UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CELADON GROUP, INC. SECURITIES LITIGATION	No. 17-cv-02828-JFK

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

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Court-appointed Lead Counsel, Labaton Sucharow LLP ("Labaton Sucharow"), respectfully submits this memorandum of law in support of its motion, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees in the amount of 25% of the Settlement Fund, which would calculate to $1,375,000.[1] Lead Counsel also seeks payment of $104,492.40 in litigation expenses that counsel reasonably incurred in prosecuting the Action.[2]

PRELIMINARY STATEMENT

The proposed Settlement, if approved by the Court, will resolve this case in its entirety in exchange for a $5.5 million cash payment pursuant to the Stipulation. The Settlement will provide valuable compensation to the Settlement Class while avoiding further delay and the significant risks of continued litigation.

The benefits of the Settlement are clear when weighed against the risks that the Settlement Class might recover less (or nothing) if litigation continued. The proposed Settlement will provide a meaningful recovery in a case where the most likely source of funds available to pay any future judgment or settlement is a "wasting" directors-and-officers insurance policy that

[1] As set forth in the Notice, Lead Counsel was assisted in this case by Block & Leviton LLP, as well as the Thornton Law Firm LLP and Campbell & Levine, LLC, which provided additional legal assistance to Greater Pennsylvania during the course of the litigation (collectively, "Plaintiffs' Counsel"). Lead Counsel has agreed to share the awarded attorneys' fees with Block, Thornton, and Campbell. The payments to additional counsel will in no way increase the fees that are deducted from the Settlement Fund, and no other attorneys will share the awarded attorneys' fees. Pursuant to the Stipulation and Agreement of Settlement, dated October 3, 2018 (ECF No. 59-1), ¶¶14-15 (the "Stipulation"), attorneys' fees and expenses awarded by the Court are payable to Lead Counsel on the first business day after entry of the Order awarding attorneys' fees and expenses and entry of the Judgment.

[2] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation or in the Declaration of Carol C. Villegas in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses (the "Villegas Declaration" or "Villegas Decl."), filed herewith. Citations to "¶" in this memorandum refer to paragraphs in the Villegas Declaration.

All exhibits herein are annexed to the Villegas Declaration. For clarity, citations to exhibits that themselves have attached exhibits will be referenced as "Ex. ___ - ___." The first numerical reference is to the designation of the entire exhibit attached to the Villegas Declaration and the second reference is to the exhibit designation within the exhibit itself.

will be rapidly depleted by rising defense costs related to this Action, multiple related derivative actions, and investigations by the U.S. Securities and Exchange Commission (the "SEC") and the U.S. Department of Justice (the "DOJ"). In addition to collectability risks, Defendants had substantial defenses to liability, including challenges to scienter, materiality and loss causation. In particular, Defendants were expected to advance vigorous challenges to scienter and loss causation in their motions to dismiss. While Lead Plaintiffs believe they had compelling counter arguments, there is a substantial risk that Defendants' motions might result in the elimination of a significant portion—or even all—of the Settlement Class's damages. Even if Defendants' motions to dismiss were not successful, Defendants would have continued to press these arguments at summary judgment and beyond.

In the face of these risks—as well as the fully contingent nature of the case—Lead Counsel devoted substantial resources to prosecuting this Action against highly skilled opposing counsel. Among other work detailed in the Villegas Declaration, Lead Counsel: conducted a robust investigation and filed a detailed consolidated complaint (the "Complaint"), which involved interviews with 12 former employees of Celadon and other third parties with relevant knowledge; consulted with an economic expert regarding loss causation and damages and with an accounting expert concerning Celadon's financial statements and compliance with relevant accounting rules; reviewed the voluminous public record; reviewed 3,600 pages of documents produced by Defendants in connection with the mediation; exchanged mediation submissions; and participated in a full-day mediation session under the auspices of an experienced and highly respected mediator from the Judicial Mediation and Arbitration Services ("JAMS"), Robert A. Meyer Esq. (the "Mediator"). *See* Villegas Decl. ¶II.B.

Against this backdrop, Lead Counsel requests a fee of 25% of the Settlement Fund, which represents a reasonable lodestar "multiplier" of 1.36, and payment of litigation expenses in the amount of $104,492.40. As demonstrated below, the request is well within, if not below, the range of attorneys' fees typically awarded in securities class actions of this size, and is well supported by both case law and the facts of this case.

For the foregoing reasons, Lead Counsel respectfully submits that the requested fees and expenses should be approved.

ARGUMENT

I. A REASONABLE PERCENTAGE OF THE FUND RECOVERED IS THE APPROPRIATE METHOD FOR AWARDING ATTORNEYS' FEES IN COMMON FUND CASES

As the Court is aware, attorneys who achieve a benefit for class members in the form of a "common fund" are entitled to be compensated for their services from that settlement fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("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"); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The purpose of the common fund doctrine is to fairly and adequately compensate counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation on their behalf. *See Goldberger*, 209 F.3d at 47.

Courts have recognized that, in addition to providing just compensation, "awards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132 (CM), 2014 WL 1883494, at *11 (S.D.N.Y. May 9, 2014), *aff'd*, *Arbuthnot v. Pierson,* 607 F. App'x. 73 (2d Cir. 2015).

The Second Circuit has authorized district courts to employ the percentage-of-the-fund method when awarding fees in common fund cases. *See Goldberger,* 209 F.3d at 47 (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used). In expressly approving the percentage method, the Second Circuit recognized that "the lodestar method proved vexing" and resulted in "an inevitable waste of judicial resources." *Goldberger,* 209 F.3d at 48, 49; *Savoie v. Merchs. Bank,* 166 F.3d 456, 460 (2d Cir. 1999) (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").

Indeed, "[t]he trend in this Circuit is toward the percentage method, which 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., Inc.,* 396 F.3d 96, 121 (2d Cir. 2005);[3] *see also In re Blech Sec. Litig.*, No. 94 Civ. 7696, 2002 WL 31720381, at *1 (S.D.N.Y. Dec. 4, 2002) ("This court … continues to find that the percentage of the fund method is more appropriate than the lodestar method for determining attorney's fees in common fund cases."); *In re IMAX Sec. Litig.,* No. 06 Civ. 6128 (NRB), 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) ("'the percentage method continues to be the trend of district courts in the [Second] Circuit'").

In sum, the weight of authority suggests that the Court should use the percentage-of-recovery method in determining a reasonable attorneys' fee here.

[3] All internal quotations and citations are omitted unless otherwise stated.

II. A FEE OF 25% IS FAIR, REASONABLE, AND CONSISTENT WITH FEES AWARDED IN COMPARABLE CASES

Many courts within the Southern District of New York have previously awarded fees of 25% or more in comparable complex securities class actions. *See, e.g.*, *In re Ability Inc. Sec. Litig.*, No. 1:16-cv-03893 (VM), slip op. at 2 (S.D.N.Y. Sept. 17, 2018) (awarding 33.3% of $3 million settlement) (Ex. 10);[4] *In re Unilife Corp. Sec. Litig.,* 16-cv-03976-RA, slip op. at 9 (S.D.N.Y. Jan. 25, 2018) (awarding 30% of $4.4 million settlement) (Ex. 10); *Fogarazzo v. Lehman Bros. Inc.*, No. 03 Civ. 5194 (SAS), 2011 WL 671745, at *4 (S.D.N.Y. Feb. 23, 2011) (awarding 33.3% of $6.75 million settlement); *In re Van Der Moolen Holding N.V. Sec. Litig.*, No. 1:03-CV-8284 (RWS), slip op. at 2 (S.D.N.Y. Dec. 6, 2006) (awarding 33 1/3% of $8 million settlement) (Ex. 10); *In re TeleTech Litig.*, No. 1:08-cv-00913-LTS, slip op. at 1 (S.D.N.Y. June 11, 2010) (awarding 30% of $11 million settlement) (Ex. 10); *In re LaBranche Sec. Litig.,* No. 03-CV-8201, slip op. at 1 (S.D.N.Y. Jan. 22, 2009) (awarding 30% of $13 million settlement) (Ex. 10); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y. 2001) (awarding 33% of $13 million settlement); *City of Providence,* 2014 WL 1883494, at *20 (awarding 33% of $15 million settlement); *see also Khait v. Whirlpool Corp.*, No. 06-6381, 2010 WL 2025106, at *8 (E.D.N.Y. Jan. 20, 2010) (awarding 33% of $9.25 million settlement).

Accordingly, the 25% fee requested here is consistent with fees awarded in similar cases in this District and is reasonable.

[4] All unreported "slip opinions" are submitted herewith in a compendium that is Ex. 10 to the Villegas Declaration.

III. THE FACTORS CONSIDERED WITHIN THE SECOND CIRCUIT CONFIRM THAT THE REQUESTED FEE IS REASONABLE

The Second Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case, whether under the percentage common fund approach or the lodestar multiplier approach:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. As discussed below, these factors and the analyses herein demonstrate that Lead Counsel's requested fee is reasonable.

A. Plaintiffs' Counsel Have Devoted Time and Labor to the Action

The time and effort expended by Lead Counsel Labaton Sucharow and additional counsel Block & Leviton LLP ("Block") in prosecuting the Action and achieving the Settlement support the requested fee. As set forth in greater detail in the Villegas Declaration, Plaintiffs' counsel, among other things: conducted a comprehensive investigation of the claims and potential claims against Celadon and the other Defendants, including consulting with a highly-regarded expert on loss causation and damages, as well as an accounting expert regarding Celadon's financial reporting and compliance with relevant accounting rules); reviewed and conducted 12 interviews of potential witnesses (including former employees of Celadon and other persons with relevant knowledge); thoroughly investigated Celadon's historical financial statements (with the assistance of the accounting expert) and reviewed the public agreements between Celadon, Element Financial Corporation ("Element"), and 19th Capital I and II, to trace the respective assets of these entities (with the assistance of the accounting expert); reviewed statistically significant stock price movements (with the assistance of the consulting damages expert); and drafted a detailed consolidated complaint. *See* Villegas Decl. ¶¶19-26. Plaintiffs' counsel

reviewed 3,600 pages of documents produced in connection with the mediation, including minutes and presentations of the Company's Board of Directors, Audit Committee, Nominating and Corporate Governance Committee, and Compensation Committee, and engaged in extensive settlement negotiations with Defendants' Counsel, including the exchange of mediation submissions and an all-day mediation session. *Id*. ¶¶43-44. Lead Counsel also consulted with bankruptcy counsel concerning the implications of the financial condition of the Company. *Id*. ¶40.

As noted above and discussed further in the Villegas Declaration, Labaton Sucharow and Block expended 1,858.15 hours prosecuting this Action with a lodestar value of $1,007,401.75. *See* Ex. 8. At all times, Plaintiffs' counsel took care to staff the matter efficiently and avoided unnecessary duplication of effort.

B. The Magnitude and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action also support the requested fee. Courts routinely recognize that securities class action litigation is "notably difficult and notoriously uncertain." *City of Providence,* 2014 WL 1883494, at * 5; *In re FLAG Telecom Holdings, Ltd.* No. 02-cv 3400, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) (same). This case was no different.

As discussed in the Villegas Declaration, this Action involved difficult, complex, hotly disputed, and expert-intensive issues related to nuanced and esoteric accounting issues and loss causation. Prosecuting the Settlement Class's claims required skill and perseverance, including the marshalling of extensive expert evidence. Accordingly, the magnitude and complexity of the Action supports the conclusion that the requested fee is fair and reasonable. *See City of Providence*, 2014 WL 1883494, at *16 ("[T]he complex and multifaceted subject matter involved in a securities class action such as this supports the fee request.").

C. The Risks of the Litigation Support the Requested Fee

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004). "Courts have repeatedly recognized that 'the risk of litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions." *In re Telik, Inc. Sec. Litig.* 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008). For this reason, the Second Circuit has said that "[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of the multiplier." *McDaniel v. County of Schenectady*, 595 F.3d 411, 424 (2d Cir. 2010) (quoting *Goldberger*, 209 F.3d at 54).

While Lead Plaintiffs remain confident in their ability to prove their claims and to effectively rebut Defendants' defenses, they recognize that proving liability and recovering their damages was far from certain. This case was further complicated by the Company's precarious financial situation, which essentially eliminated the Company as a source of recovery. The primary risks are discussed below. For a more detailed discussion, the Court is respectfully referred to the Villegas Declaration, Section III and the Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Approval of Plan of Allocation, Sections I.D.4 - I.D.6.

1. Risks Concerning Liability

Defendants were expected, in their motions to dismiss and beyond, to strongly dispute the existence of scienter, particularly throughout the course of the five-year Class Period, which required considerable legal skill to rebut. *See* Villegas Decl. ¶¶29-30. Absent the Settlement, there was a significant risk that the Court might have granted Defendants' motions to dismiss in part or in whole on any of several grounds. In particular, Defendants would have argued that the

mere existence of a restatement is insufficient to plead securities fraud, and that courts in the Second Circuit frequently dismiss securities fraud claims based solely on accounting restatements. *See, e.g.*, *Wyche v. Advanced Drainage Sys., Inc.*, No. 15 CIV. 5955 (KPF), 2017 WL 971805, at *16 (S.D.N.Y. Mar. 10, 2017), *aff'd*, 710 F. App'x. 471 (2d Cir. 2017) (dismissing Rule 10b–5 claim for failure to plead scienter and rejecting argument that restatement was sufficient to plead scienter absent "'additional supporting allegations' indicating that a defendant had possessed and ignored contrary facts"). Lead Plaintiffs would of course seek to put forth their own line of cases and, in addition, would argue that the evidence would establish that Defendants knew or recklessly disregarded the Company's accounting improprieties and deficient internal controls because, among other reasons, Defendants Peavler and Will each signed the quarterly and yearly financial reports, all of which assured investors of the accuracy of the Company's reported results and the effectiveness of the Company's internal control over financial reporting. Complaint ¶215.

Finally, even if Lead Plaintiffs were to be successful on the motions to dismiss, many of these same arguments could have been continued at summary judgment, trial, or on appeal, and, in the absence of any settlement, presumably would have been. Thus, there were very significant risks in prevailing, had the case not settled, and no guarantee that Defendants' liability could be established. *See In re Bayer AG Sec. Litig.*, No. 03-cv-1546, 2008 WL 5336691, at *5 (S.D.N.Y. Dec. 15, 2008) (noting the "difficulty of establishing loss causation [] and the difficulty in proving that Defendants acted with scienter, militate in favor of fee awards.").

2. Risks Concerning Loss Causation and Damages

Whether Lead Plaintiffs could demonstrate loss causation and damages was unsettled and would continue to require a significant amount of effort on the part of Lead Counsel. "Proof of damages in complex class actions is always complex and difficult and often subject to expert

testimony." *Shapiro v. JPMorgan Chase & Co.*, Nos. 11 Civ. 8831(CM)(MHD), 11 Civ. 7961(CM), 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014).

Lead Plaintiffs anticipate that Defendants would have strenuously argued in the motions to dismiss and thereafter that that the class period should end on May 1, 2017, the date on which Celadon warned the public that its auditor did not have a reasonable basis to support its previously issued reports on Celadon's 2016-2017 financial statements and that those financial statements "should not be relied upon." Villegas Decl. ¶33. Defendants would have argued that the class period cannot extend beyond this date, because Lead Plaintiffs would not be able to show that any stock decline following this point resulted from the disclosure of curative information that revealed new material information that had allegedly been concealed. *Id*. Any stock decline following the April 2, 2018 press release resulted from inactionable uncertainties related to Celadon's financing prospects and the NYSE delisting. *Id*. Defendants would have argued that the risk of NYSE delisting was known to the market once Celadon's 2016-2017 financial statements were publicly withdrawn on May 1, 2017, and that the securities laws do not provide redress for the materialization of a known risk. *Id*.

Additionally, Defendants would have also likely argued that the April 2, 2018 press release addressed several subjects, which would require Lead Plaintiffs to disaggregate which disclosures, if any, were actually curative of the alleged fraud. *Id*. ¶34.

In order for the Settlement Class to recover damages at the maximum level estimated by Lead Plaintiffs' damages expert, they would need to prevail on each and every one of the claims alleged and establish loss causation related to the alleged disclosures. The damage assessments of the Parties' trial experts would be sure to vary substantially, and expert discovery and trial would become a "battle of experts" requiring significant work on the part of Lead Counsel. *See,*

e.g., In re Flag Telecom Holdings Ltd. Sec. Litig., 2010 WL 4537550, at *28 (burden in proving the extent of the class's damages weighed in favor of approving fee request).

3. Risks Related to Defendants' Ability to Pay

As noted above, this case was extremely risky, given the crumbling state of the Company's financials during the pendency of the litigation. As set forth in the Villegas Declaration, Lead Plaintiffs had to defer filing the consolidated complaint numerous times, in anticipation of Celadon's restated financial results. *See* Villegas Decl. §II.A. Had the litigation continued, there would have been significant barriers to recovering even what the Parties have agreed to in the Settlement, much less anything more, given the wasting insurance policy.

4. The Contingent Nature of Counsel's Representation

Despite the uncertainties concerning the outcome of the case, Lead Counsel undertook this Action on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or potentially little recovery and leave them uncompensated for their significant investment of time and expenses. Courts within the Second Circuit have consistently recognized that this risk is an important factor favoring an award of attorneys' fees. *See, e.g.*, *In re Am. Bank Note Holographics, Inc. Sec. Litig*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award").

Unlike counsel for defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, Lead Counsel have not been compensated for any time or expenses and would have received no compensation or expenses had this case not achieved a recovery for the Settlement Class. From the outset, Lead Counsel understood that they were embarking on a complex, expensive, and lengthy endeavor with no guarantee of ever being compensated. In undertaking that responsibility, Lead Counsel were obligated to ensure that

sufficient attorney and professional resources were dedicated to the prosecution of the Action and that funds were available to compensate staff and to pay for the costs entailed. Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingent basis, expended thousands of hours and millions of dollars in expenses and time and received nothing for their efforts.[5] This case could have been dismissed like so many others on Defendants' motions to dismiss or on summary judgment, leading to absolutely no recovery for the Settlement Class or Lead Counsel. Accordingly, the contingency risk in this case supports the requested attorneys' fee.

D. The Quality of Lead Counsel's Representation

The quality of the representation by Lead Counsel is another important factor that supports the reasonableness of the requested fee.

Since the passage of the PSLRA, Labaton Sucharow has been approved by courts to serve as lead counsel in numerous notable securities class actions throughout the United States, and out of the approximately 21 post-PSLRA securities class actions that have gone to trial, Labaton Sucharow has tried three of them. Here, Labaton Sucharow attorneys have devoted considerable time and effort to this case, thereby bringing to bear many years of collective experience. For example, Labaton Sucharow has served as lead counsel in a number of high profile matters: *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the

[5] *See, e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversal of jury verdict of $81 million against accounting firm after a 19-day trial); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd*, *Herman v. Legent Corp.*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (directed verdict for defendants after five years of litigation); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict following two decades of litigation); *In re Apple Comput. Sec. Litig.*, No. C-84-20148, 1991 WL 238298, at *1-2 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions); *In re JDS Uniphase Corp. Sec. Litig.*, No. CO2-1486 CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (defense verdict after four weeks of trial by Labaton Sucharow).

Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of $1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1500 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than $600 million); *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than $600 million); *In re Schering-Plough Corp. / ENHANCE Securities Litigation*, Civil Action No. 08-397 (DMC) (JAD) (D.N.J.) (representing Massachusetts Pension Reserves Investment Management Board and reaching a settlement of $473 million). *See* Villegas Decl. ¶71; Ex. 6-C.

This favorable Settlement is attributable, in substantial part, to the diligence, determination, hard work, and reputation of Lead Counsel, who developed, litigated, and successfully negotiated the settlement of this Action, an immediate cash recovery in a very challenging case.

The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. *See Flag Telecom*, 2010 WL 4537550, at *28; *Teachers Ret. Sys.*, 2004 WL 1087261, at *20. Indeed, Defendants' Counsel, are long-time leaders among national litigation firms, with well-noted expertise in corporate litigation practices. Notwithstanding this formidable opposition, Lead Counsel was able to develop Lead Plaintiffs' case so as to resolve the litigation on terms favorable to the Settlement Class. *See, e.g.*, *In re Adelphia Commc'n Corp. Sec. and Derivative Litig.*, MDL No. 03-1529, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing

counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."), *aff'd*, 272 F. App'x. 9 (2d Cir. 2008).

E. The Requested Fee in Relation to the Settlement

"In determining whether the Fee Application is reasonable in relation to the settlement amount, the Court compares the Fee Application to fees awarded in similar securities class-action settlements of comparable value." *In re Marsh & McLennan*, *Co. Sec. Litig*. No. 04-8144, 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23, 2009); *see also In re Veeco Instruments Inc. Sec. Litig,* No. 05-1695, 2007 WL 4115808, at *4 (S.D.N.Y. Nov. 7, 2007) (noting that the fee awarded is "consistent with fees awarded in a similar class actions settlements of comparable value"). As discussed above, the attorneys' fees requested here are well within, if not below, the range of percentage fee awards in comparable securities class action cases within this district. *See* §II., *supra*.

F. Public Policy Considerations Support the Requested Fee

A strong public policy favors rewarding firms for bringing successful securities litigation. *See FLAG Telecom*, 2010 WL 4537550, at *29 (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) ("In considering an award of attorney's fees, the public policy of vigorously enforcing the federal securities laws must be considered."); *Hicks v. Stanley*, No. 01-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). This factor supports Lead Counsel's fee and expense application.

G. The Requested Attorneys' Fees Are Also Reasonable Under the Lodestar Cross-Check

To ensure the reasonableness of a fee awarded under the percentage method, the Second Circuit encourages a "crosscheck" against counsel's lodestar. *Goldberger*, 209 F.3d at 50. Under the lodestar method, a court must engage in a two-step analysis: first, to determine the lodestar, the court multiplies the number of hours each timekeeper spent on the case by each person'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. *See, e.g., Flag Telecom*, 2010 WL 4537550, at *26 ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of litigation, the complexity of the issues, the contingent nature of the engagements, the skill of the attorneys, and other factors"). Performing the lodestar cross-check here confirms that the fee requested by Lead Counsel is reasonable and should be approved.

Labaton Sucharow and Block have collectively expended 1,858.15 hours in the prosecution of this case. *See* Villegas Decl. ¶68; Exs. 6-A, 7-A, and Ex. 8. The resulting lodestar at their current rates is $1,007,401.75. *Id*.; Ex. 8. "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12–cv–8557 (CM), 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *see also Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (similar); *Telik,* 576 F. Supp. 2d at 589 n.10 (similar).

The hourly rates of Plaintiffs' counsel here range from $650 to $975 for partners, $600 for of-counsels, and $425 to $675 for associates. *See* Villegas Decl. ¶67. "In determining the

propriety of the hourly rates charged by plaintiffs' counsel in class actions, courts have continually held that the standard is the rate charged in the community where the services were performed for the type of services performed by counsel." *Telik,* 576 F. Supp. 2d at 589. In fact, "perhaps the best indicator of the 'market rate' in the New York area for plaintiffs' counsel in securities class actions is to examine the rates charged by New York firms that *defend* class actions on a regular basis." *Id*. Defense firm rates gathered and analyzed by Labaton Sucharow from bankruptcy court filings nationwide in 2017, in many cases, exceeded these rates. *See* Villegas Decl. ¶67; Ex. 9.

Thus, the amount of attorneys' fees requested by Lead Counsel represents a reasonable multiplier of 1.36 of Plaintiffs' counsel's lodestar. Such a multiplier is well within the parameters used throughout district courts in the Second Circuit and is additional evidence that the requested fee is reasonable. Indeed, within the Second Circuit, lodestar multiples between 1 and 5 are commonly awarded. *See, e.g., Walmart Stores Inc. v. Visa USA Inc.*, 396 F. 3d 96, 123 (2d Cir. 2005) (upholding a multiplier of 3.5 as reasonable on appeal); *In re Comverse Tech, Inc. Sec. Litig*., No. 06-1825, 2010 WL 2653354, at *5 (S.D.N.Y. June 24, 2010) (approving a 2.78 multiplier in case involving a $165 million settlement); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."); *In re IndyMac Mortg. Backed Sec. Litig.*, 94 F. Supp. 3d 517, 528 (S.D.N.Y. 2015) (awarding blended multiplier of 1.33); *Freedman v. Weatherford Int'l Ltd*., No. 12-2121 (LAK), 2015 WL 7454142, at *1 (S.D.N.Y. Nov. 23, 2015) (awarding multiplier of 1.35).

Accordingly, it is respectfully submitted that the requested fee is manifestly reasonable, whether calculated as a percentage-of-the-fund or in relation to Plaintiffs' counsel's lodestar.

IV. THE REACTION OF THE SETTLEMENT CLASS TO DATE SUPPORTS THE REQUESTED FEE

The reaction of the Settlement Class to date also supports the fee request. Through December 10, 2018, the Claims Administrator has mailed 32,458 copies of the Notice to potential Settlement Class Members and nominees informing them of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund and up to $550,000 in expenses. *See* Ex. 5 ¶10 and Ex. B thereto. While the time to object to the Fee and Expense Application does not expire until December 26, 2018, to date no objections have been received. Lead Counsel will address any that are submitted in their reply papers, which will be filed on or before January 9, 2019.

V. THE FEE REQUEST IS SUPPORTED BY LEAD PLAINTIFFS

The requested fee of 25% is made with the full support of the Lead Plaintiffs. *See* Exs. 1 and 2. Greater Pennsylvania and ATRS are the type of sophisticated and financially interested investors that Congress envisioned in enacting the PSLRA. Accordingly, Lead Plaintiffs' endorsement of the fee supports its approval. *See Veeco*, 2007 WL 4115808, at *8 ("Public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request[.]").

VI. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for payment of litigation expenses, which were reasonably incurred and necessary to prosecute the Action. Labaton Sucharow and Block incurred $104,492.40 in litigation expenses. *See* Ex. 8. These expenses are set forth in Plaintiffs' counsel's individual fee and expense declarations submitted concurrently herewith. *See* Exs. 6-B and 7-B. This amount is well-below the $550,000 cap that the Notice informed

potential Settlement Class Members that Lead Counsel may apply for, and which—to date—there has been no objection to.

Much of Plaintiffs' counsel's expenses were for professional services rendered by Lead Plaintiffs' experts and consultants ($80,809.50 or 77% of total expenses). As set forth in the Villegas Declaration, Lead Plaintiffs' consulting accounting expert was pivotal to assisting Lead Counsel with analyzing and investigating Celadon's historical financial statements, including balance sheets and accounting policies. *See*, *e.g.*, Villegas Decl. ¶¶19-22. Likewise, Lead Plaintiffs' consulting damages expert reviewed statistically significant price movements to assist Lead Counsel in identifying stock declines to include in the consolidated complaint, among other things. *Id*. ¶24. The consulting damages expert also developed the proposed Plan of Allocation. *Id*. ¶55. Lead Plaintiffs' also benefitted from the expertise offered by bankruptcy counsel. *Id*. ¶40.

Additionally, Plaintiffs' counsel incurred expenses related to, among other things, the mediation, electronic research, travel, court reporting and fees, and duplicating. A complete breakdown by category of the expenses incurred is set forth in Plaintiffs' counsel's respective declarations. These expenses are properly recoverable by counsel. *See In re China Sunergy Sec. Litig.*, No. 07-cv-7895, 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…'").

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 25% of the Settlement Fund, which includes accrued interest,

and $104,492.40 in litigation expenses. A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

Dated: December 12, 2018

Respectfully submitted,

LABATON SUCHAROW LLP

/s/ *Carol C. Villegas*
Carol C. Villegas
Alec T. Coquin
140 Broadway
New York, New York 10005
Telephone: 212-907-0700
Facsimile: 212-818-0477
cvillegas@labaton.com
acoquin@labaton.com

Lead Counsel for Lead Plaintiffs and the Class

BLOCK & LEVITON LLP
Jason Leviton
155 Federal Street, Suite 400
Boston, MA 02110
Telephone: (617) 398-5600
Facsimile: (617) 507-6020
Email: jason@blockesq.com

Additional Counsel for Lead Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2018, I caused the foregoing Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses to be served electronically through the Court's ECF system upon all registered ECF participants.

/s/Carol C. Villegas
Carol C. Villegas