UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

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)

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DAVID A. ROSENFELD hereby declares under penalty of perjury as follows:

1. I am an attorney duly licensed to practice law in the State of New York and am admitted to practice in this Court. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), counsel for the Court-appointed lead plaintiffs, City of Atlanta Police Officers' Pension Fund and City of Atlanta Firefighters' Pension Fund ("Lead Plaintiffs" or the "Funds"). I have been actively involved in the prosecution and resolution of the above-captioned litigation (the "Litigation"), am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my active participation in the Litigation and the supervision of, or communications with, other individuals who helped prosecute the Litigation.[1]

2. I respectfully submit this declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure, in support of: (a) Lead Plaintiffs' motion for final approval of the all-cash settlement of $7,500,000 (the "Settlement"); (b) Lead Plaintiffs' motion for approval of the proposed Plan of Allocation; and (c) Lead Counsel's application for an award of attorneys' fees and expenses, including an award to Lead Plaintiffs for their time representing the Class.

I. INTRODUCTION AND OVERVIEW

3. Lead Plaintiffs have achieved a very good settlement for the Class. The Settlement provides for the payment of $7,500,000 in cash for the benefit of the Class in exchange for a release of the Released Claims (as defined in the Stipulation) against the Defendants. As described herein, the Settlement is the product of Lead Plaintiffs' and Lead Counsel's careful analysis and vigorous litigation of the claims and defenses. Specifically, and as further detailed below, Lead Counsel conducted a comprehensive investigation of the factual basis for the initial and amended complaints, drafted the operative complaint, successfully in part defeated Defendants' motion to dismiss,

[1] Capitalized terms not otherwise defined herein have the same meanings as that ascribed to them in the Stipulation of Settlement, dated December 6, 2019 (the "Stipulation," ECF No. 37).

exchanged written discovery, and participated in a mediation session with Defendants that was overseen by Michelle Yoshida, Esq. of Phillips ADR Enterprises (the "Mediator"). With the assistance of the Mediator, the Settling Parties finalized an agreement to settle this Litigation on October 18, 2019.

4. As explained below and in the accompanying memorandum of law, this Settlement takes into consideration the significant risks specific to this Litigation. While Lead Plaintiffs and Lead Counsel believe that Lead Plaintiffs' claims have merit, there was a significant chance that one or more of Defendants' arguments in this Litigation may have ultimately proved insurmountable and the Class may have ended up with little or no recovery. If the Litigation were to proceed rather than settle at this juncture, Lead Plaintiffs would be subject to the risk that class certification would be denied or that Defendants' challenges to Lead Plaintiffs' remaining allegations would prevail at summary judgment. Even if Lead Plaintiffs were to overcome these hurdles, the eventual trial in this Litigation would last several weeks, be very complicated for jurors, be very expensive for the Class, and the Class would be subject to the risk of losing at trial. Even if Lead Plaintiffs were to prevail at trial, a jury verdict would be subject to appeal. This protracted process would have caused the Class to incur additional expenses, regardless of the outcome.

5. Lead Counsel believes that the Settlement is in the best interests of the Class, especially considering its size and the significant risks involved in the case. Rather than proceed with this Litigation for years and risk obtaining little or nothing from Defendants, the Settlement provides the Class with a substantial cash recovery now. The Settlement Amount represents an approximate recovery of 11% of reasonable recoverable damages of approximately $69.5 million (Defendants estimated reasonable recoverable damages at a significantly lower amount). This percentage far exceeds the median recovery in similar securities class actions in 2019 of 2.1%. *See*

Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* at 20, Figure 13 (NERA Feb. 12, 2020).

6. Lead Counsel seeks an award of attorneys' fees of 25% of the Settlement Amount (or $1,875,000) plus litigation expenses in the amount of $29,800.75, with interest on such fees and expenses earned at the same rate earned by the Class on the Settlement Fund. As discussed below, Lead Counsel's requested fee amounts to a modest 1.57 multiplier of Lead Counsel's "lodestar" (*i.e.*, Lead Counsel's hourly rates multiplied by the hours spent on prosecuting and settling this Litigation.

7. In addition, Lead Plaintiffs and Lead Counsel request an award to Lead Plaintiffs in the aggregate amount of $2,737. As explained in the declarations submitted herewith by Lead Plaintiffs' representatives – Richard Light, Trustee of City of Atlanta Police Officers' Pension Fund, and Derek Brent Hullender, Trustee of City of Atlanta Firefighters' Pension Fund -- expended a substantial amount of time and effort on the Litigation. Specifically, Lead Plaintiffs: (a) engaged in numerous meetings, phone conferences, and correspondence with Lead Counsel; (b) reviewed pleadings and briefs; (c) reviewed detailed correspondence concerning the status of the Litigation; (d) consulted with Lead Counsel regarding litigation strategy; (e) collected documents for production; (f) participated in a full-day mediation; and (g) were kept informed about all aspects of the mediation and settlement negotiations. Lead Plaintiffs' investment of time and effort greatly contributed to the successful resolution of the Litigation.

8. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice, dated January 6, 2020 (the "Preliminary Approval Order," ECF No. 39), the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release form (collectively, the "Claim Package") were mailed to all Class Members who could be identified with reasonable effort; the Notice was posted on the Settlement website,

www.AdvisoryBoardSecuritiesSettlement.com; and the Summary Notice was published once in the national edition of *The Wall Street Journal* and once over a national newswire service.

9. The Notice advised all recipients of, among other things: (i) the definition of the Class; (ii) their right to exclude themselves from the Class; (iii) their right to object to any aspect of the Settlement, including the Plan of Allocation and Lead Counsel's request for attorneys' fees and expenses; and (iv) the procedures and deadline for submitting a Proof of Claim and Release form in order to be eligible for a payment from the proceeds of the Settlement.

10. Lead Counsel has been advised by Gilardi & Co. LLC ("Gilardi"), whose retention as Claims Administrator was authorized by the Preliminary Approval Order, that as of March 30, 2020, a total of 23,550 copies of the Claim Package have been mailed to potential Class Members and their nominees. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), ¶¶4-11, filed herewith. The Summary Notice was published in *The Wall Street Journal* and over *Business Wire* on February 3, 2020. *Id.*, ¶12. Additionally, the Claim Package, Stipulation, and Preliminary Approval Order have been posted on the website established by Gilardi: www.AdvisoryBoardSecuritiesSettlement.com. *Id.*, ¶14.

11. The Court-ordered deadline for filing objections to the Settlement or requesting to "opt out" of the Class is April 15, 2020. Preliminary Approval Order, ¶¶15-18. To date, no objections to any aspect of the Settlement have been filed by Class Members.

II. THE NATURE AND HISTORY OF THE LITIGATION

A. The Commencement of the Action and Appointment of Lead Plaintiffs and Lead Counsel

12. This Litigation is pending before the Honorable Rudolph Contreras in the United States District Court for the District of Columbia (the "Court"). On August 3, 2017, the initial complaint in this action was filed in the United States District Court for the Southern District of New

York (the "S.D.N.Y. Action") against the following defendants: (i) The Advisory Board Company ("Advisory Board" or the "Company"); (ii) Robert W. Musslewhite, Advisory Board's Chief Executive Officer ("CEO") during the relevant time period; and (iii) Michael T. Kirshbaum, Advisory Board's Chief Financial Officer ("CFO") during the relevant time period. On September 22, 2017, a related case was filed in the United States District Court for the District of Columbia captioned *Plymouth County Retirement Association v. Advisory Board Co.*, No. 1:17-cv-01940-RC (D.D.C.) (the "D.C. Action"). ECF No. 1. On October 27, 2017, the Court appointed City of Atlanta Firefighters' Pension Fund and City of Atlanta Police Officers' Pension Fund as lead plaintiffs in the D.C. Action and approved their selection of Robbins Geller as Lead Counsel. ECF No. 9. On December 15, 2017, the S.D.N.Y. Action was dismissed and all claims on behalf of the Class were pursued in the D.C. Action.

B. The Amended Complaint and a Summary of the Allegations

13. Prior to filing the initial complaint, Robbins Geller conducted a comprehensive investigation of the facts underlying this action. Robbins Geller continued this investigation after being appointed Lead Counsel. This investigation included reviewing and analyzing publicly available information regarding Advisory Board, including U.S. Securities and Exchange Commission ("SEC") filings, other regulatory filings and reports, publicly available annual reports, press releases, published interviews, news articles and other media reports, and reports of securities analysts. Robbins Geller also interviewed former employees of Advisory Board in connection with its investigation.

14. On January 9, 2018, Lead Plaintiffs filed the Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Complaint")[2] alleging violations of §§10(b) and

[2] All "¶" references herein refer to paragraphs in the Complaint unless otherwise noted.

20(a) of the Securities Exchange Act of 1934 (15 U.S.C. §§78j(b) and 78t(a)) (the "Exchange Act"), and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5) against Defendants. ECF No. 16.

15. Advisory Board is a provider of software and solutions to the higher education and healthcare industries. The Complaint alleged that, after Advisory Board completed the acquisition of Royall & Company ("Royall")[3] on January 9, 2015 (¶2), Defendants repeatedly highlighted the success they had integrating Royall into Advisory Board. For example, during Advisory Board's May 5, 2015 earnings call, Defendants claimed that integration was "moving more quickly than we had planned," that there was "nothing surprising to us" during the quarter in terms of the Company's internal revenue and earnings expectations even though "there was a lot of change in the quarter with Royall being acquired," and affirmed revenue guidance. ¶¶3, 83. However, Defendants, who implicitly admitted to closely monitoring and evaluating the Royall integration throughout the Settlement Class Period, were aware that the integration with Royall was not proceeding efficiently and that Royall's business was being negatively impacted. Unbeknownst to investors at the time, Royall's CEO and CFO, who had stayed on after the acquisition to help smooth the integration, had already left the Company prior to the May 5, 2015 earnings call, departures that occurred much earlier than expected. Advisory Board later conceded that the early departures of Royall's CEO and CFO were, in fact, unexpected and would materially affect Royall's sales and expected revenue and earnings. The loss of Royall's top two executives during Royall's critical second-quarter sales period, both of whom were heavily involved in customer relations and sales, adversely impacted Royall's sales for the entire year to come. And Defendants knew, but failed to disclose, that Royall's CEO departed prior to the May 5, 2015 call, since his successor made his first public address to Royall's employees three weeks earlier. ¶¶5-8. As a consequence of these Royall

[3] Royall provides services to colleges and universities in connection with the various phases of student recruitment.

executive departures, Defendants had no basis to increase the revenue guidance for Royall during the Settlement Class Period. As a result of these false statements and/or omissions, Advisory Board common stock traded at artificially inflated prices.

16. On August 4, 2015, Defendants disclosed that the unexpected departure of Royall's CEO and CFO, along with Advisory Board's inability to recognize revenue on certain Royall contracts due to the shorter time that Royall could keep its books open now that it was part of a public company, led to disappointing financial results from Royall. ¶8. As a result, the price of Advisory Board stock plunged 21% the next day. *Id.* Yet Defendants continued to falsely claim during the Settlement Class Period that, "from an integration and operational standpoint, we are making good progress" concerning Royall. ¶9. In actuality, Advisory Board was not making material progress integrating Royall into Advisory Board. *Id.* Contrary to Defendants' public statements, until January 2016, there was no integration of Royall's customer relationship management software, information technology, or human resources department into Advisory Board. Nor was there any data sharing between the companies, which affected the ability of both companies' sales teams to cross-sell to each other's customers. To make matters worse, when Advisory Board did try to cross-sell to Royall's customers, Advisory Board's overly aggressive sales strategy turned off many Royall customers and led to falling customer retention rates. ¶4.

17. On February 23, 2016, Defendants finally disclosed the extent of the problems it experienced with Royall. On that date, Advisory Board announced a net loss of $101.8 million for the quarter ending December 31, 2015, compared to a net loss of $5.4 million a year earlier. ¶10. The increase in net loss was primarily attributable to an impairment charge of $95.7 million (subsequently increased to $99.1 million) to Royall's goodwill, due to Royall's "first year performance being below the expectations we had set as of the acquisition date." *Id.* A securities analyst wrote that "[t]he integration of Royall has not progressed as originally planned, and it may

take some time before we see further synergies." ¶114. On this news, Advisory Board's stock price plummeted approximately 27%. ¶10.

C. Defendants' Motion to Dismiss the Complaint

18. On March 9, 2018, Defendants moved to dismiss the Complaint. ECF No. 18. In support of their motion, Defendants asserted several arguments, any of which could have resulted in the total dismissal of the Litigation. Defendants argued, *inter alia*, that the Complaint failed to plead an actionable misstatement or omission because: (i) it did not allege facts that contradicted Advisory Board's statements regarding integration and cross-selling; (ii) Lead Plaintiffs' former-employee allegations were consistent with Defendants' class period statements; (iii) Defendants' indefinite statements about integration were not actionable; (iv) Defendants had no duty to disclose the departures of Royall's CEO and CFO and the Complaint identified no statement that was rendered materially false or misleading as a result of them; and (v) Advisory Board's statements regarding revenue guidance were not actionable. Defendants also argued that the Complaint's allegations did not support a strong inference of scienter.

19. On May 23, 2018, Lead Plaintiffs opposed Defendants' motion to dismiss. ECF No. 21. Plaintiffs set forth a detailed description of the relevant facts and asserted various arguments supporting falsity and scienter. Specifically, Lead Plaintiffs argued that: (i) Defendants' omission of the departures of Royall's CEO and CFO was actionable because Defendants created a duty to disclose that material fact; (ii) Defendants' failure to disclose material problems with Advisory Board's integration of Royall was actionable because, *inter alia*, (a) Lead Plaintiffs' allegations attributable to the former employees were well-pled; (b) Defendants' statements were contradicted by the former employees' allegations; and (c) Defendants' statements concerning the Royall integration were not puffery; and (iii) Defendants' alleged misstatements were made with scienter.

20. On June 29, 2018, Defendants filed their reply brief in further support of their motion to dismiss the Complaint. ECF No. 22. In Defendants' briefing, they supplemented their arguments regarding falsity and scienter.

D. The Court's Order on the Motion to Dismiss the Complaint

21. On March 29, 2019, the Court issued its Memorandum Opinion Granting in Part and Denying in Part Defendants' Motion to Dismiss. ECF No. 24. In partially denying Defendants' motion to dismiss, the Court held that "certain statements about Advisory Board's projected 2015 revenues were rendered misleading by Defendants' failure to tell investors that shortly before the statements were issued, key executives had left the company." *Id.* at 2. On the other hand, the Court found that other alleged misstatements in the Complaint concerning Advisory Board's integration of Royall were not false or misleading because they were inactionable "fraud by hindsight." *Id.*

E. Written Discovery

22. On April 26, 2019, Defendants filed their Answer to the Complaint. ECF No. 27. On May 31, 2019, the Settling Parties served their Rule 26(a)(1) Initial Disclosures. After meeting and conferring regarding the terms of a proposed protective order, on August 1, 2019, the Settling Parties filed a Stipulation and Proposed Protective Order governing the use of confidential, proprietary, or private information that may be produced in the course of discovery, which the Court entered on August 6, 2019. ECF No. 34.

23. On June 11, 2019, the Settling Parties served their First Set of Interrogatories and Requests for the Production of Documents, and Lead Plaintiffs also served their First Set of Requests for Admission. On July 11, 2019, the Settling Parties served their Responses and Objections to the Interrogatories and Requests for the Production of Documents, and Defendants also served their Objections and Responses to Lead Plaintiffs' First Set of Requests for Admission.

F. Third-Party Discovery

24. Following the Court's entry of the protective order, Lead Plaintiffs served the following third parties with subpoenas for the production of documents: (1) Royall's former CEO; (2) Royall's former CFO; and (3) Royall's former Chief Technology Officer.

III. THE NEGOTIATION OF THE SETTLEMENT

A. Lead Plaintiffs and Lead Counsel Had an Extensive Understanding of the Facts Before Entering into the Settlement

25. Beginning before the initial complaint was filed, Lead Counsel conducted an extensive investigation and analysis of the facts and legal issues in this case. This process included, among other things, a review of Advisory Board's SEC filings, news reports, and other publicly available information regarding Advisory Board. In addition, Lead Counsel conducted interviews of former Advisory Board employees, including the confidential witnesses who provided information for the Complaint. Lead Counsel also retained a consulting expert concerning damages. As detailed herein, Lead Plaintiffs' and Lead Counsel's analysis of the claims and defenses also involved extensive legal research and analysis in connection with opposing Defendants' motion to dismiss.

26. Pursuant to the Court's directive to discuss settlement at an early juncture, the Settling Parties decided to explore settlement through mediation, hoping it would be productive. On September 18, 2019 and September 24, 2019, the Settling Parties submitted detailed mediation statements to the Mediator in advance of the September 25, 2019 mediation session with Michelle Yoshida, Esq., an experienced mediator with Phillips ADR Enterprises. Although the Settling Parties engaged in good-faith arm's-length negotiations throughout the mediation session with Ms. Yoshida, the Settling Parties were unable to reach an agreement on September 25, 2019. While the Settling Parties made progress, Lead Plaintiffs insisted on a higher settlement amount; Lead Plaintiffs believed that the amount Defendants were offering at the time was inadequate. At no time would Lead Plaintiffs agree to settle at less than fair value.

27. Following the mediation, the Settling Parties continued settlement negotiations through Ms. Yoshida. With the benefit of substantial briefing and discussion, Ms. Yoshida made, and the Settling Parties accepted, a proposal to resolve the case for $7,500,000 on September 27, 2019. This agreement was reached subject to the negotiation of the terms of a Stipulation of Settlement and approval by the Court. The Settling Parties finalized the terms of the agreement on October 18, 2019.

28. All of these efforts have enabled Lead Plaintiffs and Lead Counsel to endorse the Settlement. Indeed, as a result of the extensive legal and factual research, and investigation and analysis conducted by Lead Counsel, Lead Plaintiffs and Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims and the defenses at the time the agreement to settle the Litigation was reached.

B. The Settlement Eliminates the Risks Lead Plaintiffs and the Class Faced

29. In deciding to settle the Litigation, Lead Plaintiffs and Lead Counsel considered, among other things: (1) the substantial immediate cash benefit to Class Members under the terms of the Stipulation; (2) the expense of fact discovery, including document production and depositions; (3) the possibility of Lead Plaintiffs' fact witnesses not being viewed as credible; (4) the expense of expert discovery; (5) the possibility of the Class not being certified; (6) the possibility of the Settlement Class Period being modified, thereby reducing total potential damages; (7) the expense involved in preparing for and briefing summary judgment and any future appeals; (8) the possibility of the Court granting summary judgment in Defendants' favor; (9) the likelihood of a "battle of the experts" with respect to the issues of falsity, materiality, loss causation and damages; (10) the possibility of losing at trial; (11) the probability that, even if Lead Plaintiffs won at trial, Defendants would file post-verdict motions and appeals resulting in additional risk to, and even more delay in obtaining, any recovery for the Class; and (12) the risk that Defendants may ultimately be unable to

satisfy a judgment after trial. With respect to the possibility of the Court granting summary judgment in Defendants' favor, Lead Plaintiffs specifically faced the risk of dismissal based on Defendants' arguments concerning falsity and scienter. For example, Defendants have argued that: (i) their revenue guidance for 2015 was not false or misleading because, according to Defendants, Advisory Board ultimately met that guidance; (ii) Lead Plaintiffs cannot demonstrate that Defendants knew, on May 5, 2015, that the departures of Royall's CEO and CFO would cause Royall to underperform guidance; and (iii) Lead Plaintiffs cannot demonstrate that the individual defendants had a motive to commit fraud.

30. While Lead Counsel believes that all of the claims asserted against Defendants have merit, there were serious risks as to whether Lead Plaintiffs would ultimately prevail on the merits and, even if completely successful, equally serious risks as to the amount of time it would take to collect on any judgment.

IV. THE PLAN OF ALLOCATION

31. The Net Settlement Fund will be distributed to Class Members substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. The Plan of Allocation provides that individuals will only be eligible to participate in the distribution of the Net Settlement Fund if they have an overall net loss on their transactions in Advisory Board common stock during the Settlement Class Period.

32. For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Counsel conferred with its damages consultant, and the proposed Plan of Allocation reflects an assessment of the damages that could have reasonably been recovered by Class Members had Lead Plaintiffs prevailed at trial. In the unlikely event there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim. If, however, and as is more likely, the amount in the Net Settlement

Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

33. To date, there have been no objections to the Plan of Allocation and Lead Counsel respectfully submits that the Plan of Allocation is fair and reasonable, and should be approved.

V. LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

34. Absent the Settlement, there was a real possibility that the Class would be unable to obtain a meaningful recovery. Lead Counsel undertook this prosecution entirely on a contingent-fee basis and assumed significant risk in bringing these claims.

35. Lead Counsel respectfully requests that the Court award attorneys' fees of 25% of the $7,500,000 Settlement Amount, or $1,875,000. Lead Counsel believes such a fee is reasonable and appropriate in light of the result obtained and the resources expended in prosecuting the case, and the inherent risk of nonpayment from representing the Class on a contingent basis. Lead Counsel further requests an award of $29,800.75 in litigation expenses. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, and Incorporated Memorandum of Law ("Fee Memorandum"), submitted herewith.

A. Time, Labor, and Fee Percentage Requested

36. Lead Counsel has devoted a significant amount of time and resources in the research, investigation, and prosecution of this Litigation.

37. Lead Counsel has substantial experience representing investors in securities class action cases, including in this District. The identification and background of Robbins Geller are included as exhibits to the separate Declaration of David A. Rosenfeld Filed on Behalf of Robbins

Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Fee Declaration").

38. Lead Counsel's representation of the Class required considerable pre-filing investigation, including: locating former employees of Advisory Board and conducting interviews; analyzing a massive amount of public information; thoroughly researching the law pertinent to the claims and defenses asserted; drafting an amended complaint; opposing Defendants' motion to dismiss; engaging in written discovery; drafting lengthy mediation briefs; and preparing for and participating in a full-day mediation session.

39. Lead Counsel's experience and advocacy were required in presenting the strengths of the case during mediation in an effort to achieve the best possible settlement and convince Defendants, their insurers, defense counsel, and the Mediator of the risks Defendants faced from not settling.

40. The fee request is based upon a percentage of the recovery after discussion with and approval by Lead Plaintiffs. *See* 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), ¶7; 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), ¶7 (collectively, "Lead Plaintiff Declarations").

41. submitted herewith. The fee request is similar to other requests approved by judges in this District, as set forth in Lead Counsel's Fee Memorandum.

42. The fee request is also reasonable when cross-checked against Lead Counsel's lodestar. Included with the Fee Declaration is a schedule that summarizes the lodestar of the firm's

personnel who performed work on the case, as well as expenses incurred by category after having both been reviewed and reduced in the exercise of billing judgment. In particular, the Fee Declaration, and the fee and expense schedules contained within, indicate the amount of time spent on this case by each attorney and member of the professional support staff employed by the firm, and the lodestar calculation based on its current billing rates.

43. Lead Counsel has expended more than 1,850 hours in the investigation, prosecution, and resolution of the Litigation. Lead Counsel's lodestar is $1,196,665. Given Lead Counsel's request of fees of $1,875,000, the multiplier is 1.57.

B. The Risk, Magnitude, and Complexity of the Litigation

44. As detailed above, the Litigation involved complex issues of law and fact that presented considerable risk to Lead Plaintiffs' case. This case involved litigating complex violations of §§10(b) and 20(a) of the Exchange Act. Thus, when Lead Counsel undertook this representation, there was no assurance that the Litigation would survive a motion to dismiss, motions for class certification or summary judgment, trial, and/or any appeals. Therefore, there was no assurance Lead Counsel would recover any payment for its services.

45. Lead Counsel accepted the representation of the Class on a contingent basis in this securities class action even though any payment for Lead Counsel's services – assuming a recovery was obtained – was likely to be delayed for several years. Cases such as this present formidable challenges as there are numerous risks of adverse rulings in favor of defendants at each stage of litigation. If the case had not settled, Lead Counsel was fully prepared to litigate this case through class certification, summary judgment, trial, and appeal. Each of those stages of litigation poses considerable challenges and expense in cases of this nature.

C. Quality of the Representation

46. Lead Counsel worked diligently to obtain an exceptional result for the Class. From the outset, Lead Counsel employed considerable resources and spent considerable time researching and investigating the facts to support a pleading that could survive a motion to dismiss and position the Litigation for class certification. Theories of damages were complex and Lead Counsel devoted much time working with its consulting expert to analyze Class-wide damages.

47. The recovery obtained for the Class is the direct result of the significant efforts of highly skilled attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel is among the most experienced securities practitioners in the country. The Settlement represents a substantial recovery for the Class, one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel.

48. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced lawyers from Skadden, Arps, Slate, Meagher & Flom LLP, a well-regarded defense firm with extensive experience in complex securities litigation. Defense counsel has a reputation for vigorous advocacy in the defense of complex cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the excellence of Lead Counsel's representation.

49. When Lead Counsel undertook to represent Lead Plaintiffs and the Class, it was with the expectation that it would have to devote a significant amount of time and effort in its prosecution and advance large sums of expenses on discovery and experts. The time spent by Lead Counsel on this case was at the expense of the time that it could have devoted to other matters. Lead Counsel undertook this case solely on a contingent-fee basis, assuming a substantial risk that the case would yield no recovery and leave Lead Counsel uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel has not been

compensated for any time or expenses since this case began. When Lead Counsel undertook to represent Lead Plaintiffs and the Class in this matter, it was with the knowledge that Lead Counsel would spend many hours of hard work against capable defense lawyers with no assurance of ever obtaining any compensation for its efforts. The only way Lead Counsel would be compensated was to achieve a successful result.

50. As discussed above, the Settlement is a very good result for the Class in light of the risks and obstacles to recovery presented in this case, including the difficulty in certifying a class, opposing summary judgment, and prevailing at trial. Instead of facing additional years of uncertain, costly and time-consuming litigation, the Settlement will provide Class Members the certainty of a significant recovery now.

VI. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

51. Lead Counsel seeks expenses in the amount of $29,800.75 in connection with the prosecution of the Litigation. *See* Fee Declaration, submitted herewith.

52. Lead Counsel submits that the expenses are modest, reasonable and were necessary for the successful prosecution of this Litigation. Lead Counsel was aware that it may not recover any of these expenses unless and until this Litigation was successfully resolved against Defendants. Accordingly, Lead Counsel took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Lead Plaintiffs' claims.

53. The requested expenses reflect routine and typical expenditures incurred in the course of litigation, such as the cost of travel, filing fees, consulting experts, legal research, and mediation fees. Lead Counsel believes these expenses are reasonable and were necessary for the successful prosecution of the Litigation.

VII. LEAD PLAINTIFFS ARE ENTITLED TO AN AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) BASED ON THEIR REPRESENTATION OF THE CLASS

54. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), Lead Plaintiffs seek an award for their time spent representing the Class in the aggregate amount of $2,737. The amount of time and effort devoted to the Litigation by Lead Plaintiffs is detailed in paragraph 5 of each of the accompanying Lead Plaintiff Declarations.

55. As discussed in Lead Counsel's accompanying Fee Memorandum and in Lead Plaintiff Declarations, the Funds have been fully committed to pursuing the claims detailed in the Complaint on behalf of the Class since they were appointed lead plaintiffs. These efforts required the representatives of the Funds to dedicate considerable time and resources to this Litigation that would have otherwise been devoted to their regular employment duties.

56. As more fully set forth in the Fee Memorandum, the efforts expended by Lead Plaintiffs during the course of this Litigation are precisely the types of activities courts have found adequate to support an award, and fully support the instant request by Lead Plaintiffs for an award of $2,737.

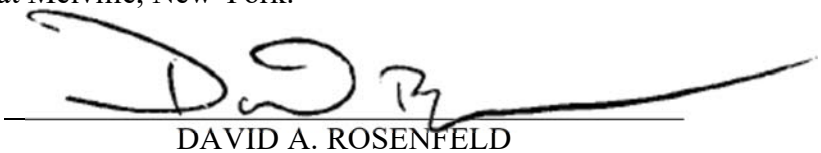
VIII. CONCLUSION

57. In light of the significant recovery to the Class and the substantial risks of this Litigation, as described above and in the accompanying memoranda in support of final approval of the Settlement and an award of attorneys' fees and expenses, Lead Plaintiffs and Lead Counsel respectfully submit that the Settlement and Plan of Allocation should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, Lead Plaintiffs and Lead Counsel respectfully submit that the Court should award attorneys' fees in the amount of 25% of the Settlement Amount, plus expenses of $29,800.75, plus the interest earned thereon at the same rate

and for the same period as that earned on the Settlement Fund until paid, plus an award of $2,737 for Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 1st day of April, 2020, at Melville, New York.



DAVID A. ROSENFELD

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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