UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AMERICAN REALTY CAPITAL PROPERTIES, INC. LITIGATION	:	Civil Action No. 1:15-mc-00040-AKH
	:	CLASS ACTION
This Document Relates To:	:	
ALL ACTIONS.	:	

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

STATUTES, RULES AND REGULATIONS

I. INTRODUCTION

After more than five years of hard-fought litigation, Lead Counsel has secured a $1,025,000,000 cash payment for the benefit of the Class (the "Settlement"). If approved by the Court, the proposed Settlement would yield an outstanding recovery of approximately 50% of the Class's maximum recoverable damages – the highest percentage recovery of any major PSLRA class action prior to trial. In addition to being one of the 15 largest securities class action settlements in history, the Settlement Fund includes contributions of over $200 million by ARCP's former CEO and an entity he controls, and ARCP's former CFO, in addition to $49 million paid by ARCP's former outside auditor.[1] Contributions of this magnitude from former officer or director defendants have never before, to Lead Counsel's knowledge, been obtained in a PSLRA class action settlement. By any measure, the proposed Settlement is an incredible result.

Pursuant to an agreement negotiated between Lead Plaintiff TIAA ("TIAA") and Lead Counsel at the outset of the Litigation, counsel is requesting attorneys' fees equal to 12.4% of the Settlement Fund.[2] Under its agreement with TIAA, Robbins Geller was charged with advancing "all fees and expenses necessary" to prosecute the case, and in return, Lead Counsel is entitled to seek a fee pursuant to a tiered fee grid if a successful outcome was achieved. Silver Decl., ¶¶25-26. The

---

[1] Capitalized terms used herein are defined and have the meanings contained in the Stipulation of Settlement (ECF No. 1272) (the "Stipulation"), the accompanying Declaration of Debra J. Wyman in Support of: (1) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses (the "Wyman Decl."), and in the Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation ("Settlement Memorandum"), submitted concurrently herewith; *see also* Report of Professor Charles Silver in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Silver Decl."), ¶¶15, 24-29, submitted herewith. Citations are omitted and emphasis is added throughout unless otherwise indicated.

[2] *See* Declaration of Laurie A. Gomez in Support of Motions for Final Approval of Settlement and Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Gomez Decl."), submitted herewith.

tiered fee grid aligned the interests of counsel with that of the Class by incentivizing Lead Counsel to recover as much as possible for the Class and to maximize personal contributions from Individual Defendants. The fee agreement worked. TIAA and Lead Counsel have obtained a truly outstanding result for the Class.

Defendants were represented by a host of the finest law firms in the City of New York, and they pressed every issue imaginable – both legal and factual. Lead Counsel's accomplishments are particularly noteworthy considering the hurdles presented throughout this case.

Lead Counsel fought Defendants' counsel tooth-and-nail for five years, winning victories at every major stage of the Litigation: (1) defeating two rounds of Defendants' motions to dismiss requiring responses to 25 separate briefs; (2) successfully certifying a Class involving seven different securities and six different legal claims, over vigorous objections from Defendants; (3) defeating, in large measure, Defendants' 12 motions for summary judgment; and (4) obtaining summary judgment on collateral estoppel grounds for certain issues against two defendants. These victories were won with diligence, hard work and skill. Lead Counsel undertook exhaustive discovery efforts which included the collection and review of over 13 million pages of documents from Defendants, non-parties and Plaintiffs. Lead Counsel took and defended over 70 depositions of current and former officers, directors and employees of ARCP, AR Capital, Grant Thornton, experts and Plaintiffs. Lead Counsel also worked closely with four expert witnesses to provide detailed reports on various issues, including the complicated REIT and AFFO accounting and auditing issues central to the Class's claims, and market efficiency, causation and damages which Defendants continually attacked – issues upon which Defendants' main defenses to liability were based and which would have been the focus of Defendants' evidence at trial. And Lead Counsel had to counter the 17 expert witnesses proffered by Defendants as well.

The 12.4% fee requested falls below the usual and customary range that clients pay lawyers to handle complex commercial cases and well within the range of percentages that judges have approved in securities and other class actions, including those that have produced large recoveries. Silver Decl., ¶¶27, 44-66. Indeed, just last month, the Second Circuit affirmed a 13% attorneys' fee award in a $2.3 billion class action settlement. *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789 (LGS), 2018 U.S. Dist. LEXIS 191373, at *14 (S.D.N.Y. Nov. 8, 2018), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, No. 18-3673-cv, 2019 U.S. App. LEXIS 32828 (2d Cir. Nov. 1, 2019).

The amount that Defendants paid their counsel to defend the case provides further evidence that Lead Counsel's request is reasonable. At the time it announced the proposed Settlement, VEREIT disclosed that it alone had already paid "about $225 million" in attorneys' fees to defend itself against claims associated with the October 29, 2014 disclosures upon which Lead Plaintiff's claims are based. Silver Decl., ¶97. The 12.4% fee request represents a fraction of the amount VEREIT's lawyers received – without any risk of non-payment.

Lead Counsel's fee request is also supported by TIAA. *See* Gomez Decl., ¶9, filed herewith. This is significant as the Second Circuit has directed district courts to

> give serious consideration to negotiated fees because PSLRA lead plaintiffs often have a significant financial stake in the settlement, providing a powerful incentive to ensure that any fees resulting from that settlement are reasonable. In many cases, the agreed-upon fee will offer the best indication of a market rate, thus providing a good starting position for a district court's fee analysis.

In re Nortel Networks Corp. Sec. Litig., 539 F.3d 129, 133-34 (2d Cir. 2008); *Christine Asia Co. v. Ma*, No. 1:15-md-02631(CM)(SDA), 2019 U.S. Dist. LEXIS 179836, at *62 (S.D.N.Y. Oct. 16, 2019) ("While this Court need not adhere to that agreement, courts apply a presumption of

reasonableness where a fee request is consistent with an *ex ante* agreement.");[3] *see also* Silver Decl., ¶27 ("[M]y research determined that courts see no reason to award less than the fee that a sophisticated client with an interest in maximizing the net recovery thought it reasonable to pay.").

Lead Counsel also seeks an award of litigation costs, charges and expenses of $5,164,539.91. These expenses were reasonably and necessarily incurred in the prosecution of the Litigation, and amount to approximately 1/2 of 1% of the total Settlement Amount. The fee and expense award is commensurate with Plaintiffs' Counsel's collective efforts, the substantial risks they undertook, the outstanding results they achieved, and is in line with costs awarded in other complex, contingency fee cases. *See* Silver Decl., ¶¶67-73, Ex. 2. As set forth below, the relevant factors articulated by the Second Circuit strongly support the requested awards. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

As detailed here, in the Wyman Declaration and in the Settlement Memorandum, the proposed Settlement represents an unprecedented result for Lead Plaintiff and the Class, particularly when the significant litigation risks attendant in this Litigation and the recovery relative to maximum recoverable damages are considered. The $1.025 billion payment that Lead Counsel obtained provides the Class with an immediate and certain recovery in a case that faced substantial obstacles in light of Defendants' various defenses and the upcoming trial. In achieving this result, Lead

[3] *In re Credit Default Swaps Antitrust Litig.*, No. 13md2476 (DLC), 2016 U.S. Dist. LEXIS 54587, at *51 (S.D.N.Y. Apr. 25, 2016) ("Under the [PSLRA], there is a well-recognized 'presumption of correctness' given to the terms of an *ex ante* fee agreement between class counsel and lead plaintiff."); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 WL 5178546, at *15 (S.D.N.Y. Dec. 23, 2009) ("Since the passage of the PSLRA, courts have found such an agreement between fully informed lead plaintiffs and their counsel to be presumptively reasonable."); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001) ("courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected Lead Plaintiff and properly selected lead counsel").

Counsel worked more than 100,000 hours over the course of five years on this complex litigation, all on a contingency basis, with no guarantee of ever being paid.

II. HISTORY AND BACKGROUND OF THE LITIGATION

Lead Counsel invested substantial time and money in the prosecution of the Litigation, including investigating background facts, interviewing witnesses, drafting complaints, briefing dispositive motions, conducting discovery, reviewing documents, working with experts, preparing for, defending, and conducting fact and expert depositions, and preparing for the upcoming trial. A detailed description of Lead Plaintiff's claims and Lead Counsel's prosecution of this case is set forth in the accompanying Wyman Declaration. For the sake of brevity, the Court is respectfully referred to that declaration.

III. ARGUMENT

At the time it retained Lead Counsel, Lead Plaintiff negotiated a fee grid designed to maximize the recovery and align Lead Counsel's interests with the Class's.

Additionally, it was important to Lead Plaintiff that the individual wrongdoers primarily responsible for the illicit conduct at the center of Lead Plaintiff's claims contribute financially to any resolution. As an institution, Lead Plaintiff believes that when market participants are held to account in such a manner, it acts as a deterrent to others who may be contemplating misconduct as a means of inflating the prices of publicly traded securities, and ultimately causing damage to investors. Gomez Decl., ¶5. As such, Lead Plaintiff specifically included a term in its fee grid which was designed to encourage Lead Counsel to obtain material financial contributions from the individuals implicated in the wrongful conduct. Gomez Decl., ¶3; Silver Decl., ¶25.

Accordingly, the fee calculation begins by looking at the following sources of recovery:

Sources of Recovery

DEFENDANT GROUP	**AMOUNT**	
Non-Individual Defendants		
ARCP	$738,500,000	
Grant Thornton	$49,000,000	
Contribution in VEREIT's Custody	$31,972,934	
Sub-Total Non-Individual Contributions		$819,472,934
Individual Defendants		
AR Capital, ARC Advisors, Schorsch, Budko, Kahane and Weil	$193,027,066[4]	
Brian Block	$12,500,000	
Sub-Total Individual Contributions		$205,527,066
TOTAL SETTLEMENT AMOUNT		**$1,025,000,000**

The fee grid then utilizes those sources of recovery to calculate the fee as follows:

Non-Individual Defendant Contributions			
Incremental Settlement Funds	Fee (%)	Incremental Fee ($)	
$0 - $25,000,000	0%	$	0
$25,000,000 - $50,000,000	8.0%	$	2,000,000
$50,000,000 - $100,000,000	9.0%	$	4,500,000
$100,000,000 - $250,000,000	10.0%	$	15,000,000
$250,000,000 - $750,000,000	12.0%	$	60,000,000
Amount above $750,000,000	14.0%	$	9,726,211
Individual Defendant Contributions			
$205,527,066	17.5%	$	35,967,236
TOTAL	12.4%	$	127,193,447

The fee grid Lead Plaintiff negotiated achieved its objective. Lead Counsel aggressively litigated this case to the eve of trial and obtained a recovery that pays the Class more than twice as much (on a per share recovery basis) than settlements entered into by Defendants with plaintiffs who opted-out of the Class and settled early. The recovery of 50% of the Class's damages is

[4] Although the contribution from this group to the Settlement was $225 million, they previously transferred $31,972,934 of this sum to VEREIT pursuant to a settlement with the SEC. Accordingly, in an effort to be conservative, the fee request only applies the 17.5% rate to $193,027,066 of the $225 million, such that the $31,972,934 is calculated as being contributed by VEREIT and not the individuals named above.

unprecedented in a major PSLRA class action settled prior to trial. The proposed Settlement includes over $200 million contributed by defendants Schorsch, Block, and the partnership Schorsch controls. The individual contributions to the Settlement Fund eclipse, several times over, any payments made in prior cases by current or former officers or directors of a public company. By any measure, the 12.4% fee requested by Lead Counsel is fair and reasonable, and should be awarded.

A. A Fee Award of 12.4% of the Settlement Fund Is Fair and Reasonable in the Context of This Case

1. The Settlement Fund Creates a Common Fund for the Benefit of the Class

The Supreme Court and Second Circuit have long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger*, 209 F.3d at 47; *Savoie v. Merchs. Bank*, 166 F.3d 456, 459-60 (2d Cir. 1999). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *59; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007). For the common fund doctrine to apply, "'the applicant's efforts must confer a "substantial benefit on the members of an ascertainable class."'" *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *59.

Here, Lead Counsel have secured a cash payment of $1.025 billion for the direct benefit of the certified Class. It is appropriate for the Court to award a fee to Lead Counsel from this fund as it "will equitably shift the costs of litigation to the group benefitting from the Settlement, *i.e.*, the Class." *Id.*

2. The Court Should Award a Fee Using the Percentage-of-the-Fund Method

The Second Circuit permits courts to award attorneys' fees in common fund cases under the "percentage-of-the-fund" method or "lodestar" method. *McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). Courts routinely find that the percentage-of-the-fund method, under which counsel is awarded a percentage of the fund that they created, is the preferred means to determine a fee because it "'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A.*, 396 F.3d 96, 122 (2d Cir. 2005); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014).[5] The Second Circuit has expressly approved the percentage-of-the-fund method, and more than a decade ago acknowledged that the "trend in this Circuit is toward the percentage method." *Wal-Mart*, 396 F.3d at 122; *Goldberger*, 209 F.3d at 48-49 (recognizing that "the lodestar method proved vexing" and had resulted in "an inevitable waste of judicial resources"); *Savoie*, 166 F.3d at 460 (stating that the "percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases"). Recently, the Second Circuit reaffirmed these principles in rejecting an objection to using the percentage-of-the-fund method in PSLRA cases, reaffirming that the percentage-of-the-fund method is appropriate to use in awarding attorneys' fees in PSLRA cases. *Fresno Cty. Emps. Ret. Ass'n v. Isaacson*, 925 F.3d 63, 72 (2d Cir. 2019).

[5] *See also Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013) ("[A]s the district court recognized, the prospect of a percentage fee award from a common settlement fund, as here, aligns the interests of class counsel with those of the class."); *Foreign Exch.*, 2018 U.S. Dist. LEXIS 191373, at *14 (adopting the percentage method in awarding 13% fee in $2.3 billion settlement).

The determination of attorneys' fees using the percentage-of-the-fund method is also supported by the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a ***reasonable percentage*** of the amount" recovered for the class. 15 U.S.C. §78u-4(a)(6). Courts have concluded that, by drafting the PSLRA in such a manner, Congress expressed a preference for the percentage-of-the-fund, as opposed to the lodestar, method of determining attorneys' fees in securities class actions. *See Veeco*, 2007 WL 4115808, at *3; *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 465-66 (S.D.N.Y. 2004); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002); *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001).

The percentage-of-the-fund method is the appropriate manner in which to award attorneys' fees in this Litigation. The percentage-of-the-fund approach recognizes that the quality of counsel's services is measured best by the results achieved and is most consistent with the system typically used in the marketplace to compensate attorneys in non-class contingency cases.[6] Silver Decl., ¶¶34-43. Lead Counsel enabled the Class to recover 50% of their recoverable damages, an unprecedented result in a pre-trial settlement in a major PSLRA case. Not only is the result extraordinary, the percentage of the Settlement Fund that Lead Counsel requests it be paid is fair and reasonable in light of the substantial benefit Lead Counsel's work has conferred on the Class.

---

[6] *See, e.g.*, *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) ("The percentage method better aligns the incentives of plaintiffs' counsel with those of the class members because it bases the attorneys' fees on the results they achieve for their clients, rather than on the number of motions they file, documents they review, or hours they work. . . . The percentage method also accords with the overwhelming prevalence of contingency fees in the market for plaintiffs' counsel."); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 184 (W.D.N.Y. 2011) (the "advantages of the percentage method . . . are that it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made, and that it is consistent with the system typically used by individual clients to compensate their attorneys").

3. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). An "'ideal proxy' for the award should reflect the fees upon which common fund plaintiffs negotiating in an efficient market for legal services would agree." *Colgate-Palmolive*, 36 F. Supp. 3d at 532. If this were a non-class action, the customary fee arrangement would be contingent and in the range of 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 904 (1984) ("'In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.'") (Brennan, J., concurring); *see also* Silver Decl., ¶¶34-66.

Here, the Court does not need an "ideal proxy" for what counsel would receive if they were bargaining for their services in the marketplace, it has the fee grid negotiated by TIAA at the outset of the Litigation which was designed to incentivize Lead Counsel to maximize the recovery for the Class. *See* Gomez Decl., ¶3; Silver Decl., ¶¶25-26; 28-29. The incentives built into the agreement worked – Lead Counsel obtained an unprecedented recovery as a percentage of damages as well as the largest personal contributions that Lead Counsel is aware have ever been paid in a PSLRA class action. Silver Decl., ¶26. The requested 12.4% fee is well within the range of percentage fees awarded by courts within the Second Circuit and nationwide in other comparable securities, antitrust and other complex cases. *See Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *60-*61 (awarding 25% fee on $250 million settlement); *Foreign Exch.*, 2018 U.S. Dist. LEXIS 191373, at *26 (awarding 13% fee on $2.3 billion settlement); *Credit Default*, 2016 U.S. Dist. LEXIS 54587, at *55 (awarding 13.61% fee on $1.86 billion settlement). District courts around the country are in accord with respect to fee awards in class action cases yielding more than $1 billion. *See, e.g.*, *In re*

Syngenta AG MIR 162 Corn Litig. v. Syngenta AG, 357 F. Supp. 3d 1094, 1114 (D. Kan. 2019) (awarding 33-1/3% fee on $1.51 billion settlement); *Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc.*, No. 02 C-5983, 2016 WL 10571774, at *1 (N.D. Ill. Nov. 10, 2016) (awarding 24.68% fee on $1.575 billion settlement); *In re Merck & Co.*, MDL No. 1658 (SRC), 2016 U.S. Dist. LEXIS 150769 (D.N.J. June 28, 2016) (awarding 20% fee on $1.062 billion settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *20 (N.D. Cal. Apr. 3, 2013) (awarding 28.6% fee on $1.080 billion settlement); *In re Tyco Int'l, Ltd.*, 535 F. Supp. 2d 249 (D.N.H. 2007) (awarding fees of 14.5% on $3.2 billion recovery); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1241 (S.D. Fla. 2006) (awarding 31.33% fee on $1.075 billion settlement); *see also* Silver Decl., Ex. 2.

4. The Fee Request Is Reasonable Under the Lodestar Method

When using the percentage-of-the-fund method, courts can also look to "hours as a 'cross check' of the reasonableness of the requested percentage," *Goldberger*, 209 F.3d at 50, "to ensure than an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. When used as a "mere cross-check, the hours documented need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

"Under the lodestar method, the court must engage in a two-step analysis: first, to determine the lodestar, the court multiplies the number of hours each attorney spent on the case by each attorney's reasonable hourly rate; and second, the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work." *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM) (GWG), 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014). Performing the

lodestar calculation here confirms that the fee requested by Lead Counsel is reasonable and should be approved.

Lead Counsel and its paraprofessionals have spent, in the aggregate, 100,691.99 hours in the prosecution of this case producing a total lodestar amount of $65,680,342.10 when multiplied by Lead Counsel's current billing rates. *See* accompanying Declaration of Debra J. Wyman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶4 ("Robbins Geller Decl.").[7] The 12.4% of the Settlement Fund requested by Plaintiffs' Counsel represents a slight multiplier of 1.94 to Lead Counsel's lodestar.[8]

The multiplier of 1.94 in this Litigation is also within (if not well below) the range of multipliers commonly awarded in securities class actions and other comparable litigation. Indeed, in complex contingent litigation, lodestar multipliers between 2 and 5 are commonly awarded. *See Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable on appeal); *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *66-*67 (awarding fee representing a 2.15 multiplier, which court found to be "well within the range commonly awarded in securities class actions of this complexity and magnitude"); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (awarding fee representing a multiplier of 4.7); *In re BHP Billiton Ltd. Sec. Litig.*, No. 1:16-cv-01445-NRB, 2019 WL 1577313, at *1 (S.D.N.Y. Apr. 10, 2019) (awarding fee

[7] In determining whether the rates are reasonable, the Court should take into account the attorneys' professional reputation, experience, and status. Here, Lead Counsel are experienced securities practitioners with track records of success, with Robbins Geller being among the most prominent and well-regarded securities practitioners in the nation. Therefore, the hourly rates are reasonable here. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *22 (S.D.N.Y. Feb. 1, 2007) (approving counsel's hourly rates). *See also* Silver Decl., ¶¶98-107.

[8] The Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Jenkins*, 491 U.S. at 283-84.

representing a 2.7 multiplier); *Foreign Exch.*, 2018 U.S. Dist. LEXIS 191373, at *25 (awarding fee representing a 1.72 multiplier, finding that such multiplier was "within the typical range for megafund cases").[9]

As detailed in the Wyman Declaration, Lead Counsel invested substantial time and effort prosecuting this Litigation for the past five years against dozens of defendants to a successful completion. This was not an easy case. The issues in this case were complex, involving dozens of defendants and six different legal claims. Defendants were represented by some of the most experienced and capable law firms in the country and mounted aggressive attacks on Lead Plaintiff's claims at every stage. While Lead Counsel is confident that it built a solid evidentiary record sufficient to win a verdict at trial, Defendants had also developed substantial evidence to support their defenses to liability. Success at trial was far from guaranteed. In cases of this nature, fees representing multiples above lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. *See In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("'a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors'"); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 WL 2653354, at *5 (E.D.N.Y. June 24,

[9] *See also Davis*, 827 F. Supp. 2d at 185 (awarding fee representing multiplier of 5.3, which was "not atypical" in similar cases); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) ("In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court."); *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (finding 3.14 lodestar multiplier "within the range of multipliers approved in this Circuit"); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (awarding 21% fee representing a 3.9 multiplier); *Credit Default*, 2016 U.S. Dist. LEXIS 54587, at *54 (approving $253.8 million fee based on multiplier of "just over 6" in a case that settled before class certification).

2010) ("Where, as here, counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar."). The requested fee, therefore, is manifestly reasonable, whether calculated as a percentage of the fund or in relation to Lead Counsel's lodestar. Moreover, as discussed below, each of the factors cited by the Second Circuit in *Goldberger* also strongly supports a finding that the requested fee is reasonable.

B. The Requested Fee Is Reasonable Under Second Circuit Precedent

In *Goldberger*, the Second Circuit explained that whether the court uses the percentage-of-the-fund method or the lodestar approach, it should continue to consider the traditional criteria to determine a reasonable fee in common fund cases, including: (1) the time and labor expended by counsel; (2) the risks of the litigation; (3) the magnitude and complexity of the litigation; (4) the requested fee in relation to the settlement; (5) the quality of representation; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50. Consideration of these factors further demonstrate that the requested fee is fair and reasonable.

1. The Time and Labor Expended by Counsel

Lead Counsel has expended substantial time and effort pursuing the Litigation on behalf of the Class. As detailed in the Wyman Declaration, submitted herewith, Lead Counsel, among other things:

> (i) opposed and largely defeated Defendants' two rounds of motions to dismiss the Complaint, responding to 25 separate briefs submitted by defendants;
>
> (ii) obtained class certification after a full-day evidentiary hearing and withstood Defendants' Rule 23(f) petitions;
>
> (iii) conducted extensive discovery, which included a review and analysis of over 12 million pages of documents produced by Defendants and third parties;
>
> (iv) defended or participated in 12 depositions of TIAA and the class representatives relating to class certification, as well as the parties' expert witnesses on market efficiency issues;

(v) took 40 depositions of fact witnesses – many of which spanned multiple days;

(vi) responded to discovery propounded by Defendants, including document requests, and deposition notices;

(vii) filed several complex discovery-related motions relating to claims of attorney-client privilege;

(viii) opposed and largely defeated Defendants' 12 separate motions for summary judgment and motion to de-certify the class, and obtained partial summary judgment against certain Defendants;

(ix) completed expert discovery, which included working with Lead Plaintiff's four experts as they drafted and finalized their reports, along with the taking or defending the depositions of the parties' 21 experts;

(x) drafted 12 motions *in limine* and opposed Defendants' 32 motions *in limine* and motion for severance;

(xi) drafted eight *Daubert* motions to exclude certain of Defendants' experts and opposed Defendants' eight *Daubert* motions against Lead Plaintiff's experts;

(xii) meticulously began preparing for trial, including the selection of over 600 exhibits, identifying Lead Plaintiff's final witness list, designating deposition testimony, and building trial witness files; and

(xiii) upon reaching the agreement to settle, Lead Counsel, with the assistance of its damages expert, prepared the proposed Plan of Allocation based primarily on an analysis estimating the amount of artificial inflation in the price of ARCP Securities during the Class Period.

See generally Wyman Decl.

Throughout the Litigation, Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. Moreover, additional hours and resources will be expended by Lead Counsel assisting members of the Class with the completion and submission of their Proof of Claim and Release forms, shepherding the claims process, and responding to Class Member inquiries well after the Court's approval of the Settlement and requests for attorneys' fees and expenses. *See Aponte v. Comprehensive Health Mgmt.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *6 (S.D.N.Y. Apr. 2, 2013).

2. The Risks of the Litigation

a. The Contingent Nature of Lead Counsel's Representation Supports the Requested Fee

The Second Circuit has recognized that the risk associated with a case undertaken on a contingent fee is an important factor in determining an appropriate fee award:

> "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended."

Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974); *Goldberger*, 209 F.3d at 54. *See City of Providence*, 2014 WL 1883494, at *14 ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award.").[10] This risk encompasses not just the risk of no payment, but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992) (reversing district court's fee award where court failed to account for, among other things, risk of underpayment to counsel). When considering the reasonableness of attorneys' fees in a contingency action, the court should consider the risks of the litigation at the time the suit was brought. *Goldberger*, 209 F.3d at 55.

From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation. In undertaking that responsibility, Lead Counsel accepted the obligation to assure that sufficient attorney and paraprofessional resources were dedicated to prosecuting the Litigation and that funds were available to compensate staff and to pay for the considerable costs which a case such as this entails. Unlike Defendants' counsel, who have been paid substantial

[10] *See also Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award").

hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began in October 2014, and would have received no compensation or payment of its expenses had this case not been resolved successfully.[11] Under these circumstances, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *63 ("With an average lag time of several years for a case like this to conclude, the financial burdens on Plaintiffs' Counsel were greater than those for a firm paid on an ongoing basis.").

In addition to advancing litigation expenses, Lead Counsel faced the possibility that it would receive no attorneys' fees at all. Defendants asserted that Lead Plaintiff's claims would fail at trial because they contended the market was not deceived by ARCP's reported AFFO as Lead Plaintiff alleged. Wyman Decl., ¶¶412-430. Defendants developed substantial evidence in support of their defense, including offering no less than six expert witnesses who were prepared to testify that ARCP's AFFO disclosures were transparent and not misleading. If successful, Defendants' "truth-on-the-market" defense would result in a total victory at trial for Defendants, leaving the Class with no recovery for their damages.

Lead Counsel certainly could have encouraged Lead Plaintiff to settle this Litigation at the same level as the opt-out plaintiffs. Pursuant to these settlements, ARCP paid $233.2 million to settle claims with sophisticated institutional investors such as Vanguard, BlackRock, PIMCO and others who held more than a third of ARCP stock at the end of the Class Period. Even after these cases settled, based on those settlements, analysts predicted that the Class would receive

[11] At the time it announced the proposed Settlement, VEREIT disclosed that it had already paid almost $225 million in attorneys' fees to defend itself against claims associated with the October 29, 2014 disclosures upon which Lead Plaintiff's claims are based, and by settling this Litigation estimated it saved an additional $100 million in attorneys' fees by avoiding trial. Silver Decl., ¶97.

approximately $466.4 million. By shouldering the risk of continuing to litigate rather than taking the safe route of settling in line with what the opt-out plaintiffs received, Lead Counsel was able to obtain well more than twice that amount for the Class.[12]

There are numerous class actions in which counsel expended thousands of hours just like Lead Counsel here and yet received no remuneration despite their diligence and expertise. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713, 725 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *In re Oracle Corp. Sec. Litig.*, No. C 01-00988-SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (court granted summary judgment for defendants after eight years of litigation, after plaintiffs' counsel incurred over $7 million in expenses, and worked over 100,000 hours, representing a lodestar of approximately $40 million).[13]

Losses in contingent-fee litigations, especially those brought under the PSLRA, are exceedingly expensive. Lead Counsel's assumption of the contingency fee risk strongly supports the reasonableness of the requested fee. *See FLAG Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Marsh ERISA Litig.*,

---

[12] Jenna Greene, *Daily Dicta: Robbins Geller Settles Vereit Class for $1B. Are Opt-Out Plaintiffs Kicking Themselves?*" Law.com, Sept. 11, 2019, https://www.law.com/litigationdaily/2019/09/11/daily-dicta-robbins-geller-settles-vereit-class-for-1b-are-opt-out-plaintiffs-kicking-themselves/?slreturn=20191006194230.

[13] *See also In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW (EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1233 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on basis of 1994 Supreme Court opinion).

265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

b. Risks of Establishing Liability

While Lead Plaintiff remains confident in its ability to prove its claims, it recognizes that its ability to prove liability was far from certain. As detailed in the Wyman Declaration and in the Settlement Memorandum (§III.C.1.c.), Defendants raised numerous challenges to the falsity and materiality of the misstatements and omissions alleged and to whether they were made with scienter. Wyman Decl., ¶¶412-430. Therefore, whether Lead Plaintiff ultimately would prove liability was far from assured.

c. Risk of Establishing Causation and Damages

With respect to proving causation and damages, Defendants undoubtedly would continue to attack the causal link between Defendants' misstatements and Lead Plaintiff's damages. In fact, Defendants maintained throughout the Litigation that the October 29, 2014 disclosure upon which Lead Plaintiff's expert relied for his causation opinions were far narrower than Lead Plaintiff contended. As a result, according to Defendants, the damage calculations of Lead Plaintiff's expert were greatly overstated. If Defendants' argument was accepted by the jury at trial, the Class's damages would be severely limited, or entirely eliminated. Wyman Decl., ¶¶358-363, 425-427; Settlement Memorandum at §III.C.1.c. Lead Counsel believes that Defendants would never concede these points and would continue to press this defense at trial.

There is no way to know how a jury would decide these issues. The damage assessments of the parties' respective trial experts would become a "battle of experts." The outcome of such battles is never predictable, and there existed the very real possibility that a jury could be swayed by Defendants' experts to minimize the Class' damages or to show that the damages were attributable to

factors other than the alleged misstatements and omissions. Thus, even if Lead Plaintiff prevailed as to liability at trial, the judgment obtained could well have been only some fraction of the damages claimed.

3. The Magnitude and Complexity of the Litigation

The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys' fees requested by class counsel. *Goldberger*, 209 F.3d at 50. In cases that require more expertise, a larger percentage of the fund should be awarded to the lawyers who can competently bring and prosecute the case. *Id*. at 55. It is widely recognized that "shareholder actions are notoriously complex and difficult to prove." *In re Bayer AG Sec. Litig.*, No. 03 Civ. 1546 (WHP), 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008); *Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *63 ("Securities class actions in particular are 'notably difficult and notoriously uncertain.'"). This case was no exception. As described herein, this Litigation involved a number of difficult and complex questions concerning liability and damages that required extensive efforts by Lead Counsel and consultation with accounting and economic experts.

The trial of liability issues alone was estimated to last 6-8 weeks, involving substantial attorney and expert time, the introduction of voluminous documentary and deposition evidence, vigorously contested evidentiary motions, and the considerable expenditure of judicial resources. Because this case revolved around "difficult, complex, hotly disputed, and expert-intensive issues," this factor favors awarding a 12.4% fee. *City of Providence*, 2014 WL 1883494, at *16.

4. The Quality of Representation Supports the Requested Fee

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee. Lead Counsel submits that the quality of the representation here is best evidenced by the quality of the result achieved. *Christine Asia*, 2019 U.S. Dist. LEXIS

179836, at *64-*65. Here, Lead Counsel recovered approximately 50% of the maximum recoverable damages at trial, and demonstrated a great deal of skill in its representation of the Class. Lead Counsel are experienced securities class action and complex litigation practitioners. *See* www.rgrdlaw.com. This proposed Settlement is attributable to the diligence, determination and hard work of counsel, who developed, litigated, and successfully negotiated the proposed Settlement of this Litigation and a substantial cash recovery in a very difficult case, without the risk of further litigation and trial.

Finally, courts repeatedly recognize that the quality of the opposition faced by plaintiff's counsel should also be taken into consideration in assessing the quality of counsel's performance. *See, e.g.*, *Marsh ERISA*, 265 F.R.D. at 148 ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."); *Veeco*, 2007 WL 4115808, at *7 (among the factors supporting a 30% award of attorneys' fees was that defendants were represented by "one of the country's largest law firms"). Here, Defendants are represented by lawyers from a dozen of the country's premier defense firms, who presented a very skilled defense and spared no effort in representing their clients. Wyman Decl., ¶¶24-35, 42, 47-50, 54-60, 70-381; Phillips Decl., ¶¶7-15, 17, 19. Notwithstanding this formidable opposition, Lead Counsel's ability to present a strong case and to demonstrate its willingness to continue to vigorously prosecute the Litigation through trial, and inevitable appeals, enabled Lead Counsel to achieve a very favorable recovery for the benefit of the Class.

5. Public Policy Considerations

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. The Supreme Court "has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil

enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *see also Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities litigation is a "necessary supplement to [SEC] action"). As such, the Second Circuit has adopted the "commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51.

The Litigation here is far broader in scope and complexity than either the criminal actions against defendants Block and McAlister, or the enforcement actions undertaken by the SEC against various Defendants. Indeed, Lead Plaintiff did not piggyback its claims on those of any governmental agency, instead researching, analyzing and stating its claims prior to any governmental actions being revealed. For example, following the initiation of this lawsuit, ARCP's CFO Brian Block was indicated for securities fraud. And ARCP's CAO Lisa McAlister was also charged and entered a guilty plea. However, the theory of the case pursued by the Government limited their actionable conduct to statements made on July 29, 2014. Had Lead Plaintiff limited its claim to that same fraud, the maximum damages that could have been recovered by the Class would have been less than $290 million. The fee agreement entered into by TIAA incentivized Lead Counsel to pursue a broader, albeit riskier, theory of the case, where the actionable conduct began more than a year earlier. This risk paid off for the Class, which is now receiving more than 3.5 times the amount it could have received if it prevailed at trial under the Government's theory of the case.

Similarly, the public policy encouraging the prosecution of meritorious private securities litigation are compelling here considering the SEC recently settled its enforcement claims against defendant ARCP (VEREIT) for $8 million, or less than 1% of the $1.025 billion Lead Counsel obtained for the Class. *See Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *65; *Maley*, 186 F.

Supp. 2d at 373 ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered.").

6. The Class' Reaction to the Fee Request to Date Supports the Requested Fee

Finally, the reaction of Class Members to the Settlement and Lead Counsel's fee request confirms the reasonableness of the request. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-Civ. 8557 (CM), 2014 WL 7323417 at *18 (S.D.N.Y. Dec. 19, 2014) ("In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the Class to the fee request in deciding how large a fee to award."). To date, the Claims Administrator has sent more than 243,000 copies of the Court-approved Notice to potential Class Members and nominees informing them, *inter alia*, that Lead Counsel intended to apply to the Court for an award of attorneys' fees in an amount not to exceed 13% of the Settlement Amount, plus expenses not to exceed $6 million, plus interest on both amounts.[14] The time to object to the fee request expires on December 31, 2019. To date, not a single objection to the fee and expense amounts set forth in the Notice has been received. This uniformly positive reaction confirms the fee request's reasonableness. *See Telik*, 576 F. Supp. 2d at 594.

Additionally, Lead Plaintiff TIAA, an institutional investor charged by the Court and the PSLRA with responsibility for monitoring Lead Counsel, supports the fee request, which conforms to the fee grid negotiated with Lead Counsel at the outset of the Litigation. *See* Gomez Decl., ¶¶3, 9. Here, Lead Plaintiff played an active role in the Litigation and closely supervised the work of Lead Counsel. *See id.*, ¶¶4-5. Accordingly, Lead Plaintiff's endorsement of the fee request supports its approval.

[14] *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶12.

C. Plaintiffs' Counsel's Expenses Were Reasonably Incurred and Necessary to the Prosecution of This Litigation

Lead Counsel also respectfully requests an award of $5,164,539.91 in costs, charges, and expenses incurred while prosecuting the Litigation – substantially below the $6 million expense limit included in the Notice to the Class. Plaintiffs' Counsel have submitted declarations regarding these costs, charges, and expenses, which are properly recovered by counsel.[15] *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"'"); *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 costs, charges and expenses include, for example, the costs of hiring experts, document storage, travel, mediating the Class' claims, and computerized research. A complete breakdown by category of the expenses incurred is set forth in the Fee Declarations. These expenses were critical to Lead Plaintiff's success in achieving the proposed Settlement. *See Glob. 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

[15] *See* Robbins Geller Decl., ¶¶5-6; Declaration of Barbara Hart Filed on Behalf of Lowey Dannenberg, P.C., ¶¶5-6; Declaration of Gregg S. Levin Filed on Behalf of Motley Rice LLC, ¶¶5-6; Declaration of Frank J. Johnson Filed on Behalf of Johnson Fistel, LLP, ¶¶6-7; Declaration of Joseph H. Weiss Filed on Behalf of WeissLaw LLP, ¶¶5-6; Declaration of Howard Longman Filed on Behalf of Stull, Stull & Brody, ¶¶5-6; Declaration of James E. Notis Filed on Behalf of Gardy & Notis, LLP, ¶¶5-6; Declaration of Christopher S. Polaszek Filed on Behalf of The Polaszek Law Firm, PLLC, ¶5; Declaration of Julie Goldsmith Reiser Filed on Behalf of Cohen Milstein Sellers & Toll PLLC, ¶¶4-5 ("Fee Declarations"), submitted herewith.

which 'the paying, arms' length market' reimburses attorneys . . . [f]or this reason, they are properly chargeable to the Settlement fund."). The total expenses, which represent approximately 1/2 of 1% of the Settlement Amount, are consistent with the expense ratios for other settlements of this size. *See Christine Asia*, 2019 U.S. Dist. LEXIS 179836, at *69. 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.

IV. CONCLUSION

In light of the outstanding $1.025 billion settlement obtained here, the work necessary to reach this result, and the substantial risks undertaken and overcome, Lead Counsel respectfully requests that the Court award attorneys' fees of 12.4% of the Settlement Amount, plus costs, charges, and expenses in the amount of $5,164,539.91, plus interest thereon.

DATED: December 17, 2019

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
DARREN J. ROBBINS
MICHAEL J. DOWD
JONAH H. GOLDSTEIN
DEBRA J. WYMAN
JESSICA T. SHINNEFIELD

s/ Debra J. Wyman
DEBRA J. WYMAN

655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
darrenr@rgrdlaw.com
miked@rgrdlaw.com
jonahg@rgrdlaw.com
debraw@rgrdlaw.com
jshinnefield@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
SAMUEL H. RUDMAN
ROBERT M. ROTHMAN
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: 631/367-7100
631/367-1173 (fax)
srudman@rgrdlaw.com
rrothman@rgrdlaw.com

Lead Counsel for Lead Plaintiff and the Class

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 17, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman
DEBRA J. WYMAN

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: debraw@rgrdlaw.com

Mailing Information for a Case 1:15-mc-00040-AKH In re American Realty Capital Properties, Inc. Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Jeffrey Simon Abraham**
  jabraham@aftlaw.com
- **Robin L. Alperstein**
  ralperstein@beckerglynn.com,esteckhan@beckerglynn.com,hhill@beckerglynn.com
- **Antonia Marie Apps**
  aapps@milbank.com,ggreen@milbank.com,AutoDocketECF@milbank.com
- **Adam M. Apton**
  aapton@zlk.com
- **Karim Basaria**
  kbasaria@sidley.com
- **Khristoph Becker**
  kbecker@steptoe.com,spu@steptoe.com,ehartman@steptoe.com,ocorn@steptoe.com
- **Stanley D Bernstein**
  bernstein@bernlieb.com,birkeland@bernlieb.com,ecf@bernlieb.com
- **Rebecca A. Beynon**
  rbeynon@kellogghansen.com
- **Brian Roger Blais**
  brian.blais@usdoj.gov,usanys.ecf@usdoj.gov,CaseView.ECF@usdoj.gov
- **Jeffrey Craig Block**
  jeff@blockesq.com,jason@blockesq.com,pacer-blockleviton-9062@ecf.pacerpro.com
- **Kristen Leigh Bokhan**
  kristen.bokhan@kirkland.com
- **Adam Jerrod Bookman**
  adam.bookman@weil.com,adam-bookman-4279@ecf.pacerpro.com
- **Bruce Roger Braun**
  bbraun@sidley.com,nyefiling@sidley.com,efilingnotice@sidley.com,catherine.stewart@sidley.com,kbasaria@sidley.com,ntygesso@sidley.com,nconrad@sidley.com,b
  braun-9612@ecf.pacerpro.com
- **Kristina Anne Bunting**
  kbunting@paulweiss.com,mao_fednational@paulweiss.com
- **Jennifer Nunez Caringal**
  jcaringal@rgrdlaw.com,SCaesar@rgrdlaw.com,kmccormack@rgrdlaw.com,JCaringal@ecf.courtdrive.com
- **Alexandra Rebecca Clark**
  aclark@pkbllp.com
- **Neil Harris Conrad**
  nconrad@sidley.com,efilingnotice@sidley.com,neil-conrad-4222@ecf.pacerpro.com
- **Patrick Joseph Coughlin**
  patc@rgrdlaw.com,smiller@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jason Robert D'Agnenica**
  jasondag@ssbny.com
- **Glen DeValerio**
  gdevalerio@bermandevalerio.com,bdentremont@bermandevalerio.com,ecf@bermandevalerio.com,bmccarthy@bermandevalerio.com
- **Bruce Whitney Dona**
  bruce.dona@ksfcounsel.com
- **Michael Joseph Dowd**
  miked@rgrdlaw.com,debg@rgrdlaw.com,e_file_sd@rgrdlaw.com,tome@rgrdlaw.com
- **Daniel S. Drosman**
  ddrosman@rgrdlaw.com,E_File_SD@rgrdlaw.com,tholindrake@rgrdlaw.com,DanD@ecf.courtdrive.com
- **H. Miriam Farber**
  mfarber@shearman.com,managing-attorney-5081@ecf.pacerpro.com,CourtAlert@Shearman.com,miriam-farber-7421@ecf.pacerpro.com,manattyoffice@shearman.com
- **Meagan Alicia Farmer**
  mfarmer@gardylaw.com

- **Reid Mason Figel**
  rfigel@kellogghansen.com,fli@kellogghansen.com,cparra@kellogghansen.com
- **Christopher Lee Filburn**
  cfilburn@paulweiss.com,mao_fednational@paulweiss.com
- **Robert Craig Finkel**
  rfinkel@wolfpopper.com,cdunleavy@wolfpopper.com,mgianfagna@wolfpopper.com
- **Jason A. Forge**
  jforge@rgrdlaw.com,tholindrake@rgrdlaw.com,e_file_SD@rgrdlaw.com,JForge@ecf.courtdrive.com
- **Adam Fotiades**
  afotiades@zuckerman.com
- **Molly Bruder Fox**
  mbfox@steptoe.com
- **Christopher Louis Garcia**
  christopher.garcia@weil.com,mco.ecf@weil.com,evert.christensen@weil.com,christopher-garcia-1339@ecf.pacerpro.com,nymao@ecf.pacerpro.com
- **James Philip Gillespie**
  jgillespie@kirkland.com,kevin.mccarthy@kirkland.com,kenymanagingclerk@kirkland.com
- **Daniel Zachary Goldman**
  dgoldman@pkbllp.com
- **Andrew Edward Goldsmith**
  agoldsmith@kellogghansen.com,ecfnotices@kellogghansen.com,ggoldfeder@kellogghansen.com,ecf-2ff5a29c9f5d@ecf.pacerpro.com
- **Jonah H. Goldstein**
  jonahg@rgrdlaw.com
- **Douglas W. Greene**
  dgreene@bakerlaw.com,agougisha@bakerlaw.com,bhlitdocket@bakerlaw.com
- **Theresa Hsin-Yi Gue**
  tgue@pkbllp.com
- **John Gueli**
  jgueli@shearman.com,managing-attorney-5081@ecf.pacerpro.com,CourtAlert@Shearman.com,manattyoffice@shearman.com,john-gueli-5051@ecf.pacerpro.com
- **Adam Selim Hakki**
  ahakki@shearman.com,managing-attorney-5081@ecf.pacerpro.com,Courtalert@shearman.com,manattyoffice@shearman.com,adam-hakki-1816@ecf.pacerpro.com
- **John Louis Hardiman**
  hardimanj@sullcrom.com,john-hardiman-9552@ecf.pacerpro.com,s&cmanagingclerk@sullcrom.com
- **David Charles Harrison**
  dharrison@lowey.com
- **Barbara J. Hart**
  bhart@lowey.com
- **Steven P. Harte**
  steven@blockesq.com,pacer-blockleviton-9062@ecf.pacerpro.com
- **James Ormerod Heyworth , V**
  jheyworth@sidley.com,nyefiling@sidley.com,james-heyworth-0340@ecf.pacerpro.com
- **William Scott Holleman**
  holleman@bespc.com,ecf@bespc.com
- **Geoffrey Coyle Jarvis**
  gjarvis@ktmc.com,9343632420@filings.docketbird.com,mswift@ktmc.com
- **Frank James Johnson**
  frankj@johnsonandweaver.com,paralegal@johnsonandweaver.com
- **Rebecca M Katz**
  rkatz@katzlawnewyork.com,disaacson@motleyrice.com,dabel@motleyrice.com,lkorenblit@motleyrice.com,kweil@motleyrice.com
- **Christopher J. Keller**
  ckeller@labaton.com,5497918420@filings.docketbird.com,lpina@labaton.com,ElectronicCaseFiling@labaton.com
- **Michael Anthony Keough**
  mkeough@steptoe.com,ehartman@steptoe.com,docketadministrators@steptoe.com,rgillis@steptoe.com,ocorn@steptoe.com,cdecamp@steptoe.com
- **Phillip C. Kim**
  pkim@rosenlegal.com
- **Robert Klipper**
  rklipper@kellogghansen.com,jmarine@kellogghansen.com

- **Lawrence Paul Kolker**
  kolker@whafh.com
- **Alexia Dorothea Korberg**
  akorberg@paulweiss.com,mao_fednational@paulweiss.com
- **Daniel Jonathan Kramer**
  dkramer@paulweiss.com,mao_fednational@paulweiss.com
- **Larry Howard Krantz**
  lkrantz@krantzberman.com
- **Eric Albin Larson**
  elarson@mmmlaw.com,eeckard@mmmlaw.com
- **Angel P. Lau**
  alau@rgrdlaw.com,tdevries@rgrdlaw.com,alau@ecf.courtdrive.com
- **Grace Jheeyoung Lee**
  grace.lee@shearman.com,managing-attorney-5081@ecf.pacerpro.com,CourtAlert@Shearman.com,grace-lee-3889@ecf.pacerpro.com,manattyoffice@shearman.com,stephen.ross@shearman.com,mariusz.jedrzejewski@shearman.com
- **Justin David Lerer**
  jlerer@paulweiss.com,mao_fednational@paulweiss.com
- **Michelle Lynn Levin**
  mlevin@steptoe.com,spu@steptoe.com,ehartman@steptoe.com,ocorn@steptoe.com
- **Daniel Craig Lewis**
  daniel.lewis@shearman.com,managing-attorney-5081@ecf.pacerpro.com,daniel-lewis-6070@ecf.pacerpro.com,CourtAlert@Shearman.com,manattyoffice@shearman.com
- **Jeremy Alan Lieberman**
  jalieberman@pomlaw.com,ahood@pomlaw.com,disaacson@pomlaw.com,abarbosa@pomlaw.com
- **Neil Robert Lieberman**
  nlieberman@hsgllp.com,crodriguez@hsgllp.com,Managingclerk@hsgllp.com
- **Howard Theodore Longman**
  tsvi@aol.com,hlongman@ssbny.com
- **Morgan Paige Lucas**
  mlucas@steptoe.com,ehartman@steptoe.com,ocorn@steptoe.com
- **John Phillip MacNaughton**
  jpm@mmmlaw.com,wew@mmmlaw.com,elarson@mmmlaw.com
- **Michael David Margulies**
  mmargulies@carltonfields.com
- **Jerry Lee Marks**
  jmarks@milbank.com
- **Rita Kathleen Maxwell**
  rita.maxwell@bracewelllaw.com,mco@bracewelllaw.com
- **Francis Paul McConville**
  fmcconville@labaton.com,HChang@labaton.com,lpina@labaton.com,drogers@labaton.com,9849246420@filings.docketbird.com,electroniccasefiling@labaton.com
- **Glen Garrett McGorty**
  gmcgorty@crowell.com
- **Donald Alan Migliori**
  dmigliori@motleyrice.com,kdotson@motleyrice.com
- **Michael Campion Miller**
  mmiller@steptoe.com,spu@steptoe.com,ocorn@Steptoe.com,ehartman@steptoe.com
- **Mark Tamerlane Millkey**
  mmillkey@rgrdlaw.com,e_file_ny@rgrdlaw.com,MMillkey@ecf.courtdrive.com
- **Erin Jennifer Morgan**
  ejmorgan@paulweiss.com,mao_fednational@paulweiss.com
- **Christopher F. Moriarty**
  cmoriarty@motleyrice.com,sturman@sturman.ch
- **Daniel P. Moylan**
  dmoylan@zuckerman.com,jlinton@zuckerman.com,cvandergriff@zuckerman.com
- **Beth Mueller**
  beth.mueller@kirkland.com,lroberts@kirkland.com,kenymanagingclerk@kirkland.com

- **Mark Francis Murphy**
  mmurphy@steptoe.com
- **Sean Michael Nadel**
  snadel@kellogghansen.com
- **William H. Narwold**
  bnarwold@motleyrice.com,glevin@motleyrice.com,lmclaughlin@motleyrice.com,vlepine@motleyrice.com,ajanelle@motleyrice.com
- **Shawn Patrick Naunton**
  snaunton@zuckerman.com,lgehlbach@zuckerman.com
- **Gregory Mark Nespole**
  gnespole@zlk.com,jtash@zlk.com
- **Ivy T. Ngo**
  ingo@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jonathan Ohring**
  johring@milbank.com,DMarcou@milbank.com,mprostko@milbank.com,TQuinn@milbank.com,JKammerman@milbank.com,milbank@ecf.courtdrive.com,jon-ohring-4945@ecf.pacerpro.com,dhooks1@milbank.com,klandis@milbank.com,AutoDocketECF@milbank.com,ggreen@milbank.com,MGrier@milbank.com,molsson@milb
- **Bradley E Oppenheimer**
  boppenheimer@kellogghansen.com,ecf-780f0d54d6a1@ecf.pacerpro.com,ggoldfeder@kellogghansen.com
- **Guy Petrillo**
  gpetrillo@pkbllp.com
- **Ashley M. Price**
  APrice@rgrdlaw.com,aprice@ecf.courtdrive.com,e_file_sd@rgrdlaw.com,lmix@rgrdlaw.com
- **Kingdar Prussien**
  kprussien@milbank.com,autodocketecf@milbank.com
- **Arlen Pyenson**
  apyenson@crowell.com
- **Fei-Lu Qian**
  fqian@saxenawhite.com,e-file@saxenawhite.com,cwallace@saxenawhite.com
- **Leah Margaret Quadrino**
  lquadrino@steptoe.com,pparker@steptoe.com
- **Daniel Brett Rehns**
  drehns@hrsclaw.com,efilings@hrsclaw.com
- **Kenneth Mark Rehns**
  krehns@saxenawhite.com,krehns@cohenmilstein.com,e-file@saxenawhite.com,cwallace@saxenawhite.com
- **Julie Goldsmith Reiser**
  jreiser@cohenmilstein.com
- **Lorin L. Reisner**
  LReisner@paulweiss.com,mao_fednational@paulweiss.com
- **Joseph F. Rice**
  jrice@motleyrice.com
- **Ann Kimmel Ritter**
  aritter@motleyrice.com,glevin@motleyrice.com,kweil@motleyrice.com
- **Darren J. Robbins**
  e_file_sd@rgrdlaw.com,jcaringal@rgrdlaw.com
- **Lara Elizabeth Romansic**
  lromansic@steptoe.com
- **Laurence Matthew Rosen**
  lrosen@rosenlegal.com
- **David Avi Rosenfeld**
  drosenfeld@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com,drosenfeld@ecf.courtdrive.com
- **Robert M. Rothman**
  rrothman@rgrdlaw.com,e_file_ny@rgrdlaw.com,RRothman@ecf.courtdrive.com,e_file_sd@rgrdlaw.com
- **Samuel Howard Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,mblasy@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Peter George Safirstein**
  psafirstein@safirsteinmetcalf.com,sfeerick@safirsteinmetcalf.com

- **Michael Gerard Scavelli**
  mscavelli@steptoe.com,spu@steptoe.com,ehartman@steptoe.com,ocorn@steptoe.com
- **Jed Mastren Schwartz**
  jschwartz@milbank.com,jed-schwartz-8050@ecf.pacerpro.com,milbank@ecf.courtdrive.com,ggreen@milbank.com,AutoDocketECF@milbank.com
- **Kevin S. Sciarani**
  ksciarani@rgrdlaw.com,KSciarani@ecf.courtdrive.com,tdevries@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joseph R. Seidman**
  seidman@bernlieb.com
- **Jonathan Lucas Shapiro**
  jshapiro@kasowitz.com,courtnotices@kasowitz.com,autodocket@kasowitz.com
- **Jessica T. Shinnefield**
  jshinnefield@rgrdlaw.com,JShinnefield@ecf.courtdrive.com,landracchio@rgrdlaw.com
- **Thomas Michael Skelton**
  tskelton@lowey.com
- **Richard William Slack**
  richard.slack@weil.com,mco.ecf@weil.com,richard-slack-7880@ecf.pacerpro.com,adam.bookman@weil.com,Patrick.Branson@weil.com,nymao@ecf.pacerpro.com,evert.christensen@weil.com,Raquel.Kellert@weil.com
- **Patrick Kevin Slyne**
  pkslyne@ssbny.com
- **Patrick C Smith**
  psmith@dehay.com
- **Audra Jan Soloway**
  asoloway@paulweiss.com,mao_fednational@paulweiss.com
- **Luigi Spadafora**
  spadafora.l@wssllp.com
- **Kendra L Stead**
  kstead@sidley.com,efilingnotice@sidley.com,jdent@sidley.com,kendra-stead-0480@ecf.pacerpro.com
- **Michael Howard Steinberg**
  steinbergm@sullcrom.com,michael-h-steinberg-5026@ecf.pacerpro.com,s&cmanagingclerk@sullcrom.com
- **Christopher D. Stewart**
  cstewart@rgrdlaw.com,karenc@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Elizabeth Johnson Stewart**
  elizabeth.stewart@shearman.com,managing-attorney-5081@ecf.pacerpro.com,CourtAlert@Shearman.com,elizabeth-stewart-0821@ecf.pacerpro.com,manattyoffice@shearman.com
- **Ellen Anne Gusikoff Stewart**
  elleng@rgrdlaw.com
- **Daniel Ben Tehrani**
  Daniel.Tehrani@usdoj.gov,CaseView.ECF@usdoj.gov
- **Steven Jeffrey Toll**
  stoll@cohenmilstein.com,efilings@cohenmilstein.com
- **Matthew Tracy**
  tracy.m@wssllp.com
- **Nicholas Tygesson**
  ntygesso@sidley.com
- **Anil Karim Vassanji**
  avassanji@fklaw.com
- **Melanie Elizabeth Walker**
  mewalker@sidley.com,melanie-walker-7174@ecf.pacerpro.com,efilingnotice@sidley.com
- **Reid Weingarten**
  rweingarten@steptoe.com
- **Joseph Harry Weiss**
  jweiss@weisslawllp.com,infony@weisslawllp.com,joshua-rubin-1257@ecf.pacerpro.com,exec@weisslawllp.com
- **Theodore Von Wells , Jr**
  twells@paulweiss.com,mao_fednational@paulweiss.com
- **Collin White**
  cwhite@kellogghansen.com

- **Regis C. Worley , Jr**
  rworley@rgrdlaw.com

- **Debra J. Wyman**
  debraw@rgrdlaw.com,DebraW@ecf.courtdrive.com,e_file_sd@rgrdlaw.com,scaesar@rgrdlaw.com

- **Genevieve Graeme York-Erwin**
  gyorkerwin@bakerlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Ar Capital LLC
,

Dwight Phillip Bostwick
Zuckerman Spaeder, LLP
1800 M Street, N.W., Ste. 1000
Washington, DC 20036-5802

Scott Alexander Edelman
Milbank LLP
55 Hudson Yards
New York City, NY 10001-2163

Kevin Patton
,

William Taylor
Zuckerman Spaeder LLP
1800 M Street, N.W
Washington, DC 20036

David C. Walton
Robbins Geller Rudman & Dowd LLP (SANDIEGO)
655 West Broadway
Suite 1900
San Diego, CA 92101

Abby M. Wenzel
,