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14

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 IN RE NEW CENTURY
18

Case No. 2:07-cv-00931-DDP (FMOx)
(Lead Case)

19 **DECLARATION OF SALVATORE J.**
20 **GRAZIANO IN SUPPORT OF**
21 **PLAINTIFFS' MOTION FOR FINAL**
22 **APPROVAL OF SETTLEMENTS**
23 **AND THE PROPOSED PLAN OF**
24 **ALLOCATION, AND IN SUPPORT**
25 **OF LEAD COUNSEL'S MOTION**
26 **FOR AN AWARD OF ATTORNEYS'**
27 **FEES AND REIMBURSEMENT OF**
28 **EXPENSES**

Date: November 8, 2010

Time: 10:00 a.m.

Ctrm: 3, Hon. Dean D. Pregerson

1 I, SALVATORE J. GRAZIANO, under the penalties of perjury, declare as
2 follows:

3 1. I am a member of the law firm of Bernstein Litowitz Berger &
4 Grossmann LLP ("Bernstein Litowitz" or "Lead Counsel"), counsel to Lead
5 Plaintiff New York State Teachers' Retirement System ("NYSTRS" or "Lead
6 Plaintiff"). Bernstein Litowitz is the Court-appointed Lead Counsel for Lead
7 Plaintiff and the Class in the above-captioned class action (the "Action").¹ I have
8 personal knowledge of the matters set forth herein based on my active participation
9 in all aspects of the prosecution and Settlements of this Action involving New
10 Century Financial Corporation ("New Century" or the "Company"). I submit this
11 declaration in support of Plaintiffs' motion for final approval of the Settlements
12 and the Plan of Allocation for distribution of the settlement proceeds, and Lead
13 Counsel's motion for an award of attorneys' fees and reimbursement of expenses.

14 2. The Settlements were made on behalf of the Class of all persons and
15 entities who purchased or otherwise acquired New Century Common Stock, New
16 Century Series A Preferred Stock, New Century Series B Preferred Stock, and/or
17 New Century Call Options and/or who sold New Century Put Options, during the
18 time period from May 5, 2005, through and including March 13, 2007, either in the
19 Offerings, pursuant to a registration statement, or in the market, and who, upon
20 disclosure of certain facts alleged in the Complaint, were injured thereby.
21 Approval of the proposed Settlements will resolve all of the claims in this Action
22 as against all Defendants, including: (i) New Century officer and director
23 Defendants Robert K. Cole ("Cole"), Brad A. Morrice ("Morrice"), Estate of
24

25
26 ¹ Unless otherwise indicated, all initial capitalized terms are used as defined in the
27 Stipulations of Settlement (the "Stipulations"), filed with the Court on
28 July 30, 2010, as Exhibits ("Exs.") 2-4 to Plaintiffs' Memorandum of Points and
Authorities in Support of Unopposed Motion for Preliminary Approval of
Settlements, ECF No. 484).

Edward Gotschall (“Gotschall”), and Patti M. Dodge (“Dodge”) (collectively, “Officer Defendants”), and New Century director defendants Frederic J. Forster (“Forster”), Michael M. Sachs (“Sachs”), Harold A. Black (“Black”), Donald E. Lange (“Lange”), Terrence P. Sandvik (“Sandvik”), Richard A. Zona (“Zona”), Marilyn A. Alexander (“Alexander”), David Einhorn (“Einhorn”), and William J. Popejoy (“Popejoy”) (collectively, “Director Defendants”; with Officer Defendants, “Individual Defendants”); (ii) New Century underwriter defendants Bear, Stearns & Co. Inc., Deutsche Bank Securities Inc., Piper Jaffray & Co., Stifel, Nicolaus & Co., Inc., JMP Securities LLC, Roth Capital Partners, Morgan Stanley & Co., Inc., and Jeffries & Co., Inc. (collectively, “Underwriter Defendants”); and (iii) New Century auditor defendant KPMG LLP (“KPMG”). New Century was not named as a defendant due to its filing of bankruptcy.

I. INTRODUCTION AND OVERVIEW

3. After more than three years of litigation, Plaintiffs’ efforts have resulted in an outstanding recovery for the Class. The Settlements provide for the payment of approximately \$125,000,000 in cash (the “Settlement Amount”), plus interest earned thereon. The Settlement Amount is a recovery of between 8% and 16% of Plaintiffs’ maximum damages estimates for the Class as calculated by Plaintiffs’ damages expert. Given the significant risks Plaintiffs faced in establishing liability and damages discussed herein and the size of the proposed Settlements, it is clear that the Settlements at this time are in the best interests of the Class. Rather than proceed with this litigation and risk obtaining little or nothing from Defendants (while causing substantial available insurance to be expended in defense costs), the Settlements provide the Class with the very substantial recovery of \$124,827,088.00 in cash – an amount which was deposited into escrow accounts beginning on August 12, 2010, and has been earning interest for the benefit of the Class.

1 4. The Settlements are documented in three separate Settlement
2 Stipulations. First, Plaintiffs entered into a Settlement Stipulation with Defendant
3 KPMG providing for payment to the Class of \$44,750,000. Second, Plaintiffs
4 entered into a Settlement Stipulation with the Underwriter Defendants for payment
5 to the Class of \$15,000,000. Third, Plaintiffs entered into a global Settlement
6 Stipulation with the New Century Officer and Director Defendants providing for
7 payment to the Class of \$65,077,088 in cash. The global Settlement Stipulation
8 provides other payments to resolve other claims brought against New Century
9 officers and directors by the U.S. Securities and Exchange Commission (“SEC”),²
10 separate Kodiak plaintiffs,³ and the New Century Liquidating Trustee.⁴

11 5. As demonstrated herein and in the accompanying Memorandum of
12 Points and Authorities in Support of Plaintiffs’ Motion for Final Approval of
13 Settlements and Plan of Allocation (the “Settlement Brief”), the proposed
14 Settlements are fair, reasonable, and adequate, and should be approved by this
15 Court. Additionally, the proposed Plan of Allocation is a fair and reasonable
16 method for distributing the proceeds of the Settlements to the members of the
17 Class, and, therefore, also should be approved.

18 6. The Settlements totaling approximately \$125 million represent an
19 excellent recovery for members of the Class. The Settlements were negotiated
20 with the direct participation of the institutional investor Lead Plaintiff, NYSTRS,
21 and by experienced counsel on all sides with a firm understanding of the strengths
22

23 ² The case brought by the SEC is before this Court as *SEC v. Morrice, et al.*, Case
24 No. 09-1426-DDP (the “SEC Action”).

25 ³ The case brought by Kodiak is before this Court as *Kodiak Warehouse LLC v.*
26 *Morrice*, Case No. 8:08-cv-01265-DDP-FMO.

27 ⁴ The case brought by the New Century Liquidating Trustee is pending in the
28 United States Bankruptcy Court for the District of Delaware as *The New Century*
Liquidating Trust and Reorganized New Century Warehouse Corporation v. Cole,
Case No. 07-10416(KJC).

1 and weaknesses of their respective cases. The Settlements confer an immediate
2 and substantial benefit to the Class and eliminate the risk of continued litigation
3 whose favorable outcome cannot be assured. Even if Plaintiffs were successful at
4 trial, it is possible that a jury could award less to the Class than that which was
5 obtained in the Settlements or that Plaintiffs would be unable to collect a greater
6 amount after trial from the Defendants found to be liable.

7 7. As explained in greater detail below, Plaintiffs' understanding of the
8 strengths and weaknesses of their case is based on Plaintiffs' Counsel's prosecution
9 of the Action, which included, *inter alia*, (i) drafting three detailed complaints –
10 the Consolidated Complaint, the Amended Consolidated Complaint and the Second
11 Amended Complaint – after extensive review and analysis of the Company's SEC
12 filings and press releases, media and news reports about the Company, publicly
13 available trading data relating to the price and volume of New Century's Common
14 Stock and Preferred Shares, the 551-page Final Report of Michael J. Missal,
15 Bankruptcy Court Examiner, and other available information, and meeting with the
16 Examiner; (ii) locating and interviewing approximately 200 former employees of
17 New Century and other witnesses; (iii) thoroughly researching the law pertinent to
18 the claims against Defendants and potential defenses thereto; (iv) opposing
19 Defendants' five separate motions to dismiss the Consolidated Complaint; (v)
20 opposing Defendants' six separate motions to dismiss the Second Amended
21 Complaint; (vi) opposing KPMG's motion for summary judgment; (vii) reviewing
22 and analyzing over 38 million pages of documents produced by Defendants and
23 third-parties in discovery; (viii) consulting with loan underwriting, due diligence,
24 accounting and damages experts; (ix) preparing for depositions of KPMG audit
25 members; (x) exchanging confidential mediation statements with Defendants; and
26 (xi) participating in eleven mediation sessions before an experienced mediator and
27 extensive related negotiations.
28

1 8. The Settlements were reached only after arduous and protracted
2 settlement negotiations, including mediation sessions under the auspices of an
3 experienced mediator (which yielded an agreement only after eleven mediation
4 sessions) and extensive discussions with Defendants and other parties, which were
5 conducted with the mediator's assistance. *See* Declaration of the Honorable Daniel
6 H. Weinstein, attached hereto as Ex. A ("Weinstein Decl."). Lead Plaintiff believes
7 that the approximately \$125,000,000 cash recovery for the Class is an outstanding
8 result, particularly when viewed in connection with the total potential damages as
9 well as the risks Plaintiffs faced going forward in this Action, including those
10 relating to establishing liability and damages, and ability to collect difficulties as to
11 the Individual Defendants whose insurance was being expended on defense costs.
12 *See* Declaration of Wayne Schneider in Support of Final Approval of Settlements
13 and Plan of Allocation, and Request for Attorneys' Fees and Reimbursement of
14 Litigation Expenses ("Schneider Decl."), attached hereto as Ex. B. Further, I
15 understand this is the second highest sub-prime securities class action settlement to
16 date – next to the settlements reached in the sub-prime securities class action
17 settlements in *In re Merrill Lynch & Co., Inc. Sec., Deriv. and ERISA Litig.*, 07-cv-
18 9633 (S.D.N.Y. Aug. 4, 2009 and Dec. 2, 2009), totaling \$625 million – and the
19 highest such settlement where the primary entity is bankrupt. I am aware of no
20 other higher sub-prime related securities class action settlement that has been
21 granted final approval as of the filing of this declaration.

22 9. From the start of this Action, Defendants vigorously denied all of the
23 claims and arguments made by Plaintiffs. As discussed in more detail below,
24 Plaintiffs faced significant risks going forward, including, among others, that
25 Defendants would ultimately be successful in showing that (i) no misrepresentation
26 had been made because the Company's statements during the Class Period were
27 true or the Company had warned investors of the risks concerning New Century's
28 sub-prime underwriting and loan quality; (ii) the alleged misrepresentations were

1 not material; (iii) the alleged accounting errors did not violate Generally Accepted
2 Accounting Principles (“GAAP”); (iv) KPMG’s audit did not violate Generally
3 Accepted Auditing Standards (“GAAS”); (v) Defendants did not act with scienter
4 because, among other things, the Individual Defendants’ trading negates scienter,
5 and they did not have a motive for committing the fraud, and relied on KPMG’s
6 audit opinion with respect to the financial statements; (vi) the alleged fraudulent
7 misstatements did not cause the loss to investors; and (vii) the Underwriter
8 Defendants would be able to establish an affirmative due diligence defense at trial.
9 Even if Plaintiffs prevailed on the merits, there was risk that the damages
10 determined to be attributable to the alleged misrepresentations and omissions
11 would be less than the Settlement Amount. In addition, New Century was
12 bankrupt and was not available as a source of recovery, and the available insurance
13 funds were deteriorating with numerous Individual Defendants represented by
14 many different attorneys in multiple actions. Accordingly, while Plaintiffs believe
15 that all of their claims have merit, one or more of these arguments or issues may
16 have ultimately proved insurmountable, and the Class may have ended up with
17 little or no recovery. In light of these risks, the Settlements provide the Class with
18 an excellent result.

19 10. Furthermore, this case could have been dismissed at various stages of
20 the litigation. Among other things, Plaintiffs carried the burden of pleading claims
21 for violations of §§ 10(b) and 20(a) of the Securities Exchange Act of 1934
22 (“Exchange Act”), and Rule 10b-5 promulgated thereunder, against certain of the
23 Defendants, in conformity with the heightened pleading requirements set forth in
24 the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. § 78u-
25 4(b). Plaintiffs faced the risk that the Complaint could be dismissed on the ground
26 that scienter was not adequately pled, as Defendants argued that there was no
27 unusual or suspicious insider trading or other strong motives to defraud.
28 Moreover, Plaintiffs faced the risk that the Complaint could be dismissed on

1 grounds of loss causation, as Defendants vigorously argued that their alleged
2 misrepresentations did not cause the loss to investors. Even though Plaintiffs
3 eventually defeated Defendants' motions to dismiss, the risks of surviving a
4 summary judgment motion was significant. Notably, KPMG submitted an expert
5 declaration in support of its motion for summary judgment stating that Plaintiffs
6 could not establish loss causation. In addition to the risk of not surviving beyond
7 the pleading and summary judgment stages, there was also risk inherent in
8 establishing liability and proving damages against Defendants at trial. There was
9 no guarantee that Plaintiffs would obtain a verdict or be able to recover significant
10 damages against Defendants. Further, continued prosecution of the Action would
11 be complex, expensive and lengthy. There were substantial risks that, even if the
12 matter were to proceed to trial and a judgment was obtained against Defendants,
13 the recovery might be no greater than the proposed Settlements.

14 11. In addition, Plaintiffs could not have been successful in resolving their
15 claims against the Individual Defendants (whose insurance was being wasted)
16 without resolving its claims against KPMG who had preserved its claims against
17 those same Defendants. At the same time, KPMG had filed a fully briefed motion
18 for summary judgment on the issue of loss causation which threatened to
19 extinguish all claims against KPMG and greatly reduce the size of Plaintiffs'
20 claims against the Individual Defendants and Underwriter Defendants. In addition,
21 the Individual Defendants argued that they did not have scienter because they
22 relied upon KPMG's audit, which could have been particularly problematic if
23 KPMG was dismissed from the Action.

24 12. In the end, the parties were able to reach global settlements on all
25 claims, including not only those claims alleged in the instant class action, but also
26 the claims brought by the Trustee, Kodiak, and the SEC which was necessary to
27 achieve the Settlements here.

1 13. The favorable reaction of the members of the Class supports the
2 reasonableness of the Settlements, Plan of Allocation, and the fee and expense
3 request. Beginning on August 17, 2010, the Notice of Pendency Of Class Action
4 And Proposed Settlements, Settlement Fairness Hearing, And Motion For
5 Attorneys' Fees And Reimbursement Of Litigation Expenses (the "Notice") was
6 mailed to over 50,000 potential Class Members or their nominees. *See* Declaration
7 of Richard W. Simmons: Notice Dissemination and Publication (the "Simmons
8 Decl."), attached hereto as Ex. C, ¶¶3-8. The Notice (attached as Ex. A to
9 Simmons Decl.) advised Class Members of the proposed Settlements, the proposed
10 Plan of Allocation and the request for an award of attorneys' fees and
11 reimbursement of expenses. The Notice further advised Class Members of their
12 right to object or seek exclusion from the Class, and explained that this right
13 needed to be exercised by October 18, 2010. Additionally, a Summary Notice was
14 published in the national edition of *The Wall Street Journal* and over the *PR*
15 *Newswire* on August 24, 2010. *See* Simmons Decl. ¶10. Finally, the Notice and
16 Proof of Claim form were posted on the website specifically created for the
17 Settlements, www.NewCenturySettlement.com, and on Lead Counsel's website,
18 www.blbglaw.com.

19 14. To date, no Class Member has objected to any aspect of the
20 Settlements, the Plan of Allocation, or the request for attorneys' fees and expenses;
21 and only one Class Member representing 300 shares has sought exclusion from the
22 Class.

23 **II. THE ALLEGATIONS OF THE ACTION**

24 15. During the Class Period, New Century was one of the nation's largest
25 sub-prime mortgage finance companies. Since its formation in 1996, the Company
26 grew rapidly, reporting \$56.1 billion of total mortgage originations and purchases
27 for the year-ended December 31, 2005, nearly ten times as much as the Company
28 had originated and purchased in 2001, and an increase of over \$10 billion of

1 originations and purchases from the prior year-ended December 31, 2004. Second
2 Amended Consolidated Class Action Complaint (“SAC” or “Complaint”) ¶2.

3 16. The SAC alleges that between May 5, 2005, to March 13, 2007, (the
4 “Class Period”), New Century kept pushing ever-increasing sub-prime mortgage
5 loans through its system by loosening the Company’s underwriting practices and
6 introducing a growing percentage of higher risk mortgage products, including
7 adjustable-rate, interest-only loans and “stated income” loans, where even W-2
8 wage earners did not have to verify their stated income. SAC ¶3. As these
9 circumstances led to increased first payment defaults on loans and New Century’s
10 loan deficiencies and defaults grew, New Century failed to account for these
11 adverse facts and substantially increased risks in its financial statements. SAC ¶4.
12 Instead, Defendants falsely promoted the quality and underwriting of the loans
13 originated by New Century and New Century overstated its financial results by,
14 among other things, failing to account for the expected discount upon disposition
15 of its repurchased loans and failing to consider its backlog of repurchase claims
16 outstanding when setting its repurchase reserves. SAC ¶89.

17 17. While these misstatements were being made, in June 2005, New
18 Century sold approximately 4,500,000 shares of 9.125% Series A Cumulative
19 Redeemable Preferred Stock for net proceeds of approximately \$109 million in an
20 offering (the “Series A Offering”). SAC ¶236. Defendants Bear Stearns, Deutsche
21 Bank, Piper Jaffray, Stifel Nicolaus, JMP Securities and Roth Capital were
22 underwriters for the Series A Offering. SAC ¶236. Defendants Morrice, Dodge,
23 Cole, Gotschall, Black, Forster, Lange, Popejoy, Sachs, Sandvik and Zona signed
24 the registration statement for the Series A Offering. SAC ¶237.

25 18. In August 2006, New Century also sold approximately 2,300,000
26 shares of 9.75% Series B Cumulative Preferred Stock for net proceeds of
27 approximately \$55.6 million in an offering (the “Series B Offering”). SAC ¶256.
28 Defendants Bear Stearns, Morgan Stanley, Stifel Nicolaus and Jefferies & Co. were

1 the underwriters for the Series B Offering. SAC ¶256. Defendants Morrice,
2 Dodge, Cole, Gotschall, Black, Forster, Lange, Sachs and Zona signed the
3 registration statement for the Series B Offering. SAC ¶256. Defendant KPMG
4 consented to the incorporation by reference in the registration statement for the
5 Series B Offering of its unqualified opinions on the Company's financial
6 statements and internal controls for the year ended December 31, 2005. SAC ¶39.

7 19. The SAC alleges that the Underwriter Defendants and Officer and
8 Director Defendants who signed the registration statements for the Series A and
9 Series B Offering materials violated § 11 of the Securities Act of 1933 ("Securities
10 Act") because the Series A and B registration statements included false and
11 misleading statements. The SAC alleges that Defendant KPMG violated § 11 of
12 the Securities Act and § 10(b) of the Exchange Act by issuing unqualified opinions
13 in connection with the Company's financial statements and internal controls for the
14 year-ended December 31, 2005. The SAC alleges that Officer Defendants Cole,
15 Morrice, Gotschall, and Dodge violated § 10(b) of the Exchange Act by issuing
16 false and misleading statements with scienter, and are liable as control persons
17 under § 20(a) of the Exchange Act and § 15 of the Securities Act.

18 20. The statutory violations alleged as to each Defendant are summarized
19 as follows:

Statutory Violation	Defendants
§ 11 of the Securities Act, Series A Offering	Cole, Morrice, Gotschall, Dodge, Forster, Sachs, Black, Lange, Sandvik, Zona, Alexander, Popejoy, Bear Stearns, Deutsche Bank, Piper Jaffray, Stifel Nicolaus, JMP Securities, Roth Capital
§ 15 of the Securities Act, Series A Offering	Cole, Morrice, Gotschall and Dodge
§ 11 of the Securities Act, Series B Offering	Cole, Morrice, Gotschall, Dodge, Forster, Sachs, Black, Lange, Zona, Alexander, Einhorn, KPMG, Bear Stearns, Morgan Stanley, Stifel Nicolaus, Jefferies & Co.

§ 15 of the Securities Act, Series B Offering	Cole, Morrice, Gotschall and Dodge
§ 10(b) of the Exchange Act	Cole, Morrice, Gotschall, Dodge and KPMG
§ 20(a) of the Exchange Act	Cole, Morrice, Gotschall and Dodge

21. The SAC alleges that, as a result of Defendants' misrepresentations, the market prices of New Century securities – including its Common Stock, Series A Preferred Stock, Series B Preferred Stock, and Call and Put Options – were artificially inflated (or deflated, in the case of Put Options) during the Class Period.⁵ The SAC alleges that the artificial inflation began to dissipate with corrective disclosures beginning on February 7, 2007.

22. On February 7, 2007, after the close of trading and just one day before the Company was scheduled to report its 2006 fourth quarter and year-end results, New Century issued a press release announcing that it would restate its reported financial results for the first three quarters of 2006. According to the press release, during the first three quarters of 2006, the Company incorrectly applied accounting policy SFAS 140 because “the Company did not include the expected discount upon disposition of loans when estimating its allowance for loan repurchase losses [and] the Company’s methodology for estimating the volume of repurchase claims to be included in the repurchase reserve calculation did not properly consider, in each of the first three quarters of 2006, the growing volume of repurchase claims outstanding that resulted from the increased pace of repurchase requests that occurred in 2006, compounded by the increasing length of time between the whole

⁵ As of March 1, 2006, New Century had 55,984,229 shares of Common Stock issued and outstanding; 4,500,000 shares of Series A Preferred Stock issued and outstanding; and 2,300,000 shares of Series B Preferred Stock issued and outstanding. SAC ¶49.

1 loan sales and the receipt and processing of the repurchase request.” The
2 February 7, 2007 press release further disclosed that, “[i]n addition, the Company
3 currently expects to record a fair value adjustment to its residual interests to reflect
4 revised prepayment, loss and discount rate assumptions with respect to the loans
5 underlying these residual interests, based on indicative market data.” SAC ¶457.

6 23. The SAC alleges that, in response to the Company’s February 7, 2007
7 disclosures, the price of New Century Common Stock closed at \$19.24 per share
8 the next day, a decline of approximately 36% from the closing price of \$30.16 on
9 February 7, 2007. SAC ¶459. Similarly, the price of New Century Series A and B
10 Preferred Stock declined by approximately 10%. SAC ¶459.

11 24. On March 1, 2007, after the close of trading, New Century issued a
12 press release announcing that it expected to file a Form 12b-25 Notification of Late
13 Filing with the SEC with respect to its Form 10-K for the year-ended December
14 31, 2006. SAC ¶463.

15 25. On March 2, 2007, New Century filed its Form 12b-25 Notification of
16 Late Filing with the SEC, which included various disclosures. Among other
17 things, New Century provided information concerning its estimated fourth quarter
18 and full-year results. New Century also disclosed that it received inquiries from
19 the SEC, the New York Stock Exchange (“NYSE”) and the U.S. Attorneys’ office.
20 New Century further disclosed that, “[i]n connection with the restatement process,
21 the Audit Committee of the Company’s Board of Directors (the “Audit
22 Committee”), advised by its independent counsel who is assisted by forensic
23 accountants, has initiated its own independent investigation into the issues giving
24 rise to the Company’s need to restate its 2006 interim financial statements, as well
25 as issues pertaining to the Company’s valuation of residual interests in
26 securitizations in 2006 and prior periods.” SAC ¶464.

27 26. The next trading day, on Monday, March 5, 2007, New Century’s
28 Common Stock declined approximately 69%, from \$10.65 per share on

1 March 2, 2007, to \$4.56 per share on March 5, 2007. SAC ¶467. Similarly, the
2 price of New Century Series A and B Preferred Stock declined by approximately
3 55% and 58%, respectively. SAC ¶467.

4 27. On March 13, 2007, before the market opened, New Century filed a
5 Form 8-K with the SEC disclosing that certain lenders had advised the Company
6 that it was in default and/or had accelerated the Company's obligation to
7 repurchase outstanding mortgage loans. The Form 8-K further stated that the
8 Company had received a grand jury subpoena requesting production of certain
9 documents. SAC ¶474. In response to these disclosures, the price of New Century
10 Common Stock declined 49%, from \$1.67 on March 12, 2007, to \$0.85 on
11 March 13, 2007. SAC ¶475.

12 28. On March 13, 2007, after the close of trading, New Century
13 announced that the New York Stock Exchange had determined that its Common
14 Stock and its Preferred A and Preferred B stock were no longer suitable for
15 continued listing on the NYSE and would be suspended immediately. SAC ¶477.

16 29. On April 2, 2007, New Century announced that the Company had
17 filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code.
18 SAC ¶479.

19 **III. HISTORY OF THE ACTION**

20 30. Beginning on February 8, 2007, numerous class action complaints
21 were filed in the United States District Court for the Central District of California
22 alleging that Defendants violated the federal securities laws by misrepresenting
23 and failing to disclose adverse facts concerning New Century's business condition
24 and financial results. As required by the PSLRA, notice to shareholders of the
25 pendency of those actions began the 60-day period for interested shareholders to
26 move the Court to be appointed Lead Plaintiff on behalf of New Century's
27 investors. In consultation with Lead Counsel, NYSTRS determined to move for
28 Lead Plaintiff, and did so on April 10, 2007. Under the PSLRA, NYSTRS was

1 presumptively the “most adequate” Lead Plaintiff movant because it had the
2 greatest loss among the movants from its investments in New Century securities
3 during the proposed class period. In its motion for Lead Plaintiff, NYSTRS
4 submitted its choice of Bernstein Litowitz as Lead Counsel to the Court. *See*
5 Notice of Motion for Appointment as Lead Plaintiff, Approval of Its Selection of
6 Counsel as Lead Counsel, and Consolidation of All Related Cases, filed by
7 NYSTRS (ECF No. 17). NYSTRS choice of Bernstein Litowitz as Lead Counsel
8 followed its review of a series of submissions by numerous interested firms and an
9 interview process designed to select the most favorable counsel for this role.

10 31. On February 8, 2007, concurrent with its motion for appointment as
11 Lead Plaintiff and approval of its selection of Bernstein Litowitz as Lead Counsel,
12 NYSTRS took steps to protect the interests of the Class. On that day, NYSTRS
13 filed a motion for preliminary injunction seeking to require Officer Defendants
14 Morrice, Dodge, Gotschall and Cole to, among other things, place in a constructive
15 trust all of the proceeds from their sales of New Century securities; an accounting
16 of their stock sales and information concerning the current location and/or
17 disposition of the proceeds of their sales; and limited and particularized expedited
18 discovery concerning their trades in New Century securities and the location and
19 proceeds of their sales of New Century stock. *See* Notice of Motion for
20 Preliminary Injunction, filed by NYSTRS (ECF No. 11). NYSTRS subsequently
21 stipulated to withdraw its motion for preliminary injunction after receiving
22 agreement from those Defendants that they would preserve documents relevant to
23 this litigation, preserve financial records sufficient to enable NYSTRS to ascertain
24 Defendants’ assets and liabilities and to trace material changes in their net worth,
25 and would not hide or otherwise waste personal assets.

26 32. On June 26, 2007, the Court appointed NYSTRS as Lead Plaintiff and
27 approved its selection of Bernstein Litowitz as Lead Counsel for the Class. *See*
28

1 Order Granting in Part and Denying in Part Various Plaintiffs' Motions Regarding
2 Consolidation, Lead Plaintiffs Status, and Lead Counsel Status (ECF No. 145).

3 33. Upon its appointment as Lead Counsel, Bernstein Litowitz undertook
4 a hard-fought prosecution that lasted for over three years through the Settlements.
5 As described more fully below, Lead Counsel vigorously litigated this Action by,
6 among other things: (i) conducting an extensive investigation into Defendants'
7 alleged wrongful conduct; (ii) drafting three detailed, particularized complaints;
8 (iii) successfully contesting Defendants' motions to dismiss the SAC; (iv) engaging
9 in extensive discovery which entailed obtaining and analyzing more than 38
10 million pages of documents; (v) moving to compel KPMG's compliance with
11 certain discovery requests; (vi) opposing KPMG's motion for summary judgment;
12 (vii) preparing to embark on an intensive program of depositions; and (viii)
13 participating in hard fought arm's-length settlement negotiations, including eleven
14 mediation sessions before an experienced mediator and related extended
15 negotiations.

16 **A. Plaintiff's Investigation**
17 **And the Consolidated Complaint**

18 34. In preparation for the filing of the Consolidated Class Action
19 Complaint ("Consolidated Complaint"), Lead Counsel conducted a thorough
20 investigation which included, among other things, locating and interviewing
21 approximately 200 witnesses including former employees of the Company,
22 reviewing statements made by Defendants (including those made in regulatory
23 filings, press releases, conference calls, news articles and analysts' reports),
24 researching the Company's business practices, researching the law related to
25 Defendants' anticipated motions to dismiss, and obtaining the assistance of experts
26 in loss causation, damages, market efficiency, accounting, loan underwriting, and
27 underwriting due diligence. Lead Counsel's investigation uncovered substantial
28

1 information about the facts and events involving New Century, which formed the
2 basis of Plaintiffs' detailed and particularized complaint.

3 35. On September 14, 2007, after extensive research and investigation,
4 Plaintiffs filed the Consolidated Complaint, asserting claims against Defendants
5 under §§ 11, 12(a)(2) and 15 of the Securities Act, and §§ 10(b) and 20(a) of the
6 Exchange Act. The Consolidated Complaint was brought on behalf of all persons
7 and entities who purchased or acquired New Century Common Stock, New
8 Century Series 9.125% Series A Cumulative Redeemable Preferred Stock, New
9 Century 9.75% Series B Cumulative Redeemable Preferred Stock, and/or New
10 Century Call Options and/or who sold New Century Call Options during the Class
11 Period. *See* Consolidated Complaint (ECF No. 191).

12 36. Beginning on November 2, 2007, Defendants filed five separate
13 motions to dismiss the Consolidated Complaint: (i) the Director Defendants
14 moved to dismiss the § 11 claims asserted against them (ECF No. 196); (ii) Officer
15 Defendants Morrice, Gotschall and Dodge moved to dismiss the claims brought
16 under §§ 11 and 15 of the Securities Act and §§ 10(b) and 20(a) of the Exchange
17 Act against them (ECF No. 202); (iii) Underwriter Defendants moved to dismiss
18 the §§ 11 and 12(a)(2) claims under the Securities Act against them (ECF No. 203);
19 (iv) Director Defendant Popejoy moved to dismiss the claims against him by
20 joining the Director Defendants' motion (ECF No. 207); and (v) Officer Defendant
21 Cole joined in the Director Defendants' motion and the Officer Defendants' motion
22 (ECF No. 199). On November 20, 2007, Defendant KPMG also filed a motion to
23 dismiss the § 11 claim asserted against it (ECF No. 208).

24 37. In their motions to dismiss, Officer Defendants Morrice, Gotschall
25 and Dodge argued that the case did not involve fraud and that New Century merely
26 got caught in an industry-wide meltdown. The Officer Defendants also argued that
27 the Consolidated Complaint did not adequately plead scienter because, among
28 other reasons, the Consolidated Complaint failed to plead specific facts that

1 Defendants knew that the Company's allowance for repurchase losses was
2 materially understated at the time they signed certifications; they relied on
3 KPMG's unqualified opinion on the Company's financial statements for the year-
4 ended December 31, 2005; the Consolidated Complaint failed to plead facts
5 demonstrating that Defendants were aware that the Company's residual interests
6 were materially overstated; Defendants did not have motives to commit the fraud;
7 Officer Defendant Morrice acquired additional shares during the Class Period;
8 Officer Defendant Gotschall's stock sales were tied to his retirement; and that the
9 insider sales by the Officer Defendants were not unusual or suspicious.

10 38. Officer Defendant Cole also argued that the Consolidated Complaint
11 failed to plead scienter because he sold only a small portion of his New Century
12 stock and held on to roughly 90% of his shares despite the Company's issuance of
13 warnings about deteriorating market conditions. Cole also argued that he, like
14 other New Century investors, suffered massive financial losses. Defendant Cole
15 also argued that, in 2005, he acquired more shares than he had sold, and that he
16 only began to diversify his New Century holdings in early 2006, after the
17 announcement of his retirement.

18 39. Underwriter Defendants and Director Defendants argued that the
19 Consolidated Complaint failed to allege misstatements concerning the Series A and
20 Series B Preferred Stock; that the alleged misstatements related to the Series B
21 Offering were non-actionable forward-looking statements accompanied by
22 sufficient cautionary language; and that the misstatement of financial for the Series
23 B Offering did not violate GAAP. In addition, the Underwriter Defendants argued
24 that the § 12(a)(2) claims against them should fail because the Consolidated
25 Complaint did not allege facts that established privity of contract between any
26 underwriter and Plaintiffs.

27 40. Defendant KPMG argued that the Consolidated Complaint should be
28 dismissed because KPMG did not cause the loss to New Century investors, as no

1 corrective disclosures were made concerning KPMG's 2005 audit opinions or its
2 audit work, and no corrective disclosures were made concerning any errors in New
3 Century's financial statements until nearly two months after it had already filed for
4 bankruptcy – long after investors had already suffered their losses in February and
5 March 2007. KPMG also argued that the claims against it should be dismissed
6 because the Consolidated Complaint did not adequately allege that KPMG's audit
7 and internal control opinion contained in the Series B registration statement were
8 false, failed to allege the nature and amount of the overstatement, failed to explain
9 how KPMG's audit work was deficient, and failed to identify any specific audit
10 procedure that would have alerted KPMG to New Century's backlog of
11 outstanding repurchase claims or that New Century's allowance for loan losses was
12 decreasing through the Class Period.

13 41. On December 14, 2007, Plaintiffs filed an omnibus opposition to
14 Defendants' motions to dismiss (ECF No. 218). Plaintiffs argued that the
15 Consolidated Complaint adequately pleaded claims under the Exchange Act
16 because the Officer Defendants made actionable misrepresentations and omissions
17 regarding New Century's financial results, including by failing to properly account
18 for the allowance for repurchase loss reserve, the valuation of residual interests,
19 and the allowance for loan loss reserve. Plaintiffs also argued that falsity was
20 sufficiently alleged despite the lack of a completed restatement. Plaintiffs further
21 argued that the allegations gave rise to a strong inference of scienter because New
22 Century admitted to material accounting errors, the Officer Defendants signed
23 sworn certifications that were contrary to the true facts concerning the Company's
24 internal controls, the allegations based on facts from confidential sources were
25 reliable and further gave rise to an inference of scienter, and the Officer
26 Defendants' financial gains from the fraud further support the inference. Plaintiffs
27 also argued that the Consolidated Complaint states claims under §§ 11 and 12(a)(2)
28 of the Securities Act because the registration statements in connection with the

1 Series A and Series B Preferred Stock Offerings contained material misstatements
2 and omissions regarding New Century's financial results, internal controls,
3 underwriting standards and loan quality. Plaintiffs further argued that KPMG's
4 audited financial opinions were materially misstated at the time of the Series B
5 Offering, that the bespeaks caution doctrine and the PSLRA's safe harbor did not
6 apply to these statements, and that Defendants' reliance on KPMG's audit opinion
7 was not appropriate grounds for dismissal on a motion to dismiss.

8 42. On January 8, 2008, Plaintiffs filed a notice of supplemental authority
9 in further support of their opposition to the Defendants' motions to dismiss.

10 43. On January 14, 2008, Defendants filed five separate reply briefs in
11 support of their respective motions to dismiss.

12 44. The reply brief filed by Officer Defendants Morrice, Gotschall and
13 Dodge further argued that Plaintiffs could not establish scienter. Among other
14 things, Morrice, Gotschall and Dodge argued that KPMG's unqualified audit
15 opinion strongly negated scienter. They also argued that New Century's
16 announced restatement of the financial results, their certifications, their
17 compensation and stock sales, the allegations regarding the repurchase reserves,
18 the allegations regarding the allowance for loan losses, and their public statements
19 did not rise to a strong inference of scienter.

20 45. Officer Defendant Cole separately filed a reply brief in which he
21 argued that the Consolidated Complaint failed to plead a strong inference of
22 scienter against him because it failed to include particularized allegations against
23 him and because his stock sales were only a small fraction of his holdings over a
24 two-year period in which he began his retirement.

25 46. The Underwriter Defendants and the New Century Director
26 Defendants' reply briefs also repeated their previous arguments that Plaintiffs
27 failed to allege material misstatements in the Series A and Series B registration
28 statements, that statements of opinion were not actionable misstatements, that the

1 alleged misstatements were forward-looking statements protected by the bespeaks
2 caution doctrine and the PSLRA's safe harbor, that disagreements with
3 management decisions was not a basis for securities liability, and that Plaintiffs
4 failed to allege "red flags" regarding KPMG's accounting work that would have
5 put the Underwriter Defendants on notice of accounting issues.

6 47. Defendant KPMG's reply brief further reiterated its argument that
7 KPMG did not cause investors to suffer any loss, that it had established negative
8 causation, and that Plaintiffs failed to sufficiently allege that KPMG's 2005
9 opinions on New Century's financial results and internal controls were false when
10 made. Defendants also addressed Plaintiffs' supplemental authority in their reply
11 briefs.

12 48. On January 22, 2008, Plaintiffs filed a second notice of supplemental
13 authority in further opposition to Defendants' motions to dismiss. On
14 January 25, 2008, the Officer Defendants responded to the supplemental authority
15 submitted by Plaintiffs.

16 49. On January 31, 2008, the Court issued an order granting Defendants'
17 motions to dismiss with leave to amend. The Court dismissed the Consolidated
18 Complaint on the basis that the Consolidated Complaint did not clearly articulate
19 the grounds for its claims and did not clearly identify the alleged false statements
20 or the factual allegations supporting an inference that particular statements were
21 false or misleading.

22 **B. The Second Amended Complaint**

23 50. On March 24, 2008, after extensive additional investigation, including
24 reviewing publicly available information concerning New Century, evaluating New
25 Century's loan data with the assistance of an expert, and interviews with additional
26 confidential witnesses, Plaintiffs filed the Amended Consolidated Class Action
27 Complaint.
28

1 51. On March 26, 2008, Michael J. Missal, the Examiner appointed by the
2 United States Bankruptcy Court for the District of Delaware to investigate the
3 accounting and financial statement irregularities of New Century, filed a 551-page
4 report of his investigations dated February 29, 2008 (the "Examiner's Report").
5 Prior to the filing of the Examiner's Report, the Examiner and his staff met with
6 Lead Counsel regarding the Examiner's investigation. Lead Counsel shared
7 information that Lead Counsel had obtained through its investigation with the
8 Examiner, including certain information pertaining to witnesses. I am informed
9 that Lead Counsel's participation in this process was a primary factor leading to the
10 Examiner's investigation of New Century statements concerning loan quality.

11 52. On March 31, 2008, in light of the Examiner's Report, and in the
12 interests of judicial economy, the parties stipulated to a filing of a Second
13 Amended Consolidated Class Action Complaint ("SAC" or the "Complaint") and a
14 briefing schedule.

15 53. On April 30, 2008, Plaintiffs filed the SAC. The SAC asserted claims
16 under §§ 10(b) and 20(a) of the Exchange Act and §§ 11 and 15 of the Securities
17 Act. For the first time, the SAC added a § 10(b) claim against KPMG for
18 fraudulent misrepresentations and dropped the § 12(a)(2) claim against the
19 Underwriter Defendants.

20 54. The SAC alleged that Defendants made false and misleading
21 statements during the Class Period concerning New Century's loan underwriting,
22 loan quality, and its financial condition. Specifically, the SAC alleged that New
23 Century's financial results were overstated during the Class Period, in violation of
24 GAAP, because the Company failed to account for the expected discount upon
25 disposition of its repurchased loans and its backlog of repurchase claims
26 outstanding when setting its repurchase reserves. The SAC alleged that (1) the
27 Officer Defendants, the Director Defendants and the Underwriter Defendants
28 violated § 11 of the Securities Act in connection with false and misleading

1 statements in the registration statements for the Series A and Series B Preferred
2 Stock Offerings; (2) the Officer Defendants violated § 10(b) of the Exchange Act
3 for fraud and were liable under other statutes as controlling persons; and (3)
4 KPMG violated § 11 of the Securities Act for making misrepresentations relating
5 to the Series B Preferred Stock Offering, as well as § 10(b) of the Exchange Act for
6 fraud.

7 55. On June 2, 2008, Defendants filed six separate motions to dismiss the
8 SAC.

9 56. In their motion to dismiss, Officer Defendants Morrice, Gotschall and
10 Dodge argued that the SAC failed to comply with the applicable pleading
11 requirement; the SAC failed to specify each statement alleged to have been
12 misleading and the reasons why the statement was misleading when made; and the
13 SAC failed to plead specific facts giving rise to an inference of scienter that was at
14 least as compelling as any opposing inference of nonfraudulent conduct because,
15 among other things, Morrice, Gotschall and Dodge's incentive compensation and
16 trading patterns were not unusual or suspicious.

17 57. Officer Defendant Cole argued that the claims against him in the SAC
18 should be dismissed for failing to adequately plead scienter, as he held on to the
19 vast majority of his New Century stock and suffered massive financial losses, and
20 the Examiner found no persuasive evidence of earnings manipulation.

21 58. Director Defendants argued that the SAC should be dismissed
22 because, among other things, investors' losses were not caused by the
23 misstatements. Specifically, Director Defendants argued that none of the alleged
24 misstatements in the registration statement for the Series A Offering caused the loss
25 to investors, investors had no recoverable damages because the decline in the price
26 of New Century securities occurred prior to any corrective disclosure, and
27 investors had no recoverable damages because the price declines were caused by
28

1 disclosures unrelated to any of the alleged misstatements in the 2005 Series A
2 registration statement.

3 59. Similarly, the Underwriter Defendants argued that the § 11 claims
4 against them should be dismissed because Plaintiffs failed to allege material
5 misrepresentations or omissions in the Offering materials, as the alleged
6 misstatements amounted to no more than corporate mismanagement, were
7 forward-looking statements accompanied by cautionary language, and were non-
8 actionable puffery. Additionally, the Underwriter Defendants argued that Plaintiffs
9 alleged facts that established a negative causation defense with respect to the
10 Series A Offering because New Century's corrective disclosures had nothing to do
11 with the misstatements in the registration statements for the 2005 Offering.

12 60. Director Defendant Popejoy joined in the motion to dismiss filed by
13 the Director Defendants and the Underwriter Defendants.

14 61. Defendant KPMG argued that Plaintiffs' claims against it should be
15 dismissed because KPMG did not cause the loss, as the corrective disclosures did
16 not reveal any misrepresentations regarding New Century's 2005 financial
17 statements, which were audited by KPMG. KPMG also argued that the § 10(b)
18 fraud claim against it should be dismissed because Plaintiffs did not plead with
19 particularity facts giving rise to a strong inference that KPMG acted with
20 conscious or deliberate recklessness and did not present a cogent theory that
21 KPMG committed fraud. KPMG also filed a separate motion to strike the SAC's
22 allegations based on the Examiner's Report, arguing that such allegations were
23 based on uncorroborated third-party assertions and inadmissible hearsay.

24 62. On July 7, 2008, Plaintiffs filed their opposition to Defendants'
25 motions to dismiss. Among other things, Plaintiffs' opposition brief argued that the
26 SAC should be upheld because it complied with the applicable pleading standard,
27 it adequately alleged that each of the Officer Defendants made actionable false and
28 misleading statements, the factual allegations gave rise to a strong inference of

1 scienter as to each Officer Defendant and KPMG, the SAC adequately stated
2 claims under § 11 with respect to the Series A and Series B Preferred Stock
3 registration statements, and the SAC adequately pled loss causation. Plaintiffs also
4 argued that KPMG's motion to strike was without basis.

5 63. On July 28, 2008, Defendants filed their five separate reply briefs in
6 support of their motions to dismiss and a separate reply in support of KPMG's
7 motion to strike.

8 64. On August 12, and 15, 2008, respectively, Plaintiffs filed a first and
9 second notice of supplemental authority in further opposition to the Defendants'
10 motions to dismiss. On August 21, 2008, Defendants filed responses to Plaintiffs'
11 first and second notices of supplemental authorities.

12 65. On September 9, 2008, Plaintiffs filed a third notice of supplemental
13 authority in further opposition to the Defendants' motions to dismiss.

14 66. On September 11, 2008, Defendants filed responses to Plaintiffs' third
15 notice of supplemental authorities.

16 67. On September 22, 2008, the Court held a hearing on Defendants'
17 motions to dismiss and KPMG's motion to strike.

18 68. Following the hearing, the parties continued to argue their positions.
19 On October 31, 2008, Officer Defendants Morrice, Dodge and Gotschall filed a
20 supplement to their motion to dismiss the SAC.

21 69. On December 2, 2008, Plaintiffs filed a fourth notice of supplemental
22 authorities in further opposition to the Defendants' motions to dismiss.

23 70. On December 3, 2008, the Court issued an order largely denying
24 Defendants' motions to dismiss and denying KPMG's motion to strike. The Court
25 found that the SAC provided sufficiently clear allegations under the applicable
26 pleading standard and that it adequately alleged material misstatements with
27 respect to loan quality and underwriting, financial reporting and internal controls in
28 connection with the Exchange Act claims under § 10(b) against the Officer

1 Defendants. The Court also found that the SAC adequately alleged scienter with
2 respect to the Officer Defendants as to statements regarding loan quality and
3 underwriting, internal controls, repurchase reserves and residual interests. The
4 Court, however, held that the SAC did not adequately allege scienter as to the
5 Officer Defendants with respect to allegations relating to New Century's
6 Allowance for Loan Losses ("ALL"). With respect to KPMG, the Court found that
7 the SAC adequately alleged a strong inference of scienter as to statements
8 regarding the repurchase reserve, residual interests, hedge accounting, mortgage
9 servicing rights and goodwill. However, it found that the SAC did not adequately
10 allege scienter as to KPMG with respect to the ALL. The Court also found that the
11 SAC sufficiently pled loss causation at the pleading stage, but warned that at a later
12 stage the alleged misstatements made "may be found too attenuated, or the
13 existence of intervening causes may be too significant, for Plaintiffs to establish
14 loss causation." With respect to the Securities Act claims, the Court upheld the
15 § 11 claims against the Director Defendants, the Underwriter Defendants and
16 KPMG; and it upheld the § 15 controlling person claims derived from the § 11
17 claims against the Officer Defendants. The Court, however, dismissed the
18 allegations of false and misleading statements that relied on the group pleading
19 doctrine.

20 71. In its December 3, 2008 order, the Court also denied KPMG's request
21 to strike all references in the SAC to the Examiner's Report, because it found that
22 the Examiner's Report qualified as a reliable source for pleading purposes.

23 72. On January 26, 2009, Defendants filed their Answers to the SAC. In
24 their Answers, Defendants raised numerous affirmative defenses. Among other
25 things, Defendants asserted that the statements that were made during the Class
26 Period were true, that any increase or decrease in New Century's securities prices
27 was not caused by Defendants' statements, that Plaintiffs were not entitled to a
28 recovery because the facts Plaintiffs claim were not disclosed were already known

1 by the market, that Defendants' conduct was not the cause of investors' losses, and
2 that Defendants lacked scienter.

3 **C. Discovery**

4 73. Pursuant to the PSLRA, until the Court decided the motions to
5 dismiss, Plaintiffs were unable to pursue any formal discovery in this Action.
6 However, following the Court's decision, the parties promptly met and conferred
7 pursuant to Fed. R. Civ. P. 26(f) and exchanged initial disclosures. In its initial
8 disclosures, Lead Plaintiff disclosed information related to its investment advisors
9 and the individuals Lead Plaintiff believed to have relevant information (including
10 individuals who Lead Plaintiff had uncovered in its pre-discovery investigation).
11 Likewise, Defendants disclosed information concerning individuals who were
12 likely to possess discoverable information.

13 74. Beginning in February 2009, Plaintiffs served document requests on
14 each of the Defendants. The requests sought, among other things, documents
15 concerning New Century's announced restatement of financial results, audit
16 workpapers, documents concerning New Century's loan underwriting, documents
17 concerning New Century's internal controls, and documents concerning New
18 Century's accounting for residual interests and repurchase reserves.

19 75. Plaintiffs also issued dozens of document subpoenas to relevant
20 nonparties, including to the Liquidating Trustee of the New Century Liquidating
21 Trust, who had maintained New Century's business records following the
22 Company's filing of bankruptcy.

23 76. Among the numerous nonparties Plaintiffs subpoenaed were as
24 follows:

Subpoenaed Entity	Relevance
Access Lending Corporation	Entity acquired by New Century that provided warehouse lending services
AlixPartners LLP	Retained by New Century to assist in management of the

	Company
Bank of America, N.A.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Barclays Bank PLC	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
BDO Seidman LLP	Retained by the Examiner to assist in the examination of New Century
Bear Stearns Mortgage Capital Corp.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Carrington Capital Management LLC	New Century invested \$2.0 million in Carrington and \$25 million in Carrington Mortgage Credit Fund I, LP ("CMCF"). During 2Q '04 and 3Q '04, New Century was the majority investor in CMCF, and consolidated its results into the Company's financial statements.
Citigroup Global Markets Realty Corp.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Concord Minutemen Capital Inc.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Credit Suisse USA Inc.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Deutsche Bank Structured Products	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Ernst & Young LLP	Consultant to New Century re Sarbanes-Oxley compliance
Fitch Ratings	Ratings agency
Flagstone Securities LLC	Analyst
Fox-Pitt Kelton, Inc.	Analyst
Friedman Billings Ramsey Group	Analyst
Gemini Securitization Corp.	Warehouse lender; had credit

	facility and/or loan repurchase agreement with New Century
Gilford Securities Inc.	Analyst
GMP Securities, LP	Analyst
Goldman Sachs Group, Inc.	Analyst
Goldman Sachs Mortgage Company	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Gradient Analytics Inc.	Analyst
Grant Thornton LLP	Auditor; assisted with New Century management's Sarbanes-Oxley review
Greenlight Capital LLC	Hedge fund that invested in New Century and ran by Defendant Einhorn
Guaranty Bank	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Heller Ehrman LLP	Involved in New Century's internal investigation
Howe Barnes Hoefer & Arnett, Inc.	Analyst
Imperial Capital LLC	Analyst
Integrity Research Associates	Analyst
Keefe, Bruyette, Woods, Inc.	Analyst
JMP Securities	Analyst
JP Morgan Securities, Inc.	Analyst
Liberty Hampshire Company	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Merrill Lynch & Co., Inc.	Analyst
Moody's Investors Service	Ratings agency
Morgan Stanley Mortgage Capital Inc.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Natixis Real Estate Capital, Inc.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Newport Funding Corp.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
Pricewaterhouse Coopers LLP	Financial consultant to Heller

	Ehrman, which conducted the internal investigation with respect to the restatement
RBC Mortgage Company	Prime mortgage lender
SNL Financial LC	Analyst
Standard & Poor's	Ratings Agency
State Street Bank and Trust Company	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
The Center for Financial Research and Analysis	Analyst
The Clayton Group	Retained to review New Century's loans
The Vance Caesar Group	Consultant to New Century
UBS Real Estate Securities Inc.	Warehouse lender; had credit facility and/or loan repurchase agreement with New Century
UBS Securities Research, LLC	Analyst

77. Lead Counsel expended much time and effort to obtain documents from each of the Defendants, the New Century Liquidating Trustee and the various nonparties who were subpoenaed. All of the parties and most of the nonparties objected to the document requests and subpoenas, requiring Lead Counsel to engage in numerous telephone conferences and correspondence in an attempt to resolve their objections and discovery disputes. In addition, before certain parties and nonparties would agree to produce documents, they required that a confidentiality and protective order be put in place. Although Plaintiffs disputed the necessity of such a confidentiality order especially in light of New Century's bankruptcy, an agreed-to, more narrowly defined, confidentiality order was eventually entered in this case.

78. Even after document requests were agreed to and the confidentiality order had been entered, certain parties and nonparties delayed their document productions or refused to produce them. For example, after numerous meet and

1 confers and protracted correspondence, Plaintiffs was forced to file motions to
2 compel Defendant KPMG to produce certain categories of documents. As
3 discussed below, Plaintiffs' motions to compel were largely successful.

4 79. Specifically, on May 8, 2009, Plaintiffs filed a motion to compel
5 production of certain documents from KPMG, seeking documents KPMG
6 produced to the Bankruptcy Examiner, the SEC, and to the Department of Justice.
7 KPMG opposed the motion, arguing that certain documents were outside of the
8 relevant time period or otherwise had no relevance to the Action.

9 80. On May 20, 2009, Plaintiffs filed a supplemental memorandum in
10 support of their motion to compel, informing the Court that their motion to compel
11 was further supported by the fact that the documents also had since been produced
12 to the Liquidating Trustee. KPMG responded the same day, again arguing that the
13 documents were not relevant to this Action.

14 81. By Order dated July 8, 2009, Magistrate Judge Olguin largely granted
15 Plaintiffs' motion to compel, and ordered that KPMG shall respond, under oath, to
16 Plaintiffs' document request no later than July 29, 2009.

17 82. On July 21, 2009, Plaintiffs filed their second motion to compel
18 production of documents from KPMG, seeking to enforce compliance with the
19 Court's prior discovery order. KPMG filed a cross-motion for protective order,
20 seeking entry of a protective order to protect KPMG's alleged trade secrets and
21 confidential commercial information and certain private personal information.

22 83. On July 29, 2009, KPMG filed a supplement to its motion for
23 protective order, to which Plaintiffs responded the same day.

24 84. By Order dated August 10, 2009, Magistrate Judge Olguin largely
25 granted Plaintiffs' second motion to compel, and granted KPMG's motion for a
26 protective order, and ordered that KPMG shall produce the documents no later than
27 August 17, 2009.

1 85. On September 23, 2009, KPMG filed a motion to compel documents
2 from Lead Plaintiff NYSTRS. KPMG sought, among other documents, Minutes of
3 meetings and other documents by NYSTRS and certain committees. Lead Plaintiff
4 opposed the motion, arguing that the discovery was an effort to burden and harass
5 NYSTRS.

6 86. On September 30, 2009, KPMG filed a supplement to its motion to
7 compel, to which Lead Plaintiff responded on the same day.

8 87. By Order dated December 7, 2009, Magistrate Judge Olguin largely
9 denied KPMG's motion to compel, finding that Lead Plaintiff had satisfied its
10 burden of establishing that the documents sought were not relevant or otherwise
11 discoverable.

12 88. Eventually, after extensive efforts, Plaintiffs ultimately obtained over
13 38 million pages of documents from the parties and non-parties in this Action. The
14 38 million pages of documents include over 35 million pages of documents from
15 the New Century Liquidating Trust, over 2.8 million pages of documents from
16 Defendant KPMG, over 600,000 pages of documents from the Underwriter
17 Defendants, and approximately 500,000 pages of documents from various third
18 parties.

19 89. Plaintiffs also produced numerous documents to Defendants,
20 including trade confirmations, brokerage statements, investment manuals, emails,
21 news articles, and other materials in their possession concerning New Century.

22 90. Plaintiffs also noticed five KPMG depositions and were preparing for
23 those and several other depositions with the assistance of Plaintiffs' accounting
24 expert, when the Settlements were reached.

25 91. Based on the extensive document production by the parties and non-
26 parties, Plaintiffs and Defendants were fully aware of the strengths and weaknesses
27 in this case.
28

1 **D. KPMG's Motion for Summary Judgment**

2 92. On January 13, 2010, Defendant KPMG filed an early motion for
3 summary judgment, arguing that Plaintiffs could not establish loss causation in this
4 case for any misstatements concerning the Company's 2005 financial results,
5 which it had audited. Among other things, KPMG argued that it did not cause the
6 loss to New Century investors because the market and securities analysts did not
7 understand that New Century's 2005 financial results were misstated before the
8 end of the Class Period, let alone that KPMG's 2005 audit report was erroneous.
9 KPMG also argued that Plaintiffs had to disaggregate the losses caused by KPMG
10 in order to withstand summary judgment. KPMG further sought summary
11 adjudication relating to losses from various Class Period disclosures on the
12 grounds that the disclosures did not reveal KPMG's misconduct or misconduct
13 related to the 2005 financial results. In support of its motion, KPMG submitted a
14 report from a proffered expert on loss causation.

15 93. On the same day, KPMG also filed a request for case management
16 conference regarding scheduling and case management issues, including, among
17 other things, the ordering of discovery, the scope of discovery regarding KPMG's
18 motion for summary judgment, dates related to class certification briefing, and a
19 trial date.

20 94. On February 26, 2010, KPMG filed a Supplemental Declaration of its
21 proffered expert, including additional analyses regarding certain allegedly
22 corrective disclosures.

23 95. On March 15, 2010, Plaintiffs filed their opposition to KPMG's
24 motion and a related motion to exclude KPMG's proffered expert on loss
25 causation. Plaintiffs argued that fact-for-fact disclosures were not required for loss
26 causation, that written analyst confirmation was not required for loss causation,
27 that investor losses were caused by disclosure of the facts related to KPMG's
28 misconduct, and that disaggregation of the losses caused by KPMG was not

1 required. Plaintiffs also argued that summary adjudication with respect to certain
2 disclosures was inappropriate because the disclosures reflected the materialization
3 of the foreseeable risks that emanated from the misconduct relating to KPMG's
4 2005 audit. In support of their opposition, Plaintiffs also filed three expert reports,
5 including: (i) the expert declaration of Stuart Harden, opining, among other things,
6 that investors had sufficient reason to conclude, based solely on information
7 publicly available up to and including February 7, 2007, and March 2, 2007, that
8 New Century's financial statements as of December 31, 2005, and KPMG's audit
9 opinion thereon, and related documents, might be materially misstated and cannot
10 be relied upon; (ii) the expert declaration of Chad Coffman, opining, among other
11 things, that KPMG's alleged misstatements caused artificial inflation in New
12 Century's stock price and when the misstatements and their consequences were
13 disclosed, the stock price fell significantly; and (iii) the expert declaration of H.
14 Nejat Seyhun, responding to the declaration of KPMG's proffered expert, and
15 opining, among other things, that reasonable investors would have and did question
16 the integrity of New Century's 2005 audited financial statements upon the
17 Company's corrective disclosures on February 7, 2007, and on subsequent
18 disclosure dates. Plaintiffs also filed a motion to exclude the declaration of
19 KPMG's proffered expert.

20 96. On April 14, 2010, KPMG filed its reply in support of its motion for
21 summary judgment, and its opposition to Plaintiffs' motion to strike the declaration
22 of KPMG's proffered expert. KPMG also filed three motions to exclude Plaintiffs'
23 experts on loss causation. KPMG argued that: (i) the declaration of Stuart Harden
24 should be excluded because it opines on subjects about which, according to KPMG,
25 he has no expertise, specifically, how reasonable investors would have interpreted
26 New Century's disclosures in February and March 2007; (ii) the declaration of
27 Chad Coffman should be excluded because, among other arguments, it makes no
28 attempt to disaggregate confounding factors that caused the claimed loss; and (iii)

1 the declaration of H. Nejat Seyhun should be excluded because, among other
2 arguments, it purportedly did not segregate the stock price impact of the alleged
3 corrective disclosures from the effects of other information.

4 97. On April 20, 2010, KPMG filed a notice of supplemental authorities
5 in support of its summary judgment motion.

6 98. Pursuant to a stipulation and Order filed March 26, 2010, the Court
7 scheduled the hearing on KPMG's motion for summary judgment for
8 May 24, 2010.

9 99. KPMG's motion for summary judgment was pending before the Court
10 when the Settlements were reached.

11 100. Also at the time the parties agreed to settle, as noted above, Plaintiffs
12 had noticed and scheduled the depositions of five KPMG witnesses to be taken
13 between April 27 and May 20, 2010, and was in the process of identifying and
14 preparing for additional potential deponents. The witnesses included key KPMG
15 employees involved in the audit of New Century's financial statements.

16 2. Experts

17 101. To assist it in the prosecution of the Action, Lead Counsel retained
18 several experts, including H. Nejat Seyhun, Ph.D.; Andrew Mintzer, CPA; Stu
19 Harding, CPA; Chad Coffman; Richard D. Puntillo; and M. Cary Collins, Ph.D.
20 Lead Counsel negotiated competitive fee rates for these experts, each of whom
21 played a significant part in the prosecution of this Action.

22 102. Professor H. Nejat Seyhun, a professor of finance and business
23 administration at the University of Michigan, is an expert on market efficiency –
24 *i.e.*, determining whether the price of New Century securities reacted to various
25 news and statements concerning the Company – as well as an expert on loss
26 causation, insider trading and damages. Lead Counsel asked Professor Seyhun to,
27 among other things, analyze whether New Century securities traded on an efficient
28 market, evaluate whether Defendants' misrepresentations caused the loss to New

1 Century investors, estimate the size of damages and losses in this Action, and
2 formulate a fair and reasonable Plan of Allocation for distribution of the settlement
3 proceeds. Professor Seyhun also drafted a detailed expert report in connection
4 with Plaintiffs' opposition to KPMG's motion for summary judgment.

5 103. Andrew Mintzer, CPA, is an accounting expert. Mr. Mintzer has had
6 more than 25 years of experience as a CPA providing accounting, auditing and
7 litigation services, and is one of fifteen members of the Accounting Standards
8 Executive Committee of the American Institute of Certified Public Accountants
9 ("AICPA"), the senior technical committee of the AICPA authorized to set
10 accounting standards and speak for the AICPA on accounting matters. Lead
11 Counsel asked Mr. Mintzer to assist in evaluating accounting workpapers and other
12 documents to help determine whether New Century's reported financial results
13 violated GAAP, whether KPMG conducted its audit in violation of GAAS, and
14 issues involving New Century's restatement.

15 104. Stu Harding, CPA, is also an accounting expert. Mr. Harding has had
16 more than 40 years of experience in public accounting, including audit work. He
17 has served as a member of the Audit Standards Board and on various committees
18 of the AICPA. He is also a current member of the Emerging Issues Task Force of
19 the Financial Accounting Standards Board. Lead Counsel asked Mr. Harding to
20 assist in evaluating the workpapers and arguments raised by KPMG. Mr. Harding
21 drafted an expert report in connection with Plaintiffs' opposition to KPMG's
22 motion for summary judgment.

23 105. Chad Coffman is the principal of Winnemac Consulting, a firm that
24 specializes in the application of economics, finance, statistics, and valuation
25 principles. Mr. Coffman has over a decade of experience involving securities
26 valuation, damages, and loss causation. Lead Counsel asked Mr. Coffman to assist
27 in evaluating Defendants' loss causation arguments in connection with mediations
28 and KPMG's motion for summary judgment. Mr. Coffman also drafted an expert

1 report, excluding exhibits, in connection with Plaintiffs' opposition to KPMG's
2 motion for summary judgment.

3 106. Professor Richard Puntillo is an expert on underwriters' due diligence.
4 Professor Puntillo is a professor of finance at the University of San Francisco with
5 two decades of high-level executive experience in investment and commercial
6 banking, as well as 30 years of board of director experience in public companies,
7 including as Chairman of the Board and Audit Committee Chair. Lead Counsel
8 asked Professor Puntillo to assist in evaluating whether Underwriter Defendants
9 performed adequate due diligence in connection with the Series A and Series B
10 Preferred Stock Offerings.

11 107. M. Cary Collins is an expert on loan underwriting. Professor Collins
12 is a professor of finance at Bryant University with expertise in fair lending,
13 underwriting and pricing models for mortgage lending activities. Lead Counsel
14 asked Professor Collins to assist in analyzing loan underwriting and loan data, and
15 to determine whether New Century followed its own underwriting practices in
16 connection with the quality of the loans New Century underwrote.

17 **E. The Risks Faced by Plaintiffs**

18 108. At the time the agreements in principle to settle the Action were
19 reached, Plaintiffs and their counsel had a thorough understanding of the strengths
20 and weaknesses of the case. While Plaintiffs and their counsel believe that all of
21 the claims asserted against Defendants have merit, they also recognize that there
22 were serious risks as to whether Plaintiffs would ultimately prevail on the merits,
23 including as a result of Defendants' argument that Plaintiffs could not establish
24 scienter, the materiality of the misstatements, or loss causation. In addition to the
25 risk that Plaintiffs might not succeed on the merits before a jury, there was a very
26 substantial risk that, even if Plaintiffs were to prevail, the Class might not recover
27 as much as the Settlement Amount on a judgment, much less more. Indeed,
28 Defendants throughout this litigation repeatedly argued that Plaintiffs could not

1 prove loss causation and that Defendants could show negative causation. For
2 example, there was a risk that Defendants could successfully argue at summary
3 judgment or at trial that the stock price drops on the alleged corrective disclosure
4 dates were only partially recoverable on one of those days, or not at all.

5 109. In addition, Defendants would have continued to argue that they could
6 not be held liable under § 10(b) of the Exchange Act because they did not have the
7 requisite scienter. The Individual Defendants would have argued that their
8 transactions in New Century stock and their retention of shares negate scienter.
9 They also would have argued that they relied on the audit opinion of KPMG in
10 connection with New Century's financial results, and that any alleged financial
11 misstatements were committed by lower level employees without their knowledge.

12 110. Defendants also would have contended that there were no material
13 misstatements; that the Company's statements during the Class Period were true
14 when made; that the Company repeatedly warned investors of the risk that loans
15 may default; and that Defendants adequately disclosed the risks that eventually
16 materialized, rendering the alleged omissions non-material.

17 111. Although Plaintiffs believe that they have sufficient evidence to
18 overcome scienter, materiality, falsity, and loss causation, there were very real risks
19 that the Court or jury would be persuaded by the arguments of Defendants and
20 their experts. In addition, as detailed *infra* ¶¶130-31, the New Century Officer and
21 Director Defendants' insurance coverage was being expended on defense costs.
22 Moreover, there could be no settlement that preserves the substantial available
23 insurance for the Class absent a global settlement of the other claims against those
24 Defendants by the SEC, the Trustee and Kodiak, as well as a release of KPMG's
25 preserved claims against those Defendants, which would not have been possible
26 absent a Class settlement with KPMG.

1 112. Plaintiffs' expert estimates that maximum recoverable damages in this
2 Action are between \$778 million and \$1.6 billion.⁶ Thus, even under Plaintiff's
3 maximum damage estimates, it has achieved a recovery of between 8% and 16% in
4 this case.

5 113. Importantly, Defendants would have argued that the declines in the
6 share price of New Century's Common Stock on February 8, 2007, and on March
7 5, 2007 – as well as various other dates – were only partially caused by the alleged
8 fraud, if at all.

9 114. With regard to the February 7, 2007 disclosure, Defendants would
10 have continued to argue that the disclosure of the restatement only pertained to the
11 first three quarters of 2006 and did not pertain at all to the Company's financial
12 results in 2005. Defendants thus would have argued that the financial results
13 issued prior to the first quarter of 2006 were not actionable. If successful, this
14

15 ⁶ As explained in the Seyhun Declaration (¶¶51-52), Lead Plaintiff's expert
16 calculated an estimated number of damaged securities for each type of security.
17 The number of individuals and institutions that have suffered damages, however, is
18 more difficult to estimate without detailed brokerage trading reports. First, this is
19 because ownership of common stock is not recorded at the individual level but at
20 the brokerage level. Second, even with detailed brokerage data, without certain
21 additional information, it would be difficult to discern multiple accounts by the
22 same individual from multiple accounts by different individuals. Professor Seyhun
23 was able, however, to determine the number of registered common shareholders in
24 New Century as of December 31, 2005, from public sources, as 165,000. Based on
25 the number of common stockholders, Professor Seyhun expects the number of
26 damaged individuals who purchased options and Preferred Shares to be in the tens
27 of thousands. The Court also inquired during the preliminary approval hearing as
28 to how many New Century employees had their retirement funds invested in New
Century securities. My firm has inquired with the Trustee and been informed that
since most employees held their stock through brokerages, the Trustee is unable to
determine the number of New Century employees who held New Century stock at
any particular time. The Trustee did inform us that since 1997 (when New Century
went public), approximately 3,000 New Century employees participated in the
Employee Stock Purchase Plan.

1 argument would have ended Plaintiffs' case against KPMG and greatly reduced
2 Plaintiff's case against the Underwriter Defendants, leaving only the Individual
3 Defendants whose insurance coverage would likely have been greatly expended by
4 that point in the litigation. In addition, with regard to the restatement for the first
5 three quarters of 2006, Defendants would have argued that the accounting errors
6 were not made with scienter. Defendants also would have argued that there was no
7 loss causation as to the February 7, 2007 disclosure because the drop in the stock
8 price was attributable to other news and information that were unrelated to the
9 fraud or financial restatement. Thus, Plaintiffs faced the risk of no recovery for the
10 stock price drop following the February 7, 2007 disclosure.

11 115. With regard to the March 2, 2007 corrective disclosure, Defendants
12 also would have argued that the fall in the price of New Century securities was not
13 caused by the fraud. Indeed, in its motion for summary judgment, KPMG argued
14 that it could not be held liable for losses from this disclosure because the disclosure
15 revealed nothing about KPMG's misconduct or New Century's 2005 financial
16 results. Moreover, all of the Defendants would have argued that the loss from the
17 March 2, 2007 disclosure did not cause New Century investors' losses because the
18 drop was caused by other news and information announced by New Century and
19 had nothing to do with the fraud or restatement. Thus, Plaintiffs also faced the risk
20 of no recovery for the March 5, 2007 stock price drop.

21 116. Additionally, with regards to the March 13, 2007 corrective
22 disclosure, Defendants would have argued that the delisting of New Century's
23 securities from the NYSE was not caused by Defendants' fraud but, instead, by the
24 decline in the mortgage industry or other news. Thus, Plaintiffs also faced the risk
25 of no recovery for the March 13, 2007 stock price drop.

26 117. Of course, if Defendants successfully argued at summary judgment or
27 trial that there was no corrective disclosure on any of these dates, the Class would
28 receive no recovery. Furthermore, each of the maximum damages estimates by

1 Professor Seyhun discussed above and in his Declaration assumes a 100% claims
2 rate by members of the Class; in other words, that following a fully successful trial,
3 each and every member of the Class would file a proof of claim. The percentage
4 of claims actually submitted in securities actions is typically significantly lower. A
5 less than 100% claims rate would have the effect of reducing the maximum
6 damages available. *See* Seyhun Decl. ¶53.

7 118. The Settlements are well within the range of reasonableness in light of
8 the best possible recovery and all the attendant risks of litigation, especially when
9 compared to other class action settlements. *See, e.g., City of Detroit v. Grinnell*
10 *Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (affirming approval of settlement that was
11 between 3.2% and 12% of recoverable damages; “[i]n fact there is no reason, at
12 least in theory, why a satisfactory settlement could not amount to a hundredth or
13 even a thousandth part of a single percent of the potential recovery”) (affirming in
14 part *City of Detroit v. Grinnell Corp.*, 356 F. Supp. 1380, 1386 (S.D.N.Y. 1972)
15 (approving settlement valued at 3.2% to 3.7% as “well within the ball park”)); *In*
16 *re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320 (E.D.N.Y. 1993) (settlement of
17 between 6% and 10% of damages); *see also* Laura E. Simmons & Ellen M. Ryan,
18 “Post-Reform Act Securities Settlements, 2005 Review and Analysis,” at 5
19 (Cornerstone Research 2006) (www.cornerstone.com) (finding that, in 2005,
20 settlement were approximately 3% of plaintiffs’ estimated damages); *cf. In re*
21 *Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, 2005 U.S. Dist. LEXIS 13627,
22 at *27-28 (C.D. Cal. June 10, 2005) (citing “Recent Trends in Securities Class
23 Action Litigation: 2003 Early Update” 1430 PLI/Corp. 429, 440, 437 (May 20-
24 21, 2004) (“In 2003, the median percentage of investor losses paid in settlement
25 remained its all-time low at 2.8%, up from 2.7% in 2002”) and Elaine Buckberg, *et*
26 *al.*, “Recent Trends in Shareholder Class Action Litigation: Bear Market Cases
27 Bring Big Settlements,” at 8 (NERA Feb. 2005) (www.nera.com) (“In 2004, the
28 median percentage of investors losses paid in settlement reached a new low of

2.3%”)); Todd Foster, Ronald I. Miller and Stephanie Plancich, “Recent Trends in Shareholder Class Action Litigation: Filings Plummet, Settlements Soar,” at 9 (NERA Jan. 2007) (www.nera.com) (finding that, in 2006, median recoveries were just 2.2% of losses); Stephanie Plancich and Svetlana Starykh, “Recent Trends in Securities Class Action Litigation: 2009 Year-End Update,” at 20 (NERA Dec. 2009) (“2009 NERA Report”), available at www.nera.com (finding that the ratio of settlements to investor losses has been between 2% and 3% of investor losses from 2002 onward, and that over the past few years, this ratio has stayed at approximately 2.5%).

119. Had the case proceeded to trial, Plaintiffs would have had to present the testimony of damage experts in order to establish that Class Members’ losses were legally recoverable damages. In recent years, defendants have become increasingly active in attempting to prevent experts from delivering testimony and attempting to strike the testimony of plaintiff’s expert on damage issues. Even if Plaintiffs’ damages experts were allowed to testify, Defendants would have undoubtedly secured their own well-credentialed experts. Plaintiffs’ experts and Defendants’ experts would inevitably have different assessments as to the existence and amount of damages the Class suffered. No doubt, Defendants’ experts would contend, among other things, that the damages claimed by Plaintiffs were grossly inflated and that much, if not all, of the losses suffered by the Class were due to market conditions or other events and not to the alleged wrongdoing. The reaction of a jury to such expert testimony is highly unpredictable, and it is uncertain whose expert a jury would find more persuasive.

120. Moreover, in light of the bankruptcy of New Century, the complexity of the case, the number of parties involved and the need for a global resolution of numerous claims, the Settlements totaling approximately \$125 million for the Class represent an extraordinary result. *See Atlas v. Accredited Home Lenders Holding Co.*, 2009 U.S. Dist. LEXIS 103035 (S.D. Cal. Nov. 2, 2009) (granting

1 final approval of settlement and noting that the company's bankruptcy filing
2 increased the risks of recovery). This result compares favorably to the median
3 settlement of \$9 million for securities class actions in 2007, 2008, and 2009. *See*
4 2009 NERA Report, at 1 (finding that the median settlement value in 2009 is \$9
5 million, similar to the 2007 and 2008 medians).

6 121. Further, Plaintiffs and their counsel obtained contributions to the
7 global Settlements from numerous Defendants, including insurers of New
8 Century's officers and directors, contribution from certain individual New Century
9 officers, auditor defendant KPMG, and the Underwriter Defendants.

10 122. Despite the most vigorous and competent efforts, success in litigation
11 such as this is never assured. The riskiness of litigation is shown by the many
12 securities cases lost on or after trial, including *Robbins v. Koger Props. Inc.*, 129
13 F.3d 617 (11th Cir. 1997) (overturning an \$81 million jury verdict for the plaintiff
14 on loss causation grounds and dismissing the entire litigation); *Anixter v. Home-*
15 *Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities fraud class
16 action verdict for plaintiffs filed in 1973 and tried in 1988 on basis of 1994
17 Supreme Court opinion); *In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556
18 (N.D. Cal. Nov. 27, 2007) (2002) (verdict for defendants); *In re Health Mgmt., Inc.*
19 *Sec. Litig.*, 184 F.R.D. 40 (E.D.N.Y. 1999) (jury verdict for auditor in securities
20 case); *In re Apple Computer Sec. Litig.*, 1991 U.S. Dist. LEXIS 15608 (N.D. Cal.
21 Sept. 6, 1991) (although plaintiff class obtained a substantial jury verdict against
22 two individual defendants, the district court vacated judgment on motion for
23 judgment n.o.v.). Even before trial, Plaintiffs faced substantial risk on Defendants'
24 arguments for summary judgment. For example, in *In re Omnicom Group, Inc.*
25 *Sec. Litig.*, following 5½ years of litigation and millions of dollars in time and
26 expense incurred by plaintiff's counsel, the district court granted defendant's
27 motion for summary judgment based on loss causation grounds, dismissing all
28 claims in their entirety. The Second Circuit affirmed. 597 F.3d 501 (2d Cir. 2010).

1 123. If the Settlements here had not been achieved, the Action would likely
2 have continued for years and the substantial insurance funds available to fund the
3 Settlements likely would have been fully expended in defense costs of this action,
4 the Trustee action, the Kodiak action, and the SEC action. Given the stakes
5 involved in this litigation, an appeal is virtually assured regardless of the result of
6 trial. Instead of the lengthy, costly, and uncertain course of further litigation with
7 Defendants, the Settlements provide an immediate and certain recovery for the
8 Class. The Settlements clearly outweigh the substantial risks associated with
9 lengthy continued litigation.

10 124. In sum, Plaintiffs and their counsel vigorously negotiated with
11 Defendants and carefully weighed the risks and benefits in a fully informed
12 manner before finally agreeing to the Settlements on behalf of the Class.

13 **F. The Negotiation of the Settlements**

14 125. The Settlements result from intensive, arm's-length negotiations
15 between informed parties, involving formal mediation sessions with all parties
16 present, as well as extensive additional negotiations. The Settlements occurred
17 only after Plaintiffs had withstood Defendants' motions to dismiss, obtained and
18 analyzed over 38 million pages of documents, filed expert reports and briefs in
19 opposition to KPMG's motion for summary judgment, and were preparing for
20 depositions. Moreover, it took eleven in-person mediation sessions and numerous
21 negotiations over the course of more than a year before the case settled.

22 126. In advance of the mediations, Lead Counsel consulted with a damages
23 expert (Professor Seyhun) to quantify the damages allegedly suffered by the Class
24 and to ensure that any negotiated settlement would confer a substantial benefit to
25 the Class. Lead Counsel also had the benefit of its work with another expert, Mr.
26 Coffman, who gave it an objective evaluation of the strengths and weaknesses of
27 the claims. Consultation with these experts helped provide Plaintiffs with
28

1 sufficient information to make an informed decision about whether to settle this
2 Action and on what terms.

3 127. Beginning on March 11, 2009, the negotiations commenced with the
4 assistance of the Honorable Daniel Weinstein (Ret.) (the "Mediator"). The Court-
5 appointed Lead Plaintiff, NYSTRS, actively participated in the negotiations, and
6 its General Counsel or Associate General Counsel personally attended the
7 mediation sessions.

8 128. Before the March 11, 2009 mediation, the parties exchanged lengthy
9 mediation briefs that set forth the respective parties' positions and analysis of the
10 strengths and weaknesses of the case. Over three separate days on March 11, 12
11 and 24, 2009, Lead Plaintiff and certain of the Defendants participated in in-person
12 mediation sessions with the Mediator, but were not able to resolve the case.
13 Thereafter, additional negotiations facilitated by the Mediator occurred on
14 March 31 and May 8, 2009. A second in-person mediation session took place over
15 two days on June 25 and 26, 2009, followed by telephone calls with the Mediator
16 on July 29 and August 18, 2009. On September 14, 2009, a third in-person
17 mediation session took place, followed by a conference call on October 1, 2009.
18 On October 14 and October 20, 2009, Lead Plaintiff provided three letter briefs to
19 the Mediator to address the defenses raised by KPMG and the Underwriter
20 Defendants, the evidence against them, and their liability. Thereafter, a fourth in-
21 person mediation session took place on October 26, 2009, followed by conference
22 calls and meetings with the Mediator on December 29, 2009, and
23 January 13, 2010. Over the course of two days on January 18 and 19, 2010, a fifth
24 in-person mediation session took place, followed by conference calls on
25 January 19, January 20, and February 11, 2010. Thereafter, the parties continued
26 to participate in conference calls with the Mediator and participated in final in-
27 person mediation sessions on April 28 and 29, 2010. By April 29, 2010, although
28 the parties did not fully resolve the matters, all of the parties were close to reaching

1 agreements in principle to settle all of the claims. At that time, Lead Counsel
2 drafted comprehensive settlement agreements. Over May, June and July 2010, the
3 parties extensively negotiated the specific terms of the settlement documents,
4 including three separate Settlement Stipulations, the proposed preliminary approval
5 Order, the Class Notice, the Summary Notice, and the three proposed Judgments.

6 129. The negotiations that ultimately culminated in the parties' agreement
7 to settle were especially complex and difficult due to the parties' disputes over the
8 claims and defenses in this Action, New Century's bankruptcy, the number of
9 defendants in this Action, and the existence of claims that were made against
10 certain of the Defendants by (1) the New Century Liquidating Trustee, (2) the
11 Kodiak plaintiffs, (3) the SEC, and (4) potential claims by KPMG against certain
12 Individual Defendants. During the course of negotiation, numerous issues had to
13 be researched and analyzed, and the claims of these other claimants had to be
14 considered. In addition, because Defendants continued to insist that they did not
15 cause New Century investors' losses, a damages and loss causation expert for
16 Plaintiffs was required to attend some of the mediations.

17 130. Further, New Century was bankrupt and could not contribute to the
18 Settlements. Although there was substantial directors and officers insurance
19 ("D&O insurance"), by the time the mandatory discovery stay of the PSLRA was
20 lifted after the Defendants' motions to dismiss were denied, the primary layer of
21 the insurance – \$10 million – had already been used for defense costs. Moreover,
22 the D&O insurance was complex. Not only did the D&O policy consist of 14
23 excess policies underwritten by 10 different insurance companies, but the 14
24 excess policies were divided into 3 different towers consisting of ABC coverage,
25 Side A coverage and Independent Directors Liability ("IDL") coverage, which
26 meant that cooperation and agreement to payment from numerous insurance
27 carriers were required to achieve the Settlements. In addition, the IDL tower
28 applied only to New Century's independent directors, and then only with respect to

1 one-seventh of the IDL tower for each of the independent directors who was found
2 liable.

3 131. As the litigation wore on, the D&O insurance continued to be rapidly
4 wasted. Moreover, the claims of competing claimants – the Trustee, the Kodiak
5 plaintiff, the SEC (and possibly KPMG) – had to be factored into the availability of
6 the D&O insurance in connection with the Settlements. Plaintiffs had to obtain the
7 cooperation of the Trustee, the Kodiak plaintiff, and the SEC – not to mention each
8 of the 11 different insurance carriers and each of the 28 defendants – and reach a
9 settlement with KPMG before the Settlements could be reached.

10 132. Lead Counsel also obtained cash contributions to the global Officer
11 and Director Settlement from certain of the Officer Defendants after hard fought
12 negotiations and after having conducted an assessment of their financial statements
13 and ability to pay. The Officer Defendants' contributions to the Settlements were
14 limited by their assets and the fact that Plaintiffs would have had to give up
15 significantly more in insurance proceeds before they could get to their assets
16 through the enforcement of any successful post-trial judgment.

17 133. In addition, Defendant KPMG threatened to sue certain Officer and
18 Director Defendants for claims that the parties could not bar with a settlement that
19 excluded KPMG. Further, a release of the Officer and Director Defendants and the
20 insurance carriers by the other Defendants was required before the Settlements
21 could be effectuated. Notwithstanding these complicated dynamics and New
22 Century's bankruptcy, Plaintiffs achieved an excellent settlement of approximately
23 \$125 million in cash for the members of the Class.

24 134. As publicly noted by an experienced commentator on an entirely
25 unsolicited basis the day after Plaintiffs filed their motion for preliminary approval
26 of the Settlements: "I suspect that this was an enormously difficult settlement to
27 pull off. Given the number of parties, the number of proceedings, the number of
28 insurers, and the amount of money at stake, trying to settle this case undoubtedly

1 was challenging, particularly since continuing defense expenses eroded the amount
2 of insurance remaining as the settlement negotiations went forward. I tip my hat to
3 the lawyers involved in bringing this settlement together.” See Ex. J attached
4 hereto.

5 135. The complexity of the Settlements is reflected in the three separate
6 Settlement Stipulations agreed to by the parties: (1) a Settlement Stipulation with
7 Defendant KPMG providing for payment to the Class of \$44,750,000; (2) a
8 Settlement Stipulation with the Underwriter Defendants for payment to the Class
9 of \$15,000,000; (3) a global Settlement Stipulation with the Officer and Director
10 Defendants providing for payment to the Class of \$65,077,008 in cash.

11 136. The last of the Settlement Stipulations, the global Settlement
12 Stipulation, provides for a total of \$91,102,331.51 in cash and \$944,029.49 in other
13 consideration to be paid to resolve all of the claims against the New Century
14 officers and directors by the Class, as well as plaintiffs in other pending actions –
15 namely, the SEC, the Trustee and Kodiak. The global Settlement Stipulation
16 further provides an agreed-to allocation of these payments to the Class and the
17 plaintiffs in the other pending actions. The Class is receiving over 70% of the
18 amount paid by and on behalf of the New Century officers and directors in the
19 global Settlement Stipulation, or \$65,077,088 all in cash.

20 137. Pursuant to the Settlement Stipulations, the three settlement
21 agreements are closely related and, if one of the three Settlements should not
22 become final for any reason, it could affect the finality and enforceability of the
23 other settlements.

24 **IV. CLASS NOTICE**

25 138. Pursuant to the Order Preliminarily Approving Settlements and
26 Providing for Notice, dated August 10, 2010 (the “Preliminary Approval Order”),
27 this Court granted preliminary approval of the Settlements, preliminarily certified
28 the Class, ordered that notice be disseminated to the Class, and set a schedule for

1 settlement events, including the filing of the settlement papers and fee application,
2 for submitting exclusion requests or objections, and for the final approval hearing
3 date.

4 139. Lead Plaintiff, with the Court's approval, retained Analytics, Inc.
5 ("Analytics") as the Claims Administrator for the Settlements. Analytics was
6 selected through a competitive bidding process with three claims administrators,
7 and approved by Lead Plaintiff NYSTRS.

8 140. Pursuant to the Preliminary Approval Order, Lead Plaintiff, through
9 Analytics, disseminated copies of the Notice and the Proof of Claim and Release
10 (the "Notice Packet") to potential Class Members. A copy of the Notice Packet is
11 attached as Ex. A to the Simmons Decl. The Notice contains a thorough
12 description of the Settlements, the Plan of Allocation and Class Members' rights to
13 participate in and object to the Settlements, or to exclude themselves from the
14 Class. *Id.* As detailed in the Simmons Declaration, Analytics obtained the names
15 and addresses of potential Class Members from the New Century bankruptcy
16 Trustee and the Underwriter Defendants, and used Analytics' database of names of
17 brokerage firms, institutions and other nominees that it maintains, as well as names
18 provided by banks, brokers and nominees pursuant to the Preliminary Approval
19 Order for purposes of its initial mailing. *Id.* ¶¶3-8.

20 141. Analytics began disseminating the Notice Packet to potential Class
21 Members on August 17, 2010. *Id.* ¶6. In total, over 50,000 copies of the Notice
22 Packet have been disseminated to potential Class Members. *Id.* ¶8.

23 142. In addition to direct mail, the Summary Notice ("Publication Notice")
24 was published once each in the national edition of *The Wall Street Journal* and over
25 the *PR Newswire* on August 24, 2010. *Id.* ¶10. Information regarding the
26 Settlements, including downloadable copies of the Notice and Claim Form, was
27 posted on the website established by the Claims Administrator for this Action
28

(www.NewCenturySettlement.com), *id.* ¶12, as well as on Lead Counsel's website (www.blbglaw.com).

143. As ordered by the Court and stated in the Notice, all objections to the Settlements, Plan of Allocation, or request for attorneys' fees and reimbursement of expenses and/or requests for exclusion from the Settlements were to be received by no later than October 18, 2010. There are presently no objections to the Settlements, the Plan of Allocation, or the fee and expense request.

144. In addition, Analytics has received only one request for exclusion from a Class Member representing only 300 shares. A list of those seeking exclusion will be included as Exhibit 1 to the proposed Judgments that will be submitted to the Court following expiration of the deadline for seeking exclusion.

V. PLAN OF ALLOCATION

145. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Settlement Fund must submit a Claim Form no later than December 15, 2010. As provided in the Notice, after deducting all appropriate taxes, administrative costs, attorneys' fees, and reimbursement of litigation expenses, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation.

146. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed among Class Members who submit valid Claim Forms. The Plan of Allocation is designed to achieve an equitable distribution of the Net Settlement Fund. Lead Plaintiff, in consultation with the other Named Plaintiffs, worked with Lead Plaintiff's damages expert, Professor H. Nejat Seyhun, in drafting the Plan of Allocation. Professor Seyhun's Declaration (attached hereto as Ex. D) explains the methods used to determine the artificial inflation in the New Century securities for purposes of the Plan of Allocation, and opines that the Plan of Allocation is fair and reasonable.

1 147. The Plan of Allocation is based on the following premises: (1) the
2 market price of New Century securities were artificially inflated during the Class
3 Period due to Defendants' allegedly material misrepresentations and omissions; (2)
4 the degree of inflation varied throughout the Class Period and decreased with each
5 partial disclosure of adverse information; and (3) the value of the Recognized Loss
6 Claim varies depending on when the claimant bought and/or sold the New Century
7 securities.

8 148. As discussed in the Declaration of Professor Seyhun, the Plan of
9 Allocation was based on an initial identification of "corrective disclosure" dates.
10 Using an "event study" methodology, Lead Plaintiff's expert performed a statistical
11 test to assess the statistical significance of the alleged corrective disclosure dates to
12 estimate the actual impact of the corrective disclosures on New Century's
13 securities prices. Plaintiffs' expert calculated the inflation per share for New
14 Century securities during the Class Period based upon the effect of the corrective
15 disclosures on the price of New Century's securities. *See* Seyhun Decl. ¶¶17-43.
16 Having identified the inflation per share during the Class Period, Plaintiffs' expert
17 was able to isolate those losses which are due to the alleged fraud from those
18 which were caused by market and industry factors or Company-specific factors not
19 related to the fraud.

20 149. The Plan of Allocation uses a formula for Recognized Loss Claims
21 which will fairly and reasonably distribute the Settlement proceeds to those Class
22 Members who suffered economic losses as a result of the alleged fraud. The Plan
23 of Allocation covers the following New Century securities: (i) Common Stock; (ii)
24 Series A Preferred Stock; (iii) Series B Preferred Stock; and (iv) Call and Put
25 Options on Common Stock. A New Century security must be held through a
26 Corrective Disclosure in order to be eligible for a recovery in the Settlements. In
27 other words, a New Century security purchased or otherwise acquired during the
28 first part of the Class Period from May 5, 2005 through February 7, 2007, must be

1 held until or beyond February 8, 2007, the first trading day after the first corrective
2 disclosure of February 7, 2007. Similarly, a New Century security purchased or
3 otherwise acquired on or after February 8, 2007, and before or on March 2, 2007,
4 must be held until March 5, 2007, the next day after the corrective disclosure on
5 March 2, 2007. Finally, a New Century security purchased or otherwise acquired
6 on or after March 5, 2007, must be held until March 13, 2007, the last day of the
7 Class Period. For shares that are held after the Corrective Disclosures, the Plan of
8 Allocation provides for calculation of recognized loss for New Century shares
9 based on inflation per share at the time of purchase minus the inflation of shares at
10 the time of sale. Plaintiffs' expert determined that the inflation per share was
11 \$25.21 for Common Stock purchased between May 5, 2005 and February 7, 2007,
12 \$11.09 for Common Stock purchased between February 8, 2007, and
13 March 4, 2007, and \$0.69 for Common Stock purchased between May 5, 2007, and
14 March 12, 2007.

15 150. Analytics, as the Claims Administrator for the Settlements, will
16 determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund
17 based upon each Authorized Claimant's Recognized Loss Claim, calculated in
18 accordance with the Plan of Allocation. Calculation of the Recognized Loss Claim
19 will depend upon several factors, including when the shares were purchased or
20 acquired, and whether they were held until the conclusion of the Class Period or
21 sold during the Class Period, and if so, when they were sold.

22 151. The Plan of Allocation was designed to fairly and rationally allocate
23 the proceeds of the Settlements among Class Members based on the Corrective
24 Disclosures. Lead Counsel respectfully submits that the Plan of Allocation is fair
25 and reasonable and should be approved. Approval of the Plan of Allocation is also
26 supported by Lead Plaintiff and the other Named Plaintiffs.

1 **VI. THE FEE APPLICATION**

2 152. Lead Counsel achieved a beneficial result for the Class at great risk
3 and expense. Throughout this litigation, Lead Counsel was committed to the
4 interests of the Class and to investing the full amount of time and resources
5 necessary to bring this litigation to a successful conclusion.

6 153. Lead Counsel undertook this litigation on a wholly contingent fee
7 basis for over three years. From the outset, Lead Counsel understood that it was
8 embarking on a complex, expensive, and probably lengthy litigation with no
9 guarantee of ever being compensated for the investment of time and money the
10 case would require. In undertaking that responsibility, Lead Counsel was obligated
11 to ensure that sufficient resources were dedicated to the prosecution of the
12 litigation and that funds were available to compensate staff and the considerable
13 out-of-pocket costs that cases like this one entail.

14 154. The Notice informed Class Members of Lead Counsel's intent to
15 apply for an award of attorneys' fees in an amount not to exceed 12% of the
16 Settlement Amount, and for reimbursement of litigation expenses in an amount not
17 to exceed \$4.5 million, plus interest on such fees and expenses at the same rate as
18 earned by the Settlement Amount.

19 155. The requested fee of approximately 11.5% of the Settlement Amount
20 is pursuant to a retainer agreement that was negotiated by Lead Plaintiff NYSTRS,
21 a sophisticated institutional investor at the beginning of the litigation.⁷ Lead
22 Plaintiff agrees that the fee requested is fair, adequate and reasonable. See
23 Schneider Decl. ¶13.

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26 ⁷ The exact fee request is \$14,410,933.80, which is approximately 11.5% of the
27 Settlement Amount. No attorneys' fees in Lead Counsel's request are based upon,
28 or sought with respect to, any disgorgement or penalties obtained by the SEC
Action.

1 156. As explained in the accompanying motion for attorneys' fees and
2 reimbursement of litigation expenses, the requested fee award of approximately
3 11.5% of the Settlement Amount is a very modest request when compared to other
4 similar securities class actions, and significantly below the Ninth Circuit's 25%
5 benchmark. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998)
6 ("This Circuit has established 25% of the common fund as a benchmark award for
7 attorney fees"); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 272 (9th
8 Cir. 1989) (25% benchmark for fees in the Ninth Circuit).

9 157. Further, the fee requested is fair, adequate and reasonable because of
10 the significant risks faced by Lead Counsel in pursuing this Action. As discussed
11 above, liability here was far from assured and there were significant risks
12 concerning the damages recoverable even if it were established and diminishing
13 insurance coverage.

14 158. The fee requested is also fair, adequate and reasonable because the
15 outstanding Settlements were in large part the result of Plaintiffs' Counsel's hard
16 work, persistence and skill. The challenges posed by the size and complexity of
17 the case and the underlying subject matter were enormous. Counsel for
18 Defendants consisted of top-tier national firms and mounted a formidable defense.
19 The risks of litigation, in particular the requirement for Plaintiffs to establish that
20 Defendants caused their loss, combined with the Defendants' rigorous defense,
21 created tremendous pressure on counsel. Only because of the skill, experience and
22 dedication of Plaintiffs' Counsel were Plaintiffs able to mount a strong and
23 vigorous prosecution, which ultimately led to an outstanding recovery of
24 approximately \$125 million in cash for the Class. Indeed, Plaintiffs' Counsel
25 expended over 29,251.45 hours in the prosecution and investigation of this
26 litigation. *See* Exs. F-H. The hours invested by counsel are a testament not only
27 to the large scale of the case, but to Plaintiffs' Counsel's commitment and
28 professional sacrifice to obtain the best possible result for the Class. Having

1 demonstrated exceptional commitment, perseverance and skill, coupled with an
2 outstanding recovery, Lead Counsel respectfully submits that Plaintiffs' Counsel
3 performed a great service to the Class. Thus, the fee requested fairly and
4 reasonably rewards Plaintiffs' Counsel's performance.

5 159. The fee is also fair, adequate and reasonable when measured based on
6 a lodestar multiplier. The lodestar multiplier is calculated by (i) dividing the fee
7 requested by (ii) the number of hours counsel billed to the case multiplied by the
8 counsel's standard hourly rate. The lodestar for the services performed by all
9 Plaintiffs' Counsel here was \$12,671,645.25. *See* Exs. F-H. This represents a
10 multiplier of only 1.1. As explained in the accompanying fee and expense
11 application, this multiplier is very reasonable, and courts have recognized that
12 multipliers that are much higher are common. This case was prosecuted on a fully
13 contingent basis, with no assurance of success, and litigated for over three years
14 without any compensation at all.

15 160. In addition, in response to over 50,000 Notices being sent, no Class
16 Member has objected to the fee request. Finally, there are no pre-existing
17 percentage fee or other fee agreements between Lead Counsel and Plaintiffs' other
18 counsel. Lead Counsel has already advanced the fees and expenses of bankruptcy
19 counsel (Lowenstein Sandler PC) and Estate Counsel (Loeb & Loeb LLP) in
20 connection with the work they performed in assisting Lead Counsel with respect to
21 the bankruptcy proceedings and the claims against the Estate of deceased
22 defendant, Edward Gotschall.

23 **VII. REIMBURSEMENT OF THE**
24 **REQUESTED EXPENSES AND**
COSTS IS FAIR AND REASONABLE

25 161. Lead Counsel seeks reimbursement of \$3,064,348.82 in litigation
26 expenses reasonably and actually incurred by Plaintiffs' Counsel in connection
27 with commencing and prosecuting the claims against the Defendants with interest
28 thereon at the same rate as earned by the Settlement Amount.

1 162. From the beginning of the case, Plaintiffs' Counsel were aware that
2 they might not recover any of its expenses, and, at the very least, would not
3 recover anything until the Action was successfully resolved. Plaintiffs' Counsel
4 also understood that, even assuming that the case was ultimately successful,
5 reimbursement for expenses would not compensate it for the lost use of the funds
6 advanced by it to prosecute this Action. Therefore, Plaintiffs' Counsel were
7 motivated to, and did, take significant steps to minimize expenses whenever
8 practicable without jeopardizing the vigorous and efficient prosecution of the case.

9 163. As set forth in the Summary Schedule attached hereto as Exhibit E,
10 Lead Counsel requests a total of \$3,064,348.82 in unreimbursed litigation expenses
11 incurred by Plaintiffs' Counsel in connection with the prosecution of this Action.
12 The declarations of Plaintiffs' Counsel detailing the expenses for which
13 reimbursement is sought are attached hereto as Exhibits F through H. As set forth
14 in the declarations, these expenses are reflected on the books and records
15 maintained by Plaintiffs' Counsel which are prepared from expense vouchers,
16 check records and other source materials, and are an accurate record of the
17 expenses incurred. The expenses of Plaintiffs' Counsel for which reimbursement is
18 sought are set forth in detail in the respective firms' declarations, which identify
19 the specific category of expense, *e.g.*, experts' fees, travel costs, photocopying,
20 telephone, fax and postage expenses, and other costs actually incurred.

21 164. The litigation expenses for which reimbursement is sought were
22 largely incurred for professional expert fees. Of the total amount of expenses,
23 \$2,116,142.55, or over 69%, was expended on experts in the areas of market
24 efficiency, loss causation, damages, accounting, loan underwriting, underwriters'
25 due diligence, and to assist with the Plan of Allocation. As discussed more fully
26 below, the expertise and assistance provided by these experts was critical to the
27 prosecution and successful resolution of this Action.

1 165. As noted above, Lead Counsel retained accounting experts to analyze
2 New Century's financial statements, audit workpapers, and determine whether
3 New Century's financial statements violated GAAP and whether KPMG's audit
4 was performed in conformity with GAAS.

5 166. Similarly, damages experts provided substantial assistance to Lead
6 Counsel in the prosecution and resolution of this Action. Plaintiffs' damages
7 expert worked closely with Lead Counsel in connection with analyzing the
8 damages suffered by the Class in advance of mediation and in developing a fair
9 and reasonable Plan of Allocation. *See* Seyhun Decl., attached hereto as Ex. D.

10 167. These experts were used to oppose KPMG's motion for summary
11 judgment on the loss causation issue and also assisted in the prosecution and
12 settlement of this Action.

13 168. Other experts were also required to assess Plaintiffs' claims and
14 Defendants' defenses, including the loan underwriting expert and the underwriting
15 due diligence expert.

16 169. The expenses also include the costs of on-line legal and factual
17 research in the total amount of \$195,799.56. *See* Ex. E hereto. These are the
18 charges for computerized factual and legal research services such as *Lexis-Nexis*
19 and *Westlaw*.

20 170. Further, Plaintiffs' Counsel were required to travel in connection with
21 prosecuting and mediating this matter and, thus, incurred the related costs of travel
22 tickets, meals, parking and lodging. Included in the expense request is \$34,338.60
23 for out-of-town travel expenses necessarily incurred for the prosecution of this
24 litigation.

25 171. The other expenses for which reimbursement is sought are the types
26 of expenses that are necessarily incurred in litigation and routinely charged to
27 clients billed by the hour. These expenses include, among others, long distance
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1 telephone and facsimile charges, postage and delivery expenses, filing fees,
2 photocopying, and document management.⁸

3 172. All of Plaintiffs' Counsel's litigation expenses incurred for which
4 reimbursement is being sought were necessary to the successful prosecution and
5 resolution of the claims against Defendants. In addition, the Notice apprised
6 potential Class Members that Lead Counsel would seek reimbursement of
7 expenses in an amount not to exceed \$4.5 million. The amount now sought –
8 \$3,064,348.82 – is far less than the amount stated in the Notice. There are no
9 objections to the request for reimbursement of expenses. Lead Plaintiff NYSTRS
10 has approved of Lead Counsel's request for reimbursement of expenses.

11 173. In addition, under the PSLRA, the Court may also award "reasonable
12 costs and expenses (including lost wages) directly relating to the representation of
13 the class to any representative party serving on behalf of a class." 15 U.S.C. §
14 78u-4(a)(4). Here, the Notice informed the Class that Lead Counsel would request
15 an award of costs and expenses (including lost wages) incurred by Plaintiffs
16 directly related to their representation of the Class. Such costs and expenses
17 incurred by Lead Plaintiff NYSTRS are \$6,611.27, and such costs and expenses
18 incurred by Plaintiff Hooten are \$3,650, for a total of \$10,261.27. The amounts
19 are supported by sworn declarations detailing the incurred expenses. *See*
20 *Schneider Decl.* ¶¶15-16; Declaration of Named Plaintiff Charles Hooten in
21 Support of Request for Reimbursement of Litigation Expenses, Ex. I attached
22 hereto, ¶¶3-4. These costs and expenses are directly related to Plaintiffs'

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26 ⁸ The amount for Outside Copying includes \$136,933.50 invoiced from KPMG as
27 costs for conversion and copying in connection with its production of documents in
28 this case. Magistrate Judge Olguin's July 8, 2009 Order allowed KPMG to seek
costs for this production to Plaintiffs, and pursuant to that Order, KPMG seeks a
total of \$136,933.50 from Plaintiffs.

1 representation of the Class and are properly reimbursable from the Settlement
2 Fund. Thus far, no Class Member has objected to the request.

3 174. In view of the complex nature of the Action, the litigation expenses
4 incurred were reasonable and necessary to pursue the interests of the Class.
5 Accordingly, Lead Counsel respectfully submits that the expenses are reasonable in
6 amount and should be reimbursed in full.

7 **VIII. CONCLUSION**

8 175. In view of the substantial recovery to the Class, the risks of this
9 Action, the enormous efforts of Plaintiffs and Plaintiffs' Counsel, the quality of
10 work performed, the contingent nature of the fee, the complexity of the case and
11 the standing and experience of Plaintiffs' Counsel, Lead Counsel respectfully
12 submits that the Settlements totaling approximately \$125,000,000 should be
13 approved as fair, reasonable and adequate; that the Plan of Allocation should be
14 approved as fair and reasonable; and that a fee in the amount of approximately
15 11.5% of the Settlement Amount, and expenses in the amount of \$3,064,348.82,
16 with interest thereon at the same rate as earned by the Settlement Amount, should
17 be awarded to Lead Counsel and a total of \$10,261.27 in expenses should be
18 awarded to Plaintiffs.

19 I declare under penalty of perjury that the foregoing is true and correct.
20
21

22 Executed on October 4, 2010

23 */s/ Salvatore J. Graziano*
24 Salvatore J. Graziano
25
26
27
28

Exhibits to Declaration of Salvatore J. Graziano

EXHIBIT	DOCUMENT
A	Declaration of the Honorable Daniel H. Weinstein
B	Declaration of Wayne Schneider in Support of Final Approval of Settlements and Plan of Allocation, and Request for Attorneys' Fees and Reimbursement of Litigation Expenses
C	Declaration of Richard W. Simmons: Notice Dissemination and Publication
D	Declaration of H. Nejat Seyhun, Ph.D.
E	Summary of All Plaintiffs' Counsel's Expenses
F	Declaration of Edward Grossmann in Support of Petition for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Bernstein Litowitz Berger & Grossmann LLP
G	Declaration of Marvin L. Frank in Support of Lead Counsel's Request for Attorneys' Fees and Reimbursement of Litigation Expenses
H	Declaration of Jeffrey C. Zwerling in Support of Lead Counsel's Request for Attorneys' Fees and Reimbursement of Litigation Expenses
I	Declaration of Named Plaintiff Charles Hooten in Support of Request for Reimbursement of Litigation Expenses
J	LaCroix, Kevin, "First-Filed Subprime Securities Suit Settles for \$125 Million" (Aug. 3, 2010)