UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GLENN FREEDMAN, individually and on behalf of all similarly situated, Plaintiff, v. WEATHERFORD INTERNATIONAL, LTD., et al., Defendants.	Civil Action No. 12-CV-2121 (LAK)

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

BLEICHMAR FONTI TOUNTAS & AULD LLP
Javier Bleichmar (JB-0435)
Joseph Fonti (JF-3201)
Wilson Meeks (WM-1066)
7 Times Square
New York, New York 10036
Telephone: 212-789-1340
Facsimile: 212-205-3960
jbleichmar@bftalaw.com
jfonti@bftalaw.com
wmeeks@bftalaw.com

Class Counsel and Counsel for Court-Appointed Co-Lead Plaintiff and Class Representative Anchorage Police & Fire Retirement System

LABATON SUCHAROW LLP
Joel Bernstein (JB-0763)
Ira Schochet (IS-2187)
140 Broadway
New York, New York 10005
Telephone: 212-907-0700
Facsimile: 212-818-0477
jbernstein@labaton.com
ischochet@labaton.com

Class Counsel and Counsel for Court-Appointed Co-Lead Plaintiff and Class Representative Sacramento City Employees' Retirement System

Table of Contents

TABLE OF AUTHORITIES

Page(s)

Cases

Docketed Cases

Other Authorities

Court-appointed Class Counsel, Labaton Sucharow LLP and Bleichmar Fonti Tountas & Auld LLP, respectfully submit this memorandum in support of their motion pursuant to Federal Rule of Civil Procedure 23(h) for an award of attorneys' fees, payment of expenses that were reasonably and necessarily incurred in the prosecution of this Action, and payment of costs also reasonably incurred by the Class Representatives.[1]

I. PRELIMINARY STATEMENT

Class Counsel has successfully recovered $120 million in cash – paid by Weatherford rather than insurance carriers – for the benefit of the Class. This result is outstanding compared with similar cases and the risks of non-recovery which were substantially higher than the norm while this Action was litigated, mainly as a result of *Halliburton II*.[2]

A recovery of this size was only possible through the unrelenting efforts of Class Counsel over nearly three-and-a-half years, and was only secured after Class Counsel deposed all of the key witnesses who would likely testify at trial (including the Individual Defendants), exchanged expert reports with Defendants, and developed a compelling factual record demonstrating that Defendants faced serious liability. For their accomplishments, skill, and commitment Class

[1] Class Counsel is simultaneously filing the Joint Declaration of Ira A. Schochet and Javier Bleichmar in Support of Class Representatives' Motion for Final Approval of the Proposed Class Action Settlement and Plan of Allocation and Class Counsel's Motion for Attorneys' Fees and Payment of Litigation Expenses ("Joint Declaration" or "Joint Decl."). We respectfully refer the Court to the Joint Declaration for a full discussion of the factual background and procedural history of the Action, the litigation efforts of Class Counsel, and the challenges faced.

All exhibits referenced herein are annexed to the Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference refers to the designation of the entire exhibit attached to the Joint Declaration and the second reference refers to the exhibit designation within the exhibit itself.

All capitalized terms not defined herein have the same meanings set forth in the Stipulation and Agreement of Settlement, dated June 30, 2015 ("Stipulation"), which was previously filed with the Court. ECF No. 191-1.

[2] *Halliburton Co. v. Erica P. John Fund, Inc.,* 134 S.Ct. 2398 (2014) ("*Halliburton II*").

Counsel request (i) a fee award in the amount of $27,930,550.00, (ii) payment of Class Counsel's litigation expenses in the amount of $4,675,424.65, and (iii) payment of costs and expenses incurred by the Class Representatives in the amount of $11,880.00. Class Counsel's request has the full support of both Court-appointed Class Representatives, each of which is precisely the type of fiduciary envisioned by the Private Securities Litigation Reform Act of 1995 ("PSLRA").[3]

Under the lodestar approach favored by this Court and consistent with Second Circuit law, *see McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010), the fee request is based on a multiplier of 1.5 on counsel's lodestar of $18,620,366.75. As explained herein, the fee request is amply supported by precedent and the factors set forth in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000). While a multiplier of 1.5 is well-within the range regularly granted by courts, Class Counsel are aware of this Court's prior decisions and understand that the multiplier requested here is on the higher end of previous awards. Class Counsel respectfully submit, however, that the request is justified based on their enormous efforts, the high quality of representation, and the excellent result obtained, and should be approved.

Having reviewed the Court's prior decisions and hearings on this issue, we seek here to address each of its previously-voiced concerns. One of the Court's often-expressed misgivings concerns the difficulty, and at times impossibility, of testing by any objective measure the quality

[3] *See* Declaration of Anchorage Police & Fire Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees and Expenses, dated September 25, 2015 (Ex. 1); Declaration of Sacramento City Employees' Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees and Expenses, dated September 29, 2015 (Ex. 19).

and amount of work conducted by class counsel.[4] This Action, however, presents the rare, and perhaps unique, instance in which the Court has a comparable case to objectively measure the result, the risks, and Class Counsel's efforts and skill. The *Dobina* securities class action against Weatherford, which settled last year and with which the Court is familiar, is closely related to the instant case. The overlap between the two actions is extensive and is set forth in detail in the Joint Declaration. *See* Joint Decl. ¶¶ 19-21; 159-67.

Compared to *Dobina*, the result that Class Counsel achieved here is superior and was the result of a substantially more efficient and comprehensive litigation strategy:

- This case settled for $120 million (14.1% of the Class's estimated damages), compared to $52.5 million in *Dobina* (10.5% of damages).[5]
- This Settlement was **not** funded by insurance. *Dobina* was fully funded by insurance.
- Class Counsel took 22 depositions (including of Defendants), completed fact discovery, exchanged expert reports, and certified the class. The *Dobina* plaintiffs conducted 10 depositions of lower-level witnesses, and did not complete discovery or certify the class.
- Defendants produced about 8 million pages of documents in this Action compared to about 2 million in *Dobina* (4:1 ratio), yet attorney hours totaled about 37,484 in this case and 30,325 in *Dobina* (less than 4:3 ratio).
- Staff attorneys primarily charged with document review represent approximately 30% of the lodestar here, compared to 45% in *Dobina*.

---

[4] *See, e.g., In re IndyMac Mortgage-Backed Sec. Litig.*, No. 09–cv–4583 (LAK), 2015 WL 1315147, at *6 (S.D.N.Y. 2015) ("the Court has 'merely done the best it can with the tools at hand, given the lack of any real adversarial testing of any of the key issues'"); *In re Weatherford, Ltd. Sec. Litig.*, No. 11-cv-1646 (LAK), 2015 WL 127847, at *2 (S.D.N.Y. Jan. 7, 2015) ("In the last analysis, then, what is to be done?") ("*Dobina*").

[5] If *Dobina* had settled for the relative percentage achieved here (14.1% of *Dobina*'s $500 million in damages), it would have settled for $70.5 million and, conversely, if this case had settled for the percentage obtained in Dobina (10.5% of $850 million in damages here), the recovery would have been $89.25 million. The difference and the incremental benefit to each Class Member in this Action is therefore tangible and material. Joint Decl.¶¶ 154-57.

A multiplier of 1.5 is further justified because of the unusual risk of non-recovery due to *Halliburton II* that is not applicable to any precedents in years past. The Supreme Court granted *certiorari* in that case immediately after the commencement of fact discovery in the fall of 2013. Fear reigned in the plaintiffs' bar that in the event of an adverse decision, which many considered likely, few if any securities class actions would be able to be certified. The statistics show that while *Halliburton II* was pending, securities cases settled prematurely and well below the post-PSLRA average, often without the benefit of a full evidentiary record (*see, e.g., Dobina*), and many of those that did not settle were stayed or not vigorously prosecuted. Joint Decl. ¶¶ 209-10.

Not surprisingly, Defendants tried to coax Class Counsel to settle early and cheaply here. Yet, Class Counsel, together with the Class Representatives, did not take the bait. Class Counsel not only refused to settle without the benefit of a fully developed record to assess the strengths and weaknesses of their claims, but continued to prosecute the case vigorously during the pendency of *Halliburton II* between November 2013 and June 2014. In that period, we completed briefing and all underlying discovery pertaining to class certification, served multiple document requests and third-party subpoenas, continued to analyze the documents produced by Defendants, spent money consulting with experts, and filed motions to compel that challenged the adequacy and scope of Defendants' document production. Class Counsel undertook these concerted efforts because, contrary to conventional wisdom, we believed that *Halliburton II* would sustain the fraud-on-the-market presumption. Our analysis and judgment proved right and the Class benefited enormously because of it.

In addition to the unprecedented risk created by *Halliburton II*, Class Counsel faced additional substantial challenges in proving their case. Defendants asserted serious defenses to

liability – including the absence of falsity under *Omnicare*,[6] scienter, and loss causation – that if successful would have resulted in no recovery. Indeed, even if the Class established liability at trial, Defendants still could have reduced the Class' maximum recovery by about 75%, to approximately $210 million, by obtaining the dismissal of certain false statements under *Omnicare*. Joint Decl. ¶ 154.

In sum, in light of *Dobina*, this case presents a unique instance where the Court can easily compare the efforts, skill, and success of Class Counsel based on circumstances well-known to the Court, and measurably find here a more skilled prosecution and superior result. This case also presents the highly unusual circumstance in which *Halliburton II* dramatically increased the risk of a complete loss and comparable securities class actions settled prematurely for diminished recoveries. Accordingly, for these reasons, and those set forth below, Class Counsel respectfully submit that their fee and expense request is fair and reasonable, and should be approved.

II. ARGUMENT

A. Class Counsel's Request For Attorneys' Fees Is Justified And Reasonable

Under long-standing precedent, attorneys who achieve a benefit for class members in the form of a "common fund" are entitled to request reasonable compensation for their contingent services. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Courts have recognized that, "[t]o make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding." *Hicks v. Morgan Stanley*, No. 01-cv-10071 (RJH), 2005 WL 2757792, *9 (S.D.N.Y. Oct. 24, 2005); *see also City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132 (CM)(GWG), 2014 WL 1883494, at *11 (S.D.N.Y. May 9,

[6] *Omnicare v. Laborers Dist. Council Const. Indus. Pension Fund*, 135 S. Ct. 1318 (2015).

2014) ("[A]wards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature."). Class 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*, 2005 WL 2757792, at *9. We respectfully submit that the requested attorneys' fees are eminently reasonable and adhere to these core principles.

B. The Requested Multiplier Is Substantially Less Than The Average In Comparable Cases

Class Counsel are familiar with this Court's preference for using lodestar over the percentage of recovery method to review and analyze fee requests in class actions.[7] Here, Class Counsel devoted 37,484 hours of time for an aggregate lodestar of $18,620,366.75 and is respectfully requesting approval of a fee of $27,930,550.00, reflecting a 1.5 multiplier.

Class Counsel are also well aware that this Court has been reticent to award positive lodestar multipliers, but believe that in this instance it is warranted.[8] As an initial matter, a

[7] The lodestar consists of the number of hours expended on the case by each attorney or professional, multiplied by that person's current hourly rate, and then the aggregation of all the amounts to calculate the total lodestar. "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12–cv–8557 (CM), 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) (citing *Missouri v. Jenkins*, 491 U.S., 274, 283-84 (1989)); *see also Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (similar); *In re Telik Inc., Sec. Litig.*, 576 F. Supp. 2d 570, 589 n.10 (S.D.N.Y. 2008) (similar).

[8] Positive lodestar multipliers are often awarded by Courts on account of the contingency fee risk incurred by counsel and other relevant factors, including the quality of the representation. For example, in approving the fee in *In re Cardinal Health Inc. Sec. Litig.*, the court explicitly said that "[it] rewards [] lead counsel that takes on more risk, demonstrates superior quality, or achieves a greater settlement with a larger lodestar multiplier." 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007). *See also In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02–cv–3400 (CM)(PED), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of

multiplier of 1.5 falls well within the range of multipliers that have historically been awarded by other courts in similarly complex cases, including other securities class actions. *See* Pretrial Order No. 35, *In re Lehman Brothers Securities And ERISA Litig.*, No. 08-CV-5523 (LAK) (S.D.N.Y. Jun. 29, 2012), ECF No. 431, at 3, (awarding a fee of $56.7 million based on a 1.5 multiplier); *Wal-Mart Stores, Inc. v. VISA U.S.A. Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (upholding multiplier of 3.5 as reasonable on appeal); Order Awarding Attorneys' Fees and Expenses, *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (S.D.N.Y. Jul. 20, 2011), ECF. No. 117 at 4. (awarding fee representing a multiplier of 4.7); *In re Comverse Tech. Inc. Sec. Litig.*, No. 06–cv–1825 (NGG)(RER), 2010 WL 2653354, at *5 (E.D.N.Y. 2010) (awarding fee representing a 2.78 multiplier); *In re Telik Inc., Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("[in] contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court"); *In re Bysis Sec. Litig.*, No. 04-cv-3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding fee representing 2.99 multiplier and finding that the multiplier "falls well within the parameters set in this district and elsewhere"); *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 341-42 (D.N.J. 2002) ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier as "well within the range awarded by courts in this Circuit and courts throughout the country").

Multipliers above 1.0 are also consistent with standard practice. In a recently filed fee request with this Court in *The Bank of New York Mellon Corp. Forex Transactions Litigation*,

---

litigation, the complexity of the issues, the contingent nature of the engagements, the skill of the attorneys, and other factors").

class counsel there provided an analysis reflecting that a multiplier of 2.03 represents the average Court-approved multiplier for every securities class action that settled between $130 million and $230 million since the enactment of the PSLRA. No. 11-CV-01975 (LAK), (S.D.N.Y. Sept. 15, 2015), ECF No. 275, at 15-16. Moreover, an empirical study of attorneys' fees in class action settlements from 1993 to 2008 found that the average multiplier in securities class actions was 1.75. Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical Legal Stud. 248, 272 (2010).

We understand that citing a raw multiplier, without additional context, does not provide a reviewing court with enough information to assess its reasonableness. For instance, Class Counsel is aware that this Court historically has scrutinized the reasonableness of proffered lodestars by considering the number of hours billed, as well as the billing rates relied upon. As set forth below, we respectfully submit that the record demonstrates that both of these metrics are reasonable here.

Indeed, Class Counsel went to great lengths to avoid duplication and waste and ensure that their division of labor created an efficient but steady work-flow within the litigation team. As explained more fully in Section II.C.1 below, the 37,484 hours that were devoted by Class Counsel were not the result of churn, but rather of skilled, thoughtful, and necessary attorney hours. Throughout the litigation, Class Counsel maintained a relatively small team of core attorneys who were principally responsible for the day-to-day prosecution of this Action. *See* Joint Decl. ¶ 179-180. Notably, the hours recorded by attorneys who were principally

responsible for document review represent approximately 30% of total lodestar, which is a relatively low proportion in this type of litigation.[9] *See* Joint Decl. ¶ 168.

As explained in the Joint Declaration, we also estimate that counsel and consultants for Defendants and key third parties likely billed almost ***twice*** as many hours as Class Counsel. Joint Decl. ¶¶ 196-200. This was particularly evident during depositions, where the number of defense attorneys and consultants routinely out-numbered Class Counsel by a margin of 2:1 or greater.[10] Joint Decl. ¶¶ 194-95. While Class Counsel typically relied upon one partner and an associate at each deposition, opposing counsel often consisted of two partners and two associates. *Id.* This is not surprising given that each Individual Defendant was represented by two separate law firms, enabling them to further their scorched-earth efforts by dividing and focusing on different components of the case.[11] Indeed, our internal analysis of the length of depositions and appearances reflects that, in total, the attorneys who appeared at depositions on behalf of Class Counsel worked almost 400 hours of billable deposition time, whereas counsel for Defendants and third parties worked approximately 830 hours. Joint Decl. ¶¶ 196-97.

We also respectfully submit that Class Counsel's billing rates are reasonable when compared against prevailing rates of law firms who specialize in complex litigation in New York City. *See Telik,* 576 F. Supp. 2d at 589 (explaining that "[p]erhaps the best indicator of the

[9] Attorneys focused on document review included graduates of Brown University, the University of Pennsylvania, Georgetown University, Columbia University, and California (Boalt) School of Law.

[10] For instance, in the deposition of EY's tax partner, the ratio was 8:1, where Class Counsel took the deposition with only one attorney present, while opposing counsel included seven attorneys and one consultant. Joint Decl. ¶ 194.

[11] Latham & Watkins LLP ("Latham") represented Weatherford, Duroc-Danner and Becnel; Jones Day also represented Duroc-Danner and focused on issues pertaining to the Company's auditors; and Williams & Connolly also represented Becnel.

'market rate' in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that defend class actions on a regular basis"). Here, the hourly billing rates of Class Counsel range from $775 to $925[12] for partners and $390 to $565[13] for associates. *See* Exs. 6–A and 7-A. Joint Decl. ¶ 203. Based on the *National Law Journal*'s most recent survey of billing rates, the rates charged by Weatherford's defense counsel range from $895 to $1,110 for partners and $465 to $725 for associates. *See* Ex. 10. Further, if Class Counsel's hourly rates are assessed in the aggregate, they result in a reasonable blended rate of $496.75, which is less than the $514.29 blended hourly rate that this Court approved in *IndyMac* after reducing the fee request in that case. *In re IndyMac Mortgage-Backed Sec. Litig.*, No. 09–cv–4583 (LAK), 2015 WL 1315147, at *6 (S.D.N.Y. 2015).

We are also cognizant that this Court has expressed concern about the billing rates that are charged for attorneys who are principally responsible for document review. *See, e.g.,* Transcript, *Dobina*, (S.D.N.Y. Sept. 15, 2014), ECF No. 278, 2:6-4:20, Ex. 18. Here, the rates for such attorneys range from $360 to $440, resulting in a blended hourly rate of $395.97. *See* Exs. 6-A and 7-A. This is comparable to the $378.02 blended hourly rate for document review attorneys that this Court recently approved in *In re Bank of New York Mellon Corp. Forex Trans. Litig.* *See* No. 12-md-2335-LAK (S.D.N.Y. Sept. 24, 2015), ECF No. 637, (order approving requested fees and expenses) and No. 12-md-2335-LAK (S.D.N.Y. Aug. 22, 2015), ECF No. 622 (joint declaration submitted by plaintiff's counsel in support of requested fees and expenses, setting forth hourly rates for document review attorneys).

[12] Except for one senior partner with over 40 years of experience with lodestar of $194,220 whose rate is $975.

[13] Except for one senior associate with only $104,903 in lodestar whose rate is $700.

In sum, we respectfully submit that a multiplier of 1.5 is fair and reasonable, and supported by precedent of this Court and many others. Nevertheless, we recognize that the critical question is whether Class Counsel has provided sufficient justification to warrant the requested multiplier. For the reasons set forth below, we respectfully submit that the answer is "yes," based on the risk taken and the skill, effort, and hard work exhibited by Class Counsel.

C. The Second Circuit's Standards Set Forth In *Goldberger* Strongly Support Class Counsel's Request As Fair And Reasonable

The Second Circuit has explained that regardless of whether a court analyzes a request for attorneys' fees under the lodestar or percentage method, it should still consider the traditional criteria that reflect a reasonable fee in common fund cases, including: (i) the time and labor expended by counsel; (ii) the risks of the litigation; (iii) the magnitude and complexity of the action; (iv) the requested fee in relation to the settlement; (v) the quality of representation; and (vi) public policy considerations. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Each of these factors lends strong support to the reasonableness of Class Counsel's request for attorneys' fees in this Action.

1. The Time And Labor Expended By Class Counsel: The Proposed Settlement Could Not Have Been Achieved Without Class Counsel's Perseverance And Exceptional Efforts

Not only did Class Counsel prosecute this case vigorously and relentlessly, leaving no stone unturned, but it did so efficiently to avoid any duplication or waste. In doing so, Class Counsel developed an extensive and thorough factual record, and presented Defendants with a legitimate trial threat. Specifically, Class Counsel:

- Conducted an investigation, filed the Consolidated Complaint and defeated Defendants' motion to dismiss (Joint Decl. ¶¶ 22-42 and 205);
    - (the approximate lodestar for this phase was $800,000)

- Successfully and expeditiously moved for class certification early in discovery and served discovery requests and third party subpoenas (Joint Decl. ¶¶ 66-71 and 205);
    - (the approximate lodestar for this phase was $1.9 million)
- Continued to pursue discovery and devote resources toward prosecution of the case while the Supreme Court's decision was pending in *Halliburton II* (Joint Decl. ¶¶ 45-57 and 205);
    - (the approximate lodestar for this phase was $2.9 million)
- Engaged in extensive fact discovery, including the analysis of over 8 million pages of documents, propounding approximately another twelve (12) subpoenas to third-parties for documents and deposition testimony, and filing targeted motions to compel and other discovery motions (Joint Decl. ¶¶ 43-59 and 205);
    - (the approximate lodestar for this phase was $5.1 million)
- Conducted twenty-two depositions, including of both Individual Defendants and all of the key witnesses who Class Counsel expected would be called at trial, many of whom were senior executives or outside auditors who had specialized expertise in tax, accounting, and financial reporting; served three opening expert reports, analyzed counterarguments to five reports served by Defendants, and prepared three expert rebuttal reports (Joint Decl. ¶¶ 60-64, 75-100, and 205);
    - (the approximate lodestar for this phase was $7.7 million)
- Actively prepared for trial, including working with consultants and experts (Joint Decl. ¶¶ 79-87); and
- Prepared detailed submissions for mediation and participated in two in-person mediations with the Honorable Layn R. Phillips (Ret.) as well as numerous direct telephonic negotiations that eventually resulted in the Settlement (Joint Decl. ¶¶ 104-107).

This comprehensive litigation effort was the result of 37,484 hours of billable time that Class Counsel devoted for the benefit of the Class. *See* Joint Decl., Exs. 6-8. The bulk of the lodestar constitutes time of a core team of day-to-day litigators who worked on the case from beginning to end, rather than lawyers dedicated to document review. Joint Decl. ¶¶ 14, 179. Staff attorneys who reviewed documents amounted to about 30% of total lodestar. Joint Decl. ¶ 168. To put this into context, in *Dobina*, the lodestar of the staff attorneys exceeded 45% of the

total even though plaintiffs there reviewed a quarter of the documents – 2.3 million pages compared to 8 million pages – and prepared for 10 depositions compared to the 22 that were conducted here. *Dobina*, No. 11-cv-1646-LAK, (S.D.N.Y. Jan. 1, 2015), ECF No. 283, at *2. A summary of tasks performed by the attorneys in this Action is attached to the Joint Declaration as Ex. 8.

More specifically, the small group of five lawyers who essentially prosecuted this Action on a day-to-day basis from its inception constitute approximately $8.4 million or 45% of Class Counsel's lodestar. Joint Decl. ¶¶ 165, 179. When fact discovery intensified and depositions commenced, three additional attorneys joined the core litigation team to increase the team's overall bandwidth in order to focus on several depositions, prepare needed discovery motions, work closely with the Class' experts regarding their forthcoming reports, and participate in active mediation efforts with Defendants. The efforts of these three attorneys contributed about $1.70 million of additional lodestar. Thus, in total, the lodestar of Class Counsel's core litigation team was approximately $10 million or about 54% of the total amount. Joint Decl. ¶ 179.

Notably, Class Counsel designated only four attorneys to conduct all twenty-two depositions. Class Counsel thus maximized its repository of knowledge within a small group of lawyers and eliminated any duplication of effort that could have arisen from multiple individuals having to re-learn and digest the same information, including past deposition transcripts. This manner of proceeding with the litigation represents an extremely high amount of concentration and efficiency, and is very rare in securities class actions of this magnitude.

One of the reasons Class Counsel was able to be so efficient was the optimization of technology. Rather than conducting a linear review of documents (*i.e.*, starting at the first bates-stamped-numbered document and progressing sequentially), Class Counsel worked with a

technology consultant and utilized a specialized electronic hosting platform to conduct a forensic analysis. Joint Decl. ¶¶ 173-74, 176-78. In so doing, Class Counsel was able to programmatically identify documents pertaining to key events and custodians, rather than by sifting through duplicates and irrelevant minutia. These procedures allowed Class Counsel to commence depositions in January 2015 despite receiving 1.6 million pages of documents in late 2014, including more than 700,000 pages of new documents pertinent to key witnesses. Joint Decl. ¶ 175.

Critically, Class Counsel also avoided any duplication of work resulting from the appointment of BFTA as Co-Class Counsel in September 2014. As set forth in detail in the Joint Declaration, Labaton Sucharow and BFTA placed the interests of the Class, the Class Representatives, and the case, above all else. Joint Decl. ¶¶ 188-90. Even during the few weeks in which the firms had initial differences with respect to the leadership of the Action, both firms continued to cooperate, coordinate, and work together to ensure the continued vigorous prosecution of the case, drafting substantive briefs together and preparing for mediation. *Id*.

2. The Risks Of The Litigation Support The Fee Request

"Courts have repeatedly recognized that 'the risk of litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions." *Telik*, 576 F. Supp. 2d at 592. For this reason, the Second Circuit has said that "[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of the multiplier." *McDaniel*, 595 F.3d at 424 (quoting *Goldberger*, 209 F.3d at 54).

(a) General Risks Relating To Class Action Litigation

Class Counsel are aware that the Court has stated in the past that the risk of non-recovery in securities class actions is low because they practically always settle. *See IndyMac*, 2015 WL

1315147, at *4. Class Counsel respectfully submit that in this instance the risks of non-recovery were substantially higher than in the typical case, and that the risk of not obtaining the exemplary result achieved here was even more so.

As an initial matter, in recent years, it is Class Counsel's experience that many courts have imposed stricter pleading requirements—particularly in view of the continued attacks on the extent to which plaintiffs can rely upon confidential witnesses at the pleading stage—and have frequently dismissed cases that appeared meritorious. This observation is backed not only by our own experience, but by empirical data that has been published by leading economic consultants, which reflects that the dismissal rate reached 59% in 2010 and 58% in 2011. *See* Ex. 12, Cornerstone Research, *Securities Class Action Filings, 2014 Year in Review* (2015) at 12; *see also* Ex. 11, NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: 2014 Full-Year in Review* (Jan. 2015) at 18, Figure 15 (dismissal rate of 54% between January 2000 and December 2014).

(i) The Risk Of Non-Recovery Because of *Halliburton II* Was Unprecedented In The Post-PSLRA Era

In addition to the rising risk of dismissal, this Action faced the unprecedented risk that the fraud-on-the-market presumption would be reversed in *Halliburton II*. The Supreme Court granted *certiorari* in that case in November 2013, shortly after this Action commenced fact discovery, raising the very realistic prospect that the presumption and class action device would disappear. The effect on then-pending securities class actions was direct and immediate. Many cases were stayed. Joint Decl. ¶ 209. There was also a marked reduction in the active prosecution of securities class actions that was documented by Cornerstone Research. Joint Decl. ¶ 209; *see* Ex. 12.

Defense counsel in many cases capitalized on these fears, driving down the value of settlements during the window between the granting of *certiorari* in November 2013 and the issuance of the Supreme Court's opinion in June 2014. Indeed, total settlement dollars in 2014 declined by 78% compared to 2013, and were 84% below the average for the prior nine years. Joint Decl. ¶ 210; *see* Ex. 12, at 1. Even more strikingly, the size of the average settlement dropped to $17.0 million in 2014 from $73.5 million in 2013, which was 64% lower than the average for all prior years since the enactment of the PSLRA. *Id*.; *see* Ex. 12, at 1 and 6. All but 1 of the 63 cases that settled in 2014 was resolved for less than $100 million (including *Dobina*, which settled for $52.5 million). *Id*.; *see* Ex. 12, at 5.

Consistent with these statistics, this Court recognized the enormous risk presented by *Halliburton II*. At the final approval hearing in *In re Lehman Brothers* on April 16, 2014, while the Supreme Court's decision was pending, the Court stated:

> In *Halliburton*, the odds, from my own personal judgment – though I have no inside information, of course – is that ***if I were to reject this settlement, we would go back to square zero, but what the class would get here would be zero. I think the Supreme Court is likely to rule adversely to the plaintiffs' bar*** and to the plaintiffs' securities world in Halliburton, and if they do that – and that seems to be the early morning line anyway – this case would be dead in the water.

Ex. 13, Transcript, *In re Lehman*, No. 09-md-2017-LAK (S.D.N.Y. Apr. 16, 2014), ECF No. 1402, at 32:2-10 (emphasis supplied); *see also* Joint Decl. ¶ 211.

Not surprisingly, Weatherford's counsel also tried to take advantage of this significant uncertainty. In a hearing before the Court in connection with the Dobina settlement, defense counsel expressed its expectation of staying and hopefully resolving this Action. Defense counsel also referred to the fact that the "economics" of this case would change in light of

Halliburton II, alluding to a diminished settlement value. Ex. 9, Transcript, Dobina, No. 11-cv-1646 (LAK) (S.D.N.Y. Feb. 19, 2014), ECF. 276, at 4:16-6:7; *see also* Joint Decl. ¶ 212.

Despite Defendants' overtures, Class Counsel and the Class Representatives declined to stay the case. Instead, Class Counsel continued to litigate vigorously, and exchanged 199 pieces of correspondence with Defendants and third-party counsel during the pendency of *Halliburton II*, tenaciously attacking the adequacy and scope of Defendants' document production. Joint Decl. ¶¶ 213-15. Class Counsel also continued to spend considerable time, resources, and money on the Action by consulting with experts, preparing for depositions, and becoming proficient in the highly complex accounting principles that were at the heart of this Action. Simply put, we did not put the case on ice, and we were armed to commence depositions promptly with a mastery of the substantial documentary evidence. Joint Decl. ¶ 216. Class Counsel believes that this show of force substantially increased the value of the Settlement.

(ii) Substantial Risks Remained After *Halliburton II*

Even after surviving *Halliburton II*, and assuming that at least some of the Class Representatives' claims would have prevailed at summary judgment, there was still a legitimate risk of a loss at trial or on appeal. For example, Labaton Sucharow had first-hand experience with a complete loss even after prevailing before a jury during a four-week trial in *In re BankAtlantic Bancorp, Inc.* 851 F. Supp. 2d 1299 (S.D. Fla. 2011). There, the district court granted defendants' motion for judgment as a matter of law, nullifying the jury verdict, and entered judgment on all claims for defendants. The Eleventh Circuit subsequently affirmed. *In re BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

In re Vivendi Universal, S.A. Securities Litigation is another prime example. No. 02-cv-5571-SAS (S.D.N.Y. 2010). There, again, plaintiffs won at trial and the jury found Vivendi

liable. Within months of the jury verdict the Supreme Court ruled in *Morrison v. Nat'l Australia Bank Ltd.,* 561 U.S. 247 (2010), holding that the Exchange Act does not apply extraterritorially. *Morrison* substantially reduced plaintiffs' damages because Vivendi securities had been largely traded abroad and not in the United States. *See also, Anixter v. Home-Stake Prod. Co*., 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice in securities action); and *In re Apollo Grp., Inc. Sec. Litig.*, No. 04-cv-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court overturned unanimous verdict for plaintiffs, verdict later reinstated by the Ninth Circuit Court of Appeals, and judgment finally re-entered after denial of *certiorari* by the United States Supreme Court).

In light of these risks, it is not surprising that a large percentage of these types of cases settle. But that is not an infirmity of securities class actions. Rather, the large percentage of settlements is emblematic of our judicial system that heavily favors such outcomes. Indeed, the percentage of federal civil actions that go to trial has been steadily declining for the past fifty years. In 1962, 11.5% of federal civil cases (including both individual and class cases) went to trial, compared with 6.2% in 1982, 1.8% in 2002, and 1.2% in 2009. Ashby Jones, *Why Have Federal Civil Jury Trials Basically Disappeared?*, Wall St. J. L. Blog (Sept. 21, 2010, 10:35 AM) (Ex. 14); *see also* Joint Decl. ¶ 219. Resolving cases out-of-court serves the important public policy objective of minimizing the burden on the judiciary. Accordingly, the fact that securities class actions settle is not an anomaly or demonstrative of any failure to prosecute. Rather, the well-known risks of *not* settling highlights the significance of obtaining, as here, a

substantial recovery for the Class, and the skill, time and perseverance necessary to have achieved it in the face of those risks.

(b) Additional Specific Risks In This Action

Although Class Counsel devoted enormous efforts and succeeded in developing a very compelling case sufficient to cause Defendants to settle substantially higher than what was obtained in *Dobina*, we also recognized that there remained significant uncertainties and obstacles to proving liability and damages.

One of Defendants' core arguments challenged falsity under *Omnicare* and paralleled Defendants' defenses on scienter (discussed below). As this Court recently wrote, "*Omnicare* makes just as clear that it is substantially more difficult for a securities plaintiff to allege adequately (or, ultimately, to prove) that such a statement [of opinion] is false than it is to allege adequately (or prove) that a statement of pure fact is false." Opinion, *City of Westland v. MetLife, Inc*., No. 12-cv-0256 (LAK) (S.D.N.Y. Sept. 11, 2015), ECF No. 90, at *28-29 ("*Metlife*"). Relying on *Omnicare*, and now *MetLife*, Defendants would have likely argued that approximately 75% of the Second and Third Restatements ("Restatements") at issue in the Action consisted of statements of opinion.[14] They would have further argued that the Class could not prove that the alleged statements were subjectively false (even if objectively so), or that Defendants had not conducted a meaningful inquiry, as required under *Omnicare*. Joint Decl. ¶¶ 5, 8, 115, 122-26.

[14] While financial statements typically constitute statements of fact, Defendants would have likely argued that the alleged false statements at issue here essentially concerned reserves (like in *MetLife*, at *36-37), which required judgment and thus constitute opinions. Joint Decl. ¶¶ 5, 8, 115, 122-26.

In response, Class Counsel developed counter-arguments to Defendants' anticipated *Omnicare* challenge, mainly rooted on the alleged absence of a meaningful inquiry into the accuracy of their income tax accounting. But Defendants were likely to point to the remediation program they launched at the beginning of the Class Period as evidence of conclusive proof, rather than an issue of fact, that a meaningful inquiry was conducted here. Accordingly, the risk of dismissal at summary judgment was very real. And, while every case is different, we respectfully submit that this Court's opinion in *MetLife*, which was issued shortly after the Parties agreed to the Settlement, is evidence that Class Counsel prudently accounted for this risk. Joint Decl. ¶¶ 9, 122-26.

The Class also faced significant risks at summary judgment concerning the inter-related issues of loss causation and disaggregation of damages. Unlike in most cases, this threat was not just predicated on a battle-of-the-experts or a routine *Daubert* attack on methodology. Rather, Defendants would have likely argued that the Class was required to disaggregate loss causation and damages with respect to each specific component of the Restatements, which included (i) dozens of uncertain tax positions, (ii) valuation allowances, (iii) deferred tax assets, (iv) withholding taxes, and (v) intercompany payments of interests and dividends. Joint Decl. ¶¶ 127-32.[15] If the Class failed to meet its burden with respect to any of these components, Defendants would have argued that the Class was required to determine the amount the actionable components contributed to the Restatements, parse out the portion of the share price decline it was responsible for, and apportion the amount of damages remaining.

[15] Because each of these issues was subject to different tax and accounting rules, guidelines and regulations, Defendants would have likewise asserted that the Class was required to prove falsity and scienter with respect to each one of these categories.

In addition, Defendants would have argued that the corrective statements in the Second and Third Restatements only reflected risks that the market had previously known, and therefore that the Class had suffered no damages. Defendants had submitted expert reports supporting this position and were clearly prepared to argue as much at summary judgment and trial. In short, such arguments required significant skill to rebut and created substantial uncertainty regarding whether the Class would be entitled to pursue the full amount, or any, of its estimated damages. They posed a legitimate threat throughout the latter stages of this Action, including summary judgment, *Daubert* motions, and trial. Joint Decl. ¶¶ 8-9, 122-24, 126, 136.

If this case ultimately proceeded to trial, there was also substantial risk that the complexity of the accounting concepts that are at the heart of this Action would have posed a barrier to proving scienter. Joint Decl. ¶¶ 7-8, 111-18. Defendants would have contended that the accounting and tax issues were mind-numbingly complex, and that they got it wrong without any nefarious intent. A tax reserve is subject to judgment and interpretation, and is ultimately one of the most complex and confounding tax issues. The jury would have experienced the complexity first-hand and easily could have been sympathetic to the Individual Defendants, none of whom were tax professionals.

Finally, there was also no evidence of insider trading or clear profiteering. While Class Counsel had developed motive evidence based on the Company's liquidity, financial condition, and securities offerings, we are cognizant that such evidence is less persuasive to a jury than evidence that specific individuals lined their pockets as a result of the alleged fraud. Moreover, as described in detail in the Joint Declaration, Defendants were prepared to argue, with both expert testimony and based on the record, that the motive allegations were meritless. Joint Decl. ¶¶ 121. In sum, the risks faced by Class Counsel strongly support the fee request.

3. The Magnitude And Complexity Of The Litigation

The complexity of this litigation also supports the reasonableness of the attorneys' fees requested by Class Counsel. *See Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194(SAS), 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("courts have recognized that, in general, securities actions are highly complex"); *In re Merrill Lynch & Co. Inc., Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *14 (S.D.N.Y. Feb. 1, 2007) ("Securities class litigation is notably difficult and notoriously uncertain.").

As stated above and described in detail in the Joint Declaration, this Action was far more difficult than the usual securities class action. It involved hundreds of complex accounting and tax issues. Joint Decl. ¶¶ 8, 116-17, 162-64. Class Counsel was required to devote significant time with the experts to learn the tax and accounting rules, guidelines, and regulations in order to be prepared for depositions and expert discovery. Indeed, aside from a handful of witnesses that included the Individual Defendants, the remaining witnesses consisted of technical tax and accounting professionals. This certainly was not a routine accounting fraud case about revenue recognition and whether income should have been booked in one quarter or the other.

The Class also received no help from the Government or an outside examiner. Class Counsel developed a full factual record, and prepared this case for trial, in the absence of any material roadmap, as a pending SEC investigation into the events underlying the Restatements provided no discernible benefit to the Class. *See, e.g., In re Lehman Bros. Sec. & ERISA Litig.,* No. 09-MD-2017-LAK (S.D.N.Y. June 29, 2012), ECF No. 970, at 2 (considering plaintiff's use of, and reliance on, an examiner's report prepared by the bankruptcy trustee in connection with weighing "the amount of compensation appropriately paid to plaintiff's counsel, particularly any amount above the lodestar"); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02–cv–3400

(CM)(PED), 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) (noting lack of prior governmental action against defendant on which Class Counsel could "piggy back" in considering fee request). To the contrary, Defendants refused to produce what they had provided to the SEC without first parsing it for relevance in the same manner that they would have produced those same documents if there were no such investigation.

Similarly, the SEC (which has yet to produce any public report in this regard) refused to cooperate with Class Counsel despite our overtures. Indeed, the District Court in Houston, Texas, where most of the SEC witnesses reside, refused to compel those witnesses to produce the transcripts of their SEC depositions to the Class. And after Class Counsel filed a motion to compel, the SEC ceased providing subsequent witnesses with copies of such transcripts. Joint Decl. ¶¶ 73-74. Class Counsel challenged the Houston District Court's ruling and filed an appeal in the Fifth Circuit. The appeal was still pending at the time of the Settlement. *Id.* at ¶ 73.

There also was no discernible benefit derived from *Dobina*. In fact, the depositions in *Dobina* (i) consisted of low-level personnel and not of any of the Weatherford witnesses deposed here or expected to be called at trial; (ii) did not pertain to the Second and Third Restatements; and (iii) were focused on internal controls, rather than the allegedly improper accounting entries, as the Court dismissed the restatement component of that case. Joint Decl. ¶¶ 19-21, 161, 208. As a result, the Class's ability to prepare a compelling case at trial rested squarely on the shoulders of Class Counsel.

4. The Requested Fee in Relation To The Settlement Amount

"In determining whether the Fee Application is reasonable in relation to the settlement amount, the Court compares the Fee Application to fees awarded in similar securities class-action settlements of comparable value." *Marsh & McLennan*, No. 04 Civ. 8144(CM), 2009 WL

5178546, at *19; *see also In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695(CM), 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007) (noting that the fee awarded is "consistent with fees awarded in similar class actions settlements of comparable value.").

As discussed above, Class Counsel is mindful that this Court has expressed concerns about the determination of attorneys' fees based on the percentage-of-recovery method. If the Court is inclined to compare Class Counsel's request in relation to the Settlement, it would amount to 23.3%, which we respectfully submit is well within the range of reasonableness.

Indeed, in consideration of this Court's observation in *IndyMac* that a "non-random sample of five fee awards amounts to no more than looking out over a crowd and picking out one's friends," 2015 WL 1315147, at *4, Class Counsel requested a record from Institutional Shareholder Services of every securities class action that has settled between $80 million and $160 million after the PSLRA – *i.e.*, a range of $40 million above and below the $120 million Settlement here. *See* Ex. 17. Our analysis indicates that, in such cases, courts awarded an average fee of approximately 22.24%.[16]

Class Counsel's fee application is predicated on a 1.5 multiplier, however, which is actually less than the 25% *ex ante* fee agreement initially reached with the Class Representatives

[16] While less scientific than the analysis of all cases between $80 million and $160 million, many settlements above $160 million result in fee percentage awards higher than the 23.3% requested here. *See In re Schering-Plough Corp./ENHANCE Sec. Litig.*, Nos. 08–397 (DMC)(JAD), 08–2177(DMC)(JAD), 2013 WL 5505744, at *3, *46 (D.N.J. 2013) (awarding 28% of $215 million settlement); *Silverman v. Motorola, Inc.,* No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement), *aff'd*, 739 F.3d 956, 958-59 (7th Cir. 2013); *In re Comverse Tech. Inc. Sec. Litig.*, 2010 WL 2653354, at *6 (awarding 25% of $225 million settlement fund) (E.D.N.Y. 2010); *In re Schering-Plough Corp. Sec. Litig.*, No. 01–cv–0829 (KSH/MF), 2009 WL 5218066, at *5-*6 (D.N.J. Dec. 31, 2009) (awarding 23% of $165 million settlement fund); *In re Oxford Health Plans, Inc. Sec. Litig.,* 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28% of $300 million settlement fund); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 734-36 (E.D. Pa. 2001) (awarding 25% of $193 million settlement).

well before any of the mediations or Settlement. Joint Decl. ¶ 222. Accordingly, considering the requested fee in relation to the settlement amount further supports the fairness and reasonableness of the request.

5. Quality Of Representation

The quality of the representation is another important factor that supports the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *28. It took a great deal of skill to achieve a settlement at this level in this particular case. Specifically, this Action required a mastery of highly complex and nuanced accounting principles, the ability to develop convincing legal theories, and the skill to respond to a host of sophisticated arguments.

Class Counsel also demonstrated good judgment in obtaining the Settlement. The statistics discussed certainly reflect the toil and effort of Class Counsel (*i.e.*, 37,484 hours, twenty-two depositions, eight million pages of documents, six expert reports, etc.). But perhaps more important were a number of critical strategic decisions that highlight the skill and good judgment that Class Counsel exhibited in prosecuting the case.

For example, Class Counsel strategically frontloaded class certification to remove a point of leverage for Defendants, and to take advantage of the fact that Plaintiffs did not have a large number of documents to analyze early in discovery and Class Counsel had time to focus on class certification. Joint Decl. ¶¶ 66-71. The motion for class certification was filed on November 19, 2013 (ECF No. 51), less than two months after the Court denied the motion to dismiss and commencement of fact discovery (ECF No. 45). Defendants then deposed the Class Representatives in mid-December and briefing on class certification was completed by January 2014. At that juncture, Defendants had not yet completed their initial production of documents. Although the Court dismissed the certification motion without prejudice pending *Halliburton II*,

the Parties had already completed all underlying class certification discovery. Thus, when the Supreme Court ultimately issued its decision in *Halliburton II* in June 2014, Defendants did not oppose class certification in light of the evidentiary record. The Court subsequently certified the Class on September 29, 2014. ECF No. 120. Accordingly, by September 2014, Class Counsel had the benefit and leverage of a certified class, and was free to pursue offensive discovery unencumbered by attacks on class certification. Joint Decl. ¶¶ 69, 71.

There were myriad other tactical litigation decisions by Class Counsel that reflected hard work and skilled judgment. For instance, Class Counsel (i) combined interrogatories and motion practice to force Defendants to waive their right to assert that they had relied in good faith on the Company's outside auditor, Joint Decl. ¶¶ 57-59; (ii) successfully moved to compel the depositions of two of Weatherford's former General Counsels, Joint Decl. ¶¶ 61 n. 4, 75; (iii) obtained very favorable deposition testimony from the audit partner and tax partner at EY in large part after carefully evaluating the claims against EY and determining that the claims were not viable, Joint Decl. ¶¶ 64, 186; (iv) served document requests, interrogatories (including contention interrogatories), and 143 separate requests for admissions, Joint Decl. ¶¶ 76-77; and (v) retained some of the most pre-eminent experts in the fields of accounting and damages, including Dr. Marcia Mayer from NERA to testify about loss causation and damages, Joint Decl. ¶¶ 80-87.

In further evaluating the quality of counsel's work, the quality of opposing counsel is also important. *See Flag Telecom*, 2010 WL 4537550, at *28. Indeed, Defendants' main counsel, Latham & Watkins, is a long-time leader among national litigation firms, with well-noted expertise in corporate litigation practices. Latham's litigation team included at least six partners and seventeen associates from numerous national offices in the District of Columbia, New York,

Los Angeles, San Francisco and San Diego. Latham zealously fought the Class Representatives' claims at every turn. Indeed, based on his central role as the mediator of the parties' settlement negotiations over an 8-month period, Judge Phillips observed that "the Class could not have achieved a settlement of this magnitude unless Lead Counsel had demonstrated it could prosecute this case at trial against top-notch defense counsel." *See* Declaration of Layn R. Phillips, dated September 23, 2015, ¶ 20 ("Phillips Decl."), submitted herewith as Ex. 2.

Like opposing counsel, Class Counsel are nationally recognized leaders in the field of securities class action litigation and have substantial experience litigating securities class actions in courts throughout the country with success. *See* Joint Decl. ¶ 224-25; Exs. 6-C and 7-C. The partners who were principally responsible for prosecuting this case are highly experienced, and relied upon their skill to develop and implement sophisticated strategies (as set forth above) to overcome myriad obstacles raised by Defendants throughout the litigation and settlement process. *See* Joint Decl. ¶¶ 108-34.

6. Public Policy Considerations

The federal securities laws are remedial in nature, and, to effectuate their purpose of protecting investors, the courts must encourage private lawsuits such as this one. *See Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988). For this reason, the Supreme Court has emphasized that private securities actions 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); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 (2007) (noting that the court has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions).

This Court has echoed the supplemental deterrent effect of private securities class actions: "one of the strong arguments for the private securities system continuing if not entirely in the form it is today is the fact that it is a means of securities law enforcement independent of the political fortunes in Washington and the SEC's budget." Ex. 13, Transcript, *In re Lehman Brothers*, No. 09-md-2017 (S.D.N.Y. Apr. 16, 2014), ECF No. 1402, at 32:2-10; *see also* Joint Decl. ¶ 211. Accordingly, public policy supports awarding Class Counsel's reasonable request for attorneys' fees.

7. The Reaction Of The Settlement Class

In accordance with this Court's Settlement Notice Order, 370,248 copies of the Settlement Notice were sent to potential Class Members. *See* Affidavit Regarding (A) Mailing of the Settlement Notice and Proof of Claim form; (B) Publication of Summary Settlement Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusion and Opt-Ins Received to Date, submitted herewith as Ex. 4.

The Settlement Notice informed the Class that Class Counsel would make an application not to exceed 25% of the Settlement Fund and seek payment of litigation expenses not to exceed $5.6 million. Ex. 4-A at 2. To date, not a single objection to the fee and expense request has been received. Pursuant to the Settlement Notice, the time to object to Class Counsel's fee request expires on October 13, 2015, and Class Counsel will address any objections received in their reply papers, which are due by October 27, 2015.

D. Class Counsel's Out-of-Pocket Litigation Expenses Were Reasonably Incurred And Necessary For The Prosecution Of This Action

Class Counsel also request a reimbursement of $4,675,424.65 for expenses that were reasonably incurred in prosecuting this Action. These expenses are set forth in the individual firm declarations submitted herewith, see Exs. 6 and 7, and are of the type that are typically

approved by courts. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys . . . [and] [F]or this reason, they are properly chargeable to the Settlement fund.") (citation omitted).

One of the most significant expenses was the cost of experts, which totaled $2,866,697.28, or 61% of Class Counsel's expenses. As detailed in the Joint Declaration, the tax and accounting issues were enormously complex even for tax accounting practitioners. The number and diversity of the restated transactions further compounded the quantity of work. Joint Decl. ¶¶ 8, 21, 115-17, 127, 163. Accordingly, to opine on the application of these complex tax and accounting rules under GAAP, the Class retained one of the foremost experts in the field, Dr. Douglas R. Carmichael, who served as the former Chief Auditor of the Public Company Accounting Overview Board created by Sarbanes-Oxley.

Dr. Carmichael had to review, analyze and opine on the work not only of EY as the statutory auditor, but also of the other three major accounting firms who Weatherford had retained to remediate the Restatements during the Class Period. Indeed, the tax and accounting remediation work at Weatherford was so vast, that PwC, Deloitte and KPMG had to divide the task. Dr. Carmichael's 91-page expert report thus lists 22 GAAP provisions, 18 SEC regulations, and 35 SEC filings that he had to consider. His report further lists at least 387 separate accounting documents, some of which were massive, like a 685-page memorandum analyzing the Third Restatement. This memorandum, among other things, evaluated and analyzed approximately 561 different balance sheets of different Weatherford subsidiaries,

which Dr. Carmichael similarly had to review, dissect, and understand. In sum, Dr. Carmichael's report was truly a Herculean task.

The report, however, was only the culmination of a 16-month forensic process in which Class Counsel and Dr. Carmichael had to make sense of a mountain of accounting work papers. Throughout, Class Counsel had to rely substantially on his expertise to even begin to comprehend the subject matter and ultimately become well-versed and educated to prepare plaintiffs' case. Indeed, the learning curve to prepare for, and take, depositions was steep. Despite the technical challenge, the deposition testimony, in Class Counsel's view, proved favorable, and Dr. Carmichael's report substantially increased the Settlement.

The Class also retained a NERA economics expert, Dr. Marcia Mayer, to opine on loss causation and damages. Dr. Mayer's credentials are impeccable and she is one of the preeminent experts in the field. Indeed, NERA is regularly relied on by defendants and substantially bolstered the credibility and impact of the Class' arguments on these issues which, as set forth above, were heavily contested. *See* Joint Decl. ¶¶ 80-82. The Phillips Declaration recognizes that these complex issues were directly in dispute throughout the mediation process. *See* Ex. 2, Phillips Decl. ¶ 11. Accordingly, Class Counsel believes that the quality of the experts had a significant positive impact at the final mediation and in the ultimate result.

Another substantial component of expenses, $1,114,970.93 or 24% of the total, relates to electronic document technology. The Class here reaped the benefits of the latest technology which allowed Class Counsel to conduct intelligent searches, using de-duping algorithms, clustering (artificial intelligent technology that groups documents by related concepts), as well as other bells and whistles that substantially reduced the amount of attorney time needed to review

documents, and partially explains the relatively low percentage of time dedicated to that task. Joint Decl. ¶¶ 173-78, 230.

The Class also incurred expenses of $159,316.44 relating to outside counsel that the Class had to retain on a non-contingent, hourly basis. This expense primarily included the cost of providing separate representation to certain former employees, as well as obtaining legal advice from an independent firm (Hinshaw & Culbertson LLP) with respect to whether certain documents obtained from third-parties were subject to the attorney-client privilege.

Finally, $179,515.39 relates to travel, business transportation, and meals. Counsel were required to travel extensively in the U.S. and abroad for the depositions of key witnesses, including 11 depositions in Texas, 2 depositions in the District of Columbia, 1 deposition in Illinois, and 1 deposition in London. None of the air travel includes business fares. The remaining expenses are attributable to such things as mediation, the costs of computerized research, copying costs, and other incidental expenses. *See* Joint Decl. ¶¶ 231-33.

The Settlement Notice advised potential Class Members that Class Counsel would seek payment of expenses not to exceed $5.6 million. *See* Ex. 4-A at 2. Class Counsel's request for payment is below this "cap." Additionally, there have not been any objections to date relating to Class Counsel's expense request.

E. A Service Award For The Class Representatives Is Warranted Here

Finally, Class Counsel request an expense award of $3,550 for Anchorage and $8,330 for Sacramento, pursuant to the PSLRA, which 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).

Courts "award such costs and expenses to both reimburse named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as provide an incentive for such plaintiffs to remain involved in the litigation and incur such expenses in the first place." *Hicks v. Morgan Stanley*, No. 01-cv-10071 (RJH), 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005). This Court approved a similar request in *Dobina* in a total amount that exceeded those requested here. *In re Weatherford Int'l Sec. Litig.*, No. 11-CV-1646-LAK (S.D.N.Y. Jan. 5, 2014), ECF No. 283 (approving awards to lead plaintiffs for $13,790.58 and $6,145.11).

In addition to this Court's decision in *Dobina*, numerous other courts have approved payments to compensate class representatives for their reasonable costs and expenses. *See, e.g., In re Satyam Computer Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ (S.D.N.Y. Sept. 13, 2011), ECF No. 365, (awarding a combined $193,111 to four institutional Class Representatives); *Marsh & McLennan Co.*, 2009 WL 5178546, at *21 (awarding a combined $214,657 to two institutional Class Representatives); *In re Computer Sciences Corp. Sec. Litig.*, No. 11-cv-0610, (E.D. Va. Sept. 20, 2013), ECF No. 335, (awarding $60,905 to institutional plaintiff).

Here, Anchorage and Sacramento seek payment for 71 and 98 hours, respectively. *See* Ex. 1 at ¶ 8; Ex. 19 at ¶ 8. The award sought here is modest. Rather than request payment for every task performed over the course of this Action, the Class Representatives only seek payment for the hours expended for several tasks that required substantial time and attention away from their duties. Specifically, the Class Representatives are seeking payment for the subset of time largely spent out of the office that they clearly would have otherwise devoted to their regular duties for Anchorage and Sacramento but were unable to, and therefore represented a cost. The time sought consisted of (i) meeting time with Class Counsel to prepare for their

depositions; (ii) travel for, and participation at their depositions in New York; and (iii) travel for, and participation at, the parties' October 7, 2014 and the May 20, 2015 mediations session in New York, New York. *See* Ex. 1 at ¶ 8; Ex. 19 at ¶ 8

Critically, if not for the willingness of SCERS and Anchorage to step forward, this Action would likely have been prosecuted by an individual rather than a sophisticated institutional investor. In fact, this Court expressed its concerns in this regard in appointing the Class Representatives as Lead Plaintiffs over an individual investor who in the Court's view had made an inadequate choice of counsel. ECF No. 31 (July 10, 2012). It has been well documented that institutional investors that served as lead plaintiffs materially increase the settlement value compared to individual investors, precisely as demonstrated by SCERS and Anchorage here. *See*, *e.g.*, C.S. Agnes Cheng, *Institutional Monitoring Through Shareholder Litigation*, 95 J. Fin. Econ. 356 (2009) ("Based on a large sample from 1996 to 2005, we find that institutional lead plaintiffs, as opposed to individual lead plaintiffs, increase the likelihood of the lawsuit surviving the motion to dismiss and help achieve larger settlements.").

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request that the Court grant Class Counsel's motion for an award of attorneys' fees, payment of litigation expenses, and payment of Class Representatives' expenses. A proposed order will be submitted with Class Counsel's reply papers after the deadline for objections has passed.

Dated: September 29, 2015

Respectfully submitted,

/s/ *Joel H. Bernstein*

LABATON SUCHAROW LLP
Joel H. Bernstein (JB-0763)
Ira A. Schochet (IS-2187)
140 Broadway
New York, NY 10005
Telephone: 212-907-0700
Facsimile: 212-818-0477
jbernstein@labaton.com
ischochet@labaton.com

Class Counsel and Counsel for Court-Appointed Co-Lead Plaintiff and Class Representative Sacramento City Employees' Retirement System

BLEICHMAR FONTI TOUNTAS & AULD LLP
Javier Bleichmar (JB-0435)
Joseph Fonti (JF-3201)
Wilson Meeks (WM-1066)
7 Times Square, 27th Floor
New York, New York 10036
Telephone: 212-789-1340
Facsimile: 212-205-3960
jbleichmar@bftalaw.com
jfonti@bftalaw.com
wmeeks@bftalaw.com

Class Counsel and Counsel for Court-Appointed Co-Lead Plaintiff and Class Representative Anchorage Police & Fire Retirement System

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2015, I caused the foregoing Memorandum of Law in Support of Class Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses to be served electronically on all ECF participants.

/s/ Joel H. Bernstein
Joel H. Bernstein