

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

PLYMOUTH COUNTY RETIREMENT )	Civil No. 1:17-CV-01940-RC
ASSOCIATION, Individually and on Behalf of )	
All Others Similarly Situated, )	<u>CLASS ACTION</u>
)	
Plaintiff, )	
)	
vs. )	
)	
ADVISORY BOARD COMPANY, ROBERT )	
W. MUSSLEWHITE, and MICHAEL T. )	
KIRSHBAUM, )	
)	
Defendants. )	
)	
_____ )	

LEAD COUNSEL’S MOTION FOR AN AWARD OF ATTORNEYS’ FEES AND PAYMENT  
OF LITIGATION EXPENSES, AND INCORPORATED MEMORANDUM OF LAW

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## PRELIMINARY STATEMENT

Court-appointed Lead Counsel Robbins Geller Rudman & Dowd LLP,<sup>1</sup> respectfully submits this motion, pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure, for an award of attorneys' fees in the amount of 25% of the Settlement Amount and payment of litigation expenses incurred during the course of the Litigation. Lead Counsel also seeks reimbursement of Lead Plaintiffs' expenses directly related to their representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4(a)(4).

As detailed in the Stipulation, Advisory Board Company ("Advisory Board" or the "Company" and, together with Robert W. Musslewhite and Michael T. Kirshbaum, the "Defendants"), caused its insurers to pay \$7.5 million in order to secure a settlement of the claims alleged in this proposed class action (the "Settlement"). This recovery is a very favorable result for the Class when evaluated in light of all the relevant circumstances – most notably, the complicated nature of the Litigation and the risks of continuing to pursue the claims through class certification, summary judgment and trial.

Lead Counsel has not received any compensation for its successful prosecution of this case, which required more than 1,850 hours of billable time. Lead Counsel respectfully requests that it be awarded an attorneys' fee of 25% of the Settlement Amount, plus accrued interest, and that it

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation of Settlement, dated as of December 6, 2019 (the "Stipulation," ECF No. 37).

Submitted herewith is the Declaration of David A. Rosenfeld in Support of: (1) Lead Plaintiffs' Motion for Final Approval of Settlement and Approval of the Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Rosenfeld Declaration" or "Rosenfeld Decl.>").

The Rosenfeld Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Rosenfeld Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Litigation, the risks faced by the Lead Plaintiffs in pursuing litigation, the negotiations that led to a settlement, and a description of the services provided by Lead Counsel.

recover \$29,800.75 for reasonably incurred litigation expenses, charges and costs plus any accrued interest. Lead Counsel also respectfully requests reimbursement for Lead Plaintiffs for the time they dedicated to this Action, consistent with the PSLRA, in the aggregate amount of \$2,737.00.

The requested fee amount has been approved by Lead Plaintiffs City of Atlanta Police Officers' Pension Fund and City of Atlanta Firefighters' Pension Fund, both sophisticated institutional investors. *See* Declaration of Derek Brent Hullender in Support of Lead Plaintiffs' Motion for Final Approval of the Settlement and Plan of Allocation and for Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4); Declaration of Richard Light in Support of Lead Plaintiffs' Motion for Final Approval of the Settlement and Plan of Allocation and for Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (together, the "Lead Plaintiffs' Declarations"). In addition, as discussed below, the requested fee is supported by each of the factors applied by district courts within the D.C. Circuit in assessing the reasonableness of a requested fee from a common fund. Importantly, the requested fee represents a modest multiplier of approximately 1.57 on Lead Counsel's total lodestar. In addition, the expenses, charges and costs incurred by Lead Counsel in connection with the prosecution of the Litigation were both reasonable and necessary.

For the reasons set forth herein and in the Rosenfeld Declaration, Lead Counsel respectfully submits that the attorneys' fees and expenses, charges and costs requested are fair and reasonable under the applicable legal standards and therefore should be awarded by the Court.

## ARGUMENT

### I. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES OF 25% OF THE COMMON FUND SHOULD BE APPROVED

#### A. Lead Counsel Is Entitled to an Award of Attorneys' Fees from the Common Fund

It is well-settled that attorneys who represent a class and achieve a common fund benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has recognized that “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); *see also In re Baan Co. Sec. Litig.*, 288 F. Supp. 2d 14, 16 (D.D.C. 2003) (quoting *Boeing*, 444 U.S. at 478). Indeed, the common fund doctrine allows an “attorney whose efforts created, increased or preserved a fund ‘to recover from the fund the costs of his litigation, including attorneys’ fees.’” *Baan*, 288 F. Supp. 2d at 16 (quoting *Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)).

#### B. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based “on a percentage of the fund bestowed on the class.” *Id.* at 900 n.16. The percentage-of-recovery method has become the preferred method in federal courts nationwide, including the D.C. Circuit. *See Howard v. Liquidity Servs.*, No. 14-1183 (BAH), 2018 U.S. Dist. LEXIS 172321, at \*24 (D.D.C. Oct. 5, 2018); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1265, 1271-72 (D.C. Cir. 1993) (“a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases”); *see also In re Fannie Mae Sec., Derivative & ERISA Litig.*, 4 F. Supp. 3d 94, 110 (D.D.C. 2013) (“our Circuit has joined other circuits in concluding that ‘a percentage-of-the-fund method is the appropriate’”



method for awarding attorneys' fees in common fund cases) (quoting *Swedish Hosp.*, 1 F.3d at 1271).

Compensating counsel in common fund cases on a percentage basis closely aligns the interests of the lawyers in being paid a fair fee with the interests of the class in achieving the maximum possible recovery in the shortest amount of time. *See In re Lorazepam & Clorazepate Antitrust Litig.*, No. 99-0790 (TFH), 2003 U.S. Dist. LEXIS 12344, at \*25 (D.D.C. June 16, 2003) (the benefit of applying a percentage of the fund is that it “directly aligns the interests of the Class and its counsel . . . for the efficient prosecution and early resolution of litigation, which clearly benefits both litigants and the judicial system”).<sup>2</sup> This is particularly appropriate in cases under the PSLRA, where Congress expressly recognized the propriety of the percentage method of fee awards. *See* 15 U.S.C. §78u-4(a)(6) (“Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.”).

Thus, Lead Counsel’s request for a percentage of the common fund is appropriate and preferred as a means of compensating counsel for the results obtained on behalf of a class of investors.

**C. Analysis Under the Percentage Method and the Factors Followed by District Courts Within the D.C. Circuit Support a Fee Award of 25%**

Lead Counsel’s request for a fee award of 25% of the Settlement Fund is eminently reasonable, as it readily satisfies the factors that are often used by courts within the D.C. Circuit to evaluate the reasonableness of a requested fee: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys

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<sup>2</sup> Citations are omitted and emphasis is added throughout unless otherwise noted.

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. *See Howard*, 2018 U.S. Dist. LEXIS 172321, at \*25. As set forth below, all of the above factors militate in favor of approving the requested fee.

**1. The Size of the Fund and the Number of Persons Benefitted**

Lead Counsel has achieved, for the benefit of the Class, a substantial recovery of \$7.5 million. The Settlement recovers approximately 11% of the total potentially recoverable damages, assuming that liability was established (Rosenfeld Decl., ¶5), which compares positively with other PSLRA settlements. *See* Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements: 2019 Review and Analysis* at 7 (Cornerstone Research 2020) (median recovery of 524 settlements reviewed between 2010 and 2019 was 4.6%); *Howard*, 2018 U.S. Dist. LEXIS 172321, at \*18, \*26 (approving 25% fee in settlement recovering between 4% and 14% estimated damages); *Fannie Mae*, 4 F. Supp. 3d at 103-04 (noting that a settlement that represents 4%-8% of the potential recovery compares favorably with other cases approving securities class action settlements).

Furthermore, the Settlement is all cash, with no reversion, which means that the Members of the Class will receive compensation that was otherwise far from certain when the case began. Given that more than 23,500 Settlement Notices have been mailed to potential Class Members, it is likely that hundreds, if not thousands of investors will benefit from the Settlement. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication and Requests for Exclusion Received to Date ("Murray Decl."), ¶11, submitted herewith; *see also Baan*, 288 F. Supp. 2d at 17 ("since over 17,500 notices were mailed to potential members of the Class, it is likely that the settlement fund will inure to the benefit of a sizeable number of . . . investors that sustained damages"). The result achieved here is significant and supports the requested fee.

**2. The Absence of Objections to Date Supports Approval of the Fee and Expense Request**

The Notice, which was sent to more than 23,500 potential Class Members and their nominees and disseminated over the internet, *see generally* Murray Decl., provided a summary of the terms of the Settlement and specifically apprised Class Members that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and litigation expenses of up to \$60,000, plus awards to Lead Plaintiffs pursuant to the PSLRA. *See* Murray Decl., Ex. A. The Notice also advised Class Members that they could object to the Fee and Expense Application and explained the procedure for doing so. *See id.* While the deadline set by the Court for Class Members to object has not yet passed, to date, no objections have been received.<sup>3</sup> Rosenfeld Decl., ¶11.

**3. The Skill and Efficiency of the Attorneys Involved Support Approval of the Fee Request**

Considerable litigation skills were required in order for Lead Counsel to achieve the Settlement in this Litigation. As noted in the Rosenfeld Declaration, this is a complex case involving difficult factual and legal issues, and the claims have been subjected to an extremely rigorous defense. Given the many contested issues, it took highly skilled counsel to represent the Class and bring about the recovery that has been obtained. Lead Counsel have not only used their knowledge, skill, and experiences from prior cases, but they were also compelled to develop case-specific expertise on the subject matters presented here – the operation of the Company and issues concerning the integration of an acquisition, among many other things – to overcome the obstacles presented by Defendants. The favorable Settlement is attributable in substantial part to the diligence, determination, and hard work of Lead Counsel.

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<sup>3</sup> The deadline for submitting objections is April 15, 2020. As provided in the Preliminary Approval Order, Lead Counsel will file reply papers no later than April 29, 2020, addressing any objections that may be received.

As demonstrated by its firm resume (*see* Fee Decl., Ex. E), Robbins Geller is among the nation's leading securities class action firms. Lead Counsel submits that the skill of its attorneys and support staff, the quality of their efforts in the Litigation, their substantial experience in securities class actions, and their commitment to the Litigation were key to reaching the Settlement. *See Fannie Mae*, 4 F. Supp. 3d at 112 (“the skill and performance of the attorneys also justifies approval of a substantial fee in this case” where “[p]laintiffs’ counsel included firms and attorneys with a great deal of experience in complex class action and securities litigation”).

Courts have also recognized that the quality of opposing counsel is important in evaluating the quality of plaintiffs’ counsel’s work. *See id.* (noting that the “best testament” to counsel’s effectiveness was “battling opposing counsel at the very top of the defense bar”). Here, Defendants are represented by highly skilled and capable counsel from Skadden, Arps, Slate, Meagher & Flom LLP, a law firm with a national reputation for vigorous advocacy in the defense of complex class actions such as this.

#### **4. The Complexity and Duration of the Litigation Support Approval of the Fee Request**

The complexity and duration of the action is another factor this Court should consider, and one that further supports the requested fee. *See id.* at 111 (noting that complexity and duration of the litigation were among the most significant factors in approving attorneys’ fee request); *Howard*, 2018 U.S. Dist. LEXIS 172321, at \*26-\*27. Indeed, securities litigation is regularly acknowledged to be particularly complex and expensive litigation, usually requiring expert testimony on multiple issues, including loss causation and damages. *See, e.g., Fogarazzo v. Lehman Bros.*, No. 03 Civ. 5194 (SAS), 2011 U.S. Dist. LEXIS 17747, at \*10 (S.D.N.Y. Feb. 23, 2011) (“securities actions are highly complex”); *In re Genta Sec. Litig.*, No. 04-2123 (JAG), 2008 U.S. Dist. LEXIS 41658, at \*10 (D.N.J. May 28, 2008) (“This [securities fraud] action involves complex legal and factual issues, and pursuing them would be costly and expensive.”).

As the Court is well aware, this Litigation has been vigorously litigated for more than two years and discovery (both fact and expert), summary judgment, trial, and post-trial proceedings would have continued to be both time- and resource-consuming for the Settling Parties and the Court. As discussed in detail in the Rosenfeld Declaration, the Litigation alleged violations of the Securities Exchange Act of 1934, raising a panoply of issues. *See* Rosenfeld Decl., ¶¶15-17. The Litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. The Litigation was hotly contested from the outset and it required creative and substantial discovery efforts.

Lead Plaintiffs faced substantial risks in ultimately proving that Defendants' statements and omissions were false and misleading at the time that they were made, and made with the requisite scienter. Among other things, to support their case, Defendants would likely put forth evidence in an attempt to refute Lead Plaintiffs' claims, arguing that their revenue guidance for 2015 was not false or misleading because Advisory Board purportedly met its guidance for 2015. Defendants would also likely put forth evidence in an attempt to demonstrate that Defendants did not know, on May 5, 2015, that the departures of Royall & Company's ("Royall") CEO and CFO would cause Royall to underperform guidance, and that Lead Plaintiffs would be unable to prove that the individual defendants had a motive to commit fraud. Rosenfeld Decl., ¶29. As scienter is generally the most difficult element of a securities fraud claim for a plaintiff to prove, Defendants would likely present facts suggesting that it had not been established.

Defendants would also argue that Lead Plaintiffs would be unable to prove loss causation and, as a result, damages. Defendants would argue that, without evidence that any alleged misstatements were the source of artificial stock price inflation, the Lead Plaintiffs could not prove that "correction" of those alleged misstatements caused the stock price decline. The Settling Parties also disagreed with each other's damages assumptions and methodologies. Loss causation and

damages issues would be vigorously contested at summary judgment and trial, and would no doubt involve a battle of the experts.

Ultimately, had this Litigation continued, Lead Plaintiffs, through Lead Counsel, would have faced the considerable risk of years of litigation with no guarantee of any recovery, much less a greater recovery than the one secured through this Settlement. They would have been required to complete document and extensive deposition discovery, and substantial expert discovery (including preparation of expert reports and expert depositions). After the close of discovery, Defendants would undoubtedly have moved for summary judgment and would have vigorously challenged Lead Plaintiffs' experts' testimony. Substantial time and expense would need to be expended in preparing the case for trial, filing and responding to *in limine* motions, and the trial itself would be lengthy and uncertain. Accordingly, Lead Counsel submits that an analysis of the complexities faced by the Class, the duration of the case thus far, and the continued duration of the Litigation, strongly support the requested fee.

#### **5. The Risk of Non-Payment Supports the Fee Request**

Lead Counsel undertook this Litigation on an entirely contingent fee basis, assuming a substantial risk that the Litigation would yield no or potentially little recovery, which would leave it uncompensated for its investment of time, as well as for its substantial expenses. Courts have recognized that the risk inherent in undertaking an action on a contingency fee basis weighs in favor of approval. *See, e.g., Fannie Mae*, 4 F. Supp. 3d at 112 (the "high risk of nonpayment" militates in favor of the fee award).

In undertaking this responsibility, counsel was duty-bound to devote sufficient resources to the prosecution of the Litigation, 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, Lead Counsel received no compensation during the course of this two year litigation and incurred \$29,800.75 in expenses, costs and charges for the benefit of the Class.

The risk of no recovery in complex cases of this type is real. 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. Lead Counsel knows from experience that despite the most vigorous and skillful efforts, a firm’s success in contingent litigation such as this, is by no means assured, and there are many class actions in which plaintiffs’ counsel have expended tens of thousands of hours and millions of dollars in expenses and received *nothing* for their efforts.<sup>4</sup> Even judgments initially affirmed on appeal by an appellate panel do not guarantee 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).

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a successful result would be realized only after considerable effort and the outlay of substantial monies. This strongly favors approval of the requested fee.

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<sup>4</sup> For illustrative examples, *see, e.g., Robbins v. Koger Props.*, 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) (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-JW, 1991 U.S. Dist. LEXIS 15608, at \*1-\*4 (N.D. Cal. Sept. 6, 1991) (\$100 million jury verdict vacated on post-trial motions); *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict after four weeks of trial).

**6. The Amount of Time Lead Counsel Devoted to the Litigation Supports the Requested Fee**

The time and effort expended by Lead Counsel in prosecuting this Litigation and achieving the Settlement establishes that the requested fee is justified. The Rosenfeld Declaration details the substantial efforts of Lead Counsel to prosecute Lead Plaintiffs' claims over more than two years of litigation. As detailed in the Rosenfeld Declaration and the Fee Declaration, the firm has devoted more than 1,850 hours to the prosecution and resolution of the Litigation.

As set forth in greater detail in the Rosenfeld Declaration, Lead Counsel:

- conducted an extensive factual investigation, which included a thorough review of publicly available information from numerous sources, such as SEC filings, public reports, and news articles concerning the Company and Defendants, and interviews of former Advisory Board employees (¶3);
- drafted and filed a detailed Amended Complaint for Violations of the Federal Securities Laws (¶¶14-18);
- successfully opposed in part Defendants' motion to dismiss (¶¶18-21);
- requested, received and reviewed written discovery from Defendants (¶¶22-23);
- requested document discovery from third parties (¶24); and
- drafted mediation statements and engaged in extensive mediation efforts with Michelle Yoshida (¶¶26-27).

As noted above, Lead Counsel expended more than 1,850 hours investigating, prosecuting, and resolving this Litigation. This investment of time resulted in a "lodestar" amount of \$1,196,665 at the hourly rates set by the firm for 2020 – an amount that results in a modest 1.57 multiplier.<sup>5</sup>

Additional work will also be required of Lead Counsel on an ongoing basis, including: preparation for, and participation in, the final approval hearing; responding to any objections;

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<sup>5</sup> Current hourly rates were used, as permitted by the United States Supreme Court and 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); *In re Ikon Office Sols.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000).



supervising the claims administration process being conducted by the Claims Administrator; and working with the Claims Administrator on the distribution of the Net Settlement Fund to Class Members who have submitted valid Proof of Claim and Release forms. However, Lead Counsel will not seek additional payment for this work.

Thus, Lead Counsel respectfully submits that the significant investment of time litigating this Litigation for the benefit of the Class weighs in favor of the requested attorneys' fee.

**7. A 25% Fee Award Is Comparable to Attorneys' Fees Awarded in Similar Cases**

“Pursuant to *Swedish Hospital*, this Court has considerable latitude on the issue of reasonableness [of attorneys' fees], but as noted by the Circuit, ‘a majority of common fund class action fee awards fall between twenty and thirty percent.’” *Baan*, 288 F. Supp. 2d at 17 (quoting *Swedish Hosp.*, 1 F.3d at 1272). Moreover, a 25% attorneys' fee would be consistent with fee awards in securities class actions and other common fund cases within the D.C. Circuit that resulted in comparable recoveries. *See, e.g., Howard*, 2018 U.S. Dist. LEXIS 172321, at \*36 (awarding fees of 25% of \$17 million settlement); *In re Sunrise Senior Living, Inc. Sec. Litig.*, No. 07-cv-00102 (RBW), slip op. at 7-8 (D.D.C. June 26, 2009) (awarding fees of 25% of \$13.5 million settlement); *In re Harman Int'l Indus., Inc. Sec. Litig.*, No. 07-cv-1757-RC, slip op. at 2 (D.D.C. Sept. 28, 2017) (awarding 25% of \$28.2 million settlement); *Baan*, 288 F. Supp. 2d at 22 (awarding 28% of \$32 million settlement); *Lorazepam*, 2003 U.S. Dist. LEXIS 12344, at \*27-\*29 (awarding 30% of \$35 million settlement); *Trombley v. Nat'l City Bank*, 826 F. Supp. 2d 179, 204 (D.D.C. 2011) (awarding 25% of \$12 million settlement).

Accordingly, it is respectfully submitted that the 25% fee requested here is very comparable to that awarded in similar cases.

**D. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Cross-Check**

Although an analysis of counsel's lodestar is not required for an award of attorneys' fees in the D.C. Circuit, a cross-check of the fee request with Lead Counsel's lodestar demonstrates its reasonableness. *See, e.g., Baan*, 288 F. Supp. 2d at 19 (reviewing plaintiffs' counsel's reported lodestar "even though not required in this Circuit under *Swedish Hospital*"); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 101 (D.D.C. 2013) ("In this circuit, such a lodestar cross-check is not required . . . although district courts are free to employ such a cross-check at their discretion to confirm the reasonableness of an award.") (internal citations omitted).

Here, Lead Counsel devoted an aggregate total of more than 1,850 hours to the prosecution and resolution of this Litigation. *See Rosenfeld Decl.*, ¶42. Lead Counsel's lodestar – which is derived by multiplying the hours spent on the Litigation by the firm's current hourly rates for attorneys, paralegals and other professional support staff – is \$1,196,665.00. *Id.* Accordingly, the requested 25% fee, if awarded, would represent a slight multiplier of 1.57 of Lead Counsel's lodestar. This modest multiplier falls well within the range of multipliers applied to counsel's lodestar in this District in other complex litigations. *See, e.g., Black Farmers*, 953 F. Supp. 2d at 102 (awarding multiplier of "less than two times the lodestar," finding it to be "unremarkable in common fund cases"); *Baan*, 288 F. Supp. 2d at 19-20 ("a multiplier of 2.0 or less falls well within a range that is fair and reasonable").

**II. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED**

"In addition to being entitled to reasonable attorneys' fees, class counsel in common fund cases are also entitled to reasonable litigation expenses from that fund." *Fannie Mae*, 4 F. Supp. 3d at 113 (quoting *Lorazepam*, 2003 U.S. Dist. LEXIS 12344, at \*33-\*35). Here, Lead Counsel has

incurred costs, charges and expenses of \$29,800.75 in prosecuting the Litigation. These expenses are outlined in counsel's declaration submitted to the Court concurrently herewith. *See* Fee Decl.

In assessing whether counsel's expenses are compensable in a common fund case, courts look to whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *See In re Vitamins Antitrust Litig.*, No. 99-197 (TFH), 2001 U.S. Dist. LEXIS 25067, at \*69 (D.D.C. July 16, 2001) ("Courts have routinely awarded expenses for which counsel would normally directly bill their clients."). Lead Counsel's declaration itemizes the various categories of expenses incurred, which are modest, reasonable and necessary to prosecuting the claims and achieving the Settlement, and should be approved.

### **III. AWARDS TO LEAD PLAINTIFFS PURSUANT TO THE PSLRA**

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Here, as detailed in their declarations, submitted herewith, Lead Plaintiffs seek \$2,737 in the aggregate. As detailed in each of their respective declarations, the Lead Plaintiffs: engaged in numerous meetings, phone conferences, and correspondence with Lead Counsel; reviewed pleadings and briefs; review detailed correspondence concerning the status of the Litigation; searched for relevant documents in response to Defendants' discovery requests; consulted with Lead Counsel regarding litigation and settlement strategy; and participated in mediation and settlement negotiations.

Courts regularly approve reasonable payments to class representatives to compensate them for the time, effort, and expenses they devoted on behalf of a class. *See, e.g., Howard*, 2018 U.S. Dist. LEXIS 172321, at \*30 (awarding \$26,974.66 to Lead Plaintiffs); *In re Winstar Commc'ns Sec.*

*Litig.*, No. 01-cv-3014 (GBD), slip op. at 2 (S.D.N.Y. Nov. 13, 2013) (awarding \$60,000 to lead plaintiffs); *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 \$193,111 to lead plaintiffs); *In re Am. Int'l Grp., Inc.*, No. 04 Civ. 8141 (DAB), 2010 U.S. Dist. LEXIS 129196, at \*19 (S.D.N.Y. Dec. 2, 2010) (awarding \$30,000 to institutional lead plaintiffs “to compensate them for the time and effort they devoted on behalf of a class”); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 U.S. Dist. LEXIS 120953, at \*61-\*63 (S.D.N.Y. Dec. 23, 2009) (awarding a combined \$214,657 to two institutional lead plaintiffs). As explained in one decision, courts “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.” *Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at \*30 (S.D.N.Y. Oct. 24, 2005).

Lead Counsel and Lead Plaintiffs respectfully submit that the amounts sought here are reasonable based on the requesting parties’ active involvement in the Litigation from inception to settlement and should be awarded.

#### **IV. CONCLUSION**

For all of the foregoing reasons, Lead Counsel respectfully request that the Court award attorneys’ fees in the amount of 25% of the Settlement Amount, or \$1,875,000, plus accrued interest at the same rate as earned by the Settlement Fund; expenses, costs and charges in the amount of \$29,800.75, plus accrued interest at the same rate as earned by the Settlement Fund; and awards to

Lead Plaintiffs in the aggregate amount of \$2,737.00. A proposed order will be submitted with Lead Counsel's reply submission on April 29, 2020, after the deadline for objections have passed.

DATED: April 1, 2020

Respectfully Submitted,

ROBBINS GELLER RUDMAN  
& DOWD LLP  
NANCY M. JUDA (DC BAR # 445487)

*/s/ Nancy M. Juda*

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Lead Counsel for Lead Plaintiffs

**CERTIFICATE OF SERVICE**

I, Nancy M. Juda, hereby certify that on April 1, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

*/s/ Nancy M. Juda*  
\_\_\_\_\_  
NANCY M. JUDA

# **Mailing Information for a Case 1:17-cv-01940-RC PLYMOUTH COUNTY RETIREMENT ASSOCIATION v. ADVISORY BOARD COMPANY et al**

## **Electronic Mail Notice List**

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## **Manual Notice List**

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- (No manual recipients)