UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE SCHERING-PLOUGH CORPORATION / ENHANCE SECURITIES LITIGATION	Civil Action No. 08-397 (DMC) (JAD)

MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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PRELIMINARY STATEMENT

Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Labaton Sucharow LLP ("Labaton Sucharow"), Court-appointed Co-Lead Counsel (collectively, "Co-Lead Counsel")[1] in this securities class action, having achieved a Settlement providing for a recovery of $473 million in cash for the benefit of the Class, respectfully submit this memorandum of law in support of their motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, on behalf of all Plaintiffs' Counsel, for (i) an award of attorneys' fees in the amount of 16.92% of the Settlement Fund; and (ii) reimbursement of (a) $3,620,049.63 for litigation expenses incurred in prosecuting the Action, and (b) awards in the amount of $102,447.26, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §77z-1(a)(4) and §78u-4(a)(4) for costs and expenses (including lost wages) incurred by Lead Plaintiffs directly related to their representation of the Class (the "Fee and Expense Application").

The settlement of the Action for $473 million in cash (the "Settlement") is an outstanding result for the Class. This Settlement, if approved by the Court, would be among the twenty-five largest securities class action settlements since the passage of the PSLRA, among the top ten post-PSLRA class action securities

[1] Capitalized terms not otherwise defined herein have the meanings set forth and defined in the Stipulation and Agreement of Settlement, dated as of June 3, 2013, and filed with the Court on June 4, 2013 (the "Stipulation") (ECF No. 419-1).

settlements in cases not involving a restatement of financials, the third largest settlement within the Third Circuit, and the largest securities class action settlement ever against a pharmaceutical company, according to the latest quarterly report of the Securities Class Action Services.[2] This exceptional result was achieved through Lead Plaintiffs and Co-Lead Counsel's persistent, creative efforts and hard work.

As set forth in detail in the Joint Declaration, this was a complex Action fraught with risk. It was litigated for over five years by Plaintiffs' Counsel on a fully contingent basis. Given: (i) the excellent result achieved for the Class; (ii) the amount and quality of Plaintiffs' Counsel's work over the past five years; (iii) the risks involved in this litigation and skill required to navigate them; and (iv) the amount of fees awarded by courts within this Circuit and in other circuits in

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[2] *See* Joint Declaration of Salvatore J. Graziano and Christopher J. McDonald, dated July 2, 2013 ("Joint Decl." or "Joint Declaration"), Exh. 1. All exhibits referenced herein are annexed to the Joint Declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as "Exh. ___ - ____." The first numerical reference refers to the designation of the entire exhibit attached to the Joint Declaration and the second reference refers to the exhibit designation within the exhibit itself.

The Joint Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to the Joint Declaration for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted in the Action; the extensive prosecutorial efforts; the negotiations leading to the Settlement; the value of the Settlement to the Class, as compared to the risks and uncertainties of continued litigation; and a description of the services Co-Lead Counsel provided for the benefit of the Class.

comparable cases, it is respectfully submitted that the requested fee in the amount of 16.92% of the Settlement Amount, plus interest accrued at the same rate as the Settlement Fund, is fair and reasonable. The reasonableness of the requested fee is also supported by comparing it to Plaintiffs' Counsel's lodestar of nearly $59.5 million, resulting in a modest lodestar multiplier of approximately 1.3. Similarly, it is submitted that the requested expenses, which were necessarily incurred for the effective prosecution of the Action and are of the type that are regularly reimbursed by courts within the Third Circuit are also reasonable. Additionally, Lead Plaintiffs, four sophisticated institutional investors, have evaluated the Fee and Expense Application and believe it to be fair, reasonable and warranting consideration and approval by the Court. *See* Declarations of Gilson, Neville, Roche and Gendron, Exhs. 2, 3, 4, and 5A.[3]

Without the tenacity and creativity of Co-Lead Counsel, this outstanding Settlement would not have been reached. Accordingly, it is respectfully submitted that the Fee and Expense Application should be granted.

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[3] Pursuant to the schedule set by the Court in the Preliminary Approval Order, the Settlement Notice, which informed Class Members of the maximum that the Fee and Expense Application could be, was mailed to Class Members on June 21, 2013. Therefore, it is not possible to address the Class's reaction to the Fee and Expense Application at this time. The Court-ordered deadline for the submission of objections is Aug. 5, 2013. Should any objections to the application be received, they will be addressed by Co-Lead Counsel in reply papers that are scheduled to be filed on Aug. 13, 2013.

ARGUMENT

I. CO-LEAD COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND CREATED BY THE SETTLEMENT

The Supreme Court has long recognized 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); *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d Cir. 1995); *In re Computron Software, Inc. Sec. Litig.*, 6 F. Supp. 2d 313, 321 (D.N.J. 1998).

Courts have recognized that the award of attorneys' fees from a common fund serves to encourage skilled counsel to represent classes of persons who otherwise may not be able to retain counsel to represent them in complex and risky litigation. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (goal of percentage fee awards is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation") (citation omitted). Indeed, the Supreme Court has repeatedly emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions," brought by the U.S. Securities and Exchange Commission ("SEC"). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards,*

Inc. v. Berner, 472 U.S. 299, 310 (1985) (private securities actions provided "a most effective weapon in the enforcement' of the securities laws and are a necessary supplement to [SEC] action.") (citation and internal quotations omitted).

Co-Lead Counsel's efforts in the present case exemplify the importance of such private cases. No other investigation or proceeding has yielded a substantial recovery for investors in Schering Securities. In fact, the only recovery to date has been the $5.4 million settlement by a coalition of thirty-six state attorneys general. *See* Joint Decl. ¶ 120.

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Co-Lead Counsel respectfully submit that this Court should award a fee based on a percentage of the common fund obtained for the Class. In the Third Circuit, the percentage-of-recovery method is "generally favored" in cases involving a settlement that creates a common fund. *See Sullivan v. DB Investments*, 667 F.3d 273, 330 (3d Cir. 2011) (the percentage of recovery method "'is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'") (citation omitted); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005); *In re Prudential Ins. Co. of Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir.1998). The percentage-of-recovery method is almost universally preferred

for determining attorneys' fees in common fund cases because it most closely aligns the interests of counsel and the class. *See Rite Aid*, 396 F.3d at 300; *Prudential*, 148 F.3d at 333.

The Third Circuit has "several times reaffirmed that the application of a percentage-of-recovery method is appropriate in common-fund cases." *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 734 (3d Cir. 2001) (citing *Gunter*, 223 F.3d at 195 n.1). While the Third Circuit recommends that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness (*Sullivan*, 667 F.3d at 330), "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T*, 455 F.3d at 164.

The Supreme Court has also specifically endorsed the percentage method, stating that "under the 'common fund doctrine' . . .a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). Additionally, the PSLRA, which governs this Action, specifies that "[t]otal attorneys' fees and expenses awarded . . . not exceed a *reasonable percentage* of the amount of any damages and prejudgment interest actually paid to the class," thus also supporting the use of the percentage-of-recovery method. PSLRA, 15 U.S.C. §77z-1(a)(6) and § 78u-4(a)(6) (emphasis added). Courts have concluded that, in using this language, Congress expressed a preference for the

percentage method, rather than the lodestar method, in determining attorneys' fees in securities class actions. *See In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005); *Rite Aid*, 396 F.3d at 300; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 354-55 (S.D.N.Y. 2005).

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees are Reasonable Under the Percentage-of-Recovery Method

The requested fee of 16.92% of the Settlement Fund is reasonable under the percentage-of-recovery method. While there is no general rule, the Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund. *GM Truck*, 55 F.3d at 822; *see also Ikon*, 194 F.R.D 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent"); *cf. Louisiana Mun. v. Sealed Air Corp.*, No. 03-CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. 2009) (Cavanaugh, J.) (noting that "'[c]ourts within the Third Circuit often award fees of 25% to 33 1/3% of the recovery.'") (citation omitted).

The requested fee of 16.92% of the Settlement Fund is below awards regularly approved in other securities class actions and other complex common fund cases within the Third Circuit that had similarly sized multi-million dollar recoveries. *See, e.g., In re Lucent Tech., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442-

43 (D.N.J. 2004) (awarding 17% of $517 million settlement and stating that the fee was "considerably less than the percentages awarded in nearly every comparable case"); *In re Rite Aid Corp. Sec. Litig*., 362 F. Supp. 2d 587 (E.D. Pa. 2005) and 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (awarding 25% of combined $320 million settlement); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-0993 (KAJ), slip op. at 1 (D. Del. Feb. 5, 2004) (Exh. 11)[4] (awarding 22.5% of $300 million settlement); *Sullivan,* 667 F.3d at 333 (affirming award of 25% of $295 million settlement).

An examination of fee decisions in securities class actions and other complex common fund cases with comparable settlements in *other* federal jurisdictions also demonstrates that an award of 16.92% of the Settlement Fund is, overall, significantly lower than the awards in those cases. *See, e.g., In re Cardinal Health, Inc. Sec. Litig*., 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007) (awarding 18% of $600 million settlement); *In re BankAmerica Corp. Sec. Litig*. 228 F. Supp. 2d 1061, 1066 (E.D. Mo. 2002) (awarding 18% of $490 million settlement); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig*., No. 03 MDL 1529 LLM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006), *aff'd*, 272 Fed. Appx. (2d Cir. 2008) (awarding 21.4% of $455 million settlement); *In re Checking Account Overdraft Litig*., No. 09-MD-0236-JLK, 2011 WL 5873389, at *22 (S.D.

[4] *See* compendium of all unreported decisions cited herein, Exh. 11.

Fla. Nov. 22, 2011) (awarding 30% of $410 million settlement); *Ohio Pub. Employees Ret. Sys. v. Freddie Mac.*, No. 03-CV-4261, 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (awarding 20% of $410 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) and 362 F. Supp. 2d 587 (E.D. Pa. 2005) (awarding 25% of $319.6 million settlements).[5]

Accordingly, the requested fee is well supported by the fees awarded in securities and other class actions involving settlements of similar magnitude.

B. The Requested Attorneys' Fees are Reasonable Under the Lodestar Method

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage-of-recovery approach is reasonable. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.[6]

[5] *But see, e.g., In re Dynegy, Inc. Sec. Litig.*, No. 02-1571, slip op. at 1 (S.D. Tex. July 9, 2005) (awarding 8.7257% of $474.05 million settlement consistent with fee agreement between lead counsel and lead plaintiff). *See* Exh. 11.

[6] Under the full "lodestar method," a court multiplies the number of hours each timekeeper spent on the case by a reasonable hourly rate, then adjusts that lodestar figure by applying a multiplier to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorney's work. The lodestar multiplier is intended to "account for the contingent nature or risk involved in a particular case and the quality of the attorneys' work." *Rite Aid*, 396 F.3d at 305-06.

Here, Plaintiffs' Counsel spent an aggregate of 126,177.49 hours on the prosecution and resolution of this Action.[7] *See* Joint Decl. ¶ 152. Plaintiffs' Counsel lodestar—which is derived by multiplying their hours by each firm's current hourly rates for attorneys, paralegals and other professional support staff—is $59,450,367.00. Accordingly, the requested 16.92% fee, which amounts to $80,031,600, represents a modest multiplier of approximately 1.3.

This multiplier is well within the parameters used throughout the Third Circuit and is additional evidence that the requested attorneys' fee is reasonable. Lodestar multipliers of one to four are often used in common fund cases. *Prudential,* 148 F.3d at 341; *see also AT&T*, 455 F.3d at 172 (approving a 1.28 multiplier and noting the Third Circuit's prior "approv[al] of a lodestar multiplier of 2.99 in . . . a case [that] 'was neither legally nor factually complex.'") (citation omitted); *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at * 8 (D.N.J. May 31, 2012) (Cavanaugh, J.) (awarding 1.6 multiplier); *Rite Aid*, 146 F. Supp. 2d at 736 and 362 F. Supp. 2d at 589 (awarding multiplier of between 4.5 and 8.5 on 2001 settlement and multiplier of 6.96 on the 2005 settlement); *Lucent*, 327 F. Supp. 2d at 443 (awarding 2.13 multiplier in $517 settlement); *DaimlerChrysler*, No. 00-0993 (awarding 4.2 multiplier); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 135 (D.N.J. 2002) (awarding 4.3

[7] These hours do not include any time spent on preparing the fee application.

multiplier); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000) (awarding 2.7 multiplier and noting that it was "well within the range of those awarded in similar cases").

Accordingly, the lodestar cross-check supports Co-Lead Counsel's request.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The Third Circuit has set forth the following criteria for courts to consider when reviewing a request for attorneys' fees in a common fund case:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the Class to the settlement terms and/or fees requested by counsel;[8] (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter, 223 F.3d at 195, n.1 The Third Circuit has also suggested three other factors that may be relevant to the Court's inquiry: (1) "the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to

[8] As explained in the Joint Declaration, ¶ 135, the Claims Administrator has to date mailed 346,384 Settlement Notices to potential Class Members. Joint Decl. Exh. 6 ¶ 8. The Court-ordered deadline for objections to any aspect of the Settlement or request for attorneys' fees and expenses is Aug. 5, 2013. To date, no objections have been received. Joint Decl. ¶ 138. At the time of Co-Lead Counsel's reply papers, which are due Aug. 13, 2013, counsel will report on the Class's reaction to the Fee and Expense Application.

the efforts of other groups, such as government agencies[9] conducting investigations;" (2) "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement at the time counsel was retained;" and (3) any "innovative terms of settlement." *AT&T*, 455 F.3d at 165 (citing *Prudential*, 148 F. 3d at 338-40).

The fee award factors "'need not be applied in a formulaic way' because each case is different, 'and in certain cases, one factor may outweigh the rest.'" *AT&T*, 455 F.3d at 165 (citing *Rite Aid*, 396 F.3d at 301). Indeed in cases involving large settlement awards, district courts may give some of the *Gunter* factors less weight, and emphasize (1) the complexity and duration of the case and (2) awards in similar cases. *Rite Aid*, 396 F.3d at 301.

An analysis of relevant factors further confirms that the fee requested here is fair and reasonable and should be approved.

[9] Here, although the events underlying the litigation were also investigated by multiple state and federal agencies, the only other monetary recovery achieved was a $5.4 million settlement by a coalition of 36 state attorneys general. Furthermore, there were no criminal or SEC claims brought against Schering or any of its officers, no convictions, no guilty pleas, no admissions, no restatement filed, no Congressional findings of wrongdoing and no negative FDA findings that assisted Co-Lead Counsel. Joint Decl. ¶ 120.

A. The Size of the Fund Created and the Number of Persons Benefitted Support the Requested Fee

The result achieved is one of the primary factors to be considered in assessing the propriety of an attorneys' fee award. *Hensley v Eckerhart*, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained").

Here, there can be little doubt that the $473 million Settlement, which will benefit tens of thousands of investors (given the number of Settlement Notices mailed to date), is an outstanding result that strongly supports the requested attorneys' fee. As discussed above, if approved, the Settlement would place among the largest securities class action settlements since the passage of the PSLRA in 1995. *See* Exh. 1. This factor strongly favors approval of the fee request.

B. The Skill and Efficiency of the Attorneys Involved Support the Fee Request

The skill and efficiency of counsel is "'measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *Hall v. AT&T Mobility LLC*, No. 07-5325 (JLL), 2010 WL 4053547, at *19 (D.N.J. Oct. 13, 2010) (citation omitted). Indeed, courts in this district have found that "the single clearest factor reflecting the quality of class

counsels' services to the class are the results obtained." *In re Aremisoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002). Here, the $473 million Settlement is an extraordinary result for the Class that was obtained through Co-Lead Counsel's hard work, persistence and skill. It was achieved only after Co-Lead Counsel overcame multiple difficult and novel legal and factual challenges, and the Parties had litigated the case to the eve of trial.

Co-Lead Counsel were required to contend with, among others, unusual class certification issues and complex issues of circumstantial proof, loss causation and damages, many of which were lacking precedent. In particular, there were substantial risks to establishing falsity and *scienter* given Defendants' claimed data quality reasons for delaying the ENHANCE results and loss causation and damages under Section 10(b), given that the top-line results of the ENHANCE study were publicly disclosed two months before the end of the Class Period, and to proving scienter in a highly complex, scientifically based case relying only on circumstantial evidence presented through adverse witnesses and highly technical expert testimony. *See* Joint Decl. ¶¶ 106-14, 159-60.

With respect to efficiency, from their pre-filing investigation, through fact and expert discovery, and onto final pre-trial preparations, Co-Lead Counsel developed and followed a plan to coordinate the marshaling of evidence and prosecution of the Action. *See* Joint Decl. ¶ 21. To achieve synergies, among

other things, Co-Lead Counsel conducted the review of Defendants' multi-million page document production in close coordination with Grant & Eisenhofer P.A. ("G&E"), co-lead counsel in the parallel action *In re Merck & Co., Inc. Vytorin/Zetia Sec. Litig.*, No. 08-2177 (DMC) ("*Merck*"). The cooperative effort among Plaintiffs' Counsel in the two cases allowed for a larger overall team of attorneys to review the documents and for the teams to seamlessly share information with each other and with more senior lawyers in each case, allowing for a more efficient document review, eliminating redundancy and duplicated efforts. *See* Joint Decl. ¶¶ 62-69.

With respect to "the experience and expertise" of counsel, as set forth in the firm resumes attached to the respective declarations of Plaintiffs' Counsel (*see* Exhs. 7A - 7E) and as the Court has been able to observe over the past five years, Co-Lead Counsel are among the most experienced and skilled firms in the securities litigation field, and each firm has a long and successful track record in securities cases throughout the country. *See* Joint Decl. ¶ 157; *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-1432, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (Cavanaugh, J.) (noting that the skill and efficiency of attorneys with substantial experience in class action litigation, as demonstrated by their supporting documents, favored an award of attorneys' fees); *In re Genta Sec. Litig.*, No. 04-2123, 2008 WL 2229843, at *10 (D.N.J. May 28, 2008) ("the

attorneys' expertise in securities litigation favors approving the requested award for attorneys' fees").

'"The quality of opposing counsel is also important in evaluating the quality of counsel's work.'" *Hall*, 2010 WL 4053547, at *19 (citation omitted); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-CV-525 (GEB), 2007 WL 4225828, at *7 (D.N.J. Nov. 28, 2007). Co-Lead Counsel was opposed in this litigation by some of the nation's most elite law firms. *See* Joint Decl. ¶ 158. Indeed, the skill, tenacity, experience and resources of Paul, Weiss, Rifkind, Wharton & Garrison LLP, one of the law firms representing Defendants, are well known. *See, e.g., In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 358 (S.D.N.Y. 2005) (stating defense counsel, including Paul, Weiss, acted as "formidable opposing counsel" and were "some of the best defense firms in the country").

Defense counsel zealously represented the interests of their respective clients and were fully prepared to try and appeal this case to the end. In the face of this experienced, formidable, and well-financed opposition who aggressively litigated the Action on behalf of their clients, Co-Lead Counsel were nonetheless able to achieve an outstanding result for the benefit of the Class. The fact that Co-Lead Counsel achieved this Settlement for the Class "in the face of formidable legal opposition further evidences the quality of their work." *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003).

The quality of the representation provided in this case to Lead Plaintiffs and the Class, as measured by the results achieved Plaintiffs' Counsel's skill and experience, and the quality of the opposition, all strongly support the reasonableness of the fee request.

C. The Complexity and Duration of the Litigation Support the Fee Request

The Third Circuit has noted in general that a case is complex when it involves "complex, and/or novel legal issues, extensive discovery, acrimonious litigation, and tens of thousands of hours spent on the case by class counsel." *PRIDES*, 243 F.3d 722. All of those factors exist here. As the Court is well aware, this Action has been vigorously litigated for the past five years and, given its complexity, the trial and post-trial proceedings would continue to be both lengthy and expensive.

As discussed in detail in the Joint Declaration, the Action alleged violations of both the Securities and Exchange Act of 1934 ("Exchange Act") and the Securities Act of 1933 ("Securities Act"), raising a panoply of issues against more than two dozen defendants. Joint Decl. ¶¶ 15-19. At every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. *Id*. ¶¶ 84-119. The litigation was hotly contested from motions to dismiss through summary judgment, and included exhaustive discovery and trial

preparation. *Id*. ¶¶ 27-104. Settlement negotiations required three mediators, spanned two years and were incredibly complicated. *Id*. ¶¶ 11, 121-25.

For example, although Co-Lead Counsel believe that the Lead Plaintiffs have a strong case for liability, the claims against the Defendants sued under the Exchange Act (the "Exchange Act Defendants") presented unique challenges given the highly technical nature of the alleged fraud. To prove their case, Lead Plaintiffs intended to show that Schering biostatisticians conducted improper statistical analyses on unblinded data from the ENHANCE study, and were then able to conclude, based on their knowledge of statistical methods, that the ENHANCE study had failed. These alleged violations of complex practices related to the conduct of clinical trials might not be easily understood by a jury and were vigorously disputed by Defendants who offered a plausible alternative explanation supported by experts and numerous exhibits that Defendants were focused on improving data quality and not improperly learning the ENHANCE results. There was a very real risk that a jury would conclude that the Exchange Act Defendants did not act with the requisite scienter. *See AT&T*, 455 F.3d at 170 (re-emphasizing that "the difficulty of proving actual knowledge under §10(b) of the Securities Exchange Act . . . weighed in favor of approval of the fee request."). Furthermore, the statistical analyses at the heart of this case were conducted by employees of Schering who were several steps removed from the senior officers of

the Company. Co-Lead Counsel had to rely on circumstantial evidence to show that the Exchange Act Defendants were aware that the ENHANCE study had failed, which might not have been credited by the jury. *See* Joint Decl. ¶¶ 109-11.

Co-Lead Counsel also wrestled with significant risks in establishing the Securities Act claims. Even if Lead Plaintiffs could prove the underlying misconduct with the ENHANCE trial, the Defendants sued under the Securities Act (the "Securities Act Defendants") would have argued that there were no misstatements in the Offering Materials. Moreover, even if statements identified in the Complaint were found to be misstated, the Securities Act Defendants intended to assert a due diligence defense. Specifically, the Underwriter Defendants would have presented credible evidence showing that they conducted an investigation into the prospects of Schering's cholesterol franchise, which included discussions specifically related to the ENHANCE study. *Id*. ¶ 113. These Defendants also would have continued to maintain that Lead Plaintiffs did not have standing to bring Section 11 claims on behalf of common stock and Preferred Stock purchasers, nor standing to bring Section 12(a)(2) claims on behalf of common stock and Preferred Stock purchasers. *Id.* ¶¶ 48, 53, 85.

Moreover, given the complex nature of this Action, Lead Plaintiffs intended to rely heavily on expert witnesses to present critical scientific expert testimony. Defendants sought to eviscerate Lead plaintiffs' case through the filing of *Daubert*

motions challenging all five of Lead Plaintiffs' designated testifying experts. Had Defendants prevailed in excluding any of this testimony, the presentation of many aspects of Lead Plaintiffs' case would have been extremely difficult. Moreover, presenting this complex technical evidence persuasively to a jury presented its own significant challenges, in addition to the risks created by the "battle of the experts" that would have ensued. *See* Joint Decl. ¶¶ 116-17.

Additionally, there were significant obstacles to establishing damages. The Schering-Related Defendants maintained that the alleged fraud was fully cured as of January 14, 2008, when the top-line results of the ENHANCE study were publicly disclosed. If the Defendants were able to convince the jury that no new material information relating to the alleged fraud was publicly disclosed after January 14, 2008, the jury could very well have ended the Class Period on that date, eliminating multiple stock drops in the case, including the single largest price drop, thereby significantly reducing the damages that could be awarded against the Defendants. *See* Joint Decl. ¶¶ 114, 159.

Accordingly, the highly complex nature of the Action and duration of the litigation conducted strongly support the requested attorneys' fees.

D. The Risk of Non-Payment Supports the Fee Request

Plaintiffs' Counsel undertook this Action on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or potentially little

recovery and leave them uncompensated for their significant investment of time, as well as for their very substantial expenses. This Court and others have consistently recognized that this risk is an important factor favoring an award of attorneys' fees. *See, e.g., Schering-Plough*, 2012 WL 1964451, at *7 ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval."); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, No. 08-CV-285, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (Cavanaugh, J.) (finding "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees" where counsel accepted the action on a contingent-fee basis); *Sealed Air*, 2009 WL 4730185, at *8 (same); *In re Suprema Specialties, Inc. Sec. Litig.*, No. 02-168 (WHW), 2008 WL 906254, at *11 (D.N.J. Mar. 31, 2008) (same).

From the outset of this Action, Co-Lead Counsel understood that they were embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable costs that a case such as this requires. With an average lag time of several years for cases of this type to conclude, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Indeed, Plaintiffs' Counsel

received no compensation during the course of this nearly five year Action and advanced or incurred $3,620,049.63 in expenses in prosecuting this Action for the benefit of the Class. *Id*. ¶ 162.

The risk of nonpayment here was much greater than the risk confronting class counsel in either the *Merck ERISA* action or the *Schering-Plough ERISA* action, cited above. In the *Merck ERISA* action, although class counsel expended about the same amount in costs (approximately $5 million) incurred by Plaintiffs' Counsel here, they had only 8,199 total hours as compared to 126,177.49 total in this case. 2010 WL 547613, at *11. Even more significantly, Plaintiffs' Counsel in this Action took the case to the brink of trial, preparing dozens of pretrial motions and extensive Pretrial Order materials, whereas class counsel in *Merck ERISA* resolved their case well ahead of trial. In that case, this Court awarded 33-1/3% of the settlement fund in attorneys' fees, noting, in particular, class counsel's risk of non-payment. *Id*. Similarly, in the related *Schering-Plough ERISA* case, this Court approved a 33.3% fee where class counsel litigated the case for four years but devoted fewer hours (only 4,640 hours) and resolved their case well ahead of trial. *Schering-Plough*, 2012 WL 1964451, at *7.

The risk of no recovery in complex cases of this type is real, and is heightened when plaintiffs' counsel press to achieve the very best result for those they represent. Indeed, even if Lead Plaintiffs had prevailed at trial on both

liability and damages, no judgment would have been secure until after the rulings on the inevitable post-judgment motions and appeals became final – a process that would likely take years. Co-Lead Counsel know from experience that despite the most vigorous and skillful efforts, a firm's success in contingent litigation, such as this, is never assured, and there are many class actions in which plaintiffs' counsel expended tens of thousands of hours and received ***nothing*** for their efforts.[10] Indeed, even judgments initially affirmed on appeal by an appellate panel are no assurance of a recovery. *See*, *e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after 11 years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision and plaintiffs recovered nothing).

Similarly, even the most promising cases can be eviscerated by a sudden change in the law after years of litigation. *See*, *e.g.*, *In re Alstom S.A. Sec. Litig.*, 741 F. Supp. 2d. 469 (S.D.N.Y. 2010) (after completion of extensive foreign

[10] For illustrative examples, *see*, *e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversal of jury verdict of $81 million against accounting firm after a 19-day trial); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (directed verdict for defendants after five years of litigation;); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict following two decades of litigation); *In re Apple Computer Sec. Litig.*, No. C-84-20148, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *In re JDS Uniphase Corp. Sec. Litig.*, No. CO2-1486 CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict after four weeks of trial).

discovery, 95% of plaintiffs' damages were eliminated by the Supreme Court's reversal of 40 years of unbroken circuit court precedents in *Morrison v. Nat'l Bank of Austl.*, 130 S. Ct. 2869 (2010)).

As discussed herein and in the Joint Declaration, the risk of no recovery was real from the beginning of this case and persisted up to the Settlement, as both proceeding to trial and dealing with the inevitable appeals presented considerable risk. Joint Decl. ¶¶ 108-119, 161, 163. Further, the very considerable investment of time and money made by Plaintiffs' Counsel, consonant with their fiduciary duty to effectively prosecute the Action on behalf of the Class, heightened the risk. Joint Decl. ¶ 162. Accordingly, the contingency risk in this case strongly supports the requested attorneys' fee.

E. The Amount of Time Devoted to the Case by Counsel Supports the Fee Request

As discussed above and detailed in the Joint Declaration and the individual declarations submitted by Plaintiffs' Counsel who contributed to the prosecution of the Action, Exhs. 7A – 7E, Plaintiffs' Counsel have collectively devoted more than 126,177.49 hours to the prosecution and resolution of the Action.

Since the initiation of the Action, Plaintiffs' Counsel have vigorously pursued the claims, reaching the Settlement just weeks before trial and after five years of litigation that included: conducting an extensive and coordinated investigation into the Class's claims; researching and preparing a detailed amended

complaint that could survive an onslaught of motions to dismiss; successfully opposing Defendants' multiple motions to dismiss and a motion for reconsideration; successfully moving for class certification and opposing Defendants' efforts to appeal the Court's class certification order to the Third Circuit; working extensively with financial and scientific experts and consultants to, among other things, produce ten opening and rebuttal expert reports; obtaining, organizing and reviewing more than 12 million pages of documents; taking or defending 90 depositions; successfully opposing Defendants' multiple motions for summary judgment; preparing for trial scheduled to begin on March 4, 2013, including conducting two multi-day mock trials; and engaging in a hard-fought and protracted settlement process with experienced defense counsel. *See* Joint Decl. ¶ 148.

As noted above, Plaintiffs' Counsel have expended more than 126,177.49 hours through May 31, 2013 investigating, prosecuting and resolving this Action, resulting in a combined "lodestar" amount of $59,450,367.00 at Plaintiffs' Counsel's regular and current billing rates.[11] *See* Exh. 7 (Summary Lodestar and Expense Table); Exhs. 7A – 7E. Co-Lead Counsel's efforts for the benefit of the Class will continue, if the Court approves the Settlement. Co-Lead Counsel will

[11] Current hourly rates were used, as permitted by the United States Supreme Court and the other courts, to help compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 517 n.10 (W.D. Pa. 2003); *Ikon*, 194 F.R.D. at 195.

continue to work through the settlement administration process, assisting Class Members, and the distribution process, without seeking any additional compensation.

Co-Lead Counsel respectfully submit that this *Gunter* factor weighs strongly in favor of the requested attorneys' fee.

F. Awards in Similar Cases Support the Fee Request

The *Gunter* analysis asks the Court to consider "awards in similar cases." *Gunter,* 223 F.3d at 195 n. 1; *Genta*, 2008 WL 2229843, at *10 (approving fee request and noting that "attorneys' fees requested in this action do not depart from those requested in other similar class actions"). As discussed in detail in Part III above, the requested 16.92% fee is lower than the fee awards that courts in the Third Circuit and around the country have regularly approved in comparable cases[12] and the lodestar multiplier resulting from the requested fee is within the range of multipliers that have commonly been awarded. Accordingly, the awards made in similar cases also strongly support the request attorneys' fee.

G. The Limited Impact of Governmental Investigations Supports the Requested Fee

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing, because this can indicate whether or not

[12] *But see* footnote 5, above.

counsel should be given full credit for obtaining the value of the settlement fund for the class.

Here, although the events underlying the litigation were also investigated by multiple state and federal agencies, and Co-Lead Counsel had access to certain evidence developed in those investigations, there were no criminal or SEC claims brought against Schering or any of its officers, no convictions, no guilty pleas, no admissions, no restatement filed, no Congressional findings of wrongdoing and no negative FDA findings that assisted Co-Lead Counsel. Joint Decl. ¶ 120. Indeed, the only other monetary recovery achieved was a $5.4 million settlement by a coalition of 36 state attorneys general. Accordingly, the outcome of these investigations created additional challenges to proving the alleged claims, as a jury could have been persuaded that the lack of charges or convictions and other significant recoveries etc. meant no fraud was perpetrated.

Thus, the value of the Settlement achieved is directly attributable to the efforts undertaken by Co-Lead Counsel in this Action. This fact supports the reasonableness of the requested fee award.

H. The Requested Fee Is Significantly Lower than Contingent Fee Arrangements Negotiated in Non-Class Litigation

As noted above, the Third Circuit has also suggested that the requested fee be compared to "the percentage fee that would have been negotiated had the case been subject to a private [non-class] contingent fee agreement." *AT&T*, 455 F.3d

at 165. The requested fee is also much lower than what would have been negotiated in the private marketplace.

If this action were a non-representative litigation, the customary fee arrangement likely would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery—a significantly higher percentage than the 16.92% requested in this Action. *See Blum*, 465 U.S. at 904 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery."); *Hall*, 2010 WL 4053547, at *21 ("Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class commercial litigation." (citation and internal quotations omitted)).

The requested fee award of 16.92% is thus reasonable when compared with such privately agreed upon contingent fee arrangements.

I. The Fact that the Requested Fee Was Negotiated with Lead Plaintiffs Is Entitled to Great Weight

Lead Plaintiffs are sophisticated institutional investors that manage millions of dollars for their beneficiaries or investors and collectively, have a substantial financial stake in this litigation. The amount of the requested fee was the subject of informed negotiation between Co-Lead Counsel and their respective clients, Lead Plaintiffs ATRS, MPERS, LAMPERS and MassPRIM. Joint Decl. ¶ 140. Lead Plaintiffs – each of which was substantially involved in the prosecution of the

Action and negotiation of the Settlement – have evaluated the Fee and Expense Application and believe that it is fair and reasonable and warrants approval by the Court. In reaching this conclusion, Lead Plaintiffs considered factors such as the size of the recovery obtained in light of the considerable challenges in the litigation and the work of Co-Lead Counsel. *See* Declarations of Gilson, Neville, Roche and Gendron, Exhs. 2, 3, 4, 5A.

Approval of Co-Lead Counsel's fee request by Lead Plaintiffs, which have been appointed under the PSLRA to represent the interests of the Class, strongly supports approval of the requested fee. *See Lucent*, 327 F. Supp. 2d at 442 ("Significantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fees and expenses request."); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-cv-1825, 2010 WL 2653354, at *4 (E.D.N.Y. June 24, 2010) ("The fact that this fee request is the product of arm's-length negotiation between Lead Counsel and the lead plaintiff is significant.").

V. CO-LEAD COUNSEL SHOULD BE REIMBURSED FOR LITIGATION EXPENSES REASONABLY INCURRED IN CONNECTION WITH THIS ACTION

Co-Lead Counsel's fee application includes a request for reimbursement in the amount of $3,620,049.63 for litigation expenses reasonably incurred in and necessary to the prosecution of the Action. Joint Decl. ¶¶ 170-78; Exhs. 7A – 7E.

Plaintiffs' Counsel have submitted declarations attesting to the accuracy of their expenses and it is well-established that such expenses are properly recovered by counsel. *See In re Safety Components, Inc. Sec. Litig*., 166 F. Supp. 2d 72, 108 (D.N.J. 2001) ("[c]ounsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action" (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *Hall*, 2010 WL 4053547, at *23 ("Courts have generally approved expenses arising from photocopying, use of the telephone and fax, postage, witness fees, and hiring of consultants.").

Plaintiffs' Counsel's declarations itemize the various categories of expenses incurred. *See* Exhs. 7A – 7E, 8. Co-Lead Counsel maintained strict control over these expenses. Indeed, many of them were paid out of two litigation funds created by Co-Lead Counsel and maintained by BLB&G or G&E, co-lead counsel in *Merck*. *See* Exhs. 9 and 10. Co-Lead Counsel collectively contributed $2,389,500.00 to the Schering Litigation Fund and the Schering Litigation Fund contributed $515,000.00 to the Joint Litigation Fund.[13] It is respectfully submitted that these expenses were reasonable and necessary to prosecuting the claims and achieving the Settlements. Co-Lead Counsel further submit that these expenses are the type of expenses that are "routinely billed by attorneys to paying

[13] A description of the payments from the Litigation Funds by category is set forth in the Exhibits 9 and 10.

clients in similar cases" and should therefore be reimbursed from the Settlement Fund. *Schering-Plough*, 2012 WL 1964451, at * 8.

One of the most significant expenses was the cost of experts, which totaled $2,225,217.91 or 61% of Plaintiffs' Counsel's expenses. As noted in the Joint Declaration, ¶ 172, Co-Lead Counsel retained damages and loss causation experts to assist in the prosecution of the Action as well as to assist in developing a fair and reasonable plan for allocating the net settlement proceeds to eligible Class Members. Co-Lead Counsel also retained multiple statistical experts, two medical experts, a due diligence expert, and a trial consulting firm. Co-Lead Counsel received crucial advice and assistance from these experts throughout the course of the Action. Their expertise enabled Co-Lead Counsel to fully frame the issues, gather relevant evidence, make a realistic assessment of provable damages, and structure a resolution of claims.

Another large component of the expenses, $624,873.25 for approximately 17% of the total expense amount, related to the document production and copying. Co-Lead Counsel had to retain the services of vendors to, among other things: (i) maintain the electronic database through which the millions of pages of documents produced were reviewed; (ii) have documents processed so that they would be in searchable format; and (iii) convert and upload hard copy documents so that they would be electronically searchable. *See* Joint Decl. ¶ 173. Another significant

expense was mediation fees assessed by the various mediators in this matter. This expense totaled $146,305.58. *Id*. ¶ 174.

The Settlement Notice advised potential Class Members that Co-Lead Counsel would seek reimbursement of expenses of up to $5.25 million. Exh. 6-A. The expenses sought here are well below this "cap" and should be awarded.

VI. LEAD PLAINTIFFS ARE ENTITLED TO REIMBURSEMENT OF REASONABLE COSTS AND EXPENSES, INCLUDING LOST WAGES, PURSUANT TO THE PSLRA

In connection with their request for reimbursement of litigation expenses, Lead Plaintiffs also seek $102,447.26 in PSLRA awards to reimburse costs and expenses incurred by them directly relating to their representation of the Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 77z-1(a)(4).

Congress specifically acknowledged the importance of awarding appropriate reimbursement to class representatives. *See* H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. 35 (1995) ("The Conference Committee recognizes that lead plaintiffs should be reimbursed for reasonable costs and expenses associated with service as lead plaintiff, including lost wages, and grants the courts discretion to award fees accordingly.") *See also In re Am. Int'l Grp. Inc. Sec. Litig.,* No. 04 Civ.

8141, 2012 WL 345509, at *6 (S.D.N.Y. Feb. 2, 2012) ("Courts . . . routinely award . . . 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." (citation and internal quotations omitted)).

Here, Lead Plaintiffs, ATRS, MPERS, LAMPERS and MassPRIM, seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Class in the amounts of $8,020.00, $39,080.00, $19,575.00, and $35,772.26, respectively. The amount of time and effort devoted to this Action by the Lead Plaintiffs is detailed in the accompanying declarations of their respective representatives, annexed as Exhs. 2, 3, 4, 5B to the Joint Declaration.

Numerous cases have approved reasonable payments to compensate class representatives for the time and effort devoted by them. *See, e.g.*, *In re Satyam Computer Servs. Ltd. Sec. Litig.*, No. 09-MD-2027-BSJ, slip op. at 3-4 (S.D.N.Y. Sept. 13, 2011) (awarding a combined $193,111 to four institutional lead plaintiffs) (Exh. 11); *In re Marsh & McLennan Co. Inc. Sec. Litig.*, No. 04-cv-08144, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding a combined $214,657 to two institutional lead plaintiffs); *In re General Motors Corp. Sec. & Deriv. Litig.*,

No. 06-md-1749, slip op. at 3 (E.D. Mich. Jan. 6, 2009) (awarding $184,205 to two institutional representatives and $1,000 to each named plaintiff) (Exh. 11).

Indeed, given that the central objective of the PSLRA was to "protect[] investors who join class actions against lawyer-driven lawsuits by . . . increas[ing] the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel,'" (*In re Cavanaugh*, 306 F.3d 726, 737 (9th Cir. 2002)), it would be unreasonable to penalize institutional class plaintiffs, like Lead Plaintiffs here, for devoting time to the litigation by denying them reimbursement. *See also In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (recognizing the important public policy role of lead plaintiffs).

Here, Lead Plaintiffs have collectively devoted more than 700 hours to the Action, which included time spent, *inter alia*: (i) reviewing pleadings and case materials; (ii) corresponding with Co-Lead Counsel about the status and strategy of the case; (iii) responding to document requests and producing more than 15,000 pages of documents; (iv) preparing for depositions and being deposed; and (v) preparing for, attending and participating in, multiple in-person mediation sessions and other settlement negotiations. Exhs. 2, 3, 4, 5B. Co-Lead Counsel and Lead Plaintiffs therefore respectfully submit that the $102,447.26 sought, based on Lead

Plaintiffs' extensive involvement in the Action from inception to settlement, is eminently reasonable and should be granted.

CONCLUSION

For the foregoing reasons, Co-Lead Counsel respectfully request that this Court award attorneys' fees of 16.92% of the Settlement Fund, reimbursement of litigation expenses in the amount of $3,620,049.63, and reimbursement of Lead Plaintiffs' expenses in the amount of $102,447.26. A proposed order will be submitted with Co-Lead Counsel's reply papers after the deadline for objections has passed.

Dated: July 2, 2013

Respectfully submitted,

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