UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SHEET METAL WORKERS LOCAL 32 PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TEREX CORPORATION, et al., Defendants.	No. 3:09-cv-02083-RNC **(Consolidated)** CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

TABLE OF CONTENTS

Page

Page

Page

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

Page

STATUTES, RULES AND REGULATIONS

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs Sheet Metal Workers Local 32 Pension Fund and Ironworkers St. Louis District Council Pension Fund and additional plaintiff Sheet Metal Workers Local #218(S) Pension Fund (together, "Plaintiffs") respectfully submit this memorandum of law in support of their motion for approval of: (1) the $10,000,000 all-cash Settlement; (2) the proposed Plan of Allocation; (3) Lead Counsel's application for an award of attorneys' fees and expenses; and (4) Plaintiffs' applications for awards in the total amount of $7,500, pursuant to 15 U.S.C. §78u-4(a)(4).[1]

I. INTRODUCTION

In accordance with the terms of the Stipulation, on April 18, 2019, Defendants completed payment of $10,000,000 in cash into an interest-bearing escrow account maintained on behalf of the Settlement Class. This proposed Settlement is an excellent recovery achieved in the face of significant risk, and is a credit to the Plaintiffs and Lead Counsel's persistent and creative efforts.

Risks that Plaintiffs faced, and would have faced had the Litigation continued, include the risks that: (1) the Court would deny class certification; and (2) Defendants would prevail at summary judgment, at trial, or on appeal. In the face of these and many other obstacles, Lead Counsel was able to achieve a $10 million all-cash Settlement, all without the uncertainties of continued litigation.

Further confirming the fairness, reasonableness and adequacy of the Settlement is the fact that, to date, Settlement Class Members have reacted positively. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") (ECF No. 119), over 129,000 copies of the Notice were sent to potential Settlement Class Members and nominees, and notice was published once over a national newswire service and in *The Wall Street Journal*.[2] To

[1] Unless otherwise noted, all capitalized terms used herein are defined in the March 27, 2019 Settlement Agreement ("Stipulation"). ECF No. 118-4.

[2] *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶¶10-11 ("Sylvester Decl.") (ECF No. 123) and

date, Plaintiffs are neither aware of a single objection to the Settlement nor a request for exclusion from the Settlement Class. Ferguson Decl., ¶6-7.

Plaintiffs also request that the Court approve the proposed Plan of Allocation, which was set forth in the Notice sent to Settlement Class Members. The Plan of Allocation governs how claims will be calculated and how Settlement proceeds will be distributed among Authorized Claimants. It was prepared in consultation with Plaintiffs' in-house economics consultant and is based on the out-of-pocket measure of damages, *i.e.*, the difference between what Settlement Class Members paid for their Terex common stock during the Settlement Class Period and what they would have paid had the alleged misstatements not been made or the omitted information been disclosed. The Plan of Allocation calculates Settlement Class Member claims as they would have been calculated had Plaintiffs prevailed at trial. It is fair, reasonable, and adequate, and should be approved.

Lead Counsel also respectfully applies for an award of attorneys' fees in the amount of 31% of the Settlement Amount and litigation expenses of $174,450.49, plus interest on both amounts. Lead Counsel's fee request, approved by Plaintiffs,[3] is within the range of percentages awarded in class actions in this District and across the country. It is also reasonable when viewed against the result achieved here and the risks Lead Counsel was able to overcome.

In addition, Plaintiffs apply for awards of $2,500 each for Lead Plaintiffs Sheet Metal Workers Local 32 Pension Fund and Ironworkers St. Louis District Council Pension Fund and additional plaintiff Sheet Metal Workers Local #218(S) Pension Fund, pursuant to 15 U.S.C. §78u-4(a)(4), for their time incurred in prosecuting this Litigation. *See* Villarruel, Garrett and Robison Decls.

Declaration of Mishka Ferguson Regarding Notice Dissemination and Requests for Exclusion Received to Date, ¶3 ("Ferguson Decl."), submitted herewith.

[3] *See* Declarations of Daniel Villarruel ("Villarruel Decl."), Tom Garrett ("Garrett Decl.") and Ed Robison ("Robison Decl."), submitted herewith.

Finally, Lead Counsel, which has substantial experience prosecuting securities class actions, has concluded that the Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement and approve the Plan of Allocation as fair and reasonable, and award fees and expenses in the amounts requested.

II. PROCEDURAL AND FACTUAL BACKGROUND

This securities fraud class action alleges violations of the Securities Exchange Act of 1934 ("Exchange Act") against Defendants on behalf of a class of purchasers of Terex publicly-traded common stock from February 20, 2008 through February 11, 2009, inclusive ("Settlement Class Period"). Plaintiffs allege that Defendants made untrue statements of material fact and omitted to disclose material information which Defendants were required to disclose during the Settlement Class Period. More specifically, Plaintiffs allege that the challenged statements were materially false and misleading because Terex failed to disclose that: (i) the Company did not properly and timely account for impaired assets in its Construction and Roadbuilding, Utility Products and Other segments; (ii) the Company was experiencing declining demand for its products in its Construction, Materials, Processing and Aerial Work Platform segments; and (iii) there was no reasonable basis for the positive statements about Terex and its prospects. *See* accompanying Declaration of Robert J. Robbins in Support of Motion for Final Approval of Settlement and Approval of Plan of Allocation and for an Award of Attorneys' Fees and Expenses and Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Robbins Decl." or "Robbins Declaration"). Defendants deny all of Plaintiffs' allegations.

For the sake of brevity, the Court is respectfully referred to the accompanying Robbins Declaration for a full discussion of: (1) the factual background and procedural history of the Litigation; (2) the efforts of Lead Counsel; (3) the negotiations leading to this Settlement; (4) the

reasons why the Settlement and the Plan of Allocation are fair and reasonable and should be approved; and (5) why the Court should approve Lead Counsel's application for an award of fees and expenses.

III. THE NOTICE OF PROPOSED SETTLEMENT SATISFIES RULE 23 AND DUE PROCESS REQUIREMENTS AND IS REASONABLE

Rule 23(c)(2) requires the "'best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.'" *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (class notice designed to fulfill due process requirements).[4] The standard for measuring the adequacy of a class action settlement notice is reasonableness. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Id*. "Notice is 'adequate if it may be understood by the average class member.'" *Id.*

Here, in accordance with the Preliminary Approval Order, by May 6, 2019, the Claims Administrator caused the Notice and Proof of Claim to be mailed to potential Settlement Class Members and nominees. *See* Sylvester Decl., ¶¶4-10. As of June 12, 2019, over 129,000 copies of the Notice have been mailed to potential Settlement Class Members and nominees. Ferguson Decl., ¶3. The Notice contains a description of the claims asserted, the Settlement, the Plan of Allocation, and Settlement Class Members' rights to participate in and object to the Settlement or the fees and expenses that Lead Counsel intends to request, or to exclude themselves from the Settlement Class. In addition, the Summary Notice was published once over a national newswire service and in *The Wall Street Journal*. Sylvester Decl., ¶11. Information regarding the Settlement, including

[4] Citations are omitted and emphasis is added throughout, unless otherwise indicated.

downloadable copies of the Notice and Proof of Claim, was also posted on a website devoted solely to the administration of the Settlement: www.TerexSecuritiesSettlement.com. *Id.*, ¶13.

The notice program, which combined an individual, mailed Notice and Proof of Claim to all potential Settlement Class Members and nominees who could be identified with reasonable effort, and a Summary Notice published in preeminent business publications and over the internet, contained all of the information required by §21D(a)(7) of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and is adequate to meet the due process and Rules 23(c)(2) and (e) requirements for providing notice to the Settlement Class. *See In re Priceline.com, Inc.*, No. 3:00-CV-1884(AVC), 2007 U.S. Dist. LEXIS 52538, at *7 (D. Conn. July 20, 2007).

IV. THE COURT SHOULD FINALLY CERTIFY THE SETTLEMENT CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT

In presenting the Settlement to the Court for preliminary approval, Plaintiffs requested that the Court certify the Settlement Class for settlement purposes only so that notice of the Settlement, the Settlement Hearing and the rights of Settlement Class Members to object to the Settlement, request exclusion from the Settlement Class or submit Proofs of Claim, could be issued. In the Preliminary Approval Order, the Court addressed the requirements for class certification set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and found that Plaintiffs had met the requirements for certification of the Settlement Class for purposes of settlement. By its Preliminary Approval Order, the Court preliminarily certified the following Settlement Class:

> All persons who purchased or acquired the publicly-traded common stock of Terex from February 20, 2008 through and including February 11, 2009, and who were allegedly damaged thereby. Excluded from the Settlement Class are Defendants, members of each Defendant's immediate family, any entity in which any Defendant has or had a controlling interest, directors of Terex during the Settlement Class Period, and Defendants' legal representatives, heirs, successors, or assigns of any such excluded party. Also excluded from the Settlement Class are those Persons who timely and validly request exclusion from the Settlement Class pursuant to the Notice.

See ECF No. 119, ¶¶4-5.

Since entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Settlement Class and, for all the reasons stated in Plaintiffs' motion for preliminary approval, incorporated herein by reference, Plaintiffs respectfully request that the Court affirm its preliminary certification and finally certify the Settlement Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), and appoint Plaintiffs as class representatives and Lead Counsel as class counsel.

V. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Settlements Are Generally Favored and Encouraged

The court may approve a "class action settlement if it is 'fair, adequate, and reasonable, and not a product of collusion.'" *Wal-Mart*, 396 F.3d at 116. The evaluation of a proposed settlement requires the court to consider "both the settlement's terms and the negotiating process leading to settlement." *Id.*; *see also Simerlein v. Toyota Motor Corp.*, No. 3:17-cv-1091 (VAB), 2019 U.S. Dist. LEXIS 96742, at *42 (D. Ct. June 10, 2019). While the decision to grant or deny approval lies within a court's broad discretion, a general policy favoring settlement exists, especially for class actions. *Wal-Mart*, 396 F.3d at 116 (noting "'strong judicial policy in favor of settlements, particularly in the class action context'"). Recognizing that a settlement represents an exercise of judgment by the negotiating parties, the Second Circuit has cautioned that while a court should not give "rubber stamp approval" to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974).

B. The Settlement Is Presumptively Fair

A "'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Wal-Mart*, 396 F.3d at 116; *Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *52-*53.

Great weight is accorded to the recommendations of counsel, who are most closely acquainted with the litigation. *See In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 315 (E.D.N.Y. 2006). A court may find the negotiating process is fair where, as here, "the settlement resulted from 'arm's-length negotiations'" and plaintiffs' counsel "'possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests.'" *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001).

This initial presumption of fairness and adequacy applies in this case because the Settlement was reached by experienced, fully-informed counsel after substantial arm's-length negotiations with the assistance of the Hon. Daniel Weinstein (Ret.) of JAMS, a former judge and nationally-recognized mediator of complex cases. Robbins Decl., ¶27. *See In re Priceline*, 2007 U.S. Dist. LEXIS 52538, at *9. In addition, Lead Counsel was fully informed of the merits and weaknesses by the time the Settlement was reached. Lead Counsel had conducted an extensive factual investigation, including interviews with numerous confidential witnesses and consultation with analysts on issues of valuation, damages and causation. Robbins Decl., ¶6. The accumulation of information resulting from this investigation informed Plaintiffs and their counsel about the strengths and weaknesses of the case and enabled them to engage in effective settlement discussions designed to maximize any recovery. *See Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982). Thus, the Settlement is entitled to the presumption of procedural fairness in this Circuit.

C. The Settlement Is Substantively Fair

As explained below, the nine factors set forth by the Second Circuit in *Grinnell*, 495 F.2d at 463, which include the following, overwhelmingly favor final approval of the Settlement:

(1) the complexity, expense and likely duration of the litigation;

(2) the reaction of the class to the settlement;

(3) the stage of the proceedings and the amount of discovery completed;

(4) the risks of establishing liability;

(5) the risks of establishing damages;

(6) the risks of maintaining the class action through the trial;

(7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

"A court need not find that every factor militates in favor of a finding of fairness; rather, a court 'consider[s] the totality of these factors in light of the particular circumstances.'" *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007); *see also Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *56 (same).

1. The Settlement Satisfies the Requirements for Final Approval

a. The Complexity, Expense, and Duration of the Litigation Justify the Settlement

Without the Settlement, the anticipated complexity, cost, and duration of the Litigation would be considerable. *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 175 (S.D.N.Y. 2014) ("the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement"); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *10 (E.D.N.Y. Sept. 18, 2007) (same). This case involves complex legal issues under the federal securities laws, including falsity, scienter and causation, as well the proper accounting for balance sheet items such as goodwill impairment. "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them" and courts therefore favor class action settlements. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000).

In the absence of the Settlement, Plaintiffs would be required to request and review hundreds of thousands of documents, complete depositions, retain experts, prepare expert reports, and complete expert and fact discovery, much of which would involve events that occurred over a decade ago. Robbins Decl., ¶30. Class certification, summary judgment and other pretrial proceedings would also require substantial expenditures of time and resources – from the parties and the Court – and pose significant risks to recovery. All of this would add further years of delay before the Settlement Class could enjoy the benefit of a verdict, if any, obtained in its favor. *In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 WL 1956267, at *6 (S.D.N.Y. May 1, 2008) ("Not only would Plaintiffs spend substantial sums in litigating this case through trial and appeals, it could be years before class members saw any recovery, if at all."); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) (same).

Even if the Settlement Class could recover a larger judgment after a trial, the additional delay posed by the trial itself, as well as post-trial motions and appeals, could deny the Settlement Class any recovery for years. *See Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."). More importantly, there is no guarantee that the outcome would favor the Settlement Class. *See In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) (noting securities class action litigation is "'notably difficult and notoriously uncertain'"). The Settlement avoids all of these risks.

b. The Reaction of the Settlement Class to the Settlement

The reaction of the Settlement Class to the Settlement is a significant factor in assessing its fairness and adequacy, and the lack of objections "'evidenc[es] the fairness of a settlement.'" *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y.), *aff'd*, 117 F.3d 721 (2d Cir.

1997). "'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'" *Wal-Mart*, 396 F.3d at 118. Over 129,000 copies of the Notice, which describes the nature of the Litigation and the terms of the Settlement, were distributed to potential Settlement Class Members and nominees. Ferguson Decl., ¶3. To date, no objections to the Settlement have been received and no investor has opted out of the Settlement Class.[5] The reaction of the Settlement Class here strongly supports approval of the Settlement. *See Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *59.

c. The Stage of the Proceedings and Discovery Completed

A court will also consider "'whether the [plaintiffs] had adequate information about their claims such that their counsel can intelligently evaluate the merits of [their] claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (quoting *IMAX*, 283 F.R.D. at 190). "To satisfy this factor, [the] parties need not have even engaged in formal or extensive discovery." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557 (CM), 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014) (noting discovery cannot begin in cases brought under the PSLRA until the motion to dismiss is denied) (citing *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 363 (S.D.N.Y. 2002)). "[I]t is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to 'intelligently make . . . an appraisal' of the Settlement." *Holocaust Litig.*, 80 F. Supp. 2d at 176. *See also Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *60 (third *Grinnell* factor met where only informal and confirmatory discovery performed).

[5] The Court-ordered deadline for objections or opting out is July 3, 2019. Any objections received by that date will be addressed in Plaintiffs' reply brief, due on July 17, 2019.

In this case, Plaintiffs had sufficient information to make an informed decision on the propriety of the Settlement. As detailed in the Robbins Declaration, Plaintiffs and Lead Counsel negotiated the Settlement after an extensive factual investigation and analysis relating to the events and transactions beginning with the initial complaint, including the review of Terex's SEC filings, news reports, and other publicly available information as well as conducting discussions with numerous former Terex employees. Robbins Decl., ¶6. Lead Counsel's investigation continued with the drafting of the detailed amended complaint; opposing Defendants' motion to dismiss; consulting with analysts on issues of valuation, damages and loss causation; and participating in mediation with Defendants' counsel overseen by Judge Weinstein, with follow-up communications that culminated in a mediator's proposal that was accepted by the parties. *Id*.

Accordingly, Plaintiffs and their counsel "developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had 'a clear view of the strengths and weaknesses of their case' and of the range of possible outcomes at trial." *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *7 (S.D.N.Y. May 9, 2014) (quoting *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004)). *See also Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *60.

d. The Risks of Establishing Liability

In evaluating the Settlement, the Court will balance the benefits to the Settlement Class, including the immediacy and certainty of a recovery, against the continued risks of litigation. *See Grinnell*, 495 F.2d at 463; *Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *61. "In determining the risks of establishing liability and damages, courts need not 'adjudicate the disputed issues or decide unsettled questions; rather, [courts] need only assess the risks of litigation against the certainty of recovery under the proposed settlement.'" *Simerlein*, 2019 U.S. Dist. LEXIS 96742, at *61 (quoting

In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 459 (S.D.N.Y. 2004)). While Plaintiffs strongly believe in their claims, they recognize that success is not assured, and further believe that this Settlement, when viewed against the risks of proving liability, is fair, adequate, and reasonable. Indeed, despite the strength of this case, Plaintiffs faced numerous hurdles to establishing liability, given that they shouldered the burden to prove: (1) existence of a material misstatement or omission; (2) scienter; (3) reliance; (4) economic loss; and (5) loss causation. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341-42 (2005).

Defendants maintained throughout the Litigation that they did not make any misleading statements or omissions of material fact and did not act with scienter. For instance, Defendants argued that there was no corrective disclosure of any accounting fraud because Terex never restated its financial statements for the Settlement Class Period, nor did its auditors withdrawn its prior audits. *See* ECF No. 69 at 5. Defendants also argued that their forward-looking statements were protected by the PSLRA's safe-harbor. *Id*. at 23. They also strenuously argued that they had a good faith belief in the accuracy of their public statements and that Plaintiffs failed to allege particularized facts giving rise to a strong inference of concerns, misbehavior or recklessness. *Id*. at 9-22. The Court granted the motion to dismiss with respect to certain categories of statements and as to all of the individual defendants except Riordan, finding that the allegations against them "do not support a strong inference of scienter." ECF No. 97 at 2. Although Plaintiffs survived a motion to dismiss against Terex and Riordan, they faced the risk that they would not be able to prove the allegations against the remaining defendants after the completion of discovery.

Even if these defenses were overcome, Plaintiffs would have to establish loss causation, *i.e.*, that Defendants' alleged fraud caused economic loss. *Dura Pharm.*, 544 U.S. at 338 (noting a plaintiff "must prove that the . . . fraud caused an economic loss"). The issue of loss causation would have been hotly contested at summary judgment and trial. Defendants would continue to

argue, as they have throughout the Litigation, that the global financial crisis was the cause of the decline in Terex's stock price. Robbins Decl., ¶29. As a result, there was a substantial risk of recovering limited or no damages if the jury sided with the defense.

Plaintiffs faced practical hurdles as well. The events at issue in this Litigation occurred over a decade ago. In addition to fading memories, locating percipient witnesses may have proved difficult and relevant non-party evidence may be lost. *Id*., ¶30.

By the time the parties agreed on the proposed Settlement, Lead Counsel understood that certain of the defenses might resonate with the Court or jurors. While Plaintiffs remained confident in their ability to prove their claims and counter any defense, the risk of losing at summary judgment, trial, or on appeal, when weighed against the immediate and substantial benefits of the $10,000,000 Settlement, supports a finding that the Settlement is fair, reasonable, and adequate.

e. The Risks of Establishing Damages

Plaintiffs also faced substantial risk in proving damages. *See Hi-Crush*, 2014 WL 7323417, at *9 (discussing difficulty of proving damages in securities cases and the "real risk of no recovery"). To prevail on their §10(b) claims, Plaintiffs were required to prove that the alleged misleading statements inflated the price of the Terex publicly-traded common stock. If this case were to proceed, the defense would continue to argue that there was no corrective disclosure which caused Terex's stock price to drop. ECF No. 69 at 2.

Proof of damages is a complex matter requiring expert testimony. At trial, Defendants would have challenged Plaintiffs' expert's methodology for calculating damages. Accordingly, Plaintiffs would have faced a "battle of the experts" – a battle in which no party is ever assured to prevail.[6]

[6] *See, e.g., In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) ("In this 'battle of experts,' it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

While Lead Counsel believes its expert would be convincing and would have prevailed on this issue, the outcome at later stages or trial was uncertain. A jury could award nothing or far less in damages than Plaintiffs recovered in the Settlement – a risk that also favors final approval. *See Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-cv-1714 (VAB), 2018 U.S. Dist. LEXIS 130535, at *22 (D. Conn. Aug. 3, 2018).

f. The Risks of Maintaining the Class through Trial

Although Plaintiffs were confident they would have obtained class certification here, it was not guaranteed and the Court could have reevaluated it at any time. *See Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."). The Settlement eliminates any uncertainty regarding this issue.

g. Defendants' Ability to Withstand a Greater Judgment

The ability of a defendant to pay a judgment greater than the amount offered in a settlement may be relevant to a settlement's fairness. *Grinnell*, 495 F.2d at 463. But "the fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate." *PaineWebber*, 171 F.R.D. at 129; *see also IMAX*, 283 F.R.D. at 191 ("'[A] defendant is not required to "empty its coffers" before a settlement can be found adequate.'"). Here, Terex undoubtedly could endure a large judgment, but where all other factors favor final approval, the Court may still approve the Settlement as fair, reasonable and adequate. *See Kemp-Delisser v. St. Francis Hosp. & Med. Ctr.*, No. 15-cv-1113 (VAB), 2016 U.S. Dist. LEXIS 152496, at *10 (D. Conn. Nov. 3, 2016).

h. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Risks of Litigation

The last two *Grinnell* factors are also satisfied here. The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent*

Orange" Prod. Liab. Litig., 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). The Settlement need only fall within a "'range of reasonableness.'" *PaineWebber*, 171 F.R.D. at 130; *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) ("[I]n any case there is a range of reasonableness with respect to a settlement."); *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993) (observing that reasonableness of a settlement "is not susceptible of a mathematical equation yielding a particularized sum") (citing *Newman*, 464 F.2d at 693). In addition, the Court should consider that the Settlement provides for payment to the Settlement Class now, rather than a speculative payment many years later. *See In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. MDL 1500, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) (where settlement fund is in escrow, "the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery").

The Settlement eliminates the numerous risks involved in litigation – especially those inherent in securities class action cases. In light of the legal and factual issues typically present in these cases, the unpredictable outcome of a lengthy and complex trial, concerning events taking place over a decade ago, and the appellate process that would most likely follow, the fairness of this substantial settlement is readily apparent.

In sum, the *Grinnell* factors, individually and collectively, weigh strongly in favor of the Court's approval of the Settlement.

2. The Settlement Meets the Additional Requirements of Amended Rule 23(e)(2)

a. The Class Representatives and Class Counsel have Adequately Represented the Settlement Class[7]

As explained above and in the Robbins Declaration, during the course of this Litigation, Plaintiffs and Lead Counsel have assiduously represented the Settlement Class' interests. In

[7] This factor overlaps with the third *Grinnell* factor.

addition, Plaintiffs provided substantial assistance to Lead Counsel throughout the Litigation, keeping themselves informed of developments over the course of the Litigation, as well as litigation strategy, and any potential resolution. Specifically, Plaintiffs:

> (a) engaged in meetings and correspondence with Robbins Geller; (b) reviewed pleadings and briefs; (c) reviewed detailed correspondence concerning the status of the Litigation; (d) identified and provided relevant information concerning the respective funds' investments in Terex stock; (e) consulted with Robbins Geller regarding litigation and settlement strategy; and (f) were kept informed about the settlement negotiations and the mediator's proposal that resulted in this Settlement.

Villarruel Decl., ¶5; Garrett Decl., ¶5 and Robison Decl., ¶7. This factor favors final approval.

b. The Settlement Was Negotiated at Arm's Length

As explained in detail above, and in the Robbins Declaration (*see* ¶27), the Settlement resulted from a mediator's proposal following arm's-length negotiations with the assistance of a mediator known for resolving complex securities litigation. This factor is thus satisfied.

c. The Relief Provided for the Class Is Adequate, Taking into Account the Costs, Risks and Delays of Litigation

This factor, which overlaps with the first *Grinnell* factor, views the benefit of the Settlement in the context of the costs, risks, and delays associated with continued litigation. As shown above, the Settlement provides for an immediate cash recovery of $10,000,000 to the Settlement Class and provides very real value to the Settlement Class, especially when viewed against the costs, risks, and delays of continued litigation.

d. The Proposed Method of Distributing the Settlement to Class Members Is Fair and Reasonable

The proposed method of distributing the Settlement to Settlement Class Members is set forth in the Plan of Allocation, which is addressed below. For the reasons stated therein, the Plan of Allocation is fair and reasonable, and treats Settlement Class Members equitably.

e. The Settlement Is Adequate, Taking into Account Lead Counsel's Request for Attorneys' Fees and Expenses

As explained below, Lead Counsel's request for an award of attorneys' fees and expenses meets all the factors set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), and is in line with other decisions in this District, and other decisions throughout the country.

f. The Parties' Supplemental Agreement

Amended Rule 23(e)(3) provides that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the [settlement] proposal," while Amended Rule 23(e)(2)(C)(iv) provides for the disclosure of any such agreement. The parties have entered into a Supplemental Agreement, which as explained in ¶8.3 of the Stipulation, allows Defendants to terminate the Settlement if Settlement Class Members who purchased a certain percentage of Terex common stock during the Settlement Class Period exclude themselves from the Settlement Class. This type of agreement is customary in securities class actions.

VI. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

If the Court approves the proposed Settlement, upon completion of the claims administration process, the Net Settlement Fund will be distributed to Authorized Claimants according to the Plan of Allocation set forth in the Notice. "[T]he adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information." *PaineWebber*, 171 F.R.D. at 133; *see also In re Priceline*, 2007 U.S. Dist. LEXIS 52538, at *11-*12 (same). The opinion of experienced and informed counsel carries considerable weight. *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001). Thus, an allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *Id*. at 429-30. Courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among . . . class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978).

Here, the Plan of Allocation was formulated by Lead Counsel and Plaintiffs' in-house economics consultant, and calculates individual Settlement Class Member's claims as they would have been calculated had Plaintiffs prevailed at trial. The plan is based on the out-of-pocket measure of damages and is designed to measure the difference in what Settlement Class Members paid for their Terex common stock during the Settlement Class Period and what they would have paid had the allegedly omitted information been disclosed or alleged misstatements not been made. Robbins Decl., ¶¶42-46. Under the Plan of Allocation, each Authorized Claimant will receive a *pro rata* share of the Net Settlement Fund, with that share determined by the ratio that the Authorized Claimant's allowed claim bears to the total allowed claims of all Authorized Claimants. Accordingly, the Plan of Allocation is fair, reasonable, and adequate to the Settlement Class as a whole, and treats Settlement Class Members equitably, warranting approval.

VII. AWARD OF ATTORNEYS' FEES

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees from the $10,000,000 Common Fund Created in the Settlement

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *accord Goldberger*, 209 F.3d at 47; *In re Priceline*, 2007 U.S. Dist. LEXIS 52538, at *13. Courts recognize that awards of attorneys' fees from a common fund "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes,"[8] and discourage misconduct of a similar nature. Indeed, the Supreme Court has emphasized that private securities actions are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551

[8] *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 585 (S.D.N.Y. 2008); *accord In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007).

U.S. 308, 313 (2007). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks*, 2005 WL 2757792, at *9.

B. The Court Should Award a Reasonable Percentage of the Common Fund, as Requested

Most courts find that the percentage-of-the-fund method, under which counsel is awarded a percentage of the fund they created, is the preferred means to determine a fee because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart*, 396 F.3d at 122; *see also Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("[T]he prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."). The percentage approach also recognizes that the quality of counsel's work is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases.[9]

The Supreme Court has indicated that attorneys' fees in common-fund cases generally should be based on a percentage of the fund. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (noting "a reasonable fee is based on a percentage of the fund bestowed on the class"). The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50 (holding that the percentage-of-the-fund or lodestar method may be used); *see also Savoie v. Merchs.*

[9] *See, e.g.*, *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (the "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

Bank, 166 F.3d 456, 460 (2d Cir. 1999) ("percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used"). The Second Circuit also has acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart*, 396 F.3d at 122; *accord Davis*, 827 F. Supp. 2d at 183-85; *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010). All Courts of Appeal to consider the matter have approved of the percentage method, with two circuits ***requiring*** its use in common-fund cases.[10]

The PSLRA also supports use of the percentage-of-the-fund method, as it provides 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" recovered for the class. 15 U.S.C. §78u-4(a)(6). Several courts have concluded that Congress, in using this language, expressed a preference for the percentage method when determining attorneys' fees in securities class actions. *See, e.g.*, *Telik*, 576 F. Supp. 2d at 586; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005); *Maley*, 186 F. Supp. 2d at 370.

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

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were offering their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the

[10] *See In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305-07 (1st Cir. 1995); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props.*, 9 F.3d 513, 515-17 (6th Cir. 1993); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). The Eleventh and District of Columbia Circuits have required the use of the percentage method in common fund cases. *See Camden*, 946 F.2d at 774; *Swedish Hosp.*, 1 F.3d at 1271.

customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum*, 465 U.S. at 904 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.") (Brennan, J., concurring).

The requested 31% fee is consistent with fee awards in similar securities class actions, within the Second Circuit in comparable securities cases. *See, e.g.*, *In re Austin Capital Mgmt., Ltd., Sec. & Emp. Ret. Income Sec. Act (ERISA) Litig.*, No. 1:09-md-02075-TPG, slip op. (S.D.N.Y. Oct. 2, 2014) (awarding fees of 33-1/3% of $6.85 million recovery, plus expenses) (attached as Ex. 1 hereto); *Landmen Partners, Inc. v. Blackstone Grp., L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of $85 million recovery, plus expenses); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.33% of $586 million recovery); *In re Van der Moolen Holding N.V. Sec. Litig.*, No. 1:03-cv-8284 (RWS), slip op. (S.D.N.Y. Dec. 6, 2006) (awarding 33-1/3% of $8 million recovery, plus expenses) (attached as Ex. 2 hereto). Similar awards have been approved nationwide. *See* Exhibit 3 hereto.

D. The *Goldberger* Factors Confirm that the 31% Requested Fee Is Fair and Reasonable

The Second Circuit has repeatedly held that the appropriate criteria to consider when reviewing a request for attorneys' fees in a common-fund case include 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."

Goldberger, 209 F.3d at 50. These factors, addressed below, support approval of the requested fee.

1. The Time and Labor Expended by Plaintiffs' Counsel Support the Requested Fee

In the over nine years since this case was filed, Lead Counsel dedicated a substantial amount of time and resources to prosecuting these claims. Its efforts included an extensive and thorough investigation necessary to prepare the initial and amended complaints. Robbins Decl., ¶6. Lead

Counsel also strenuously opposed Defendants' motion to dismiss, which required extensive briefing and oral argument. *Id.*, ¶¶23-24.

In sum, Plaintiffs' Counsel devoted a significant amount of time and resources to this Litigation. Specifically, Plaintiffs' Counsel spent 3,369 hours prosecuting this case. *See* Declaration of Robert J. Robbins Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), Ex. A; Declaration of Jon P. Whitcomb Filed on Behalf of Diserio Martin O'Connor & Castiglioni LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Diserio Martin Decl."), Ex. A. This time and effort confirm that the fee requested here is reasonable.

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

As mentioned above, courts have long recognized that securities class actions are "'notably difficult and notoriously uncertain.'" *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) (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This Litigation was no exception. As explained above (at 11-13), Defendants raised compelling arguments in connection with the elements of falsity, scienter, loss causation, and damages. Discovery concerning events that occurred over a decade ago would have to be completed, and experts would have to be retained.

Accordingly, the magnitude and complexity of this Litigation support the conclusion that the requested fee is fair and reasonable.

3. The Risks of the Litigation Support the Requested Fee

The risk undertaken in the Litigation is often considered the most important *Goldberger* factor. *See, e.g.*, *Comverse*, 2010 WL 2653354, at *5; *Telik*, 576 F. Supp. 2d at 592. The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> "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 470. When considering the reasonableness of attorneys' fees in a contingency action, the Court should consider the risks of the litigation at the time the suit was brought. *See Goldberger*, 209 F.3d at 54-55; *Parker v. Time Warner Entm't Co., L.P.*, 631 F. Supp. 2d 242, 276 (E.D.N.Y. 2009) (the court should consider "'the contingent nature of the expected compensation'" and the "'risk of non-payment viewed as of the time of the filing of the suit'").

Lead Counsel undertook this case on a wholly contingent basis, knowing that the Litigation could last for years and would require them to devote substantial attorney time and significant expenses with no guarantee of compensation. Robbins Decl., ¶¶53-54. Although the case was brought to a successful conclusion, this was far from guaranteed at the outset – or indeed, through much of the Litigation. In fact, the Court granted the motion to dismiss of all Defendants except Terex and Riordan, and dismissed several categories of allegedly false statements. "There are numerous class actions in which counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise." *Veeco*, 2007 WL 4115808, at *6. Lead Counsel's assumption of this contingency-fee risk strongly supports the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *27 ("the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

As discussed in the Robbins Declaration (¶¶29-31) and above (at 11-13), there were substantial risks here with respect to the ability to prove at trial that Defendants had made material

misstatements or omissions with scienter that caused Plaintiffs' losses. Defendants steadfastly maintained that the rapid decline in the global economy during the Settlement Class Period was the driving force behind any weakness in Terex's financial performance, and that the Defendants suffered the same economic losses as Settlement Class Members. *Id*. As a result, Defendants contended that the challenged statements were not actionable. Plaintiffs faced the risk that the jury would side with Defendants on these issues.

Lead Counsel firmly believes that Plaintiffs' claims were meritorious. However, Defendants were represented by highly capable attorneys and the risk of a defense verdict after completing expensive discovery and trial was significant. Lead Counsel's willingness to assume that risk with a significant commitment of time and money demonstrates that this *Goldberger* factor weighs heavily in favor of the requested fee.

4. The Quality of Representation Supports the Requested Fee

The quality of the representation is another important factor that supports the reasonableness of the requested fee. The quality of the representation here is best evidenced by the quality of the result achieved. *See Goldberger*, 209 F.3d at 55. As a result of its skill and substantial experience in the specialized field of shareholder securities litigation (*see* Lead Counsel's firm resume, attached to the Robbins Geller Decl. as Ex. E) and its substantial litigation efforts, Lead Counsel developed a record over the course of over nine years of litigation which was critical to recovering the $10,000,000 for Settlement Class Members.

Finally, courts repeatedly recognize that the quality of opposing counsel should be taken into account in assessing the quality of plaintiffs' counsel's performance. *See, e.g.*, *Marsh*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Here, Defendants are represented by Fried, Frank, Harris, Shriver & Jacobson LLP, a highly respected law firm, and the defense attorneys

brought to bear substantial experience in securities litigation and tenacity in representing their clients. Despite this formidable opposition, Lead Counsel presented a strong case and demonstrated a commitment to vigorously prosecuting this Litigation, which enabled Lead Counsel to achieve the Settlement.

5. Second Circuit Precedent Supports the 31% Fee as a Reasonable Percentage of the Total Recovery

In considering the requested fee in relation to the settlement, a court will consider the fee as a percentage of the total recovery and compare it "'to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3. As discussed herein, the requested fee award is well within the range of fees that courts in the Second Circuit and around the country have awarded in comparable complex cases. *See supra* at 21. Accordingly, the fee award requested is reasonable in relation to the size of the Settlement.

6. Public Policy Considerations Support the Requested Fee

Public policy strongly favors rewarding firms for bringing successful securities actions like this one. *See Flag Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."). Accordingly, public policy favors granting the fee and expense application here.

7. Plaintiffs' Approval and the Settlement Class' Reaction Support the Requested Fee

Plaintiffs were actively involved in the prosecution and settlement of this Litigation and have considered and approved the requested fee and expense award. *See* Villarruel Decl., ¶9, Garrett Decl., ¶9 and Robison Decl., ¶11. The reaction of the Settlement Class also supports the requested fee. As of June 12, 2019, the Claims Administrator has sent over 129,000 copies of the Notice to

potential Settlement Class Members and their nominees (Ferguson Decl., ¶3), informing them that, among other things, Lead Counsel intended to apply for an award of attorneys' fees in an amount not to exceed 31% of the Settlement Amount and expenses in an amount not to exceed $225,000 (plus interest thereon for both). While the time to object does not expire until July 3, 2019, to date, not a single objection has been received. Any objection received will be addressed in Plaintiffs' reply brief, which is due on July 17, 2019.

E. A Lodestar Cross-Check Strongly Confirms the Reasonableness of the Fee Request

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit permits courts to "cross-check" the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50. In cases like this, fees representing multiples of lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See, e.g.*, *Flag Telecom*, 2010 WL 4537550, at *26 ("'Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.'"); *Comverse*, 2010 WL 2653354, at *5 ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar.").

Accordingly, in complex contingent litigation, lodestar multipliers of between 2 and 5 are commonly awarded. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier was "within the range of reasonable . . . multipliers approved in this Circuit"); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (3.9 multiplier on $272 million settlement); *In re Intercept Pharm., Inc. Sec. Litig.*, No. 1:14-cv-01123-NRB, 2016 U.S. Dist. LEXIS 138413, at *5 (S.D.N.Y. Sept. 8, 2016) (2.72 multiplier); *Davis*, 827 F. Supp. 2d at 185 (multiplier of 5.3 was "not atypical"

in similar cases); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (4.7 multiplier); *Comverse*, 2010 WL 2653354, at *5 (2.78 multiplier); *Telik*, 576 F. Supp. 2d at 590 ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *In re Bisys Sec. Litig.*, No. 04 Civ. 3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (awarding 30% fee representing 2.99 multiplier, which "f[ell] well within the parameters set in this district and elsewhere"); *In re Priceline*, 2007 U.S. Dist. LEXIS 52538, at *17 (finding 1.98 multiplier "reasonable in light of the circumstances of this case").

Here, if the Court decides to consider it, a lodestar cross-check would fully support the requested fee. This contingent action was litigated for over nine years. Plaintiffs' Counsel devoted 3,369 hours of attorney and staff time in prosecuting this Litigation, and their lodestar – derived by multiplying the hours each person worked by their current hourly rates – is $2,169,234.00.[11] *See* Robbins Geller Decl., Ex. A; Diserio Martin Decl., Ex. A. The requested fee of 31% of the Settlement Amount represents a modest multiplier of approximately 1.4 of lodestar. Thus, the multiplier and 31% fee are well within the range awarded in cases of this type.

VIII. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENT

Lead Counsel's application includes a request for charges and expenses reasonably incurred in pursuing the claims on behalf of the Settlement Class. Lead Counsel's expenses and certain in-house charges are properly recoverable. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be

[11] The Supreme Court and courts in this Circuit have long approved the use of current hourly rates to calculate lodestar as a means of compensating for the delay in receiving payment that is inherent in class actions, inflationary losses, and the loss of access to legal and monetary capital that could otherwise have been employed had class counsel been paid on a current basis during the pendency of the litigation. *See In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989); *Veeco*, 2007 WL 4115808, at *9; *Jenkins*, 491 U.S. at 284.

compensated "'for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation"'"); *Flag Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.").

As detailed in counsel's fee and expense declarations, Lead Counsel requests $174,450.49 in expenses for prosecuting this Litigation for the benefit of the Settlement Class. These expenses are of a type necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses and other charges include consultant and investigator fees, online factual and legal research, mediation costs, and travel expenses, among others.

The Notice informed Settlement Class Members that Lead Counsel would apply for expenses in an amount not to exceed $225,000 to be paid from the Settlement Fund. Sylvester Decl., Ex. A. The expenses requested, $174,450.49, are well below that amount. To date, no Settlement Class Member has objected to Lead Counsel's request for expenses.

IX. PLAINTIFFS ARE ENTITLED TO A REASONABLE AWARD UNDER 15 U.S.C. §78u-4(a)(4)

Plaintiffs also each seek approval for awards of $2,500 in recognition of the time and resources they spent representing the Settlement Class. The PSLRA allows an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Many courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *Flag Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to plaintiff for time spent on the litigation).

As set forth in the Villarruel, Garrett and Robison Declarations (filed herewith), Plaintiffs took an active role in prosecuting the Litigation over the last 10 years, including: (1) communicating with Lead Counsel on issues and developments in the Litigation; (2) reviewing documents filed in the case; and (3) consulting with Lead Counsel on litigation and settlement strategy. *See* Villarruel Decl., ¶¶5, 7; Garrett Decl., ¶¶5, 7; Robison Decl., ¶¶7, 9.

These are precisely the types of activities courts have found support PSLRA awards to class representatives. *See, e.g.*, *Veeco*, 2007 WL 4115808, at *12 (characterizing such awards as "'routine[]'" in this Circuit); *Hicks*, 2005 WL 2757792, at *10 ("Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place."). Pursuant to the PSLRA, Plaintiffs collectively request $7,500 for participating in this Litigation and representing the Settlement Class.

The Notice informed potential Settlement Class Members that Plaintiffs may seek in the aggregate, $7,500 in time and expenses incurred in representing the Settlement Class. Sylvester Decl., Ex. A. To date, no Settlement Class Member has objected to such awards to Plaintiffs. Accordingly, Plaintiffs' requests are reasonable and fully justified under the PSLRA and should be granted.

X. CONCLUSION

Based on the foregoing and the entire record, Plaintiffs and Lead Counsel respectfully request that the Court approve: the Settlement and the Plan of Allocation; Lead Counsel's request for an award of attorneys' fees of 31% of the Settlement Amount and payment of $174,450.49 in expenses; and awards of $2,500 to each Plaintiff as allowed by the PSLRA.

DATED: June 19, 2019

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EXHIBIT 1

Griesa, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AUSTIN CAPITAL MANAGEMENT, LTD., SECURITIES & EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA) LITIGATION	:	No. 1:09-md-02075-TPG [~~PROPOSED~~] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on October 2, 2014, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated April 10, 2014 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Investor Class who have not timely and validly requested exclusion.

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 33-1/3% of the Settlement Fund, plus expenses in the amount of $63,553.61, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated amongst other Plaintiffs' Counsel in a manner that Co-Lead Counsel in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the action.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the

Stipulation, and in particular ¶8.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: 10/2/14

THE HONORABLE THOMAS P. GRIESA
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE VAN DER MOOLEN HOLDING N.V. SECURITIES LITIGATION	)	Civil Action No. 1:03-CV-8284 (RWS)

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

This matter came before the Court for hearing pursuant to an Order of this Court, dated October 6, 2006, on the application of the Parties for approval of the settlement (the "Settlement") set forth in the Stipulation of Settlement, dated as of October 3, 2006 (the "Stipulation"). Due and adequate notice having been given of the Settlement as required in said Order, and the Court having considered all papers filed and proceedings held herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings set forth in the Stipulation.

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

3. The Court finds that Co-Lead Counsels' request for attorneys' fees is fair and reasonable, and that the request is supported by the relevant factors, which have been considered by this Court. The Court finds that the fee request is supported by, *inter alia*, the following:

(a) the Settlement provides for an $8 million cash fund, plus interest, (the "Gross Settlement Fund"); and that Settlement Class Members who file timely and valid claims will benefit from the Settlement created by Co-Lead Counsel;

(b) the Summary Notice was published over the *Primezone Media Network* newswire; and over 4,800 copies of the Notice were disseminated to putative Settlement Class Members indicating that at the December 6, 2006 hearing, Plaintiffs' Counsel intended to seek up to 33⅓% of the $8 million Gross Settlement Fund in attorneys' fees and to seek reimbursement of their expenses in an amount not to exceed $180,000, plus interest, and no objection was filed against either the terms of the proposed Settlement or the fees and expenses to be requested by Plaintiffs' Counsel;

(c) Plaintiffs' Counsel have devoted 3,965 hours, with a lodestar value of $1,493,003.66, to achieve the Settlement;

(d) Co-Lead Plaintiffs faced complex factual and legal issues in this Action, which they have actively prosecuted for almost three years, and in the absence of a Settlement, would be required to overcome many complex factual and legal issues;

(e) if Co-Lead Counsel had not achieved the Settlement, there was a risk of either nonpayment or of achieving a smaller recovery;

(f) Co-Lead Counsel have conducted this litigation and achieved the Settlement with skill and efficiency;

(g) the amount of attorneys' fees awarded and expenses reimbursed from the Gross Settlement Fund are consistent with the awards in similar cases; and

(h) public policy considerations support encouraging the legal community to continue to undertake similar litigations.

4. Plaintiffs' Counsel are hereby awarded 33 1/3% of the Gross Settlement Fund as and for their attorneys' fees, which sum the Court finds to be fair and reasonable. Plaintiffs' Counsel are also hereby awarded $ 125,657.46 in reimbursement of their reasonable expenses, incurred in the course of prosecuting this action, from the Gross Settlement Fund, together with interest from the date the Settlement Fund was funded to the date of payment at the same net rate that the

Settlement Fund earns. The above amounts shall be paid to Co-Lead Counsel pursuant to the terms of the Stipulation, from the Gross Settlement Fund. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion and sole discretion of Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions to the prosecution of the Action.

5. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation or the Settlement Effective Date does not occur, then this Order shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation and the Parties shall be returned to the *status quo ante*.

Dated: New York, New York, January 6 2006

THE HONORABLE ROBERT W. SWEET
UNITED STATES DISTRICT JUDGE

Submitted by:

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EXHIBIT 3

2010 To The Present
Cases In Which Award Of Fees Equalled Or Exceeded
30% Of The Fund Plus Expenses

1. *In re: Syngenta AG MIR 162 Corn Litigation*, MDL No. 2591, Memorandum and Order (D. Kan. Dec. 7, 2018) (awarded fees of one-third ($503,333,333.33) of $1.51 billion recovery);

2. *Burges v. BancorpSouth, Inc.*, No. 3:14-cv-01564 (M.D. Tenn. Sept. 21, 2018) (awarded 33-1/3% of $13 million recovery, plus expenses);

3. *In re AuthenTec, Inc. Shareholder Litig.*, No. 05-2012-CA-57589 (Brevard County Fla. Cir. Ct. Nov. 28, 2016) (awarded 33.33% of $10 million recovery, plus expenses);

4. *In re Austin Capital Mgmt., Ltd., Sec. & Emp. Ret. Income Sec. Act (ERISA) Litig.*, No. 1:09-md-02075-TPG (S.D.N.Y. Oct. 2, 2014) (awarded fees of 33-1/3% of $6.85 million recovery, plus expenses);

5. *In re Skelaxin (Metaxalone) Antitrust Litigation*, No. 1:12-md-02343 (E.D. Tenn. June 30, 2014) (awarded fees of 33-1/3% of $73 million recovery, plus expenses);

6. *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595 (M.D. Tenn. May 12, 2014) (awarded fees of 33-1/3% of $3.25 million, plus expenses);

7. *Landmen Partners Inc. v. Blackstone Group*, No. 08-cv-03601-HB-FM (S.D.N.Y. Dec. 18, 2013) (awarded fees of 33-1/3% of $85 million recovery, plus expenses);

8. *Eshe Fund v. Fifth Third Bancorp*, No. 1:08-cv-421 (S.D. Ohio Nov. 20, 2013) (awarded fees and expenses of 33-1/3% of $16 million recovery);

9. *In re Constellation Energy Group, Inc. Sec. Litig.*, No. 1:08-cv-02854-CCB (D. Md. Nov. 4, 2013) (awarded fees of 33-1/3% of $4 million recovery, plus expenses);

10. *Levine v. Atricure, Inc.*, No. 1:06-cv-14324-RJH (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of $2 million recovery, plus expenses);

11. *In re Noah Educ. Holdings Ltd. Sec. Litig.*, No. 1:08-cv-09203 (S.D.N.Y. May 27, 2011) (awarded fees of 33-1/3% of $1.75 million recovery, plus expenses);

12. *Eaton v. Halifax PLC*, No. MON-L-2365-03 (Monmouth Cnty. NJ Super. Ct. May 26, 2011) (awarded fees of 33-1/3% of $8.6 million recovery, plus expenses);

13. *Menkes v. Stolt-Nielsen S.A.*, No. 3:03CV00409(DJS) (D. Conn. Jan. 25, 2011) (awarded fees of 33-1/3% of $2 million recovery, plus expenses);

14. *Moorhead v. CONSOL Energy, Inc.*, No. 2:03-cv-01588-TFM (W.D. Pa. May 14, 2007) (awarded fees of 33-1/3% of $2.7 million recovery; plus expenses);

15. *Wade v. Bayer AG, et al.*, No. CT-004748-06 (Shelby County, Tenn. Cir. Ct. Dec. 7, 2006) (awarded fees of 33-1/3% of $3.7 million recovery, plus expenses);

16. *In re Van der Moolen Holding N.V. Sec. Litig.*, No. 1:03-CV-8284 (S.D.N.Y. Dec. 6, 2006) (awarded fees of 33-1/3% of $8 million recovery, plus expenses);

17. *In re Interpool, Inc. Sec. Litig.*, No. 3:04-cv-00321-SRC (D.N.J. Sept. 9, 2006) (awarded fees of 33-1/3% of $1 million recovery, plus expenses);

18. *Denver Area Meat Cutters and Employers Pension Plan v. James L. Clayton, et al.*, Case No. E-19723 (Blount County Tenn. June 8, 2005) (awarded fees of 33-1/3% of $5 million recovery, plus expenses);

19. *Lezin v. MiniMed, Inc., et al.*, Case No. BC251832 (Los Angeles Super. Ct. Aug. 10, 2004) (awarded fees of 33-1/3% of $1.25 million recovery, plus expenses);

20. *Franks v. Cheap Tickets, Inc., et al.*, Civil No. 01-1-2376-08-DDD (1st Cir. Haw. July 2, 2004 (awarded fees of 33-1/3% of $1 million recovery, plus expenses);

21. *William Sponn v. Emergent Biosolutions, Inc., et al.*, No. 8:16-cv-02625-RWT (D. MD Jan. 25, 2019) (awarded fees of 33% of $6.5 million recovery, plus expenses);

22. *In re MobileIron, Inc., S'holder Litig.*, No. 2015-1-CV-284001 (Santa Clara Sup. Ct. Aug. 21, 2017) (awarded 33% of $7.5 million recovery, plus expenses);

23. *Firerock Global Opportunity Fund LP v. Rubicon Technology, Inc.*, No. 1:15-cv-03813 (N.D. Ill. May 20, 2016) (awarded 33% of $2.5 million recovery, plus expenses);

24. *In re Walter Energy, Inc. Sec. Litig.*, No. 2:12-cv-00281-VEH (N.D. Ala. May 3, 2016) (awarded 33% of $25 million recovery, plus expenses);

25. *Bristol Cnty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.*, No. 1:12-cv-03297 (N.D. Ill. July 22, 2015) (awarded 33% of $9.75 million recovery, plus expenses);

26. *Dahl v. Bain Capital Partners, LLC*, No. 1:07-cv-12388-WGY (D. Mass. Feb. 2, 2015) (awarded 33% of $590.5 million recovery, plus expenses);

27. *Conlee v. WMS Industries*, No. 1:11-cv-03503-JBZ (N.D. Ill. May 20, 2014) (awarded fees of 33% of $3.7 million recovery, plus expenses);

28. *In re State Street Bank and Trust Co. Fixed Income Funds Inv. Litig.*, No. 1:08-cv-08235-PAC (S.D.N.Y. Sept. 6, 2012) (awarded fees of 33% of $6.25 million recovery, plus expenses);

29. *Schultz v. Applica, Inc.*, No. 06-60149-CIV (S.D. Fla. Jan. 15, 2008) (awarded fees of 33% of $2 million recovery, plus expenses);

30. *In re Canadian Superior Energy Inc. Sec. Litig.*, Master File No. 04-CV-02020(RO) (S.D.N.Y. Oct. 19, 2005) (awarded fees of 33% of $3.2 million recovery, plus expenses);

31. *Thomas & Thomas Rodmakers Inc., et al. v. Newport Adhesives and Composites, Inc., et al.*, Case No. CV-99-07796-FMC(RNBx) (C.D. Cal. Oct. 17, 2005) (awarded fees of 33% of $36.25 million recovery, plus expenses);

32. *In re Triton Energy Ltd. Sec. Litig.*, No. 5-98-CV-256 (E.D. Tex. Sept. 23, 2012) (fee equal to 31% of recovery, plus expenses);

33. *In re BHP Billiton Limited Sec. Litig.*, No. 1:16-cv-01445-NRB (S.D.N.Y. Apr. 10, 2019) (awarded fees of 30% of $50 million recovery, plus expenses);

34. *City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc. and Michael T. Duke*, No. 5:12-cv-5162 (W.D. AR Apr. 8, 2019) (awarded fees of 30% of $160 million recovery, plus expenses);

35. *Lucero v. Solarcity Corp., et al.*, No. 15-cv-05107-RS (N.D. Cal. Jan. 26, 2018) (awarded 30% of $15 million recovery, inclusive of expenses);

36. *Epstein v. World Acceptance Corp.*, No. 6:14-cv-01606-MGL (D.S.C. Dec. 18, 2017) (awarded 30% of $16 million recovery, plus expenses);

37. *n re Genworth Fin., Inc. Sec. Litig.*, No. 1:14-cv-02392-AKH (S.D.N.Y. Nov. 16, 2017) (awarded 30% of $20 million recovery, plus expenses);

38. *Krystek v. Ruby Tuesday, Inc.*, No. 3:14-cv-01119 (M.D. Tenn. Aug. 7, 2017 (awarded 30% of $5 million recovery, plus expenses);

39. *In re Molycorp, Inc. Sec. Litig.*, No. 1:12-cv-00292-RM-KMT (D. Colo. June 16, 2017) (awarded 30% of $20.5 million recovery, plus expenses);

40. *Bemis v. Trius Therapeutics*, No. 37-2013-00060593 (San Diego Sup. Ct. Nov. 7, 2016) (awarded 30% of $9.4 million recovery, plus expenses);

41. *Schwartz v. Urban Outfitters, Inc.*, No. 13-5978 (E.D. Pa. Oct. 31, 2016) (awarded 30% of $8.5 million recovery, plus expenses);

42. *City of Sterling Heights General Employees' Retirement System v. Prudential Financial, Inc.*, No. 2:12-cv-05275 (D. N.J. Sept. 29, 2016) (awarded 30% of $33 million recovery, plus expenses);

43. *In re Doral Financial Corp. Sec. Litig.*, No. 3:14-cv-01393-GAG (D. P.R. Aug. 8, 2016) (awarded 30% of $7 million recovery, plus expenses);

44. *Robinson v. Audience, Inc.*, No. 1:12-cv-232227 (Santa Clara Sup. Ct. June 10, 2016) (awarded 30% of $6.05 million recovery, plus expenses);

45. *Phillips v. Triad Guaranty Inc.*, No. 1:09CV71 (M.D. N.C. May 9, 2016) (awarded 30% of $1.6 million, plus expenses);

46. *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033 (M.D. Tenn. Apr. 14, 2016) (awarded 30% of $215 million recovery, plus expenses);

47. *Medoff v. CVS Caremark Corp.*, No. 09-cv-554-JNL (D.R.I. Feb. 17, 2016) (awarded 30% of $48 million recovery, plus expenses);

48. *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, No. 2:10-cv-02847-KOB (N.D. Ala. Sept. 14, 2015) (awarded 30% of $90 million recovery, plus expenses);

49. *In re Camelot Info. Sys. Inc. Sec. Litig.*, No. 1:12-cv-00086-PGG (S.D.N.Y. July 1, 2015) (awarded 30% of $2.75 million recovery, plus expenses);

50. *Hulsebus v. Belo Corp.*, No. DC-13-06601 (Dallas Cnty. Tex. June 1, 2015) (awarded 30% of $4.5 million recovery, plus expenses);

51. *Morgensen v. Body Central Corp.*, No. 3:12-cv-00954-HES-JRK (M.D. Fla. Jan. 21, 2015) (awarded fees of 30% of $3.425 million recovery, plus expenses);

52. *In re Synovus Fin. Corp.*, No. 1:09-cv-01811-WCO (N.D. Ga. Nov. 18, 2014) (awarded fees of 30% of $11.75 million recovery, plus expenses);

53. *In re Epicor Software Corp. S'holder Litig.*, No. 30-2011-00465495-CU-BT-CXC (Orange County Super. Ct. Oct. 24, 2014) (awarded fees of 30% of $18 million recovery, plus expenses);

54. *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira, Inc.*, No. 1:11-cv-08332-AJS (N.D. Ill. Aug. 5, 2014) (awarded fees of 30% of $60 million recovery, plus expenses);

55. *W. Pa. Elec. Emps.' Pension Fund v. Alter*, No. 2:09-cv-04730-CMR (E.D. Pa. Aug. 4, 2014) (awarded fees of 30% of $13.25 million recovery, plus expenses);

56. *Board of Trustees of the Operating Engineers Pension Trust v. JPMorgan Chase Bank*, No. 09-cv-09333-KBF (S.D.N.Y. November 20, 2013) (awarded fees of 30% of $23 million recovery, plus expenses);

57. *Fisher v. Suffolk*, No. 1:11-cv-05114-SJ-RML (E.D.N.Y. Nov. 19, 2013) (awarded fees of 30% of $2.8 million recovery, plus expenses);

58. *Buettgen v. Harless*, No. 3:09-cv-00791-K (N.D. Tex. Nov. 13, 2013) (awarded fees of 30% of $33.75 million recovery, plus expenses);

59. *Luman v. Anderson*, No. 4:08-cv-00514-C-W-HFS (W.D. Mo. July 23, 2013) (awarded fees of 30% of $4.25 million recovery, plus expenses);

60. *Hildenbrand v. W Holding*, No. 07-1886 (JAG) (D. P.R. June 10, 2013) (awarded fees of 30% of $8.75 million recovery, plus expenses);

61. *Citiline Holdings, Inc. v. iStar Fin. Inc.*, No. 1:08-cv-03612-RJS (S.D.N.Y. Apr. 5, 2013) (awarded fees of 30% of $29 million recovery, plus expenses);

62. *In re Constar Int'l Sec. Litig.*, No. 03cv05020 (E.D. Pa. Dec. 19, 2012) (awarded fees of 30% of $23.5 million recovery, plus expenses);

63. *Siracusano v. Matrixx Initiatives, Inc.*, No. CV-04-0886-PHX-NVW (D. Ariz. Nov. 13, 2012) (awarded fees of 30% of $4.5 million recovery, plus expenses);

64. *Winslow v. BancorpSouth, Inc.*, No. 3:10-cv-00463 (M.D. Tenn. Oct. 31, 2012) (awarded 30% of $29.25 million recovery, plus expenses);

65. *Szymborski v. Ormat Techs., Inc.*, No. 3:10-CV-132-RCJ (D. Nev. Oct. 16, 2012) (awarded fees of 30% of $3.1 million recovery, plus expenses);

66. *City of Ann Arbor Emps.' Ret. Sys. v. Sonoco Prods. Co., et al.*, No. 4:08-cv-02348-TLW-KDW (D.S.C. Sept. 7, 2012) (awarded fees of 30% of $13 million recovery, plus expenses);

67. *In re Sturm, Ruger & Co., Inc. Sec. Litig.*, No. 3:09-cv-01293-VLB (D. Conn. Aug. 20, 2012) (awarded fees of 30% of $3 million recovery, plus expenses);

68. *Local 731 I.B. of T. Excavators and Pavers Pension Trust Fund v. Swanson*, No. 1:09-cv-00799-MMB (D. Del. June 22, 2012) (awarded 30% of $25 million recovery, plus expenses);

69. *In re Focus Media Holding Ltd. Litig.*, No. 1:07-cv-10617-LTS(GWG) (S.D.N.Y. Apr. 25, 2012) (awarded fees of 30% of $2 million recovery, plus expenses);

70. *Western Wash. Laborers-Employers Pension Trust v. Panera Bread Co., et al.*, No. 4:08-cv-00120 ERW (E.D. Mo. June 22, 2011) (awarded fees of 30% of $5.75 million recovery, plus expenses);

71. *Norfolk Cnty. Ret. Sys. v. Ustian*, No. 1:07-cv-07014 (N.D. Ill. May 25, 2011) (awarded fees of 30% of $13 million recovery, plus expenses);

72. *In re Orion Sec. Litig.*, No. 1:08-cv-01328-RJS (S.D.N.Y. Apr. 14, 2011) (awarded fees of 30% of $3.25 million recovery, plus expenses);

73. *Schultz v. Tomotherapy, Inc.*, No. 08-cv-000314-SLC (W.D. Wis. Mar. 22, 2011) (awarded fees of 30% of $5 million recovery, plus expenses);

74. *In re L.G. Philips LCD Co., Ltd. Sec. Litig.*, No. 1:07-cv-00909-RJS (S.D.N.Y. Mar. 17, 2011) (awarded fees of 30% of $18 million recovery, plus expenses);

75. *In re Gilead Sciences Sec. Litig.*, No. C-03-4999-SI (N.D. Cal. Nov. 5, 2010) (awarded 30% of $8.25 million recovery, plus expenses);

76. *Beach v. Healthways, Inc.*, No. 3:08-cv-00569 (M.D. Tenn. Sept. 27, 2010) (awarded fees of 30% of $23.6 million recovery, plus expenses);

77. *In re TeleTech Litigation*, No. 1:08-cv-00913-LTS (S.D.N.Y. June 11, 2010) (awarded fees of 30% of $11 million recovery, plus expenses);

78. *In re PETCO Animal Supplies, Inc. S'holder Litig.*, No. GIC 869399 (San Diego Super. Ct. Mar. 26, 2010) (awarded fees of 30% of $16 million recovery, plus expenses);

79. *Kelleher v. ADVO, Inc.*, No. 3:06-cv-01422-AVC (D. Conn. Mar. 3, 2010) (awarded fees of 30% of $12.5 million recovery, plus expenses);

80. *Hawaii Structural Ironworkers Pension Trust Fund v. Calpine Corp.*, No. 1-04-CV-021465 (Santa Clara Super. Ct. Feb. 3, 2010) (awarded fees of 30% of $43 million recovery, plus expenses).