The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE WASHINGTON MUTUAL, INC. SECURITIES & ERISA LITIGATION	No. 2:08-md-1919 MJP
IN RE WASHINGTON MUTUAL, INC. SECURITIES LITIGATION This Document Relates to: ALL CASES	Lead Case No. C08-387 MJP PLC-30 **CLASS REPRESENTATIVE'S MOTION FOR FINAL APPROVAL OF LEHMAN SETTLEMENT** NOTE ON MOTION CALENDAR (Settlement Hearing Date): February 5, 2016 at 9:00 a.m.

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Lead Counsel respectfully submits this motion on behalf of Plaintiff Brockton Contributory Retirement System ("Brockton" or "Claimant") and the certified Class in the above-captioned action (the "Action"), for final approval of the settlement of the Class Claim in the SIPA liquidation proceeding of Lehman Brothers Inc., *In re Lehman Bros. Inc.*, Case No. 08-01420 (SCC) SIPA (Bankr. S.D.N.Y.) (the "SIPA Proceeding"). The terms and conditions of the proposed settlement are set forth in the Stipulation and Order Regarding Proofs of Claim of Brockton Contributory Retirement System, *et al*. (No. 5765, as Amended by No. 6802, and 5762) and Limited Related Stay Relief dated March 20, 2015 previously submitted to the Court (ECF No. 928-1) (the "Stipulation"). This motion is brought pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and seeks final approval of the proposed settlement (the "Settlement" or "Lehman Settlement") by this Court. The Settlement was previously approved by the Bankruptcy Court in the Lehman SIPA Proceeding by order dated April 7, 2015.

Lead Counsel is simultaneously submitting herewith the Declaration of Hannah Ross in Support of Class Representative's Motion for Final Approval of Settlement of Class Claim Filed in the SIPA Liquidation of Lehman Brothers Inc. and Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Ross Declaration" or "Ross Decl."). The Ross Declaration is an integral part of this submission and the Court is respectfully referred to it for a detailed description of the history of the prosecution of the claims against Lehman and the efforts of Lead Counsel, Liaison Counsel, and Plaintiffs' retained bankruptcy counsel Lowenstein Sandler LLP ("Bankruptcy Counsel") (Ross Decl. ¶¶ 10-25); the terms of the Lehman Settlement (*id*. ¶¶ 26-31); the benefits of the Lehman Settlement in light of the risks and uncertainties of continued litigation (*id*. ¶¶ 32-42); and the dissemination of notice of the Lehman Settlement (*id*. ¶¶ 43-47).[1]

[1] All capitalized terms not otherwise defined herein have the meaning set forth in the Ross Declaration, the Stipulation, or the Stipulation of Settlement with the Underwriter Defendants dated June 30, 2011 (ECF No. 874-2).

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I. PRELIMINARY STATEMENT

In this long-running case arising from the financial crisis, Plaintiffs have successfully negotiated a substantial financial benefit for the Class from the final culpable party in the downfall of Washington Mutual, Inc. ("WaMu"): Lehman Brothers Inc. ("Lehman"). While Lehman served as an underwriter for WaMu's Class Period offerings, Plaintiffs were precluded from pursuing their claims against Lehman in the securities litigation before this Court as a result of Lehman's liquidation and filing of its SIPA Proceeding in September 2008, which stayed the prosecution of claims against Lehman in this Action. Now, more than eight years after this case was first filed and more than four years after the securities litigation was resolved, Lead Counsel and Liaison Counsel and the Class Representative have reached a settlement with Lehman. If approved by the Court, the Settlement will provide for a $16,500,000 Allowed Class Claim against Lehman's estate on behalf of the Class in the SIPA Proceeding. As explained below, this $16.5 million Allowed Class Claim will result in the Class promptly realizing $5.775 million, plus an estimated additional amount of potentially $2.475 million, for an estimated total cash recovery of approximately $8.25 million.

This recovery of approximately $8.25 million from Lehman is in addition to the $208.5 million in settlements that Plaintiffs, Lead Counsel and Liaison Counsel previously achieved for the Class. The $208.5 million in settlements included (i) a $105 million settlement with certain former officers and directors of WaMu and with WaMu; (ii) an $18.5 million settlement with Deloitte & Touche LLP, WaMu's outside auditor; and (iii) an $85 million settlement with fifteen underwriters of WaMu securities other than Lehman (the "Underwriter Settlement") (collectively, the "2011 Settlements"). This additional settlement will bring the aggregate total recovery achieved for the Class to approximately $216.75 million.

Significantly, at the time of the 2011 Settlements it was not clear whether Lehman would have any funds available to pay the claims of unsecured creditors, which is what the Securities Act claims that Class Members in this Action had asserted against Lehman would be, if the

claims were settled or successfully pursued to judgment. Indeed, at the time approval was sought in 2011, Plaintiffs and Lead Counsel believed that the aggregate $208.5 million in settlements achieved would most likely be the total recovery for the Class. However, in order to protect the interests of the Class, certified Class Representative Brockton, which purchased securities underwritten by Lehman in the Offerings, filed claims in Lehman's SIPA Proceeding in the United States Bankruptcy Court for the Southern District of New York, on behalf of itself and the Class, and Lead Counsel ensured that any Class claims against Lehman were preserved by not including Lehman as a settling defendant or released party in any of the 2011 Settlements.

As a result of these actions and those detailed in the papers submitted herewith, Brockton and Lead Counsel have now achieved a proposed resolution of the Class Claim asserted in the SIPA Proceeding. The Settlement provides for a $16,500,000 Allowed Class Claim against Lehman's estate on behalf of the Class in the SIPA Proceeding. While the exact amount that will ultimately be recovered from Lehman's estate with respect to the Allowed Class Claim cannot currently be determined, it is estimated that the amount will potentially be 50% of the value of the Allowed Class Claim, or approximately $8,250,000. Ross Decl. ¶ 5. As discussed below, this estimate is based on the amount of the distributions made to date in the SIPA Proceeding to general unsecured creditors with allowed claims and the potential amount of all future distributions. *Id*. Moreover, as part of the Settlement, the SIPA Trustee has agreed to reserve funds with respect to the Class Claim representing the *pro rata* payments already made on other allowed general unsecured claims and that amount will become payable to the Class upon the occurrence of the Effective Date of the Settlement. *Id*. Currently, a total of 35% of the amount of the Allowed Class Claim, or $5,775,000, has been reserved by the SIPA Trustee and will be payable promptly to the Class upon approval of the Settlement. *Id*. The balance of the estimated total recovery will be paid as future distributions are made in the SIPA Proceeding. *Id*.

Brockton, together with Lead Counsel, Brockton's counsel Saxena White P.A. ("Saxena White"), and Liaison Counsel (collectively, "Plaintiffs' Counsel") believe that the proposed

Settlement is a tremendously favorable result for Class Members, particularly in light of the substantial costs of litigating a disputed claim in the SIPA Proceeding and the uncertainty as to the amount, if any, that could be recovered in the SIPA Proceeding. Ross Decl. ¶ 6. The Settlement was reached only after extensive arm's-length settlement negotiations between counsel for the SIPA Trustee, on one hand, and Lead Counsel and Bankruptcy Counsel, on the other. *Id*. ¶¶ 21-22. The Settlement is the result of lengthy efforts by Plaintiffs, Plaintiffs' Counsel and Bankruptcy Counsel to pursue claims against Lehman originally asserted in this Action and thereafter through the SIPA Proceeding, which included, among other things: (a) an extensive initial investigation of potential claims against WaMu and other defendants in this Action, including the underwriters of WaMu's securities such as Lehman; (b) the filing of a detailed Consolidated Class Action Complaint which included claims against Lehman; (c) the extensive litigation of similar claims in this Action, including through motion practice, class certification, the review of millions of pages of documents and taking of 25 merits depositions; (d) the filing of timely proofs of claim in the SIPA Proceeding to preserve the claims of Plaintiffs and the Class against Lehman's estate; (e) extensive monitoring of the Lehman's SIPA Proceeding over the course of several years; (f) responding to requests for information and pleadings filed in the SIPA Proceeding; (g) lengthy arm's-length negotiations of the Settlement with counsel for the SIPA Trustee; and (h) approval of the Settlement by the Bankruptcy Court, including modification of the automatic stay to allow for approval of the Settlement in this Court. *Id*. ¶ 7.

Brockton and Plaintiffs' Counsel believe that the proposed Settlement is fair, reasonable and adequate and in the best interests of the Class in light of the amount recovered pursuant to the Settlement, the substantial costs of litigating a disputed claim in the SIPA Proceeding and the substantial uncertainty as to the amount, if any, that could be recovered in the SIPA Proceeding. Ross Decl. ¶¶ 6, 32. In the absence of the Settlement, Plaintiffs would be required to seek certification of a class in the Bankruptcy Court, engage in extensive discovery (including costly

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expert discovery on issues such as Lehman's due diligence obligations and loss causation), and then prove liability and damages in order to be in a position to obtain any recovery. *Id.* ¶ 33. Securing a recovery on the Class Claim in the SIPA Proceeding through litigation would, therefore, require substantial expense and time and, because all other claims in this litigation have been resolved, the costs incurred would come solely out of any recovery that could be obtained from Lehman. *Id.* Finally, the Securities Act claims asserted against Lehman were subject to the same risks and uncertainties as the claims that had been asserted against the other underwriters in the Action. These included, among others, the risks of proving that the alleged misstatements in WaMu's registration statements were false and misleading when made (and were not merely statements of opinion or later made false by changed circumstances), and challenges in rebutting Lehman's anticipated defenses that it exercised due diligence or that the drop in price of WaMu securities was due to reasons other than the alleged misstatements. *Id.* ¶¶ 7, 34-40. These risks created a possibility that, in the absence of the Settlement, the Class could achieve no recovery at all, or a lesser recovery than the Allowed Class Claim after years of additional protracted litigation. Based on these factors, Brockton, Plaintiffs' Counsel and Bankruptcy Counsel have concluded that the Settlement is fair, reasonable and adequate and in the best interests of the Class, and respectfully request that the Settlement be approved.

II. BACKGROUND

Beginning in November 2007, several putative securities class actions were filed alleging that WaMu and certain of its officers and directors violated Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder, with respect to public disclosures concerning the lending practices and financial condition of WaMu. Ross Decl. ¶ 11. By Order dated May 7, 2008, the Court consolidated the related actions, appointed Ontario Teachers' Pension Plan Board as Lead Plaintiff, and appointed Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and Byrnes Keller Cromwell LLP as Liaison Counsel. *Id.*

1 In preparation for filing a consolidated complaint in the Action, Lead Counsel conducted
2 an extensive investigation of WaMu's mortgage loan business, including WaMu's risk
3 management practices, appraisal process, and underwriting practices, and WaMu's accounting
4 for its reserve for loan losses. Ross Decl. ¶ 12. The investigation included interviews with
5 nearly 500 former WaMu employees and third-party witnesses, and resulted in uncovering
6 critical internal documents that had never previously been made public. *Id*. The pre-filing
7 investigation also included an extensive review of publicly-available information about WaMu,
8 including SEC filings, analyst reports, news articles and other public statements, and
9 consultation with experts in accounting, loss causation and loan performance who undertook
10 their own reviews of publicly-available information. During this investigation, Lead Counsel
11 engaged a detailed analysis of the known facts and applicable law and considered claims that
12 could be asserted against additional defendants, including the underwriters of WaMu's securities
13 such as Lehman. *Id*.

14 Following Lead Counsel's investigation, on August 5, 2008, Plaintiffs filed a detailed
15 Consolidated Class Action Complaint (ECF No. 67) (the "Consolidated Complaint"), which
16 included Brockton as a named plaintiff and alleged claims pursuant to both the Exchange Act and
17 the Securities Act of 1933 (the "Securities Act"). The Consolidated Complaint included claims
18 against the underwriters of WaMu's Floating Rates Notes, 7.250% Notes, and Series R Stock
19 (collectively, the "Securities Act Securities") for violations of Sections 11 and 12(a)(2) of the
20 Securities Act of 1933 in connection with those offerings.

21 Lehman was named as one of the underwriter defendants in the Consolidated Complaint.
22 *See* Consolidated Complaint ¶ 843. Lehman underwrote a portion of the offering of each of the
23 three Securities Act Securities. Specifically, Lehman underwrote $20 million of the $500 million
24 Floating Rates Notes offering in August 2006; $112.5 million of the $500 million 7.250% Notes
25 offering in October 2007; and $990 million of the $3 billion offering of Series R Stock in
26 December 2007. Ross Decl. ¶ 13.

Less than two months after the Consolidated Complaint was filed, Lehman collapsed. Specifically, on September 19, 2008, the Securities Investor Protection Corporation ("SIPC") commenced the liquidation of Lehman. As a result of the commencement of Lehman's liquidation proceeding, all claims asserted against Lehman in the Action were stayed pursuant to Section 362(a) of the Bankruptcy Code. *See* 11 U.S.C. § 362(a). The Order Commencing Liquidation entered by the United States District Court for the Southern District of New York on September 19, 2008 on the complaint and application of SIPC (the "LBI Liquidation Order"), provided that the automatic stay provisions of 11 U.S.C. § 362(a) operated as a stay of, among other things, "the continuation . . . of a judicial, administrative or other proceeding against [Lehman] that was . . . commenced before the commencement of this [liquidation] proceeding, or to recover a claim against [Lehman] that arose before the commencement of this proceeding."

Plaintiffs retained Bankruptcy Counsel experienced in the specialized area of bankruptcy law, Michael S. Etkin of Lowenstein Sandler LLP, in order to protect the interest of class members in Lehman's SIPA Proceeding. Ross Decl. ¶ 15. Bankruptcy Counsel also represented the interest of class members in WaMu's own bankruptcy proceedings, which also began in September 2008. *Id*.

On May 29, 2009, Plaintiffs timely filed three general creditor claims in Lehman's SIPA Proceeding based on Lehman's alleged violations of federal securities laws as asserted in this Action. Claim No. 5765 was filed on behalf of the Class (the "Original Class Claim"), and two individual claims, Claim Nos. 5762 and 5764, were filed on behalf of two plaintiffs in the Action. The Original Class Claim has since been amended by Claim No. 6802 (the "Class Claim"), which is the claim that is the subject of this motion. The Class Claim and Brockton's individual Claim No. 5762 are collectively referred to herein as the "Claims." Brockton, a certified class representative in the Action, purchased securities underwritten by Lehman in the Offerings and filed proofs of claims in the SIPA Proceeding on behalf of itself and the Class. (Individual Claim No. 5764 filed by Lead Plaintiff Ontario Teachers' Pension Plan Board has

been withdrawn as Ontario Teachers did not purchase any of the securities underwritten by Lehman in the Offerings.)

In the Amended Consolidated Class Action Complaint filed in this Action on June 15, 2009 (ECF No. 293), Plaintiffs alleged the same Securities Act claims against Lehman as alleged in the Consolidated Complaint, but noted that the claims against Lehman had been stayed. Ross Decl. ¶ 17. Thereafter, Plaintiffs vigorously litigated their claims against the non-debtor Defendants, which included conducting a massive discovery effort involving the review of millions of pages in documents obtained from Defendants and third parties and taking 25 merits depositions. *Id*. As noted above, in 2011, as a result of these efforts, Plaintiffs achieved three settlements totaling $208.5 million in this Action with defendants other than Lehman, including an $85 million settlement with fifteen underwriters of the Securities Act Securities other than Lehman. These settlements were approved by the Court on November 4, 2011. ECF Nos. 908-910.

At that time, Plaintiffs and Lead Counsel believed that the $208.5 million in settlements achieved would likely be the total recovery obtained for the Class. Ross Decl. ¶ 19. Nonetheless, in negotiating the three prior settlements, Lead Counsel ensured that Lehman was not included as a settling defendant nor as a released party in any of them, thereby preserving the Class's potential claims in the bankruptcy proceedings against Lehman. *See, e.g.*, Underwriter Stipulation (ECF No. 874-2) at ¶¶ 1(jj) (defining Lehman as one of the "Other Defendants"), 1(oo) (excluding Other Defendants from the definition of Related Parties, who are released under the Underwriter Stipulation).

At the time of the 2011 Settlements, it was not clear whether or to what extent Lehman's estate would have funds available to pay claims asserted by unsecured creditors, including the Class Claim asserted on behalf of the Class. Ross Decl. ¶ 20. Accordingly, Plaintiffs, through Lead Counsel and Bankruptcy Counsel, continued to monitor the activity and progress of the SIPA Proceeding. *Id*. Counsel also responded to requests for information from the SIPA

Trustee's counsel and responded to pleadings and motions filed in the SIPA Proceeding where necessary. *Id.*

By mid-2013 it became apparent that Lehman's estate might have sufficient funds to make distributions to holders of allowed unsecured claims. *Id.* ¶ 21. When the availability of such funds crystallized, Plaintiffs, though Bankruptcy Counsel and Lead Counsel, actively pursued such a recovery, including engaging in informal discovery with the SIPA Trustee and beginning negotiations with counsel for the SIPA Trustee to resolve the Class Claim. *Id.*

The settlement negotiations between counsel for the SIPA Trustee, on one hand, and Lead Counsel and Bankruptcy Counsel, on the other, were at arm's length and extensive, occurring over a period of many months and involved detailed discussions of the claims at issue. Lead Counsel rejected the SIPA Trustee's initial offers to settle the Class Claim for lower amounts and negotiated for the best result it believed was reasonably available for the Class. During the negotiation process, Lead Counsel prepared a detailed analysis to quantify the claim against the Lehman bankruptcy estate based on work prepared by Plaintiffs' damages expert in the earlier litigation against the other underwriter defendants and prepared responses to the SIPA Trustee's arguments regarding due diligence and class certification issues. Following these negotiations, Brockton and the SIPA Trustee reached an agreement and entered into the Stipulation on March 20, 2015 setting forth the terms of the proposed Settlement.

The Settlement provides that Brockton, on behalf of itself and as a certified class representative on behalf of the Class in the Action, will have an allowed general unsecured claim against the Lehman general estate in the SIPA Proceeding in the amount of $16,500,000 (the "Allowed Class Claim"). *See* Stipulation ¶ 10. Brockton, on behalf of itself, and as a certified class representative on behalf of the Class in the Action, will receive the same proportionate payments or distributions (including with respect to the timing and type of payments or distributions) with respect to the Allowed Class Claim as are generally received by holders of other allowed general unsecured claims against the Lehman estate. *Id.* As noted above, the

amount that will ultimately be recovered from Lehman's estate with respect to the Allowed Class Claim is currently unknown but it is estimated that the amount will potentially be 50% of the value of the Allowed Class Claim, or approximately $8,250,000. Ross Decl. ¶ 27. This estimate is based on the amount of the distributions made to date in the SIPA Proceeding and the estimated amount of all future distributions. *Id.*

Several distributions have already been made to holders of allowed general unsecured claims in the SIPA Proceeding, equal to 35% of the amount of such claims. The SIPA Trustee has agreed to reserve funds with respect to the Class Claim in an amount consistent with payments already made on other allowed general unsecured claims and such amount will become payable to the Class upon the occurrence of the Effective Date of the Settlement. Ross Decl. ¶ 28. Thus, when the Settlement becomes effective, 35% of the amount of the Allowed Class Claim, or $5,775,000, will be paid for the benefit of the Class as a catch-up payment, based on the distributions that have already occurred in the SIPA Proceeding. *Id.* The balance of the potential total recovery will be paid as and when future distributions are made in the SIPA Proceeding. *Id.*

Following execution of the Stipulation, the SIPA Trustee sought approval of the Stipulation in the Bankruptcy Court and requested limited relief from the automatic stay under the Bankruptcy Code. On April 7, 2015, the Bankruptcy Court approved the Stipulation, which provided, in part, that "[u]pon Bankruptcy Court Approval, the automatic stay pursuant to section 362(a) of the Bankruptcy Code and the LBI Liquidation Order shall be modified solely to the extent necessary to permit Claimant to seek and obtain District Court Approval of the settlement of the Class Claim as set forth in herein." ECF No. 928-1, at ¶ 5.

On May 29, 2015, Brockton moved for preliminary approval of the Settlement in this Court (ECF No. 928). On June 22, 2015, the Court entered the Order Preliminarily Approving Proposed Settlement of Class Claim Filed in the SIPA Liquidation of Lehman Brothers Inc. (ECF No. 929) (the "Preliminary Approval Order"), which preliminarily approved the proposed

Settlement; approved the proposed form and manner of providing notice of the Settlement to Class Members; and scheduled a hearing regarding final approval of the Settlement and related matters. The hearing was originally scheduled for January 15, 2016 and was subsequently rescheduled for February 5, 2016 at 9:00 a.m. ECF Nos. 930, 931.

For all the reasons set forth herein, Brockton respectfully requests that the Settlement be approved as fair, reasonable and adequate to the Class.

III. ARGUMENT

A. The Standards For Judicial Approval Of A Class Action Settlement

In the Ninth Circuit, "there is a strong judicial policy that favors settlements, particularly where complex class action litigation is concerned." *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Class actions readily lend themselves to compromise because of "the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006); *see also In re Skilled Healthcare Grp., Inc. Sec. Litig.*, 2011 WL 280991, at *2 (C.D. Cal. Jan. 26, 2011) ("judicial policy favors settlement in class actions and other complex litigation where substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation").

Under Rule 23(e) of the Federal Rules of Civil Procedure, a class action may be settled upon notice of the proposed settlement to class members, and a court finding, after a hearing, that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In exercising its discretion to approve the settlement of a class action, the Court should consider the following non-exclusive factors:

> (1) the strength of the plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Churchill Vill., LLC v. Gen. Elec., 361 F.3d 566, (9th Cir. 2004); *accord In re Mego Fin. Corp. Sec. Litig.,* 213 F.3d 454, 458 (9th Cir. 2000); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

In exercising its sound discretion, the district court should not adjudicate the merits of the case. As the Ninth Circuit has noted:

> [T]he settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. Neither the trial court nor this court is to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.

Officers for Justice, 688 F.2d at 625.

In addition to considering the substantive fairness, adequacy and reasonableness of a proposed settlement, the Court should also consider its procedural fairness. *See Officers for Justice,* 688 F.2d at 625; *City of Roseville Employees' Ret. Sys. v. Micron Tech., Inc.*, No. 06-CV-85-WFD, 2011 WL 1882515, at *4 (D. Idaho Apr. 28, 2011); *Pelletz v. Weyerhaeuser Co.*, 255 F.R.D. 537, 542 (W.D. Wash. 2009).

B. The Settlement Warrants Final Approval

Consideration of all the applicable factors set out by the Ninth Circuit strongly supports a finding that the proposed Settlement of the Class Claim asserted in Lehman's SIPA Proceeding is fair, reasonable, and adequate and should be approved.

1. The Strength Of Plaintiffs' Claims And The Significant Risks Of Continued Litigation Support Approval Of The Settlement

In considering the fairness and adequacy of a settlement, the Court should consider both "the strength of the plaintiffs' case" and "the risk . . . of further litigation." *Mego,* 213 F.3d at 458. In conducting this analysis, the Court must balance the benefits afforded to members of the

Class, and the immediacy and certainty of a substantial recovery, against the continuing risks of litigation (including the strengths and weakness of the plaintiffs' case). *See id.*; *see also Couser v. Comenity Bank*, No. 12CV2484-MMA-BGS, --- F. Supp. 3d. ----, 2015 WL 5117082, at *4 (S.D. Cal. May 27, 2015). In assessing these factors, the Court is not required to "decide the merits of the case or resolve unsettled legal questions," *Carson v. Am. Brands, Inc.,* 450 U.S. 79, 88 n.14 (1981), or to "foresee with absolute certainty the outcome of the case." *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8311 (CM)(MHD), 2014 WL 1224666, at *10 (S.D.N.Y. Mar. 24, 2014). "[R]ather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement." *Id*.

Brockton and Plaintiffs' Counsel believe that the proposed Settlement is in the best interests of the Class in light of the uncertainty as to the amount, if any, that could be recovered on behalf of the Class in the SIPA Proceeding and the substantial costs of recovering from the Lehman estate though litigation of a disputed claim. As discussed in the Ross Declaration, in the absence of the Settlement, Plaintiffs would be required to seek certification of a class in the Bankruptcy Court, engage in extensive discovery, and prove liability and damages in order to obtain any recovery. Ross Decl. ¶ 33.

The Securities Act claims that formed the underlying basis of the Class Claim asserted against Lehman's estate in the SIPA Proceeding were subject to the same risks and uncertainties as the claims asserted against the other underwriter defendants in the Action, including, among others, risks of proving that the alleged misstatements in WaMu's registration statements were false and misleading when made (and were not merely statements of opinion or later made false by changed circumstances), and risks in rebutting Lehman's anticipated defenses that it exercised due diligence or that the drop in price of the WaMu securities was due to reasons other than the alleged misstatements. Ross Decl. ¶ 34. These litigation risks created a possibility that, in the absence of the Settlement, the Class might achieve no recovery at all, or a lesser recovery than the Allowed Class Claim after years of additional protracted litigation. *Id*.

1 First, Plaintiffs and the Class would have faced challenges in establishing the falsity of
2 statements made in the Offering Materials in order to establish Lehman's liability under the
3 Securities Act. There had been no restatement of WaMu's financial results and Defendants had
4 vigorously denied that the statements were false or materially misleading. As the Court is aware,
5 Defendants had argued that the statements in the Offering Materials which Plaintiffs alleged
6 were false (a) were true at the time they were made and only subsequently became false because
7 of market conditions, (b) were not misleading when considered in the context of other
8 statements, (c) were nonactionable puffery, or (d) were statements of opinion. Ross Decl. ¶ 35.
9 Lehman would have tried to characterize certain alleged misstatements, including WaMu's
10 reporting of its allowance for loan losses, as forecasts or predictions that were not false when
11 made but that simply proved to be inaccurate as a result of later, unpredicted market changes. If
12 the Court accepted this view at summary judgment or trial, there could be no liability for these
13 statements under the Securities Act. *See, e.g., In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 389
14 (9th Cir. 2010) (that a "forecast turned out to be incorrect does not retroactively make it a
15 misrepresentation"); *Coronel v. Quanta Capital Holdings, Ltd.*, No. 07 Civ. 1405 (RPP), 2009
16 WL 174656, at *29 (S.D.N.Y. Jan. 26, 2009) (holding that the fact that "later announcements
17 about reserve losses differed from earlier ones . . . [did not establish that prior] reserve estimates
18 were false"); *In re CIT Group, Inc. Sec. Litig.*, 349 F. Supp. 2d 685, 690-91 (S.D.N.Y. 2004)
19 (holding that later increases to loan loss reserves provided no basis for concluding that
20 statements regarding the adequacy of prior period reserves were false).

21 Lehman would also have been able to make colorable arguments that the statements
22 about the adequacy of WaMu's allowance for loan loss reserves were statements of opinion,
23 which would require proving not only that the statement was false but that the maker of the
24 statement subjectively believed the statement to be false (or that facts showing that the speaker
25 lacked a reasonable basis for making the statement were omitted). *See, e.g., Fait v. Regions Fin.*
26 *Corp.*, 655 F.3d 105, 113 (2d Cir. 2011) (characterizing statements "regarding the adequacy of

loan loss reserves" as opinions requiring proof of subjective falsity); *see also Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 135 S. Ct. 1318, 1328-30 (2015).

With respect to the claims asserted against Lehman arising out of the October 2007 and December 2007 Offerings, which comprised the largest portion of the claims asserted against Lehman (based on the value of the securities underwritten by Lehman), Plaintiff would have faced additional significant hurdles in establishing the falsity of the statements (or, as discussed below, overcoming "negative causation" defenses) because these two offerings occurred after WaMu had already announced substantial increases to its loan loss provisions and some analysts were openly commenting on the company's dire financial condition and bleak prospects. *See* Ross Decl. ¶ 37. The December 2007 Offering of Series R Stock, which suffered the largest damages of any of the Offering Securities – and was the Offering with the largest percentage underwritten by Lehman – also occurred after the New York Attorney General's lawsuit alleging fraud in connection with appraisals of WaMu's loans was publicly filed, which Defendants had argued acted as a ***complete*** corrective disclosure of the misstatements alleged in the Consolidated Complaint. Lehman would have been able to argue, particularly with respect to the December 2007 Offering, that the Offering Materials contained full and detailed disclosures of all relevant and material information, including the potential problems with WaMu's loan portfolio. These and other similar hurdles to establishing the falsity of the Offering Materials created substantial risks that Plaintiffs would not be able to establish Lehman's liability – or might only be able to establish Lehman's liability with respect to the Floating Rates Notes offering in August 2006. Because Lehman underwrote only 4% of this Offering ($20 million of the $500 million offering), such an outcome would have dramatically reduced the potential damages recoverable.

In addition, Lehman could also have asserted plausible defenses of due diligence and negative causation under the Securities Act. With respect to Lehman's due diligence defense, many WaMu executives had signed and certified WaMu's financial statements and statements about the effectiveness of its internal controls, which Lehman could point to as providing them

comfort regarding the company's controls and financial condition and prospects. At summary judgment or trial, Lehman might have been able to prevail on the grounds that it conducted adequate due diligence with respect to the Offerings but simply did not uncover facts showing that WaMu's statements about its underwriting practices or appraisal process were false or that WaMu's allowance for loan losses was improper. *See* Ross Decl. ¶ 38.

Lehman could also have asserted a plausible defense of "negative causation" – arguing that some or all of the declines in the value of the Securities Act Securities resulted from market movements and the "fear contagion" that prevailed during the financial crisis rather than from the revelation of misstatements in the Offering Materials. *See Lentell v. Merrill Lynch & Co.*, 396 F.3d 161, 174 (2d Cir. 2005) (noting that the likelihood of demonstrating loss causation decreases if a "plaintiff's loss coincides with a marketwide phenomenon"); *Micron*, 2011 WL 1882515, at *3 (difficulty in "distinguish[ing] between movements in Micron stock caused by artificial inflation and those caused by external market forces" was a risk supporting settlement); *Taft v. Ackermans*, 2007 WL 414493, at *6 (S.D.N.Y. Jan. 31, 2007) (approving settlement where "[e]xternal factors such as the industry-wide telecommunications 'meltdown' could make loss causation difficult to prove"). Even partial success by Lehman on this argument would have greatly reduced the damages that the Class could recover. *See* Ross Decl. ¶ 39.

Moreover, proof of loss causation and calculation of damages at trial would ultimately have required expert testimony. While Plaintiffs would have been able to present a cogent and persuasive expert's view establishing loss causation and damages, there is little doubt that the SIPA Trustee would also be able to produce a well-qualified expert who would opine against a finding of loss causation for many or all of the price declines, giving rise to the well-known risk of the "battle of experts." Plaintiffs could not be certain which expert's view would prevail. *See, e.g.*, *In re Bear Stearns Cos., Inc. Sec., Deriv. & ERISA Litig.*, No. 08 MDL 1963, 2012 WL 5465381, at *6 (S.D.N.Y. Nov. 9, 2012) ("When the success of a party's case turns on winning a so-called 'battle of experts,' victory is by no means assured."); *In re Cendant Corp. Litig.*, 264

F.3d 201, 239 (3d Cir. 2001) ("establishing damages at trial would lead to a 'battle of experts' . . . with no guarantee whom the jury would believe").

In sum, based on their consideration of these risks, the uncertainty of any recovery, the limited funds available to the Lehman estate, and the significant costs that would be incurred in pursuing this litigation, Brockton, Plaintiffs' Counsel and Bankruptcy Counsel have concluded that the Settlement, providing for an Allowed Class Claim in the amount of $16,500,000, is fair, reasonable and adequate to the Class, and in its best interests.

2. The Expense, Complexity, And Likely Duration Of Further Litigation Support Approval Of The Settlement

The certainty of recovery under the Settlement also strongly weighs in favor of its approval, given the expense, complexity and likely duration of continued litigation of the Class Claim in Lehman's SIPA Proceeding. *See McPhail v. First Command Fin. Planning, Inc.*, 2009 WL 839841, at *4 (S.D. Cal. Mar. 30, 2009) ("The expense and possible duration of the litigation should be considered in evaluating the reasonableness of settlement.") (quoting *Mego*, 213 F.3d at 458); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *6 (C.D. Cal. June 10, 2005) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

To recover on the Class Claim, Plaintiffs would be required to seek certification of a class in the Bankruptcy Court, engage in extensive discovery in the Bankruptcy Court, including potential expert discovery on issues such as Lehman's due diligence obligations and loss causation, and then prove liability and damages. Ross Decl. ¶ 34. A trial on liability would require substantial factual and expert testimony about WaMu's allowances for loan loss reserves and WaMu's risk management practices, appraisal process, and underwriting practices. Even if Plaintiffs successfully established the Class Claim in the Bankruptcy Court, the SIPA Trustee could then appeal the determination of the Bankruptcy Court. Accordingly, achieving a recovery on the Class Claim in the absence of the Settlement would be lengthy and costly.

Moreover, because all other claims in connection with the Action have been resolved, all of the costs and expenses that would be incurred in such further litigation would come solely out of any recovery that could ultimately be obtained from Lehman. Ross Decl. ¶ 33.

Finally, any judgment or recovery that was obtained through litigation of the disputed Class Claim in the SIPA Proceeding would still be considered a general unsecured claim and would be subject to the same discounting based on the amount of available funds available to satisfy all general unsecured claims against Lehman's estate as will be applied to the Allowed Class Claim under the Settlement. Ross Decl. ¶ 41. In other words, the same discount that will be applied to the Allowed Class Claim based on the funds available to pay general unsecured claims (currently estimated to be approximately 50%) would also be applied to the Class Claim if it were resolved through further costly litigation.

In contrast to the substantial costs and delay that would result from further litigation of the Class Claim, the resolution of the Class Claim through the Settlement will prevent further litigation expenses and will allow the Class to benefit from economies of scale because the administration and distribution of the Settlement can be combined with the prior recoveries obtained in this Action, thus reducing overall administrative costs. If the Settlement is approved, Lead Counsel expects that it will be able to receive payment of the portion of the Allowed Class Claim that is based on distributions that have already been made in the SIPA Proceeding shortly after the Effective Date of the Settlement, with other distributions made as further distributions to unsecured creditors occur in the SIPA Proceeding. The Claims Administrator for this Action anticipates that it will be able to conduct a second distribution of the earlier settlement funds, based on funds available as a result of uncashed checks or other reasons, in the coming months. Accordingly, the proceeds of the Lehman Settlement may be able to be distributed to Authorized Claimants simultaneously with the second distributions of funds remaining from the earlier settlements, thereby reducing administrative costs.

In sum, the costly, lengthy and uncertain nature of further litigation in the SIPA Proceeding support approval of the Settlement.

3. The Risks Of Certifying A Class In The Bankruptcy Proceedings Support Approval Of The Settlement

Notwithstanding this Court's certification of the Class, Plaintiffs would be required to seek a separate certification of a class pursuant to the Federal Rules of Bankruptcy Procedure in order to pursue the Class Claim on behalf of a class in the Bankruptcy Court. Ross Decl. ¶ 33. The need to obtain certification of a class in Bankruptcy Court presents an additional procedural hurdle for Plaintiffs before any recovery could be obtained on the Class Claim in the SIPA Proceeding. While Brockton and Lead Counsel believe that the Class Claim is appropriate for class treatment in accordance with this Court's October 12, 2010 class certification order (ECF No. 759), Lehman nonetheless might have opposed class certification generally in the context of the SIPA Proceeding, or asserted colorable arguments to either limit the Class Period or eliminate certain of the Offerings from the Class based on arguments that certain disclosures in late 2007 – including WaMu's substantial increases to its loan loss provisions and the disclosure of the New York Attorney General's lawsuit alleging fraud in connection with appraisals of WaMu's loans – had corrected any misstatements that may have existed in the Offering Materials.

4. The Amount Obtained Supports Approval Of The Settlement

The determination of a "reasonable" settlement is not susceptible to a mathematical equation yielding a particularized sum. Rather, "in any case there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Courts in the Ninth Circuit have "long deferred to the private consensual decision of the parties" in evaluating the adequacy of a settlement amount. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Indeed, the Court of Appeals has cautioned that evaluation of the settlement amount should be "limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties," and that

the settlement as a whole is fair, reasonable and adequate. *Hanlon*, 150 F.3d at 1027 (quoting *Officers for Justice*, 688 F.2d at 625). A proposed settlement may be acceptable even though it amounts to only "a fraction of the potential recovery" that might be available to the class members at trial. *See Mego*, 213 F.3d at 459; *see also Micron*, 2011 WL 1882515, at *4; *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004).

Here, the Settlement in the amount of $16,500,000 will potentially provide approximately $8,250,000 to eligible Class Members and will, at the very least, provide $5,775,000 to the Class. Given the complexities of this litigation and the continued risks if Plaintiffs were to continue to pursue the Class Claim through litigation in the SIPA Proceeding, the Settlement represents a reasonable resolution of the Class Claim and eliminates the risk that the Class might otherwise not recover anything from Lehman.

5. The Extent Of Discovery Completed And The Stage Of The Proceedings Support Approval Of The Settlement

The stage of the proceedings and the amount of information available to the parties to assess the strengths and weaknesses of their case is another factor that courts consider. *See Mego*, 213 F.3d at 459; *McPhail*, 2009 WL 839841, at *5. No specific amount of discovery is required – instead the question is whether "the parties have sufficient information to make an informed decision about settlement." *Larsen v. Trader Joe's Co.*, No. 11-CV-05188-WHO, 2014 WL 3404531, at *5 (N.D. Cal. July 11, 2014); *see also Mego*, 213 F.3d at 459 ("[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement").

Here, Plaintiffs, through Lead Counsel, had a full understanding of the strengths and weaknesses of the claims against Lehman and the substantial costs and difficulties that the Class would face in obtaining a recovery through litigation in the SIPA Proceeding. First, Plaintiffs had conducted significant discovery concerning the underlying claims and potential defenses that could be asserted by underwriters in the course of litigation against the defendants who settled in

2011 and had consulted extensively with experts, including with damages experts in preparing analyses of possible damages that could be recovered under each Offering in light of the risks of negative causation. While no separate formal discovery occurred in the SIPA Proceeding, the parties engaged in informal discovery and extended settlement negotiations and this, together with the extensive information gathered concerning the strength and weaknesses of the claims through the earlier litigation in this Action, provided Lead Counsel with more than adequate information to negotiate the Settlement, once the availability of a meaningful distribution to unsecured creditors of Lehman crystallized. Accordingly, this factor strongly supports approval of the Settlement. *See, e.g., In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008); *Heritage Bond*, 2005 WL 1594403, at *9.

6. Experienced Lead Counsel Supports Approval Of The Settlement

Courts recognize that the opinion of experienced counsel supporting a settlement is entitled to considerable weight. *See Pelletz*, 255 F.R.D. at 543 ("Class counsel are highly experienced in class action litigation . . . The fact that they view the settlement as fair, adequate and reasonable supports the Court finding same."); *Omnivision*, 559 F. Supp. 2d at 1043 ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."). Courts give considerable weight to the opinions of counsel because counsel are "most closely acquainted with the facts of the underlying litigation." *Heritage Bond*, 2005 WL 1594403, at *9 (internal quotation marks omitted); *see also Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *5 (N.D. Cal. Jan. 26, 2007), *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009). Indeed, "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Thus, "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Heritage Bond*, 2005 WL 1594403, at *9 (internal quotation marks omitted).

Here, the Action has been litigated by experienced and competent counsel. Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") has many years of experience in litigating complex securities fraud actions throughout the country, and in assessing the merits of each side's case. *See* Firm Resume of BLB&G, attached as Exhibit 2A-5 to the Ross Declaration. Liaison Counsel Byrnes Keller Cromwell LLP also played an active role in analyzing the strategic and practical implications of the Lehman bankruptcy; stayed abreast of and monitored the filing of the claims in the bankruptcy proceedings; participated in the analysis conducted to quantify the claim against the Lehman bankruptcy estate; and provided input and advice with regard to strategy and other issues regarding the negotiation of the Settlement. *See* Declaration of Bradley S. Keller, attached as Exhibit 2B to the Ross Declaration, at ¶ 2. Lead Counsel also consulted extensively with Bankruptcy Counsel, which specializes in complex bankruptcy litigation and the assertion and treatment of investor and class action claims in bankruptcy and SIPA liquidation cases. *See* Ross Decl. ¶¶ 15, 60 and Exhibit 2A-4 thereto. It is the informed opinion of Lead Counsel, Liaison Counsel, and Bankruptcy Counsel that, given the uncertainty and further substantial expense of pursuing the Class Claim through litigation in the SIPA Proceeding, the proposed Settlement is fair, reasonable and adequate and in the best interests of the Class. *See* Ross Decl. ¶ 42.

7. Reaction Of The Class To The Proposed Settlement

Another factor to be weighed in determining the fairness and adequacy of the Settlement is the reaction of the Class. *See Mego*, 213 F.3d at 459; *Skilled Healthcare*, 2011 WL 280991, at *4.

In accordance with the Preliminary Approval Order, on July 6, 2015, Garden City Group, LLC ("GCG"), the Court-approved Claims Administrator, mailed the Summary Notice to all Class Members who: (a) received a distribution from the Underwriter Settlement and cashed their distribution check; or (b) are claimants with a Claim-in-Process or Disputed Claim that would be eligible for payment from the Underwriter Settlement if their claim is approved. *See*

Declaration of Stephen J. Cirami Regarding Mailing and Publication of Notice ("Cirami Decl."), attached to the Ross Decl. as Exhibit 1, at ¶ 3. The Summary Notice contained, among other things, a summary description of the proposed Settlement, the reasons the Settlement is being recommended, information on how to obtain more information (including a copy of the longer Notice), and information on how to object to the Settlement. Ross Decl. ¶ 44.

While the deadline set by the Court for Class Members to object to the Settlement (based on the revised hearing date) has not yet passed, to date, ***no*** objections to the Settlement or the request for attorneys' fees and expenses have been received. The deadline for receipt of objections is 21 days before the hearing (*see* Preliminary Approval Order ¶ 11) or January 15, 2016. (When initially mailed in July 2015, the Summary Notice indicated a Settlement Hearing date of January 15, 2016 and an objection deadline of December 26, 2015 and referred Class Members to the website, www.WashingtonMutualSecuritiesLitigationSettlement.com, for more information and updates. After the Settlement Hearing was rescheduled, updated information on the new Settlement Hearing date and objection deadline was provided on the website.) Brockton and Lead Counsel will file reply papers on January 29, 2016 addressing any objections that may be received or informing the Court that no objections have been received.

8. The Settlement Is The Product Of Arm's-Length Negotiations

Finally, the Settlement is the product of prolonged and hard-fought negotiations undertaken by experienced counsel for both parties and is not the product of any collusion. The fact that the Settlement is the product of arm's-length negotiations between experienced and well-informed counsel supports approval of the Settlement. *See Lundell v. Dell, Inc.*, No. 05-3970, 2006 WL 3507938, at *3 (N.D. Cal. Dec. 5, 2006) (approving class action settlement that was "the result of intensive, arms'-length negotiations between experienced attorneys familiar with the legal and factual issues of this case").

C. Notice To The Class Satisfied The Requirements Of Rule 23 and Due Process

As noted above, GCG mailed the Summary Notice on July 6, 2015 to all Class Members who: (a) previously received a distribution from the Underwriter Settlement and cashed their distribution check; or (b) are claimants with a Claim-in-Process or Disputed Claim that would be eligible for payment from the Underwriter Settlement if their claim is approved. *See* Cirami Decl., attached as Exhibit 1 to the Ross Decl., at ¶ 3. GCG mailed a total of 1,693 copies of the Summary Notice to Class Members who met these criteria. *Id.* Direct mailed notice was sent to this set of Class Members because these Class Members are still eligible to receive distributions from the Underwriter Settlement and thus will be eligible to participate in the proposed Lehman Settlement. Ross Decl. ¶ 44. The Summary Notice contained, among other things, a summary description of the proposed Settlement, the reasons the Settlement is being recommended, information on how to obtain more information (including a copy of the longer Notice), Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 7.5% of the proceeds of the Settlement and for reimbursement of litigation expenses in an amount not to exceed $225,000, and information on how to object to the Settlement or the motion for fees and expenses. *Id.* In addition, GCG caused the Summary Notice to be published over the *PR Newswire* on July 6, 2015, and copies of the more detailed Notice were made available on www.WashingtonMutualSecuritiesLitigationSettlement.com and on Lead Counsel's website, www.blbglaw.com, on that date.

The notice complied with all requirements of the Preliminary Approval Order and satisfied the requirements of Rule 23(e) and due process that notice be provided "in a reasonable manner" to class members. Fed. R. Civ. P. 23(e)(1); *see Wal-Mart Stores Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005) ("[t]he standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness."); *In re Ambac Fin. Grp., Inc. Sec. Litig.*, No. 08-cv-0411-NRB, slip op. at 3-4 (S.D.N.Y. Mar. 11, 2015), ECF No. 179 (ordering that mailed notice of a comparable settlement

1 with the Lehman estate be directed to the class members eligible to receive distributions from the
2 previous underwriter settlement); *In re WorldCom, Inc. Sec. Litig.*, No. 02 Civ. 3288 (DLC), slip
3 op. at 3 (S.D.N.Y. Oct. 2, 2012), ECF No. 3358 (ordering that mailed notice of an additional
4 settlement recovery be sent only to class members who previously submitted claims and would
5 be eligible to receive additional distributions); *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-
6 CV-20743 RMW (PVT), slip op. at 3 (N.D. Cal. Nov. 28, 2012), ECF No. 1789 (same).

7 **IV. <u>CONCLUSION</u>**

8 For the foregoing reasons, Class Representative Brockton respectfully requests that the
9 Court grant final approval of the Settlement.

10 Dated: December 31, 2015

Respectfully submitted,

11 BERNSTEIN LITOWITZ BERGER &
12 GROSSMANN LLP

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25

26

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses on the Court's Electronic Mail Notice list.

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