UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

IN RE THORNBURG MORTGAGE, INC. SECURITIES LITIGATION THIS DOCUMENT RELATES TO: ALL ACTIONS	Case No. CIV 07-815JB/WDS

CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Co-Lead Counsel bring this motion, with the approval of plaintiffs W. Allen Gage, individually and on behalf of J. David Wrather, Harry Rhodes, FFF Investments, LLC, Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust, Nicholas F. Aldrich, Sr., Betty L. Manning, John Learch and Boilermakers Lodge 154 Retirement Plan (collectively, "Plaintiffs"), for the entry of an order (i) awarding attorneys' fees in the amount of twenty percent (20%) of the Settlement Fund recovered on behalf of the Class; and (ii) awarding reimbursement of $243,145.93 in expenses that Plaintiffs' Counsel incurred to prosecute the Litigation, plus interest earned thereon.

This Motion is based upon (i) the Joint Declaration of Benjamin J. Sweet and Betsy C. Manifold in Support of Final Approval of Settlement, Plan of Allocation and Application for an Award of Attorneys' Fees and Expenses and the exhibits attached thereto; (ii) the Memorandum of Law in Support of Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and (iii) all other pleadings and matters of record; and such additional evidence or argument as may be presented at the hearing on August 27, 2012.

Co-Lead Counsel will submit a proposed Order and Final Judgment to the Court, along with Plaintiffs' reply submission, on or before August 20, 2012.

Opposing parties do not concur with this Motion.

Dated: July 23, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 23, 2012, the foregoing CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES was electronically filed with the Clerk of the court using the CM/ECF System, which will send notification of such filing to all counsel of record and declarant served the parties who are not registered participants of the CM/ECF System, via United States First Class Mail.

Turner W. Branch

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

IN RE THORNBURG MORTGAGE, INC. SECURITIES LITIGATION THIS DOCUMENT RELATES TO: ALL ACTIONS	Case No. CIV 07-815JB/WDS

MEMORANDUM OF LAW IN SUPPORT OF APPROVAL OF CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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In connection with the Court's final approval of the Settlement in the above-captioned litigation (the "Litigation"), Co-Lead Counsel, Wolf Haldenstein Adler Freeman & Herz LLP and Kessler Topaz Meltzer & Check, LLP ("Co-Lead Counsel"), with the approval of the Court-appointed Lead Plaintiffs W. Allen Gage, individually and on behalf of J. David Wrather; Harry Rhodes; FFF Investments, LLC; Robert Ippolito, individually and as Trustee for the Family Limited Partnership Trust; Nicholas F. Aldrich, Sr.; and Plaintiffs Betty L. Manning; John Learch and Boilermakers Lodge 154 Retirement Plan (collectively, "Plaintiffs"), respectfully submit this memorandum in support of their motion for an award of attorneys' fees and expenses. In consideration of Co-Lead Counsel's efforts and the recovery obtained for Plaintiffs and the Class, Co-Lead Counsel respectfully move this Court for: (i) an award of attorneys' fees in the amount of 20% of the Settlement Fund; and (ii) reimbursement of expenses incurred to prosecute the Litigation in the amount of $243,145.93, plus interest earned thereon.[1]

I. PRELIMINARY STATEMENT

While the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995) ("PSLRA") "significantly altered the landscape of attorneys' fee awards in securities class actions," one feature of that landscape was left untouched.[2] Namely, that "[i]f Class Counsel were not successful, they risked losing everything." *In re Enron Corp. Sec., Deriv. & "ERISA" Litig.*, 586 F. Supp. 2d 732, 790-91 (S.D. Tex. 2008). Here, due to considerable effort against overwhelming odds, Co-Lead Counsel obtained a recovery of $2,000,000 for the Class. To date, although the deadline to file an objection has not yet passed, only two objections have

[1] Capitalized terms not defined herein shall have those meanings ascribed to them in the Stipulation and Agreement of Settlement dated March 28, 2012 (the "Stipulation") and in the accompanying Joint Declaration of Benjamin J. Sweet and Betsy C. Manifold in Support of Final Approval of Settlement, Plan of Allocation and Application for an Award of Attorneys' Fees and Expenses (the "Joint Declaration" or "Joint Decl.").

[2] *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 180 (3d Cir. 2005).

been filed challenging the maximum amount of attorneys' fees set forth in the Notice. Co-Lead Counsel's current request for 20% of the Settlement Fund is five percent (5%) less than the amount of attorneys' fees set forth in the Notice.[3]

By providing a recovery of even some portion of the Class's potential recoverable damages, the Settlement avoids the very real risk of ***no*** recovery. This risk analysis is based on, *inter alia*: Thornburg Mortgage, Inc's ("TMI" or the "Company") bankruptcy, the limited amount of insurance coverage available to fund a settlement with the Individual Defendants or satisfy a future judgment, the limited liability of the remaining Individual Defendants, and the ability to collect any judgment from the remaining Individual Defendants.[4] As a result, even if the Litigation were to proceed, overcoming the remaining Individual Defendants' significant defenses to liability and establishing the Class's damages at trial, based only on the three statements issued by defendant Larry A. Goldstone ("Goldstone") during the Class Period, there would be a real risk of dismissal on summary judgment or an adverse verdict for Plaintiffs at

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[3] The Notice advises recipients that Co-Lead Counsel will apply to the Court for attorneys' fees not to exceed 25% of the Settlement Fund. As of July 20, 2012, nearly 214,000 copies of the Notice have been mailed to potential Class Members and nominees. *See* ¶9 of the Declaration of Josephine Bravata Concerning (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date, submitted on behalf of the Court-appointed claims administrator for this Settlement, Strategic Claims Services ("SCS"). Pursuant to the Court's Preliminary Approval Order dated April 23, 2012, and as set forth in the Notice, the deadline to file an objection is August 6, 2012. ECF No. 387 at 11.

[4] On May 1, 2009, TMI filed a petition for voluntary Chapter 11 bankruptcy in the United States Bankruptcy Court for the District of Maryland (the "Bankruptcy Court"). *See In re TMST, Inc. f/k/a Thornburg Mortgage, Inc., et al.*, No. 09-17787. On May 5, 2009, TMI filed a Suggestion of Bankruptcy in this Court asserting that its bankruptcy filing operated as an automatic stay of judicial proceedings against it under 11 U.S.C. §§ 362(a)(1) and 362(a)(3). ECF No. 193. On March 2, 2012, Plaintiffs voluntarily dismissed TMI from the Litigation with prejudice. ECF No. 384. *See* Joint Decl. at ¶18.

trial.[5] Further, even if successful at trial, it is uncertain whether Plaintiffs could recover from the remaining Individual Defendants an amount greater than the present Settlement.

Most importantly, the Settlement Amount of $2,000,000 essentially exhausts the available insurance proceeds for the remaining claims. Accordingly, the Settlement provides some recovery to the Class despite the aforementioned significant limitations.

Co-Lead Counsel recognize that, despite their efforts and achievements on behalf of the Class, "[i]t is [also] important to avoid awarding 'windfall fees' and any appearance of having done so for the integrity of the judicial system, legal profession and Rule 23."[6] Co-Lead Counsel appreciate that the Court has an independent obligation to ensure the reasonableness of any fee request and that this Court, in particular, takes this obligation seriously. Which leaves but one question – namely, whether Co-Lead Counsel's fee request of 20% of the $2 million recovery – or $400,000 – is "reasonable." 15 U.S.C. § 78u-4(a)(6).

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[5] By Amended Memorandum Opinion and Order dated January 27, 2010, the Court (i) dismissed all claims asserted under the Securities Exchange Act of 1934 ("Exchange Act"); (ii) dismissed the claims asserted under section 10(b) of the Exchange Act, with the exception of certain claims asserted against defendant Goldstone; (iii) dismissed all claims asserted under section 20(a) of the Exchange Act, with the exception of those claims asserted against Clarence D. Simmons ("Simmons"), defendant Goldstone, and Paul G. Decoff ("Decoff"); and (iv) reserved judgment as to the section 10(b) claims against TMI and the section 20(a) claims against defendants Simmons, Goldstone and Decoff (the "January 27, 2010 Opinion and Order"). ECF No. 252. Joint Decl. at ¶19. A separate Memorandum Opinion and Order also issued on January 27, 2010 dismissed all claims asserted against the Underwriter Defendants. ECF No. 251. *Id.* On June 2, 2011, the Court entered a memorandum opinion fully detailing the basis for its order dated March 31, 2011, and further ordered that it had reconsidered its January 27, 2010 Opinion and Order and would make no substantive change to its decisions, except for its decision to reserve ruling on the dismissal of the Plaintiffs' section 20(a) claims against defendants Goldstone, Simmons, and Decoff. ECF No. 360 at 99-104. Joint Decl. at ¶23

[6] *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05-0232, 2008 U.S. Dist. LEXIS 95437, at *36 (E.D. Pa. Nov. 21, 2008).

II. LEGAL STANDARDS

A. Awards of Attorneys' Fees Under Federal Rule of Civil Procedure 23

Under Federal Rule of Civil Procedure 23(e), the "claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval." In 2003, Rule 23(h) was adopted to more specifically address fee awards in the class action setting. Rule 23(h) states, in relevant part, that "[i]n a certified class action, the court may award ***reasonable*** attorney's fees and nontaxable costs that are authorized by law . . . ."

B. Attorneys' Fees Under the PSLRA

In common fund cases, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). In 1995, the PSLRA codified the percentage of recovery approach for awarding fees. 15 U.S.C. §78u-4(a)(6). To recover fees from a common fund, attorneys must demonstrate that their services were of some benefit to the fund or enhanced the adversarial process. The common fund doctrine provides for "the successful plaintiff [to be] awarded attorney fees because his suit creates 'a common fund, the economic benefit of which is shared by all members of the class.'" *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1444 (10th Cir. 1995) (quoting *Aguinaga v. United Food & Commercial Workers Int'l Union*, 993 F.2d 1480, 1482 (10th Cir. 1993)). Fee awards in meritorious cases also promote private enforcement of, and compliance with, the federal securities laws which "seek to maintain public confidence in the marketplace . . . . They do so by deterring fraud, in part, through the availability of private securities fraud actions." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345 (2005); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318 (2007).

The Tenth Circuit favors the percentage method for awarding attorneys' fees in common-fund cases such as this. In *Gottlieb v. Barry*, 43 F.3d 474, 484 (10th Cir. 1994) (awarding 22.5%

of $44 million settlement fund), for instance, the Court of Appeals explained that a percentage method for setting a fee "is less subjective than the lodestar plus multiplier approach," matches the marketplace most closely thus providing better incentive to counsel, and is better suited where class counsel "was initially retained on a contingent fee basis." *See also Uselton v. Commercial Lovelace Motor Freight*, 9 F.3d 849, 853 (10th Cir. 1993) (accepting the propriety of the percentage approach "rather than lodestar" in the awarding of attorneys' fees).

Further, "[the percentage] methodology rewards efficiency and provides plaintiffs' counsel with a strong incentive to effectuate the maximum possible recovery under the circumstances." *In re St. Paul Travelers Sec. Litig.*, Civil No. 04-3801 (JRT/FLN), 2006 U.S. Dist. LEXIS 23191, at *10 (D. Minn. Apr. 25, 2006); *see also In re N.M. Indirect Purchasers Microsoft Corp. Antitrust Litig.*, 149 P.3d 976, 993 (N.M. Ct. App. Nov. 15, 2006) ("The percentage method is preferred in some jurisdictions, including the Tenth Circuit, because this method rewards efficient and prompt resolutions of class actions.").

"Simply put, it is much easier and far less demanding of scarce judicial resources to calculate a percentage of the fund fee than to review hourly billing practices over a long, complex litigation." *In re Copley Pharm., Inc., "Albuterol" Prods. Liab. Litig.*, 1 F. Supp. 2d 1407, 1411 (D. Wyo. 1998).

III. THE REQUESTED FEE IS REASONABLE UNDER THE *JOHNSON* FACTORS

Although reasonable attorneys' fees in common fund cases may be awarded either by the percentage-of-the-fund method or the lodestar plus multiplier method, the Tenth Circuit has shown a preference for applying the percentage-of-the-fund method when calculating fees in common fund cases.[7] *See, e.g.*, *Gottlieb*, 43 F.3d at 482 ("the more recent trend [in determining

[7] *See, e.g.*, *Anderson v. Merit Energy Co.*, Civil Case No. 07-cv-0916-LTB-BNB, 2009 U.S. Dist. LEXIS 100681, at *13 (D. Colo. Oct. 20, 2009) (applying percentage method); *Lewis v.*

a fee award in a common fund case] has been toward utilizing the percentage method in common fund cases"); *Ramah Navajo Chapter v. Norton*, 250 F. Supp. 2d 1303, 1306 (D.N.M. 2002) ("recent trend has been toward utilizing the percentage method in common fund cases"); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1269 (D. Kan. 2006) (noting that percentage of fund analysis is preferred method for awarding fees in common fund cases); *Vaszlavik v. Storage Tech. Corp.*, Civil Action No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *4 (D. Colo. Mar. 9, 2000) ("[w]hile enhanced lodestar cases remain instructive, the Tenth Circuit has expressed 'a preference for the percentage of the fund method'") (quoting *Rosenbaum*, 64 F.3d at 1445).[8]

Regardless of which of the two methods for determining attorneys' fees in common fund cases is utilized, courts in this jurisdiction have considered the factors set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) ("*Johnson*") for added guidance on setting reasonable fees. *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (noting that "federal courts have relied heavily on the factors articulated by the Fifth Circuit in [*Johnson*] in calculating and reviewing attorneys' fees awards"); *see also Lane v. Page*, No. CIV 06-1071 JB/ACT, 2012 U.S. Dist. LEXIS 74273, at *205 (D.N.M. May 22, 2012) ("*Lane*") (the Tenth Circuit "has adopted" the Fifth Circuit Test in *Johnson*).

The *Johnson* factors are as follows: (1) time and labor required; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) preclusion of other employment; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and results obtained;

Wal-Mart Stores, Inc., Case No. 02-cv-0944-CVE-FHM, 2006 U.S. Dist. LEXIS 87681, at *2-3 (N.D. Okla. Dec. 4, 2006) (same); *Millsap v. McDonnell Douglas Corp.*, No. 94-cv-0633 H(M), 2003 U.S. Dist. LEXIS 26223, at *21 (N.D. Okla. May 28, 2003) (same).

[8] *See, e.g.*, MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 at 187 (2004) (commenting that "the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common fund cases").

(9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. The weight to be given to each of the *Johnson* factors varies from case to case, and each factor is not always applicable in every case.[9] The factors applicable to this Litigation are addressed below.

A. The Amount Involved and the Results Obtained

"Courts have consistently held that the most important factor within [the *Johnson*] analysis is what results were obtained for the class." *Lane*, 2012 U.S. Dist. LEXIS 74273, at *215 (*citing Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).[10] The monetary result obtained, however, must be viewed in light of the risks of litigation and the specific circumstances of the case. As this Court noted in *Lane*, "[a]lthough [the roughly $3.7 million] may not be as large a Settlement fund as members of the class hoped to receive, and is probably less than class counsel wanted upon filing this action, it is significant given the real likelihood that the class could receive nothing." *Lane*, 2012 U.S. Dist. LEXIS 74273, at *218. Here, under difficult circumstances and a real risk of no recovery from the Settling Defendants, Co-Lead Counsel have obtained $2 million for the Class.

Based on the following factors (as well as the substantial expense and length of time that would be necessary to prosecute this Litigation through full merits discovery, trial and appeals,

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[9] *See Gottlieb*, 43 F.3d at 483 n.4. "[R]arely are all of the *Johnson* factors applicable." *Lane*, 2012 U.S. Dist. LEXIS 74273, at *206 (citation omitted). The following factors do not pertain to this Litigation: preclusion of other employment, time limitations imposed by the client or the circumstances, and the nature and length of the professional relationship with the client. Thus, Co-Lead Counsel will not analyze these factors.

[10] "This factor may be given a greater weight in a common fund case when the court determines that the recovery 'was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class.'" *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1151 (D. Colo. 2009) ("*Qwest I*").

and the significant uncertainties in predicting the outcome of this or any complex litigation), Co-Lead Counsel believe that the Class would face a substantial risk of ***no*** recovery if the Litigation were to continue:

(1) TMI's Chapter 11 bankruptcy filing and the absence of the alleged corporate wrongdoer from the Litigation;

(2) TMI's remaining director and officer ("D&O") insurance proceeds (*see* ECF No. 298, June 9, 2010 Hr'g Tr. at 43-44, explaining that TMI carries only $10 million in director and officer insurance, a substantial amount of which has already been advanced – and will continue to be advanced – to the multiple defense counsel in this case to pay their substantial legal fees);

(3) The dismissal of Plaintiffs' negligence-based Securities Act claims asserted against the Dismissed Defendants and Underwriter Defendants;

(4) Plaintiffs' remaining claims against the Individual Defendants consist entirely of a challenge to just three statements – alleged misstatements made by defendant Goldstone on June 6, 2007 (TMI focused "exclusively" on prime mortgage origination) and July 20, 2007 (TMI is "not an Alt-A lender"), and an alleged misstatement in TMI's March 3, 2008 Form 8-K signed by defendant Goldstone (ECF No. 260 at 98) that, "[t]o the extent that any other reverse purchase agreements [RPAs] contains a cross-default provision, the related lender, which may be an underwriter or its affiliate, could declare an event of default at any time"; and

(5) With the remaining three statements, Plaintiffs faced the uncertainty of proving materiality, falsity, scienter and loss causation at trial and, even if successful, faced the uncertainty that any Individual Defendant would have funds available to pay a substantial recovery for damaged investors.

Thus, although the Class's potential 10b-5 damages are substantial, a Settlement here avoids the very real risk of ***no*** recovery. It also avoids the risks Plaintiffs faced in overcoming the defenses that the Individual Defendants would likely assert if the Litigation were to continue (*e.g.*, that defendant Goldstone's statements did not artificially inflate the value of TMI's securities, that TMI had disclosed the truth about its Alt-A liabilities and RPAs, and that any loss in the value of TMI securities was due to the collapse of real estate values and the mortgage market in 2006 through 2008). Joint Decl. at ¶38.

That Co-Lead Counsel have secured any recovery in the face of such risks evinces the real significance of the Settlement obtained by Co-Lead Counsel.

B. The Customary Fee and Awards in Other Cases – The Percentage Requested Falls Well Within Those Awarded in This Circuit

"Under the percentage-of-the-find method, an appropriate starting point is the 25% benchmark established by the case law, with adjustments to be made up or down based on the factors articulated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." *Robles v. BrakeMasters Systems, Inc.*, No. CIV 10-0135 JB/WPL, 2011 U.S. Dist. LEXIS 14432, at *54-55 (D.N.M. Jan. 31, 2011) (*citing Ramah Navajo Chapter*, 250 F. Supp. 2d at 1316). The Tenth Circuit recognizes 25% of the fund as the "benchmark" award in common fund cases. *Millsap v. McDonnell Douglas Corp.*, Case No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, at *25 (N.D. Okla. May 28, 2003) (citing *Gottlieb*, 43 F.3d at 488). In fact, "regardless of whether a percentage of the fund or enhanced lodestar approach is used, class action fee awards are typically 30% of the fund created by the settlement." *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *4-6 (awarding 30% of settlement fund); *Horton v. Leading Edge Mktg. Inc.*, No. 04-cv-0212-EWN-CBS, 2008 U.S. Dist. LEXIS 11761, at *8 (D. Colo. Feb. 4, 2008) (fee of

23% was "less than the customary contingency fee of one-third of the recovery, and on the low end of the range of fees granted by federal courts in common fund cases").[11]

Here, a request for attorneys' fees of 20% falls on the lower end of the fee percentages awarded by courts in this jurisdiction in common fund cases.[12] Joint Decl. at ¶67. *See, e.g.*, *McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV 07-0933-M, 2008 U.S. Dist. LEXIS 86741, at *46 (W.D. Okla. 2008) (awarding 33% and noting that "[f]ees in the range of at least one-third of the common fund are frequently awarded in class action cases of this general variety"). Thus, Co-Lead Counsel's 20% fee request is fair and reasonable and below the customary fee awarded in similar cases.

C. Time and Labor Dedicated By Plaintiffs' Counsel Justifies the Requested Fee

The amount of time and labor Co-Lead Counsel dedicated to the prosecution and settlement of the Litigation with the Settling Defendants also demonstrates the reasonableness of the 20% fee request. As detailed in the accompanying Joint Declaration and as this Court is well aware, having issued several detailed and lengthy opinions, Co-Lead Counsel has vigorously prosecuted this Litigation against multiple sets of defendants for five years.

The present Settlement was reached only after extensive prosecution of this Litigation, including a thorough investigation into the Class's claims, which has included, *inter alia*,

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[11] *See also* 4 NEWBERG ET AL., NEWBERG ON CLASS ACTIONS § 14:6 at 551 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around ***one-third*** of the recovery.") (emphasis added).

[12] *See also In re Williams Sec. Litig.*, No. 02-CV-0072-SPF (FHM), ECF No. 1638, slip op. at 2 (N.D. Okla. Feb. 12, 2007) (25%); *Lewis*, 2006 U.S. Dist. LEXIS 87681, at *4-5 (33%); *In re Pre-Paid Sec., Inc. Litig.*, No. CIV-01-0182-C, ECF No. 132, slip op. at 9 (W.D. Okla. Dec. 10, 2004) (30%); *Cimarron Pipeline Const., Inc. v. Nat'l Council On Compensation Insurance, No.* Case Nos. CIV 89-822-T, CIV-1186-T, 1993 U.S. Dist. LEXIS 19969, at *4-5 (W.D. Okal. 1993) ("[f]ees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingent fee basis"). Unpublished opinions cited herein are attached as Exhibit 7 to the Joint Declaration.

reviewing and analyzing: (1) public documents pertaining to TMI and the other Defendants; (2) TMI's filings with the Securities and Exchange Commission ("SEC"); (3) press releases published by TMI; (4) analyst reports concerning TMI; (5) pleadings in other actions in which TMI or the Individual Defendants are/were a party; (6) pleadings and other documents filed in TMI's consolidated bankruptcy proceedings, *In re TMST, Inc. f/k/a Thornburg Mortgage, Inc., et al.,* No. 09-17787 (Bankr. D. Md.); (7) newspaper and magazine articles and other media coverage regarding TMI and the Individual Defendants; and (8) motions in the bankruptcy proceedings and exhibits attached thereto; as well as (9) interviews with, *inter alia*, former TMI employees; (10) consultation with experts; and (11) research of the applicable law with respect to the claims asserted in the Litigation and the potential defenses thereto.[13] Joint Decl. at ¶27. Co-Lead Counsel also devoted substantial time researching and crafting two comprehensive complaints; consulting with experts and bankruptcy counsel; briefing arguments made in several motions, including extensive motions to dismiss filed by defendants and Plaintiffs' Motion for Clarification; and engaging in arm's-length settlement negotiations with the Settling Defendants over the course of several months, followed by additional months of negotiating the terms of the Stipulation and drafting the related settlement documents. Joint Decl. at ¶59. These efforts paved the way for Co-Lead Counsel to obtain some financial recovery, where none was likely, for the Class. Co-Lead Counsel should be awarded a fee for their efforts.

Moreover, as demonstrated by the accompanying lodestar and expense submissions of Plaintiffs' Counsel, over 11,362 hours – resulting in an aggregate lodestar of $5,409,776.75 –

[13] Co-Lead Counsel will continue to perform legal work on behalf of the Class should the Court approve the proposed Settlement and continue to prosecute an appeal against the Underwriter Defendants. Additional resources will be expended assisting Class Members with their Proof of Claim forms and related inquiries and working with the claims administrator, SCS, to ensure the smooth progression of claims processing.

have been invested in this Litigation from inception through July 23, 2012.[14] *See* Joint Decl. at ¶59 and the lodestar and expense submissions attached as Exhibits 3 through 6 to the Joint Declaration; *see, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989). As a result, Co-Lead Counsel's request for 20% of the Settlement Fund (or, $400,000) results in a negative multiplier of 0.074 and amounts to ***less*** than 10% of the time actually spent on this case. *Id.* The request is also five percent (5%) less than the maximum amount of attorney's fees set forth in the Notice to the Class. In other words, Co-Lead Counsel's request for attorneys' fees reflects a very substantial discount on the time Plaintiffs' Counsel actually spent litigating the matter.

Even "if every attorney and paralegal who worked on this case billed at the relatively low rate of $200 per hour" as this Court considered in *Lane*, "the attorney's fees [approximately $2.3 million in this Litigation] would be in excess of the attorney's fee award requested" of $400,000. *Lane*, 2012 U.S. Dist. LEXIS 74273, at *207. Furthermore, given the complexity of the case, the number and substantial nature of Defendants' multiple motions to dismiss, and the extensive hearings before this Court, 11,362 hours of attorney and professional support staff time is reasonable. However, even if the Court cut these hours by 80% (and there is no reason to do so) and awarded an exceedingly low billing rate of $200 (which would be inappropriate in this complex case), the fees would still exceed the requested fee of $400,000.

The foregoing analysis heavily militates in favor of the reasonableness of Co-Lead Counsel's fee request, as courts have repeatedly recognized that the reasonableness of a fee request under the percentage method is "reinforced by evidence that the percentage fee would represent a negative multiplier of the lodestar." *In re Blech Sec. Litig.*, Nos. 94 CIV. 7696 (RWS), 95 CIV. 6422 (RWS), 2000 WL 661680, at *5 (S.D.N.Y. May 19, 2000); *see also In re*

[14] Time spent in connection with the continuing appeal against the Underwriter Defendants is not included in these figures.

Portal Software, Inc. Sec. Litig., No. C-03-5138 VRW, 2007 U.S. Dist. LEXIS 88886, at *43 (N.D. Cal. Nov. 26, 2007) (explaining that a negative multiplier suggests a percentage-based award is fair and reasonable based on the time and effort expended by class counsel); *In re Sterling & Foster, Inc. Sec. Litig.*, 238 F. Supp. 2d 480, 490 (E.D.N.Y. 2002) ("the fact that any reasonable fee would necessarily represent a negative multiplier of the lodestar supports an award at the higher end of the spectrum") (citations omitted).[15] Therefore, a 20% fee request is fair and reasonable when cross-checked against Plaintiffs' Counsel's lodestar. *See* Exhibits 3 through 6 to the Joint Declaration.

D. Novelty and Difficulty of the Legal and Factual Questions Presented

An analysis of the novelty and difficulty of the issues involved in the Litigation also favors granting Co-Lead Counsel's request for attorneys' fees. As Courts have noted, "[t]here are few simple class action cases involving securities law. This area of law may not be novel, but it generally is complex and difficult." *Qwest I*, 625 F. Supp. 2d at 1149. In this Litigation, not only were Plaintiffs faced with the inherent complexities involved in this type of action, but there were also additional complexities presented here, such as the number of Defendants (the Thornburg Defendants[16] and Underwriter Defendants), the different federal securities law claims

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[15] This Court should find that the lodestar cross-check and resulting negative multiplier of 0.074 underscores the reasonableness of Co-Lead Counsel's fee application. In *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, Civil Case No. 01-cv-1451-REB-CBS, 2006 U.S. Dist. LEXIS 71267, at *21 (D. Colo. Sept. 29, 2006) ("*Qwest II*"), the court explained that "[l]ead counsel who create a common fund for the benefit of a class are rewarded with fees that often are ***at least*** two times the reasonable lodestar figure, and in some cases reach as high as five to ten times the lodestar figure." *See also Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *7-8 (noting that "[c]ourts in common fund cases regularly award multipliers of ***two to three times the lodestar or more*** to compensate for risk and to reflect the quality of the work performed") (emphasis added); *In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming application of a 2.57 multiplier).

[16] The term "Thornburg Defendants" refers to Defendants Garrett Thornburg, Larry A. Goldstone, Joseph H. Badal, Paul G. Decoff, Clarence D. Simmons, and TMI.

against them, four separate securities offerings by TMI, and the intricacies surrounding TMI's bankruptcy, including the preservation of Company documents. *See* generally Joint Decl. at ¶60; *see also In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 632 (D. Colo. 1976) (finding this factor supported requested fees where "[t]he litigation … involved unique and substantial issues of law in the technical area of SEC Rule 10b-5, . . . difficult, complex and oft-disputed class action questions, and difficult questions regarding computation of damages").

1. The Litigation Involved Complex and Novel Issues

As this Court recently noted in *Lane v. Page*, 2012 U.S. Dist. LEXIS 74273, at *210, the fact that the Court's Memorandum Opinion(s) have been widely cited and relied upon by other courts "demonstrates the novelty of the issues presented this case," and that the Court has written over 365 pages of decisional authority in at least eight (8) separate Memorandum Opinions addressing the issues involved also "demonstrates the complexity of the case." *Id.* For example, the Court's Memorandum Opinion cited as *In re Thornburg Mortgage, Inc. Sec. Litig.*, 695 F. Supp. 2d 1165 (D.N.M. 2010) was widely cited by Courts in the Tenth Circuit and in other Circuits such as:

- *Winslow v. BancorpSouth, Inc.*, Case No. 10-0463, 2011 U.S. Dist. LEXIS 45559 (M.D. Tenn. Apr. 26, 2011);
- *In re Countrywide Fin. Corp. Mortgage-Backed Sec. Litig.*, Case Nos. 11-ML-2265 MRP (MANx) and 11-CV-10414 MRP (MANx), 2012 U.S. Dist. LEXIS 59620 (C.D. Cal. Apr. 16, 2012);
- *Philco Invs., Ltd. v. Martin*, Case No. C 10-2785 CRB, 2011 U.S. Dist. LEXIS 114314 (N.D. Cal. Oct. 4, 2011);
- *Maine State Ret. Sys. v. Countrywide Fin. Corp.*, Case No. 10-CV-0302 MRP (MANx), 2011 U.S. Dist. LEXIS 125203 (C.D. Cal. May 5, 2011);
- *Philco Invs., Ltd. v. Martin*, Case No. C 10-2785 CRB, 2011 U.S. Dist. LEXIS 12951 (N.D. Cal. Feb. 9, 2011);

- *Genesee County Employees' Ret. Sys. v. Thornburg Mortgage Sec. Trust 2006-3*, 825 F. Supp. 2d 1082 (D.N.M. 2011);
- *Archuleta v. Taos Living Center, LLC*, 791 F. Supp. 2d 1066 (D.N.M. 2011);
- *Wilms v. Laughlin*, Civil Action No. 10-CV-1671 ZLW-BNB, 2011 U.S. Dist. LEXIS 32776 (D. Colo. Mar. 28, 2011);
- *Two Old Hippies, LLC v. Catch the Bus, LLC*, 784 F. Supp. 2d 1200 (D.N.M. 2011);
- *Wilms v. Laughlin*, Civil Action No. 10-CV-1671 ZLW-BNB, 2011 U.S. Dist. LEXIS 1220 (D. Colo. Jan. 6, 2011); and
- *United Food and Commercial Workers Union v. Chesapeake Energy Corp.*, No. CIV 09-1114 D, 2010 U.S. Dist. LEXIS 92208 (D. Okla. Sept. 2, 2010). [17]

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[17] *See also* ***In re Thornburg Mortgage, Inc. Sec. Litig.*, 824 F. Supp. 2d 1214 (D.N.M. 2011)** (cited in *Silverstrand Invs. v. AMAG Pharms., Inc.*, No. 10-10470 NMG, 2011 U.S. Dist. LEXIS 90166, at *17 (D. Mass. Aug. 11, 2011) ("A breach of the duty to disclose under Item 303 may be actionable under § 11.)); ***In re Thornburg Mortgage, Inc. Sec. Litig.*, No. CIV 07-0815 JB/WDS, 2010 U.S. Dist. LEXIS 71295 (D.N.M. July 1, 2010)** (cited by motion (Plaintiffs' Suggestions in Opposition to Defendants' Motion for a Stay of Proceedings) in *Luman v. Anderson*, No. 08-CV-0514 W/HFS, 2008 U.S. Dist. Ct. Motions 67330, at *6-7 (W.D. Mo. June 10, 2011) ("Here, because there is no motion to dismiss pending . . . the PSLRA does not support a stay of discovery.") *See, e.g., In re Thornburg Mortg. Inc.*, No. CIV. 07-0815-JB/WDS, 2010 U.S. Dist. LEXIS 71295, at *33-*34 (D.N.M. Jul. 1, 2010) ("Once the motions to amend or to dismiss are no longer pending, the Court will lift the stay and the Lead Plaintiffs will be entitled to the discovery they seek.")); ***In re Thornburg Mortgage, Inc. Sec. Litig.*, 265 F.R.D. 571 (D.N.M. 2010)** (cited by *Cabot v. Wal-Mart Stores, Inc.*, No. CIV 11-0260 JB/RHS, 2012 U.S. Dist. LEXIS 55507, at *9 (D.N.M. Apr. 10, 2012) ("Under rule 15(a), the court should freely grant leave to amend a pleading where justice so requires. *See In re Thornburg Mortgage, Inc. Sec. Litig.*, 265 F.R.D. 571, 579-80 (D.N.M. 2010).")); *S2 Automation LLC v. Micron Tech., Inc.*, No. CIV 11-0884 JB/WDS, 2012 U.S. Dist. LEXIS 34106, at *32-33 (D.N.M. Mar. 5, 2012) ("Under rule 15(a) the court should freely grant leave to amend a pleading where justice so requires.")); ***In re Thornburg Mortgage, Inc. Sec. Litig.*, 683 F. Supp. 2d 1236 (D.N.M. 2010)** (cited by *United Food & Commercial Workers Union v. Chesapeake Energy Corp.*, No. CIV 09-1114-D, 2010 U.S. Dist. LEXIS 92208, at *12 (W.D. Okla. Sept. 2, 2010) ("Where a securities claim sounds in fraud, the complaint must also satisfy the heightened pleading standard of Fed. R. Civ. P. 9(b) and the Private Securities Litigation Reform Act of 1995 . . . thus requiring a plaintiff to plead fraud with particularity")); ***In re Thornburg Mortgage, Inc. Sec. Litig.*, No. CIV 07-0815 JB/WDS, 2009 U.S. Dist. LEXIS 124549 (D.N.M. Dec. 21, 2009)** (cited by *Martinez v. Martinez*, No. CIV 09-0281 JB/KBM, 2010 U.S. Dist. LEXIS 38109 (D.N.M. Mar. 30, 2010)); and ***In re Thornburg Mortgage, Inc. Sec. Litig.*, 629 F. Supp. 2d 1233 (D.N.M. 2009)** (cited by *Boilermakers Nat'l Annuity Trust Fund v. WaMu Mortgage Pass Through*

Joint Decl. at ¶60.

2. Plaintiffs Faced Substantial Difficulties in Establishing Liability, Loss Causation and Damages

Plaintiffs faced substantial risks in moving forward with the Litigation, and in opting to settle the Litigation with the Settling Defendants, Plaintiffs and Co-Lead Counsel considered the significant risks attendant to the Class's claims. For instance, the Court dismissed all the section 11 claims against the Underwriter and Thornburg Defendants and significantly narrowed the only remaining section 10b-5 claims against three Individual Defendants. In this Litigation, the Settling Parties disagree on nearly all factual and legal issues and, to this day, the Settling Defendants adamantly deny any liability. As they did in their motions to dismiss, the Settling Defendants were prepared to persuasively argue at trial that they did not act with the requisite scienter, that the alleged misstatements were not materially misleading, and that there was no control person liability. Joint Decl. at ¶¶35-37. All of these issues would adversely impact the Class were the Litigation to continue. Furthermore, while Plaintiffs disagreed with all of the Defendants' contentions and, respectfully, the Court's opinions significantly dismissing and narrowing the Plaintiffs' claims, there was a substantial risk of establishing ***no*** liability. *Id.*

Even if Plaintiffs ultimately succeeded in overcoming each and every defense the Individual Defendants could raise regarding liability, Plaintiffs faced risks to establishing causation and damages. Plaintiffs would be required to prove that three allegedly false and misleading statements attributed to defendant Goldstone artificially inflated the price of TMI securities from June 6, 2007 to the end of the Class Period, and that once TMI corrected these allegedly false statements, the price of TMI securities dropped, damaging Plaintiffs and the

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Certificates, Series 2006-AR1, Case No. C 09-0037 MJP, 2009 U.S. Dist. LEXIS 123089 (W.D. Wash. Dec. 18, 2009)).

Class. *Dura Pharms.*, 544 U.S. at 341-42. Plaintiffs would also be required to prove the amount of the artificial inflation. Joint Decl. at ¶38.

Although Co-Lead Counsel believe they would be able to present expert testimony to meet Plaintiffs' burden on loss causation and establish damages with respect to each alleged corrective disclosure, the remaining Individual Defendants undoubtedly would advocate for a substantially smaller damages figure or zero damages. Joint Decl. at ¶39. As the Court is doubtless aware, one can never predict how a jury will weigh the testimony of competing experts. As a result, the crucial element of damages would likely be reduced at trial to a "battle of the experts." *See In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001) ("establishing damages at trial would lead to a 'battle of experts' . . . with no guarantee whom the jury would believe"). As a result of the foregoing risks, the Class is by no means assured of a ruling in its favor. *See id.*

Further, even if the Settling Defendants were found liable and Plaintiffs could prove substantial damages, there are significant limitations in the ability to collect from the remaining Individual Defendants. Joint Decl. at ¶39.

E. The Skill Required and the Experience, Reputation, and Ability of the Attorneys Involved

The skill required and the experience, reputation, and ability of the attorneys, also support the requested fee award. *Qwest II*, 2006 U.S. Dist. LEXIS 71267, at *18-19 ("Particularly in a case as complex as this [securities class action]...[t]his factor carries significant weight because the plaintiff class likely would not have obtained any relief without the assistance of counsel with a high level of skill and expertise."). Co-Lead Counsel are among the nation's preeminent law firms in class action securities litigation and have successfully litigated these types of actions

in courts throughout the country. Joint Decl. at ¶62.[18] Court-appointed Liaison Counsel, the Branch Law Firm, and bankruptcy counsel, Lowenstein Sandler PC, are also skilled complex litigation firms that greatly assisted Co-Lead Counsel in the successful prosecution of this matter. *Id.* Co-Lead Counsel are grateful for their efforts and contributions to obtaining the present recovery for the Class.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Co-Lead Counsel. *See Qwest II*, 2006 U.S. Dist. LEXIS 71267, at *18 (finding that counsel for defendants were also "represented by lawyers of similar expertise and experience"); *Schwartz v. TXU Corp.*, Case No. 02-cv-2243-K, 2005 U.S. Dist. LEXIS 27077, at *100 (N.D. Tex. Nov. 8, 2005) (weighing standing of opposing counsel when determining attorneys' fees "because such standing reflects the challenge faced by plaintiffs' attorneys"). In this Litigation, the Defendants are represented by experienced and skilled defense firms, including some of the largest and well-respected defense firms in the world, such as Wilmer Hale LLP; Gibson, Dunn & Crutcher LLP; Williams & Connolly LLP; and Katten Muchin Rosenman LLP, which spared no effort in the defense of their respective clients' claims.

In the face of this formidable opposition, and in light of the various unfavorable circumstances present in this Litigation, Co-Lead Counsel were able to negotiate a $2 million recovery for the Class. Joint Decl. at ¶63.

F. Whether the Fee is Fixed or Contingent

Courts in this Circuit have found that "the risk of non-recovery" weighs heavily in considering an award of attorneys' fees. *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *9-10; *see also Qwest II*, 2006 U.S. Dist. LEXIS 71267, at *22 (contingent fee "is designed to reward

[18] *See* firm biographies for Plaintiffs' Counsel attached as Exhibits 3 through 6 to the Joint Declaration.

counsel for taking the risk of prosecuting a case without payment during the litigation, and the risk that the litigation may be unsuccessful"). For nearly five years, Co-Lead Counsel have litigated this Litigation on a wholly contingent basis, and have borne all the ***risk*** of this Litigation. Co-Lead Counsel understood from the outset that they were embarking on a complex, expensive and lengthy litigation, which would require the investment of hundreds of thousands of dollars and thousands of hours of attorney time, with no guarantee of ever being compensated for the investment of such time and money. Co-Lead Counsel also understood that Defendants would (and, in fact, did) retain large and highly experienced corporate defense firms to mount a strong defense. In undertaking this risk, Co-Lead Counsel were obligated to ensure that sufficient resources were dedicated to the prosecution of this Litigation. Joint Decl. at ¶64.

The risks of contingent litigation are highlighted by the fact that a dramatic change in the law can result in the dismissal of a claim after a great deal of time and effort has been expended on the case. For example, the Supreme Court eliminated a cause of action based on aiding and abetting under section 10(b) of the Exchange Act. *Cent. Bank of Denver, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994) (Kennedy, J.) As a result, many courts then dismissed long pending cases that otherwise stated a proper cause of action at the time they were brought. *See also Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008). Many other cases are lost on summary judgment after thousands of hours have been invested in successfully opposing motions to dismiss and pursuing discovery. Indeed, controlling authority demonstrates the real risks associated with such developments. *See, e.g.*, *In re Williams Sec. Litig.*, 558 F.3d 1130, 1143 (10th Cir. 2009) (affirming grant of summary judgment for energy company in PSLRA case). Recently, the Supreme Court has shown great interest in class action cases generally, as well as securities cases. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011)

(Scalia, J.); *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (Scalia, J.); *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869 (2010) (Scalia, J.). Thus, there existed a real risk that Co-Lead Counsel (and the Class) would invest substantial resources and efforts and receive nothing – a risk that became even greater following TMI's Chapter 11 bankruptcy filing, as well as the Court's dismissal of Plaintiffs' negligence-based Securities Act claims.

G. Undesirability of the Case

Securities cases have often been recognized as "undesirable" due to the financial burden on counsel, and the time demands of litigating class actions of this size and complexity. *Qwest II*, 2006 U.S. Dist. LEXIS 71267, at *27 (finding case undesirable, noting "[a]t a minimum, this case required lead counsel to advance large amounts of time, money, and other resources to determine if any recovery might be had"); *see also Millsap*, 2003 U.S. Dist. LEXIS 26223, at *41 ("This case is . . . undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant expenditures."); *Lucas v. Kmart Corp.*, No. 99-cv-1923-JLK-CBS, 2006 U.S. Dist. LEXIS 51420, at *20 (D. Colo. July 27, 2006) (finding complex class action to be "not a desirable case to take" given the risk of no recovery and legal issues involved). As stated above, Co-Lead Counsel pursued this Litigation on a contingent basis and faced substantial hurdles with respect to proving liability and damages.

IV. REACTION TO THE REQUESTED FEE BY THE CLASS

Although not specifically cited as a factor for consideration by the Tenth Circuit, courts also recognize the significance of the class members' reaction to the request for attorneys' fees and expenses. *See generally Qwest II*, 2006 U.S. Dist. LEXIS 71267, at *32. As of July 19, 2012, a total of 213,994 copies of the Notice have been mailed to potential Class Members and nominees, advising them that Co-Lead Counsel would be requesting an award of attorneys' fees not to exceed 25% of the Settlement Amount and reimbursement of out-of-pocket expenses not

to exceed $260,000 plus interest on both amounts at the same rate earned on the Settlement Fund, all to be paid from the Settlement Fund. Although the period to object has not yet expired, as of the filing of this memorandum, there have only been two objections to the amount of attorneys' fees and expenses set forth in the Notice. Joint Decl. at ¶58.[19] This minimal number of objections to date weighs in support of Co-Lead Counsel's fee request.

V. CO-LEAD COUNSEL ARE ENTITLED TO REIMBURSEMENT FOR THEIR REASONABLE LITIGATION EXPENSES

"As with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred." *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *11 (awarding $309,252 in expenses). Here, Co-Lead Counsel request reimbursement of out-of-pocket expenses, in the amount of $243,145.93, incurred by Plaintiffs' Counsel to date in connection with the prosecution of the Litigation on behalf of the Class and the subsequent resolution with the Settling Defendants. A large portion of these expenses was used to fund Plaintiffs' investigation – expenses critical to Co-Lead Counsel's success in achieving the proposed Settlement. Plaintiffs' Counsel's expenses arise from, *inter alia*: expert expenses, photocopying of documents, on-line research, postage, express mail and next day delivery, filing fees, transportation, meals, travel and other incidental expenses directly related to the prosecution of this Litigation. *See* Plaintiffs' Counsel's lodestar and expense submissions attached as Exhibits 3 through 6 to the Joint Declaration. As stated above, to date, only two objections to the amount of attorneys' fees and expenses set forth in the Notice

[19] The deadline for submitting objections is August 6, 2012. Should any objections be received after the date of this submission, they will be collectively addressed by Co-Lead Counsel, along with the two objections filed to date, in a submission to be filed with the Court on or before August 20, 2012.

have been received. Joint Decl. at ¶70.[20] Accordingly, Co-Lead Counsel respectfully request reimbursement for these reasonable expenses.

VI. CONCLUSION

For the reasons set forth herein, Co-Lead Counsel respectfully request that the Court award: (i) attorneys' fees of 20% of the Settlement Amount, plus interest; and (ii) reimbursement of $243,145.93 in expenses incurred in successfully prosecuting and settling this Litigation with the Setting Defendants, plus interest.

Dated: July 23, 2012

Respectfully submitted,

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[20] As noted above, these two objections will be addressed in Co-Lead Counsel's submission to the Court on or before August 20, 2012 (after the deadline for objections has passed).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 23, 2012, the foregoing MEMORANDUM IN SUPPORT OF APPROVAL OF CO-LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES was electronically filed with the Clerk of the court using the CM/ECF System, which will send notification of such filing to all counsel of record and declarant served the parties who are not registered participants of the CM/ECF System, via United States First Class Mail.

Turner W. Branch