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Case No. 8059-CB

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JEFFERIES GROUP, INC. SHAREHOLDERS LITIGATION	))	CONSOLIDATED C.A. No. 8059-CB

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT

Plaintiffs Laborers' District Council Pension and Disability Trust Fund No. 2 ("Laborers"), Genesee County Employees' Retirement System ("Genesee"), Elizabeth Gelfand ("Gelfand"), and Oklahoma Firefighters Pension & Retirement System ("Oklahoma") (collectively, "Plaintiffs"), submit this motion for final approval of the settlement and for an award of attorneys' fees in the amount of $27,500,000.00 plus litigation expenses in the amount of $1,002,603,28.

The grounds for the motion are set forth in the accompanying Plaintiffs' brief in support of motion for final approval of the settlement and supporting affidavits in support of applications for attorneys' fees and expenses.

Dated: March 10, 2015

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR FINAL APPROVAL OF THE SETTLEMENT

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Plaintiffs Laborers' District Council Pension and Disability Trust Fund No. 2 ("Laborers"), Genesee County Employees' Retirement System ("Genesee"), Elizabeth Gelfand ("Gelfand"), and Oklahoma Firefighters Pension & Retirement System ("Oklahoma") (collectively, "Plaintiffs"), submit this brief in support of their motion for final approval of the settlement and for an award of attorneys' fees and expenses.

PRELIMINARY STATEMENT

The proposed Settlement here represents a truly extraordinary result for former stockholders of Jefferies Group, Inc. ("Jefferies" or the "Company"). The proposed Settlement provides for a net distribution of $70 million, in the form of either cash or freely tradable securities, to former stockholders of Jefferies (the "Class" or "Class Members") who exchanged their shares for stock in Leucadia National Corporation ("Leucadia") in a merger that closed in March of 2013. Since the Settlement represents a net payment to the Class, not subject to expenses or any fee award, the value of the proposed Settlement is equivalent to a gross settlement fund of $100 million. If approved by the Court, the Settlement would be among the largest settlements in the history of the Delaware Court of Chancery.

This litigation arises from Leucadia's acquisition of Jefferies pursuant to an agreement that provided Jefferies stockholders with 0.81 shares Leucadia for each share of Jefferies (the "Merger" or the "Transaction"). Plaintiffs alleged that the

Transaction was tainted by conflicts affecting half of the Jefferies board of directors (the "Board") and as a result had to meet the exacting standards of the entire fairness standard under Delaware law. Specifically, the Merger came together with Leucadia's co-founders and Jefferies directors Ian M. Cumming ("Cumming") and Joseph S. Steinberg ("Steinberg") negotiating on behalf of Leucadia ("Leucadia Defendants"), and Jefferies Chief Executive Officer ("CEO") and Chairman Richard B. Handler ("Handler"), and Jefferies director and Chairman of its Executive Committee Brian P. Friedman ("Friedman", together with Handler, the "Jefferies Defendants") supposedly representing Jefferies, but only after assuring themselves coveted leadership roles at Leucadia following the close of the Merger. In other words, Plaintiffs' core theory was that the Merger was negotiated by Leucadia's past and future leadership, with nobody properly representing Jefferies' stockholders.

From the inception of this litigation, Plaintiffs viewed the claims as giving rise to post-closing damages. Plaintiffs did not, therefore, seek expedited proceedings based on alleged inadequacies of disclosures, and did not seek to negotiate a settlement that would have resolved the claims quickly without adequately protecting the financial interests of Jefferies' stockholders. This was a significant strategic decision that avoided an unnecessary waste of judicial resources, but also exposed Plaintiffs to considerable legal risk depending on

whether a Court reviewing the Transaction post-closing would evaluate the deal under entire fairness, or would apply the much more lenient business judgment standard of review. Thus, Plaintiffs undertook the prosecution of this case knowing that the litigation would be difficult, time-consuming, and with significant legal risk, with no assurance that their strategy would be successful. The extraordinary settlement here proves the merit of Plaintiffs' judgment and diligence. Ultimately, the parties agreed to the proposed Settlement on the eve of trial, literally hours before the parties were prepared to file their pretrial briefs, and following extensive discovery that included over a dozen depositions, the production and review of tens of thousands of documents, the exchange of reports from nationally recognized financial experts, and the Court's rejection of Defendants' motions for summary judgment. Plaintiffs respectfully submit that the proposed $70 million net distribution to former Jefferies' stockholders represents an extraordinary result, and that the proposed Settlement should be approved by the Court.

Plaintiffs also request an award of fees in the amount of $27,500,000 plus out of pocket expenses of $1,002,603.28, for a total award of $28,502,603.28, all of which will be paid separately by Leucadia as a condition of the Settlement (*i.e.* ***not*** out of the $70 million consideration being paid to the Class). The manner in which the proposed Settlement was negotiated was, to our knowledge, unique in

Delaware jurisprudence. Instead of negotiating an "all-in" fund from which administrative expenses and any attorneys' fees awarded would be deducted prior to distribution and the ultimate payout to stockholders remained unknown, the parties instead negotiated a net amount to be distributed to stockholders, with Leucadia agreeing to bear administrative expenses separately, and to pay any and all attorneys' fees and expenses that may be awarded by the Court. The proposed Settlement thus provides certainty to the Class, but in order to evaluate the proposed Settlement on an apples-to-apples basis with other common fund cases, it is necessary to include Plaintiffs' requested fees and administrative expenses associated with the distribution of the fund as part of the overall value of the Settlement. In this regard, Plaintiffs submit that achieving a net payment to stockholders of $70 million is equivalent to a gross settlement fund of approximately $100 million (with the total fee and expense award representing 28.5% thereof).[1] The requested fee award represents just under 27.5% of the total Settlement value, and is eminently reasonable under Delaware law.

[1] Plaintiffs calculate the value of the Settlement as follows:

Net Distribution to the Class	$70,000,000
Administrative Expenses	$1,500,000
Legal Fees	$27,500,000
Legal Expenses	$1,002,603
TOTAL	$100,002,603

STATEMENT OF FACTS

A. BACKGROUND OF THE TRANSACTION

Jefferies is a global investment banking firm. The Company provides a full range of investment banking, sales, trading, research and strategy services across the spectrum of equities, fixed income and commodities, in the U.S., Europe and Asia. Jefferies is headquartered in New York, New York.

Leucadia is a diversified holding company which, through its subsidiaries, engages in myriad businesses, including beef processing, manufacturing, land based oil and gas drilling, gaming entertainment, real estate activities, medical product development, and winery operations. As of January 24, 2013, Leucadia owned 58,006,024 shares of Jefferies common stock, representing approximately 28.52% of Jefferies' outstanding shares. Cumming, Leucadia's CEO and Chairman, and Steinberg, Leucadia's President and member of its board of directors, co-founded Leucadia. Critically, both also served as Jefferies directors.

On November 12, 2012, Jefferies and Leucadia issued a joint press release announcing they had entered into the definitive merger agreement whereby Leucadia would acquire all of Jefferies' outstanding shares, not already owned by Leucadia, in exchange for 0.81 of a share of Leucadia common stock. If closed, Jefferies would become a wholly owned subsidiary of Leucadia.

The press release also disclosed that upon closing of the Merger, Jefferies' top executives would assume the top leadership positions at Leucadia. Jefferies' Chairman and CEO Handler would become a director and the CEO of Leucadia, and would remain the Chairman and CEO of Jefferies. Friedman, Chairman of Jefferies' Executive Committee and also a director of Jefferies, would retain his positions at Jefferies but would also join Leucadia's board as a director and would also be named Leucadia's President. Steinberg would become Chairman of Leucadia's board and would continue to work at Leucadia as an executive. Cumming would retire as CEO and Chairman of Leucadia's board but remain a director of Leucadia.

Besides Handler, Friedman, Cumming and Steinberg (the "Conflicted Directors"), the Jefferies Board included four other members: 1) W. Patrick Campbell ("Campbell"); 2) Richard G. Dooley ("Dooley"); 3) Robert E. Joyal ("Joyal"); and 4) Michael T. O'Kane ("O'Kane") (collectively, the "Independent Directors"). Upon closing of the Transaction each of the Jefferies directors also would become a member of the Leucadia board of directors.

On January 29, 2013, Leucadia and Jefferies filed a joint proxy statement soliciting support from shareholders for the proposed merger agreement ("Proxy"). On February 28, 2013, Jefferies announced that the Company's shareholders had voted to approve the Transaction.

B. COMMENCEMENT OF THE LITIGATION AND PLAINTIFFS' ALLEGATIONS

In November 2012, following the announcement of the proposed Transaction, Plaintiffs commenced litigation before this Court, on behalf of themselves and other similarly situated Jefferies stockholders, alleging that the Transaction was the product of breaches of fiduciary duties by the Jefferies directors, and was not financially fair to Jefferies' public stockholders. This Court subsequently granted Plaintiffs' proposed order of consolidation and appointed Grant & Eisenhofer P.A., Bernstein Litowitz Berger & Grossmann LLP, Saxena White, P.A., and Faruqi & Faruqi, LLP as Co-Lead Counsel ("Co-Lead Counsel" or "Plaintiffs' Counsel") for the Plaintiffs' Class (the "Delaware Action"). Plaintiffs did not seek expedited proceedings to enjoin the Transaction, but instead made the strategic decision to prosecute the case post-closing seeking an award of damages for Jefferies stockholders who exchanged their shares in the Transaction.

Plaintiffs alleged that the true purpose of the Transaction was to place Handler and Friedman in controlling positions at Leucadia, and that in doing so, the Conflicted Directors sacrificed a fair price for Jefferies' public stockholders. The Verified Second Amended Complaint, filed on January 30, 2014, detailed deep, personal relationships among Handler, Cumming and Steinberg, for a period extending over twenty years, which far surpassed mere professional relationships. Handler publicly referred to Cumming and Steinberg as his "mentors" and "idols,"

and, Plaintiffs alleged, used his position at Jefferies to direct investments worth billions of dollars to Leucadia, to cause Jefferies to purchase $1.25 billion of securities from Leucadia in 2011 and 2012, and to cause Jefferies to purchase from Cumming and Steinberg personally common stock of Jefferies and Leucadia worth tens of millions of dollars. For their part, Cumming and Steinberg caused Leucadia to purchase $25.2 million in Jefferies stock from Handler in order to help him pay off a significant personal tax liability.

In addition to regarding Cumming and Steinberg as his "mentors," Handler had designs on succeeding them in leading Leucadia. In April 2012, following Cumming's announcement that he would not renew his employment contract with Leucadia when it expired in 2015, Handler saw an opportunity to achieve his "personal goal" and seized it. He approached Cumming with the proposal to combine Leucadia and Jefferies in a deal that would allow Handler and Friedman to succeed Cumming and Steinberg in their leadership roles at Leucadia.

Between April and mid-July 2012, Handler, Friedman, Cumming and Steinberg had many discussions about a possible strategic transaction between Jefferies and Leucadia, including numerous deal structures, without informing the Independent Directors on the Jefferies Board. In July of 2012, Friedman finally notified the Independent Directors of the existence of these discussions. At a regularly scheduled meeting of the Jefferies Board in September 2012, Handler

suggested the Independent Directors establish a Transaction Committee to review any proposed transaction with O'Kane and Joyal serving as co-chairs ("Transaction Committee Defendants"). A resolution establishing the Transaction Committee was adopted unanimously by the whole Jefferies Board, including the Conflicted Directors.

Although ostensibly created to neutralize the apparent conflicts of interests of the Conflicted Directors, Plaintiffs alleged that the Transaction Committee was ineffective. The Transaction Committee did not require Handler and Friedman to recuse themselves from negotiations with Leucadia. In fact, no member of the Transaction Committee actually engaged in any direct negotiations with Leucadia at all. The Transaction Committee retained a financial advisor, Citigroup, to provide an analysis of the fairness of the deal, but then allowed Handler and Friedman to control the financial information that was provided to that advisor. The Company's management itself retained a separate financial advisor, JP Morgan. JP Morgan provided Handler and Friedman financial forecasts and valuations for Jefferies which were materially higher than those provided to the Transaction Committee by Citigroup, and which were never shared with the Transaction Committee.

In addition, the Transaction Committee allowed Handler to negotiate the final exchange ratio with Cumming and Steinberg, which took place in a meeting

that lasted all of an hour. Plaintiffs alleged that in negotiating that exchange ratio, Handler allowed his personal interest in achieving leadership of Leucadia to dominate the negotiation, and as a result agreed to an exchange ratio that did not reflect an entirely fair price for Jefferies' public stockholders.

C. PROCEDURAL HISTORY OF THE LITIGATION

On May 24, 2013, Plaintiffs filed a Verified Amended Class Action Complaint. On July 24, 2013, the Leucadia Defendants and Transaction Committee Defendants each filed a motion to dismiss, with the Jefferies Defendants joining the motions. On September 3, 2013, Plaintiffs filed their brief in opposition to both motions to dismiss. On October 29, 2013, Plaintiffs voluntarily dismissed the Transaction Committee Defendants.

On November 4, 2013, Chief Justice, then Chancellor, Leo E. Strine heard argument on the motions to dismiss. After argument, Chief Justice Strine denied the motions to dismiss as to Handler, Friedman, Cumming and Steinberg and allowed Plaintiffs the opportunity to file an amended complaint to add a claim for aiding and abetting a breach of fiduciary duty against Leucadia (Handler, Friedman, Cumming, Steinberg and Leucadia are collectively referred to herein as "Defendants"). On January 30, 2014, Plaintiffs filed the Verified Second Amended Class Action Complaint (the "SAC").

On July 22, 2014, Defendants filed a motion for summary judgment. On August 21, 2014, Plaintiffs filed a brief opposing Defendants' motion for summary judgment. On September 5, 2014, Defendants filed a reply brief in support of Defendants' motion for summary judgment. On September 16, 2014, this Court heard oral argument concerning Defendants' motion for summary judgment. This Court denied defendants motion from the bench. Pre-trial briefs were due the day this case settled.

D. DISCOVERY IN THIS ACTION

Over the course of this action, Plaintiffs' Counsel reviewed more than 80,000 pages of documents produced by Defendants and third parties. Between December 19, 2012 and February 7, 2014, Plaintiffs served multiple sets of requests for production of documents on Defendants as well as interrogatories ("Discovery Requests"). The Discovery Requests sought, *inter alia*, documents and information concerning: negotiations of the Transaction, the Transaction and any alternative transactions considered by Jefferies; Jefferies strategic plans and valuation; personal and professional relationships among the Defendants; opportunities available to Jefferies; the exchange ratio and how it was negotiated; minutes of Board and Transaction Committee meetings; and retention agreements for advisors retained in relation to the Transaction; and materials generated and provided to Defendants and the Transaction Committee by advisors.

Plaintiffs also served subpoenas on third parties Citigroup, JPMorgan, UBS, and Rothschild demanding the production of documents in those parties' possession related to the Transaction. UBS and Rothschild advised Leucadia concerning the Transaction, Citigroup advised the Transaction Committee, and JP Morgan advised Jefferies' management.

Between April 2014 and July 2014, ten depositions were taken:

- Richard Handler, Jefferies CEO and Board member, was deposed in New York, New York, on April 3-4, 2014.

- Jonathan G. Rose, designated representative for Plaintiff Laborers' District Council Pension and Disability Trust Fund No. 2, was deposed in Washington D.C., on April 8, 2014.

- Elizabeth Gefland, Plaintiff, was deposed in Miami, Florida, on April 22, 2014.

- Jeffrey Cyphert, designated representative for Plaintiff Genesee County's Employment Retirement System, was deposed in Flint, Michigan, on April 24, 2014.

- Joseph Orlando, Leucadia's Vice President and Chief Financial Officer, was deposed in New York, New York, on April 25, 2014.

- Joseph Steinberg, Leucadia's Vice President and Jefferies Board member, was deposed in New York, New York on May 2, 2014.

- Michael O'Kane, Jefferies Board member and Transaction Committee member, was deposed in New York, New York, on May 21, 2014.

- Brian Friedman, Jefferies Chairman of the Executive Committee and Board member, was deposed in New York, New York, on June 4, 2014.

- Robert Joyal, Jefferies Board member and Transaction Committee member, was deposed in New York, New York, on July 10, 2014.
- David Head, Citigroup, was deposed in New York, New York, on July 15, 2014.

The parties also engaged the services of nationally regarded financial experts. Plaintiffs' valuation expert was Professor Mark E. Zmijewski, the Leon Carroll Marshall Professor at the University of Chicago School of Business and Senior Consultant to Charles Rivers Associates, a firm that specializes in the application of economics, finance, statistics, and valuation principles to a variety of issues, including litigation. Professor Zmijewski is a Ph.D in accounting and regularly serves as a consulting or testifying expert in valuation and damages matters. Defendants' principal expert, Kevin F. Dages ("Dages") is an Executive Vice President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues, and is well known to this Court. Defendants' additional expert, Daniel R. Fischel ("Fischel") is President of Compass Lexecon, and is also well known to this Court. After exchanging reports, the parties deposed the proffered experts:

- Mark E. Zmijewski, Plaintiffs' Expert, was deposed in Chicago, Illinois, on October 1, 2014.
- Kevin F. Dages, Defendants' Expert, was deposed in Chicago, Illinois, on October 7, 2014.

E. THE NEGOTIATION OF THE SETTLEMENT

The discovery in this case was extensive and instrumental in facilitating settlement discussions, enabling Plaintiffs to refine their theory of the case and making clear to both sides the significant risks in proceeding to trial. At various points throughout the litigation, the parties discussed the possibility of resolving Plaintiffs' claims. However, the parties did not agree on the terms of the proposed Settlement until the eve of trial.

On September 18, 2014, after extensive discovery had been completed and the parties were preparing for trial, the parties began serious discussions about a potential settlement. These discussions continued through October 24, 2014, at which time the parties agreed upon the structure of any potential settlement which would involve a payment to Jefferies' stockholders in cash or Leucadia stock, with attorneys' fees to be paid by Leucadia independent of any agreed upon amount. From October 24, 2014 to October 28, 2014, the parties engaged in negotiations about the amount of consideration to be paid to the settlement Class, and ultimately agreed to a $70 million payment to the Class with legal fees to be paid by Leucadia separately, in an amount to be determined by the Court. From October 28, 2014 to October 31, 2014, the parties drafted, finalized and executed a settlement term sheet ("Term Sheet").

From November 4, 2014 to December 22, 2014, the parties vigorously negotiated but could not reach agreement on all the terms of the final stipulation. The only outstanding issue was whether holders of deferred shares of Jefferies common stock would be included in the Class. After briefing, the issue, on January 13, 2015, the Court ordered the parties to submit final settlement documentation, with a Class definition consistent with the Plaintiffs' proposal.

ARGUMENT

I. THE SETTLEMENT SHOULD BE APPROVED AS FAIR, REASONABLE AND ADEQUATE

A. The Standard For Approving The Settlement

Delaware has long favored the voluntary settlement of contested claims. *See, e.g., In re Triarc Cos., Inc. Class & Deriv. Litig.*, 791 A.2d 872, 876 (Del. Ch. 2001); *Kahn v. Sullivan*, 594 A.2d 48, 58-59 (Del. 1991); *In re Resorts Int'l S'holders Litig. Appeals*, 570 A.2d 259, 265-66 (Del. 1990); *Nottingham Partners v. Dana*, 564 A.2d 1089, 1102 (Del. 1989); *Polk v. Good*, 507 A.2d 531, 535 (Del. 1986). In reviewing a class action settlement, the Court is "not required to decide any of the issues on the merits." *Polk*, 507 A.2d at 536. Rather, this Court "consider[s] the nature of the claim[s], the possible defenses thereto, the legal and factual circumstances of the case, and then … appl[ies] its own business judgment in deciding whether the settlement is reasonable in light of these factors." *Barkan*

v. Amsted Indus., Inc., 567 A.2d 1279, 1284 (Del. 1989) (quoting *Polk*, 507 A.2d at 535).

As summarized by the Delaware Supreme Court in *Polk*, the critical "facts and circumstances" considered when assessing the overall fairness of a proposed settlement include: (i) the probable validity of the claims; (ii) the apparent difficulties in enforcing the claims through the courts; (iii) the delay, expense, and trouble of litigation; (iv) the amount of the compromise as compared with the amount of any collectible judgment; and (v) the views of the parties involved. *Polk*, 507 A.2d at 536; *see also Kahn*, 594 A.2d at 58-59.

Ultimately, the critical issue when evaluating the fairness of a class action settlement is the balance between the value of the benefits achieved for class members against the strength of the claims being compromised. *Barkan,* 567 A.2d at 1284; *Polk*, 507 A.2d at 535. As a result of the Settlement, Jefferies' former stockholders will receive an immediate and direct monetary benefit of $70 million in cash or freely transferrable Leucadia common stock. They will avoid the delay, expense, and real risk of trial. Plaintiffs, and their experienced Co-Lead Counsel, believe that this is an excellent result for stockholders. All factors weigh heavily in favor of finding that the Settlement is fair, reasonable, and adequate.

B. Analysis Of The Benefits Achieved Through The Settlement

This Settlement provides substantial benefits to Jefferies' stockholders. If the Settlement is approved by the Court, the Class Members, whose shares of Jefferies common stock were exchanged for shares of Leucadia common stock in the Transaction, will receive a *pro rata* share of the $70 million distribution. Absent the Settlement, the Class Members would not receive anything.

The $70 million distribution excludes attorneys' fees and expenses, as well as administrative and distribution costs. In other words, the stockholders will enjoy the whole $70 million. Any award of attorneys' fees and expenses will be paid with additional funds from Defendants, and/or their insurers, and will not diminish the stockholders' recovery at all.

The significant $70 million recovery achieved for Class Members reflects not only the strength of the claims, but also Defendants' recognition that Plaintiffs and their Co-Lead Counsel were determined and willing to take these claims to trial. The $70 million distribution, when weighed against the risks of continued litigation, supports approval of the Settlement.

C. Analysis of the Strength of the Claims at Trial

In comparison to the significant and immediate benefits achieved through the Settlement, Plaintiffs faced significant risks if they decided to forego settlement negotiations and continue litigating their claims. Trial was scheduled to begin on

December 8, 2014 – just five weeks after the October 31, 2014 Term Sheet was executed. Plaintiffs would have forcefully pursued their claims for breach of fiduciary duty against Conflicted Directors Handler, Friedman, Cumming, and Steinberg, as well as claims for aiding and abetting against Leucadia, and believe their arguments would have prevailed. But, as is discussed below, complicated legal and factual issues remained. There was no certainty that Plaintiffs would have been successful at trial, and they risked being left with nothing. Therefore, Plaintiffs negotiated and agreed to the Settlement in order to provide substantial and immediate relief to Jefferies' stockholders and to avoid the risks and expense of continued litigation.

1. Applicability of "Entire Fairness" Review

Plaintiffs believe that the "entire fairness" review was the appropriate rubric for adjudicating their claims, and that the burden of establishing fairness was on Defendants. Defendants, however, presented significant and somewhat novel arguments challenging that position. Plaintiffs faced significant risk at trial regarding the applicable standard. The Court recognized when denying Defendants' motion for summary judgment that the applicable standard remained a key issue in the case:

> I could see this case ending up being a business judgment rule case and I could see this case ending up being a fairness case, and I could see it being in a fairness situation and who knows where it goes from

> there. Could be entirely fair, maybe not, but there are many facts that I would need to get comfortable with and understand.

In re Jefferies Group, Inc. S'holders Litig., C.A. No. 8059-CB, at 174:11-17 (Del. Ch. Sept. 16, 2014) (TRANSCRIPT). In short**,** Plaintiffs argued that entire fairness review applied because a majority of the eight-member Board did not consist of disinterested directors. Plaintiffs intended to prove that Handler and Friedman covertly negotiated a self-interested transaction with Cumming and Steinberg for over three months before even informing the Independent Directors. By the time the Independent Directors were informed, the structure of the Transaction was finalized, and contemplated Handler's and Friedman's ascension to the top two executive spots at the combined company. Therefore, the four Conflicted Directors "stood on both sides of the transaction" because well before the final price negotiations on November 9, 2012, Handler and Friedman were effectively the Leucadia "officers-elect." *See, e.g.*, *Carsanaro v. Bloodhound Techs*, 65 A.3d 618, 638 (Del. Ch. 2013). When the determinative price negotiations occurred, the only four people in the room were Leucadia's senior officers and their designated replacements.

Moreover, Handler and Friedman received substantial and material personal benefits for supporting the Transaction, which also rendered them "conflicted" under settled Delaware law. *See, e.g.*, *Cede & Co. v. Technicolor*, *Inc.*, 634 A.2d 345, 362 (Del. 1993); *Cambridge Ret. Sys. v. Bosnjak*, 2014 WL 2930869, at *5

(Del. Ch. June 26, 2014). Handler fulfilled a personal dream of succeeding his mentors and idols – Cumming and Steinberg – as CEO of a large, diversified conglomerate. Friedman achieved a big promotion with commensurately enhanced prestige and compensation. Because no disinterested Board majority existed, the defendants were responsible for proving that the Transaction was entirely fair. *Carsanaro*, 65 A.3d at 637.

Defendants, however, would argue at trial that entire fairness only applies if a ***majority*** of the Board is conflicted, and the four/four split on the Jefferies Board was insufficient. While Plaintiffs believe that Defendants' position has no merit, particularly given the way that the four Conflicted Directors dominated the Independent Directors, they faced a risk that the Court would have found that business judgment analysis applied at trial on this basis.

Similarly, Defendants argued that, for purposes of determining whether the Transaction was conflicted, the Court should only count those directors who ***voted on or approved*** the Transaction. In other words, Defendants claim that, even if entire fairness review was otherwise applicable, they are still entitled to business judgment review because Cumming and Steinberg did not participate in the final vote. According to Defendants, because Handler, Friedman, and the four Independent Directors were the only Directors to vote on the Transaction (while

Cumming and Steinberg abstained), the board should be interpreted as being a majority independent.

Plaintiffs strongly contend that Cumming and Steinberg's recusal from the final vote did not and could not shift the standard of review back from entire fairness to business judgment. The motivating spirit of the entire fairness standard is that it replicates the result of an open-market, arm's-length transaction, assuring the courts that public stockholders received fair market value. It would undermine that policy if conflicted fiduciaries were permitted to initiate, structure, and negotiate a transaction for their personal benefit, and then remove it from the purview of entire fairness simply by recusing themselves at the last minute.

Nevertheless, the Court could have determined, either before, during, or after trial, that Defendants' recusal argument had merit. Such a determination would have undermined Plaintiffs' Claims.

2. Challenges Based on the Purported "Cleansing" Effect of the Transaction Committee

One of Defendants' primary arguments at trial would be that the Transaction Committee's approval of the Transaction "cleansed" it, such that entire fairness review was inapplicable. Plaintiffs strongly contest this position, as Delaware law only recognizes the cleansing effect of a special committee when it is "well-functioning." *Kahn v. Tremont Corp.*, 694 A.2d 422, 428 (Del. 1997). In making that determination, courts look to the actual effectiveness – *i.e.* whether it truly

operated out from under the thumb of the conflicted fiduciaries – paying particular attention to whether the Transaction Committee was fully informed. *In re S. Peru Copper Corp. S'holder Deriv. Litig.*, 52 A.3d 761, 789-93 (Del. Ch. 2011); *Frank v. Elgamal*, 2014 WL 957550, at *29 (Del. Ch. Mar. 10, 2014); *see also In re MFW S'holders Litig.*, 67 A.3d 496, 501, 514 (Del. Ch. 2013).

Here, Plaintiffs would prove that the Transaction Committee was far from fully informed, or well-functioning. Even after Independent Directors learned what was going on (in July 2012) and the Transaction Committee was formed (in September 2012), the Conflicted Directors tightly constrained the proceedings by, among other things:

- controlling the process through which the Transaction Committee selected advisors;
- retaining their own personal investment bankers, who were provided with materially better information about the Company's future prospects than the Transaction Committee's advisors;
- controlling the flow of information to the Transaction Committee and its advisors, including the fact that Handler and Friedman's personal investment bankers were provided nonpublic management projections supporting a materially higher valuation

for the Company than the public information used by the Transaction Committee's advisors; and

- ignoring the Transaction Committee's edict that Handler and Friedman were not to discuss their positions in the combined company until ***after*** the economic terms of the Transaction were finalized. For its part, the Transaction Committee took no appropriate steps to reign in the Conflicted Directors by taking back the negotiation process, even after learning that they had been kept in the dark for months.

Because the Conflicted Defendants negotiated much of the deal without the Independent Directors' knowledge, and withheld critical information from and constrained the Transaction Committee even after it formed, there was no fully functioning independent committee capable of "cleansing" the conflicts at the heart of the Transaction. Thus, the Court should have adjudicated Plaintiffs' Claims using the entire fairness standard of review.

Defendants would respond that any information allegedly withheld from the Transaction Committee either was, in fact, provided, or would not have been material to its analysis. Both of these defenses are fact intensive questions that would need to be resolved in Plaintiffs' favor at trial, including through witness credibility determinations, and thus would inherently carry meaningful risk.

Defendants also would argue that the extensive negotiations predating the Transaction Committee's formation were irrelevant to determining the standard of review because all that matters was whether the Transaction Committee was "fully informed" as of the November 10, 2012 vote. Plaintiffs firmly believe that the Transaction Committee members were ***never*** fully informed, and that they would be able to demonstrate that fact during trial. But, in the event the Court disagreed, Plaintiffs would need to show that, based on the law and facts of this case, the period during which the Transaction Committee was indisputably uninformed is sufficient to justify entire fairness review. As the Court recognized in its opinion denying Defendants' motion to dismiss, a key, and novel, legal issue for trial would have been whether a "snapshot" or "moving picture" analysis is appropriate for determining whether the Transaction Committee was fully informed.

Although Plaintiffs are confident that they would have shown that the Transaction Committee was not fully informed or effective at trial, it remained a significant open issue and one with significant litigation risk. In fact, the Court pointed out in its ruling denying Defendants' motion for summary judgment that "[a] key issue" for trial would be:

> how well informed the members of the transaction committee indeed were, ultimately, in making key judgments about the advisors they hired, who they appointed to conduct the negotiations, their level of knowledge about the state of play, the true state of play, and what the potential … or actual motivations of Handler and Friedman were.

In re Jefferies Group, Inc. S'holders Litig., C.A. No. 8059-CB, at 174:17-23 (Del. Ch. Sept. 16, 2014) (TRANSCRIPT).

3. Challenges Based on the Purported "Cleansing" Effect of the Stockholder Vote

Defendants also raised as an affirmative defense the fact that a majority of the disinterested stockholders voted in favor of the Transaction "cleansed" the conflict. Plaintiffs intended to prove at trial that the Jefferies stockholders were not fully informed when they voted on the Transaction because the Proxy lacked material information about the deal, rendering Defendants' purported "ratification" defense untenable. *See, e.g.*, *In re Lear Corp. S'holder Litig.*, 926 A.2d 94, 113-14 (Del. Ch. 2007) ("a reasonable stockholder would want to know an important economic motivation of the negotiator …, when that motivation could rationally lead that negotiator to favor a deal at a less than optimal price"). Specifically, the Proxy failed to disclose, among other things, material facts regarding the management projections that were withheld from the Transaction Committee and its advisors, the ulterior motivations of the Conflicted Directors, and the silent nature of Cumming and Steinberg's purported recusal.

Defendants would respond, however, that the Proxy fully informed the Jefferies stockholders, and any omissions identified by Plaintiffs were inaccurate, immaterial, or "self-flagellation" not requiring disclosure. While Plaintiffs are confident that they could have proved at trial that the Proxy was inadequate, there

remained a significant risk that they would be unsuccessful in establishing that the Jefferies stockholders were not fully informed as of the February 28, 2013 stockholder vote in favor of the Transaction.

4. **Challenges to the Fairness of the Process**

Even assuming that entire fairness review applied (and that the burden of proof was on Defendants), Plaintiffs still faced risks establishing that the entire process or price was unfair. *See e.g., In re Jefferies Group, Inc. S'holders Litig.*, C.A. No. 8059-CB, at 174:13-17 (Del. Ch. Sept. 16, 2014) (TRANSCRIPT) ("I could see it being in a fairness situation and who knows where it goes from there. Could be entirely fair, maybe not, but there are many facts that I would need to get comfortable with and understand"); *In re Cox Radio, Inc. S'holders Litig.*, 2010 WL 1806616, at *13 (Del. Ch. May 6, 2010) ("Even if a court found the entire fairness standard applicable here, Plaintiffs still would have to clear significant hurdles to succeed on their claim. Defendants credibly can claim, for example, that the Transaction meets the entire fairness standard."); *In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) (court found that although entire fairness standard applied to transaction, that the decision to approve the merger was entirely fair).

Plaintiffs believe that their arguments regarding the unfairness of the process were very strong. At trial, Plaintiffs would prove, among other things, that the

Conflicted Directors: (i) kept the Transaction Committee in the dark for months while negotiating the important components of the Transaction, including Handler and Friedman's future positions atop the combined company; (ii) failed to meaningfully discuss other possible transaction structures with the Transaction Committee, or the appeal of remaining a standalone company, in furtherance of the disloyal goal of securing Handler and Friedman's future titles; (iii) exchanged confidential Jefferies information without any nondisclosure agreement; (iv) disregarded the Jefferies Board Resolution prohibiting negotiations without the Transaction Committee's involvement (including negotiation of future job titles); and (v) withheld management projections from the Transaction Committee and its advisors that, when analyzed by ***Handler and Friedman's*** investment bankers supported a fair market value for Jefferies materially above the Transaction price.

Defendants, however, would dispute the veracity and/or materiality of these assertions. Meaningful litigation risk remained, as the Court's analysis would necessarily come down, at least in part, to witness credibility and materiality determinations.

5. <u>Challenges to Damages</u>

Even if Plaintiffs were able to establish that Defendants were liable, Plaintiffs still faced risks in proving damages. Defendants would have argued vigorously that the price stockholders received in the Transaction was fair, and,

thus, stockholders suffered no damages at all, irrespective of any deficiencies found in the merger process.

The fact that the Transaction was a stock-for-stock merger created an added level of complexity. The Transaction offered an exchange ratio of 0.81 shares of Leucadia common stock for each share of Jefferies, implying consideration valued at $17.01 per share. Plaintiffs' expert opined that the fair market value of Jefferies was well above the Transaction price. Defendants' Expert's opined that the deal price of $17.01 was well within a range of fairness. Although Plaintiffs believe that Dr. Zmijewski's damages calculations were reasonable and supportable, Dr. Fischel and Mr. Dages obviously disagreed. This situation would have given rise to a "battle of the experts" – with Plaintiffs facing significant risk as to whether or not Dr. Zmijewski's view would prevail.

In this regard, it is important to note that the record was undisputed that prior to the negotiation of the Transaction, Jefferies did not have any long-term financial forecasts. All financial forecasts for Jefferies used by the parties to the deal, therefore, were created for purposes of valuing Jefferies in the Transaction itself. Dr. Zmijewski's valuation of Jefferies hinged on the acceptance of certain financial projections for Jefferies that JP Morgan created based on its discussions with Jefferies' management, and which were not shared with the Transaction Committee or its financial advisor Citigroup. As explained in Dr. Zmijewski's

report, filed with the Court on August 21, 2014, in connection with Plaintiffs' opposition to Defendants' motion for summary judgment (Transaction ID 55922680), based on these projections Dr. Zmijewski opined that the fair value of Jefferies as of the closing of the Transaction was between $21.65 and $26.03 per share, implying a fair range of exchange ratios of between 1.03x and 1.24x. *Id.* On the other hand, Defendants argued that the Transaction Committee's financial advisor, Citigroup, had equal access to Jefferies' management, and independently generated financial projections that fully supported the fairness of the Transaction price. *See* Reply Brief in Support of Defendants' Motion for Summary Judgment, at 17-20 (Transaction ID 55989257). A real possibility existed, therefore, that regardless of the strengths of Plaintiffs' claims as to the applicability of the entire fairness standard and the inadequacy of the process, a decision following trial ultimately may have resulted in a finding that the Transaction price fell within an appropriate "range" of fairness, with no resulting damages. *Valeant Pharms. Int'l v. Jerney*, 921 A.2d 732, 748 (Del.Ch.2007) (noting that fair price terms may allow a transaction to pass the entire fairness test despite a relatively unfair process); *see also In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 79 (Del. Ch. 2013).

D. THE EXPERIENCE AND OPINION OF PLAINTIFFS AND THEIR COUNSEL, WHO VIGOROUSLY PROSECUTED THIS CASE, FAVOR APPROVING THE SETTLEMENT

The opinion of representative Plaintiffs and their experienced counsel is entitled to weight in determining the fairness of a settlement. *See, e.g.*, *Rome v. Archer*, 197 A.2d 49, 53 (Del. 1964); *Polk*, 507 A.2d at 536 (the court considers "the views of the parties involved" in determining the "overall reasonableness of the settlement").

Here, three of the four Plaintiffs are substantial institutional investors who are familiar with transactional litigation. All four Plaintiffs have submitted affidavits to demonstrate their support for the Settlement, which also weighs in favor of approving the Settlement.

Plaintiffs' Counsel are experienced and skilled stockholder advocates, who are well-known to the Court. Plaintiffs' Counsel negotiated the terms of the Settlement on behalf of Plaintiffs, and concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Company and its stockholders. Plaintiffs and their Co-Lead Counsel believe that the Settlement is an excellent outcome for the Class Members.

Plaintiffs and their Co-Lead Counsel only negotiated the Settlement, and made their final determination that it was fair, after extensive briefing, conducting full fact and expert discovery, and prosecuting the case up to the eve of trial.

Accordingly, Plaintiffs' Counsel were well-aware of the strengths and weaknesses of their case while negotiating the Settlement and concluding that it is fair, which, like each of the other factors discussed above, powerfully supports approval of the Settlement. *See Neponsit Inv. Co. v. Abramson*, 405 A.2d 97 (Del. 1979) (approving settlement based in part on plaintiff's counsel's conclusion following substantial pretrial discovery that the purchase price obtained through the settlement was fair and in the best interests of stockholders).

Delaware courts also place considerable weight on the adversarial and vigorous nature of the settlement negotiations themselves when assessing the fairness of a class action settlement. *See, e.g.*, *In re Allion Healthcare Inc. S'holders Litig.*, 2011 WL 1135016, at *3 (Del. Ch. Mar. 29, 2011).[2] Because the Settlement was the product of repeated, arm's-length negotiations between Plaintiffs' Counsel and sophisticated opposing counsel, those negotiations support a finding that the Settlement was fair, reasonable, and in the best interests of stockholders.

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[2] The focus on the adequacy of the negotiation process is hardly limited to Delaware and, in fact, extends to both state and federal courts around the country. *See, e.g.*, *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (according presumption of fairness to settlements reached "in arm's-length negotiations between experienced, capable counsel after meaningful discovery") (*citing* Manual for Complex Litigation, Third § 30.42 (1995)).

II. FINAL APPROVAL OF THE SETTLEMENT CLASS IS APPROPRIATE

Delaware courts liberally interpret Chancery Court Rule 23's requirements to favor class certification. *See Parker v. Univ. of Del.*, 75 A.2d 225, 227 (Del. 1950). This is especially so in stockholder litigation. As this Court explained in *Shapiro v. Nu-West Indus., Inc.*, 2000 WL 1478536, at *4 (Del. Ch. Sept. 29, 2000), "class certification … serves judicial efficiency since it allows a single court to determine claims involving one set of actions by defendants that have a uniform effect upon a class of identically situated shareholders."

On May 30, 2014, by stipulation of the parties, the Court entered an Order certifying a Class under Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2), consisting of:

> All record and beneficial holders of Jefferies common stock as of November 11, 2012, together with their successors and assigns, and excluding the Defendants in this action and each of Defendants' associates, affiliates, legal representatives, heirs, successors in interest, transferees and assigns.

In re Jefferies Group, Inc. S'holders Litig., C.A. No. 8059-CB, (Del. Ch. May 30, 2014) (ORDER).

On October 31, 2014, about five weeks before trial in this matter was scheduled to begin, the parties signed the Term Sheet settling the litigation. In Paragraph 2 of the Term Sheet, the parties agreed "to ask the Court to amend the definition" of the certified class to read as follows:

> All persons or entities who or which held Jefferies common stock at any time during the period from November 11, 2012 through and including the exchange of shares of Jefferies common stock for shares of Leucadia on March 1, 2013 (the "class period"). Excluded from the class are Jefferies and Leucadia and any persons who served as one of their Directors (on or after April 1, 2012) or Section 16 Officers (on or after April 1, 2012), as well as the Individual Defendants and any members of their immediate family, and any person or entity which is or was an affiliate of any of the Defendants at any time during the class period, and each of the Defendants' (and the other aforementioned excluded persons' and entities') heirs, legal representatives, successors in interest, transferees and assigns of Jefferies stock.

Though Defendants later urged the Court to include holders of "Jefferies Deferred Shares" in the "Class Definition," the Court ultimately sided with the Plaintiffs in ruling that holders of Jefferies Deferred Shares should not be included in the class. *See* the Court's January 13, 2015 letter to Counsel.

Because Plaintiffs have met the requirements of Chancery Court Rules 23(a) and (b) as set forth below, the Class certified by stipulation of the parties on May 30, 2014 should receive final approval for settlement purposes.

A. PLAINTIFFS SATISFY CHANCERY COURT RULE 23(A)

Chancery Court Rule 23(a) sets forth the threshold requirements that must be met for a class to be certified: (i) the class is so numerous that joinder of all members is impracticable; (ii) there are questions of law or fact common to the class; (iii) the claims or defenses of the representative parties are typical of the

claims or defenses of the class; and (iv) the representative parties will fairly and adequately protect the class's interests.

1. **Numerosity**

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Ch. Ct. R. 23(a)(1). Prior to the Merger, there were in excess of 200 million shares of Jefferies common stock outstanding, owned by thousands of record and beneficial holders.[3] As with any publicly traded company, these shares are held by stockholders who are geographically dispersed throughout the United States and the world, rendering joinder of all class members impracticable. *See In re Countrywide Corp. S'holders Litig.*, 2009 WL 846019, at *13 (Del. Ch. Mar. 31, 2009) ("The test of numerosity under Rule 23(a)(1) is whether joinder of all class members would be impractical, not impossible"). Accordingly, Plaintiffs have satisfied Rule 23(a)(1)'s numerosity requirement.

2. **Commonality**

Rule 23(a)(2) requires common questions of law or fact to exist among individuals before a class may be certified. Commonality exists "where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically

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[3] As of January 9, 2013, there were 203,799,188 shares of Jefferies common stock outstanding, according to the Company's Form 10-K filed with the U.S. Securities and Exchange Commission on January 29, 2013.

situated." *Leon N. Weiner & Assocs., Inc. v. Krapf*, 584 A.2d 1220, 1225 (Del. 1991). Here, questions of law or fact common to all plaintiffs in the Class include:

- whether the Conflicted Directors breached their fiduciary duties to Plaintiffs and the Class in connection with the Merger with Leucadia;
- whether the Leucadia Defendants aided and abetted the Board's alleged breaches of duty;
- whether the Conflicted Directors colluded to effectuate the Merger in breach of their fiduciary duties;
- whether the Conflicted Directors disclosed all material facts in connection with the Merger; and
- whether Plaintiffs and the other members of the Class suffered damages as a result of Defendants' misconduct.

These questions of law and fact are common to all Class Members. If Defendants committed the breaches alleged, then they are liable to all Class Members. Likewise, if Defendants did not commit the breaches alleged, then Defendants are liable to no Class Members. Moreover, Delaware Courts consistently find that allegations of breaches of fiduciary duties are sufficiently common to warrant class certification. *See, e.g., Nottingham Partners v. Dana*, 564 A.2d at 1089; *Zirn v. VLI Corp.*, 1991 WL 20378 (Del. Ch. Feb. 15, 1991). Plaintiffs, therefore, have satisfied Rule 23(a)(2)'s "commonality" requirement.

3. <u>Typicality</u>

Rule 23(a)(3) requires a class representative's claims to be typical of – but not identical to – those of the class. Typicality exists where a class

representative's legal and factual position is "not … markedly different from that of the members of the class[.]" *Singer v. Magnavox Co.*, 1978 WL 4651, at *2 (Del. Ch. Dec. 14, 1978). As this Court explained in *In re Talley Industries, Inc. S'holder Litig.*, 1998 WL 191939, at *9 (Del. Ch. Apr. 13, 1998), typicality exists where "all Class members face the same injury flowing from the defendants' conduct." Here, Plaintiffs meet this requirement because Plaintiffs and the Class were affected by Defendants' misconduct in the same way. In other words, if Messrs. Handler, Cumming, Steinberg and Friedman colluded to effectuate the Merger, and if the Jefferies Board failed to obtain the best price reasonably available for the Company, all of the Jefferies stockholders, including Plaintiffs, would be receiving the same inadequate consideration for their shares. Thus, Rule 23(a)(3)'s typicality requirement is met.

4. <u>Adequacy</u>

Rule 23(a)(4) requires a representative plaintiff to be an adequate class representative. In *Oliver v. Boston University*, 2002 WL 385553, at *7 (Del. Ch. Feb. 28, 2002), this Court explained that "a representative plaintiff must not hold interests antagonistic to the class, retain competent and experienced counsel to act on behalf of the class and, finally, possess a basic familiarity with the facts and issues involved in the lawsuit." Plaintiffs meet these requirements.

First, Plaintiffs' interests are identical to those of the Class. Plaintiffs have owned Jefferies common stock throughout the Class Period. There is no suggestion of any conflict between Plaintiffs and any member of the Class. Second, Plaintiffs have retained competent counsel that are highly experienced in stockholder litigation. Plaintiffs' counsel have successfully prosecuted stockholder and corporate governance class actions in this Court and others. Finally, the Plaintiffs have a basic familiarity with the facts and issues of the case. They actively monitored the litigation and received regular reports from Plaintiffs' counsel. Laborers' Aff. at ¶ 5; Genesee Aff. at ¶ 5; Oklahoma Firefighters Aff. at ¶ 6; Gelfand Aff. at ¶ 6.

Plaintiffs are, therefore, adequate representatives for the Class under Rule 23(a)(4).

B. PLAINTIFFS SATISFY CHANCERY COURT RULES 23(B)(1) AND 23(B)(2)

Actions challenging the exercise of fiduciary responsibilities in corporate transactions, such as the Merger, are routinely certified under Chancery Court Rules 23(b)(1) and (b)(2). *See Nottingham*, 564 A.2d at 1094-97. "Subdivision (b)(1) applies to class actions that are necessary to protect the party opposing the class or the members of the class from inconsistent adjudications in separate actions. Subdivision (b)(2) applies to class actions for class-wide injunctive or declaratory relief." *Id.* at 1095. (internal quotations omitted) This action readily

satisfies these elements and, thus, certification of the proposed class is proper under Chancery Court Rules 23(b)(1) and (b)(2). *See also In re Wm. Wrigley Jr. Co. S'holders Litig.*, 2009 WL 154380, at *3 (Del. Ch. Jan. 22, 2009) ("Subsection (b)(1) applies to class actions that are necessary to protect the party opposing the class or members of the class from inconsistent adjudications in separate actions.").

III. THE REQUESTED ATTORNEYS' FEE AND EXPENSE AWARD AND SERVICE AWARD ARE REASONABLE AND SHOULD BE APPROVED IN FULL

Co-Lead Counsel respectfully request an award of $28,502,603.28, which includes $1,002,603.28 in out of pocket expenses (the "Fee and Expenses Award"). From this amount, Plaintiffs request authorization to distribute a $10,000 service award to each class representative (for the time and effort of participating in document discovery and depositions) to be paid out of the Fee and Expense Award (the "Service Award"). No portion of the Fee and Expense Award or the Service Award will be paid from the $70 million fund to be distributed to the Class.

An award of attorneys' fees is warranted where, as here, counsels' "efforts result[ed] in the creation of a common fund." *Tandycrafts, Inc. v. Initio Partners*, 562 A.2d 1162, 1164 (Del. 1989) (internal citations omitted). As shown below, the requested Fee and Expense Award is reasonable and fair in light of the significant

benefits to the Class, the significant effort expended during the litigation, and standing and ability of Co-Lead Counsel.

"The determination of any attorney fee award is a matter within the sound judicial discretion of the Court of Chancery." *Ams. Mining Corp. v. Theriault*, 51 A.3d 1213, 1254 (Del. 2012) (upholding fee award of over $304 million); *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149-50 (Del. 1980). In exercising its discretion, this Court should consider: (1) the benefits achieved in the action; (2) the efforts of counsel and the time spent in connection with the case; (3) the contingent nature of the fee; (4) the difficulty of the litigation; and (5) the standing and ability of counsel. *Sugarland*, 420 A.2d at 149-50; *Ams. Mining Corp.* 51 A.3d at 1254; *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *3 (Del. Ch. Feb. 4, 2005). This Court also considers the stage of the litigation when the settlement was obtained. *Ams. Mining Corp.* 51 A.3d at 1254; *In re Emerson Radio Deriv. S'holder Litig.*, 2011 WL 1135006, at *3 (Del. Ch. Mar. 28, 2011). These factors fully support the requested Fee and Expense Award, particularly given the exceptional recovery of the Class here.

A. THE LITIGATION CONFERRED A SUBSTANTIAL BENEFIT ON THE CLASS

The primary consideration in determining the proper amount of a fee award is the benefit achieved through the litigation. *Ams. Mining Corp.*, 51 A.3d at 1254; *Ryan v. Gifford*, 2009 WL 18143, at *9 (Del. Ch. Jan. 2, 2009).

Accordingly, the benefit obtained is the factor accorded the greatest weight under Delaware law in determining a fee award. *Sugarland,* 420 A.2d at 149-50; *Seinfeld v. Coker*, 847 A.2d 330, 336 (Del. Ch. 2000) ("*Sugarland's* first factor is indeed its most important – the results accomplished for the benefit of the shareholders. In practical terms, the benefit is the dollar amount of the fund created by the settlement. This is the heart of the *Sugarland* analysis."). Here, the proposed Settlement provides for $70 million to be paid to the Class, without reduction for the payment of any administrative or distribution expenses or fee award approved by the Court. Plaintiffs' Co-Lead Counsel are solely responsible for creating this benefit, which is the result of significant efforts.

This financial relief is substantial, immediate, and certain, and will be available much sooner than any potential judgment if the Action proceeded to trial. *See, e.g.*, *Ryan v. Gifford*, 2009 WL 18143, at *10 (approving final settlement of a derivative action which provided financial relief for the company, because financial relief "provides benefits to Maxim that are substantial and certain.").

B. THE REQUESTED FEE AND EXPENSE AWARD IS WITHIN THE RANGE AWARDED IN OTHER STOCKHOLDER LITIGATION

The proposed Settlement here is somewhat unique in Delaware jurisprudence in that the $70 million to be distributed to the Class will not be reduced to account for administrative expenses, or any fee award that the Court

may determine is appropriate. *Cf. Emerson*, 2011 WL 1135006, at *2 (typically, in common fund cases an award of attorneys' fees and expenses come from the fund itself; thereby reducing the net benefit to the class, dollar for dollar). Thus, to evaluate benefit of the Settlement here on an apples-to-apples basis with prior cases, it is necessary to determine the total value of this Settlement *including* all fees and expenses that otherwise would be applied to reduce the value of the net distribution to the class.

The benefit conferred in such a common fund case includes "the entire sum recovered by class counsel for purposes of settling a class action lawsuit." *In re Ky. Grilled Chicken Coupon Mktg. & Sales Practices Litig.*, 2011 U.S. Dist. LEXIS 157910, at *16 (N.D. Ill. Nov. 30, 2011).[4] Thus, where, as here, the Defendants have also agreed to pay "the costs of notice, administration of the settlement fund, incentive awards, and attorneys' fees, … such costs are reasonably viewed as having been paid for the benefit of the class." *Id.* at *17 (quotation omitted); *see also Frederick v. Range Res.-Appalachia, LLC*, 2011 WL 1045665, at *8 (W.D. Pa. Mar. 17, 2011) (including "contribution to attorney fees" to calculate total common fund).

In this regard, the total value of the Settlement here would be $70 million, *plus* administrative and distribution expenses, *plus* the Fee and Expense Award

[4] "The Delaware courts have often considered methods employed by other courts." *Seinfeld*, 847 A.2d at 335.

that otherwise would come out of a traditional gross class action settlement fund. Plaintiffs therefore estimate that the total value of the Settlement here is approximately $100,002,602.00.[5]

Delaware Courts recognize two methods of calculating fee awards in common fund cases: the percentage of the fund method and the lodestar method. *Ams. Mining Corp.*, 51 A.3d at 1218. Under the percentage of the fund method, courts calculate fees based on a reasonable percentage of the common fund. *Id.* The lodestar method multiplies hours reasonably expended against a reasonable hourly rate to produce a "lodestar," which can then be adjusted through application of a "multiplier," to account for additional factors such as the contingent nature of the case and the quality of an attorney's work. *Id.* In the instant case, the requested Fee and Expense Award is reasonable when calculated using either the fund method or the lodestar method.

Co-Lead Counsels' requested fee award equates to 27.5% of the overall value of the proposed Settlement, or 28.5% including expenses. A request of this amount is squarely within the range of reason and precedent based on the fund method for calculating fee awards, especially when taking into account that the case settled on the eve of trial. *Ryan v. Gifford*, 2009 WL 18143, at *13- (awarding attorneys' fees of 33.3% of the monetary recovery, noting that the case

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[5] *Supra* n. 4.

settled at the partial summary judgment motion stage). Where, as here, there is a "significant benefit achieved by the Settlement" in the form of an exceptionally "high[] recovery," this "militates in favor of a substantial fee award for plaintiffs' counsel." *Id.*

In fact, "this court has often approved fee requests of 30% or more of the benefits" where a litigation confers significant benefits on a class. *Marie Raymond Revocable Trust v. Mat Five LLC*, 980 A.2d 388, 410 & n.71 (Del. Ch. 2008) (collecting cases awarding 30% or more of common fund in attorneys' fees).[6] Further, this Court has awarded a fee award of "29% of the . . . monetary recovery" where a case settled after summary judgment but before trial, even where the settlement consideration fell "at the low end" of the range of fairness. *Forsythe v. ESC Fund Mgmt.*, 2012 WL 1655538, at *1, *7 (Del. Ch. May 9, 2012).

Moreover, the requested Fee and Expense Award is also reasonable based on the lodestar method. *Ams. Mining Corp.*, 51 A.3d at 1218. Co-Lead Counsel have spent over 9,256.75 hours in time, and incurred $1,002,603.28 in litigation

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[6] *See also In re Chaparral Res., Inc. S'holders Litig.*, C.A. No. 2001-VCL (Del. Ch. Mar. 13, 2008) (Order) (awarding attorneys' fees of 33% of $36,780,554 settlement fund); *In re Telecommc'ns, Inc. S'holders Litig.*, C.A. No.16470-CC (Del. Ch. Feb. 1, 2007) (Order) and Stip. of Settlement (Del. Ch. Nov. 17, 2006) (awarding 30% of $52 million fund); *In re Telecorp PCS, Inc. S'holders Litig.*, C.A. No. 19260-VCS (Del. Ch. Aug. 20, 2003) (Order) and Settlement Tr. at 102 (Del. Ch. Aug. 20, 2003) (awarding 30% of $47.5 million fund); *In re Intek Global Corp. S'holders Litig.*, C.A. No. 17207-VCS (Del. Ch. Apr. 24, 2000) (Order) (cited in *Seinfeld*, 847 A.2d at 337 n.31) (awarding 33% of quantifiable portion of benefit).

expenses and administrative costs. See Affidavit of Michael Barry (the "GE Aff.") at ¶¶ 2,4,5; Mark Lebovich (the "BLBG Aff.") at ¶ 3; Juan Monteverde (the "FF Aff.") at ¶¶ 3 and 5; and Jonathan Stein ("SW Aff.") at ¶ 3. After subtracting expenses, the requested Fee and Expense Award represents an effective hourly rate of $2,970.80 per attorney hour. Such a Fee and Expense Award is a fraction of the effective hourly rates sometimes awarded by the Court. *See, e.g.*, *Ams. Mining Corp.*, 51 A.3d at 1254 (approving fee award that represented "over $35,000 per hour worked and 66 times the value of their time and expenses" applying the *Sugarland* factors); *In re Clear Channel Outdoor Holdings Inc., Deriv. Litig.*, C.A. No. 7315-CS, at 7 (Del. Ch. Sept. 9, 2013) (TRANSCRIPT) (awarding fee that represented over $5,700 per hour; "The fee, it's a nice hourly wage that's requested, but I'm not going to quibble with it."); *In re El Paso Corp. S'holder Litig.,* C.A. No. 6949-CS (Del. Ch. Dec. 3, 2012) (ORDER), Final Order and Judgment (granting $26 million fee representing effective hourly rate of approximately $2,538 per hour with a $110 million common fund).[7]

[7] *See also Franklin Balance Sheet Inv. Fund v. Crowley*, 2007 WL 2495018, at *14 (Del. Ch. Aug. 30, 2007) (awarding a fee that represented an effective rate of $4,023 per hour, in a breach of fiduciary duty case that created a $32 million common fund); *In re Fox Entm't Group, Inc. S'holders Litig*., C.A. No. 1033-CC, at 70 (Del. Ch. Sept. 19, 2005) (TRANSCRIPT) (litigation resulted in increased consideration in exchange offer; fee represented effective rate of $3,000 per hour); *In re NCS Healthcare S'holders Litig*., 2003 WL 21384633, at *3 (Del. Ch. May 28, 2003) (litigation resulted in enhanced merger consideration; fee represented an effective hourly rate of approximately $3,030); *Dagron v. Perelman*, C.A. No.

Additionally, the Fee and Expense Award is particularly reasonable considering the late stage of the litigation when the settlement was obtained. *Emerson*, 2011 WL 1135006, at *6 (in determining the reasonableness of an award, Delaware courts consider the stage of the litigation when settlement is reached); *Brinckerhoff v. Texas Eastern Prods. Pipeline Co., LLC,* 986 A.2d at 370, 396 (Del. Ch. 2010) ("[H]igher percentages are warranted when cases progress further...."). Here, Co-Lead Counsel marched this case towards the final stage of litigation before reaching a settlement – and only settled after extracting an exceptionally high recovery. As such, the requested Fee and Expense Award is entirely reasonable, well within the range of fees awarded in other stockholder class action litigation, and should be granted

C. THE CONTINGENT NATURE OF COUNSEL'S WORK, COMPLEXITY OF THE CASE, AND THE STANDING OF COUNSEL ALL SUPPORT THE FEE AND EXPENSE AWARD

The contingent nature of the representation is the "second most important factor considered by this Court" in awarding attorneys' fees. *Dow Jones Co. v. Shields*, 1992 WL 44907, at *2 (Del. Ch. Mar. 4, 1992); *see also In re Talley Indus., Inc. S'holders Litig.*, 1998 WL 191939, at *5 (contingent basis of

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15101-CC, at 4851 (Del. Ch. Aug. 29, 1997) (TRANSCRIPT) (litigation resulted in improvement of merger consideration; fee represented an effective hourly rate of approximately $3,500); *In re Lin Broad. Corp. S'holders Litig.*, C.A. No. 14039-VCL (Del. Ch. Sept. 15, 1995) (Order) (litigation resulted in enhanced consideration; fee represented an effective hourly rate of more than $3,800).

representation justifies higher fee). It is the "public policy of Delaware to reward this risk-taking in the interests of shareholders." *In re Plains Res. Inc. S'holders Litig.*, 2005 WL 332811, at *6. Contingent representation entitles plaintiffs' counsel to both a "risk" premium and an "incentive" premium on top of the value of their standard hourly rates. *Seinfeld*, 847 A.2d at 337. Here, Co-Lead Counsel handled this matter on a fully contingent basis, litigated it through fact discovery and a decision on summary judgment, and settled less than one month before trial. Indeed, Plaintiffs' counsel took on substantial risk that the Action would be unsuccessful and that their efforts would go entirely uncompensated.

Additionally, the standing and ability of counsel is another factor Delaware courts consider when determining the reasonableness of a fee and expense award. *See Sugarland*, 420 A.2d at 149-50. Here, the Co-Lead Counsel are highly experienced law firms in the field of stockholder class and corporate governance litigation, and their reputations have been the subject of favorable comments by the courts of this state and other state and federal courts.

The standing of opposing counsel also may be considered in determining an allowance of counsel fees. Defendants are represented by experienced, skillful and well-respected law firms who vigorously defended their clients' interests. The ability of opposing counsel enhances the significance of the result Co-Lead

Counsel achieved. Accordingly, the requested Fee Award is reasonable and warranted.

D. THE EXPENSES INCURRED WERE REASONABLE

Plaintiffs request reimbursement of $1,002,603.28 in out of pocket expenses incurred by Plaintiffs' counsel. As detailed in the accompanying affidavits of Plaintiffs' counsel, 85% of these expenses ($854,471.10) were fees for Plaintiffs' expert at Charles River Associates. G&E Aff. at ¶ 5. The remaining expenses include court reporters for depositions, fees from the Court of Chancery, reasonable travel, duplicating, and electronic discovery.

E. THE SERVICE AWARD IS REASONABLE

The Court should also grant Co-Lead Counsel the right to provide $10,000 to each Class Representative. Plaintiffs have spent significant time and effort pursuing and monitoring this litigation. Plaintiffs have collectively spent over 9,200 hours and have dedicated substantial time, effort and employees for this case – including carefully monitoring the litigation, active involvement in the evaluation and review of documents and appearing for depositions. Plaintiffs' meaningful participation also included pre-complaint evaluation of the action, reviewing and commenting on the operative complaint, reviewing document requests and interrogatories, collecting and reviewing documents for document production, monitoring motions to dismiss and summary judgment motions, monitoring the

status of and consulting on settlement discussions, and reviewing and approving the Term Sheet, the Settlement Agreement and related exhibits.

This Court has awarded similar Plaintiffs' service awards under similar circumstances. *See, e.g.*, *Brinckerhoff,* 986 A.2d at 396 (approving "leave to pay $100,000 to lead plaintiff"); *Forsythe*, 2012 WL 1655538, at *8 (awarding $20,000 to lead plaintiff who sat for deposition); *Ryan v. Gifford*, 2009 WL 18143, at *14 (awarding $10,000 to lead plaintiffs). Co-Lead Plaintiffs meaningfully participated in this action. Their contribution provided the Class with an exceptional result. Accordingly, a $10,000 Service Award to each Class Representative should be granted.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that the proposed Settlement is fair, reasonable, and adequate and should be approved. In addition, Co-Lead Counsel's request for a Fee and Expense Award of $28,502,603.28, which includes $1,002,603.28 in litigation expenses should be granted. Further, the Court should authorize the payment of a $10,000 Service Award for each class representative to be paid out of the Fee Award.

Dated: March 10, 2015

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE JEFFERIES GROUP, INC. SHAREHOLDERS LITIGATION	))	CONSOLIDATED C.A. No. 8059-CB

CERTIFICATE OF COMPLIANCE WITH
<u>TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION</u>

1. This brief complies with the typeface requirement of Ct. Ch. R. 171(d)(4) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2010.

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CERTIFICATE OF SERVICE

I hereby certify that, on March 10, 2015, I caused the foregoing *Plaintiffs' Motion for Final Approval of Settlement* to be served via electronic mail on the counsel listed below:

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