases to the secondary offerings of common stock during the Class Period and that no class should be certified for purchasers in the Cobalt note offerings because individualized issues concerning the location of note purchases (*i.e*., foreign vs. domestic) would predominate over common issues. ¶¶ 84, 121. In addition, Defendants asserted that the statute of repose bars Securities Act claims based on the Cobalt Securities Offerings. ¶ 121. While Plaintiffs are confident that the Class was properly certified, the Class's claims could be significantly curtailed or even foreclosed if Defendants prevailed on any of these issues on appeal. ¶ 122.

Notwithstanding these difficulties and uncertainties regarding the outcome of the case, Plaintiffs' Counsel prosecuted this Action on a wholly contingent basis with no guarantee of compensation.

3. The Skill Required to Perform the Legal Services Properly, and the Experience, Reputation and Ability of the Attorneys

The *Johnson* factors also include consideration of the skills required to litigate the Action and "the experience, reputation and ability of the attorneys" involved. *See Johnson*, 488 F.2d at 718-19. Considerable litigation skills were required for Plaintiffs' Counsel to achieve the Settlements in this Action. As demonstrated by their respective firm resumes, Plaintiffs' Counsel are among the nation's leading securities class action firms. ¶ 144. The skill of their attorneys, the quality of their efforts in the litigation, their substantial experience in securities class actions, and their commitment to the litigation were key elements in enabling Lead Counsel to negotiate the Settlements. ¶¶ 141-147.

Courts have also recognized that the quality of the opposition faced by plaintiffs' counsel should be taken into consideration in assessing the quality of counsel's performance. *See, e.g.*, *Schwartz*, 2005 WL 3148350, at *30 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation"). Here, the Sponsor Defendants were represented by Wachtell, Lipton, Rosen & Katz and Williams & Connolly LLP, the Cobalt Defendants were represented by Baker Botts LLP and Greenberg Traurig, LLP, Cobalt's Chief Executive Officer was represented by Quinn Emanuel Urquhart & Sullivan, LLP, and the Underwriter Defendants were represented by Skadden, Arps, Slate,

Meagher & Flom, LLP, all distinguished and highly experienced corporate defense firms. ¶ 148. Notwithstanding this formidable opposition, Plaintiffs' Counsel achieved Settlements that are favorable to the Settlement Class.

4. The Preclusion of Other Employment

Plaintiffs' Counsel dedicated substantial time and effort to the Action despite the very significant risks of no recovery and while deferring any payment of their fees and expenses until a settlement was reached. Accordingly, this *Johnson* factor also supports the requested fee. *See, e.g.*, *Johnson*, 488 F.2d at 718; *Burford v. Cargill, Inc.*, 2012 WL 5471985, at *3 (W.D. La. Nov. 8, 2012); *Shaw*, 91 F. Supp. 2d at 970.

5. The Customary Fee and Awards in Similar Cases

As noted above, the fee requested by Lead Counsel is well within the range awarded in similar cases on a percentage or lodestar/multiplier basis. *See* Section II above. This also supports the reasonableness of the requested fee. *See Johnson*, 488 F.2d at 718-19.

6. The Contingent Nature of the Fee

The fully contingent nature of the fee requested by Lead Counsel and the substantial risks posed by the litigation are also important factors supporting the requested fee. *See Johnson*, 488 F.2d at 718. "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." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974).

Here, Plaintiffs' Counsel assumed a contingency fee risk, with no guarantee of compensation absent a successful resolution of the Action. Plaintiffs' Counsel's extensive

time and effort devoted to litigating the Action in the face of myriad and major risks, strongly supports the reasonableness of the requested fee. *See Klein*, 705 F. Supp. 2d at 678 (where "class counsel represented the class on a contingent-fee basis, with no guarantee of any recovery . . . [t]he contingent nature of the fee favors an increase" in the fee); *OCA*, 2009 WL 512081, at *22 ("the risk plaintiffs' counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys' fees, and thus an upward adjustment is warranted").

7. The Amount Involved and the Results Achieved

Another *Johnson* factor is the "overall degree of success achieved." *Roussel v. Brinker Int'l, Inc.*, 2010 WL 1881898, at *3 (S.D. Tex. Jan. 13, 2010), *aff'd,* 441 F. App'x 222 (5th Cir. 2011). Here, Lead Counsel have achieved a substantial recovery of at least $173.8 million for the benefit of the Settlement Class with additional potential recoveries from insurance carriers. ¶ 136. The result achieved, given the substantial risks, is very significant and supports the requested fee.

8. The Undesirability of the Case

Although Plaintiffs' Counsel did not consider this case to be "undesirable," there were substantial risks in financing and prosecuting the Action (*see* ¶¶ 103-122), including a bankrupt corporate defendant, and devoting the necessary resources for a successful outcome. As a result, Plaintiffs' Counsel knew that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. *See, e.g.*, *Billitteri*, 2011 WL 3585983, at *8 (where a case "raised particularly difficult issues," including the risk of "no recovery whatsoever," this factor supported an

increase in the fee); *Braud v. Transport Serv. Co. of Ill.*, 2010 WL 3283398, at *13 (E.D. La. Aug. 17, 2010) (given the "risk of non-recovery" and the burdens of "undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee," the Court found that "undesirability in this case warrants an increase in the fee award").

B. Other Factors Considered by Courts Further Support the Requested Fee as Fair and Reasonable

In addition to the *Johnson* factors, courts often consider certain other factors in determining the appropriate fee in a class action case.

1. Public Policy Considerations Support the Requested Fee

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (citation omitted); *see also Tellabs*, 551 U.S. at 313. Here, that public policy was advanced, as Lead Counsel achieved a meaningful recovery for investors, notwithstanding the absence of any recovery for Cobalt investors from the SEC or any other regulatory agency.

2. Plaintiffs Have Approved the Requested Fee

Plaintiffs are all institutional investors who played an active role in the prosecution and resolution of the Action and have a sound basis for assessing the reasonableness of the fee request. Each of the Plaintiffs fully supports and approves the fee request. *See* ¶ 102. Plaintiffs' endorsement of the fee request in this PSLRA action supports its approval. *See,*

e.g., 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 the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request"); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("[s]ignificantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request").

3. The Reaction of the Settlement Class to Date Supports the Requested Fee

The reaction of the class also supports the requested fee. As of January 7, 2019, the Claims Administrator has disseminated the Notice to more than 85,000 potential Settlement Class Members and nominees informing them of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees of up to 25% of the Settlement Fund and reimbursement of up to $5,000,000 in expenses. *See* Notice ¶¶ 5, 45. To date, no objections have been received. Joint Decl. ¶¶ 127, 166.[7]

IV. THE REQUESTED EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for reimbursement of Plaintiffs' Counsel's litigation expenses that were reasonably incurred and necessary to the prosecution of this Action. These expenses are properly recovered by counsel. *See Billitteri*, 2011 WL 3585983, at *10 ("Expenses and administrative costs expended by class

[7] Lead Counsel will address any objections that may be received in their reply papers to be filed with the Court on February 6, 2019.

counsel are recoverable from a common fund in a class action settlement."). As set forth in the Joint Declaration, Plaintiffs' Counsel have incurred $1,972,357.01 in litigation expenses in the prosecution of the Action. ¶ 136.

The largest component of expenses related to experts. Specifically, $956,754.16, or 49%, was expended on experts and consultants. ¶ 155. Lead Counsel consulted with industry experts on issues pertaining to the oil and gas industry, and the FCPA, and experts on the issues of market efficiency, damages, and loss causation. ¶ 146. Another large component of the litigation expenses was for document management and litigation support services, which were needed to host, organize, and search the substantial volume of electronic documents from Defendants and non-parties and to produce Plaintiffs' records to Defendants. These charges amounted to $159,170.25. ¶ 158. The Settlement Class's portion of mediation costs totaled $88,123.50. ¶ 157.

The other expenses for which Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, electronic research, transcription fees, work-related transportation, out-of-town travel, and copying costs. ¶ 154. The foregoing expense items are not duplicated in the firms' hourly rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for reimbursement of litigation expenses in an amount not to exceed $5,000,000. The total amount of expenses requested $2,029,334.01 (including the $56,977 requested for Plaintiffs' costs and expenses) is substantially below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

V. PLAINTIFFS' REQUESTED COSTS AND EXPENSES ARE REASONABLE AND APPROPRIATE UNDER 15 U.S.C. § 78u-4(A)(4)

Lead Counsel also seek reimbursement of a combined $56,977 in costs and expenses incurred by Plaintiffs directly relating to their representation of the Settlement Class. The PSLRA specifically 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). Here, the Plaintiffs seek awards based on the time dedicated by their employees in furthering and supervising the Action. Specifically, the GAMCO Funds seek reimbursement of $25,000, St. Lucie seeks reimbursement of $1,977, AP7 seeks reimbursement of $15,000, and Universal seeks reimbursement of $15,000. ¶¶ 161-164.

Each of the Plaintiffs took an active role in the litigation and has been fully committed to pursuing the claims on behalf of the Settlement Class since they became involved in the litigation. For instance, Plaintiffs engaged in time-consuming discovery efforts to search for and gather internal documents responsive to Defendants' document requests and to respond to interrogatories. ¶¶ 160-165. In addition, representatives of each of the Plaintiffs prepared for, traveled to and testified at depositions contesting the class certification motion. *Id*. These efforts required employees of the Plaintiffs to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties. ¶ 160.

Numerous courts have approved reasonable awards to compensate plaintiffs for the time and effort they spent on behalf of a class. *See, e.g., Halliburton*, 2018 WL 1942227,

at *14 (awarding $100,000 to plaintiff as "compensation for the time it dedicated in supervising this action"); *In re Arthrocare Corp. Sec. Litig.*, 2012 WL 12951371, at *6 (W.D. Tex. June 4, 2012) (awarding $55,850 to plaintiff for time spent, *inter alia*, in "overseeing and communicating with Lead Counsel on a regular basis, reviewing and commenting on various pleadings, [and] sitting for depositions"); *In re Conn's, Inc. Sec. Litig.*, No. 4:14-cv-00548 (KPE), slip op. at 4 (S.D. Tex. Oct. 11, 2018), ECF No. 194 (awarding over $22,000 to a class representative for its efforts); *see also In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*, 772 F.3d 125, 132-33 (2d Cir. 2014) (affirming award of over $450,000 to five class representatives for time spent by their employees on the action); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding a combined $214,657 to two institutional lead plaintiffs). The awards sought by Plaintiffs here are reasonable under the PSLRA based on their involvement in the Action from inception to settlement, and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request that the Court award (i) attorneys' fees for Plaintiffs' Counsel in the amount of 25% of the current amount of the Settlement Fund, plus interest incurred on that amount at the same rate as the Settlement Fund, and any future recoveries on behalf of the Settlement Class in the Cobalt Settlement funded by the insurance coverage litigation; and (ii) reimbursement of litigation expenses totaling $2,029,334.01, including payment of Plaintiffs' Counsel's expenses in the amount of $1,972,357.01 and reimbursement of $56,977.00 to Plaintiffs for their costs and expenses related to their representation of the Settlement Class.

Dated: January 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 9th day of January 2019, I caused the foregoing to be electronically filed with Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List.

By: */s/ Andrew J. Entwistle*

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL ENERGY, INC. SECURITIES LITIGATION	Lead Case No. 4:14-cv-3428 (NFA)

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on February 13, 2019 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and litigation expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC, dated October 9, 2018 (ECF No. 334-1); the Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader

Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (ECF No. 337-1); and the Stipulation and Agreement of Settlement Between Plaintiffs and Underwriter Defendants Other Than Goldman Sachs & Co. LLC, dated November 28, 2018 (ECF No. 352-1) (collectively, the "Stipulations") and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulations.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Plaintiffs' Counsel are hereby awarded attorneys' fees in the amount of _____% of the Settlement Fund (which consists of the Sponsor/GS&Co. Settlement Amount, the Cobalt Settlement Fund (including both the Cobalt Settlement Existing Proceeds and any additional recoveries obtained for the Settlement Class in the future under that Settlement), and the Underwriter Settlement, plus any interest accrued on those amounts), and $_____ in reimbursement of Plaintiffs' Counsel's litigation expenses

(which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlements have created a fund of $173,800,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, as well as the potential of up to an additional $161.5 million as a result of insurance coverage litigation with the Cobalt Defendants' insurance carriers, and that numerous Settlement Class Members who submit valid Claim Forms will benefit from the Settlements that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee has been reviewed and approved as reasonable by Plaintiffs, who are institutional investors that actively supervised the Action;

(c) Copies of the Notice were mailed to all Settlement Class Members who could be identified with reasonable effort stating that Lead Counsel would apply for attorneys' fees not to exceed 25% of the Settlement Fund and reimbursement of Plaintiffs' Counsel's litigation expenses in an amount not to exceed $5 million, which might include awards for Plaintiffs for their reasonable time and expenses in representing the Settlement Class;

(d) Plaintiffs' Counsel conducted the litigation and achieved the Settlements with skill, perseverance and diligent advocacy;

(e) The Action raised a number of complex issues;

(f) Had Plaintiffs' Counsel not achieved the Settlements there would remain a significant risk that Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(g) Plaintiffs' Counsel devoted over 59,800 hours, with a lodestar value of approximately $36 million, to achieve the Settlements; and

(h) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust are hereby awarded $_____ from the Settlement Fund as reimbursement for their reasonable costs and expenses directly related to their representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4).

7. Plaintiff St. Lucie County Fire District Firefighters' Pension Trust Fund is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4).

8. Plaintiff Sjunde AP-Fonden is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs and expenses directly related to its representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4).

9. Plaintiff Universal Investment Gesellschaft mbH is hereby awarded $_____ from the Settlement Fund as reimbursement for its reasonable costs and

expenses directly related to its representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4).

10. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application or awards to any of the Plaintiffs shall in no way disturb or affect the finality of the Judgments.

11. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulations and this Order.

12. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2019.

_____

The Honorable Nancy F. Atlas
United States District Judge