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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re MAXIM INTEGRATED PRODUCTS, INC., SECURITIES LITIGATION

CASE NO. C-08-00832-JW

CLASS ACTION

LEAD PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: September 27, 2010
Time: 9:00 a.m.
Courtroom: 8, Fourth Floor
Judge: Hon. James Ware

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STATUTES, RULES , AND OTHER AUTHORITIES

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that pursuant to Fed. R. Civ. P. 23(e) and (h) and the Court's Order Preliminarily Approving Settlement, Providing for Notice and Scheduling Settlement Hearing (Docket No. 276), on September 27, 2010, at 9:00 a.m., before the Honorable James Ware of the United States District Court for the Northern District of California, San Jose, California, Lead Counsel Bernstein Litowitz Berger & Grossmann LLP and Chitwood Harley Harnes LLP ("Lead Counsel") will and hereby do move for entry of an order awarding attorneys' fees and reimbursement of litigation expenses relating to its prosecution of the claims by Lead Plaintiffs the Cobb County Government Employees' Pension Plan, the DeKalb County Pension Plan and the Mississippi Public Employees Retirement System (collectively, "Lead Plaintiffs"), acting on behalf of themselves and all Class Members in the above-titled action, against Defendants Maxim Integrated Products, Inc., the Estate of John F. Gifford, Carl W. Jasper, and Timothy Ruehle.

This Motion is based on this Notice of Motion, the Memorandum of Points and Authorities, the Stipulation of Settlement dated June 18, 2010 (Docket No. 271), all pleadings and papers filed herein, arguments of counsel, and any other matters properly before the Court.

STATEMENT OF ISSUES TO BE DECIDED (Civil L.R. 7-4(a)(3))

1. Whether the application for attorneys' fees and reimbursement of litigation expenses shall be granted.

Lead Plaintiffs' Answer: Yes.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Lead Counsel succeeded in reaching a Settlement of this securities class action for $173 million in cash. The substantial monetary recovery obtained for the Class was achieved only after over two years of hard-fought litigation, through the skill, work, tenacity, and effective advocacy of plaintiffs' Lead Counsel.[1] As detailed in the accompanying Joint Declaration of Lead Counsel,[2] Lead Counsel's efforts included: (i) conducting an extensive pre-filing investigation; (ii) locating and interviewing numerous former Maxim employees and additional witnesses; (iii) completing an extensive review and analysis of Maxim's Securities and Exchange Commission ("SEC") filings and other documents related to the alleged false and misleading statements as alleged in the Consolidated Class Action Complaint ("Complaint"), including analyst reports and press releases; (iv) preparing and filing the detailed Complaint that satisfied the heightened pleading standard of the Private Securities Litigation Reform Act of 1995 ("PSLRA"); (v) largely defeating Defendants' motions to dismiss; (vi) retaining and consulting with experts; (vii) reviewing and analyzing over one million pages of documents produced by Defendants and third parties; (viii) preparing for, and participating in, nine depositions; (ix) preparing and filing a motion for class certification support by expert testimony and other evidence; (x) exchanging confidential mediation statements with Defendants; and (xi) preparing for, and participating in, mediation before an experienced mediator and extensive negotiations following the formal mediation session. *See* Joint Decl. ¶¶18-63.

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[1] Pursuant to the Court's Order Preliminarily Approving Settlement, Providing For Notice and Scheduling Settlement Hearing granted July 13, 2010 ("Preliminary Approval Order," Docket No. 276), the Class is defined as follows: all persons and entities who purchased the common stock of Maxim between April 29, 2003, through January 17, 2008, inclusive, and who were damaged thereby. Defendants and certain other individuals, as well as those who opt out of the Settlement, are excluded from the Class. Defendants include Defendants Maxim Integrated Products, Inc. ("Maxim"), the Estate of John F. Gifford ("Gifford"), Carl W. Jasper ("Jasper"), and Timothy Ruehle ("Ruehle") (collectively, "Defendants"). All terms not otherwise defined herein shall have the meaning given them in the Stipulation of Settlement ("Stipulation") dated June 18, 2010, and previously filed with the Court (Docket No. 271).

[2] *See* Joint Declaration of Blair A. Nicholas and Gregory E. Keller in Support of Motion for Final Approval of Settlement and Plan of Allocation and Motion for An Award of Attorneys' Fees and Reimbursement of Expenses ("Joint Decl."), submitted herewith.

Lead Counsel undertook the prosecution of this action on an entirely contingent basis. As compensation for the efforts expended to achieve the recovery for the Class, Lead Counsel is applying for fees constituting 17% of the Settlement Fund, net of Court-approved litigation expenses, and for reimbursement of $751,507.54 in out-of-pocket litigation expenses (including Lead Plaintiffs' expenses as discussed below). The percentage fee requested was agreed to and approved by Lead Plaintiffs, sophisticated institutional investors with experience in prosecuting securities class actions under the PSLRA. *See* Joint Declaration of George W. Neville, J. Virgil Moon and Edmund J. Wall in Support of Class Action Settlement ("Lead Plaintiffs Decl."), ¶24, attached as Exhibit ("Ex.") A to the Joint Decl.

Furthermore, the requested fee percentage is well below the 25% benchmark established by the Ninth Circuit, and also below the fee awards customarily granted in other similar backdating securities class actions. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002) (recognizing 25% benchmark); *see also In re Brocade Sec. Litig.*, 05-cv-02042, Docket No. 496 (N.D. Cal. Jan. 26, 2009) (awarding 25% fee on $160 million settlement); *In re Monster Worldwide, Inc. Sec. Litig.*, 07-CV-02237, Docket No. 139 (S.D.N.Y. Nov. 25, 2008) (awarding 25% of the $47.5 million recovery); *In re Comverse Sec. Litig.*, 2010 WL 2653354, at *6 (E.D.N.Y. June 24, 2010) (awarding 25% fee on a $225 million settlement, observing "an improperly calibrated fee would provide a disincentive to future counsel to take risks and pursue large class settlements that the SEC cannot"); *In re Marvell Tech. Group Ltd. Sec. Litig.*, 06-06286, Docket No. 292 (N.D. Cal. Nov. 13, 2009) (awarding 20.5% fee on a $72 million settlement); *In re Broadcom Corp. Class Action Litig.*, 06-cv-05036, Docket No. 355 (C.D. Cal. Aug. 11, 2010) (awarding 18.5% fee on a $160.5 million settlement).[3]

[3] It is also well below the fee percentages granted in options backdating cases that were brought derivatively. *See, e.g., Ryan v. Gifford*, 2009 WL 18143 (Del. Ch. Jan. 2, 2009) (awarding 33% of the cash recovery); *In re Zoran Corp. Deriv. Litig.*, 2008 WL 4104517 (N.D. Cal. Sept. 2, 2008) (awarding 38% of the cash recovery); *In re Marvel Tech. Group Ltd. Deriv. Litig.*, 06-03894, Docket No. 108 (N.D. Cal. Aug. 11, 2009) (awarding 29% of the cash recovery); *In re NVIDIA Corp. Deriv. Litig.*, 2009 U.S. Dist. LEXIS 24973 (N.D. Cal. Mar. 18, 2009) (awarding $7.25 million, equal to 45.8% of the $15.8 million cash recovery); *In re Juniper Deriv. Actions*, 2008 U.S. Dist. LEXIS 109858 (N.D. Cal. Nov. 13, 2008) (awarding $9 million, equal to 39.6% of the $22.7 million cash recovery); *In re Activision, Inc. S'holder Deriv. Litig.*, CV-06-04771-MRP, Docket No. 84 (C.D. Cal. July 21, 2008) (awarding $10.75 million, equal to 44.2% of the $24.3 million cash recovery); *In re*

The reaction thus far from Class Members further supports Lead Counsel's request for attorneys' fees and expenses. Beginning on July 27, 2010, the Court-approved Class Notice was sent to more than 195,000 potential Class Members and informed them of Lead Counsel's proposed fee application. *See* Declaration of Jennifer M. Keough Re: Notice Dissemination and Publication ("Keough Decl."), ¶¶3-8, attached as Ex. B to the Joint Decl. In addition, the Summary Notice was published in *The Investor's Business Daily* on August 6, 2010. *Id.* ¶9.

The deadline for Class Members to object to the Settlement and/or Lead Counsel's fee application, or to seek exclusion from the Class, expires on September 3, 2010. To date, not a single Class Member has objected to any aspect of the Settlement, the Plan of Allocation, or the request for attorneys' fees and reimbursement of expenses.[4]

II. HISTORY OF THE LITIGATION

A detailed description of the procedural history of the litigation, the investigation and discovery undertaken, the negotiation and substance of the Settlement, and the substantial risks and uncertainties of the litigation is contained in the accompanying Joint Declaration (¶¶18-63). A summary description is provided below.

This is a securities fraud class action alleging false and misleading statements and omissions in violation of § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC Rule 10b-5, and control person liability under § 20(a) of the Exchange Act.

On February 6, 2008, a class action complaint was filed against Maxim and certain Individual Defendants in the United States District Court for the Northern District of California, San Jose

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McAfee, Inc. Deriv. Litig., 2009 U.S. Dist. LEXIS 29246 (N.D. Cal. Jan. 30, 2009) (awarding $13.75 million, equal to 45.8% of the $30 million cash recovery); *In re Apple Computer, Inc. Deriv. Litig.*, 2008 WL 4820784 (N.D. Cal. Nov. 5, 2008) (awarding $8.85 million, equal to 63% of the $14 million cash recovery).

[4] In addition, a total of twenty requests for exclusion have been received (eleven of which were received after the Keough Declaration was finalized), but fifteen of the twenty requests indicate that they are not from Class Members, as they did not purchase Maxim common stock during the Class Period. Thus, there are only five potentially valid requests for exclusion from potential Class Members. Those seeking exclusion will also be listed in Ex. 1 to the proposed Final Approval Order which will be submitted to the Court following expiration of the deadline for seeking exclusion. Although the deadline for submitting claim forms does not expire until November 24, 2010, the claims administrator has already received 234 claims representing over 350,000 shares. *See* Joint Decl. ¶10.

Division (Case No. C-08-00832-JW). The complaint alleged, *inter alia*, that certain Defendants improperly backdated stock option grants, which caused the Company to file materially false and misleading financial statements. Following a hearing, by Order dated May 15, 2008, this Court appointed the Cobb County Government Employees' Pension Plan, the DeKalb County Pension Plan and the Mississippi Public Employees Retirement System as Lead Plaintiffs and Bernstein Litowitz Berger & Grossmann LLP and Chitwood Harley Harnes LLP as Lead Counsel. [Docket No. 110].

On November 14, 2008, Lead Plaintiffs filed the operative complaint in this action, the Complaint. [Docket No. 129]. The Complaint includes significant information that Lead Counsel obtained from locating and interviewing numerous confidential witnesses as part of Lead Counsel's investigation. Lead Counsel's extensive investigation also included review and analysis of Maxim's SEC filings, analyst conference calls, and press releases, as well as analyst reports and other media. Lead Counsel also consulted with loss causation and accounting consultants in preparing the Complaint.

On January 30, 2009, Defendant Maxim (along with Defendants Gifford and Jasper), and Defendant Ruehle, separately, filed motions to dismiss and related requests for judicial notice. Lead Plaintiffs opposed the motions on March 16, 2009. Lead Counsel defeated Maxim's primary arguments on its motions to dismiss when, on July 16, 2009, the Court granted in part and denied in part Maxim's motion, finding that Lead Plaintiffs had sufficiently pleaded loss causation with respect to the January 17, 2008 disclosure, but dismissed claims relating to disclosures prior to that date. [Docket No. 205].

Lead Counsel also defeated Defendant Ruehle's motion to dismiss, in which he argued that he was not a control person and that the statute of limitations had expired for the claims against him. Defendants answered the Complaint on August 28, 2009. [Docket Nos. 218, 219, 222, 224].

On December 11, 2009, pursuant to the Court's scheduling order, Lead Counsel filed Lead Plaintiffs' motion for class certification under Rule 23 of the Federal Rules of Civil Procedure. Lead Counsel supported the motion with an extensive report of an economic expert, Professor Gregg Jarrell, and other evidence to establish that the requirements of Rule 23 were satisfied. [Docket No. 244]. Defendants filed an opposition to the motion, together with the affidavit of their own economic expert,

on March 26, 2010. [Docket No. 251, 252, 256, 258].

During the course of the litigation, Lead Counsel conducted extensive discovery, including obtaining and reviewing more than one million pages of documents produced by Defendants and third parties. Lead Counsel participated in nine depositions – defending seven depositions of Lead Plaintiffs' representatives and one deposition of Lead Plaintiffs' loss causation expert witness, and noticing and deposing Defendants' expert witness who offered a rebuttal opinion. Additionally, Lead Counsel reviewed over 25 depositions taken in related actions,[5] and noticed and extensively prepared for additional witness depositions scheduled to be completed by Lead Plaintiffs before the close of discovery.

Lead Counsel engaged in initial settlement discussion with the Defendants after the motions to dismiss had been briefed. On June 10, 2009, Lead Plaintiffs and Defendants participated in a day-long mediation session with the Honorable Daniel Weinstein (Ret.) in New York. The parties were unable to agree on an appropriate range for the settlement of this action during that mediation.

During the briefing on the class certification motion, and after the depositions of each side's experts on class certification issues, the parties began further negotiations. On May 3, 2010, after considerable discussions and negotiations between Lead Counsel and Defendants' counsel, Lead Plaintiffs and Maxim executed a Memorandum of Understanding reflecting an agreement in principle to settle the Action for $173 million in cash to be paid by Maxim.

Following this Court's issuance of the Preliminary Approval Order, on July 23, 2010, the Settlement Fund was deposited into an interest-bearing escrow account. *See* Joint Decl. ¶3. Pursuant to the Court's Preliminary Approval Order, beginning on July 27, 2010, Lead Counsel, through the claims administrator, caused the Notice packet (including the Court-approved Notice, Claim Form and Opt Out Form) to be sent to potential Class Members, and the Summary Notice to be published in *The Investor's Business Daily*. *See* Keough Decl. ¶¶3-9.

[5] In the related SEC action, following trial, a judgment was entered against Defendant Jasper requiring payment in the amount of $360,000 as a civil penalty, and payment in the amount of $1,869,639 as forfeiture of bonuses and stock-sale profits, and a two-year prohibition on acting as an officer or director of a public company.

The Notice informs Class Members of the September 3, 2010 deadline for submitting any objections to any aspect of the Settlement, the Plan of Allocation, or request for attorneys' fees and reimbursement of litigation expenses, or for requesting exclusion from the Class.

III. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

A. A Reasonable Percentage Of The Fund Recovered Is An Appropriate Approach To Awarding Attorneys' Fees In Common Fund Cases

Lead Counsel seek a reasonable percentage of the common fund recovered for the benefit of the Class. The Ninth Circuit has recently confirmed its approval of the percentage-of-recovery approach, and this approach has become the prevailing method for awarding fees in common fund cases in the Ninth Circuit. *See Glass v. UBS Fin. Servs., Inc.*, 331 Fed. Appx. 452, 456-57 (9th Cir. 2009) (unpubl.) (affirming 25% fee award, overruling objection based on use of percentage-of-the-fund approach); *see also Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268 (9th Cir. 1989); *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); *Vizcaino*, 290 F.3d 1043; *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007) (citations omitted).

The percentage method is desirable because it most fairly correlates the compensation of counsel with the benefit conferred upon the class. *See Omnivision*, 559 F. Supp. 2d at 1046 (citing authorities that have "described thoroughly" the advantages of using the percentage method). First, it closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time.[6] Second, the percentage method decreases

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[6] The court in *Kirchoff v. Flynn*, 786 F.2d 320, 325-26 (7th Cir. 1986), identified the aligning of lawyers' and clients' interest as among the merits of the percentage approach:

> The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains . . . The unscrupulous lawyer paid by the hour may be willing to settle for a lower recovery coupled with a payment for more hours. Contingent fees eliminate this incentive and also ensure a reasonable proportion between the recovery and the fees assessed to defendants...

the burden imposed on courts by eliminating a detailed and time-consuming lodestar analysis and assuring that the beneficiaries do not experience undue delay in receiving their share of the settlement. *See Gerstein v. Micron Tech. Inc.*, 1993 U.S. Dist. LEXIS 21215, at *14 (D. Idaho Sept. 10, 1993) ("This court favors the percentage approach [in common fund cases] because it conserves scarce judicial resources by saving the court from having to make a series of largely judgmental decisions with respect to the actual fees claimed."); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989). It is also consistent with the practice in the private marketplace where contingent-fee attorneys are customarily compensated by a percentage of the recovery, and with the PSLRA's mandate that attorneys' fees "shall not exceed a ***reasonable percentage***" of the class recovery. 15 U.S.C § 78u-4(a)(6) (emphasis added).

B. A Fee Of 17% Of The Net Settlement Amount Is Reasonable

After the decision is made to apply the percentage method of fee determination, courts must determine what percentage to apply. The Ninth Circuit has recognized 25% of the settlement amount as the appropriate benchmark for attorneys' fees awarded under the percentage method. *See, e.g.*, *Glass*, 331 Fed. Appx. at 457; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (referring to 25% in attorneys' fees as a "benchmark award").

Here, in view of, among other circumstances, the litigation risks faced; the result achieved; the skill required and the quality of the representation; the endorsement of the fee by the sophisticated institutional Lead Plaintiffs; and the support of the Class, an award of 17% of the Settlement Fund, net of litigation expenses – far less than the 25% benchmark – is reasonable.

C. Consideration Of The Relevant Factors Used By Courts In The Ninth Circuit Justifies A Fee Award Of 17%

The ultimate task for this Court in awarding attorneys' fees is to ensure that Lead Counsel is fairly compensated for the work they performed and the results they achieved. Courts in this Circuit consider the following factors: (1) the results achieved; (2) the risks of litigation; (3) the skill required

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> At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.

and quality of work; (4) the contingent nature of the fee and financial burden carried by the plaintiffs; (5) awards made in similar cases; (6) the reaction of the class to the proposed fee and expense request; and (7) the amount of a lodestar cross-check. *See Vizcaino*, 290 F.3d at 1048-50; *Omnivision*, 559 F. Supp. 2d at 1046-48. As discussed below, application of these factors here confirms that the 17% fee is justified.

1. The Results Achieved

Lead Counsel have succeeded in obtaining a $173 million cash Settlement for the Class in the face of significant risks on dispositive legal issues. This achievement was the result of Lead Counsel's vigorous prosecution, skillful presentation of issues, and artful settlement negotiations. The Class will receive immediate compensation for its losses due to federal securities laws violations by Defendants. The immediate Settlement will avoid the substantial risks of lesser or no recovery due to the defenses to liability and limitations on the recoverable damages.

Courts have consistently recognized that the settlement achieved is a major and perhaps the most important factor to be considered in determining an appropriate fee award. *See Omnivision*, 559 F. Supp. 2d at 1046 (citation omitted).

As detailed in the Joint Declaration and below, Lead Plaintiffs faced numerous obstacles in this litigation, including in particular, establishing loss causation, reliance, and the full extent of the Class' damages. The expense and length of continued proceedings necessary to prosecute the action through dispositive motions, further discovery, trial and appeals would be substantial. Lead Plaintiffs, aided by Lead Counsel, carefully considered the likelihood of success against Defendants, the potential total damages that could be recovered against Defendants, as well as the uncertain outcome and risk of any litigation, especially in complex actions such as this, and the difficulties and delays inherent in such litigation. *See* Joint Decl. ¶¶53-58. Particularly in light of these circumstances, the amount obtained is a substantial achievement on behalf of the Class, and weighs in favor of granting the requested 17% fee.

2. Risks Of Litigation

Risk that further litigation might result in plaintiffs not recovering at all is an important factor in determining a fair fee award. *See, e.g., Omnivision*, 559 F. Supp. 2d at 1047; *In re Washington Pub.*

Power Supply Sys. Sec. Litig., ("*WPPSS*"), 19 F.3d 1291, 1299-1301 (9th Cir. 1994); *see also In re Heritage Bond Litig.*, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005) ("The risks assumed by Class Counsel, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award.").

While courts have always recognized that securities class actions carry significant risks, post-PSLRA rulings make it clear that the risk of no recovery has increased significantly. Courts have noted that "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). According to an April 2006 NERA study, dismissal rates have doubled since the PSLRA, accounting for 40.3% of dispositions. *See* Ronald I. Miller, et al., *Recent Trends in Shareholder Class Action Litigation: Beyond the Mega-Settlements, is Stabilization Ahead?*, at 4 (NERA Apr. 20, 2006).

In this action, Lead Counsel, like the Class Members, faced the substantial risk of lesser or no recovery. Defendants argued throughout the litigation that Lead Plaintiffs would be unable to prove loss causation and reliance as to some or all of the Class Period. On Defendants' motion to dismiss, Lead Counsel argued successfully that the complaint adequately alleged loss causation based on Maxim's January 17, 2008 disclosure, but the Court dismissed claims based on earlier alleged corrective disclosures. Lead Counsel also successfully defeated Defendants' argument that purchasers of Maxim stock after January 31, 2007, had no claim because Maxim had said that its financial statements could no longer be relied upon. At the class certification stage, Defendants renewed their argument that Class Members could not establish reliance as a result of Maxim's January 31, 2007 disclaimer and that Lead Plaintiffs could not establish loss causation with respect to the January 17, 2008 disclosure. Those arguments, both central to the claims of the class, would undoubtedly have been reasserted at summary judgment phase, at trial and on appeal.

Lead Counsel anticipated Defendants' assertions in their opposition to class certification that the "fraud on the market" presumption was rebutted by a lack of loss causation, and that the Class should exclude anyone who purchased shares after Maxim stated that its financial statements could not be relied upon. Lead Counsel retained one of the few economists, Professor Gregg A. Jarrell, who had researched the effect of options backdating on stock prices and who had published a peer reviewed

article on the subject. By working with Professor Jarrell, Lead Counsel effectively countered Defendants' contentions with Dr. Jarrell's opinions on those issues submitted with Lead Plaintiffs' opening motion papers on class certification. Professor Jarrell provided evidence that: (1) Maxim's common stock traded in an efficient market; (2) Defendants' alleged false statements and omissions were material to investors; and (3) several of the misrepresentations and omissions caused losses for shareholders who purchased common stock during the Class Period and held the shares through at least one of the partially corrective disclosures. These efforts, in part, led to renewed settlement negotiations, resulting in Lead Counsel obtaining the $173 million cash recovery for the Class.

While Lead Counsel developed persuasive evidence and strong legal arguments supporting the claims against Defendants, Lead Counsel also recognized that if Defendants were successful in their loss causation and reliance arguments at any further stage of the litigation – class certification, summary judgment, trial, or appeal – total recoverable damages for the Class would have been greatly reduced or eliminated altogether.

In the face of these risks, Lead Counsel achieved a $173 million recovery for the Class. Under these circumstances, the requested fee is fully justified.

3. The Skill Required And Quality Of The Work Performed

The third factor to consider in determining what fee to award is the skill required and quality of work performed. *See Gustafson v. Valley Ins. Co.*, 2004 WL 2260605, at *2 (D. Or. Oct. 6, 2004). "The 'prosecution and management of a complex national class action requires unique legal skills and abilities.' [citation omitted]. This is particularly true in securities cases because the [PSLRA] makes it much more difficult for securities plaintiffs to get past a motion to dismiss." *Omnivision*, 559 F. Supp. 2d at 1047; *see also Heritage Bond*, 2005 WL 1594389, at *12 ("The experience of counsel is also a factor in determining the appropriate fee award.").

Here, the attorneys at Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Chitwood Harley Harnes LLP ("Chitwood") are among the most experienced and skilled practitioners in the

securities litigation field, and the firms have long and successful track records in such cases.[7] From the outset, Lead Counsel engaged in a concerted effort to obtain the maximum recovery for the Class. Lead Counsel demonstrated that they would work to develop sufficient evidence to support a convincing case. As detailed in the Joint Declaration, through Lead Counsel's persistent and skillful work, Lead Plaintiffs were able to plead detailed allegations based on their investigation, largely defeat Defendants' motions to dismiss, file a comprehensive class certification motion, and ultimately obtain a $173 million settlement on behalf of the Class. *See* Joint Decl. ¶¶18-63.

Lead Counsel also successfully obtained and reviewed voluminous documents from Defendants and third parties during discovery, prepared for and participated in nine depositions, and filed a motion for class certification and supporting documents. Lead Counsel's skill and experience was also key in communicating with the experts they necessarily retained in this complicated securities class action. *See* Joint Decl. ¶¶28-52.

The fact that Lead Counsel has demonstrated a willingness and ability to prosecute complex cases such as this throughout trial and appeals was undoubtedly a factor that encouraged Defendants to engage in settlement discussions, and added valuable leverage in the negotiations, ultimately resulting in the recovery for the Class.

As a result of Lead Counsel's skill and efforts, by the time the Settlement was reached, Lead Counsel and Lead Plaintiffs had a thorough understanding of the strengths and weaknesses of the claims asserted in the case. Lead Counsel engaged in hard-fought and protracted settlement negotiations. Although the in-person mediation under the auspices of Judge Weinstein, a retired California state court judge and experienced mediator, failed to bring about an agreement, the parties thereafter engaged in further negotiation, and Lead Counsel eventually achieved the settlement. *See*

[7] *See* Firm Biographies of BLB&G and Chitwood, attached, respectively, as Ex. 3 to the Declaration Of Blair A. Nicholas In Support Of Lead Counsel's Application For Attorneys' Fees And Reimbursement Of Litigation Expenses Filed On Behalf Of Bernstein Litowitz Berger & Grossmann LLP ("Nicholas Decl.," Ex. D to Joint Decl.), and Ex. 5 to the Declaration Of Gregory E. Keller In Support Of Lead Counsel's Application For Attorneys' Fees And Reimbursement Of Litigation Expenses Filed On Behalf Of Chitwood Harley Harnes LLP (Ex. E to Joint Decl.).

Joint Decl. ¶¶60-63. Lead Counsel's extensive efforts and skill leading to the settlement strongly support the requested percentage fee.

The quality and vigor of opposing counsel is also important in evaluating the services rendered by Lead Counsel. *See, e.g., In re Equity Funding Corp. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Defendant Maxim has been represented by experienced counsel from a prominent law firm, Weil, Gotshal & Manges LLP, and Defendants Gifford, Jasper and Ruehle have been represented by Sonnenblick, Parker & Selvers, P.C., Latham & Watkins, LLP, and O'Melveny & Myers LLP, respectively, firms with substantial experience in this type of litigation. The representation of the Defendants was no less rigorous than Lead Counsel's representation of the Class. The fact that Lead Counsel achieved this Settlement for the Class in the face of formidable legal opposition further evidences the quality of their work.

4. The Contingent Nature Of The Fee And The Financial Burden Carried By Counsel

The Ninth Circuit has confirmed that a determination of a fair and reasonable fee must include consideration of the contingent nature of the fee and the obstacles surmounted in obtaining the settlement.

> It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose.[8]

Here, Lead Counsel received no compensation during the course of this action and invested $9,540,457.50 in time, and incurred expenses totaling $706,337.54 (excluding Lead Plaintiffs'

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[8] *WPPSS*, 19 F.3d at 1299; *see In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2007 WL 2416513, at *1 (N.D. Cal. Aug. 16, 2007) ("Plaintiffs' counsel risked time and effort and advanced costs and expenses with no ultimate guarantee of compensation."); *see also Omnivision*, 559 F. Supp. 2d at 1047 ("The importance of assuring adequate representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee.") (citations omitted).

expenses) in obtaining the Settlement for the benefit of the Class. *See* Joint Decl. ¶¶82, 85, 87. In addition to the advancement of costs, lawyers working on the case have forgone the business opportunity to devote time to other cases. *See Vizcaino*, 290 F.3d at 1050. Any fee award has always been at risk, and completely contingent on the result achieved and on this Court's discretion in awarding fees and expenses.

Indeed, the risk of no recovery in complex cases is very real. Lead Counsel knows from personal experience that, despite the most vigorous and competent efforts, their success in contingent litigation such as this is never guaranteed. The commencement of a class action is no guarantee of success. These cases are not always settled, nor are plaintiffs' lawyers always successful. *See, e.g., In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007). Hard, diligent work by skilled counsel is required to develop facts and theories to prosecute a case or persuade defendants to settle on terms favorable to the Class.

5. Awards Made In Similar Cases

Lead Counsel seeks a fee of 17% of the net Settlement Fund – far less than the Ninth Circuit's 25% benchmark for common fund cases. Indeed, "in most common fund cases, the award exceeds that benchmark." *Omnivision*, 559 F. Supp. 2d at 1047 (approving 28% fee award in securities class action) (citing *Activision*, 723 F. Supp. at 1377-78 (surveying securities cases nationwide and noting, "This court's review of recent reported cases discloses that nearly all common fund awards range around 30%")); *see also In re THQ, Inc. Sec. Litig.*, CV-00-01783 (C.D. Cal.), Order Awarding Lead Counsel's Attorneys' Fees And Reimbursement Of Expenses filed June 30, 2003, Docket No. 128 (granting fees equaling 30% of the settlement amount in a securities class action); *In re CV Therapeutics, Inc. Sec. Litig.*, 2007 WL 1033478 (N.D. Cal. Apr. 4, 2007) (approving 30% fee award in securities class action); *In re Informix Corp. Sec. Litig.*, 1999 U.S. Dist. LEXIS 23579, at *6 (N.D. Cal. Nov. 23, 1999) (awarding 30% of $132 million settlement fund in securities class action); *see also Silva v. Banco Popular North America*, Case No. CV 08-06300 (C.D. Cal.), Order Granting Final Approval Of Settlement And Awarding Fees And Costs filed June 22, 2009, Docket No. 42 (granting fees equaling 28% of the class settlement fund); *Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *6 (N.D. Cal. Feb. 2, 2009) (approving 30% fee award).

This fee percentage – negotiated with sophisticated Lead Plaintiffs – is also less than the fee percentages typically awarded in similar backdating securities class actions as set forth below:

Backdating Securities Class Action Settlement	**Settlement Amount**	**Fee Percentage Granted**
In re Brocade Sec. Litig., 05-cv-02042 (N.D. Cal. Jan. 26, 2009)	$160 million	25%
In re Monster Worldwide, Inc. Sec. Litig., 07-CV-02237, Docket No. 139 (S.D.N.Y. Nov. 25, 2008)	$47.5 million	25%
In re Comverse Sec. Litig., 2010 WL 26533354, at *6 (E.D.N.Y. June 23, 2010)	$225 million	25%
In re Marvell Tech. Group Ltd. Sec. Litig., 06-06286 (N.D. Cal. Nov. 13, 2009)	$72 million	20.5%
In re Broadcom Corp. Class Action Litig., 06-cv-05036, Docket No. 355 (C.D. Cal. Aug. 11, 2010)	$160.5 million	18.5%
In re KLA-Tencor Corp., 06-4065, Docket No. 226 (N.D. Cal. September 26, 2008)	$65 million	16.4%

The fee percentage negotiated and requested is also well below the fee percentages granted in other options backdating cases that were brought derivatively, including in the related derivative case against Defendant Gifford and the other individuals in this action. *See Ryan*, 2009 WL 18143 (awarding 33% of the cash recovery); *see also Zoran*, 2008 WL 4104517 (awarding 38% of the cash recovery); *In re Marvell Tech. Group Ltd. Deriv. Litig.*, C-06-03894, Docket No. 108 (N.D. Cal. Aug. 11, 2009) (awarding 29% of the cash recovery); *NVIDIA*, 2009 U.S. Dist. LEXIS 24973 (awarding $7.25 million, equal to 45.8% of the $15.8 million cash recovery); *Juniper Deriv. Actions*, 2008 U.S. Dist. LEXIS 109858 (awarding $9 million, equal to 39.6% of the $22.7 million cash recovery); *In re Activision, Inc. S'holder Deriv. Litig.*, CV-06-04771, Docket No. 84 (C.D. Cal. July 21, 2008) (awarding $10.75 million, equal to 44.2% of the $24.3 million cash recovery); *McAfee*, 2009 U.S. Dist. LEXIS 29246 (awarding $13.75 million, equal to 45.8% of the $30 million cash recovery); *Apple*, 2008 WL 4820784 (awarding $8.85 million, equal to 63% of the $14 million cash recovery).

In addition, many courts weigh the customary fee in the marketplace for non-class action contingency cases as a significant measure in approving fees. *See e.g., In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("[W]hen deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time."); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *7 (S.D.N.Y. Aug. 24, 1992) ("What should govern such [fee]awards is not the essentially whimsical view of a judge, or even a panel of judges, as to how much is enough in a particular case, but what the market pays in similar cases"); *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975 (7th Cir. 2003) ("A court must give counsel the market rate for legal services . . . .").

Although the Ninth Circuit has not adopted the marketplace analogy as a factor to consider in setting fees in class actions, the Circuit expressly recognized it as at least "probative" of what fee is reasonable. *Vizcaino*, 290 F.3d at 1049. If this was a non-class action litigation, the customary contingent fee would likely range between 30 and 40 percent of the recovery.[9]

Lead Counsel's work was performed, and the results achieved, on a wholly contingent basis in the face of determined opposition. Under these circumstances, it necessarily follows that Lead Counsel is entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained. Under all of the circumstances present here, a 17% fee is fair and reasonable.

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[9] *See, e.g., Ikon*, 194 F.R.D. at 194 ("in private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery"); *accord Blum v. Stenson*, 465 U.S. 886, 904 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (concurring opinion); *In re United States Bioscience Sec. Litig.*, 155 F.R.D. 116, 119 (E.D. Pa. 1994) (adopting Special Master's conclusion that 30% would likely have been negotiated in securities action); *see also Kirchoff*, 786 F.2d at 323 (observing that 40% is the customary fee in tort litigation); *In re Pub. Service Co. of New Mexico*, 1992 WL 278452, at *7 (S.D. Cal. July 28, 1992); ("[i]f this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 40% of the recovery"); *In re M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("[i]n private contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total recovery"); *Phemister v. Harcourt Brace Jovanovich, Inc.*, 1984 WL 21981, at *15 (N.D. Ill. Sept. 14, 1984) ("[t]he percentages agreed on [in non-class-action damage lawsuits] vary, with one-third being particularly common").

6. Reaction Of The Class Supports The Fees And Expenses Sought

The reaction of the class to a proposed settlement and fee request is a relevant factor in approving fees. *See Red Door Salons*, 2009 WL 248367, at *7; *Omnivision*, 559 F. Supp. 2d at 1048. Here, beginning on July 27, 2010, the Notice was sent to over 195,000 potential Class Members and the Summary Notice was published in the *Investor's Business Daily* on August 6, 2010. *See* Keough Decl. ¶¶3-9. The Court-approved Notice (attached as Ex. A to the Keough Decl.) informed Class Members that Lead Counsel intend to apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 17% of the Settlement Fund net of Court-approved litigation expenses, plus interest at the same rate and for the same period as earned by the Settlement Fund. The Notice further advised Class Members of their right to opt out of the Settlement or to object to the Settlement, the Plan of Allocation or the request for attorneys' fees and expenses. While the deadline for submitting any objections does not expire until September 3, 2010, to date, no Class Member has filed an objection. This factor further supports the requested award of 17% of the net Settlement Fund. *See Silva v. Banco Popular North America*, CV 08-06300 (C.D. Cal.), Order Granting Final Approval Of Settlement And Awarding Fees And Costs filed June 22, 2009, Docket No. 29 (awarding 28% based in part on no objections); *Red Door Salons*, 2009 WL 248367, at *7 (no objection supports 30% award); *Omnivision*, 559 F. Supp. 2d at 1048 (only three objections supports 28% award).

7. The Lodestar Crosscheck Confirms The Reasonableness Of The Requested Fee

Although courts in this Circuit typically apply the percentage approach to determine attorneys' fees in common-fund cases, courts may use a lodestar analysis as a "cross-check" on the percentage method. *See Glass*, 331 Fed. Appx. at 456; *In re Immunex Sec. Litig.*, 864 F. Supp. 142, 144 (W.D. Wash. 1994); *WPPSS*, 19 F.3d at 1296-98. Here, such a "cross-check" confirms that the requested fee amount is reasonable.

In *Vizcaino*, the Ninth Circuit noted that

> "courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases. . . . This mirrors the established practice in the private legal market

> of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." . . . In common fund cases, "attorneys whose compensation depends on their winning the case [] must make up in compensation in the cases they win for the lack of compensation in the cases they lose.'"

290 F.3d at 1051 (quoting *WPPSS*, 19 F.3d at 1300-01). There, the Ninth Circuit affirmed a fee awarded in this District that equaled 28% of the settlement fund and a multiplier of 3.65.[10]

Here, Plaintiffs' Counsel's lodestar is $9,540,457.50. *See* Joint Decl. ¶85. Thus, Lead Counsel's request for an award of $29,282,243.72 (17% of the settlement amount of $173 million less total Litigation Expenses of $751,507.54), amounts to a multiplier of just 3. Courts have routinely held that larger multipliers are fair and reasonable. *See, e.g., Vizcaino*, 290 F.3d 1043 (affirming fee award equaling 28% of the settlement fund, resulting in a 3.65 multiplier). Indeed, "'multipliers of between 3 and 4.5 have been common.'"[11]

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[10] Under the lodestar method, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorney's work. *See, e.g., Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 487 F.2d 161, 167-69 (3d Cir. 1973), *subsequently amended in Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 116-18 (3d Cir. 1976) (*en banc*). Courts are encouraged to award a multiplier because calculation of the lodestar is "simply the beginning of the analysis." *In re Medical X-Ray Film Antitrust Litig.*, 1998 WL 661515, at *7 (E.D.N.Y. Aug. 7, 1998) (quoting *In re Warner Communc'ns Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985).

[11] *Rabin v. Concord Assets Group, Inc.*, 1991 WL 275757, at *2 (S.D.N.Y. Dec. 19, 1991) (multiplier of 4.4) (citation omitted); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."); *see also Keith v. Volpe*, 501 F. Supp. 403, 414 (C.D. Cal. 1980) (multiplier of 3.5); *In re Brocade Sec. Litig.*, 05-CV-2042-CRB, Final Order and Judgment, at 13 (N.D. Cal. Jan. 26, 2009) (Docket No. 496) (awarding 25% of $160 million settlement fund, resulting in a 3.5 multiplier); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706 (E.D. Pa. 2001) (multipliers of 4.5-8.5); *In re Infospace, Inc.*, 330 F. Supp. 2d 1203 (W.D. Wash. 2004) (awarding multiplier of 3.5 on a $34.4 million settlement fund); *see also In re NASDAQ Market-Makers Anti-Trust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding a 3.97 multiplier on a $1.0 billion settlement and finding fee awards of 3 to 4.5 to be "common"); *see also In re Lucent Tech., Inc. Sec. Litig.*, 327 F. Supp. 2d 426 (D.N.J. 2004); *Kurzweil v. Philip Morris Cos., Inc.*, 1999 WL 1076105, at *3 (S.D.N.Y. Nov. 30, 1999) (recognizing that multipliers of between 3 and 4.5 are common in federal securities cases); *Wal-Mart Stores, Inc. v. VISA USA, Inc.*, 396 F.3d 96 (2d Cir. 2005) (affirming fee award equaling a 3.5 multiplier); *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 33 1/3% of the common fund, equaling a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re Interpublic Sec. Litig.*,

Moreover, the resulting multiplier here is entirely consistent with the resulting multipliers in fees awarded in other backdating securities cases. *See, e.g., In re Brocade Sec. Litig.*, 05-cv-02042, Docket No. 496 (N.D. Cal. Jan. 26, 2009) (awarding 25% fee, resulting in 3.5 multiplier); *In re Marvell Tech. Group Ltd. Sec. Litig.*, 06-06286, Docket No. 292 (N.D. Cal. Nov. 13, 2009) (awarding 20.5% fee, resulting in 3.36 multiplier); *Comverse*, 2010 WL 2653354, at *6 (awarding 25% fee, resulting in a multiplier of approximately 3).

Further, Lead Counsel's lodestar does not account for the additional time that will be required of Lead Counsel to participate in the final approval process and to oversee the claims administration process and the distribution of the net settlement funds to eligible claimants.

IV. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED FOR THE CLASS

Lead Counsel also requests that the Court grant their application for $706,337.54 (excluding Lead Plaintiffs' expenses discussed below) to reimburse their incurred costs in connection with the prosecution of this litigation.[12] The appropriate analysis to apply in deciding whether expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See, e.g., Omnivision*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters."); *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'") (citations omitted).

From the beginning of the case, Lead Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the action was successfully resolved. Lead Counsel also understood that, even assuming that the case was ultimately successful,

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2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) (approving fee representing multiplier of 3.96 times lodestar and noting that "[I]n recent years multipliers of between 3 and 4.5 have been common in federal securities cases."); *In re WorldCom Inc. Sec. Litig.*, 388 F. Supp. 2d 319 (S.D.N.Y. 2005) (approving fee award equaling 4.0 multiplier); *In re Bisys Sec. Litig.*, 2007 WL 2049726 (S.D.N.Y. July 16, 2007) (approving fee award of 30%, equaling 2.99 multiplier).

[12] *See* Joint Decl. ¶87. For a summary of all requested expenses, see Ex. 3 to the Keller Decl.

an award of expenses would not compensate them for the lost use of the funds advanced to prosecute this action. Thus, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the action. *See* Joint Decl. ¶88.

The expenses which Lead Counsel seek are the type of expenses routinely charged to hourly paying clients. For example, a large portion of the litigation expenses for which reimbursement is sought were incurred for professional expert and consultant fees. Of the total amount of expenses, $438,377.82, or 62%, was expended on experts and consultants in the areas of liability, loss causation, market efficiency, damages, and to assist with the Plan of Allocation. The expertise and assistance provided by these experts was critical to the prosecution and successful resolution of this action. *See* Joint Decl. ¶90.

The expenses also include the costs of on-line legal and factual research in the total amount of $118,422.36. *See* Joint Decl. ¶91. These are the charges for computerized factual and legal research services such as *Lexis-Nexis* and *Westlaw*. It is standard practice for attorneys to use *Lexis-Nexis* and *Westlaw* to assist them in researching legal and factual issues. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1371 (N.D. Cal. 1996). Indeed, courts recognize that these tools create efficiencies in litigation and, ultimately, save clients and the class money. *See, e.g., In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992). In approving expenses for computerized research, the court in *Gottlieb v. Wiles* underscored the time-saving attributes of computerized research as a reason reimbursement should be encouraged. 150 F.R.D. 174, 186 (D. Colo. 1993), *rev'd and remanded on other grounds sub nom. Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994).

Further, Lead Counsel were required to travel in connection with prosecuting and mediating this matter and nine depositions and, thus, incurred the related costs of travel tickets, meals, and lodging. Included in the expense request is $64,885.78 for out-of-town travel expenses necessarily incurred for the prosecution of this Litigation. *See* Joint Decl. ¶92. The expenses in this category are reasonable in amount, and are properly charged against the fund created. The other expenses for which reimbursement is sought 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, long distance

telephone and facsimile charges, postage and delivery expenses, filing fees, photocopying, and document/litigation support.[13]

And finally, the Court-approved Notice provided to potential Class Members informed them that Lead Counsel intends to apply for the reimbursement of litigation expenses in an amount not to exceed $1.5 million, plus interest at the same rate and for the same time period as earned by the Settlement Fund.[14] The amount of expenses now sought – $751,507.54 (including Lead Plaintiffs' expenses) – is only *half* of the amount stated in the Notice. The deadline for objecting to the fee and expense application or opting out of the Settlement expires on September 3, 2010. To date, there have been no objections to any aspect of the Settlement, the Plan of Allocation, or the request for attorneys' fees and reimbursement of litigation expenses.

V. LEAD PLAINTIFFS SHOULD BE REIMBURSED FOR THEIR COSTS AND EXPENSES

Under the PSLRA, the Court may award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Courts have noted that it is important to reimburse time and expenses of class representatives because doing so "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co.*, 2000 WL 1683656, at *5, n.2 (S.D.N.Y. Nov. 8, 2000).

Time spent by class representatives in: managing the case; performing economic analysis; providing audit services and for computer expenses are properly reimbursable from the Settlement Fund. *See In re Broadcom Corp. Class Action Litig.*, 06-cv-05306, Docket No. 355 (C.D. Cal. Aug.

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[13] *Id.*; *see Thornberry v. Delta Air Lines, Inc.*, 676 F.2d 1240, 1244 (9th Cir. 1982), *vacated and remanded on other grounds*, 461 U.S. 952 (1983); *see also Red Door Salon*, 2009 WL 248367, at *7 (approving of expenses relating to "online legal research, travel, postage and messenger services, phone and fax charges, copying, court costs, and the costs of travel"); *Omnivision*, 559 F. Supp. 2d at 1048 (approving of expenses relating to "photocopying, printing, postage and messenger services, court costs, legal research on Lexis and Westlaw, experts and consultants, and the costs of travel for various attorneys and their staff throughout the case").

[14] Pursuant to the PSLRA, the Notice further informed Class Members that if the Court approves Lead Counsel's fee and expense application, the average cost per damaged share of common stock will be approximately $0.04.

11, 2010) (awarding $12,250 for lead plaintiff expenses in backdating case); *see also Atlas v. Accredited Home Lenders Holding Co.*, 2009 WL 3698393, at *5 (S.D. Cal. Nov. 4, 2009); *Omnivision*, 559 F. Supp. 2d at 1049; *In re Gilat Satellite Networks, Ltd.*, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (awarding $10,000 for named plaintiff expenses); *Hicks v. Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) (awarding $7,500 for reasonable costs and expenses).

The Notice informed the Class that Lead Counsel would request an award for Lead Plaintiffs directly related to their representation of the Class. The expenses incurred by Lead Plaintiffs total $45,170, as further detailed in the Lead Plaintiff Declaration at ¶¶2-4, 8-11, 14-16. Thus far, no Class Member has objected to the request.

As demonstrated in the Lead Plaintiff Declaration, these expenses are directly related to the Lead Plaintiffs' representation of the Class and are properly reimbursable from the Settlement Fund.

VI. CONCLUSION

From the beginning of this litigation, Lead Plaintiffs have faced determined adversaries represented by experienced counsel. With no assurance of success, Lead Plaintiffs and Lead Counsel pursued the action, and successfully obtained a $173 million cash Settlement. The Settlement reflects Lead Counsel's efforts in the face of significant risk. Accordingly, Lead Counsel respectfully submit that the Court should approve the fee and expense application and award Lead Counsel 17% of the net Settlement Fund, or $29,282,243.72 in fees, and $706,337.54 in Plaintiffs' Counsel's expenses, plus interest on for the same time period and at the same rate accrued by the Settlement Fund beginning on the July 23, 2010 funding date. Additionally, Lead Plaintiffs should be awarded $45,170 in reimbursement of their reasonable costs and expenses relating to their representation of the Class.

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Respectfully submitted,

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Attorneys for Lead Plaintiffs the Cobb County Government Employees' Pension Plan, the DeKalb County Pension Plan and the Mississippi Public Employees Retirement System