UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JIHONG WANG, QI LI, LES AKIO OMORI, and ALAN BECK, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CHINA FINANCE ONLINE CO. LIMITED,

Defendant.

Case No.: 1-15-CV-07894-RMB

Document Electronically Filed

Motion Date: February 21, 2017

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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I. INTRODUCTION

Lead Plaintiffs Jihong Wang, Qi Li, and Les Akio Omori ("Plaintiffs"), on behalf of themselves and the Class,[1] respectfully submit this memorandum in support of their motion for an award of attorneys' fees and reimbursement of expenses.

This was a risky case. The crux of this case was that China Finance Online Co., Ltd. ("CFO") did not adequately disclose that a $23 million investment was with a related party. The Complaint alleges that Class Members suffered losses when a series of corrective disclosures showed that CFO could not recover its investment, and directly revealed that the investment recipient was a related party.

None of the supporting indicia of wrongdoing that simplify the difficult task of pleading securities class actions was present here. There was no restatement. CFO has had two auditors, one of which is a Big 4 auditor. Both continue to insist that CFO's financial statements were, and are, accurately stated. There were no U.S. government investigations, and on the statements Plaintiffs allege were misleading, no foreign government investigation, either. There were no other related cases against CFO, and few other plaintiffs even wanted to be appointed lead plaintiff.

This action was not only risky; it required extremely specialized skills. To have a hope of surviving Defendants' inevitable motion to dismiss, Plaintiffs had to undertake a sophisticated investigation in China. This required experience investigating cases in China, familiarity with Chinese corporate recording, and attorneys who had experience with both the Chinese legal system and U.S. securities class actions.

[1]Unless otherwise indicated, all capitalized terms take have the same meanings as set forth in the Memorandum of Law In Support of Plaintiffs' Motion for (A) Final Approval of Settlement and (B) Approval of Plan of Allocation, filed herewith, or the Stipulation and Agreement of Settlement (the "Stipulation") filed with the Court on November 2, 2016 (Dkt. # 129).

Despite these obstacles, Lead Counsel have achieved the $3.0 million Settlement, which provides a significant cash benefit for the Class. As more fully set out in the Memorandum of Law In Support of Plaintiffs' Motion for (A) Final Approval of Settlement and (B) Approval of Plan of Allocation (the "Final Approval Brief"), even though Plaintiffs took an extremely aggressive view of recoverable damages, the Settlement still recovers a higher proportion of these damages than the median securities class action settlement. The Settlement recovers about 30.3% of a more realistic estimate of damages.

Lead Counsel now seek attorneys' fees of 30% of the Settlement Amount, or $900,000. The requested attorneys' fees award represents a lodestar multiplier of 2.58 based on the lodestar of Plaintiffs' Counsel of $350,347 (for 543.8 hours of attorney and paralegal work). *See* Horne Fee Dec., filed herewith, Ex. A.[2] This is a reasonable reward for marshalling highly specialized skill to efficiently achieve an excellent result for the Class. It is, moreover, less than Lead Counsel indicated they may request in the Notice sent to the Class. And pursuant to the Stipulation, attorneys' fees and expenses will not be distributed to Lead Counsel until at least 80% of the Settlement Fund has been distributed to the Class – meaning that Lead Counsel will only be paid after Class Members have been paid. The request for $900,000 is both fair and reasonable.

[2] Citations to "¶_" are to Paragraphs of the Complaint. Citations to "Horne Dec. ¶__" are to Paragraphs of the Declaration of Jonathan Horne Concerning Final Approval, filed herewith. Citations to "Bravata Supp. Dec. ¶__" are to Paragraphs of the Supplemental Declaration of Josephine Bravata Concerning the Mailing of Notice and Claim Form, Requests For Exclusions and Objections, filed as Exhibit 1 to the Horne Dec. Citations to "Bravata Dec. ¶__" or "Ex. __" are to Paragraphs of or Exhibits to the Declaration of Josephine Bravata Concerning Mailing of Notice of Pendency and Proposed Settlement of Class Action and Proof of Claim and Release, dated December 16, 2016, dkt. # 133-1. Citations to "Horne Fee Dec. ¶__" or "Ex. __" are to the Declaration of Jonathan Horne Concerning Fees, Exhibit 2 to the Horne Dec.

Lead Counsel also seeks reimbursement of out-of-pocket litigation expenses incurred in prosecuting this action in the amount of $37,155.51. Horne Fee Dec. ¶9. These expenses were both reasonable and necessary to successfully prosecute and resolution of the claims against the Settling Defendants.

Securities class action are both complex and laden with risk. That CFO is a Chinese company only adds to the complexity and risks. Lead Counsel took on these risks without any promise that they could ever see a return. Having obtained an excellent result for the Class, they should be rewarded.

II. ARGUMENT[3]

A. The Application for an Award of Attorneys' Fees and Reimbursement of Expenses Is Reasonable and Should Be Approved

1. Legal Standards for Award of Attorneys' Fees

The Supreme Court and the Second Circuit have both recognized that where counsel's efforts have created a "common fund" for the benefit a class, counsel should be compensated from that common fund. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000).

Awards of attorneys' fees from a common fund "serve the dual purposes of encouraging representatives to seek redress for damages caused to an entire class of persons and discouraging future misconduct of a similar nature." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002). The common fund doctrine also prevents unjust enrichment of class members who benefit from a lawsuit without paying for its costs. *See Boeing Co.*, 444 U.S. at 478. Because the common fund doctrine provides incentives for both plaintiffs and their counsel

[3]A detailed description of procedural history, settlement negotiations, and the considerations leading to the Settlement is set forth in the Final Approval Brief filed herewith.

and serves to deter similar misconduct, 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) (internal quotations omitted).

2. The Requested Fee is Fair Under the Percentage-of Recovery Method and the Second Circuit's *Goldberger* Factors

The Supreme Court consistently has held that the percentage-of-recovery approach is an appropriate method for determining attorneys' fees in common fund cases. *See Blum v. Stenson*, 465 U.S. 886, 900, n.16 (1984). District Courts in the Second Circuit typically use the percentage-of-the recovery method in common fund cases. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014).

The use of the percentage of recovery method also comports with the language of the Private Securities Litigation Reform Act of 1995 ("PSLRA") which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class…." 15 U.S.C. § 78u-4(a)(6); *Maley*, 186 F.Supp.2d at 370 (when drafting the PSLRA, Congress "indicated a preference for the use of the percentage method").

In *Goldberger*, the Second Circuit examined the history of the alternative methods for calculating attorneys' fees and expressly approved use of the percentage-of-recovery method in awarding fees from a common fund. *Goldberger*, 209 F. 3d at 50. Indeed, the clear trend within this Circuit and this District is to utilize the percentage-of-recovery approach when awarding attorneys' fees in common fund cases. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (stating that "the trend [is] in favor of the percentage-of-recovery approach ... within this district"); *Maley*, 186 F. Supp. 2d at 370 (citing *Goldberger*, and noting "the trend

within this Circuit is to use the percentage of recovery method to calculate fee awards to class counsel" in common fund cases). In fact, as courts have observed, while the lodestar method "tempts lawyers to run up their hours", the percentage-of-recovery method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Colgate-Palmolive*, 36 F. Supp. 3d at 348.

In determining a reasonable fee under the percentage-of-recovery approach, courts look to the *Goldberger* factors: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *In re AOL Time Warner, Inc. Sec.*, No. 02 CIV. 5575 (SWK), 2006 WL 3057232, at *11 (S.D.N.Y. Oct. 25, 2006) (*citing Goldberger*). Every factor supports the fee request here.

a. Time and Labor Expended By Counsel

As set forth in the Horne Fee Declaration, Lead Plaintiffs' Counsel expended 543.8 hours for an aggregate lodestar of $350,347 in litigating this case. Horne Fee Dec. Ex. A. As further set out in the Horne Fee Dec., the plurality of this time (about $170,000 of time) was spent investigating and drafting the Complaints in this action. In 2016, more securities class actions were dismissed than were settled. Stefan Boettrich and Svetlana Starykh, Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review, at 24 (NERA Economic Consulting January 2017) (Horne Dec. Ex. A). Thus, this was time well spent.

And the time was necessary. CFO is a Chinese company, whose business takes place in China, in Chinese. Thus, on top of the usual knowledge of legal and accounting matters that is *de rigueur* for securities attorneys, Lead Counsel needed familiarity with the Chinese legal system and a practical ability to quickly understand Chinese-language documents. *Khunt v. Alibaba Grp. Holding Ltd.*, 102 F. Supp. 3d 523, 540 (S.D.N.Y. 2015) (in another case, noting the Rosen Law

Firm's familiarity with aspects of the legal system and the fact that it employs fluent Chinese speakers as reasons to appoint it lead counsel).

To draft the Complaint, Plaintiffs (a) reviewed the extensive record of Defendants' public statements and media reports about CFO (including in Chinese); (b) conducted an on-the-ground investigation in China, which involved obtaining corporate records of more than a dozen companies and speaking with more than 10 former CFO employees to flesh out the relationships between Wang, Zhao, and the Strawmen; and (c) consulted with accounting experts regarding the related party disclosure obligations of both CFO and its auditors. This is not a case where a plaintiff can rely on a few witnesses who provide startling admissions. Instead, Lead Counsel had to patiently accumulate from numerous sources a host of connections between the Strawmen and Zhao to show that he controlled them.

Plaintiffs' review of public statements and media reports was necessarily time-consuming, and was also beneficial to the Class. It allowed Plaintiffs to buttress their legal theory that the Langfang Investment, the Langfang Loan, and the Langfang Transfer were related party transactions by tracing the history of Defendants' statements about, and corrective disclosures concerning, the Langfang Investment. This included catching disclosures buried in CFO's SEC filings, such as the names of various parties involved in the misconduct alleged in the Complaint. Plaintiffs' review of Chinese-language media went back decades, allowing them to discover the length of the relationship between Wang, Zhao, and Ling Wancheng.

Lead Plaintiffs also obtained the Chinese-language corporate filings for more than a dozen companies that formed part of Wang and Zhao's *de facto* conglomerate. The process was iterative; as Plaintiffs reviewed company documents, they discovered yet more relevant companies and persons. When they obtained corporate records for these new companies, these

new corporate records identified yet more relevant companies and persons. Because of Lead Counsel's previous experience conducting similar research in China, they were able to conduct this search efficiently, but the process still took a China-barred attorney more than 60 hours. Based on this research, and site visits conducted by Plaintiffs' investigator, Plaintiffs were able to create a reasonably complete list of relationships between the Strawmen, Wang, and Zhao. Horne Dec. ¶¶7-8.

The investigator Plaintiffs retained and directed also spoke with more than 10 former China Finance employees. These employees provided detailed information about China Finance's operations as well as relationships between Wang, Zhao, and Ling Wancheng. Finally, Plaintiffs also obtained travel records for Zhao which showed that he had not left China since February 2014 – substantiating the claim that he faced travel restrictions. Horne Dec. ¶¶4, 9.

Plaintiffs also had discussions with an auditing expert. These discussions allowed Plaintiffs to streamline their allegations that CFO violated accounting rules requiring disclosure of related party transactions. The discussions also supported Plaintiffs' allegations against CFO's auditors. Horne Dec. ¶10.

Other significant tasks in this case included opposing Defendants' motion to dismiss (about $70,000 of time). Defendants' 25-page motion to dismiss raised a host of novel challenges – from the application of the U.S. securities laws to transactions involving American Depositary Shares ("ADSs") to the appropriate venue for a lawsuit involving U.S.-traded ADSs of a Chinese company, to the precise showing that must be made to show "control" under accounting rules. Lead Counsel spent $30,000 of time drafting a mediation brief, attending an all-day mediation, negotiating an agreement in principle ($30,000 of time), and drafting settlement papers ($56,000 of time). Less than $300,000 of lodestar to secure a $3.0 million settlement is time well spent.

And drafting the complex paperwork necessary to document a securities class action for $56,000 is a relative bargain. All this shows that Lead Counsel was very efficient in litigating this case.

Indeed, the amounts spent here are well below the norm for cases that settled at a similar stage. *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05 CIV 10240 CM, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007) (using 2007 rates, lodestar of $570,000 for case that settled at inception of discovery); *Athale v. Sinotech Energy Ltd.*, No. 11 CIV. 05831 (AJN), 2013 WL 11310686, at *9 (S.D.N.Y. Sept. 4, 2013) (lodestar of $710,000 before ruling on motion to dismiss); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 360 (S.D.N.Y. 2002) (using 2002 rates, lodestar of $820,000 before a ruling on motion to dismiss).

Plaintiffs' hourly rates are reasonable. Substantially similar rates have been approved by, among others, Judge Kronstadt of the United States District Court for the Central District of California. See Horne Dec. Ex. 5, at 16. They are likely lower than Defendant's counsel's rates. A recent Wall Street Journal article using data culled from bankruptcy filings could not find a Proskauer Rose LLP partner whose billing rate was ***lower*** than $925/hour, which is ***higher*** than Mr. Rosen's rate. Horne Dec. Ex. 6. And a recent bankruptcy fee request by Proskauer Rose reported that attorneys with about the same experience as Mr. Horne and Ms. Chen fetched hourly rates of $850/hour. Horne Dec. Ex. 7. To be clear, Lead Counsel have no doubt that Defendant's attorneys are worth their price, but if plaintiffs are to successfully prosecute their claims against such qualified attorneys, then they must retain similarly qualified attorneys.

And Plaintiffs properly delegated tasks to the most junior possible attorney. Less than 20% of the time in this case was billed by partners. Horne Dec. Ex. A. Partners appropriately limited their role to high-level supervision, final review and editing of the most important

documents and settlement discussions, delegating tasks like drafting complaints and briefs to lower-billing associates.

Accordingly, the time and labor expended by Lead Counsel amply supports the requested fee.

b. The Magnitude, Complexities, and Risks of the Litigation

The magnitude, complexities and the risks of the litigation are addressed fully in the Final Approval Brief. This action has significant merit, and the fact that Defendants are willing to settle for $3.0 million, or 30% of realistic damages, shows that Lead Counsel were right to bring it. But litigation is inherently risky, and cases far less complex and difficult than this one have been lost on motion, at trial, or on appeal. As the court stated in *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970):

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

The Second Circuit explicitly recognizes that the attorneys' "risk of litigation" is an important factor to be considered in making an appropriate fee award. In *Grinnell*, the Second Circuit explained:

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

Grinnell, 495 F.2d at 463 (2d Cir. 1974) (*quoting Cherner v. Transitron Elec. Corp.*, 221 F. Supp. 55, 61 (D. Mass. 1963)).

Contingency agreements offer counsel many ways to spend a lot of time and money on a case without ever recovering anything for themselves or for their clients. In other cases, attorneys can secure significant results, but spend so much time achieving them that they do so at significant loss to themselves. Lead Counsel have, unfortunately, had their fair share of both of these kinds of cases.

This was an exceptionally risky case. At the time of filing, there was a significant risk that the Chinese government would shutter CFO. The Chinese government's well-publicized corruption crackdown appeared to have ensnared CFO's executives. A CFO director Rongquan Leng was detained in April 2015, and Ling was a fugitive from Chinese authorities. ¶161. CFO's CEO's business associates were being methodically rounded up and sent to prison, or fleeing the country, including CFO's CEO's key government partner, Ling Wancheng, who had fled to the U.S. and was being targeted by Chinese agents here. Michael Forsythe & Mark Mazzetti, China Seeks Businessman Said to Have Fled to U.S., Further Straining Ties (N.Y. Times Aug. 3, 2015).[4] Further, there was credible evidence (in the form of travel records) that CFO's CEO himself was a target. ¶132. If the Chinese government shut down CFO, Plaintiffs would have been left attempting to draw blood from a stone. Beyond that, the Chinese government could frustrate document discovery by interposing state secrets objections or prohibiting China Finance executives from traveling to their depositions. While this risk did not come to pass, risk is measured as of when the case is filed. *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 374 (S.D.N.Y. 2005).

There were other risks. The PSLRA and decisions interpreting it have created "formidable challenges to successful pleading." *In re BP p.l.c. Sec. Litig.*, 852 F. Supp. 2d 767,

[4] Available at < https://www.nytimes.com/2015/08/04/world/asia/china-seeks-ling-wancheng-businessman-said-to-have-fled-to-us.html>

820 (S.D. Tex. 2012); *City of Livonia Employees' Ret. Sys. v. Wyeth*, No. 07 CIV. 10329 RJS, 2013 WL 4399015, at *5 (S.D.N.Y. Aug. 7, 2013) (similar). These challenges make even an ordinary PSLRA case perilous; in 2016, more cases were dismissed than settled. See 5, above. Plaintiffs face lower risks when there are parallel investigations from government agencies or offices or bankruptcy examiners, or even accounting restatements, that substantiate claims of fraud and publicly reveal facts showing the fraud. Here, though, there were no investigations or restatements – Plaintiffs were on their own. The inability of Lead Counsel to rely upon a government investigation, particularly where they must investigate their claims in the PRC, shows increased risk and weighs in favor of the requested fee. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122, 124 (2d Cir. 2005) (lauding district court's analysis on fee question, which had relied significantly on fact that plaintiffs could not rely on government investigation); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, at *8 (E.D.N.Y. Aug. 7, 1998) (awarding 33% of the fund in part because "this is not a case where plaintiffs' counsel can be seen as jackals to the government's lion, arriving on the scene after some enforcement or administrative agency has made the kill").

Indeed, it was plain that other firms *did* find this case too risky. Counsel who file a securities class action in federal court must issue public notice inviting class members to apply to be lead plaintiffs, which typically draws a flurry of applications. In the Court's two most recent securities class actions, *Longwei* and *Tesco*, there were seven and five applications, respectively. *In re Longwei Petroleum Investment Holding Ltd. Sec. Litig.*, 13-cv-214-RMB-RLE (S.D.N.Y.); *In re Tesco PLC Sec. Litig.*, 14-cv-8495 (S.D.N.Y.). Here, there were only three.

The fact that CFO's locus is China also complicated litigation in this case. First, Lead Counsel had to pore over CFO's SEC filings to find the names of the Strawmen. Second, Lead

Counsel needed to be familiar both with the mundane details of Chinese corporate recordkeeping system in order to identify private companies associated with these strawmen, obtain corporate records, and analyze their contents. Third, Lead Counsel had to comprehensively map the network of relationships between Ling and Wang and the Strawmen – a task that, given the relatively less advanced state of Chinese recordkeeping, took a China-barred attorney employed by Lead Counsel more than 60 hours. And as more fully set out in the Final Approval Brief, Plaintiffs would have faced substantial obstacles in discovery, such as the difficulty of third-party discovery in China and CFO's inevitable claim that Chinese state secrets law prohibited disclosure of most documents.

c. The Quality of Representation

The result achieved and the quality of the services provided are important factors to be considered in determining the amount of reasonable attorneys' fees under a percentage of the fee analysis. *See Goldberger*, 209 F.3d at 50; *In re Warner Commc'ns. Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985). Despite the significant risk of no recovery in this action, and as more fully set out in the Final Approval Brief, Counsel nonetheless efficiently obtained an excellent result for the Class.

The standing and prior experience of Lead Plaintiffs' Counsel is also relevant in determining fair compensation. *See, e.g., Grinnell*, 495 F.2d at 470; *Eltman v. Grandma Lee's, Inc.*, No. 82 CIV. 1912, 1986 WL 53400, at *4 (E.D.N.Y. May 28, 1986). As its firm resume demonstrates, Lead Counsel has extensive experience in the specialized field of shareholder securities litigation, and the even more specialized field of litigation where such companies are located in China. *Khunt*, 102 F. Supp. 3d at 540; Horne Fee Dec. Ex. B.[5] Lead Counsel employed

[5] *See, e.g., In re Montage Tech. Group Ltd. Sec. Litig.*, 14-cv-722-SI (N.D. Cal.); *In re Lihua Int'l Inc. Sec. Litig.*, No. 14-cv-5037-RA (S.D.N.Y.); *Lewy v. Skypeople Fruit Juice, Inc.*, 11-cv-

its highly specialized skill and experience to thoroughly evaluate the merits and value of the case, draft a Complaint that alleged CFO's liability, and successfully negotiate the excellent Settlement.

The quality and vigor of opposing counsel is also important in evaluating the services rendered by plaintiffs' counsel. *See, e.g., Warner Commc'ns*, 618 F. Supp. at 749. Here, the Settling Defendants were represented by Proskauer Rose LLP, whose name speaks for itself, and its partner Ralph Ferrara. Mr. Ferrara served as the SEC's general counsel and was named one of the U.S.'s leading lawyers in nine categories by *Best Lawyers*. Horne Dec. ¶ 14. That Lead Counsel achieved this Settlement for the Class in the face of high-quality legal opposition further shows the quality of Lead Counsel's efforts.

d. The Requested Fee in Relation to the Settlement

The fee request of 30% of the Gross Settlement Fund is well within the range of percentages courts in this Circuit have awarded in similar securities class action settlements of this size. *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) ("For example, it is very common to see 33% contingency fees in cases with funds of less than $10 million, and 30% contingency fees in cases with funds between $10 million and $50 million"); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 CIV. 6377 SAS, 2012 WL 2149094, at *2 (S.D.N.Y. June 11, 2012) (awarding 30%, or $23,130,000, for reaching "reasonable" but "by no means extraordinary" settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 164 (S.D.N.Y. 2011) (approving 33% fee citing fact that corporate defendant was based in China); *In re Blech Sec. Litig.*, 94 Civ. 7696, 2002 WL 31720381 (S.D.N.Y. Decl. 4, 2002) (awarding one third of $2,795,000 settlement

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2700 (S.D.N.Y. 2011); *Perry v. Duoyuan Printing, Inc.*¸10-cv-07235 (S.D.N.Y.); *Munoz v. China Expert Tech., Inc.*, 07-cv-10531 (S.D.N.Y.).

fund); *Becher v. Long Island Lighting Co.*, 64 F. Supp. 2d 174, 182 (E.D.N.Y. 1999) (one-third fee of $7.8 million, is "well within the range accepted by courts in this circuit"); *Berchin v. General Dynamics Corp.*, 93 Civ. 1325, 1996 WL 465752 at *2 (S.D.N.Y. Aug. 14, 1996) (one-third of first $3 million); *Maley v. Del Global Tech*, 186 F. Supp. 2d 358 (awarding one third of $11.5 million settlement fund);

Under the percentage-of-recovery approach, the attorneys' fee Lead Counsel requests is fair and reasonable for litigation of this kind and is wholly consistent with previous awards made by Courts both within and outside this Circuit.

e. Public Policy Considerations

"Congress, the Executive Branch, and [the Supreme] Court, moreover, have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions […]." *Amgen Inc. v. Connecticut Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1201 (2013). The meritorious private actions the Court refers to are largely class actions; *Amgen*, the case *Amgen* quoted (*Tellabs*),[6] and the two cases *Tellabs* relied upon for the proposition quoted in *Amgen* were all securities class actions.[7] Thus, public policy favors granting counsel fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions. *In re Worldcom, Inc. Sec. Litig.*, 388 Supp.2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.") The "essential supplement" of private securities enforcement thus depends on adequate common fund attorneys' fee awards.

[6] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).
[7] *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 345 (2005); *J. I. Case Co. v. Borak*, 377 U.S. 426, 427 (1964).

The need to provide adequate attorneys' fees is especially compelling in this case. There was no flurry of law firms vying to be appointed lead counsel. See 11, above. This reflects investors' and the plaintiffs' bar's judgment that obtaining a recovery for the Class in this case would be difficult. Unless counsel are adequately rewarded for successfully prosecuting such difficult cases, they will not bring them.

3. Requested Fee is Reasonable Under the Lodestar Cross-Check

This Court may also consider whether the requested fee determined under the percentage approach is reasonable when crosschecked against the lodestar of Lead Counsel. *AOL Time Warner*, 2006 WL 3057232, at *40 (describing this second analysis as the "lodestar cross-check"); *Twinlab*, 187 F. Supp. 2d at 85. The lodestar/multiplier method involves calculating the product of the number of hours worked and counsel's hourly rates, *i.e.* the "lodestar," and adjusting the lodestar for contingency, risk and other factors by applying a "multiplier" to the lodestar. *Grinnell*, 495 F.2d at 470-71. Although the Second Circuit has encouraged the practice of performing this lodestar "cross-check" on the reasonableness of a fee award based on the percentage of recovery approach, when doing so, the hours documented "need not be exhaustively scrutinized." *Goldberger*, 209 F.3d at 50.

As set forth in the Horne Fee Dec., Lead Plaintiffs' Counsel expended 543.8 hours for lodestar of $350,347 in litigating this case.[8] The lodestar multiplier is 2.58. This modest

[8] In computing the lodestar, the hourly billing rate to be applied is the "market rate", *i.e.*, the hourly rate that is normally charged in the community where counsel practices. *See, e.g., Blum*, 465 U.S. at 895; *Hensley v. Eckerhart*, 461 U.S. 424, 447 (1983) ("market standards should prevail"); *In re Cont'l. Illinois Sec. Litig.*, 962 F.2d 566, 568 (7th Cir. 1992) ("[I]t is not the function of judges in fee litigation to determine the equivalent of the medieval just price. It is to determine what the lawyer would receive if he were selling his services in the market rather than being paid by court order," holding that district court committed legal error in placing "a ceiling of $175 on the hourly rates of all lawyers for the class, including lawyers whose regular billing rates were almost twice as high"); *Lindy Bros. Builders of Phila. v. Am. Radiator & Standard*

multiplier is well below the lower range of lodestar multipliers approved by Courts in this Circuit, which further demonstrates the reasonableness of the requested fee. As Judge McMahon explained, "[l]odestar multipliers of nearly 5 have been deemed 'common' by courts in this District." *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 05 Civ. 10240, 2007 WL 2230177, *17, n. 7 (S.D.N.Y. July 27, 2007) (citing cases). In fact, in risky cases like this one, a multiplier just slightly lower (2.09) would be "at the ***lower*** end of the range of multipliers awarded by courts within the Second Circuit". *In re Lloyd's Am. Trust Fund Litig.*, No. 96 CIV.1262 RWS, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) (emphasis added)

Lodestar multipliers in the higher end of the range are especially common in early settlements, as to do otherwise would reduce the incentive to settle early when appropriate. *See In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 367 (S.D.N.Y. 2005) (Berman, J.) (approving multiplier of 3.47 when counsel achieved an early settlement).; *see also In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (in case with very little discovery, 5 multiplier is "large, but not unreasonable").

4. Reimbursement of Litigation Expenses

Lead Counsel further requests that in addition to awarding them reasonable attorneys' fees, the Court grant their request for reimbursement of $37,155.51 in litigation costs and expenses incurred or expected to be incurred in connection with the prosecution of this Action. *See* Horne Fee Dec. ¶9. Courts routinely hold that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses that would have been reimbursed by a paying client. *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993); *Reichman v.*

Sanitary Corp., 487 F.2d 161 (3d Cir. 1973)("value of an attorney's time generally is reflected in his normal billing rate").

Bonsignore, Brignati & Mazzotta, P.C., 818 F.2d 278, 283 (2d Cir. 1987); *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 132 (S.D.N.Y. 2008).

Larger expense items here included mediation fees of $12,500, expert and investigator fees of $16,608.75, and travel expenses of $2,492.31, predominantly for travel to the California Court where the case was originally filed. Other fees include translating the Complaint for service in China ($1,077.30), service of process ($1,011.10), PACER/WestLaw fees ($757.25), and photocopying and printing documents ($429.30 at $0.10/page). These fees were necessary for the prosecution and resolution of the action. Moreover, such fees are customarily reimbursed from the settlement fund. *See In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012) (reimbursing over $1 million in expert expenses to plaintiff's counsel); *Campos v. Goode*, No. 10 CIV. 0224 DF, 2011 WL 9530385, at *8 (S.D.N.Y. Mar. 4, 2011) (reimbursing mediation fee); *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1367 (N.D. Cal. 1996) (reimbursing investigator fee).

III. CONCLUSION

For all of the foregoing reasons, Lead Plaintiffs respectfully request that the Court grant their counsel's application for an award of attorneys' fees and reimbursement of reasonable expenses.

Dated: February 21, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this on the 21st day of February, 2017, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Jonathan Horne