UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re SAIC, INC. SECURITIES LITIGATION	Master File No. 1:12-cv-01353-DAB CLASS ACTION
This Document Relates To: ALL ACTIONS.	LEAD PLAINTIFFS' MEMORANDUM OF LAW: (1) IN RESPONSE TO DEFENDANT'S PURPORTED OBJECTION; (2) IN FURTHER SUPPORT OF FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AND AN AWARD OF EXPENSES TO LEAD COUNSEL AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4); AND (3) REGARDING NOTICE OF THE RESCHEDULED SETTLEMENT HEARING

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Lead Plaintiffs ("Plaintiffs") and Lead Counsel respectfully submit this memorandum of law: (i) in response to a purported partial "objection" of non-Class Member and defendant Leidos, Inc. ("Leidos")[1] to Lead Counsel's request for an expense award; (ii) in further support of final approval of the Settlement and Plan of Allocation and approval of an award of expenses to Lead Counsel and an award to Plaintiffs; and (iii) regarding notice of the Settlement hearing, when rescheduled.[2]

I. LEIDOS'S PARTIAL PURPORTED "OBJECTION" IS WITHOUT MERIT

After a robust notice program that involved mailing almost 20,000 Notices to potential Class Members, only one "objection" is at issue. Unlike objections by class members with a true stake in a settlement, however, this one is submitted by defendant Leidos – a party with ***no standing*** to object. Despite this threshold deficiency, Leidos – which ***admittedly*** defrauded the City of New York out of hundreds of millions of dollars in a lengthy overbilling scheme – ironically accuses Lead Counsel of seeking fees when it said it would not. But Lead Counsel engaged and ***paid*** Kellogg, Hansen, Todd, Figel & Frederick, PLLC to represent Plaintiffs on Leidos's Supreme Court appeal, and legitimately seeks reimbursement of that expense on a dollar-for-dollar basis, without a markup. Any suggestion to the contrary is unfounded. The frivolous nature of Leidos's objection is proof that no good deed goes unpunished, as Lead Counsel outlaid all expenses and ***seeks no fee*** for achieving a $6.5 million settlement for the Class in this lengthy and complicated securities case.

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[1] *See* Defendant's Partial Objection to Lead Plaintiffs' Request for Expenses, dated December 16, 2019 (ECF No. 192) ("Objection," cited as "Obj."). Leidos does not have a reversionary interest in the Settlement Fund.

[2] Unless noted, all capitalized terms are defined in the June 26, 2019 Amended Stipulation of Settlement (ECF No. 183) or in Plaintiffs' opening memorandum of law, dated December 11, 2019, in support of this motion (ECF No. 187), and all citations and internal quotation marks are omitted and emphasis is added. Submitted herewith are the Declaration of Ross D. Murray Regarding Notice Dissemination and Requests for Exclusion Received, dated January 9, 2020 ("Murray Decl."), and a proposed: (i) Final Judgment; (ii) Order Approving Plan of Allocation; and (iii) Order Awarding Attorneys' Expenses and Award to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4).

Also specious is Leidos's insinuation that Lead Counsel misled this Court or Class Members, circumvented "notice requirements," or violated the law. *See* Obj. at 3, ¶8. The Notice truthfully told Class Members that Lead Counsel would forgo a fee – despite expending nearly $5 million in professional time – but seek an award of expenses. Consistent with that representation (and others), Lead Counsel confirmed to the Court that it would not seek a fee, only expenses, writing:

> As indicated in my June 18, 2019 letter (ECF No. 182), we confirm that, consistent with the proposed Notice, ***lead counsel*** will not seek attorneys' fees, but will apply for an award of costs and expenses not to exceed $340,000 (plus interest), from the settlement fund.

Obj., Ex. A at 1. This representation followed – and, indeed, referenced – an identical representation in Lead Counsel's June 18, 2019 letter to the Court, which stated: "As the proposed Notice reflects, ***Lead Counsel*** will not seek attorneys' fees, but will apply for an award of costs and expenses not to exceed $340,000, plus interest." ECF No. 182; *see also* Obj. at 1, ¶1 (quoting June 18, 2019 letter). As Leidos knows, the Settlement defines the term "Lead Counsel" as "Robbins Geller Rudman & Dowd LLP" **only**. ECF No. 183 (Amended Stipulation) at 8, ¶1.12; ECF No. 179 (Stipulation) at 8, ¶1.12. There is no question, nor has there ever been, that references to Lead Counsel are to Robbins Geller, and no other firm.

The Notice likewise unambiguously indicates that "the law firm of Robbins Geller Rudman & Dowd LLP represents the Class Members" and is "called ***Lead Counsel***" (ECF No. 179, Ex. A-1 at 8) – a term used throughout the Notice. In fact, Lead Counsel is introduced under a heading called "**THE LAWYERS REPRESENTING YOU**," and a subheading entitled "**Do I have a lawyer in this case?**" *Id*. (emphasis in original). And the Notice advises Class Members that "***Lead Counsel*** will not apply to the Court for an award of attorneys' fees, but will apply to the Court for an award of expenses and costs not to exceed $340,000 . . . ." *Id*. True to its word, Lead Counsel has not sought fees for its work and does not seek them now – and the Notice remains accurate.

Faced with these unambiguous representations, it should come as no surprise to Leidos – an entity that claims to value accurate disclosure to investors – that "Lead Counsel" excludes Kellogg, whose services were engaged for a specialized purpose: to oppose Leidos's Supreme Court appeal. Having ***paid*** $249,750 to Kellogg, Lead Counsel substantiated its request for $340,000 in expenses – less than the $400,000 in costs it has incurred (ECF No. 191, ¶¶3-4) – with that expenditure. There is nothing improper or misleading about that request, and Lead Counsel's submissions to the Court – which Leidos inexplicably casts in a nefarious light – transparently disclosed the expense. In fact, Lead Counsel's papers in support of the Settlement and expense request are ***publicly available*** on the Settlement website. http://www.saicsecuritiessettlement.com/case-documents.aspx. Class Members need look no further than that site and those papers for a detailed breakdown of the expenses sought.

Ignoring the standing and substantive deficiencies of its Objection, as well as Lead Counsel's accurate representations to the Court and the Class, Leidos falls back on a gross mischaracterization: that Kellogg "was not an 'expense' Lead Counsel incurred," because it "represented Lead Plaintiffs." Obj. at 3, ¶5. But the same could be said of any outside consultant or professional a party's counsel might engage to pursue or defend a case, including temporary attorneys commonly hired to review documents. Thus, courts ***routinely approve*** expense requests that include the cost of non-contingent fees paid to specialized outside counsel engaged to assist in representing a class, such as:

- ***Supreme Court or other specialized appellate counsel***: *See Ind. St. Dist. Council of Laborers v. Omnicare*, 2019 WL 7483663, at *1 (E.D. Ky. June 27, 2019) (awarding expenses, including $535,000 in costs for Supreme Court counsel's work (set forth in plaintiffs' counsel's declaration there)); *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, 2017 WL 4685536, at *10 (C.D. Cal. May 8, 2017) (approving expenses for "services of experts and specialist appellate counsel"); *In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *10 (C.D. Cal. Oct. 25, 2016) (awarding expenses, including $577,057 in costs for Kellogg's work as Supreme Court could (set forth in plaintiffs' counsel's declaration there)); *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, 2016 WL 11575090, at *5 (D.N.J. June 28, 2016) (awarding expenses, including $713,228 in costs for specialized and local counsel (set forth in plaintiffs' counsel's declaration there)).

- ***Specialized bankruptcy counsel***: *See Cortes v. New Creators, Inc.*, 2016 WL 3455383, at *6 (S.D.N.Y. June 20, 2016) (awarding costs of "specialized bankruptcy counsel"); *N.Y. State Teachers' Ret. Sys. v. GM Co.*, 315 F.R.D. 226, 245 (E.D. Mich. 2016) (same); *Phillips v. Triad Guar. Inc.*, 2016 WL 2636289, at *9 (M.D.N.C. May 9, 2016) (approving expenses, including "outside bankruptcy counsel"); *In re Quintus Sec. Litig.*, 2006 WL 3507936, at *4 (N.D. Cal. Dec. 5, 2006) (approving "reimbursement of fees and expenses of bankruptcy counsel of $162,478.40," separate from attorney's fees).

- ***Foreign legal experts and consultants, who advise on issues of non-U.S. law or assist in proceedings outside of the U.S.***: *See In re BHP Billiton Ltd. Sec. Litig.*, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding expenses, including costs for foreign counsel's work (set forth in plaintiffs' counsel's declaration there)); *City of Austin Police Ret. Sys. v. Kinross Gold Corp.*, 2015 WL 13639234, at *4 (S.D.N.Y. Oct. 19, 2015) (approving expenses, including the cost of a Canadian law firm that assisted class counsel (set forth in plaintiffs' counsel's declaration there)); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *30 (S.D.N.Y. Nov. 8, 2010) (approving expenses, including "fees for foreign counsel").

- ***Temporary attorneys hired to review documents***: *See In re Petrobras Sec. Litig.*, 317 F. Supp. 3d 858, 875 (S.D.N.Y. 2018) (requiring lead counsel to expense non-U.S. reviewers); *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 438 (S.D.N.Y. 2016) (noting "[contract] attorney time was accounted as an expense rather than included in the lodestar," approving expenses); *see also In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *18 (N.D. Cal. Aug. 17, 2018) ("commend[ing] the practice of treating contract attorney work as a cost").

That Kellogg served as an appellate specialist – as opposed to a bankruptcy or foreign legal expert, temporary lawyer, or even an economic consultant – makes no meaningful difference. Lead Counsel engaged and paid Kellogg, which received a non-contingency fee solely for its work on the Supreme Court appeal. As Leidos acknowledges, Kellogg entered an appearance in that proceeding **only**. Obj. at 2-3, ¶5. Kellogg did not appear in this Court or the Second Circuit, and no fee-sharing agreement exists with Lead Counsel. Thus, contrary to Leidos's irresponsible assertion (*id.* at 3, ¶8), the Notice complies with applicable law, including Local Civil Rule 23.1 (governing **fee** requests, not expense reimbursement requests).

Nor does Kellogg's role as a law firm, which received a fee for its work from Lead Counsel, transform Lead Counsel's request for reimbursement of that expense into a fee request – and Leidos fails to explain why it would.[3] Of course, Leidos cannot credibly argue that Lead Counsel promised to forgo reimbursement of that expense. As it stands, Lead Counsel has expended nearly $5 million in professional time and incurred expenses exceeding $400,000. The wholesale denial of its expense request would denigrate the admirable result achieved for Class Members and penalize Lead Counsel – perversely, at Leidos's urging.[4] And even if the expense request is awarded in full, Class Members will receive a far larger recovery than they would under normal circumstances where lead counsel seeks attorneys' fees.

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[3] The two cases that Leidos cites are irrelevant. *See* Obj. at 3, ¶6 (citing *U.S. Football League v. Nat'l Football League*, 887 F.2d 408 (2d Cir. 1989), and *Peter v. NantKwest, Inc.*, 2019 WL 6719083, 140 S. Ct. 365 (2019)). In *U.S. Football League*, the Second Circuit held that "reasonable out-of-pocket expenses incurred by attorneys" are "properly included in the amount that may be awarded" to a prevailing party for a violation of the Clayton Act. 887 F.2d at 416-17. And in *Peter*, the Supreme Court held that "expenses of the proceedings" under the Patent Act do not "include the salaries of attorney and paralegal employees of the United States Patent and Trademark Office" – so a dissatisfied patent applicant need not cover those items. 2019 WL 6719083, at *2; *see also id*. (noting "PTO moved for reimbursement of expenses that included . . . the pro rata salaries of PTO attorneys and a paralegal"). Of course, where, unlike here, lead counsel justifies a ***fee request*** with specialized counsel's unreimbursed fees, it cannot simultaneously request an award of ***expenses*** that includes specialized counsel's fees. *Cf. In re NTL, Inc. Sec. Litig*., 2007 U.S. Dist. LEXIS 13661, at *12 (S.D.N.Y. Mar. 1, 2007) (noting inclusion of bankruptcy counsel fees in lead counsel lodestar).

[4] Leidos's motive in raising this Objection is questionable, given its apparent lack of standing to object or interest in Lead Counsel's expense request. *See, e.g.*, *Tennille v. W. Union Co.*, 809 F.3d 555, 562-63 (10th Cir. 2015) (finding defendant lacked standing to object to attorney fee from common fund); *see also Fresno Cty. Emps.' Ret. Ass'n v. Isaacson/Weaver Family Trust*, 925 F.3d 63, 70 (2d Cir. 2019) ("The settling defendant's focus is on its bottom line, and once that bottom line has been inked, the defendant's interest in how class members and class counsel spend the settlement money dwindles."). Nevertheless, because Lead Counsel recorded $404,775.53 in expenses and charges in this Litigation, eliminating the $249,750 Kellogg expense would leave $155,025.33 in unchallenged expenses and charges. That Kellogg's fees are a substantial portion of Lead Counsel's expenses – as Leidos points out (Obj. at 2, ¶4) – does not render this request unreasonable, however. Rather, Lead Counsel's relatively low total expenses is a testament to its responsible management of this Litigation, and Kellogg's cost reflects the importance of the specialized services required here.

At bottom, Leidos concedes, as it must, that Lead Counsel is entitled to the reimbursement of "expenses that are incidental and necessary to the representation." Obj. at 3, ¶6. Here, there is no question that Kellogg performed work for which Lead Counsel paid, and that Lead Counsel remains unreimbursed for it. Instead, Leidos argues that the cost of Kellogg's work is not reimbursable as an expense. "Fees for experts and consultants" are precisely the type of "out-of-pocket expenses" this Court has held are "reasonable and necessary" in a securities class action. *See In re China Sunergy Sec. Litig*, 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011) (Batts, J.); *accord Flag*, 2010 WL 4537550, at *30 (noting "fees for foreign counsel" were among "customary and necessary expenses for a complex securities action"). That holding is not any less sound merely because the expert or consultant is a lawyer. The Objection must fail.

II. THE CLASS OVERWHELMINGLY SUPPORTS THE SETTLEMENT

The absence of objections or requests for exclusion from Class Members supports a finding that the Settlement, Plan of Allocation, and expense requests are fair, reasonable and adequate. *See, e.g., In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (approving settlement); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115809, at *14 (S.D.N.Y. Nov. 7, 2007) (approving plan of allocation to which no class member objected). "[T]he favorable reaction . . . of class members . . . is perhaps the most significant factor" in assessing a settlement's adequacy. *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 119 (2d Cir. 2005); *see also In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 176 (S.D.N.Y. 2014) (absence of objections and minimal opt-outs were evidence of approval).

Further substantiating the fairness and reasonableness of the Settlement is Lead Counsel's decision to forgo a fee and seek a limited award of expenses (below the amount it actually incurred), vesting the Class with a greater recovery than investors in comparable securities cases – particularly a case involving the complexity and substantial professional time expended here.

III. NOTICE OF THE RESCHEDULED SETTLEMENT HEARING

As explained in the Murray Declaration, notice of the Settlement was widely disseminated by mail, as well as in *The Wall Street Journal* and online by *BusinessWire*. *See* Murray Decl., ¶¶3-4, 6. In fact, the claims administrator mailed almost 20,000 Notices to potential Class Members, brokers and nominees, and has received a very good rate of response. *Id*., ¶¶3-4, 9-10. And the Settlement website – at which various Settlement-related materials, including Lead Counsel's submissions, are available – has received over 900 hits. *Id*., ¶12. Due to an unintentional and regrettable oversight, however, the abbreviated Summary Notice was not published online on *Investor's Business Daily* or *PRNewswire*, or in *USA Today*. *Id*., ¶¶5-13. Because the Court adjourned the Settlement hearing, Lead Counsel respectfully proposes to publish notice of the rescheduled hearing in each publication identified in the Preliminary Approval Order if the Court finds it appropriate to do so.[5] *Id*., ¶13.

IV. CONCLUSION

Far from trying to protect the Class for an altruistic purpose, the Objection – which Leidos lacks standing to assert – is frivolous and misguided, seeking to deny reimbursement of an expense Lead Counsel incurred solely for the Class's benefit in opposing Leidos's Supreme Court appeal. Upholding the Objection would also be unprecedented, as it would improperly confer standing on ***all*** defendants to object to class-action settlements they negotiate and contravene settled law treating as expenses the cost of consultants and experts who received a flat or hourly rate in rendering services. The Settlement is a good result for the Class, which will receive distributions from the $6.5 million fund without a reduction for Lead Counsel's attorneys' fees. The Class agrees: to date, not one Class Member has objected to, or requested exclusion from, the Settlement.

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[5] Should the Court find any merit in the Objection or extend the deadlines for filing objections or requesting exclusion from the Class, notice of any such determination could also be provided to Class Members in advance of any rescheduled Settlement hearing. *See* Murray Decl., ¶13.

Accordingly, the Court should reject the Objection, set a new hearing date, and approve the Settlement and the awards requested by Lead Counsel and Plaintiffs.

DATED: January 15, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on January 15, 2020, I authorized the electronic filing of the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the e-mail addresses to those registered to receive such notice.

/s/ Joseph Russello
JOSEPH RUSSELLO