UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SAIC, INC. SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Master File No. 1:12-cv-01353-DAB CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND FOR AN AWARD OF EXPENSES TO LEAD COUNSEL AND FOR AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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SECONDARY AUTHORITIES

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs Indiana Public Retirement System, Indiana State Teachers' Retirement Fund and Indiana Public Employees' Retirement Fund ("Lead Plaintiffs" or the "Funds"), on behalf of themselves and the Class, respectfully submit this memorandum of law in support of their motion for approval of: (1) the $6,500,000 all-cash Settlement; (2) the proposed Plan of Allocation (the "Plan"); (3) Lead Counsel's application for an award of expenses; and (4) Lead Plaintiffs' application for awards in the total amount of $20,000 pursuant to 15 U.S.C. §78u-4(a)(4).[1] The terms of the Settlement are set forth in the Amended Stipulation of Settlement, dated June 26, 2019, which was previously filed with the Court ("Stipulation" or "Settlement"). ECF No. 183.[2] The Court granted preliminary approval of the Settlement on September 26, 2019. ECF No. 185.

I. PRELIMINARY STATEMENT

The $6,500,000 recovery on behalf of the Class is the product of hotly contested litigation concerning the CityTime project, together with arm's-length settlement negotiations among experienced and knowledgeable counsel, including formal mediation overseen by a nationally-recognized, neutral mediator. The Settlement is a very good result for the Class, representing approximately 45% of maximum estimated recoverable damages for the shortened nine-week Class Period, and satisfies each of the applicable Rule 23(e)(2) and *Grinnell*[3] factors. It is particularly beneficial to the Class in light of the delays posed by continued litigation and the risks Lead

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[1] Lead Counsel does not seek an award of attorneys' fees.

[2] All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and the Declaration of Joseph Russello in Support of Lead Plaintiffs' Motion for Final Approval of Settlement, Approval of Plan of Allocation, and for an Award of Expenses to Lead Counsel and for Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Russello Decl."), submitted herewith.

[3] *Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974).

Plaintiffs faced in the resolution of the pending Supreme Court appeal, other dispositive motions, trial of this case, and likely appeals, which could ultimately lead to no recovery, or a far smaller recovery.

Further confirming the fairness of the Settlement is the fact that, to date, and not unexpectedly, there has been no objection to the Settlement from Class Members. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") dated September 26, 2019 (ECF No. 185), copies of the Notice were sent to over 19,600 potential Class Members and nominees beginning on October 17, 2019, and notice was published in *The Wall Street Journal* and transmitted over *Business Wire* on October 18, 2019.[4] *See* Sylvester Decl., ¶¶11-12.

Lead Plaintiffs also request that the Court approve the proposed Plan, which was set out in the Notice sent to Class Members. The Plan governs how claims will be calculated and how Settlement proceeds will be distributed to Authorized Claimants. It was prepared in consultation with Lead Counsel's damages consultant, and is based on the out-of-pocket measure of damages, *i.e.*, the difference between what Class Members paid for their SAIC common stock during the Class Period and what they would have paid had the alleged misstatements not been made or the omitted information been disclosed. It is fair, reasonable, and adequate, and should be approved.

Lead Counsel also respectfully applies for an award of litigation expenses, costs and charges of $340,000, plus interest. These expenses were reasonably and necessarily incurred in connection with the prosecution of the Litigation.[5]

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[4] *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Sylvester Decl."), submitted herewith.

[5] Lead Counsel's actual expenses, charges and costs exceed $400,000; however, the Notice informed Class Members that Lead Counsel would seek no more than $340,000.

Additionally, Lead Plaintiffs apply for an award of $20,000 in the aggregate, pursuant to 15 U.S.C. §78u-4(a)(4), for their time incurred in prosecuting the Litigation. *See* accompanying Declaration of Anthony Green Filed on Behalf of Indiana Public Retirement System, Indiana State Teachers' Retirement Fund and Indiana Public Employees' Retirement Fund in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation of Settlement Proceeds, an Award of Attorneys' Expenses, and Award to Lead Plaintiffs ("Green Decl."), ¶¶26-27.

Finally, Lead Counsel, with substantial experience prosecuting securities class actions, has concluded that the Settlement is fair, reasonable, and adequate under the circumstances and in the best interests of the Class. Accordingly, Lead Plaintiffs respectfully request that the Court grant the motion in its entirety.

II. FACTUAL AND PROCEDURAL BACKGROUND

To avoid repetition, Lead Plaintiffs respectfully refer the Court to the accompanying Russello Declaration for a detailed discussion of the factual background and procedural history of the Litigation, the extensive efforts undertaken by Lead Plaintiffs and their counsel during the course of the Litigation, the risks of continued litigation, and a discussion of the negotiations leading to the Settlement. Russello Decl., ¶¶11-29.

III. STANDARDS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

A. The Law Favors and Encourages Settlements

"The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 174 (S.D.N.Y. 2014); *see also In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006) ("Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome,

and the typical length of the litigation."); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) ("the courts have long recognized that [complex class action] litigation 'is notably difficult and notoriously uncertain,' . . . and that compromise is particularly appropriate") (citation omitted). Therefore, when exercising discretion to approve a settlement, courts are "mindful of the 'strong judicial policy in favor of settlements.'" *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)). Thus, the Second Circuit has cautioned that, while a court should not give "rubber stamp approval" to a proposed settlement, it should "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *Grinnell*, 495 F.2d at 462; *see also Christine Asia Co. v. Ma*, No. 1:15-md-02631 (CM)(SDA), 2019 U.S. Dist. LEXIS 179836, at *35 (S.D.N.Y. Oct. 16, 2019) ("'[C]ourts should give proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation . . . .'").

B. The Settlement Must Be Procedurally and Substantively Fair, Adequate, and Reasonable

"Fairness [of a settlement] is determined upon review of both the terms of the settlement agreement and the negotiation process that led to such agreement." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005). "Absent fraud or collusion, [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement." *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 U.S. Dist. LEXIS 57918, at *12 (S.D.N.Y. July 27, 2007).

Rule 23(e)(2), as recently amended, provides that:

> (2) ***Approval of the Proposal***. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
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> (C) the relief provided for the class is adequate, taking into account:
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> (i) the costs, risks, and delay of trial and appeal;
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> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
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> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
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> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

In addition, the Second Circuit considers the following factors (known as the "*Grinnell* factors") when determining whether to approve a class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Wal-Mart, 396 F.3d at 117 (quoting *Grinnell*, 495 F.2d at 463). The factors set forth in Rule 23(e)(2) are applied in tandem with the *Grinnell* factors and "focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) Advisory Committee's Notes to 2018 Amendments.

In finding that a settlement is substantively fair, reasonable, and adequate, not every *Grinnell* factor needs to be satisfied, but "rather, the court should consider the totality of these factors in light

of the particular circumstances." *Thompson v. Metro. Life Ins. Co.*, 216 F.R.D. 55, 61 (S.D.N.Y. 2003) (citing *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001)). As such, the court should assess the settlement as presented, without modifying its terms, and without substituting its '"business judgment for that of counsel, absent evidence of fraud or overreaching.'" *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) (quoting *In re McDonnell Douglas Equip. Leasing Sec. Litig.*, 838 F. Supp. 729, 737 (S.D.N.Y. 1993)).

Lead Plaintiffs respectfully submit that the proposed Settlement satisfies both Rule 23(e)(2) and the *Grinnell* factors and is therefore fair, reasonable, and adequate.

C. The Proposed Settlement Is Procedurally and Substantively Fair, Adequate, and Reasonable

1. The Settlement Satisfies the Requirements of Rule 23(e)(2)

As explained in Lead Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Settlement ("Preliminary Approval Memorandum") (at 7-16) (ECF No. 178), and as acknowledged by the Preliminary Approval Order, Lead Plaintiffs have met all of the requirements imposed by Rule 23(e)(2). Courts analyzing the recently amended Rule 23(e)(2) factors have noted that a plaintiff's satisfaction of these factors at final approval is virtually assured where, as here, little has changed between preliminary approval and final approval. *See In re Chrysler-Dodge-Jeep Ecodiesel® Mktg., Sales Practices & Prods. Liab. Litig.*, No. 17-md-02777-EMC, 2019 U.S. Dist. LEXIS 75205, at *29 (N.D. Cal. May 3, 2019) (finding that the "conclusions [made in granting preliminary approval] stand and counsel equally in favor of final approval now"); *Snyder v. Ocwen Loan Servicing, LLC*, No. 14 C 8461, 2019 U.S. Dist. LEXIS 80926, at *14 (N.D. Ill. May 14, 2019) (noting in analyzing Rule 23(e)(2) that "[s]ignificant portions of the Court's analysis remain materially unchanged from the previous order [granting preliminary approval]").

a. Lead Plaintiffs and Lead Counsel Have Adequately Represented the Class

Lead Plaintiffs and Lead Counsel have adequately represented the Class as required by Rule 23(e)(2)(A). Among other things, Lead Counsel investigated the CityTime Project, including monitoring other legal and administrative proceedings concerning it; submitted and pursued requests to federal and state agencies under the Freedom of Information Act and the New York Freedom of Information Law; successfully litigated an Article 78 proceeding in New York State Court against several New York agencies with knowledge of, or involvement in, the CityTime Project, thereafter reviewing documents and trial transcripts; drafted complaints; briefed motions to dismiss and motions for reconsideration; briefed a motion to partially lift the PSLRA discovery stay; briefed a motion to vacate the judgment or for leave to amend the complaint; briefed and argued an appeal to the Second Circuit; litigated the proper length of the class period; and briefed SAIC's appeal to the United States Supreme Court. Lead Counsel thereafter negotiated this Settlement with the assistance of Bruce A. Friedman, Esq. of JAMS, a respected mediator. Russello Decl., ¶¶11-29. Lead Plaintiffs actively and faithfully oversaw and supervised Lead Counsel over the course of the Litigation in accordance with their duties as lead plaintiffs. Green Decl., ¶¶7-16. Lead Plaintiffs and Lead Counsel stood ready to, and at all times did, advocate for the best interests of the Class. Thus, Lead Plaintiffs satisfy Rule 23(e)(2)(A) for purposes of final approval.

b. The Proposed Settlement Was Negotiated at Arm's Length

Lead Plaintiffs clearly satisfy Rule 23(e)(2)(B). The Settlement is the result of arm's-length negotiations in which there is no hint of collusion. As detailed in the Russello Declaration, at no point did Defendant concede that a single aspect of Lead Plaintiffs' claims was meritorious, and took the case to the Supreme Court. *Id.*, ¶¶11-29. In addition, the parties negotiated the Settlement under

the supervision of an experienced mediator. *Id.* The mediation process provides compelling evidence that the Settlement is not the product of collusion between the parties. *See N.J. Carpenters Health Fund v. Royal Bank of Scot. Grp., PLC*, No. 08 Civ. 5310 (DAB), 2019 U.S. Dist. LEXIS 39807, at *6, *13-*14 (S.D.N.Y. Mar. 8, 2019) (the parties' participation in mediation is evidence of arm's-length negotiations); *Dover v. British Airways, PLC (UK)*, No. 12 CV 5567 (RJD) (CLP), 2018 U.S. Dist. LEXIS 174513, at *10-*11 (E.D.N.Y. Oct. 9, 2018) (same). Thus, Lead Plaintiffs have again established that the Settlement was negotiated in good faith and at arm's length. *Id.*, ¶¶28, 39.

In the Second Circuit, a strong presumption of fairness attaches to a class action settlement reached through arm's-length negotiations among able and experienced counsel. *See Wal-Mart*, 396 F.3d at 116; *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *38-*39; *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("So long as the integrity of the arm's length negotiation process is preserved . . . a strong initial presumption of fairness attaches to the proposed settlement."), *aff'd*, 117 F.3d 721 (2d Cir. 1997); *see also Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 366 (S.D.N.Y. 2002) ("'"great" weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation'") (citation omitted).

Accordingly, the Settlement should be entitled to the presumption of procedural fairness under Second Circuit law, and be found to satisfy Rule 23(e)(2)(B).

c. The Proposed Settlement Is Adequate in Light of the Costs, Risks, and Delays of Trial and Appeal

Rule 23(e)(2)(C)(i) and the first, fourth and fifth *Grinnell* factors concern the substantive adequacy of the Settlement. Rule 23(e)(2)(C)(i) advises district courts to consider "the costs, risks,

and delay of trial and appeal," while the relevant *Grinnell* factors overlap and address the risks of establishing liability and damages.

(1) The Risks of Establishing Liability at Trial

Securities class actions present numerous hurdles for plaintiffs to meet and these risks weigh in favor of final settlement approval. Indeed, courts in this district '"have long recognized that [securities] litigation is notably difficult and notoriously uncertain.'" *In re Flag Telecom Holdings Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quoting *In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 281 (S.D.N.Y. 1999)); *see also Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *44 ("Securities litigation is unpredictable because it involves complex issues of fact and law, and this case is no exception."). Although Lead Plaintiffs and Lead Counsel firmly believe that the claims asserted in the Litigation are meritorious, and that they would ultimately prevail, further litigation against Defendant posed risks to proving their claims that made any recovery uncertain. Russello Decl., ¶¶6, 35-38; Green Decl., ¶¶17-21.

For example, former SAIC employee and former Defendant Gerard Denault was criminally convicted for honest services fraud ***against*** SAIC. Russello Decl., ¶5. Defendant argued that this conviction, coupled with criminal convictions of other perpetrators of the CityTime fraud – but not of SAIC – undermined, if not totally vitiated, any inference or finding of scienter. *Id.*[6] "Proving scienter is hard to do." *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *46. If the jury was persuaded by any of Defendant's scienter arguments, the Class would recover nothing. Defendant also argued that the surviving alleged misrepresentations and omissions, based upon claimed violations of Item 303 of Regulation S-K and Financial Accounting Standard No. 5, were not

[6] Lead Plaintiffs believe certain materials they obtained through their investigation pertained to SAIC's involvement in the CityTime project, including its knowledge of staffing matters and contract costs. *Id.*, ¶34.

actionable. Russello Decl., ¶5. Defendant may have prevailed in securing dismissal by the Supreme Court of one of only two remaining claims. *Id.*, ¶37. Defendant further maintained that the CityTime contract was not material to SAIC, arguing that it was but one of the Company's 10,000 contracts, and though ultimately valued at more than $600 million, given SAIC's $10 billion in annual revenue, was immaterial as a matter of law. *Id.*, ¶36. Lead Plaintiffs also risked that the Class Period, already significantly cut by this Court and the Second Circuit to only nine weeks, could be further shortened, eliminating either or both of Lead Plaintiffs' remaining claims.

Moreover, given the mandatory PSLRA discovery stay, formal discovery had not yet started when the Litigation settled in 2017. Therefore, reconstructing events that took place well before 2010, when criminal investigations were nearing their conclusion, would have proved challenging. *Id.*, ¶35. By 2017, several witnesses were deceased, jailed, or not able to be located. *Id.* Lead Counsel's efforts in seeking even public materials using FOIL and FOIA requests proved difficult, as state and federal agencies remained reluctant to cooperate with Lead Plaintiffs' investigative efforts or produce materials. *Id.*

Nevertheless, Lead Counsel obtained the $6.5 million Settlement.

(2) The Risks of Establishing Damages at Trial

Lead Plaintiffs also faced risks in establishing loss causation and damages at trial. Defendant has steadfastly argued that Lead Plaintiffs could not meet their burden. Notably, it argued that: (1) investors already knew information regarding the CityTime scheme that Lead Plaintiffs had alleged was concealed; (2) the single alleged corrective disclosure that remained in the Litigation did not reveal any new information regarding SAIC's purported culpability for the CityTime fraud; and (3) the decline in SAIC's stock price resulted from continued adverse publicity, not exposure or revelation of any previously unknown fact. Russello Decl., ¶36. Therefore, SAIC had a potentially

potent "truth on the market" defense that information about problems with the CityTime contract was publicly available in the years preceding the Class Period. *Id.*, ¶6. Defendant has also argued that damages, if any, are significantly less than Lead Plaintiffs have estimated. At trial, issues relating to loss causation and damages would have likely come down to the jury determining the unpredictable and hotly disputed "battle of the experts."

(3) The Settlement Eliminates the Additional Costs and Delay of Continued Litigation

The anticipated complexity, cost, and duration of the remainder of this Litigation would be considerable. *See Advanced Battery*, 298 F.R.D. at 175 ("the complexity, expense, and likely duration of litigation are critical factors in evaluating the reasonableness of a settlement"); *see also Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery"); *Hicks v. Morgan Stanley*, No. 01 Civ. 10071 (RJH), 2005 WL 2757792, at *6 (S.D.N.Y. Oct. 24, 2005) ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action.").

If not for this Settlement, the Litigation would have continued to be vigorously contested. The parties were preparing for oral argument in the Supreme Court. Depending on the outcome, discovery would be taken,[7] class certification and summary judgment would be briefed and argued, experts would be retained, and a multi-week trial was likely. Post-trial motions and appeals could last for years. A prolonged, lengthy and uncertain trial and appeals process would not serve the

[7] As noted above, given the length of time between the alleged wrongdoing and the time formal discovery could begin, obtaining witness testimony would prove difficult.

interests of the Class compared to the immediate and substantial monetary benefits of the Settlement. Defendant was prepared, and had the wherewithal, to vigorously contest liability and damages at trial and on appeal. Defendant has denied, and continues to deny, any liability to Lead Plaintiffs and the Class. "Establishing otherwise [would] require considerable additional pre-trial effort and a lengthy trial, the outcome of which is uncertain." *Charron v. Pinnack Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 199 (S.D.N.Y. 2012), *aff'd sub nom.*, *Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013).

Accordingly, the Rule 23(e)(2)(C)(i) factor and the first, fourth and fifth *Grinnell* factors weigh in favor of final approval of the Settlement.

d. The Proposed Method for Distributing Relief Is Effective

With respect to Rule 23(e)(2)(C)(ii), Lead Plaintiffs and Lead Counsel have taken steps to ensure that the Class is notified about the Settlement. Pursuant to the Preliminary Approval Order, more than 19,600 copies of the Notice and Proof of Claim were mailed to potential Class Members and nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *Business Wire* on October 18, 2019. Sylvester Decl., ¶¶11-12. Class Members have until December 16, 2019 to object to the Settlement. While that date has not yet passed, to date, there have been no objections to the Settlement and no requests for exclusion from the Class. In addition, the claims process is similar to that commonly used in securities class action settlements, and it provides for straightforward cash payments based on the trading information provided. Thus, this factor supports final approval for the same reason that it supported preliminary approval.

e. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." As discussed herein, Lead Counsel does not seek an award of

attorneys' fees here, and seeks only expenses in an amount of $340,000, plus interest. As explained below, this request is reasonable under the circumstances.

f. The Parties Have No Other Agreements Besides Opt-Outs

Rule 23(e)(2)(C)(iv) requires the disclosure of any agreement required to be disclosed under Rule 23(e)(3). The parties have entered into a standard supplemental agreement which provides that in the event that Class Members who purchased or otherwise acquired a certain number of SAIC shares opt out of the Class, Defendant shall have the option to terminate the Stipulation.

g. Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), looks at whether Class Members are treated equitably. The Settlement is designed to do precisely that. As discussed *infra* at §IV, the Plan treats Class Members equitably relative to each other, based on the timing of their purchases, acquisitions and sales of SAIC common stock, and by providing that each Authorized Claimant shall receive his, her or its *pro rata* share of the Net Settlement Fund based on their recognized losses. For this reason, this factor merits granting final approval of the Settlement.

* * *

Thus, Lead Plaintiffs and Lead Counsel respectfully submit that each factor identified under Rule 23(e)(2) supports granting final approval of the Settlement.

2. The Settlement Satisfies the Remaining *Grinnell* Factors

a. The Lack of Objections to Date Supports Final Approval of the Settlement

The reaction of the Class to the Settlement "is considered perhaps 'the most significant factor to be weighed in considering its adequacy.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *7 (S.D.N.Y. Nov. 7, 2007) (citation omitted); *see also Flag Telecom*, 2010 WL 4537550, at *16. In fact, the "'absence of objections may itself be taken as

evidencing the fairness of a settlement.'" *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014) (citing *PaineWebber*, 171 F.R.D. at 126); *see also In re Tesco PLC Sec. Litig.*, No. 14 Civ. 8495 (RMB), slip op. at 10 (S.D.N.Y. May 26, 2016) ("[T]he 'reaction of the class to the settlement' – favors approval of the Settlement insofar as no Class member objected to the Settlement.") (attached hereto as Ex. A).

While the deadline to submit objections and exclusions is December 16, 2019, to date no objections have been received. Russello Decl., ¶¶7, 45. The positive reaction of the Class supports approval of the Settlement. *See In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528 (SAS), 2011 WL 6825235, at *1 (S.D.N.Y. Dec. 28, 2011).

b. Lead Plaintiffs Have Sufficient Information to Make an Informed Decision as to the Settlement

In considering the third *Grinnell* factor, "'the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (quoting *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012)). "To satisfy this factor, parties need not have even engaged in formal or extensive discovery." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ-8557 (CM), 2014 WL 7323417, at *7 (S.D.N.Y. Dec. 19, 2014) (nothing that discovery cannot commence in cases brought under the PSLRA until the motion to dismiss is denied); *Maley*, 186 F. Supp. 2d at 363; *see also In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y 2000) ("[T]he Court need not find that the parties have engaged in extensive discovery. Instead, it is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to 'intelligently make . . . an appraisal' of the Settlement.") (quoting *Plummer v. Chem. Bank*, 668 F.2d 654, 660 (2d Cir. 1982) *aff'd sub nom.*

D'Amato v. Deutsche Bank, 236 F.3d 78 (2d Cir. 2001)); *Global Crossing*, 225 F.R.D. at 458 ("[T]he question is whether the parties had adequate information about their claims.").

In this case, there can be no question that Lead Plaintiffs had sufficient information to make an informed decision on the propriety of the Settlement. Lead Plaintiffs and their counsel were able to negotiate the Settlement after conducting an extensive factual investigation and analysis relating to the CityTime project. *See* ECF No. 178 at 4. Prior to settling the case, Lead Plaintiffs reviewed trial transcripts from the criminal proceedings; requested and received documents pursuant to FOIA and FOIL requests; litigated an Article 78 proceeding in New York State Court against several New York City agencies; litigated motions to dismiss and appeals; and prepared mediation materials and participated in arm's-length settlement negotiations with Leidos, assisted by an experienced mediator.

Accordingly, Lead Plaintiffs and their counsel "have developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had 'a clear view of the strengths and weaknesses of their case' and of the range of possible outcomes at trial." *City of Providence*, 2014 WL 1883494, at *7 (citing *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004)).

c. Maintaining Class Action Status Through Trial Presents a Substantial Risk

While Lead Plaintiffs believe they would prevail on a motion to certify the Class, Defendant was poised to vigorously oppose it, giving rise to the risk that the Class would not be certified. Class certification may be reviewed at any stage of the litigation. *See Chatelain v. Prudential-Bache Sec., Inc.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992) ("Even if certified, the class would face the risk of decertification."); Fed. R. Civ. P. 23(c) (authorizing a court to decertify a class at any time). The Court had already significantly shortened the Class Period, a decision affirmed by the Second

Circuit. Russello Decl., ¶6. The presence of this risk and the uncertainty surrounding class certification, therefore, weighs in favor of final approval of the Settlement. *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *50 (finding that "the risk of maintaining a class through trial supports the approval of a settlement in this case").

d. Defendant's Ability to Withstand a Greater Judgment

Courts generally do not find the ability of a defendant to withstand a greater judgment to be a barrier to settlement when the other factors favor the settlement. "[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate." *PaineWebber*, 171 F.R.D. at 129; *see also IMAX*, 283 F.R.D. at 191 ("'[A] defendant is not required to "empty its coffers" before a settlement can be found adequate.'") (citations omitted). "'[W]here, as here, the other *Grinnell* factors weigh in favor of approval, this factor alone does not suggest a settlement is unfair.'" *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *50. In any event, the fact that SAIC may have the ability to pay a greater judgment is outweighed here by the other strong considerations favoring the Settlement, most notably, the risks to the Class of establishing liability and damages at trial and the reasonableness of the Settlement Amount in light of those risks. *See* Russello Decl., ¶42.

e. The Settlement Amount Is Reasonable in View of the Best Possible Recovery and the Risks of Litigation

The adequacy of the amount offered in a settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987); *see also Wal-Mart*, 396 F.3d at 119. A court need only determine whether the settlement falls within a "'range of reasonableness.'" *PaineWebber*, 171 F.R.D. at 130 (citation omitted). The "range of reasonableness" has been

described by the Second Circuit as a range that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

Here, the $6.5 million Settlement is a substantial result for the Class. As explained in Lead Plaintiffs' Preliminary Approval Memorandum (at 15) (ECF No. 178), the Settlement represents approximately 45% of estimated recoverable damages for the shortened Class Period. This is an outstanding result. *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* at 35, Figure 27 (NERA Jan. 29, 2019) (19.4% median recovery between January 1996 and December 2018 of settlements as a percentage of NERA-defined losses of less than $20 million).

Finally, the Settlement offers the opportunity to provide relief to the Class now, rather than a speculative payment years down the road. *See In re AOL Time Warner, Inc.*, No. MDL 1500, 2006 WL 903236, at *13 (S.D.N.Y. Apr. 6, 2006) (where the settlement fund is in escrow and earning interest for the class, "the benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery"). This case has already been pending for seven years. In light of the complex legal and factual issues present here, the fairness of the Settlement is apparent. Russello Decl., ¶42; *see also Maley*, 186 F. Supp. 2d at 366-67.

Accordingly, Lead Plaintiffs respectfully submit that the immediate cash benefit is well "within the range of reasonableness" in light of the best possible recovery and all the risks of litigation.

IV. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

The standard for approval of the Plan is the same as the standard for approving the Settlement as a whole. Specifically, "'it must be fair and adequate.'" *In re WorldCom, Inc. Sec.*

Litig., 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005) (quoting *Maley*, 186 F. Supp. 2d at 367). "'As a general rule, the adequacy of an allocation plan turns on . . . whether the proposed apportionment is fair and reasonable' under the particular circumstances of the case." *In re Air Cargo Shipping Servs. Antitrust Litig.*, MDL No. 1775, 2015 WL 5918273, at *4 (E.D.N.Y. Oct. 9, 2015) (citation omitted). "'When formulated by competent and experienced class counsel,' a plan for allocation of net settlement proceeds 'need have only a reasonable, rational basis.'" *Advanced Battery*, 298 F.R.D. at 180 (quoting *Global Crossing*, 225 F.R.D. at 462).

The Plan, which is set forth in the Notice, was prepared with the assistance of Lead Counsel's damages consultant and is based on the same methodology underlying Lead Plaintiffs' damages theories. It is a fair method to apportion the Net Settlement Fund among Authorized Claimants based on, and consistent with, the claims alleged. *See* Russello Decl., ¶¶43-44. *See also Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *55 (approving plan of allocation to be fair and adequate when it was "developed by Plaintiffs' expert in conjunction with Plaintiffs' Counsel, reflects an assessment of the damages that Plaintiffs contend could have been recovered under the theories of liability asserted in the action . . . has a clear rational basis, equitably treats the class members, and was devised by experience and estimable class counsel.").

The Net Settlement Fund will be distributed to Authorized Claimants, *i.e.*, Members of the Class who submit timely and valid Proofs of Claim and Release that are approved for payment from the Net Settlement Fund pursuant to the Plan. The Plan treats all Class Members in a similar manner: everyone who submits a valid and timely Proof of Claim and Release form, and did not exclude himself, herself, or itself from the Class, will receive a *pro rata* share of the Net Settlement Fund in the proportion that the Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants, so long as such Authorized Claimant's payment amount is $10.00 or more.

Lead Counsel believes that the Plan is fair and reasonable and respectfully submits that it should be approved by the Court. Notably, there have been no objections to the Plan to date, which also supports the Court's approval. Russello Decl., ¶45; *Veeco*, 2007 WL 4115809, at *7; *Maley*, 186 F. Supp. 2d at 367.

V. THE COURT SHOULD FINALLY CERTIFY THE CLASS FOR PURPOSES OF EFFECTUATING THE SETTLEMENT

In presenting the Settlement to the Court for preliminary approval, Lead Plaintiffs requested that the Court certify the Class for settlement purposes only so that notice of the Settlement, the Settlement Hearing and the rights of Class Members to object to the Settlement, request exclusion from the Class or submit Proof of Claim and Release forms, could be issued. In the Preliminary Approval Order, the Court addressed the requirements for class certification set forth in Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and found that Lead Plaintiffs had met the requirements for certification of the Class for purposes of settlement. By its Preliminary Approval Order, the Court preliminarily certified the following Class:

> all Persons who purchased or otherwise acquired SAIC common stock between March 25, 2011 and June 2, 2011, inclusive. Excluded from the Class are: the Former Defendants, the officers and directors of Leidos, formerly SAIC, during the Class Period, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant or the Former Defendants have or had a controlling interest. Also excluded from the Class is any Class Member that validly and timely requests exclusion in accordance with the requirements set forth in the Notice.

See ECF No. 185, ¶¶2-3. In addition, the Court preliminarily certified Lead Plaintiffs as class representatives and Lead Counsel as class counsel. *Id.*, ¶4.

Since entry of the Preliminary Approval Order, nothing has changed to alter the propriety of the Court's preliminary certification of the Class and, for all the reasons stated in Lead Plaintiffs' Preliminary Approval Memorandum, incorporated herein by reference, Lead Plaintiffs respectfully

request that the Court affirm its preliminary certification and finally certify the Class for purposes of carrying out the Settlement pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), and appoint Lead Plaintiffs as class representatives and Lead Counsel as class counsel.

VI. NOTICE TO THE CLASS SATISFIES THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

Rule 23 requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). Additionally, notice of a settlement must be directed to class members in a "reasonable manner." Fed. R. Civ. P. 23(e)(1). Notice of a settlement satisfies Rule 23(e) and due process where it fairly apprises "'members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart*, 396 F.3d at 114 (citations omitted); *Vargas v. Capital One Fin. Advisors*, 559 F. App'x 22, 26-27 (2d Cir. 2014). "'Notice need not be perfect'" or received by every class member, but instead be reasonable under the circumstances. *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *56 (quoting *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008)). Notice is adequate "if the average person understands the terms of the proposed settlement and the options provided to class members thereunder." *Merrill Lynch*, 249 F.R.D. at 133.

The Notice and the method utilized to disseminate it to potential Class Members satisfies these standards. The Court-approved Notice and Proof of Claim and Release (the "Notice Packet") amply apprise Class Members of, *inter alia*: (1) the nature of the Litigation and the Class' claims; (2) the essential terms of the Settlement; (3) the proposed Plan; (4) Class Members' rights to object to the Settlement, the Plan, or the requested expenses, or to request exclusion from the Class; (5) the binding effect of a judgment on Class Members; and (6) information regarding Lead Counsel's

motion for an award of expenses and awards to the Lead Plaintiffs. *See* Sylvester Decl., Ex. A. The Notice also provides specific information regarding the date, time, and place of the Settlement Hearing, and sets forth the procedures and deadlines for: (1) submitting a Proof of Claim and Release; (2) objecting to any aspect of the Settlement, including the proposed Plan and the request for expenses; and (3) requesting exclusion from the Class.

The Notice also contains the information required by the PSLRA, including: (1) a statement of the amount to be distributed, determined in the aggregate and on an average per share basis; (2) a statement of the potential outcome of the case (*i.e.*, whether there was agreement or disagreement on the amount of damages); (3) a statement indicating the attorneys' fees and costs sought; (4) identification and contact information of counsel; and (5) a brief statement explaining the reasons why the parties are proposing the Settlement. *See id.*; *see also In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 184 (S.D.N.Y. 2003).

In accordance with the Preliminary Approval Order, Gilardi & Co. LLC ("Gilardi") commenced the mailing of the Notice Packet by First-Class Mail to potential Class Members, brokers, and nominees on October 17, 2019. Sylvester Decl., ¶¶5-8. As of December 10, 2019, more than 19,600 copies of the Notice Packet have been mailed. *Id.*, ¶11. Gilardi also published the Summary Notice in *The Wall Street Journal* and transmitted it over the *Business Wire* on October 18, 2019. *Id.*, ¶12. Additionally, Gilardi posted the Notice Packet, as well as other important documents, on the website maintained for the Settlement. *Id.*, ¶14.[8]

This combination of individual First-Class Mail to all Class Members who could be identified with reasonable effort, supplemented by mailed notice to brokers and nominees and

[8] The Notice Packet and Summary Notice reference the Internet website for the Settlement. *See* Sylvester Decl., Exs. A and C.

publication of the Summary Notice in a relevant, widely-circulated publication and internet newswire, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). This method of providing notice has been repeatedly approved for use in securities class actions and other comparable class actions. *See, e.g.*, *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *58.

VII. LEAD COUNSEL'S EXPENSES WERE REASONABLY INCURRED AND NECESSARY TO THE PROSECUTION OF THIS LITIGATION

Lead Counsel also respectfully requests an award of $340,000 in expenses incurred while prosecuting the Litigation.[9] Lead Counsel has submitted a declaration regarding these expenses, which are properly recovered by counsel. *See* Declaration of Joseph Russello on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Expenses ("Robbins Geller Decl."), ¶¶5-6, submitted herewith. *See, e.g.*, *In re China Sunergy Sec. Litig.*, No. 07 Civ. 7895 (DAB), 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should be compensated "'for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were "incidental and necessary to the representation"'") (citation omitted); *Flag Telecom*, 2010 WL 4537550, at *30 ("It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class."); *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (court may compensate class counsel for reasonable expenses necessary to the representation of the class).

Counsel's expenses include, for example, the costs of hiring a Supreme Court specialist, damages consultant, mediating the Class' claims, and computerized research. A complete breakdown by category of the expenses incurred is set forth in the Robbins Geller Declaration.

[9] As noted, this requested amount falls below Lead Counsel's actual expenses.

These expenses were critical to Lead Plaintiffs' success in achieving the Settlement. *See Global Crossing*, 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys . . . [f]or this reason, they are properly chargeable to the Settlement fund."). So far, not a single objection to the expense amount set forth in the Notice has been received. Accordingly, Lead Counsel respectfully requests payment for these expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund.

VIII. LEAD PLAINTIFFS' AWARD UNDER 15 U.S.C. §78u-4(a)(4)

Lead Plaintiffs seek approval for an award of $20,000 in the aggregate in recognition of the time and resources they spent representing the Class. Green Decl., ¶27. The PSLRA specifically allows an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4).

As detailed in the Green Declaration, Lead Plaintiffs took an active role and dedicated significant time to the Litigation by communicating with Lead Counsel, reviewing significant pleadings, briefs, and certain correspondence in the Litigation and monitoring the progress of settlement negotiations. *See* Green Decl., ¶¶7-16. Without Lead Plaintiffs' efforts no recovery would have occurred for the benefit of the Class.

Many courts, including this one, have approved such awards under the PSLRA to compensate lead plaintiffs for the time and effort they spent on behalf of a class. *See, e.g.*, *In re Am. Int'l Grp. Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the

time and effort they devoted on behalf of a Class"); *Flag Telecom*, 2010 WL4537550, at *31 (approving award of $100,000 to lead plaintiff for time spent in the litigation); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, No. 1:12-cv-01203-VEC, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 19, 2015) (awarding $16,800.11 to lead plaintiff and additional named plaintiffs "to compensate them for their reasonable costs and expenses directly relating to their representation of the Class"); *Hicks*, 2005 WL 2757792, at *10 ("Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.").

The Notice sufficiently informed potential Class Members that such expenses would be sought. Sylvester Decl., Ex. A (Notice) at 2. The request by Lead Plaintiffs is supported by a declaration, are reasonable and fully justified under the PSLRA, and should be granted. To date, there have been no objections to this request.

IX. CONCLUSION

Lead Plaintiffs were prepared to continue the Litigation, and believe they would have won. But litigation and trial are not without substantial risk. Therefore, the Settlement obtained here, which recovers approximately 45% of Lead Plaintiffs' estimate of maximum estimated damages (and many times more than Defendant's estimates), is a very good result for the Class. Therefore, for the foregoing reasons, Lead Plaintiffs respectfully request that this Court find that the Settlement is fair, reasonable and adequate, and enter the proposed Order and Final Judgment approving the Settlement. Lead Plaintiffs also request that the Court find that the proposed Plan is fair, reasonable and adequate, and enter an order approving the Plan, which will govern distribution of the Settlement

proceeds. Finally, Lead Counsel requests that the Court approve an award of expenses of $340,000 to Lead Counsel, and awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: December 11, 2019

Respectfully submitted,

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Joseph Russello, hereby certify that on December 11, 2019, I authorized a true and correct copy of the MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT, APPROVAL OF PLAN OF ALLOCATION, AND FOR AN AWARD OF EXPENSES TO LEAD COUNSEL AND FOR AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4), to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

/s/ Joseph Russello
JOSEPH RUSSELLO

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE TESCO PLC SECURITIES LITIGATION

14 Civ. 8495 (RMB)

DECISION & ORDER APPROVING SETTLEMENT

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I. Background

On June 18, 2015, Stephen Klug ("Klug" or "Lead Plaintiff"), represented by attorneys Kahn Swick & Foti, LLC ("Lead Counsel" or "Class Counsel"), filed the Second Consolidated Amended Class Action Complaint "on behalf of all persons or entities who purchased or otherwise acquired American Depository Shares ('ADRs') of Tesco PLC . . . between April 18, 2012 and September 22, 2014" ("Plaintiffs"), against Tesco PLC ("Tesco"), and Tesco's former Chief Executive Officer Philip Clarke, former Chief Financial Officer Laurie McIlwee, and former Chairman of the Board Sir Richard Broadbent (collectively, "Defendants"). (Second Consolidated Am. Class Action Compl., dated Mar. 19, 2015 ("Complaint"), at 2; Decision & Order, dated Mar. 19, 2015, at 8-9.)[1] The Complaint was filed pursuant to Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. (Id. at 96.) Plaintiffs alleged that Defendants engaged in an "accounting scheme," including "accelerated recognition of commercial income and delayed accrual of costs," in order to maintain artificially high market prices for Tesco's securities. (Id. at 2, 7, 97.) Tesco is a grocery and general merchandise retailer based in the United Kingdom. (Id. at 2.)

[1] On March 19, 2015, the Court consolidated six related putative class action lawsuits against Defendants, appointing Klug as Lead Plaintiff and approving Kahn Swick & Foti, LLC as Lead Counsel. (See Decision & Order, dated Mar. 19, 2015, at 3, 10.)

On August 17, 2015, Defendants moved to dismiss the Complaint. (Defs.' Mem. of Law in Supp. of Their Mot. To Dismiss the Consolidated Am. Compl., dated Aug. 17, 2015.) On October 1, 2015, Plaintiffs opposed Defendants' motion to dismiss. (Pl.'s Mem. of Law in Opp'n to Defs.' Mot. To Dismiss, dated Oct. 1, 2015.) And, on October 15, 2015, Defendants filed a Reply. (Defs.' Mem. of Law in Further Supp. of its Mot. To Dismiss, dated Oct. 15, 2015.)

On November 19, 2015, prior to the resolution of Defendants' motion to dismiss, the parties entered into a Stipulation of Settlement ("Settlement"), and established a $12 million settlement fund ("Settlement Fund"). (Stip. of Settlement, dated Nov. 19, 2015.) Following application to the Court, dated November 25, 2015, on December 23, 2015, the Court preliminarily approved the Settlement and preliminarily certified a class for settlement purposes. (Order Preliminarily Approving Settlement & Providing for Notice, dated Dec. 23, 2015 ("Preliminary Approval Order"), at 1.)

The Settlement provides, among other things, the following:

- The "Class" shall be defined as all persons "who purchased or otherwise acquired ADRs of Tesco" or "Tesco F Shares between April 18, 2012 and September 22, 2014, inclusive" ("Class Period") (id. at 3);

- "Excluded from the Class definition are . . . all persons and/or entities who have brought claims in the litigation captioned: Western & Southern Life Insurance Co., et al. v. Tesco PLC, No. 15-cv-658-SSB-SKB, currently pending in the United States District Court for the Southern District of Ohio" (id. at 3-4, 6-7)[2];

- "Tesco has concluded that further conduct of the Action would be protracted and expensive, and has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Action," and "Lead Plaintiff also is mindful of the inherent problems of proof and the possible defenses to the securities law violations asserted in the Action" (id. at 11-12);

[2] On February 2, 2016, the Judicial Panel on Multidistrict Litigation denied Tesco's motion to transfer the Ohio action to this District. (Order Denying Transfer, MDL No. 2680, dated Feb. 2, 2016.) At a December 15, 2015 conference, Class Counsel informed the Court that the plaintiffs in the Ohio action had requested to be excluded from the Class. (Hr'g Tr., dated Dec. 15, 2015, at 5:19-22.)

- "Tesco shall pay or cause to be paid the Settlement Amount [of $12,000,000] . . . which, with any accrued interest, shall constitute the Settlement Fund" to be distributed after payment of costs and expenses in connection with administering the Settlement, "Taxes and Tax Expenses," and "Lead Counsel's attorneys' fees and expenses" ("Plan of Allocation") (id. at 6, 23-24)[3];

- "Tesco will not take any position on any Fee and Expense Application that . . . seeks an award of attorneys' fees in an amount not greater than thirty percent (30%) of the Settlement Fund and reimbursement of expenses incurred in connection with the prosecution of this Action not to exceed $200,000" (id. at 27). And, "costs or expenses for notice or claims administration in excess of [$257,147.06] shall be . . . subject to the approval of Lead Counsel and further approval of the Court" (id. at 15; Endorsed Letter from Kim E. Miller to Hon. Richard M. Berman, dated Nov. 5, 2016).

Pursuant to the Preliminary Approval Order, the Claims Administrator, Epiq Systems, Inc. ("Epiq"), mailed the Notice of Pendency and Proposed Settlement of Class Action ("Notice") and the form Proof of Claim to potential members of the Class, and published a summary notice in Investor's Business Daily and PR Newswire on January 12, 2016. (Decl. of Kim E. Miller Regarding Mailing of Notice & Claim Form & Publication of Summary Notice, dated Jan. 20, 2016, Ex. 1.) Pursuant to the Court's December 30, 2015 order, the summary notice was also published in the Financial Times on January 12, 2016 and January 13, 2016. (Id.; Pl.'s Mem. of Law in Supp. of Its Mot. for Final Approval of Class Action Settlement, dated Mar. 24, 2016 ("Settlement Mem."), at 3.) Copies of the Complaint, Settlement, Notice, and Proof of Claim form were "placed on a website that has been maintained by Lead Counsel (at www.tescosecuritieslitigation.com)." (Decl. of Kim E. Miller Regarding Mailing of Notice & Claim Form & Publication of Summary Notice, dated Jan. 20, 2016.)

On March 24, 2016, Lead Plaintiff filed a motion for final approval of the Settlement. (Pl.'s Mot. for Final Approval of Class Action Settlement, dated Mar. 24, 2016.) Former United

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[3] See infra p. 18 (regarding distribution of the Settlement Fund prior to payment of attorneys' fees). See, e.g., Beane v. Bank of New York Mellon, 2009 WL 874046, at *9 (S.D.N.Y. March 31, 2009); Gatto v. Sentry Services, Inc. et al, No. 13-cv-05721, Am. Order, dated May 18, 2015, at 6.

States District Judge Layn R. Phillips, who also served as the parties' mediator, submitted a declaration stating that "the parties' settlement is the product of vigorous and independent advocacy and arms-length negotiation conducted in good faith." (Decl. of Layn R. Phillips in Supp. of Settlement, dated Mar. 24, 2016 ("Phillips Decl."), at 3.) Judge Phillips also stated that "the Settlement represents a well-reasoned and sound resolution of highly uncertain litigation." (Id. at 4.)

Also, on March 24, 2016, Class Counsel filed a motion for an award of attorneys' fees and reimbursement of litigation expenses. (Pl.'s Mot. for an Award of Attorneys' Fees, dated Mar. 24, 2016.) Class Counsel seeks attorneys' fees of 20% of the $12 million Settlement Fund, which represents a reduction from "the 30% maximum fee request indicated in the Notice." (Pl.'s Mem. of Law in Supp. of Mot. for an Award of Attorneys' Fees, dated Mar. 24, 2016 ("Atty. Fees Mem."), at 4.) According to Class Counsel, 20% of the Settlement Fund would represent a "2.13 multiplier of the total lodestar" of $1,127,995.50. (Id.) Class Counsel also seeks reimbursement of $123,935.44 in expenses, including the costs of retention of experts and private investigators. (Id.)

As of April 14, 2016, the Claims Administrator had mailed a total of 111,727 notice packages to potential Class members. (Second Supplemental Decl. of Stephanie A. Thurin Regarding Notice Dissemination & Exclusion Requests, dated Apr. 14, 2016, at 2-3.) Class Counsel stated that "no objections to the Stipulation, the Settlement Amount, the Plan of Allocation, or the Applications [for attorneys' fees] have been received." (Supplemental Decl. of Kim E. Miller in Supp. of Final Approval, dated Apr. 14, 2016, at 1.) The deadline for

postmarking any objection was April 5, 2016. (Id.)[4]

On April 21, 2016, the Court held a fairness hearing which had been noticed pursuant to Rule 23(e)(2) of the Federal Rules of Civil Procedure. (See Fairness Hr'g Tr., dated Apr. 21, 2016.) The Court heard from Class Counsel, Kim Miller, who spoke in favor of the Settlement and Class Counsel's application for attorneys' fees. (Id. at 7:16-23:21.) Defendants' counsel, George Conway, also spoke in favor of the Settlement. (Id. at 27:11-25; 41:23-43:19.) Lead Plaintiff Stephen Klug was present at the fairness hearing and requested to be heard to object to Class Counsel's application for attorneys' fees "for anything more than 20 percent" of the Settlement Fund. (Id. at 28:8-10, 29:18-19 ("I'm not here to object to the settlement itself."), 34:9-13 ("I sent [Class Counsel] an email . . . that said not only would I not support 30 percent [as an award of attorneys' fees], but if they asked for **anything more than 20 percent**, I would come to this hearing and object.").) Klug also "propose[d] that counsel be awarded fees equal to no more than their . . . actual billings," i.e. not to exceed the lodestar. (Id. at 35:16-23, 41:5-9.)[5]

On April 22, 2016, at the Court's request, Class Counsel submitted the attorney time sheets for 1,840.9 hours between April 16, 2014 and March 24, 2016 that formed the basis for its proposed lodestar of $1,127,995.50. (Letter from Kim E. Miller to Hon. Richard M. Berman, dated Apr. 22, 2016.)

On May 5, 2016, Klug filed what he termed "Lead Pl.'s Motion Pursuant to Rule 11(b)(3) for Sanctions against Kahn Swick & Foty, LLC." (Lead Pl.'s Mot. for Sanctions against Kahn

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[4] Prior to Class Counsel's March 24, 2016 application for attorneys' fees, Lead Plaintiff Klug sent Class Counsel an "e-mail of January 6, 2016 which advised them that I would oppose a fee of 30% and [Class Counsel] acted on that e-mail by reducing the fee request from 30% to 20%." (Letter from Stephen Klug to Hon. Richard Berman, dated May 5, 2016, at 1-2; see also infra pp. 16-17.)

[5] In response, Miller stated that she "did not know that Mr. Klug was going to object to the fee today" and that Klug "had requested that we limit our fee to 20 percent, and so I thought that [when we did so] that had resolved the problem." (Fairness Hr'g Tr. at 36:5-6, 38:19-39:3.)

Swick & Foty, LLC, dated May 5, 2016 ("Klug's Mot.").) Klug asserts that Class Counsel's March 24, 2016 application for 20% attorneys' fees contained a "false" statement, namely that "not a single objection has been filed challenging either the Settlement or Lead Counsel's fee and reimbursement request of up to 30% of the Net Settlement Fund." (Id. at 1; Letter from Stephen Klug to Hon. Richard Berman, dated May 5, 2016 ("Klug Letter"), at 2.) Klug states that Class Counsel "concede receiving my e-mail of January 6, 2016 which advised them that I would oppose a fee of 30% and that they acted on that e-mail by reducing the fee request from 30% to 20%." (Klug Letter at 1-2.) On May 18, 2016, Class Counsel opposed Klug's motion for sanctions, stating that Class Counsel's March 24, 2016 application for attorneys' fees "was true and correct." (Class Counsel's Mem. of Law in Opp'n to Lead Pl.'s Mot. for Sanctions, dated May 18, 2016, at 1.) Class Counsel states that, prior to the April 21, 2016 fairness hearing, Klug had not submitted any objection under the Notice's procedures, and "[h]ad Lead Counsel publicly disclosed the contents of Mr. Klug's email as he apparently argues they should have, Lead Counsel would have waived the attorney-client privilege protecting their correspondence." (Id. at 2-3.) Class Counsel further states that, because it "limited its fee request to 20% in its written motion for fees and expenses, as Mr. Klug had requested," it "was not on notice that Mr. Klug intended to object to Lead Counsel's fee request" at the fairness hearing. (Id. at 2.) On May 23, 2016, Klug submitted what he termed "Lead Plaintiff's Reply to Counsel's Memorandum of Law in Opposition to Lead Plaintiff's Motion for Sanctions under Rule 11(b)(3)," asserting that Class Counsel had falsely stated in its fee application that the fee application was submitted "with the prior approval of Plaintiff, Mr. Klug." (Letter from Stephen Klug to Hon. Richard Berman, dated May 20, 2016; see also Decl. of Kim E. Miller in Supp. of Pls.' Mot. for Final Approval of Class Action Settlement, dated Mar. 24, 2016 ("Miller Decl."), at 31.) Klug states that "[t]he only communication from Plaintiff to Counsel regarding the fee request was the January 6, 2016 e-mail that plainly objected to the 30% fee." (Letter from Stephen Klug to Hon. Richard Berman, dated

May 20, 2016.)

As of May 20, 2016, Epiq received 83,233 Proofs of Claim, representing "greater than 60%" of the total 128,139 notice packages mailed to potential Class members. (Decl. of Stephanie A. Thurin Regarding Proofs of Claim Received and Administrative Fees and Expenses, dated May 24, 2016, at 2.) Id. On May 24, 2016, Epiq submitted a declaration requesting reimbursement of $597,992.85, i.e. its expenses for claims administration incurred through May 23, 2016, and a request for "a reserve of $32,147.96" to be approved for reimbursement of the anticipated expenses to complete the administration of the Settlement. (Id. at 6-7.) The Court's endorsement of Epiq's declaration stated, among other things, that the information and explanation for Epiq's expense request is insufficient, and the "Court is unable to approve a claims administration award at this time and likely will not do so until the claims administration phase is completed and the class members are paid." (Memo Endorsement, dated May 25, 2016.)

For the reasons set forth below, the Settlement is approved, Class Counsel's motion for an award of attorneys' fees is granted in part and denied in part, and Klug's motion for sanctions is denied.[6]

II. Legal Standard

"[W]hen considering whether to approve a class action settlement, a district court must carefully scrutinize the settlement to ensure its fairness, adequacy and reasonableness, and that it was not a product of collusion." D'Amato v. Deutsche Bank, 236 F.3d 78, 85 (2d Cir. 2001) (internal quotation marks omitted). A "presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery," Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96, 116 (2d Cir. 2005), and "overseen by an experienced, neutral third-party mediator," In re

[6] **Any issues raised by the parties not specifically addressed herein were considered by the Court on the merits and rejected.**

Citigroup Inc. Bond Litig., 296 F.R.D. 147, 155 (S.D.N.Y. 2013). And, courts "are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context,'" and the "compromise of complex litigation is encouraged by the courts and favored by public policy." Wal-Mart Stores, Inc., 396 F.3d at 116-17 (citations omitted).

A party seeking attorneys' fees bears the burden of establishing entitlement to and the reasonableness of an award. Savoie v. Merchants Bank, 166 F.3d 456, 463 (2d Cir. 1999). "Courts have used two distinct methods to determine what is a reasonable attorneys' fee." Goldberger v. Integrated Res., Inc., 209 F.3d 43, 47 (2d Cir. 2000). Under the percentage method of awarding legal fees, the "court sets some percentage of the recovery as a fee." Id. Under the lodestar method, the "court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate." Id. "The trend in this Circuit is toward the percentage method, which directly aligns the interest of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." Wal-Mart Stores, 396 F.3d at 121. As a result, "[t]he Second Circuit encourages using the lodestar method only as a cross-check for the percentage method." In re March & McLennan Cos., Inc. Sec. Litig., 2009 WL 5178546, at *14 (S.D.N.Y. Dec. 23, 2009) (citing Goldberger, 209 F.3d at 50). "[I]n instances where a lodestar analysis is . . . used as a 'cross check' for a percentage of recovery analysis, counsel may be entitled to a 'multiplier' of their lodestar rate," In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008), "to reflect litigation risk, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." In re Flag Telecom Holdings, Ltd. Sec. Litig., 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010). Also, the "case law makes clear . . . that an award of no lodestar multiplier at all is within the district court's discretion." McDaniel v. County of Schenectady, 595 F.3d 411, 425 (2d Cir. 2010).

III. Analysis

The Settlement Is Approved

The Court approves the Settlement as fair, reasonable, and adequate to the Class because, among other reasons, the Settlement was negotiated at arm's-length by sophisticated counsel before an experienced mediator. In re Flag Telecom Holdings, Ltd. Sec. Litig., 2010 WL 4537550, at *4. The parties "participated in an all-day formal mediation session on October 20, 2015 in New York" (Phillips Decl. at 2) before a "well-regarded mediator of complex securities cases," former United States District Judge Phillips (W.D. Ok.).[7] In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig., 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012). Judge Phillips states that "both parties made compelling arguments in support of their respective positions, evidencing thorough knowledge of the facts of the case and the law governing the action," and their mediation briefs were "supported by substantial factual, expert, and backup data." (Phillips Decl. at 2-3.) The "parties and their experts offered strong opinions on how they viewed the measure of potential damages, which set the stage for rigorous settlement negotiations." (Id. at 3; see also Miller Decl. at 20.) Class Counsel also has extensive experience handling complex plaintiffs' securities class actions. In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. 151, 160 (S.D.N.Y. 2011); (see Settlement Mem. Ex. 5). See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436, 461 (S.D.N.Y. 2004).

Analysis of the (nine) Grinnell factors further supports approving the Settlement. Wal-Mart Stores, Inc., 396 F.3d at 116 (citing City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974)). The first Grinnell factor – the "complexity, expense and likely duration of the litigation" – favors approval of the Settlement because this case "involves complex jurisdictional

[7] Judge Phillips served as a United States District Judge in the Western District of Oklahoma from 1987 to 1991. (Phillips Decl. at 1.)

questions related to the particular securities – ADRs and F-shares – at issue." (Settlement Mem. at 8; see also Phillips Decl. at 2 ("[D]iscussion concerned unique issues regarding the territorial reach of Plaintiff's Section 10(b) claims and forum non conveniens")); In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. at 456. Plaintiffs were able to achieve a recovery for the Class despite the risks in defeating Defendants' motion to dismiss and ultimately in proving damages. (Settlement Mem. at 8-9; see also Phillips Decl. at 3 ("[C]onsiderable work was done by counsel for all parties to pursue these issues through the appellate process.").) See In re AOL Time Warner, Inc., 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006) ("Due to its notorious complexity, securities class action litigation is often resolved by settlement, which circumvents the difficulty and uncertainty inherent in long, costly trials.").

The second Grinnell factor – the "reaction of the class to the settlement" – favors approval of the Settlement insofar as no Class member objected to the Settlement. (See Fairness Hr'g Tr. at 28:8-10, 29:18-19 ("[Lead Plaintiff] KLUG: . . . I'm not here to object to the settlement itself."), 40:19-23 ("THE COURT: My understanding is that [regarding] the settlement of $12 million . . . you have approved that, because that is the number that you gave to counsel as your cutoff, right? MR. KLUG: That's correct.")); In re AOL Time Warner, Inc., 2006 WL 903236, at *9 ("Courts in this Circuit have noted that the lack of objections may well evidence the fairness of the Settlement.") (internal quotation marks and citations omitted).

The third Grinnell factor – "the stage of the proceedings and the amount of discovery completed" – weighs in favor of approving the Settlement because the parties obtained "sufficient information to make an informed judgment on the reasonableness of the settlement proposal." Beane, 2009 WL 874046, at *4; see also In re AOL Time Warner, Inc., 2006 WL 903236, at *10 ("The relevant inquiry for this factor is whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy

of the settlement."); (Phillips Decl. at 3 ("It was apparent to me from the submissions and presentations made by the parties before and during the mediation that counsel for all parties had performed a thorough examination of the facts and law.")). Judge Phillips had proposed that Lead Counsel conduct informal discovery in order to confirm the reasonableness of the Settlement; the parties negotiated and agreed on the contours of this informal discovery; and, on November 2, 2015, Class Counsel received a substantial volume of documents from Defendants of "about 10,000 pages," including "board and executive committee notes and emails." (Miller Decl. at 15; Fairness Hr'g Tr. at 23:8-10.) See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. at 458 ("Formal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims.").

"The fourth through seventh Grinnell factors – namely, the risks of establishing liability and damages, maintaining the class action, and collecting on any judgment – all support settlement." Beane, 2009 WL 874046, at *4. Class Counsel recognizes that "the gravest and most immediate risk to Plaintiff's case was raised by Defendants' novel jurisdictional challenges," including (1) their Section 10(b) argument under Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010), and (2) their *forum non conveniens* argument that the United Kingdom was the better forum for the action. (Settlement Mem. at 2; Phillips Decl. at 3.) "Defendants' success on any of these arguments would have resulted in dismissal and zero recovery for the Class." (Settlement Mem. at 3.) Additionally, Plaintiffs faced the risks of bringing any securities claims, such as establishing scienter and damages. (Id. at 2); see In re AOL Time Warner, Inc., 2006 WL 903236, at *11.

The eighth and ninth Grinnell factors – "the range of reasonableness of the settlement fund in light of the best possible recovery" and "the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation" – also favor settlement. Beane,

2009 WL 874046, at *5. Plaintiffs state that "[t]he Settlement, which provides for payment of $12,000,000 to the Class, a recovery of approximately 25% of the maximum recoverable damages (approximately $48.1 million, as determined by Plaintiff's damages consultants) is an exceptional result for the Class, particularly in the context of other settlements in ADR . . . cases." (Settlement Mem. at 1.) Judge Phillips also states that this recovery of 25% of damages is "higher" than the typical percentage of recovery in securities class actions. (Phillips Decl. at 4.) See In re China Sunergy Sec. Litig., 2011 WL 1899715, at *2, 5 (S.D.N.Y. 2011) ("This [18.4% recovery] far surpasses the average settlement amounts in securities fraud class actions . . . over the past decade which have ranged from 3% to 7% of the class members' estimated losses.").

The Class is Certified

The Court provisionally certified the Class via the Preliminary Approval Order (Prelim. Approval Order ¶ 3), and "[s]ince there have been no material changes to alter the propriety of [those] findings regarding the . . . Class, this action is hereby finally certified, for the purposes of settlement only, as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3)." In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig., 909 F. Supp. 2d at 264; see also Weinberger v. Kendrick, 698 F.2d 61, 72 (2d Cir. 1982) ("Temporary settlement classes have proved to be quite useful in resolving major class action disputes.").

"A class seeking to be certified for purposes of effectuating a settlement must satisfy the applicable requirements of Rules 23(a) and 23(b), i.e., numerosity, commonality, typicality, adequacy of representation, predominance of common issues, and superiority." Beane, 2009 WL 874046, at *5 (citing Amchem Products. Inc. v. Windsor, 521 U.S. 591 (1997)). The Class satisfies Fed. R. Civ. P. 23(a), because it is "impracticable" to join 111,727 potential Class Members. Id. Plaintiffs allege questions of law and fact that are "common to the class." Id. For example, whether Defendants knowingly made "material misrepresentations . . . for the purpose

and effect of concealing Tesco's operating condition" is such a common question. (Am. Compl. at 98-99.) The Court previously concluded that Klug, as Lead Plaintiff, "satisfies the requirements of . . . typicality and adequacy of representation." (Decision & Order, dated Mar. 19, 2015, at 8.)

The Court also finds that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. at 159; see Amchem, 521 U.S. at 625 ("Predominance is a test readily met in certain cases alleging consumer or securities fraud."). Violations of the federal securities laws, such as those alleged in the Complaint, "inflict economic injury on large numbers of geographically dispersed persons such that the cost of pursuing individual litigation to seek recovery is often not feasible." In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. at 159.

17% of the Settlement Fund Is Awarded as Attorneys' Fees

Class Counsel seeks an award of attorneys' fees in the amount of 20% of the Settlement Fund and reimbursement of expenses in the amount of $123,935.44, plus interest. (Atty. Fees Mem. at 1.) Class Counsel states that it "has spent over 1,804.9 hours researching, investigating, and prosecuting this case on behalf of the Class with an aggregate lodestar of approximately $1,127,995.50." (Id. at 8.) Thus, it seeks a "multiplier" of 2.13. (Id. at 20.) According to Class Counsel, it successfully argued Klug's Motion To Be Appointed Lead Plaintiff; conducted extensive research into the underlying facts, including interviews of numerous persons and consultation with experts; filed the 92-page Complaint; "opposed Defendants' motion to dismiss"; "engaged in a formal mediation facilitated by Judge Phillips"; "reviewed and analyzed a substantial volume of discovery materials provided by Defendants"; "filed the motion for

preliminary approval and stipulation of settlement"; and oversaw the Settlement administration process. (Id. at 9-10.)

"Employing the percentage method of fixing Class Counsel's compensation (while relying upon the lodestar method as a 'cross-check')," the Court finds that 17% of the $12,000,000 Settlement Fund, or $2,040,000, would be a fair and reasonable fee under "the 'Goldberger factors.'" Beane, 2009 WL 874046, at *7; see Wal-Mart Stores, 396 F.3d at 121 (citing Goldberger v. Integrated Res., Inc., 209 F.3d 43, 50 (2d Cir. 2000)). That sum incorporates a (generous) multiplier of 1.81. See, e.g., In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d at 590.

The first Goldberger factor – "the time and labor expended by counsel" – supports (albeit is less than) the fee, based on the time sheets submitted by Class Counsel. Beane, 2009 WL 874046, at *7. Class Counsel billed 1,840.9 total hours for this case, providing time sheets that substantiate 659.3 hours billed by partners, 1790.4 hours billed by associates, and 50.5 hours billed by paralegals. (Miller Decl. Ex. 3.) Class counsel expended substantial resources in representing Plaintiffs, Gattinella v. Kors, 2016 WL 690877, at *2 (S.D.N.Y. Feb. 9, 2016), "including the retention of private investigators in the United States and the United Kingdom, the retention of an accounting consultant . . . , interviews of numerous persons with knowledge of the allegations, including former employees of Tesco, as well as third parties, [and] consultation with experts on the issues of damages and market efficiency" (Miller Decl. ¶ 4).

The second and third Goldberger factors – "the magnitude and complexities of the litigation" and "the risk of [contingency] litigation" – support the fee award. Beane, 2009 WL 874046, at *8; see also In re AOL Time Warner, Inc., 2006 WL 903236, at *9 ("[T]he legal requirements for recovery under the securities laws present considerable challenges, particularly with respect to loss causation and the calculation of damages."). The case concerned unique issues regarding the territorial reach of Plaintiff's Section 10(b) claims and forum non

conveniens," and application of "this Court's decision in In re Société Générale Securities Litigation, No. 08 Civ. 2495 (RMB), 2010 WL 3910286 (S.D.N.Y. Sept. 29, 2010)." (Phillips Decl. at 3.) Additionally, Class Counsel's "funds were available to compensate staff, investigators and consultants, and to pay for the considerable out-of-pocket costs which a case such as this entails." (Atty. Fees Mem. at 15.) "Class counsel undertook a substantial risk of absolute non-payment in prosecuting this action, for which they should be adequately compensated." Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 372-73 (S.D.N.Y. 2002) (where "class counsel not only undertook risks of [contingency] litigation, but advanced their own funds and financed the litigation").

The fourth Goldberger factor – "the quality of representation" – supports the fee award. Maley v. Del Global Techs. Corp., 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002). Judge Phillips notes that "Lead Counsel performed a thorough examination of the merits of the claims in this action . . . in connection with the mediation in a way that produced a valuable recovery for the Class." (Phillips Decl. at 4.) "The quality of opposing counsel is also important in evaluating the quality of the services rendered by Plaintiffs' Class Counsel." Maley, 186 F. Supp. 2d at 373. Tesco was represented by George Conway of Wachtell, Lipton, Rosen, & Katz, LLP, who "briefed and argued the case for respondents in Morrison v. National Australia Bank, in which the Supreme Court held that Section 10(b) does **not** apply extraterritorially." (Atty. Fees Mem. at 18.) See Maley, 186 F. Supp. 2d at 373 ("The ability of plaintiffs' counsel to recover a settlement valued at more than $11.5 million for the Class in the face of such formidable legal opposition provides further evidence of the quality of their work.").

As to the fifth Goldberger factor – "the requested fee in relation to the settlement" – the fee award is consistent with fees granted in other similarly complex class actions. Beane, 2009 WL 874046, at *4 (awarding 16% of $2.2 million settlement fund); In re AOL Time Warner ERISA

Litig., 2007 WL 3145111, at *1 (awarding 17.9% of $100 million settlement fund); In re Currency Conversion Fee Antitrust Litig., 2012 WL 3878825, at *2 (S.D.N.Y. Aug. 22, 2012) (awarding 18.25% of $49.5 million settlement fund); In re WorldCom, Inc. ERISA Litig., 2004 WL 2338151, at *11 (S.D.N.Y. Oct. 18, 2004) (awarding 18% of $47.15 million settlement fund).

As to the sixth Goldberger factor – "public policy considerations" – a modified fee award of 17% both encourages class counsel to pursue securities litigations and helps ensure against excessive fees. Figueroa v. EZE Castle Integration, Inc., 2011 WL 2682129, at *2 (citing Goldberger, 209 F.3d at 53).

The reasonableness of a $2,040,000 legal fee award is confirmed by a lodestar "cross-check." Beane, 2009 WL 874046, at *8. The 17% fee award results in a lodestar multiplier of 1.81, which amply rewards Class Counsel "for the [contingency] risk they assumed . . . and the result achieved for the class." In re Telik, Inc. Sec. Litig., 576 F. Supp. 2d at 590; see also In re Currency Conversion Fee Antitrust Litig., 263 F.R.D 110, 129-30 (S.D.N.Y. 2009). See In re Citigroup Inc. Bond Litig., 296 F.R.D. at 378 (approving a 1.8 multiplier); Sakiko Fujiwara v. Sushi Yasuda Ltd., 58 F. Supp. 3d 424, 439 (S.D.N.Y. 2014) (approving a 1.75 multiplier); In re Platinum & Palladium Commodities Litig., 2015 WL 4560206, at *4 (S.D.N.Y. July 7, 2015) (approving a 1.9 multiplier); Gattinella, 2016 WL 690877, at *2 (approving a 1.94 multiplier). Where the lodestar is "used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." Goldberger, 209 F.3d at 50. There also appears to have been appropriate delegation of tasks, as the majority of Class Counsel's lodestar of $1,127,995.50 is attributable to associates' billing rates. (Miller Decl. Ex. 3; see also supra p. 13); Ayers v. SGS Control Services, Inc., 2008 WL 4185813, at *8 (S.D.N.Y. Sept. 9, 2008). And, Class Counsel has excluded any attorney time devoted to its request for fees. (Miller Decl. ¶ 79 n.6.) Partners billed at $785 to $850 per hour and associates billed at $450 to $585 per hour

(Miller Decl. Ex. 3), which "comport with rates approved by other courts in this District." In re Platinum & Palladium Commodities Litig., 2015 WL 4560206, at *3 (citing City of Providence v. Aeropostale, Inc., 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014) (where attorneys' billing rates ranged from $335 to $875 per hour)).

For the foregoing reasons, any objection to the magnitude of the requested fee award, including Klug's, has been addressed by the Court. In re Currency Conversion Fee Antitrust Litig., 263 F.R.D. at 130 (downward adjustment from Class Counsel's original fee request of 30% will "redound to the benefit of the Class"). The Court also notes that Klug acknowledges that Class Counsel has already reduced its fee petition from the 30% noticed to potential Class members to 20%. (Fairness Hr'g Tr. at 34:9-13.) Class Counsel accurately stated in its March 24, 2016 application for attorneys' fees that no objection had "been filed" challenging a fee request of "up to 30%" of the Settlement Fund. (Atty. Fees Mem. at 23.) "In order for a factual contention to be sanctionable under Rule 11, it must be utterly lacking in support." Kiobel v. Millson, 592 F.3d 78, 81 (2d Cir. 2010). Class Counsel has "sufficiently supported its contention" that Klug had not submitted an objection as of March 24, 2016 (but, instead, objected to the fee at the April 21, 2016 fairness hearing), and Class Counsel was "unaware" that Klug intended to object at the fairness hearing after Class Counsel had complied with Klug's request to reduce the fee application from 30% to 20%. StreetEasy, Inc. v. Chertok, 752 F.3d 298, 308 (2d Cir. 2014); (see Klug's Mot. Ex. 1 (Klug's e-mail, dated Jan. 6, 2016, to Class Counsel, stating: "Be advised that I will oppose any application **in excess of 20% of** the settlement and will attend the fairness hearing to testify on behalf of the class.")).[8]

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[8] **Klug's motion for sanctions against Class Counsel based on purportedly "false" representations in Class Counsel's fee application is denied because Class Counsel's representations do not, in the Court's view, rise to the level of being "factually false." StreetEasy, Inc., 752 F.3d at 308.**

Class Counsel's request for reimbursement of expenses in the amount of $123,935.44 appears reasonable and is supported as "necessary for the prosecution of this litigation." Beane, 2009 WL 874046, at *9. The requested expenses consist of, among other things, payments for experts and consultants ($56,523.37), investigation services ($33,066.55), mediation ($23,250), transportation and lodging ($5,490.43), legal research ($1,239.70), and photocopying ($890.55). (Miller Decl. Ex. 4.) See In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. at 468 ("The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which 'the paying, arms' length market' reimburses attorneys."). Class Counsel hired a forensic accounting consultancy, FailSafe CPA, because "this case fell under . . . the international forensic accounting standards." (Fairness Hr'g Tr. at 9:13-25 (the detailed charts that address inventory, profits, and commercial income were "prepared in consultation" with FailSafe CPA.).) Class Counsel's economics expert, Global Economics Group, participated in the mediation before Judge Phillips. (Id. at 10:3-15.) The private investigation firm, Gryphon Investigations, "compiled a list of hundreds of potential relevant witnesses with knowledge regarding the underlying claims" and "reached out to dozens of witness prospects" (Atty. Fees Mem. at 38-39), resulting in the attribution in the Complaint to "one former high-level witness at the company" (Fairness Hr'g Tr. at 23:13-21). For these reasons, the expenses are properly chargeable to the Settlement Fund. In re Giant Interactive Grp., Inc. Sec. Litig., 279 F.R.D. at 165; In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. at 468; see also In re Ashanti Goldfields Sec. Litig., 2005 WL 3050284, at *5 (E.D.N.Y. Nov. 15, 2005) ("By far the largest expense . . . was for the services of expert witnesses . . . . This is not unusual in securities litigation actions.").

IV. Conclusion & Order

For the foregoing reasons, Plaintiffs' motion for final approval of the Settlement [# 98] is granted, Class Counsel's application for attorneys' fees and costs [# 100] is granted in part and denied in part, and Klug's motion for sanctions against Kahn Swick & Foty, LLC [# 109] is denied.

Note: Attorneys' fees are not to be distributed to Class Counsel until at least 80% of the Settlement Fund has been distributed to the Class. On the other hand, approved attorneys' out-of-pocket expenses may be reimbursed when the initial Class distributions are made. The Claims Administrator's application for approval of fees and expenses is still under the Court's consideration.

The parties, including the Claims Administrator, are directed to participate in a status conference on September 7, 2016 at 10:30 a.m. in Courtroom 17B, 500 Pearl Street, New York, New York.

Dated: New York, New York
May 26, 2016

RMB

Hon. Richard M. Berman, U.S.D.J.