UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE TEVA SECURITIES LITIGATION THIS DOCUMENT RELATES TO:	: : : :	No. 3:17-cv-00558 (SRU) All Class Actions

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AWARDS OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND REASONABLE COSTS AND EXPENSES TO CLASS REPRESENTATIVES

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Lead Counsel Bleichmar Fonti & Auld LLP ("BFA") respectfully submits this memorandum of law in support of its motion for awards of (1) attorneys' fees and litigation expenses, and (2) reasonable costs and expenses to Class Representatives Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System pursuant to the PSLRA.[1]

PRELIMINARY STATEMENT

The question at hand is an equitable one: What is a fair and reasonable attorneys' fee for the quality and amount of Class Counsel's work necessary to compel a $420 million settlement from an aggressive, sophisticated defendant whose financial condition and litigation exposure have worsened over the lengthy course of this litigation?

To assist the Court in answering that question and analyzing the relevant factors under *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000), this memorandum and its supporting materials detail the work Class Counsel performed and the risks they faced, and provide empirical data regarding fee awards, including in similarly large, complex, procedurally advanced class actions within this District and Circuit. We respectfully submit that these considerations support an attorneys' fee award of 23.70% of the Settlement Amount.

First, Class Representatives approved the requested fee based on arm's-length negotiation and careful consideration of empirical research, comparable prior settlements, and the result achieved. Both Ontario Teachers' and Anchorage are experienced PSLRA class representatives

[1] "Class Counsel" are BFA; Bleichmar Fonti & Auld Canada; The Law Offices of Susan R. Podolsky; and Carmody Torrance Sandak & Hennessey LLP. References to "Ex.__" are to the exhibits to the Declaration of Joseph A. Fonti in Support of (I) Class Representatives' Motion for Final Approval of Class Settlement and Approval of Plan of Allocation and (II) Lead Counsel's Motion for Awards of Attorneys' Fees, Litigation Expenses, and Reasonable Costs and Expenses to Class Representatives (the "Fonti Decl."). Capitalized terms not defined herein shall have the meanings specified in the Fonti Declaration or the Stipulation of Settlement, dated January 18, 2022 (ECF 919-2). Emphasis is added, and citations and internal quotation marks are omitted, unless otherwise stated.

who have actively supervised Class Counsel's efforts as fiduciaries for the Settlement Class. Class Representatives authorized BFA to engage former Judge Christopher Droney (Ret.) to perform an independent analysis of the requested fee in light of Class Counsel's work, academic research, and empirical data. Based on their consideration of Judge Droney's analysis and determination that Class Counsel displayed superior skill and ability to achieve the result, Class Representatives together authorized the fee request of 23.70%. (Ex. 3 (Davis Decl.) ¶¶28-30; Ex. 4 (Jarvis Decl.) ¶¶28-30.) Their authorization provides a "good starting position" for the Court's analysis. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133-34 (2d Cir. 2008).

Second, the *Goldberger* factors strongly support the requested fee. As to risk—the foremost factor—Class Counsel shouldered the risk of a total loss throughout five years of intense litigation. There was no guarantee of being paid anything. A class action litigated solely on contingency is fundamentally different from a risk-free representation where attorneys are continuously paid, even if they lose. Contingent-fee counsel assumes all downside risk—including the risk of a total loss—in exchange for potential upside if a recovery is achieved. Thus, counsel in common-fund cases are "entitled to compensation not only for skillfully negotiating [the] settlement fund but [also] for bearing the risk that the suit would not generate any recovery." *Fresno Cty. Emps.' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 72 (2d Cir. 2019).

Here, the risks of zero recovery were substantial: Class Counsel initially faced the risk of dismissal at the pleading stage, where over half of securities cases are dismissed outright. (*Infra* at 10.) Despite overcoming Defendants' motions to dismiss, Class Counsel continued to face the risk that discovery would not pan out, the class would not be certified, or the claims would be defeated at summary judgment or trial. Class certification, and every element of liability and damages, were vigorously contested by Defendants and their four experts. (*Infra* at 10-13.)

This highly technical case presented specific risks well beyond the typical securities class action, as Defendants had substantial "truth on the market" and materiality arguments that could defeat liability entirely. (*Infra* at 11-12.) Further, Teva is a combative and financially distressed litigant saddled with over $20 billion in debt and facing multiple existential threats, including thousands of opioids litigations and a criminal antitrust indictment—external risks that threatened to foreclose any recovery, even after a victory on the merits. (*Infra* at 13-14.) Moreover, much of this case unfolded in an unprecedented litigation environment during the Covid-19 pandemic and a period of demonstrably reduced settlement values in securities cases. (*Infra* at 14-15.)

Sophisticated corporate entities exploit these dynamics to seek inexpensive resolutions of securities class actions. Here, to achieve a $420 million settlement, Class Counsel demonstrated the strength of the merits to Defendants and their insurance carriers through relentless effort, ingenuity, and skill. Notably, Class Counsel repeatedly eschewed opportunities for an early resolution, including at a July 2020 mediation, instead continuing to shoulder risk and expense to strengthen the Class's position for summary judgment and trial. Class Counsel pressed forward to obtain class certification, take or defend 40 depositions, complete fact and expert discovery, and reach the verge of *Daubert* filings and summary judgment—among only a small fraction of securities cases to do so. (*Infra* at 10-11.)

By surmounting the heightened risks of this case and investing enormous time and effort, Class Counsel delivered a superlative result. Class Counsel's independent work secured the first—and, to date, only—meaningful recovery from Teva based on its alleged generic drug price increases. Not only did Class Counsel deliver this result ahead of the pending civil and criminal antitrust litigations, but the proposed $420 million settlement is the second-largest class settlement in this District, and the fourth-largest securities settlement in this Circuit not involving a

restatement or the 2008-2009 financial crisis.[2] (Fonti Decl. ¶4.)

Third, based on a review of empirical research and authority from this District, the Second Circuit, and other courts, Judge Droney concluded that Lead Counsel's requested fee percentage is "within statistical trends of securities litigation class actions" and consistent with "national data for similar awards." (Ex. 5 (Droney Decl.) ¶¶18-22.) Similarly, Professor Geoffrey Miller of New York University Law School—a leading scholar on class action fee awards—surveyed extensive empirical research and concluded that the requested percentage is reasonable and supported by national data. (Ex. 6 (Miller Decl.) ¶¶65-80.)

The requested fee also accounts for the empirical observation that average fee percentages tend to decline in large settlements—the so-called "scaling" effect. *See Goldberger*, 209 F.3d at 52. As discussed below, for example, recent empirical analysis has found a median fee award of 24.5% in securities settlements between $100 million and $500 million over the last decade; Lead Counsel's requested fee is below this median. (*Infra* at 16-17.) Moreover, in securities class actions since *Goldberger*, the Second Circuit has affirmed a wide range of fee awards from 16% (in a $750 million settlement) to 30% (in a $50 million settlement) over objections (*infra* at 36), confirming this Court's discretion to award an appropriate fee based on case-specific circumstances.

In addition, while the requested fee would result in a substantial award of $99.54 million, courts in this District have approved comparable or larger awards. In *Xerox*, a $750 million securities settlement, Judge Thompson awarded a fee of $120 million (16%); the Second Circuit

[2] The absence of a restatement (*i.e.*, a company's revision of its SEC filings to correct material misstatements) is notable because restatements streamline proof of falsity and materiality, *see SEC v. Kelly*, 663 F. Supp. 2d 276, 285 (S.D.N.Y. 2009) ("under Generally Accepted Accounting Principles . . . a restatement issues only when errors are material"), thereby reducing risk for counsel and the class and increasing settlement values.

affirmed over an objection that it "exceed[ed] the amount a reasonable client would be willing to pay." *Carlson v. Xerox Corp.*, 355 F. App'x 523, 526 (2d Cir. 2009). And in *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 3:07-MD-1894 (AWT), 2014 WL 12862264 (D. Conn. Dec. 9, 2014)—a RICO and contract class action that resulted in a $297 million settlement—Judge Thompson awarded a fee of $99 million (33.3%). Notably, *U.S. Foodservice* resembles this action in several respects, including contentious discovery (with motions to compel, six million pages produced, and 37 depositions); disputed class certification; and a large investment in experts.[3]

Fourth, a lodestar cross-check confirms "the reasonableness of the requested [fee] percentage" in light of Class Counsel's hours, rates, and an appropriate "multiplier" based on factors "such as the risk of the litigation and the performance of the attorneys." *Goldberger*, 209 F.3d at 47, 50. Here, Class Counsel's lodestar is $45,837,361.00 based on 77,090.70 hours of work. In contrast to other complex class actions involving hundreds of attorneys, Class Counsel's work was led by a leanly staffed core group of just seven attorneys who accounted for over half of lodestar. This team was devoted to the highest-value litigation work, which foreclosed many of the exit ramps that defendants typically utilize to obtain cheaper settlements before classes are certified and fact and expert discovery are complete.

Class Counsel's hourly rates range from $225 to $985, with a blended hourly rate (total lodestar divided by total hours) of $595. In the context of a specialized national practice, Class Counsel's rates are reasonable relative to rates in complex cases within this District, other national securities litigation firms based in New York, and leading defense firms. (*Infra* at 29-32;

[3] *See* No. 3:07-MD-1894, ECF 510-2. As Professor Miller explains, the fee awards in *Xerox* and *U.S. Foodservice* (from 2009 and 2014, respectively) are larger in current dollars, accounting for inflation. (Ex. 6 (Miller Decl.) ¶77.)

Ex. 6 (Miller Decl.) ¶¶36-51.) Judge Droney's review concluded that Class Counsel's hours, rates, and staffing were appropriate. (Ex. 5 (Droney Decl.) ¶¶56-68.)

The requested fee corresponds to a lodestar multiplier of 2.17, which Judge Droney concluded is "within statistical trends of securities litigation class actions." (*Id.* ¶18.) Similarly, Professor Miller found that this multiplier is below the average multiplier of 2.72 for the top decile of class settlements (those above $67.5 million) nationally, and below a prior study's average of 3.18 for settlements above $175.5 million. (Ex. 6 (Miller Decl.) ¶¶54-56.) Within this District, in *U.S. Foodservice*, cited above, Judge Thompson's fee award reflected a multiplier of 2.23.

Thus, while the requested fee is substantial, in the specific circumstances of this case, we respectfully submit that it is not an "unwarranted windfall[]." *Goldberger*, 209 F.3d at 49, 53. A "windfall" suggests some "unearned advantage," such as in a "contingency-fee representation that succeeds immediately and with minimal effort, suggesting very little risk of nonrecovery." *Fields v. Kijakazi*, 24 F.4th 845, 856 (2d Cir. 2022). Here, Class Counsel had no "unearned advantage," but instead achieved a significant settlement by devoting over five years of concerted effort to a risky, hard-fought, protracted litigation.

Lead Counsel also requests the award of litigation expenses of $9,717,887.47. These expenses are reasonable and were necessarily incurred in this complex, data-intensive litigation, which required extensive work by four leading experts to develop the proof and counter Defendants' six experts on class certification and the merits. Indeed, the Class's experts issued a total of 12 reports and sat for seven depositions, and expert fees alone comprise about 75% of Class Counsel's expenses.

Finally, this motion seeks awards of $49,213.02 to Ontario Teachers' and $7,080 to Anchorage, as authorized by the PSLRA, to cover their reasonable out-of-pocket expenses and

time devoted to this matter. Institutional investors' leadership of securities class actions serves a valuable public purpose. Ontario Teachers' and Anchorage have served as class representatives with distinction. They actively worked with Class Counsel at every stage, attended key Court hearings, and integrally participated in the lengthy mediation process. Their leadership materially contributed to the historic result. (Ex. 3 (Davis Decl.); Ex. 4 (Jarvis Decl.); Fonti Decl. ¶¶24-26.)

I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

A. Lead Counsel Is Entitled to Attorneys' Fees from the Common Fund

The Supreme Court and Second Circuit recognize that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "The rationale for the [common-fund] doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." *Goldberger*, 209 F.3d at 47.

The common-fund doctrine is particularly applicable in complex class actions. It would be unheard of for widely dispersed class members to collectively pay attorneys millions of dollars in hourly, up-front compensation with no assurance of success. Instead, by working on contingency, class counsel invest their own time and resources and take on risk for the benefit of the class. Thus, to the extent counsel's efforts generate a common fund, as the Second Circuit has explained, the fee award "does not necessarily approximate what a client would pay; rather, it must reflect 'the actual effort made by the attorney to benefit the class.'" *Xerox*, 355 F. App'x at 526.

Common-fund fee awards are also fundamentally different from statutory fee-shifting. In common-fund cases, a "reasonable fee from the plaintiff's perspective can account for contingency risk where such risk exists, and a common-fund fee may therefore exceed what would be a 'reasonable fee' in the fee-shifting context." *Fresno Cty.*, 925 F.3d at 70. The "presumption in favor of the lodestar and the restrictions on lodestar multipliers that apply to fee awards made

pursuant to fee-shifting statutes do not apply in common fund cases." *City of Birmingham Ret. & Relief Sys. v. Davis*, 806 F. App'x 17, 18 (2d Cir. 2020). Thus, in common-fund cases, district courts are "under no obligation to treat the unenhanced lodestar as the presumptive fee." *Id.*

B. Class Representatives Support the Requested Fee

The PSLRA, enacted in 1995, imposed significant procedural reforms governing federal securities class actions, including a rigorous process to appoint lead plaintiffs most capable of adequately representing class members; those lead plaintiffs would then select and supervise lead counsel. *See Nortel*, 539 F.3d at 131 n.2. In turn, the Second Circuit "expect[s]" district courts "will give serious consideration to negotiated fees because PSLRA lead plaintiffs often have a significant financial stake in the settlement, providing a powerful incentive to ensure that any fees resulting from that settlement are reasonable. In many cases, the agreed-upon fee will offer the best indication of a market rate, thus providing a good starting position for a district court's fee analysis." *Nortel*, 539 F.3d at 133–34.

This reasoning fully applies here. As detailed in the Davis and Jarvis Declarations, both Class Representatives supervised Class Counsel throughout this litigation and have a significant financial stake in the settlement. Class Representatives negotiated the fee at arm's length based on the result Class Counsel achieved through five years of effort, the significant complexity and risks of this matter, and other relevant factors, informed by Class Representatives' experience as PSLRA lead plaintiffs and Judge Droney's independent analysis. (Ex. 3 (Davis Decl.) ¶¶26-36; Ex. 4 (Jarvis Decl.) ¶¶26-35.)

C. The Requested Attorneys' Fees Are Warranted under the *Goldberger* Factors and Reasonable under the Percentage-of-Recovery and Lodestar Methods

To determine reasonable attorneys' fees in common-fund cases, the Second Circuit has approved both the percentage-of-recovery and lodestar approaches. The "trend in this Circuit is

toward the percentage method," which "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 Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). In contrast, the "lodestar create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits." *Id.*[4]

Under either approach, courts apply "the traditional criteria in determining a reasonable common fund fee, including: (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. We address each factor below, beginning with risk.

1. The Substantial Risk and Lengthy Duration of the Litigation Support the Requested Fee (*Goldberger* 3)

The Second Circuit has recognized that litigation risk is "perhaps the foremost" factor to be considered. *Goldberger*, 209 F.3d at 54. Litigation risk "must be measured as of when the case is filed,' rather than with the hindsight benefit of subsequent events." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (quoting *Goldberger*, 209 F.3d at 55).

Here, "[w]hile some significant recovery in a case of this magnitude may seem a foregone conclusion now, the recovery achieved . . . was never certain." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005). Rather, "[f]rom the outset . . . this case presented significant litigation, collectability, and contingency risks," *Global Crossing*, 225 F.R.D. at 467; *see also In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884, 2007 WL 2115592, at *5 (D. Conn.

[4] The percentage approach also aligns with the PSLRA's provision that fee and expense awards "shall not exceed a reasonable percentage of the amount . . . actually paid to the class." 15 U.S.C. § 78u-4(a)(6).

July 20, 2007) (same). These numerous risks—all of which were fully borne by Class Counsel—are detailed in the Fonti Declaration and summarized below.

a. Class Counsel Faced Contingency Risk for Five Years

The risk associated with a case undertaken on a contingent fee basis is a crucial factor in determining an appropriate fee award. As the Circuit recently noted, "[l]awyers who operate on contingency—even the very best ones—lose a significant number of their cases and receive no compensation when they do." *Fields*, 24 F.4th at 855. In light of that risk, contingent-fee representations are fundamentally different from cases where attorneys are paid on an hourly basis, even if they lose. The Circuit has explained that the class is "appropriately charged for contingency risk where such risk is appreciable because the class has benefited from class counsel's decision to devote resources to the class's cause at the expense of taking other cases." *Fresno Cty.*, 925 F.3d at 70.

Empirical data shed light on the contingency risk Class Counsel faced. (Fonti Decl. ¶259-268.) In recent decades, under the PSLRA's heightened pleading standards, more than half of securities class actions were dismissed outright. (*Id.* ¶259.) Notably, this dismissal rate is double the pre-PSLRA rate. (*Id.* ¶260.) And even the minority of actions that survive the pleading stage can be entirely or substantially lost at class certification, summary judgment, trial, or on appeal. (*See id.* ¶¶262-268.) For actions filed in 2016 (like this case), NERA has found that as of December 31, 2021, 42% have been dismissed and 23% remained pending, while only 35% have settled. (*Id.* ¶261.) These data confirm that securities class actions are "notably difficult and notoriously uncertain," *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM), 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010), and many yield no recovery.

Here, after defeating Defendants' motions to dismiss, Class Counsel continued to face significant contingency risk in advancing through the risky and resource-intensive junctures of

class certification and extensive fact and expert discovery, reaching the brink of summary judgment. Most securities class actions never reach this stage. The economics consulting firm NERA has found that over 80% of securities cases are dismissed or settled before class certification is granted, and that summary judgment motions are filed in just 9% of resolved cases.[5] (Fonti Decl. ¶¶262, 267.)

Class Counsel's contingency risk was particularly acute because this action spanned more than five years. (*See id.* ¶¶368-369.) *See Christine Asia Co., Ltd. v. Ma*, No. 1:15-md-02631, 2019 WL 5257534, at *18 (S.D.N.Y. Oct. 16, 2019) ("*Alibaba*") ("With an average lag time of several years for a case like this to conclude, the financial burdens on Plaintiffs' Counsel were greater than those for a firm paid on an ongoing basis").

b. Risks of Establishing Liability

Unlike other securities cases that resulted in large settlements, this action does not feature risk-reducing factors such as a financial restatement, SEC investigation, or criminal conviction (*see* Fonti Decl. ¶256; *supra* n.2), demanding that Class Counsel prove the entire case from scratch. Defendants have vigorously disputed liability, and the outcome was far from certain. *See Priceline*, 2007 WL 2115592 at *3 ("risks of establishing liability" through "complex and fact-intensive analysis of accounting and fraud issues"). As the Fonti Declaration describes, the elements of falsity, materiality, and scienter raised particularly significant risks. (¶¶272-282.)

First, Defendants have maintained that all of the challenged statements and omissions were non-actionable and/or immaterial. (*Id.* ¶¶272-278.) Most notably, Defendants would assert a "truth on the market" defense arguing that Teva's price increases and related profits were publicly

[5] Since the 1990s, NERA has conducted independent empirical analysis of securities class actions. Though Class Counsel engaged NERA for expert work here, its annual reports cited herein were not prepared for purposes of any specific litigation, including this case.

known and could not have resulted in any misstatements, omissions, or losses. (*Id.* ¶274.) Defendants' experts argued this position at length at class certification and in expert discovery. (*Id.*) If Defendants defeated either falsity or materiality, the Class would recover nothing.

Second, Defendants have vigorously denied scienter, including in the Individual Defendants' deposition testimony. (*Id.* ¶¶279-282.) The failure to prove scienter would eliminate any Exchange Act recovery and the majority of the Class's damages. (*Id.* ¶282.)

Third, extensive reliance on experts "often increases the risk that a jury may not find liability or would limit damages." *Edwards v. N. Am. Power & Gas, LLC*, No. 3:14-CV-01714 (VAB), 2018 WL 3715273, at *14 (D. Conn. Aug. 3, 2018) (Bolden, J.). Here, the Class's case necessarily would rely heavily on experts to address data-intensive issues of Teva's generic drug pricing and technical financial and disclosure issues. (Fonti Decl. ¶¶290-91.) These experts were particularly important to prove the Class's claims given the lack of a single "star witness" from Teva. (*Id.* ¶289.) However, Defendants were expected to move to exclude each of Class Representatives' experts and engaged four competing experts of their own. (*Id.* ¶291.)

c. Risks of Establishing Causation and Damages

Defendants have also advanced substantial arguments to severely reduce or eliminate Exchange Act damages, and to reduce Securities Act damages through "negative causation." (*Id.* ¶¶292-298.)

As to the Exchange Act, Defendants' expert Dr. James argued that the Class's expert Dr. Tabak failed to show loss causation or damages and employed unreliable methodologies, and sought to substantially reduce or eliminate Exchange Act damages by challenging each of the eight corrective events that supported Dr. Tabak's opinion. (*Id.* ¶¶293-296.)

As to the Securities Act, Defendants have invoked a statutory negative causation defense to severely reduce damages with respect to the offered ADS, Preferred Shares, and Notes.

See 15 U.S.C. § 77k(e); *see also* 15 U.S.C. § 77l(b). Defendants' expert Dr. James submitted three expert reports, totaling 893 pages (including exhibits), on the issue. (Fonti Decl. ¶¶297-298.)

d. Risks of Teva's Distressed Financial Condition

Throughout this litigation, Class Counsel were fully exposed to extrinsic risks arising from Teva's distressed financial condition, including the prospect of numerous events outside this litigation that could materially reduce or even eliminate any recovery for the Class. (*Id.* ¶¶303-312.) These risks continued to mount throughout this case. While Teva ADS peaked at $72.00 per share in July 2015, after a series of negative disclosures and events, by the time discovery commenced on September 25, 2019, the ADS traded at just $6.96 per share. (Fonti Decl. ¶303.)

Today, Teva remains far from a "deep pocket" corporate defendant. In particular, Teva is saddled with over $20 billion in debt that is currently rated "junk." (*Id.* ¶304.) Reflecting its current circumstances, Teva's market capitalization declined from over $52 billion at its Class Period peak to less than $10 billion at the time of settlement. (*Id.* ¶306.) Notably, the $420 million settlement is over 4% of Teva's market capitalization at the time of settlement. By comparison, the $486 million settlement in *Pfizer*, another securities class action in the pharmaceutical industry (discussed below), was just 0.2% of Pfizer's $211 billion market capitalization at the time.

Moreover, Teva is a notoriously combative litigant. For example, Teva has failed to resolve its criminal antitrust liability with the DOJ—in contrast to peers like Sandoz that avoided prosecution with monetary penalties—resulting in a Sherman Act indictment of Teva's U.S. subsidiary. Teva has warned that a conviction or guilty plea "could have a material adverse effect" on its business. (Fonti Decl. ¶311.)

Teva also faces unresolved, material exposures to opioids litigation. While Teva has settled some opioids cases on the verge of trial—generally with a combination of free treatment and

limited cash contributions over a lengthy period[6]—Teva has taken multiple opioids cases to trial (losing a New York jury trial), and continues to do so. Opioids trials against Teva recently commenced in West Virginia state court, as well as in a federal MDL.[7] Teva's unresolved opioids litigation and multiple trials present an ongoing and significant financial threat. Teva has explicitly warned that opioids losses or settlements "could have a material adverse impact on our liquidity." (Ex. 14 (Excerpted Teva 2021 Form 10-K) at 43.) Accordingly, Class Counsel vigorously pursued this action while facing the continuing risk that Teva's opioids exposure could lead to catastrophic results—including bankruptcy, a tactic other drug companies have pursued to resolve their liability from opioids and other mass torts. (Fonti Decl. ¶308.) The risk posed by Teva's opioids trials would only increase if litigation of this action had continued.

For all of these reasons, Class Representatives and Class Counsel faced a significant risk that Teva would be unable to satisfy a judgment in this action. *See In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-cv-06728, 2020 WL 4196468, at *12 (S.D.N.Y. July 21, 2020) ("there is no assurance that the Company could have satisfied" a judgment for maximum recoverable damages, "and it might have been forced into bankruptcy").

e. Risks of Securities Litigation in the Pandemic Environment

Finally, much of this litigation—including all depositions, expert discovery, class certification, and mediation—occurred during the Covid-19 pandemic. (Fonti Decl. ¶¶253-254.) In this environment, securities class settlement values have generally declined, with NERA reporting that "[t]he median annual settlement value for 2021 is approximately 40% lower than

[6] Emily Field, *Teva Strikes $100M Deal, Ends Rhode Island Opioid Trial*, Law360 (Mar. 21, 2022, 3:25 P.M. EDT), https://www.law360.com/articles/1475053/teva-strikes-100m-deal-ends-rhode-island-opioid-trial.

[7] *In re Opioid Litig.*, No. 21-C-9000 MFR (W. Va. Cir. Ct. Kanawha Cty.); *City and County of San Francisco v. Purdue Pharma LP et al.*, No. 3:18-cv-07591 (N.D. Cal.).

the inflation-adjusted median value observed in 2018, 2019, and 2020." (Ex. 11 (NERA 2021 Report) at 20.) Similarly, NERA has calculated that in 2021, only 4% of securities class action settlements were $100 million or greater, below the 6-9% rate in prior years. (*Id.* at 19, Figure 19.) Despite this challenging environment, Class Counsel achieved a proposed settlement that is the second-largest in the country reached since the beginning of the pandemic.[8] (Fonti Decl. ¶254.)

* * *

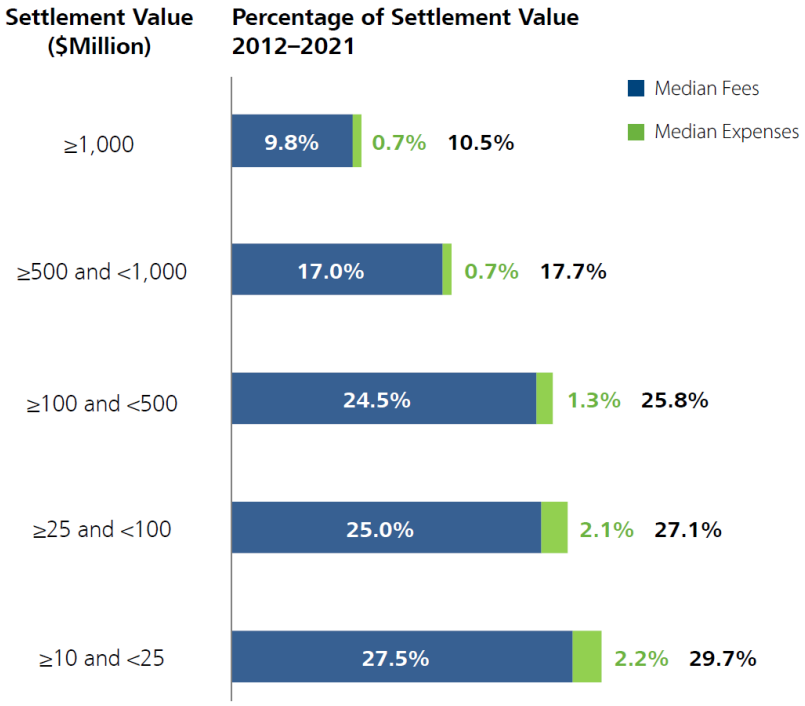
In the face of the risks outlined above, Class Counsel invested not only over 77,000 hours of time, but considerable out-of-pocket expenses of $9,717,887.47 to press the case to the brink of summary judgment and maximize the potential recovery. Despite this effort and expense, success remained far from assured, and Class Counsel are "entitled to compensation . . . for bearing the risk that the suit would not generate any recovery." *Fresno Cty.*, 925 F.3d at 72.

2. The Requested Fee Is Reasonable in Relation to the Settlement and Consistent with Comparable Cases of Similar Size (*Goldberger* 5)

"When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *3 (E.D.N.Y. June 24, 2010). The Droney and Miller Declarations provide multiple data points to inform the Court's analysis, including fee percentages that other courts have awarded in comparably large, complex, intensively litigated cases. (Ex. 5 (Droney Decl.) ¶¶8-22; Ex. 6 (Miller Decl.) ¶¶65-70.) While the specific facts and circumstances of each case ultimately drive the fee award, we believe these analyses help illustrate the landscape of fee awards for successful prosecution of large securities class actions.

[8] An $809.5 million settlement was announced in *In re Twitter Securities Litigation* on September 20, 2021, but has not yet received preliminary approval.

First, in securities settlements from 2012 to 2021 between $100 million and $500 million, NERA has found a median fee award of 24.5%. (Ex. 11 (NERA 2021 Report) at 27 (excerpted below).)



This calculation—based on a decade of national data—supports the reasonableness of Class Counsel's requested fee. (Ex. 5 (Droney Decl.) ¶18; Ex. 6 (Miller Decl.) ¶¶69-70.) Similarly, an empirical study of all types of class settlements nationwide from 2009 to 2013 found average fee awards of 22.3% for the top decile of class settlements (those over $67.5 million). (*See* Ex. 6 (Miller Decl.) ¶69 (citing Ex. 15).) A third academic study of class action settlements from 2006 and 2007 found that the average fee award for settlements between $250 million and $500 million was 17.8% (with a median of 19.5%) and a standard deviation of 7.9%, indicating a range of awards above and below the average. (*Id.* (citing Ex. 17, Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. EMPIRICAL LEGAL

STUD. 811, 839, tbl. 11 (2010)).) Professor Miller concluded that Lead Counsel's requested fee percentage is within the general range reported in these leading empirical studies. (*Id.* ¶70.)

The studies above show a decline in average or median fee percentages as settlement amounts increase, an effect described in the literature as "scaling" (*see id.* ¶68) and illustrated in the chart above. Professor Miller opines that the requested fee here accounts for this "scaling" effect. (*Id.* ¶¶11, 70.) Indeed, Lead Counsel's requested fee falls between the 24.5% median fee for securities settlements between $100 million and $500 million and Professor Miller's 22.3% average for settlements above $67.5 million. It is also within one standard deviation of Professor Fitzpatrick's 17.8% average for settlements between $250 million and $500 million. Courts have relied on similar analyses to find that fee requests "fall[] properly within" any "sliding scale." *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (Rakoff, J.) (noting Miller and Fitzpatrick research and approving 20% fee, with 4.09 multiplier, in $386.5 million settlement).

Second, while empirical research necessarily focuses on average and median fee awards, this case is not "average." As noted above, over 80% of securities cases are dismissed or settled before class certification (*supra* at 11). Such cases should be distinguished from heavily litigated cases like this one that reach an advanced procedural stage, including class certification and the completion of extensive fact and expert discovery. These factors indicate that significant time and effort was required to achieve a large settlement. (*See* Ex. 6 (Miller Decl.) ¶¶72-73.)

Having scrutinized the history of this litigation, Judge Droney determined that "the most relevant securities cases" are the six securities cases in the range of $200 million to $500 million within the Second Circuit that had advanced through motions to dismiss, achieved class

certification, and reached summary judgment filings before settlement.[9] (Ex. 5 (Droney Decl.) ¶9.) In those six cases, the average fee award was 24.3% and the median was 25.7%.[10] For example, in *Signet*—a $240 million settlement where Chief Judge McMahon of the Southern District of New York awarded the requested fee of 25%—discovery involved 3.6 million pages of documents, 31 depositions, and the exchange of 20 expert reports "on a host of complex issues," and the settlement was reached only after "three full-day mediation sessions under the guidance of Judge Phillips." 2020 WL 4196468 at *2-3; *see also* Ex. 5 (Droney Decl.) ¶9 n.8. The average and median fees awarded in these comparable cases confirm that Lead Counsel's requested fee is reasonable in the circumstances here.

Third, fee awards vary widely among individual cases and depend heavily on case-specific facts and circumstances. On the one hand, "[d]istrict courts in the Second Circuit routinely award fees upwards of 25% in securities and other complex litigation settlements of comparable size." *Alibaba*, 2019 WL 5257534 at *17 (awarding 25% of $250 million settlement); *see also Signet*, 2020 WL 4196468 at *15-16, *24; *In re Pfizer Inc. Sec. Litig.*, No. 04-cv-09866 (LTS), ECF 727 at 2 (S.D.N.Y. Dec. 21, 2016) (awarding 28% of $486 million settlement).

On the other hand, some large class settlements in this Circuit have awarded lower fees. However, Class Counsel believe that these fee awards involved different circumstances from this case, including because the actions settled at significantly earlier stages or presented lower risk of

[9] In our experience, the most laborious and costly stages of securities class action litigation are fact and expert discovery, which are typically necessary to form the evidentiary basis for summary judgment motions. Here, Class Counsel completed discovery and prepared summary judgment and *Daubert* motions that were ready to file at the time of settlement.

[10] Notably, five of the six cases awarded fees at or above 20%. The outlier was a 15% award in *Jones v. Pfizer Inc.*, No. 1:10-cv-03864-AKH (S.D.N.Y.), ECF 504, where Judge Hellerstein awarded a fee of $60 million, effectively identical to the lodestar (*see id.* ECF 484 at 31 of 40). For all of the reasons herein, we believe a multiplier of Class Counsel's lodestar is warranted here.

non-recovery. The fee requests themselves often reflected these factors. For example, in *In re Marsh & McLennan Sec. Litig.*, No. 04 Civ. 8144 (CM) (S.D.N.Y.), ECF 333 ($400 million settlement awarding the requested fee of 13.2%), the defendant had already settled a related regulatory proceeding and admitted "shameful" and "unlawful" conduct, reducing the securities plaintiffs' burden and risk. *See id.* ECF 142 (Oct. 13, 2006 Complaint) ¶304. Similarly, *In re Bristol-Myers Squibb Sec. Litig.*, 361 F. Supp. 2d 229, 232 (S.D.N.Y. 2005) ($300 million settlement; 7.5% fee requested and 4% awarded)—an action that settled after the court granted the defendants' motion to dismiss, while an appeal was pending—was on "the low end of the continuum of risk" due to a restatement, and "neither unique nor complex." *Id.* at 234. Nonetheless, the 4% fee award resulted in a "quite reasonable multiplier of 2.29." *Id.* at 237.

Within this District, there is similarly a wide range of awards based on the circumstances of each case. Judge Thompson awarded a 33.3% fee ($99 million) in a $297 million class settlement in *U.S. Foodservice*, 2014 WL 12862264 at *3, an action with many similarities to this case, as noted above, that settled after class certification and before summary judgment.

In *Xerox*, Judge Thompson awarded a 16% fee in a $750 million securities settlement. 596 F. Supp. 2d 400, 414 (D. Conn. 2009). While this was below the 20% fee requested, Judge Thompson assessed fee awards in prior "settlements in the range of $500 million to $1.2 billion" and awarded a fee "in the upper range" of that group.[11] *Id.* at 412-13. The Second Circuit—by a panel including Judge McLaughlin, who had authored *Goldberger* nine years earlier—affirmed. 355 F. App'x 523 (2d Cir. 2009). The award in *Xerox* was also informed by Judge Thompson's assessment that "the litigation risks . . . were at most those presented by a typical case," 596

[11] The 16% award is similar to NERA's finding of 17% median fees for securities settlements in the $500 million to $1 billion range from 2012-2021. (*See* Ex. 11 (NERA 2021 Report) at 27.)

F. Supp. 2d at 412. Indeed, Xerox had issued two restatements and faced an SEC enforcement action,[12] and counsel only took seven depositions (and reviewed additional testimony obtained from a parallel SEC investigation and litigation). 596 F. Supp. 2d at 403, 407, 413-14.

We also understand that in *In re Aggrenox Antitrust Litig.*, No. 3:14-md-02516-SRU (D. Conn.), ECF 740 at 7, a $146 million antitrust settlement, this Court awarded 20% fees. It appears that counsel in *Aggrenox* had only taken six depositions and settled the case before class certification, and the Court expressed concerns about partner time, staffing, and rates. *Id.* ECF 745 at 7:10-25.

Here, as the Fonti and Droney Declarations discuss in detail, Class Counsel faced substantially higher risks and more challenging proof, expended targeted effort to advance the case to a much later stage, and utilized efficient and appropriate staffing at all levels.

3. The Magnitude and Complexity of This Litigation Support the Requested Fee (*Goldberger* 2)

Class Representatives' allegations span a Class Period of over five years (and significant earlier conduct), numerous alleged misstatements and omissions, alleged price increases and price erosion on Teva's portfolio of hundreds of generic drugs and their role in Teva's financial performance, alleged collusion, and twelve alleged partially corrective events.

Given the Court's active engagement and familiarity with this action, below we highlight three specific areas that may have been less apparent from prior filings during the proceedings:

Class Counsel Efficiently Assembled Complex Proof: The "contentious discovery" necessary to obtain over 8.2 million pages of documents illustrates "[t]he magnitude and complexity of this case . . . ." *Priceline*, 2007 WL 2115592 at *5. The documentary record was

[12] *See* No. 3:00-cv-01621-AWT (D. Conn.), ECF 493-2 at 5-6 of 52.

highly complex, including voluminous spreadsheets and structured data (*e.g.*, Teva's drug-by-drug sales and pricing). With documents in hand, Class Counsel had to execute a comprehensive and efficient review process to identify key documents for depositions, summary judgment, and trial. To do so, Class Counsel sequenced the review to prioritize high-value documents related to key custodians and events, supplemented by advanced analytics and targeted searches. These efforts allowed Class Counsel to advance towards depositions with a focused and efficient review team. (Fonti Decl. ¶¶103-119.)

Fact Depositions Yielded over 7,000 Pages of Testimony: Class Counsel's 23 fact depositions included all seven Individual Defendants (Teva's former CEO, CFOs, Generics Head, CAO, and interim CEO, as well as current CEO Schultz), the Chair of Teva's Audit Committee (Lieberman), other senior executives, and Rule 30(b)(6) depositions of Teva's auditor (PwC Israel) and a lead underwriter for the Offerings (Barclays). (*Id.* ¶¶133-141.)[13]

These depositions were particularly challenging due to the large documentary record, numerous alleged misstatements and omissions, each witness's distinct role, and Teva's complex reporting structure. Several key witnesses were located in Israel, requiring two-day depositions, and certain communications were produced in Hebrew, requiring translation. (*Id.* ¶¶109, 139.) Ultimately, these 23 depositions generated over 7,000 pages of testimony, including key admissions that were featured in Class Representatives' summary judgment and *Daubert* papers. (*Id*. ¶¶140-141.) Further, at the time of settlement, Class Counsel were about to depose former Teva executive Maureen Cavanaugh regarding thousands of missing text messages and potential spoliation—an issue that Class Counsel carefully pursued throughout discovery. (*Id.* ¶¶145-165.)

[13] Class Counsel also secured declarations and agreements to testify at trial from three admitted co-conspirators. (*Id.* ¶167.)

Class Counsel Completed Highly Technical and Data-Intensive Expert Discovery: The complex allegations in this action required Class Counsel to invest heavily in leading experts to develop the Class's proof and achieve the best possible result. To prove the impact of Teva's price increases, Class Counsel, with the Court's necessary intervention, obtained voluminous data for Teva's portfolio of hundreds of drugs. (*Id.* ¶¶97-102.) The Class's experts conducted in-depth analysis of this data to isolate unusual price increases and quantify their impact on Teva's financial results—a crucial issue for falsity and materiality. For example, Mr. Regan (the Class's accounting expert) prepared over 250 pages of detailed schedules to quantify price increases' impact on Teva's reported results, including drug-by-drug profit breakdowns. (*Id.* ¶227.) Dr. Bradford (the Class's industry expert) identified price increases that could not be explained by legitimate market factors and applied a robust model, based on academic literature, to quantify Teva's profits on those drugs above the profits Teva would have earned in normally functioning competitive markets. (*Id.* ¶223.)

Expert discovery also encompassed technical and sharply disputed issues of collusion, accounting and disclosure matters, and the applicable SEC requirements and materiality, among other things. (*Id.* ¶¶206-238.) The parties exchanged 23 expert reports by ten different experts on class certification and merits issues. *See Signet*, 2020 WL 4196468 at *20 ("The fact that the parties exchanged 20 expert reports by 15 different experts speaks to the breadth and complexity of the case.").

4. Class Counsel Provided High-Quality and Unrelenting Representation, as the Historic Result Demonstrates (*Goldberger* 4)

The quality of Class Counsel's "representation is evidenced by the recovery obtained for the [Settlement] Class . . . ." *Alibaba*, 2019 WL 5257534 at *19 (quoting *Global Crossing*, 225 F.R.D. at 467). The $420 million settlement is a direct product of Class Counsel's high-quality representation, as set forth in detail in the Fonti Declaration. (*See, e.g.*, ¶¶389-391; *see also* Ex. 5

(Droney Decl.) ¶72; Ex. 6 (Miller Decl.) ¶33.) At the parties' initial mediation in July 2020—before many of the riskiest and most resource-intensive stages of the case—Class Counsel declined to pursue a settlement (Fonti Decl. ¶317). Class Counsel then continued to invest heavily in time and resources to achieve class certification (and defeat Defendants' Rule 23(f) petition) (*id.* ¶¶176-197); extract deposition testimony from 23 fact witnesses about the relevant conduct and statements, including key admissions (*id.* ¶¶132-144); provide data-driven expert analyses of Teva's entire generic drug portfolio to quantify the full financial impact of Teva's price increases (*id.* ¶¶220-229); provide opinions from leading experts on the governing disclosure and materiality standards (including the former Chief Accountant of the SEC and a co-author of SEC Staff Accounting Bulletin No. 99, *Materiality*, and the Sarbanes-Oxley Act) (*id.* ¶¶225-233); provide Dr. Tabak's exhaustive analysis of how Defendants' alleged statements and omissions affected the prices of Teva Securities and caused the Class's losses (*id.* ¶¶211-219); and complete summary judgment and *Daubert* motions. (*Id.* ¶¶242-251.)

Executing all of this work at the highest level was necessary to convince Teva and its insurance carriers that the strength of the merits warranted the payment of $420 million, including both insurance proceeds and company cash (Fonti Decl. ¶361), to resolve this action. By Lead Counsel's calculation, the proposed settlement is the fifth-largest securities settlement against a pharmaceutical company (*id.* ¶390)—particularly notable because pharmaceutical companies are often seasoned and sophisticated litigants involved in disputes over everything from product liability to intellectual property.

The proposed settlement is a particularly strong result in light of Teva's serious financial constraints. (*Id.* ¶¶303-312.) Further, the proposed settlement is the sixth-largest securities settlement against a foreign issuer (*id.* ¶390); these defendants often are more resistant to

settlement than U.S. issuers. In addition to being the second-largest class settlement in this District, in this Circuit, it is among the top 21 securities settlements since the passage of the PSLRA, and the fourth-largest not involving a restatement or the 2008-2009 financial crisis. (*Id.*)

The proposed settlement recovers a meaningful amount of potential damages, representing:

- A 73% recovery if Defendants defeated Exchange Act liability and prevailed on Securities Act negative causation and other damages issues (resulting in estimated damages of $576 million);
- A 14.1% recovery if Defendants defeated Exchange Act liability and the Class prevailed on full Securities Act damages (resulting in estimated damages of approximately $2.97 billion);
- A 5.6% recovery if the Class proved Exchange Act liability, but Defendants eliminated some or all of three corrective events under the Exchange Act and prevailed on Securities Act negative causation and other damages issues (resulting in estimated damages of $7.44 billion); and
- A 3.4% recovery under a scenario at the high end of realistically provable damages under both the Exchange Act and Securities Act (resulting in estimated damages of $12.22 billion).

(*Id.* ¶¶352-358.) Particularly in light of Teva's financial condition and the current challenging litigation environment, even the low end of this range is a meaningful recovery. (*Id.* ¶359.) For context, though not based on actual aggregate damages, in cases with $10 billion or greater in "NERA-Defined Investor Losses," NERA has found historical median settlement values of 0.5%. (*Id.*) The proposed settlement is also unusually large in absolute terms. Across all types of class actions, 92% of class settlements from 2009–2013 "had recoveries under $100 million." (Ex. 15 (Miller, Eisenberg and Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. LAW REVIEW 937, 943 (2017)).)

Finally, "the quality of the opposition should also be taken into consideration in assessing the quality of the counsel's performance." *Signet*, 2020 WL 4196468 at *20; *In re Adelphia Sec. & Deriv. Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Jan. 3, 2012) ("The fact that the settlements

were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work"). Here, Class Counsel faced formidable opposition from Shipman & Goodwin, Kasowitz Benson Torres, and Morgan Lewis (with over 2,200 lawyers, one of the largest law firms in the country).

In sum, Class Counsel "has been energetic and creative. Its skill has matched that of able and well-funded defense counsel. It has [achieved] a settlement of historic proportions." *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), 2004 WL 2591402, at *18-19 (S.D.N.Y. Nov. 12, 2004).

5. Class Counsel Expended Over 77,000 Hours of Time and Labor (*Goldberger* 1), and the Requested Fee Is Reasonable Under a Lodestar Cross-Check

Class Counsel invested 77,090.70 hours of work through April 14, 2022 to achieve the proposed settlement. (Fonti Decl. ¶¶370-381, 388; *see also* Ex. 7 (Fonti F&E Decl.) ¶¶7, 11; Ex. 8 (Kurzman F&E Decl.) ¶7; Ex. 9 (Podolsky F&E Decl.) ¶6.) The amount and quality of this work support the requested fee, as does a lodestar cross-check.

a. Class Counsel's Hours

As the Fonti Declaration explains in detail, Class Counsel's extensive work reflects the complexity and duration of this action, the expansive fact and expert discovery necessary to prove the Class's claims, and Defendants' vigorous efforts to dispute liability and damages. Class Counsel's work advanced the case through numerous litigation milestones over five years, including:

- Investigating and preparing the Complaint, which utilized econometric analysis to allege Teva's price increases on eight drugs that generated approximately $1 billion in profits, and opposing five motions to dismiss (Fonti Decl. ¶¶39-52);
- Preparing the Amended Complaint, which clarified two distinct grounds for falsity, expanded the econometric analysis to allege Teva's price increases on at least 60 drugs

and over $2 billion in excess profits, and included factual allegations from four former Teva employees, and overcoming Defendants' three motions to dismiss (*id.* ¶¶53-71);

- Achieving consolidation with other putative class actions and Direct Actions and opposing DOJ's intervention motion (*id.* ¶¶75-83);

- Pursuing comprehensive and vigorously contested document discovery, including litigating five motions to compel and initiating an enforcement proceeding against Sandoz Inc., addressing discovery disputes at numerous status conferences, and efficiently analyzing over 8.2 million pages of documents (*id.* ¶¶84-131, 145-165, 168-171, 179-183, 198-202);

- Taking and defending 25 fact depositions and obtaining declarations and agreements to appear at trial from three Teva co-conspirators (*id.* ¶¶132-144, 167, 203-205);

- Pursuing evidence of spoliation for over two years, reaching the brink of Cavanaugh's deposition (*id.* ¶¶145-165);

- Achieving class certification despite Defendants' three experts, *Daubert* motion, stay request,[14] and Rule 23(f) petition to the Second Circuit (*id.* ¶¶176-178, 184-197);

- Completing rigorous merits expert discovery, including working with the Class's experts on four opening reports, analyzing Defendants' seven opposing reports, facilitating six reply reports, and conducting ten expert depositions (*id.* ¶¶206-241);

- Mediating with Judge Phillips in three full-day sessions, with detailed mediation statements and multiple presentations on liability, damages, and financial issues, followed by months of intense follow-up negotiations (*id.* ¶¶313-332); and

- Preparing detailed summary judgment and *Daubert* motions that were complete and ready to be filed when the parties agreed to the proposed settlement (*id.* ¶¶242-251).

To further assist the Court, Class Counsel have also presented their time in 10 chronological categories tied to key case events. (*Id.* ¶¶371-381.) The majority of time—50,827.15 hours—was expended from September 2019 to September 2021 (Categories 5-8), in

[14] Defendants attempted to leverage a decision from the unrelated *Endo* litigation to seek a stay as to class certification (ECF 720). In denying Defendants' stay request, this Court found the *Endo* decision "virtually irrelevant" and did "not share the *Endo* Court's concerns regarding BFA." (ECF 735 at 7.) The parties in *Endo* later reached a settlement, and last month the *Endo* court awarded BFA attorneys' fees of $1,500,000 and out-of-pocket expenses of $1,291,273, while repeating its prior criticisms of BFA. *Pelletier v. Endo International plc*, No. 2:17-cv-05114-MMB (E.D. Pa.), ECF 415 at 5. Our March 1, 2021 submission to this Court (ECF 718) addressed those criticisms.

which Class Counsel (among other things) achieved consolidation and class certification; completed fact and expert discovery, including 40 depositions; and participated in three mediation sessions. (*Id.* ¶¶376-379.) Much of this work built an extensive merits record that would have been presented at summary judgment and trial, and proved critical to driving the $420 million settlement.

Based on a review of Class Counsel's work (including time records), Judge Droney concluded that Class Counsel's number of hours "is justified by their billing summaries and the course of this litigation." (Ex. 5 (Droney Decl.) ¶56.) As importantly, Class Counsel's work was conducted with a high degree of efficiency and concentrated among a core team of seven attorneys who dedicated the majority of their time to this action at various points, accounting for 40.6% of hours and 52.9% of lodestar. (*See id.* ¶¶57, 68; Ex. 6 (Miller Decl.) ¶¶30-34.) Moreover, all fact and expert depositions were taken and defended by four of these BFA attorneys to further leverage their collective knowledge of the record. (*See* Fonti Decl. ¶¶139, 188, 240.)

Judge Droney's review concluded that Class Counsel's work was properly allocated to the case team's competence and experience. (*See* Ex. 5 (Droney Decl.) ¶¶57-63.) For example:

- Partners performed appropriate tasks, such as developing high-level litigation strategy, taking and defending senior-level and complex depositions, presenting oral argument, interacting with Class Representatives, working with experts, and conducting the mediation and settlement discussions.

- Associate work included drafting briefs, discovery requests, and correspondence, conducting meet and confers with opposing counsel, managing the discovery team, drafting deposition outlines, taking certain depositions, and working with experts.

- An experienced, focused team of at most 14 review team attorneys supported Class Counsel's efforts by performing discovery analysis (using technology to focus and streamline work), researching substantive factual issues, preparing initial deposition outlines and related materials, and developing a detailed factual chronology.

Similarly, Professor Miller determined that Class Counsel had an appropriate ratio of partner to non-partner time of 1:2.49. (Ex. 6 (Miller Decl.) ¶¶31-32.)

In total, Class Counsel utilized just 47 timekeepers—far below the staffing in other large, complex class actions in this District. In *Xerox*, for example, the fee submissions reflected 407 timekeepers, while in *U.S. Foodservice*, the submissions reflected 248 timekeepers.[15]

Further detail on the roles and experience of Class Counsel's timekeepers is provided in Exhibits 7-B, 7-E, 8-B, 9, and 9-A to the Fonti Declaration. In addition to Lead Counsel and Ms. Podolsky, Class Liaison Counsel at Carmody were actively involved from the outset, attending each hearing, providing valuable strategic counsel, working to address Defendants' extensive discovery demands, and fully participating in the parties' mediation efforts, particularly with respect to insurance issues. (Ex. 8 (Kurzman F&E Decl.) ¶4.)

b. Lodestar Cross-Check

Courts may assess "hours as a 'cross check' on the reasonableness of the requested [fee] percentage." *Goldberger*, 209 F.3d at 50. This involves multiplying "the number of hours reasonably billed to the class . . . by an appropriate hourly rate," with a discretionary "multiplier" based on factors "such as the risk of the litigation and the performance of the attorneys." *Id.* at 47. When used as a "mere cross-check, the hours documented need not be exhaustively scrutinized by the district court." *Id.* at 50; *see also Priceline*, 2007 WL 2115592 at *5.

As discussed below, Class Counsel's total lodestar, derived by multiplying each timekeeper's hours by their current hourly rate, is $45,837,361.00.[16] The requested fee of 23.70% of the $420 million settlement (or $99.54 million) represents a multiplier of 2.17.

[15] *See Xerox*, No. 3:00-cv-01621-AWT (D. Conn.), ECF 496-3, 496-7, 496-12, 496-16, 496-20, 496-24, 496-28, 496-32, 496-36, 496-40, 496-44, 496-48, and 496-52; *U.S. Foodservice*, No. 3:07-md-01894-AWT (D. Conn.), ECF 510-3 at 7-9, 24-26, 51, 61-62, 74, 82, 92, and 106 of 112.

[16] Class Counsel have used current rates to account for inflation and the delay in payment. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) ("the use of current rates to calculate the lodestar

(1) Rates

Class Counsel's blended hourly rate (total lodestar divided by total hours) is $595, with minimum rates of $225 (for a paralegal) to a maximum rate of $985 (for BFA's founding partners). (Fonti Decl. ¶387.) Judge Droney concluded that these rates are "within the appropriate ranges," and the Miller Declaration provides additional empirical data and analysis to assist the Court's review. (Ex. 5 (Droney Decl.) ¶65; Ex. 6 (Miller Decl.) ¶¶42-51.)

As a starting point, courts have approved the use of out-of-district rates, even if higher than in-district rates, in national securities class actions. *See In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1065 (E.D. Mo. 2002), *aff'd*, 350 F.3d 747 (8th Cir. 2003) ("[W]hile the hourly rates ranging up to $695 [equivalent to $1,435 in March 2022 dollars, using the methodology described below] are high for the Eastern District of Missouri, they are nonetheless within the range of reasonableness in the realm of nationwide securities class actions.").

The Second Circuit has held that district courts may use an out-of-district hourly rate upon a showing "that a reasonable client would have selected out-of-district counsel because doing so would likely (not just possibly) produce a substantially better net result"; relevant factors include "counsel's special expertise in litigating the particular type of case." *Simmons v. N.Y. City*, 575 F.3d 170, 175-76 (2d Cir. 2009). Here, Class Representatives selected BFA due to such "special expertise" to "produce a substantially better net result." *Id.* BFA specializes in complex, high-impact securities and consumer class actions around the country. (Ex. 7-A (BFA Firm Resume).) Class Representatives are sophisticated institutional investors who selected BFA to ensure the best

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figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation"). Professor Miller further describes the rationale for using current rates. (Ex. 6 (Miller Decl.) ¶38.)

possible result in this securities action with antitrust components, and view BFA's rates as appropriate in this case. (Ex. 3 (Davis Decl.) ¶¶27, 31-33; Ex. 4 (Jarvis Decl.) ¶¶27, 31-32.)

Moreover, the Second Circuit has recognized in the context of attorney rates that the "legal communities of today are increasingly interconnected," and that "legal markets may be defined by practice area." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections*, 522 F.3d 182, 192 (2d Cir. 2008). This observation fully applies to PSLRA class actions, which are highly specialized and necessarily national in scope. To obtain the best results, institutional investors seek class counsel with specialized expertise in PSLRA class actions. To that end, both Class Representatives have consistently selected and retained New York-based counsel on behalf of proposed classes they have represented as PSLRA lead plaintiffs. (Ex. 3 (Davis Decl.) ¶33; Ex. 4 (Jarvis Decl.) ¶32.) Similarly, Judge Droney has observed that lead counsel in complex class cases are typically located outside the District, and that PSLRA class actions tend to be both prosecuted and defended by members of a national securities bar principally based in New York and California. (Ex. 5 (Droney Decl.) ¶¶65-66.) Here, both BFA and Defendants' lead counsel at Kasowitz are based in New York.

Judge Droney concluded that Class Counsel's rates are appropriate within the context of a national securities bar (*id.* ¶67), and Professor Miller likewise evaluated Class Counsel's rates within the nationwide market for attorneys in large-scale, complex class litigation and concluded that Class Counsel's rates "are reasonable in the circumstances of this case." (Ex. 6 (Miller Decl.) ¶51.) Several data points support these conclusions:

First, Class Counsel's rates are comparable to the rates submitted in settlements of complex class cases within this District. Given the age of these submissions, Professor Miller provides the rates as originally submitted and applies an inflation adjustment into constant (March 2022) dollars

using the U.S. Bureau of Labor Statistics' Producer Price Index-Office of Lawyers (PPI-OL). (Ex. 6 (Miller Decl.) ¶¶44-45.) The results are presented below:

Case	Blended Rate		Highest Individual Rate	
	As submitted	Constant dollars	As submitted	Constant dollars
Priceline (2007) ($80 million securities settlement)	$381	$624	$770	$1,261
U.S. Foodservice (2014) ($297 million RICO and contract settlement)	$474.62	$620	$985	$1,287
Xerox (2009) ($750 million securities settlement)	$330	$503	$925	$1,409
Teva (2022) ($420 million securities settlement)	$595		$985	

Class Counsel's blended rate of $595 is below the blended rates in constant dollars in *Priceline* ($624/hour) and *U.S. Foodservice* ($620/hour). (Ex. 6 (Miller Decl.) ¶¶44-45.) Class Counsel's highest hourly rate of $985 is equal to the highest rate submitted in *U.S. Foodservice* eight years ago, and below the constant-dollar rates in all three cases above. (*Id.* ¶¶43-45.)

In addition, in a recent securities settlement before Judge Bolden in this District, counsel submitted a blended rate of $596/hour, individual rates of up to $1,300, and Connecticut partner rates of $850 and $1,150. *See In re Frontier Comms. Corp. Stockholders Litig.*, No. 3:17-cv-01617-VAB (D. Conn. Apr. 5, 2022), ECF 198-4 at 2 (lodestar summary); ECF 198-5 at 9-10 of 47; ECF 198-6 at 7 of 23; *see also* Ex. 6 (Miller Decl.) ¶42.

Second, Class Counsel's rates are comparable to other national plaintiffs'-side securities litigation firms. (*See* Ex. 6 (Miller Decl.) ¶42; *see also* Ex. 5 (Droney Decl.) ¶65.) In evaluating a "market rate," "[a]wards in comparable cases are an appropriate measure of the market value of counsel's time," and the Court may consider "[s]imilar billing rates for law firms representing plaintiffs in securities class actions." *Hi-Crush*, 2014 WL 7323417 at *14-15. Even several years ago, courts noted partner hourly rates "from $700 to $995 at Bernstein Litowitz" and "$715 to $980 at Robbins Geller." *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017

WL 3579892, at *5 (S.D.N.Y. Aug. 18, 2017). In addition, Ontario Teachers' regularly retains leading law firms in Canada and the U.S., and views Class Counsel's hourly rates as comparable to rates charged by other leading complex litigation firms. (Ex. 3 (Davis Decl.) ¶31.)

Third, "[p]erhaps the best indicator of the 'market rate' in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that *defend* class actions on a regular basis." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 589 (S.D.N.Y. 2008) (emphasis in original). Leading defense firms frequently charge higher hourly rates than Class Counsel—even where clients timely pay their fees regardless of the result. For example, Professor Miller found that all of Class Counsel's partner rates (in the range of $340 to $985) are below the median billing rates in 2020 for equity partners at the top 50 U.S. law firms (including Morgan Lewis), which were over $1,200/hour, and that all of Class Counsel's partner and associate rates are below average rates among New York firms as reported in a 2021 study.[17] (Ex. 6 (Miller Decl.) ¶¶46-48; *see also id.* ¶50 (reporting average partner billing rates for leading defense firms in the range of $950-$1,350 as of 2017).)

(2) Multiplier

Lodestar multipliers (the requested fee in dollars divided by total lodestar) should reflect the risk of a case, its duration, and other factors. Indeed, "[i]n complex contingent litigation . . . fees representing multiples above the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors." *Signet*, 2020 WL 4196468 at *16 ("lodestar multipliers between 2 and 5 are commonly awarded"); *see also Priceline*, 2007 WL 2115592 at *4-5 (courts "typically

[17] In a bankruptcy fee application in October 2020, Defendants' lead counsel at Kasowitz indicated partner rates of up to $1,250/hour, described as "comparable to the rates charged by Kasowitz, and by comparably skilled practitioners in other firms, for complex corporate and litigation matters." *In re Trivascular Sales LLC*, No. 20-BK-31840 (Bankr. N.D. Tex. filed Oct. 31, 2020), ECF 434 at 2, ECF 434-3 at 1.

apply a multiplier to the lodestar amount to recognize the risks of litigation and [recovering] a contingent fee").

The Second Circuit has confirmed that in common-fund cases, district courts are "under no obligation to treat the unenhanced lodestar as the presumptive fee." *Davis*, 806 F. App'x at 18 (affirming fee award of 30%, with 2.72 multiplier, in $50 million securities settlement).[18] The Circuit has also noted that in large settlements, a multiplier of 3.5 "has been deemed reasonable." *Wal-Mart*, 396 F.3d at 123.[19] Moreover, empirical research has found that multipliers tend to increase with settlement size. (Ex. 6 (Miller Decl.) ¶54.)

Here, the lodestar cross-check yields a multiplier of 2.17, which we submit is merited in light of the factors discussed herein, including the result achieved, Class Counsel's efficient and high-quality representation, and the risks Class Counsel have borne for over five years.

To begin, Class Counsel's multiplier reflects a high degree of efficiency. Class Counsel utilized lean staffing and efficient prosecution, with much of the work conducted by a small core team, to achieve a $420 million settlement. (*See* Fonti Decl. ¶¶382-385; Ex. 5 (Droney Decl.) ¶¶57-63.)[20] While the simple math would yield a lower multiplier had Class Counsel generated a larger lodestar (the denominator for the multiplier), "[i]t would be foolish to punish a firm for its efficiency and thereby encourage inefficiency." *Fields*, 24 F.4th at 854. Class Counsel's

[18] The lodestar and multiplier addressed in *Davis* are described at *In re BHP Billiton Ltd. Sec. Litig.*, No. 16-cv-01445-NRB (S.D.N.Y. Apr. 10, 2019), ECF 139 at 1-2.

[19] While *Wal-Mart* affirmed the district court's award of "a generous fee based on a somewhat low percentage of the fund," 396 F.3d at 123—6.5% of about $3.4 billion in compensatory relief—the original fee request reflected a multiplier of 9.68, which the district court rejected as "absurd." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 523 (E.D.N.Y. 2003).

[20] *See also Telik*, 576 F. Supp. 2d at 589-90 ("Plaintiffs' Counsel were presumably able to perform the various tasks necessary to advance Plaintiffs' and the Class's interests in a more efficient manner than would have counsel with a lesser degree of specialization in this field.").

efficiency distinguishes this case from large settlements with lower multipliers.[21]

Recognizing that individual cases vary widely, the Droney and Miller Declarations provide empirical analysis confirming that a 2.17 multiplier is reasonable. (Ex. 5 (Droney Decl.) ¶¶18, 69; Ex. 6 (Miller Decl.) ¶¶54-56.) For example, in national research, Professor Miller and co-authors found an average multiplier of 2.72 for the top decile of class settlements from 2009 to 2013 (those with recoveries above $67.5 million), and an average multiplier of 3.18 for the top decile from 1993 to 2008 (those with recoveries above $175.5 million). (Ex. 6 (Miller Decl.) ¶¶54-55.) Here, Professor Miller concluded that Class Counsel's 2.17 multiplier is "well within the range of reason" relative to this data and the observed trend of increasing multipliers with higher recovery. (*Id.* ¶56.) Within the Second Circuit, Judge Droney noted that the average multiplier for securities settlements above $200 million is approximately 1.97, but concluded that a higher multiplier is warranted in this case in light of its above-average risks and challenges and Class Counsel's ability to deliver a substantial settlement. (Ex. 5 (Droney Decl.) ¶69.)

Securities and antitrust settlements within this Circuit have approved multipliers comparable to or higher than 2.17. For example, in a $250 million securities settlement, Chief Judge McMahon of the Southern District of New York awarded a 25% fee and concluded that the resulting 2.15 multiplier was "well within the range commonly awarded in securities class actions of this complexity and magnitude." *Alibaba*, 2019 WL 5257534 at *19.[22]

[21] For example, in *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 505, 515 (S.D.N.Y. 2009), a $586 million securities settlement, the court awarded a fee of $170 million, below counsel's $278 million lodestar, noting that "the amount of time and labor counsel spent on this litigation [was] highly disproportionate to the settlement they achieved on behalf of the class."

[22] *See also Adelphia*, 2006 WL 3378705 at *3 (approving 2.89 multiplier in $455 million securities settlement and finding that "[l]arger lodestar multipliers have been awarded in (more or less) comparable cases"); *In re Credit Default Swaps Antitrust Litig.*, No. 13 md 2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (Cote, J.) (approving multiplier of "just over 6" in antitrust settlement).

Similar multipliers have also been approved in large class settlements within this District. For example, in *U.S. Foodservice*, 2014 WL 12862264 at *3, the 33.3% fee award resulted in a 2.23 multiplier. *See also Priceline*, 2007 WL 2115592 at *5 (awarding 30% fee with 1.98 multiplier).

6. Public Policy Supports the Requested Fee (*Goldberger* 6)

The Supreme Court "has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Fee awards in securities class actions should "encourage enforcement of the securities laws and support attorneys' decisions to take these types of cases on a contingent fee basis." *Priceline*, 2007 WL 2115592 at *5; *see also Signet*, 2020 WL 4196468 at *21 (noting "strong public policy concern . . . for rewarding firms for bringing successful securities litigation").

This is the only class action seeking to enforce the U.S. securities laws against Defendants and redress the significant harm caused by their alleged conduct. Class Representatives believe that the allegations in this action—including that Defendants engaged in alleged price-fixing and large price increases on generic drugs used for serious health conditions—have a significant impact on the integrity of the markets in which they invest and accepted standards of corporate governance. (Ex. 3 (Davis Decl.) ¶5; Ex. 4 (Jarvis Decl.) ¶5.) The proposed settlement sends an important message about preserving the integrity of the securities markets and robust competition in the markets for generic drugs.

D. The Requested Fee Will Not Result in a "Windfall" Under *Goldberger*

In *Goldberger*, the Second Circuit expressed its concern that applying a "benchmark" fee of 25% in common-fund cases (which the Ninth Circuit had adopted, *see id.* at 51) could result in "routine windfalls" in larger settlements because of perceived "economies of scale" that led courts

to award "fees in the lower range of 11% to 19%." 209 F.3d at 52. For the following reasons, we believe this case does not present any of *Goldberger*'s "windfall" concerns.

First, Lead Counsel's requested fee is not based on any "benchmark," but rather recognizes the "searching assessment that should properly be performed in each case." *Id.* The requested fee is based on the facts specific to this case, the result achieved, and consideration of the *Goldberger* factors addressed above. As fiduciaries, Class Representatives have carefully considered these factors, and two expert opinions and empirical data further support Lead Counsel's request.

Second, while *Goldberger* itself affirmed a 4% fee award, that "low risk" case "arose from one of the most notorious financial frauds of the 1980s" and offered "almost certain prospects of a large recovery from solvent defendants." 209 F.3d at 53-54. Indeed, "two of the defendants—Drexel and Milken—were convicted of criminal conduct bearing directly on the claims advanced in [the securities] case." *Id.* at 56.

Importantly, *Goldberger* is also the product of a different era. The underlying action was filed in the 1980s, and the Circuit quoted a law review article from 1991 to suggest that "losses in [securities] cases are 'few and far between.'" 209 F.3d at 52. The enactment of the PSLRA in 1995, with heightened pleading standards, created a very different landscape: over half of securities cases are now dismissed outright. (*See supra* at 10.) In the two decades since *Goldberger*, the Circuit has affirmed fee awards from 16% to 30% over objections that they were too large. For example, in *Xerox*, 355 F. App'x 523 (2d Cir. 2009), the Circuit affirmed a 16% fee award (with a 1.25 multiplier) in a $750 million securities settlement. The Circuit has also affirmed a 30% fee award (with a 2.72 multiplier) in a $50 million securities settlement. *See Davis*, 806 F. App'x at 18. And empirical research has found a median fee award of 24.5% in securities settlements between $100 million and $500 million, with several district courts in this Circuit

exercising their discretion to award fees of 20% or higher in procedurally advanced, comparably sized cases. (*Supra* at 16-18 (Section I.C.2).)

Moreover, *Goldberger* noted a "perception . . . that plaintiffs in common fund cases are mere 'figureheads,' and that the real reason for bringing such actions is 'the quest for attorney's fees.'" *Id.* at 53. Again, the PSLRA dramatically altered this perception. Both Ontario Teachers' and Anchorage are sophisticated institutional investors who devoted hundreds of hours of time to this action, materially contributed to the result, and carefully determined the fee that Class Counsel could request (including with reference to Judge Droney's independent analysis) on behalf of the Settlement Class. (*Supra* at 1-2, 8, 40.)

Third, a fee award is not a "windfall" simply because it is large. Instead, the Second Circuit recently observed (in the context of a Social Security case) that a "windfall is more likely to be present in a case, unlike this one, where the lawyer takes on a contingency-fee representation that succeeds immediately and with minimal effort, suggesting very little risk of nonrecovery. That kind of unearned advantage is what the windfall concern really is about." *Fields*, 24 F.4th at 856.

Here, Class Counsel enjoyed no "unearned advantage." Instead, as Judge Droney noted, "Class Counsel had no shortcut to proving their case, since Teva did not admit misconduct, restate its financial statements, or face any enforcement action from the SEC." (Ex. 5 (Droney Decl.) ¶71.) The need to prove the entire case from scratch, and the complexity of the issues, drove Class Counsel to expend over 77,000 hours of work and invest over $9.7 million out of pocket. As is required to achieve an exceptional result in a complex, demanding class action, "[s]everal of the lead attorneys for the Class essentially devoted years of their lives to this litigation, with the personal sacrifices that accompany such a commitment." *WorldCom*, 388 F. Supp. at 359.

Moreover, far from "almost certain prospects of a large recovery from solvent defendants," *Goldberger*, 209 F.3d at 53, Class Counsel litigated against a financially constrained, combative defendant in a challenging economic environment and faced a real risk of no recovery. (*Supra* at 9-15.) Where heightened risks require extraordinary effort to achieve a large settlement, a substantial fee award is not a "windfall." *See* 5 Newberg on Class Actions § 15:80 (5th ed.) ("some high fund cases involve significant risks, require enormous investments of money and time, and may appropriately trigger a healthy percentage award"); *see also* Ex. 6 (Miller Decl.) ¶¶71-76.

Finally, *Goldberger*'s concern about "windfalls" due to "economies of scale" is best addressed through the multiplier, which captures the relationship between counsel's efforts, the risks incurred, and the requested fee. "Given that a high multiplier is the best measuring stick of a windfall, courts ought to use the high multiplier to police windfalls, regardless of the size of the fund, rather than use the size of the fund as a policing mechanism." 5 Newberg on Class Actions § 15:81 (5th ed.). In *Goldberger*, for example, counsel requested a multiplier of 6 times their lodestar. 209 F.3d at 51. Here, the multiplier of 2.17 is appropriate in light of Class Counsel's sustained investment of effort in this high-risk case, and further confirms that the requested fee is not a "windfall." (*See* Ex. 5 (Droney Decl.) ¶69; Ex. 6 (Miller Decl.) ¶¶56, 74.)

II. CLASS COUNSEL'S REQUESTED EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED

This motion also seeks an award of litigation expenses of $9,717,887.47 that Class Counsel incurred to prosecute this action. (*See* Fonti Decl. ¶¶397-406.) "It is well-settled that attorneys may be 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." *In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 343 F. Supp. 3d 394, 418 (S.D.N.Y. 2018); *see also 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.").

Class Counsel's combined expenses are detailed by category at Paragraph 398 of the Fonti Declaration, and each firm has submitted a separate declaration detailing their expenses. (Exs. 7-9.) Because these expenses "were incurred with no guarantee of recovery, [Class] Counsel had a strong incentive to keep them at a reasonable level, and did so." *Hi-Crush*, 2014 WL 7323417 at *19. The Fonti Declaration and Judge Droney's review demonstrate that these expenses are reasonable and were necessarily incurred to prosecute this complex and expert-intensive action:

- The largest component ($7,269,761.31, or about 75% of the total) relates to the four experts who assisted at class certification and the merits stage (providing a total of 12 reports and testimony in seven depositions), as well as consulting experts who assisted with Class Counsel's investigation and analysis, aggregate damages analyses for mediation, and other areas. (Fonti Decl. ¶400.) *See In re GSE Bonds*, 2020 WL 3250593 at *6 ("The majority of Co-Lead Counsel's expenses were devoted to expert work, which was essential to the resolution of this complex case.").

- The second-largest category ($1,789,846.78) was primarily incurred to host and facilitate review of Defendants' and third parties' voluminous document productions. The electronic database provided state-of-the-art technology that Class Counsel utilized to identify the strongest proof for effective fact depositions, expert discovery, and preparation for summary judgment. (*Id.* ¶401.)

- The third-largest category ($224,994.34) relates to court reporter services and transcript fees, including for 40 depositions and numerous conferences and hearings. (*Id.* ¶403.)

- The remaining expenses ($433,285.04) include mediation fees, outside counsel engaged on an hourly basis, and typical categories such as computer research, external photocopies, travel, accommodations, and business meals. (*Id.* ¶¶398, 402, 404-405.)[23]

III. CLASS REPRESENTATIVES SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER THE PSLRA

Finally, pursuant to the PSLRA, Class Representatives seek "award[s] of [their] reasonable costs and expenses (including lost wages) directly relating to the representation of the class."

[23] In addition to the expenses that are the subject of this motion, up to $1,750,000 of Notice and Administration Expenses are payable from the Settlement Fund before the Effective Date (ECF 919-2 ¶2.11), while any additional amount will be presented to the Court after the Effective Date.

15 U.S.C. § 78u-4(a)(4). "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." *Alibaba*, 2019 WL 5257534 at *20.

As detailed in the Davis and Jarvis Declarations, Ontario Teachers' seeks an award of $49,213.02 and Anchorage seeks an award of $7,080 based on their respective time devoted to this action in place of their regular duties, as well as their out-of-pocket expenses. Ontario Teachers' and Anchorage have been fully committed to pursuing this action and actively participated and supervised Class Counsel over five years, vigorously discharging their responsibilities as class representatives under the PSLRA. (*See* Ex. 3 (Davis Decl.); Ex. 4 (Jarvis Decl.).) These efforts entailed at least 274.5 hours of time for Ontario Teachers', corresponding to $32,940 at a reasonable hourly rate of $120.[24] (Ex. 3 (Davis Decl.) ¶¶39-42.) In addition, Ontario Teachers' incurred $16,273.02 in out-of-pocket expenses. (*Id.* ¶¶38, 43-46.) Anchorage devoted 120 hours to this action, corresponding to $7,080 at a reasonable hourly rate of $59. (Ex. 4 (Jarvis Decl.) ¶¶37-40.)

CONCLUSION

Lead Counsel respectfully requests that the Court (1) award attorneys' fees in the amount of 23.70% of the Settlement Fund; (2) award $9,717,887.47 for Class Counsel's reasonable litigation expenses; and (3) award Class Representatives $56,293.02 for their reasonable costs and expenses, as authorized by the PSLRA.

[24] While Ontario Teachers' also devoted a substantial amount of internal work to this matter, including reviewing drafts and attending to discovery, for purposes of the requested awards, Ontario Teachers' has counted only time spent attending Court hearings, depositions, mediation sessions, and meetings with Class Counsel. (Ex. 3 (Davis Decl.) ¶39.)

Dated: New York, New York
April 28, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, a copy of the foregoing was filed electronically with the Clerk of Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the court's CM/ECF system.

/s/ Joseph A. Fonti
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