UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARKANSAS TEACHER RETIREMENT SYSTEM and FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. BANKRATE, INC. et al., Defendants.	Case No. 13-cv-7183 (JSR) **ECF CASE**

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

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Dated: October 17, 2014

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Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel" or "BLBG"), respectfully submits this memorandum of law in support of its motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys' fees in the amount of 25% of Settlement Fund, net of Court-approved Litigation Expenses, or $4,450,113.07, plus interest.[1] Lead Counsel also seeks reimbursement of $194,426.83 in litigation expenses that it reasonably and necessarily incurred in prosecuting and resolving the Action, and reimbursement of $5,120.89 in costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. Lead Counsel respectfully requests that 50% of the attorneys' fees awarded and 100% of the approved expenses be payable immediately upon the Court's approval of the fees and expenses, with the balance of the attorneys' fees to be payable when the distribution of the Net Settlement Fund to Authorized Claimants has been very substantially completed.

PRELIMINARY STATEMENT

The proposed Settlement, which provides for payment of $18 million in cash in exchange for the resolution of the Action, is a very favorable result for the Settlement Class. The Settlement represents a substantial percentage of recoverable damages in this case. In undertaking this litigation, counsel faced numerous challenges to proving both liability and damages that posed the serious risk of no recovery, or a substantially lesser recovery than the Settlement, for the Settlement Class. The significant monetary recovery obtained was achieved

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Amended Stipulation and Agreement of Settlement dated September 17, 2014 (ECF No. 73-1) (the "Amended Stipulation") or in the Declaration of John Rizio-Hamilton in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Rizio-Hamilton Declaration" or "Rizio-Hamilton Decl."), filed herewith. Citations to "¶" in this memorandum refer to paragraphs in the Rizio-Hamilton Declaration.

through the skill, tenacity and effective advocacy of Lead Counsel, which litigated this Action on a fully contingent fee basis against highly skilled defense counsel.

As detailed in the accompanying Rizio-Hamilton Declaration[2], Lead Counsel vigorously pursued this litigation from its outset by, among other things, (i) conducting a wide-ranging investigation of the insurance lead business of Bankrate, Inc. ("Bankrate" or the "Company"), which included an extensive review of SEC filings, press releases, new reports and other public information, interviews with more than 60 former Bankrate employees and consultation with a damages expert; (ii) researching and drafting an initial complaint and a detailed amended complaint; (iii) successfully opposing Defendants' motion to dismiss through briefing and oral argument; (iv) engaging in an intensive mediation process overseen by former Judge Layn Phillips, which involved the exchange of written submissions concerning liability and damages, preparing responses to numerous confidential written questions posed by Judge Phillips, and engaging in a full-day formal mediation session; and (v) discovery that included the review of nearly 145,000 pages of documents, interviews with both Individual Defendants (Bankrate's former CEO, Defendant Thomas Evans, and its former CFO, Defendant Edward DiMaria), and the deposition of the CEO of Bankrate Insurance. ¶¶ 4, 10, 14-21, 26-36.

The Settlement achieved through Lead Counsel's efforts is a particularly favorable result when considered in light of the significant risks of proving the Defendants' liability and establishing damages, which are set forth in detail in the Rizio-Hamilton Declaration at

[2] The Rizio-Hamilton Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action (¶¶ 10-25); the nature of the claims asserted (¶ 16); the negotiations leading to the Settlement (¶¶ 26-42); the risks and uncertainties of continued litigation (¶¶ 44-68); and a description of the services Lead Counsel provided for the benefit of the Settlement Class (¶¶ 4, 10-42).

paragraphs 44 to 68. Among other things, Lead Plaintiffs faced significant challenges in proving that Defendants' statements about the "high quality" of Bankrate's insurance leads were materially false or misleading in light of their arguably general nature and the adverse information that Defendants disclosed about insurance lead quality during the Class Period. ¶¶ 46-49. Lead Plaintiffs also faced meaningful hurdles in proving that Defendants acted with *scienter*. Defendants would have strenuously argued that they undertook a voluntary effort to repair Bankrate's lead quality during the Class Period, even if it meant forgoing revenue, and kept the market apprised of their efforts by disclosing a significant amount of negative information to investors as it became known to them. ¶¶ 50-53.

Even if Lead Plaintiffs were successful in establishing falsity and *scienter*, proving damages and loss causation would also have been fraught with great risk. Defendants had compelling arguments that damages in this Action were dramatically limited by the fact that, during the Class Period, as much as 80% of Bankrate's common stock was held by insiders and, thus, the shares held by them could not be included in any damages calculation. ¶ 55. Additionally, Defendants had very serious loss causation arguments that, if accepted, would have further limited damages, if not eliminated them entirely. For instance, Defendants would have contended that, prior to both alleged corrective disclosures, they had made significant disclosures of adverse information about the quality of Bankrate's insurance leads and its impact on the Company's financial performance. ¶¶ 59, 63. Defendants also would have argued that contemporaneous market commentary confirmed that investors knew that Bankrate was experiencing lead quality problems, and expected that these problems would negatively impact its revenues throughout the Class Period. ¶¶ 59, 64. Defendants would have further argued – again relying on a significant amount of market commentary – that the disclosure of adverse

information about Bankrate's credit card business, which is not at issue in this case, was responsible for virtually all of the stock price declines following the alleged corrective disclosures here. ¶¶ 61, 65. Given these risks, Lead Counsel respectfully submits that the Settlement achieved is a testament to its hard work and the quality of its representation.

In light of the recovery obtained, the time and effort devoted by Lead Counsel, the work performed, the skill and expertise required, and the risks that counsel undertook, Lead Counsel submits that the requested fee award and the reimbursement of incurred expenses are fair and reasonable. As discussed below, the percentage fee requested is well within the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries. Further, the requested fee represents a multiplier of 1.79 of Lead Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. In addition, the expenses for which Lead Counsel seeks reimbursement were reasonable and necessary for the successful prosecution of the Action.

Lead Plaintiffs, which are sophisticated institutional investors that actively supervised the Action, have reviewed the request for fees and expenses and endorsed it as reasonable. *See* Declaration of George Hopkins, Executive Director of Arkansas Teacher Retirement System, attached as Exhibit 2 to the Rizio-Hamilton Declaration ("Hopkins Decl."), at ¶¶ 4-7; Declaration of Becky Van Wyk, Assistant Retirement Administrator of Fresno County Employees' Retirement Association, attached as Exhibit 3 to the Rizio-Hamilton Declaration ("Van Wyk Decl."), at ¶¶ 4-7.

In addition, pursuant to the Amended Preliminary Approval Order, 21,649 copies of the Notice have been mailed to potential Settlement Class Members and their nominees through October 16, 2014, and the Summary Notice was published in *Investor's Business Daily* and

transmitted over the *PR Newswire*. *See* Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, attached as Exhibit 1 to the Rizio-Hamilton Decl. ("Fraga Decl."), at ¶ 8. The Notice advised potential Settlement Class Members that Lead Counsel would apply for an award of attorneys' fees in amount not to exceed 25% of the Settlement Fund and reimbursement of litigation expenses (including reimbursement of the reasonable costs and expenses of Lead Plaintiffs) in an amount not to exceed $300,000. *See* Fraga Decl. Exh. A at ¶¶ 5, 70. The fees and expenses sought by Lead Counsel do not exceed the amounts set forth in the Notice. While the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 74, 99.[3]

ARGUMENT

I. LEAD COUNSEL IS ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

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); *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). Courts recognize that awards of fair attorneys' fees from a common fund "serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons," and therefore "to discourage future misconduct of a similar nature." *In re FLAG Telecom Holdings,*

[3] The deadline for the submission of objections is October 31, 2014. Should any objections be received, Lead Counsel will address them in reply papers, which will be filed with the Court on or before November 14, 2014.

Ltd. Sec. Litig., No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010) (citation omitted); *see In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007) (same).

Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the 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 provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'") (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005).

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

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. The Second Circuit has expressly approved the percentage method, recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48-50 (holding that either the percentage of fund method or lodestar method may be used to determine appropriate attorneys' fees); *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). More recently, the Second Circuit

has reiterated its approval of the percentage method, stating that it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation," and has noted that the "trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citations omitted); *see also In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010).

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

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

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and typically in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("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.") (Brennan, J., concurring).

The 25% fee requested by Lead Counsel is well within the range of percentage fees that have been awarded in the Second Circuit in comparable securities class actions. *See, e.g., City of Pontiac Gen. Emps.' Ret. Sys. v. Lockheed Martin Corp.,* 954 F. Supp. 2d 276, 281 (S.D.N.Y. 2013) (awarding 25% of $19.5 million settlement fund and noting that 25% is an "increasingly used benchmark"); *Citiline Holdings, Inc. v. iStar Fin., Inc.*, No. 1:08-cv-03612-RJS, slip op. at

1 (S.D.N.Y. Apr. 5, 2013), ECF No. 127 (awarding 30% of $29 million settlement fund) (attached hereto as Exhibit 1); *In re Sadia S.A. Sec. Litig.,* No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement fund); *In re L.G. Philips LCD Co. Sec. Litig.*, No. 1:07-cv-00909-RJS, slip op. at 1 (S.D.N.Y. Mar. 17, 2011), ECF No. 82 (awarding 30% of $18 million settlement fund) (attached hereto as Exhibit 2); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (awarding 25% of $21 million settlement fund).[4]

Courts have repeatedly awarded fees of 25% or more where a settlement was reached during the pendency of a motion to dismiss or shortly after, and where no or very limited formal discovery had been obtained as a result of the PSLRA discovery stay. *See In re L.G. Philips LCD Co. Sec. Litig.*, slip op. at 1 (awarding 30% of $18 million settlement fund, representing a multiplier of 3.17, where settlement was reached while motion to dismiss was pending); *Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007) (awarding 30% of $15.2 million settlement fund, representing a 1.44 multiplier, where settlement was reached while motion to dismiss was pending); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (awarding 33.3% of $11.5 million settlement fund, representing a 4.65 multiplier, where settlement was reached while motions to dismiss were pending); *In re Am. Express Fin. Advisors Sec. Litig*., No. 04 Civ. 1773 (DAB), slip op. at 8 (S.D.N.Y. July 18, 2007), ECF No. 170 (awarding 27% of $100 million settlement fund,

[4] *See also Hayes v. Harmony Gold Mining Co.*, No. 08 Civ. 03653 (BSJ)(MHD), 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding 33.3% of $9 million settlement fund), *aff'd*, 509 F. App'x 21 (2d Cir. 2013); *In re Acclaim Entm't, Inc. Sec. Litig.*, Master File No. 2:03-CV-1270 (JS) (ETB), slip op. at 9 (E.D.N.Y. Oct. 2, 2007), ECF No. 147 (awarding 30% of $13.65 million settlement) (attached hereto as Exhibit 3); *Hicks*, 2005 WL 2757792, at *9-*10 (awarding 30% of $10 million settlement fund).

representing a 2.8 multiplier, where settlement was reached while motion to dismiss was pending) (attached hereto as Exhibit 4).

Indeed, one of the merits of awarding fees on a percentage basis is that it does not penalize attorneys for achieving a prompt resolution of a case, where, as here, sufficient information about the value of the claims could be determined through investigation and careful analysis of loss causation issues, thus avoiding the need for costly and lengthy formal discovery. *See Wal-Mart,* 396 F.3d at 121 (one of the merits of the percentage method is that it "provides a powerful incentive for the efficient prosecution and early resolution of litigation") (citation omitted); *Savoie*, 166 F.3d at 461 (the percentage method "removes disincentives to prompt settlement").

In sum, the 25% fee requested here is well within the range of fees awarded on a percentage basis in comparable actions.

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

To ensure the reasonableness of a fee awarded under the percentage-of-the-fund method, the Second Circuit encourages district courts to cross-check the proposed award against counsel's lodestar. *See Goldberger*, 209 F.3d at 50.

Here, Lead Counsel spent a total of 5,106 hours of attorney and other professional support time prosecuting the Action for the benefit of the Settlement Class. ¶ 88. Lead Counsel's lodestar, derived by multiplying the hours spent by each attorney and paraprofessional by their current hourly rates, is $2,485,701.25.[5] *See id*. The requested 25% fee, which amounts

[5] The Supreme Court and courts in this Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflationary losses, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. at 284; *Veeco*, 2007 WL 4115808 at *9; *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989).

to $4,450,113.07 (before interest), if Lead Counsel's request for Litigation Expenses is approved, therefore represents a multiplier of 1.79 of Lead Counsel's lodestar.

The requested 1.79 multiplier in this Action is well within the range of multipliers commonly awarded in securities class actions and other comparable litigation. In cases of this nature, fees representing multiples above the lodestar are regularly awarded to reflect the contingency fee risk and other relevant factors. *See FLAG Telecom,* 2010 WL 4537550, at *26 ("a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors"). Indeed, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded. *See, e.g., Bd. of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, No. 09 Civ. 686 (SAS), 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding fee representing a 2.86 multiplier); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), slip op. at 4 (S.D.N.Y. July 18, 2011), ECF No. 117 (awarding fee representing a 4.7 multiplier) (attached hereto as Exhibit 5); *Maley*, 186 F. Supp. 2d at 369 (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country").

In sum, Lead Counsel's requested fee award is well within the range of what courts in this Circuit regularly award in class actions such as this one, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar. Moreover, as discussed below, each of the factors established for the review of attorneys' fee awards by the Second Circuit in *Goldberger* also strongly supports a finding that the requested fee is reasonable.

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

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

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50 (internal quotes and citation omitted). Consideration of these factors, together with the analyses above, demonstrates that the fee requested by Lead Counsel is reasonable.

A. The Time and Labor Expended Support the Requested Fee

The substantial time and effort expended by Lead Counsel in prosecuting the Action and achieving the Settlement also support the requested fee. The Rizio-Hamilton Declaration details the efforts of Lead Counsel in prosecuting Lead Plaintiffs' claims over the course of the litigation. As set forth in greater detail in the Rizio-Hamilton Declaration, Lead Counsel, among other things:

- conducted an extensive investigation of the claims asserted in the Action and Bankrate's insurance lead business, which included a detailed review of SEC filings, press releases, analyst reports, news reports and other public information, interviews with many former Bankrate employees, and consultation with a damages expert (¶¶ 4, 14-15);
- researched and drafted an initial complaint and a detailed amended complaint based on its investigation (¶¶ 10, 16);
- successfully opposed Defendants' motion to dismiss following thorough briefing and oral argument (¶¶ 17-22);
- initiated the process of document discovery, including the exchange of initial disclosures, requests for production of documents and interrogatories, served responses and objections to Defendants' first request for production of documents, and assisted Lead Plaintiffs in searching for and gathering documents in response to Defendants' document requests (¶¶ 24-25);

- engaged in a mediation process overseen by former Judge Layn Phillips, which involved the exchange of written submissions concerning liability and damages, preparing a response to numerous confidential written questions from Judge Phillips, engaging in a full-day formal mediation session, and engaging in additional consultations with Lead Plaintiffs' damages expert (¶¶ 26-29); and

- conducted discovery that included the review of nearly 145,000 pages of documents, interviews with both Individual Defendants and the deposition of a third key senior Bankrate executive who headed the Company's insurance leads business (¶¶ 34-35).

As noted above, Lead Counsel expended more than 5,100 hours prosecuting this Action with a lodestar value of over $2,485,000. ¶ 88. Throughout the litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. ¶ 90. The time and effort devoted to this case by Lead Counsel was critical in obtaining the favorable result achieved by the Settlement, and confirms that the fee request here is reasonable.

B. The Risks of the Litigation Support the Requested Fee

The risk of the litigation is one of the most important *Goldberger* factors. *See Goldberger*, 209 F.3d at 54; *Comverse*, 2010 WL 2653354, at *5. The Second Circuit has recognized that the risks associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Comverse*, 2010 WL 2653354, at *5 (citation omitted); *see also Am. Bank Note Holographics*, 127 F. Supp. 2d at 433 (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

While Lead Counsel believes that the claims of Lead Plaintiffs are meritorious, Lead Counsel recognized that there were a number of substantial risks in the litigation from the outset and that Lead Plaintiffs' ability to succeed at trial and obtain a substantial judgment was far from certain.

As discussed in greater detail in the Rizio-Hamilton Declaration and in the memorandum of law in support of the Settlement, there were substantial risks here with respect to establishing both liability and damages in the Action. First, Lead Counsel faced significant hurdles in proving that the statements made by Bankrate and its officers about the "high quality" of Bankrate's insurance leads were materially false and misleading in light of their arguably general and subjective nature. ¶ 46. Defendants also had substantial arguments that their statements were not misleading because they had disclosed problems with the quality of Bankrate's insurance leads, and told investors that fixing these problems would have a negative impact on Bankrate's financial performance throughout the Class Period. ¶¶ 47-48. In support of these arguments, Defendants would have pointed to market commentary stating that analysts were aware that Bankrate had lead quality problems, and the weakness in Bankrate's insurance business was "expected" to continue through the end of the Class Period. ¶¶ 47, 49.

Lead Counsel also faced substantial challenges in establishing that Defendants acted with *scienter*. Defendants would have vigorously argued that they had disclosed adverse information about Bankrate's lead quality during the Class Period, undertook significant and voluntary initiatives to improve lead quality, and did not discover the full extent of the lead quality problems until the end of the Class Period, when they disclosed them. ¶¶ 50, 52. Defendants also would have contended that Bankrate did not have direct control over the quality of the insurance leads, which it purchased from third parties, and that when they became aware of a

source of poor quality leads, they terminated it, even though it resulted in reduced revenue – conduct which, they would have contended, demonstrates good faith. ¶ 51. Moreover, Defendants would have argued that there was no concrete motive for them to engage in fraud. ¶ 53.

Even if Lead Plaintiffs successfully proved both falsity and *scienter*, Lead Counsel would have confronted extremely significant challenges in proving loss causation and damages. Lead Plaintiffs alleged that the price of Bankrate common stock declined in response to disclosures made by Defendants after the close of trading on May 1, 2012 and October 15, 2012, when Bankrate disclosed that material amounts of its insurance leads were of such poor quality that they could not be sold. ¶ 57. However, Defendants would have forcefully contended that the recoverable damages in this Action were non-existent or minimal, for several reasons.

First, Defendants have asserted that, during the Class Period, as much as 80% of Bankrate's common stock was held by Apax Partners and other insiders who were excluded from the class. ¶ 55. Accordingly, Defendants would have had powerful arguments that the large majority of Bankrate's shares could not be included in any damages calculation. *Id*.

In addition, Defendants would have advanced very serious loss causation arguments that could have further reduced or potentially eliminated damages. For example, Defendants would have argued that, prior to both corrective disclosure dates, they had disclosed a significant amount of adverse information concerning Bankrate's lead quality, had informed investors that fixing the lead quality problems was difficult and would take time, and had warned investors that their efforts would have a negative impact on Bankrate's financial performance through the end of the Class Period. ¶¶ 47-48, 59, 63. Defendants also would have argued that a substantial amount of contemporaneous market commentary confirmed that investors were well aware of

these facts, and were not surprised by the insurance-related information they disclosed on the corrective disclosure days. ¶¶ 47, 49, 59, 64. Indeed, Defendants would have argued that analysts widely viewed the clean-up of Bankrate's insurance business as a positive factor for Bankrate's long-term financial performance, and thus, the value of its stock. ¶¶ 60, 65. Finally, Defendants would have argued that negative news about Bankrate's credit card business, which is not at issue here, was the actual cause of the stock price declines on both corrective disclosure days. ¶¶ 61, 65. Again, Defendants would have asserted that significant analyst commentary confirmed that investors were anticipating that insurance lead revenue would be negatively impacted by ongoing lead quality problems, but were surprised by the weakness in the credit card business. *Id*.

When these risks are accounted for, the Settlement represents a significant portion of recoverable damages. Lead Plaintiffs' damages expert, in consultation with Lead Counsel, analyzed Defendants' arguments concerning damages and loss causation advanced in connection with the mediation, and attempted to determine the likelihood that a reasonable juror would accept Defendants' contentions. ¶ 66. Based on this analysis, Lead Plaintiffs' damages expert concluded that recoverable damages in this case were approximately $88 million. *Id*. However, Defendants contended that Lead Plaintiffs would, at most, be able to establish loss causation for no more than a small portion of the October 16, 2012 stock price decline and would not be able to establish loss causation for any of the May 2, 2012 decline. *Id*. If a fact-finder were to have accepted Defendants' arguments, damages could be reduced to zero, and would have been no more than approximately $30 million. *Id*.

In the face of the many uncertainties regarding the outcome of the case, Lead Counsel undertook this case on a wholly contingent basis, knowing that the litigation could last for years

and would require the devotion of a substantial amount of time and a significant expenditure of litigation expenses with no guarantee of compensation. ¶¶ 93-95. Lead Counsel's assumption of this contingency fee risk supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *Marsh ERISA*, 265 F.R.D. at 148 ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

C. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the requested fee. Courts have long recognized that securities class action litigation is "notably difficult and notoriously uncertain." *FLAG Telecom*, 2010 WL 4537550, at *27 (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). This case was no exception. As noted above and in the Rizio-Hamilton Declaration, the litigation raised a number of complex questions concerning liability and loss causation that would have required extensive efforts by Lead Counsel and consultation with experts to bring to resolution. To build the case, Lead Counsel had to conduct an extensive factual investigation, including interviews with numerous confidential witnesses and a broad review of available documents. If the Action had not been settled, there would have been substantial litigated discovery; depositions of fact and expert witnesses; additional motion practice; a trial; post-trial motion practice; and mostly likely appeals. Accordingly, the magnitude and complexity of the Action supports the conclusion that the requested fee is fair and reasonable.

D. The Quality of Lead Counsel's Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submits that the quality of its representation is best evidenced by the quality of the result achieved. *See, e.g.*, *Veeco*, 2007 WL 4115808, at *7; *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). Here, the Settlement provides a very favorable result for the Settlement Class in light of the serious risks of continued litigation, and represents a substantial portion of likely recoverable damages. *See* ¶¶ 66, 68. Lead Counsel respectfully submits that the quality of its efforts in the litigation to date, together with its substantial experience in securities class actions and its commitment to this litigation, provided it with the leverage necessary to negotiate the Settlement.

Courts have repeatedly recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of the counsel's performance. *See, e.g., Veeco*, 2007 WL 4115808, at *7 (among factors supporting 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work") (citation omitted), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Here, Defendants were represented by Wachtell, Lipton, Rosen & Katz, one of the country's most capable and renowned law firms, which vigorously represented its clients throughout this Action. *See* ¶ 92. Notwithstanding this formidable opposition, Lead Counsel's thorough investigation, ability to present a strong case, successful opposition of Defendants' motion to dismiss, and demonstrated willingness to vigorously prosecute the Action enabled it to achieve the favorable Settlement.

E. The Requested Fee in Relation to the Settlement

Courts have interpreted this factor as requiring the review of the fee requested in terms of the percentage it represents of the total recovery. "When determining whether a fee request is reasonable in relation to a settlement amount, 'the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.'" *Comverse*, 2010 WL 2653354, at *3 (citation omitted). As discussed in detail in Part III above, the requested 25% fee is well within the range of percentage fees that courts in the Second Circuit have awarded in comparable cases. Accordingly, the fee requested is reasonable in relation to the Settlement.

F. Public Policy Considerations Support the Requested Fee

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley*, 186 F. Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks*, 2005 WL 2757792, at *9 ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted). Accordingly, public policy favors granting Lead Counsel's fee and expense application here.

G. The Approval of Lead Plaintiffs and the Reaction of the Settlement Class to Date Support the Requested Fee

Lead Plaintiffs Arkansas Teacher Retirement System ("ATRS") and Fresno County Employees' Retirement Association ("Fresno County"), which were actively involved in the

prosecution, mediation and settlement of the Action, have approved the requested fee. *See* Hopkins Decl. ¶¶ 4-7; Van Wyk Decl. ¶¶ 4-7. ATRS and Fresno County are paradigmatic examples of the type of sophisticated and financially interested investor that Congress envisioned serving as a fiduciary for the class when it enacted the PSLRA. The PSLRA was intended to encourage institutional investors like ATRS and Fresno County to assume control of securities class actions in order to "increase 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." H.R. Conf. Rep. No. 104-369, at *32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the ongoing prosecution of the litigation and to assess the reasonableness of counsel's fee request. Lead Plaintiffs here were appointed after a hearing and inquiry by the Court. Thereafter, they took an active role in the litigation and closely supervised the work of Lead Counsel. *See* Hopkins Decl. ¶¶ 4-5; Van Wyk Decl. ¶¶ 4-5. Accordingly, the endorsement of the fee as reasonable by Lead Plaintiffs supports approval of the fee. *See In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *16 (S.D.N.Y. Dec. 23, 2009) ("public policy considerations support fee awards where, as here, large public pension funds, serving as lead plaintiffs, conscientiously supervised the work of lead counsel, and gave their endorsement to lead counsel's fee request"); *Veeco*, 2007 WL 4115808, at *8 ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request").

The reaction of the class to date also supports the requested fee. Through October 16, 2014, GCG has disseminated the Notice to 21,649 potential Settlement Class Members and

nominees informing them, among other things, that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and up to $300,000 in expenses. While the time to object to the Fee and Expense Application does not expire until October 31, 2014, to date, not a single objection has been received. ¶¶ 99, 101. Should any objections be received, Lead Counsel will address them in its reply papers.

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

Lead Counsel's fee application includes a request for reimbursement of its litigation expenses, which were reasonably incurred and necessary to the prosecution of the Action. *See* ¶¶ 101-109. These expenses are properly recovered by counsel. *See In re China Sunergy Sec. Litig.,* No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were 'incidental and necessary to the representation'") (citation omitted); *FLAG Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class"). As set forth in detail in the Rizio-Hamilton Declaration, Lead Counsel incurred $194,426.83 in litigation expenses in the prosecution of the Action. ¶ 103. Reimbursement of these expenses is fair and reasonable.

The expenses for which Lead Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert fees, on-line research, court reporting and transcripts, photocopying, and postage expenses. The largest expense is for retention of Lead Plaintiffs' damages and loss causation expert, in the amount of $77,898.75, or 40% of the total litigation expenses incurred by Lead Counsel. ¶ 105. The second largest expense is for the combined

costs of on-line legal and factual research in the amount of $57,551.08, or 30% of the total amount of expenses. ¶ 106. Lead Counsel also paid $29,875.00 for plaintiffs' portion of the mediation fees charged by Judge Phillips. ¶ 107. A complete breakdown by category of the expenses incurred by Lead Counsel is set forth in Exhibit 6 to the Rizio-Hamilton Declaration. These expense items are billed separately by Lead Counsel, and such charges are not duplicated in the firm's hourly billing rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for reimbursement of litigation expenses in an amount not to exceed $300,000, which may include the reasonable costs and expenses of Lead Plaintiffs directly related to their representation of the Settlement Class. The total amount of expenses requested by Lead Counsel is $199,547.72, which includes $194,426.83 in reimbursement of litigation expenses incurred by Lead Counsel and $5,120.89 in reimbursement of costs and expenses incurred by Lead Plaintiffs, an amount well below the amount listed in the Notice. To date, there has been no objection to the request for expenses.

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER 15 U.S.C. §78u-4(a)(4)

In connection with its request for reimbursement of Litigation Expenses, Lead Counsel also seeks reimbursement of $5,120.89 in costs and expenses incurred directly by Lead Plaintiffs. 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. § 78u-4(a)(4). Here, Lead Plaintiffs ATRS and Fresno County seek awards of $4,270.22 and $850.67, respectively, for time dedicated by their employees in furthering and supervising the Action. *See* Hopkins Decl. ¶¶ 8-10; Van Wyk Decl. ¶¶ 8-10. Employees of ATRS and Fresno County took an active role in the

litigation, including reviewing significant pleadings and briefs in the Action, communicating regularly with Lead Counsel regarding developments in the Action, travelling to New York and testifying at the lead plaintiff hearing, searching for and gathering their internal documents for production in response to Defendants' document requests, authorizing settlement discussions, monitoring the progress of settlement negotiations, and approving of the Settlement. *See* Hopkins Decl. ¶ 4; Van Wyk Decl. ¶ 4. The requested reimbursement amounts are based on the number of hours that Lead Plaintiffs' employees committed to these activities, multiplied by a reasonable hourly rate for their time, which is determined according to their annual compensation. *See* Hopkins Decl. ¶ 10 n.2; Van Wyk Decl. ¶ 10 n.2.

Numerous courts have approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. In *Marsh & McLennan*, the court awarded $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds, to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class." 2009 WL 5178546, at *21. As the court noted, their efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *Id.*; *see also Flag Telecom*, 2010 WL 4537550, at *31 (approving award of $100,000 to Lead Plaintiff for time spent on the litigation); *In re Monster Worldwide, Inc. Sec. Litig.,* No. 07-cv-02237 (JSR), 2008 WL 9019514, at *2 (S.D.N.Y. Nov. 25, 2008) (awarding lead plaintiff $7,303 for reasonable costs and expenses directly relating to the representation of the class); *Veeco*, 2007 WL 4115808, at *12 (awarding institutional lead plaintiff $15,900 for time spent supervising litigation, and characterizing such awards as "routine" in this Circuit); *In re Gilat Satellite Networks, Ltd.,* No. CV-02-1510 (CPS)(SMG), 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here,

"the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation").

The awards sought by ATRS and Fresno County are reasonable and justified under the PSLRA based on their involvement in the Action from inception to settlement, and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 25% of the Settlement Fund, net of Court-awarded expenses, or $4,450,113.07, plus interest at the same rate as earned by the Settlement Fund; $194,426.83 in reimbursement of the reasonable litigation expenses that Lead Counsel incurred in connection with the prosecution of the Action; and $5,120.89 in reimbursement of Lead Plaintiffs' costs and expenses. Lead Counsel respectfully requests that 50% of the attorneys' fees awarded and 100% of the approved expenses be payable immediately upon the Court's approval of the fees and expenses, with the balance of the attorneys' fees to be payable when the distribution of the Net Settlement Fund to Authorized Claimants has been very substantially completed.

Dated: October 17, 2014

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

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Attorneys for Lead Plaintiffs Arkansas Teacher Retirement System and Fresno County Employees' Retirement Association and the Settlement Class

#832496

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITILINE HOLDINGS, INC., Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. ISTAR FINANCIAL INC., et al., Defendants.	Civil Action No. 1:08-cv-03612-RJS **(Consolidated)** CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on April 5, 2013, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses in the Litigation, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Order incorporates by reference the definitions in the Settlement Agreement dated September 5, 2012 (the "Stipulation") and all capitalized terms used, but not defined herein, shall have the same meanings as set forth in the Stipulation.

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

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Fund, plus expenses in the amount of $234,901.71, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the Litigation.

5. The awarded attorneys' fees and expenses and interest earned thereon, shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶¶6.2-6.3 thereof, which terms, conditions, and obligations are incorporated herein.

SO ORDERED.

DATED: April 5, 2013
New York, New York

RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re L.G. PHILIPS LCD CO., LTD. SECURITIES LITIGATION	Civil Action No. 1:07-cv-00909-RJS CLASS ACTION
This Document Relates To: ALL ACTIONS.	

[redacted] ORDER AWARDING CO-LEAD COUNSEL ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on March 17, 2011, on the motion of Co-Lead Counsel for an award of attorneys' fees and expenses incurred in the action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement dated October 15, 2010 (the "Stipulation"), and filed with the Court.

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

3. The Court hereby awards Co-Lead Counsel attorneys' fees of 30% of the Settlement Amount, plus litigation expenses in the amount of $81,993.45, together with the interest earned on both amounts for the same time period and at the same rate as that earned on the Settlement Fund until paid, pursuant to 15 U.S.C. §78u-4(a)(6). The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The fees and expenses shall be allocated among Lead Plaintiffs' counsel in a manner which, in Co-Lead Counsel's good-faith judgment, reflects each such counsel's contribution to the institution, prosecution, and resolution of the action.

5. Justin M. Coren is awarded $1,500.00 pursuant to 15 U.S.C. §78u-4(a)(4) for his efforts and service to the Class during the action.

6. The awarded attorneys' fees and expenses and interest earned thereon shall immediately be paid to Co-Lead Counsel subject to the terms, conditions, and obligations of the Stipulation, and in particular ¶8 thereof which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: March 17, 2011

THE HONORABLE RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

Exhibit 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re ACCLAIM ENTERTAINMENT, INC. SECURITIES LITIGATION	:	MASTER FILE NO. 2: 03-CV-1270 (JS) (ETB)
This Document Relates To: ALL ACTIONS.	:	

ORDER AND FINAL JUDGMENT

The Stipulation and Agreement of Settlement, dated as of May 8, 2007, (the "Stipulation"), of the above-captioned consolidated civil action (the "Action"), having been presented at the Settlement Fairness Hearing on October 2, 2007, pursuant to the Order for Notice and Hearing entered herein on July 6, 2007 ("Preliminary Approval Order"), which Stipulation was joined and consented to by Lead Plaintiffs Penn Capital Management, Robert L. Manard and Steve Russo (the "Lead Plaintiffs") and defendants Gregory Fischbach, Edmond Sanctis, James Scoroposki, Gerard Agoglia (the "Individual Defendants") and KPMG LLP (collectively, the "Defendants") (together Lead Plaintiffs and the Defendants are referred to as the "Parties") and which (along with the defined terms therein) is incorporated herein by reference.

The Court, having determined that notice of said hearing was given in accordance with the Preliminary Approval Order to members of the Class as certified by the Court in the Preliminary Approval Order, and that said notice was the best notice practicable and was adequate and sufficient; and the Parties having appeared by their attorneys of record;

and the attorneys for the respective Parties having been heard in support of the Stipulation and the settlement of the Action as between Lead Plaintiffs and the Defendants provided therein (the "Settlement"); and an opportunity to be heard having been given to all other persons desiring to be heard as provided in the notice; and the entire matter of the Settlement having been considered by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court, for purposes of this Order and Final Judgment, adopts all defined terms as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, the Lead Plaintiffs, the other members of the Class, and the Defendants.

3. The Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing (the "Notice") has been given to the Class (as defined hereinafter), pursuant to and in the manner directed by the Preliminary Approval Order, proof of the mailing of the Notice was filed with the Court by Co-Lead Counsel, and full opportunity to be heard has been offered to all Parties, the Class, and persons in interest. The form and manner of the Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of FED. R. CIV. P. 23, and it is further determined that all members of the Class are bound by the Judgment herein.

4. Pursuant to FED. R. CIV. P. 23:

a. The Court specifically finds that (i) the Class, as defined below, is so numerous that joinder of all members is impracticable, (ii) there are questions of law and fact common to the Class, (iii) the claims of the Lead Plaintiffs are typical of the claims of the Class, (iv) the

Lead Plaintiffs will fairly and adequately protect the interests of the Class;

b. The Court finds that Lead Plaintiffs and Co-Lead Counsel have adequately represented the interests of the Class with respect to the Action and the claims asserted therein;

c. The Court finds that the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that the class action is superior to other available methods for the fair and efficient adjudication of the controversy;

d. This Action is hereby certified as a class action on behalf of all persons who purchased the common stock of Acclaim from October 14, 1999 through July 1, 2004, inclusive (the "Class"). Excluded from the Class are: Acclaim, the Individual Defendants, KPMG, the directors and officers of Acclaim and KPMG, at all relevant times, members of the Individual Defendants' immediate families, and the heirs, successors and assigns of the Defendants and Acclaim, and any entity in which Acclaim or any Defendant has or had a controlling interest. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

5. The Settlement, and all transactions preparatory or incident thereto, are found to be fair, reasonable, adequate, and in the best interests of the Class, and it is hereby approved. The Parties to the Stipulation are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions; and the Clerk of this Court is directed to enter and docket this Judgment in the Action.

6. This Judgment, the Stipulation and all negotiations, statements, and proceedings in connection herewith shall not, in any event, be construed or deemed to be evidence of an admission or concession on the part of the Lead Plaintiffs, any Defendant, Acclaim, any member of the Class, or any other person, of any liability or wrongdoing by

them, or any of them, and shall not be offered or received in evidence in any action or proceeding (except an action to enforce this Stipulation and settlement contemplated hereby), or be used in any way as an admission, concession, or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Lead Plaintiffs, any member of the Class, any present or former stockholder of Acclaim, or any other person, has or has not suffered any damage.

7. Upon the Effective Date of this Settlement, Lead Plaintiffs and members of the Class on behalf of themselves and each of their heirs, executors, administrators, successors and assigns, and any persons they represent, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

8. Upon the Effective Date of this Settlement, each of the Defendants and Acclaim, on behalf of themselves and the Released Parties, shall release and forever discharge each and every of the Defendants' Claims, and shall forever be enjoined from prosecuting the Defendants' Claims.

9. "Released Parties" means Defendants and Acclaim, their past or present subsidiaries, divisions, joint ventures, affiliates, subdivisions, parents, successors, and predecessors, estates and assigns, executors and administrators, officers, directors, shareholders, agents, personal or legal representatives, trustees, partners, principals, employees, attorneys, insurers (including, but not limited to, National Union and Chubb), reinsurers, agents, advisors, investment advisors, auditors, accountants, and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant or Acclaim has or had a controlling interest or which is related to or affiliated

with any of the Defendants or Acclaim, and the legal representatives, heirs, successors in interest or assigns of any of the Defendants or Acclaim.

10. "Settled Claims" shall collectively mean all claims (including "Unknown Claims" as defined below), demands, rights, liabilities, actions and causes of action, known or unknown, contingent or absolute, suspected or unsuspected, matured or unmatured, whether or not concealed or hidden, that have been or could have been asserted in the Action or in any court, tribunal or proceedings (including but not limited to any claims arising under federal or state law), by the Lead Plaintiffs or any Class Member against the Released Parties that arise out of, or relate in any manner to, the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, omissions or any other matter, thing or cause whatsoever, alleged or set forth in the Complaint and that are related to the purchase of Acclaim common stock during the Class Period. Settled Claims also include claims arising out of, relating to, or in connection with the settlement or resolution of the Action.

11. "Defendants' Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and unknown claims, that have been or could have been asserted in the Action or any forum by any Defendant or Acclaim, or the successors and assigns of any of them against any of the Plaintiffs, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action.

12. It is the intention of the Parties to extinguish all Settled Claims, and, consistent with such intention, the Class has waived its rights, to the extent permitted by

law, under Section 1542 of the California Civil Code, or any other similar state law, federal law, or principal of common law, which may have the effect of limiting the releases set forth in ¶¶7 and 8 above. The release ordered hereby extends to claims that the Lead Plaintiffs, the Class Members and the Released Parties do not know or suspect to exist as of the effective date of the Settlement as defined in the Stipulation which, if known, might have affected their decision regarding the releases contained in this Judgment. Lead Plaintiffs, the Class Members, and the Released Parties have acknowledged that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the releases, but have stated that it is their intention to fully, finally, and forever settle and release any and all claims released hereby, known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

13. The Plan of Allocation is approved as fair and reasonable, and Co-Lead Counsel and the Claims Administrator are directed to administer the Settlement in accordance with its terms and provisions.

14. The Court finds and concludes, pursuant to Section 27(c)(1) of the Securities Act of 1933 and Section 21D(c)(1) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. §§ 77z-1(c)(1), 78u-4(c)(1), that the Lead Plaintiffs, Co-Lead Counsel, Defendants, and Defendants' Counsel have complied with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

15. The Court finds that all persons within the definition of the Class have been adequately provided with an opportunity to remove themselves from the Settlement by executing and returning a "request for exclusion" in conformance with the terms of the Stipulation. All persons who have requested exclusion from this Settlement in the manner described in the Notice are not bound by this Judgment. All persons who have opted out of this Action are identified on Exhibit 1 hereto.

16. In the event that the Settlement fails to become effective in accordance with its terms, or if this Judgment is reversed, vacated, or materially modified on appeal (and, in the event of material modification, if any party elects to terminate the Settlement), this Judgment (except this Paragraph) shall be null and void, the Settlement, except for ¶¶8, 29, 33, and 35 of the Stipulation, shall be deemed terminated, and the Parties shall return to their pre-settlement positions as provided for in the Settlement, except that (1) any modifications, reversal, or vacation of the award of attorneys' fees and expenses to Co-Lead Counsel on appeal or in any further motions in this Court shall in no way disturb or affect any other part of this Judgment, and (2) any further proceedings, whether in this Court or on appeal, related to the Plan of Allocation shall in no way disturb or affect any other part of this Judgment.

17. Only those Class Members filing valid and timely Proofs of Claim and Release shall be entitled to participate in the Settlement and receive a distribution from the Settlement Fund. The Proof of Claim and Release to be executed by the Class Members shall further release all Settled Claims against the Released Parties. All Class Members shall, as of the Effective Date, be bound by the releases set forth herein whether or not they submit a valid and timely Proof of Claim and Release.

18. In accordance with Section 21D-4(f)(7)(A) of the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4(f)(7)(A): (i) every Person is hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for contribution against any Released Parties based upon, relating to, or arising out of the Settled Claims, and (ii) the Released Parties are hereby permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim for contribution against any of the Persons based upon, relating to, or arising out of the Settled Claims. For purposes of the paragraph only, Persons shall include any person who Lead Plaintiffs may hereafter sue based upon, relating to, or arising out of the Settled Claims and the Trustee ("Reform Act Bar Order").

19. Any Person, including the Released Parties, are permanently barred, enjoined, and restrained from commencing, prosecuting, or asserting any claim, however styled, whether for indemnification, contribution, or otherwise and whether arising under state, federal, or common law, against one another based upon, relating to, or arising out of the Settled Claims and where damages would be calculated based upon the Persons' liability to the Lead Plaintiff or the Class (the "Complete Bar Order").

20. To the extent (but only to the extent) not covered by the Reform Act Bar Order and/or the Complete Bar Order, the Lead Plaintiffs, on behalf of themselves and the Class, further agree that they will reduce or credit any settlement or judgment (up to the amount of such settlement or judgment) they may obtain against a Person by an amount equal to the amount of any settlement or final, non-appealable judgment that a Person may obtain against any of the Released Parties based upon, relating to, or arising out of the Settled Claims. In the event that a final judgment is entered in favor of Lead

Plaintiffs or the Class against a Person before the resolution of that Person's potential claims against any Released Parties, any funds collected on account of such judgment shall not be distributed, but shall be retained by the Escrow Agent pending the resolution of any potential claim by the Person against such Released Party(s) as provided in ¶25 of the Stipulation.

21. Co-Lead Counsel are hereby awarded attorneys' fees of 30 % of the Settlement Fund and reimbursement of expenses in the amount of $436,148.89. The attorneys' fees and expenses shall be paid to Co-Lead Counsel from the Settlement Fund with interest on both amounts from the date such Settlement Fund was funded to the date of payment at the same net rate that the Settlement Fund earns. The award of attorneys' fees shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Co-Lead Counsel, fairly compensates Plaintiffs' Counsel for their respective contributions in the prosecution of the Action.

22. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

a. the settlement has created a fund of $13,650,000 in cash, comprised of payments of i) $10 million on behalf of the Individual Defendants and ii) $3.65 million on behalf of defendant KPMG LLP, plus interest thereon, and that numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement created by Co-Lead Counsel;

b. Over 62,000 copies of the Notice were disseminated to putative Class members indicating that Co-Lead Counsel were moving for attorneys' fees not to exceed 30% of the Settlement Fund and for reimbursement of out-of-pocket expenses not to exceed $525,000 and no objections were filed against the ceiling on the fees and expenses requested by Co-Lead Counsel contained in the Notice, and only one objection was filed with respect to the Plan of Allocation;

c. This Action involved numerous difficult issues related to liability and damages;

d. Co-Lead Counsel achieved this Settlement with skill, perseverance, and diligent advocacy for the Class;

e. Had Co-Lead Counsel not achieved the Settlement there would remain a significant risk that Lead Plaintiffs and the Class may have recovered less or nothing from the Defendants;

f. Co-Lead Counsel have devoted over 6,366 hours, with a lodestar value of $2,727,177.10, to achieve the Settlement;

g. Co-Lead Counsel pursued this Action on a contingent basis;

h. Co-Lead Counsel have requested 30% of the Settlement Fund in attorneys' fees, which is consistent with awards in similarly complex cases in this jurisdiction; and

i. This Settlement was negotiated at arm's length, and no evidence of fraud or collusion has been presented.

23. Lead Plaintiffs Penn Capital Management, Robert L. Manard and Steve Russo are hereby awarded $ 15,000.00 $ 12,250.00 and $ 4,952.50 respectively, from the Gross Settlement Fund for reimbursement of their reasonable costs and expenses (including lost wages) directly relating to their representation of the Class in prosecuting this Action.

24. The Garden City Group, Inc. ("GCG") is awarded $ 88,851.11 for reimbursement of its fees and expenses incurred acting as the Settlement Administrator in this Action.

25. Without affecting the finality of this Judgment in any way, the Court reserves exclusive and continuing jurisdiction over the Action, the Lead Plaintiffs, the Class, and the Released Parties for the purposes of: (1) supervising the implementation, enforcement, construction, and interpretation of the Stipulation, the Plan of Allocation,

and this Judgment; (2) hearing and determining any application by Co-Lead Counsel for an award of attorneys' fees, costs, and expenses; and (3) supervising the distribution of the Settlement Fund.

SIGNED this 2nd day of October 2007.

/s/ JOANNA SEYBERT

JUDGE JOANNA SEYBERT
UNITED STATES DISTRICT JUDGE

\489432

Exhibit 4

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AMERICAN EXPRESS FINANCIAL ADVISORS SECURITIES LITIGATION

Master File No. 04 Civ. 1773 (DAB)

ORDER AND FINAL JUDGMENT

On July 13, 2007, the Court held a hearing to determine (1) whether the terms and conditions of the Stipulation of Settlement dated January 18, 2007 ("Stipulation")[1] are fair, reasonable, and adequate for the settlement of all claims asserted on behalf of the Class in the above-captioned Action, including the release of Defendants, Nominal Defendants, and the other Released Persons, and should be approved; (2) whether judgment should be entered dismissing the Action on the merits and with prejudice in favor of Defendants and Nominal Defendants and as against all Class Members who are not Opt-Outs; (3) whether the Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel is a fair, reasonable, and adequate method of allocating the settlement proceeds among the Class Members; (4) whether and in what amount Plaintiffs' Co-Lead Counsel should be awarded attorneys' fees and reimbursement of expenses; and (5) whether and in what amount incentive awards should be given to the lead plaintiffs in the instant action and in a related action, known as *Haritos v. American Express Financial Advisors, Inc.*, Case No. 02-2255 PHX-PGR, pending in the United States District Court for the District of Arizona ("Haritos").

1. All defined terms have the same meaning as defined in the Stipulation of Settlement dated January 18, 2007.

The Court, having considered all matters submitted to it at the hearing and otherwise; and it appearing from the submissions of the parties that, in accordance with the Court's Order Provisionally Certifying Class, Directing Dissemination of Notice, and Setting Settlement Fairness Hearing, dated February 14, 2007 ("Notice Order"), a notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was mailed to all Class Members who could be identified with reasonable effort, using the information provided by Defendant American Express Financial Advisors, Inc. or its successor, Ameriprise Financial Services, Inc. (collectively, "AEFA"), pursuant to the Notice Order; and it appearing that a summary notice of the Settlement and Final Fairness Hearing, substantially in the form approved by the Court, was published once in the national edition of The Wall Street Journal and Parade Magazine in accordance with the Notice Order; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested by Plaintiffs' Co-Lead Counsel; and all defined terms used herein having the meanings as set forth and defined in the Stipulation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Class Members, and Defendants.

2. The Court makes a final determination that, for the purposes of the Settlement, the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that (a) the Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Plaintiffs' claims are typical of the claims of the Class they seek to represent; (d) Plaintiffs and their counsel will fairly and adequately represent the interests of the Class; (e) questions of

law and fact common to the Class Members predominate over questions affecting only individual members of the Class; and (f) a class action settlement is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and, for the purposes of the Settlement, this Court hereby makes final its certification of the Action as a class action on behalf of the following Class:

All Persons who, at any time during the Class Period:

(i) Paid a fee for financial advice, financial planning, or Financial Advisory Services;

(ii) Purchased any of the Non-Proprietary Funds through AEFA or for which AEFA was listed as the broker;

(iii) Purchased any of the AXP Funds through AEFA or for which AEFA was listed as the broker; and/or;

(iv) Paid a fee for financial advice, financial planning, or other financial advisory services rendered in connection with an SPS, WMS and/or SMA account.

Excluded from the Class are Defendants, Nominal Defendants, members of Defendant James M. Cracchiolo's immediate family, any entity in which any Defendant or Nominal Defendant has or had a controlling interest, and the employees, agents, legal affiliates, or representatives who had been employees, agents, legal affiliates or representatives during the Class Period, heirs, controlling persons, successors, and predecessors in interest or assigns of any such excluded party, and all persons and entities who timely and properly requested exclusion from the Class pursuant to the Mailed Notice or Publication Notice disseminated in accordance with the Notice

Order, and six persons whose tardy exclusions are excused due to extenuating circumstances. Those six persons are: Carroll Neinhaus, James King, Dorothy King, Muriel Wester, Joseph Centineo and Ester Saabye.

4. Plaintiffs assert claims against Defendants under Sections 12(a)(2) and 15 of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rules 10b-5(a)-(c) and 10b-10 promulgated thereunder; Section 20(a) of the Securities Exchange Act of 1934; the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-5, 80b-6; the Minnesota Uniform Deceptive Trade Practices Act, Minnesota Consumer Fraud Act, Minnesota False Advertisement Act, and Minnesota Unlawful Trade Practices Act; and for breach of fiduciary duty and unjust enrichment. The Complaint alleges that Defendants engaged in a common course of conduct that included, among other things, misrepresentations and omissions in connection with the (a) marketing and sale of financial plans and advice to Defendants' clients; (b) the marketing, recommending, and sale of certain non-proprietary mutual funds that paid inadequately disclosed compensation to Defendants for such promotion; and (c) the marketing, recommending, and sale of Defendants' proprietary mutual funds and other proprietary products. For purposes of the Settlement only, the Court makes final its certification of these claims for class treatment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs (Leonard D. Caldwell, Carol M. Anderson, Donald G. Dobbs, Kathie Kerr, Susan M. Rangeley, and Patrick J. Wollmering) as representatives of the Class for purposes of the Settlement.

6. Having considered the factors described in Rule 23(g)(1) of the Federal Rules of Civil Procedure, the Court hereby makes final its appointment of Plaintiffs' counsel, the law

firms of Girard Gibbs LLP, Milberg Weiss LLP, and Stull Stull & Brody, as counsel for the Class for purposes of the Settlement.

7. In accordance with the Notice Order, individual notice of the pendency of this Action as a class action and of the proposed Settlement was given to all Class Members who could be identified with reasonable effort, using the information provided by Defendant AEFA, supplemented by published notice. The form and method of notifying the Class of the pendency of the Action as a class action, the terms and conditions of the Settlement, and the Final Fairness Hearing met the requirements of Rule 23 of the Federal Rules of Civil Procedure; Section 21D(a)(7) of the Securities Exchange Act of 1934 (as amended by the Private Securities Litigation Reform Act of 1995), 15 U.S.C. § 78u-4(a)(7); and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

8. The Settlement is approved as fair, reasonable, and adequate, and the Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

9. The Complaint, which the Court finds was filed on a good-faith basis in accordance with the Private Securities Litigation Reform Act of 1995, based upon publicly available information, is hereby dismissed with prejudice and without costs, except as provided in the Stipulation, as against Defendants.

10. Class Members, and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Released Claims against any and all Released Persons. The Released Claims are hereby compromised, settled, released, discharged, and dismissed as to all

Class Members and their successors and assigns and as against the Released Persons on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

11. Defendants and Nominal Defendants and their successors and assigns are hereby permanently barred and enjoined from instituting, commencing, or prosecuting, either directly or in any other capacity, any and all Settled Defendants' Claims against any Plaintiffs, Class Members, or their attorneys. The Settled Defendants' Claims of all Defendants and Nominal Defendants are hereby compromised, settled, released, discharged, and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

12. The Released Persons are hereby discharged from all claims for indemnity and contribution by any person or entity, whether arising under state, federal or common law, based upon, arising out of, relating to or in connection with the Released Claims of the Class or any Class Member, other than claims for indemnity or contribution asserted by a Released Person against another Released Person. Accordingly, the Court hereby bars all claims for indemnity and/or contribution by or against the Released Persons based upon, arising out of, relating to, or in connection with the Released Claims of the Class or any Class Member; provided, however, that this bar order does not prevent any Released Person from asserting a claim for indemnity or contribution against another Released Person.

13. Neither this Order and Final Judgment, nor the Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against Defendants or Nominal Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Defendant with respect to the truth of any fact alleged by Plaintiffs, the

certification of the class, or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants or Nominal Defendants;

(b) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Defendant or Nominal Defendant;

(c) offered or received against Defendants or Nominal Defendants as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant or Nominal Defendant, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; provided, however, that Defendants and/or Nominal Defendants may refer to this Order and Final Judgment and/or the Stipulation to effectuate the liability protection granted them thereunder;

(d) construed as an admission or concession that the consideration given under the Stipulation represents the amount which could be or would have been recovered after dispositive motions or trial; or

(e) construed as or received in evidence as an admission, concession, or presumption against Plaintiffs or any Class Members that any of their claims are without merit, or that any defenses asserted by Defendants or Nominal Defendants have any merit, or that damages recoverable under the Complaint would not have exceeded the Settlement Payment.

14. The Plan of Allocation proposed by Plaintiffs' Co-Lead Counsel for allocating the proceeds of the Settlement is approved as fair, reasonable, and adequate, and the Claims Administrator is directed to administer the Settlement and allocate the Settlement Fund in accordance with its terms and provisions.

15. The Court finds that all Parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

16. Plaintiffs' Co-Lead Counsel are hereby awarded 27 percent of the Settlement Fund in attorneys' fees, which sum the Court finds to be fair and reasonable, and $597,204 in reimbursement of expenses, which fees and expenses shall be paid to Plaintiffs' Co-Lead Counsel from the Settlement Fund with interest at the same net rate that the Settlement Fund earns, from the date the Court approves the Fee and Expense Award. Plaintiffs' Co-Lead Counsel shall allocate the award of attorneys' fees among themselves according to their own agreement, and among any other counsel in a fashion that, in the opinion of Plaintiffs' Co-Lead Counsel, fairly compensates such counsel for their contribution to the prosecution of the Action.

17. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $100,000,000 in cash that is already on deposit, plus interest thereon, and that numerous Class Members who file acceptable Proof of Claim forms will benefit from the Settlement created by Plaintiffs' Co-Lead Counsel;

(b) The Settlement obligates Defendants to pay all reasonable expenses of notice and settlement administration and to adopt remedial measures negotiated with Plaintiffs' Co-Lead Counsel and designed to address the issues giving rise to the Action;

(c) Over 3,012,814 copies of the Settlement Notice were disseminated to putative Class Members indicating that Plaintiffs' Co-Lead Counsel were moving for attorneys' fees and reimbursement of expenses in the requested amounts, and there were approximately 80 written comments and objections in opposition to the proposed Settlement and/or the fees and expenses requested by Plaintiffs' Co-Lead Counsel which have been considered by the Court and the Court overrules; JAB 7/18/07

(d) Plaintiffs' Co-Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Action involves complex factual and legal issues and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of such issues;

(f) Had Plaintiffs' Co-Lead Counsel not achieved the Settlement, there would remain a significant risk that the Class would recover significantly less or nothing from Defendants and/or Nominal Defendants;

(g) Plaintiffs' Co-Lead Counsel have submitted affidavits showing that they expended over 24,000 hours, with a lodestar value of $9,572,865, in prosecuting the Action and achieving the Settlement; and

(h) The amounts of attorneys' fees awarded and expenses reimbursed from the Settlement Fund are consistent with awards in similar cases.

18. Plaintiffs' Co-Lead Counsel are authorized to pay, from the amount awarded by the Court for attorneys' fees, incentive awards of $5,000 each to each of the six class representatives in this action and each of the five plaintiffs in the related Haritos case.

19. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this Action and the Settlement, including (a) the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order and Final Judgment; (b) any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Class Members; (c) any dispute over attorneys' fees or expenses sought in connection with the Action or the Settlement; and (d) determination whether, in the event an appeal is taken from any aspect of the Judgment approving the Settlement or any award of attorneys' fees, notice should be given under Federal Rule of Civil Procedure 23(d), at the appellant's expense, to some or all members of the Class apprising them of the pendency of the appeal and such other matters as the Court may order.

20. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

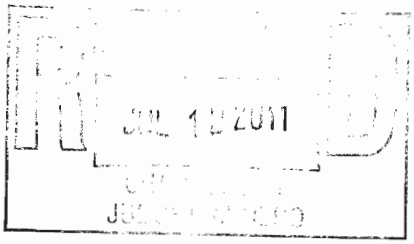
DATED: July 18, 2007

Deborah A. Batts

THE HONORABLE DEBORAH A. BATTS
UNITED STATES DISTRICT JUDGE

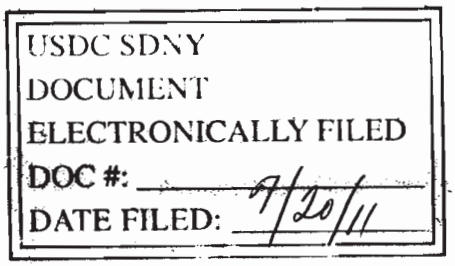
Exhibit 5

Harrero, 5



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEVIN CORNWELL, Individually and On Behalf of All Others Similarly Situated, Plaintiff, vs. CREDIT SUISSE GROUP, et al., Defendants.	Civil Action No. 08-cv-03758(VM) **(Consolidated)** CLASS ACTION ORDER AWARDING ATTORNEYS' FEES AND EXPENSES



THIS MATTER having come before the Court on July 18, 2011, on the motion of Lead Plaintiffs' counsel for an award of attorneys' fees and expenses incurred in the Action; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of the Action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated March 7, 2011.

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

3. Counsel for the Lead Plaintiffs are entitled to a fee paid out of the common fund created for the benefit of the Settlement Class. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478-79 (1980). In class action suits where a fund is recovered and fees are awarded therefrom by the court, the Supreme Court has indicated that computing fees as a percentage of the common fund recovered is the proper approach. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Second Circuit recognizes the propriety of the percentage-of-the-fund method when awarding fees. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005).

4. Lead Plaintiffs' counsel have moved for an award of attorneys' fees of 27.5% of the Settlement Fund, plus interest.

5. This Court adopts the percentage-of-recovery method of awarding fees in this case, and concludes that the percentage of the benefit is the proper method for awarding attorneys' fees in this case.

6. The Court hereby awards attorneys' fees of 27.5% of the Settlement Fund, plus interest at the same rate as earned on the Settlement Fund. The Court finds the fee award to be fair and reasonable. The Court further finds that a fee award of 27.5% of the Settlement Fund is consistent with awards made in similar cases.

7. Said fees shall be allocated among plaintiffs' counsel by Co-Lead Counsel in manner which, in their good faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Action.

8. The Court hereby awards expenses in an aggregate amount of $285,072.62, plus interest.

9. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered each of the applicable factors set fort in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). In evaluating the *Goldberger* factors, the Court finds that:

(a) Counsel for Lead Plaintiffs expended considerable effort and resources over the course of the Action researching, investigating and prosecuting Lead Plaintiffs' claims. Lead Plaintiffs' counsel have represented that they have reviewed tens of thousands of pages of documents, interviewed witnesses and opposed legally and factually complex motions to dismiss. The parties also engaged in settlement negotiations that lasted several months. The services provided by Lead Plaintiffs' counsel were efficient and highly successful, resulting in an outstanding recovery for the Settlement Class without the substantial expense, risk and delay of continued litigation. Such efficiency and effectiveness supports the requested fee percentage.

(b) Cases brought under the federal securities laws are notably difficult and notoriously uncertain. *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. MDL 1500, 2006 U.S. Dist. LEXIS 17588, at *31 (S.D.N.Y. Apr. 6, 2006). "[S]ecurities actions have become more

difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Despite the novelty and difficulty of the issues raised, and the procedural posture of the case, Lead Plaintiffs' counsel secured an excellent result for the Settlement Class.

(c) The recovery obtained and the backgrounds of the lawyers involved in the lawsuit are the best evidence that the quality of Lead Plaintiffs' counsel's representation of the Settlement Class supports the requested fee. Lead Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case. Based upon Lead Plaintiffs' counsel's diligent efforts on behalf of the Settlement Class, as well as their skill and reputations, Lead Plaintiffs' counsel were able to negotiate a very favorable result for the Settlement Class. Lead Plaintiffs' counsel are among the most experienced and skilled practitioners in the securities litigation field, and have unparalleled experience and capabilities as preeminent class action specialists. Their efforts in efficiently bringing the Action to a successful conclusion against the Defendants are the best indicator of the experience and ability of the attorneys involved. In addition, Defendants were represented by highly experienced lawyers from a prominent firm. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of Lead Plaintiffs' counsel to obtain such a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the superior quality of their representation and the reasonableness of the fee request.

(d) The requested fee of 27.5% of the settlement is within the range normally awarded in cases of this nature.

(e) Public policy supports the requested fee, because the private attorney general role is "'vital to the continued enforcement and effectiveness of the Securities Acts.'" *Taft v. Ackermans*, No. 02 Civ. 7951(PKL), 2007 U.S. Dist. LEXIS 9144, at *33 (S.D.N.Y. Jan. 31, 2007) (citation omitted).

(f) Lead Plaintiffs' counsel's total lodestar is $4,049,631.50. A 27.5% fee represents a multiplier of 4.7. Given the public policy and judicial economy interests that support the expeditious settlement of cases, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002), the requested fee is reasonable.

10. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Co-Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

Dated: New York, NY
18 July, 2011

THE HONORABLE VICTOR MARRERO
UNITED STATES DISTRICT JUDGE

635891_1

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, I submitted the foregoing to orders_and judgments@nysd.uscourts.gov and e-mailed to the e-mail addresses denoted on the Court's Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 11, 2011.

s/ Ellen Gusikoff Stewart
ELLEN GUSIKOFF STEWART

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