UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LAWRENCE E. JAFFE PENSION PLAN, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. HOUSEHOLD INTERNATIONAL, INC., et al., Defendants.	Lead Case No. 02-C-5893 (Consolidated) CLASS ACTION Judge Ronald A. Guzman

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND REASONABLE COSTS AND EXPENSES FOR LEAD PLAINTIFFS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

Page

Page

Page

STATUTES, RULES AND REGULATIONS

SECONDARY AUTHORITIES

I. INTRODUCTION

Lead Counsel obtained on behalf of plaintiffs and the Class, a judgment of $2.46 billion ("Judgment Amount") against defendants Household International, Inc., William F. Aldinger, David A. Schoenholz and Gary Gilmer. The total recovery represents 100% of the Class's maximum potential damages as proven at trial, plus an additional 66% for prejudgment interest. It is the largest securities class action judgment in history following a trial. Given the unprecedented Judgment Amount and in light of the very significant risks from inception to judgment, the result ranks as the most successful securities class action of all time.

Class Counsel have skillfully and zealously represented the Class for more than 11 years. And the stakes in the litigation have only increased as the years have gone by. Class Counsel took on tremendous risk in taking the case to trial, overcoming post-verdict challenges and obtaining this unprecedented judgment. It is against this background that each of the sophisticated institutional investors who served as Lead Plaintiffs and suffered compensable damages, respectfully requests that Class Counsel be awarded attorneys' fees equal to 24.37% of the Judgment. *See* Declaration of James Glickenhaus in Support of Motion for Award of Attorneys' Fees and Expenses and Reimbursement to the Class Representatives Pursuant to 15 U.S.C. §78u-4(a)(4) ("Glickenhaus Decl."); Declaration of Tommy Plymale in Support of Motion by Class Counsel for an Award of Attorneys' Fees and Expenses ("Plymale Decl."), filed herewith.

Class Counsel's request for an award of fees of 24.37% of the Judgment Amount is fair and reasonable. Consistent with the principles applied in the Seventh Circuit, the requested fee is consistent with fee percentages negotiated *ex ante* in the private legal marketplace for complex litigation. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid I*"). As set forth in more detail below, in complex litigation, sophisticated institutions with large claims typically agree to pay their counsel 30%-33% of any recovery in a contingency agreement. *See* the

accompanying Report of Professor Charles Silver on Attorneys' Fees ("Silver Report"), at 3, 23-30. Often, plaintiffs' counsel negotiate for an even higher percentage if a case is tried. Furthermore, the requested fee is based on the fee agreement Class Counsel negotiated at a relatively early stage of the litigation. The agreement provided for a fee percentage of between 19%-25% contingent on the amount of recovery – well below the 30%-33% customarily awarded in this District. *See* Plymale Decl., ¶4. At the time of the agreement, the difficulties and challenges facing Lead Counsel meant that a recovery at or near the Judgment Amount was not likely since most securities cases settle for a small fraction of potential damages due to the risks involved. In fact, there had been only three securities class action recoveries in excess of $100 million in the history of the Seventh Circuit. The Judgment Amount represents a remarkable recovery in terms of both dollar amount and percentage of damages recovered and is even more remarkable when compared to the risks faced by the Class and Class Counsel. Indeed, if Class Counsel's request for a 24.37% fee is granted, the Class will still receive an unprecedented 100% of their damages, plus an additional 26% even after the fees and expenses are paid out of the common fund.

The quality of Class Counsel's representation and their efforts further support the requested fee award. Class Counsel have prosecuted the case vigorously and skillfully against five of the country's most successful law firms at various times over 11 years. Pre-trial, Class Counsel spent an enormous amount of time attempting to uncover defendants' fraudulent conduct through intensive discovery efforts, including reviewing over four million pages of documents, filing 40 motions to compel discovery in order to obtain the evidence plaintiffs needed to prove their case, obtaining third-party discovery, working with experts to prepare their reports and taking or defending 71 depositions. *See* Declaration of Spencer A. Burkholz in Support of Plaintiffs' Counsel's Motion for Attorneys' Fees and Expenses ("Burkholz Decl."), ¶3, filed herewith. During the eight days of pre-trial hearings, the lawyers for the Class argued *in limine* and *Daubert* motions, objections to trial

evidence and jury instructions. *Id*. During the five weeks of trial, Class Counsel efficiently prepared for and questioned 22 fact and expert witnesses and introduced over 200 exhibits, responded to defendants' Rule 50 motion and conducted opening, interim and final arguments. *Id*. Despite being vastly outnumbered by defense counsel, Class Counsel responded to every issue and objection raised by defendants. Class Counsel did such a thorough and successful job that defendants decided not to call their accounting expert, Roman Weil, or witnesses from Household and Arthur Andersen to bolster their accounting and re-aging defenses. Class Counsel also spent millions of dollars to hire top-notch experts to testify on behalf of the Class and incurred other significant expenses in trying the case to verdict – all at risk of non-payment if the case was lost at trial. Class Counsel expended over 100,000 hours of time over seven years in bringing the case to a Verdict. Following the Verdict, Class Counsel spent four years and over 12,000 hours litigating various Phase II issues on behalf of more than 45,000 class members with valid claims to procure the Judgment Amount. *Id*., ¶5. This complex litigation was prosecuted entirely on a contingent basis and Class Counsel's investment of over $54 million in time and over $14 million in expenses was entirely contingent and remains at risk of non-payment.

Class Counsel's litigation expenses should also be awarded in full as they were reasonably and necessarily incurred in the prosecution of the Litigation. Finally, the Lead Plaintiffs should be awarded their reasonable expenses pursuant to the Private Securities Litigation Reform Act ("PSLRA"), which encourages institutional investors to participate in securities class actions.

II. ARGUMENT

A. Class Counsel Are Entitled to a Fee from the Common Fund

The Supreme Court has long recognized the "common fund" exception to the general rule that a litigant bears his or her own attorneys' fees. *Trustees v. Greenough*, 105 U.S. 527 (1882). As explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980):

> [T]his Court has recognized consistently 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 . . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Likewise, the Seventh Circuit has held "[w]hen a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund." *Florin v. Nationsbank, N.A.*, 34 F.3d 560, 563 (7th Cir. 1994). *See also Pavlik vs. FDIC*, No. 10 C 816, 2011 U.S. Dist. LEXIS 126016, at *6 (N.D. Ill. Nov. 1, 2011). The common fund doctrine prevents unjust enrichment and encourages counsel to protect the rights of those who have very small claims. The importance of the common fund doctrine is particularly acute in the context of private securities fraud actions, which the Supreme Court has observed, provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [Securities and Exchange] Commission action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).

B. The Court Should Award Attorneys' Fees Using the Percentage-of-the-Fund Method and Consider Criteria of the Market Rate, Risk of Non-Payment, Amount of Work and Quality of Representation, and the Stakes of the Litigation

The Supreme Court has also consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, counsel fees should be determined as a percentage of the fund. *See, e.g.*, *Boeing*, 444 U.S. at 478-79; *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class"); *see also* Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 242 (Oct. 8, 1985) (fee awards in common fund cases have historically been computed based upon a percentage of the fund); 1 Alba Conte, *Attorney Fee*

Awards §2.02, at 31-32 (2d ed. 1993) (same). The PSLRA likewise supports awarding attorneys' fees in securities cases using the percentage method, as it provides 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 of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6). *See also In re Worldcom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005) (the PSLRA contemplates that "the percentage method will be used to calculate attorneys' fees in securities fraud class actions").

The Seventh Circuit has recognized the advantages of applying the percentage-of-the-recovery method, including its relative objectivity and ease of administration. *See Florin*, 34 F.3d at 566. This Court and other courts in this Circuit have consistently applied the percentage method.[1] The percentage-of-the-fund method is also consistent with, and is intended to mirror, the private marketplace for negotiated contingent fee arrangements. *See, e.g.*, *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee ***is*** the 'market rate.'")[2] (emphasis in original).

In determining the appropriate fee percentage in common fund cases, the Seventh Circuit has held that "courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *Synthroid 1*, 264 F.3d at 718 (citing Seventh Circuit cases and overturning and remanding the district court's award limiting attorneys' fees to 10% of the common fund in a large recovery of approximately $132 million); *see also In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975 (7th Cir. 2003) ("*Synthroid*

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[1] *Kohen v. Pacific Investment Mgmt. Co.*, No. 05-CV-04681 (N.D. Ill. May 2, 2011) (Guzman, J.) (20% legal fee on $118 million settlement based on agreement between class counsel and plaintiff *ex ante*); *Central Laborers Pension Fund v. SIRVA*, No. 04-C-7644 (N.D. Ill. Oct. 31, 2007) (Guzman, J.) (29.85% legal fee awarded); *In re Lithotripsy Antitrust Lit.*, No. 98 C 8394 (N.D. Ill. June 9, 2000) (Guzman, J.) (33.3% legal fee awarded).

[2] Citations and footnotes are omitted and emphasis is added unless otherwise noted.

II") ("A court must give counsel the market rate for legal services."). The Seventh Circuit has made clear that the "market rate" is "as we have been at pains to stress, [what] the lawyer . . . would have gotten in the way of a fee in an arms' length negotiation, had one been feasible." *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992). As set forth in more detail below, the attorney fee agreement negotiated at an early stage of the litigation with Class Counsel was the market rate for legal services. The Court in *Synthroid I* noted that "[w]e have never suggested that a 'megafund rule' trumps these market rates" in overturning a district court's capping of legal fees at 10% on the basis that there was a large recovery. *Synthroid I*, 264 F.3d at 717-18. *See also Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (overturning district court's decision to limit attorney fees to 15% of settlement instead of 28%); *Continental*, 962 F.2d at 572 (overturning district court's decision to reduce legal fees to 10% of settlement where class counsel and plaintiffs agreed to a 20% legal fee).

The Seventh Circuit noted that in determining the reasonableness of the fee requested in light of the market rate, *see Continental*, 962 F.2d at 572, district courts should also consider "the risk of nonpayment a firm agrees to bear, . . . the quality of [the firm's] performance, . . . the amount of work necessary to resolve the litigation, and . . . the stakes of the case." *Synthroid I*, 264 F.3d at 721. Also relevant to this inquiry is an assessment of "the riskiness of the litigation by measuring the probability of success of this type of case at the outset of the litigation." *Florin*, 34 F.3d 565 (emphasis omitted). As the Court held in *Motorola*, "neither *Synthroid* nor any other decision of which we are aware holds that fee schedules set *ex ante* are the only lawful means to compensate class counsel in common-fund cases." *Silverman v. Motorola Solutions, Inc.*, No. 12-2339, 2013 U.S. App. LEXIS 16878, at *4 (N.D. Ill. Aug. 14, 2003) (emphasis omitted). Further, in determining the reasonableness of attorneys' fee applications, courts within the Seventh Circuit consider the unique circumstances of the case to be relevant. *See, e.g.*, *In re AT&T Mobility*

Wireless Data Servs. Sales Tax Litig., 792 F. Supp. 2d 1028, 1032, 1035-40 (N.D. Ill. 2011) ("*AT&T Mobility II*") (applying the circumstance of the case in making its reasonableness finding).

This case was tried to a jury. It is one of a dozen or so securities cases to go to verdict since the enactment of the PSLRA and the only one to generate a judgment of this magnitude. Thereafter, Class Counsel defended the Class and individual class members in discovery related to reliance issues and argued against defendants' objections to virtually every claim. More than any other securities case ever filed, the unique circumstances here support a fee award that was negotiated almost a decade ago and is less than 25%.

Class Counsel respectfully submit that in addition to the *ex ante* legal fee agreement, all of the other factors – the exceptional results achieved, the contingent nature and risks of the Litigation, and counsel's exceptional efforts on behalf of the Class – justify a fee award of 24.37% of the Judgment Amount.

1. The Requested Fee Negotiated by Class Counsel Is Consistent with Percentage Fees Negotiated Ex Ante in the Private Market for Legal Services

As Professor Silver notes at the outset of his report:

> [T]he Seventh Circuit . . . has repeatedly held that lawyers representing plaintiff classes are to be compensated at market rates, meaning rates that "willing buyers and willing sellers of legal services" would have agreed to at the start of litigation. Fees paid by real clients whose own money is on the line provide the best evidence of market rates.

Silver Report at 2. Professor Silver has provided the Court with extensive information regarding fees negotiated in private cases at the outset of representation. Silver Report at 3. Based on his survey, Professor Silver concludes that, whether in "mass" actions, conventional personal injury cases, or complex, high-dollar private business disputes, plaintiffs negotiate percentage fees consistent with or higher than the percentage sought here, even when the potential recovery approaches the result obtained here. *Id*.

In this case, a fee agreement was reached with Class Counsel in April 2005. At that time, the ultimate outcome of the case was highly uncertain: the Court had granted certain portions of defendants' three motions to dismiss; discovery had just commenced; defendants were preparing to file a second round of motions to dismiss, arguing that plaintiffs had failed to properly allege loss causation based on the then-recent U.S. Supreme Court ruling in *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336 (2005); defendants also were set to file a motion based on the statute of limitations, which would ultimately wipe out two years of the asserted Class Period, based on the Seventh Circuit's decision in *Foss v. Bear, Stearns & Co.*, 394 F.3d 540 (7th Cir. 2005); and plaintiffs faced all the risks of summary judgment and trial. In short, at the time the agreement was made, no class recovery or potential fee award was anywhere near the horizon.

The fee grid negotiated here provides for a sliding scale fee based on the recovery – 19% on the first $50 million recovered; 23% of the next $100 million recovered; and 25% of all recovery amounts in excess of $150 million. *See* Plymale Decl., Ex. A. The agreement noted that the usual attorney fee percentage of 30% awarded in this District would not be used by the Lead Plaintiffs in favor of a lower percentage. Thus, at the time the fee agreement was reached, it was well below the customary fee award of 30%-33% in this District and below the 31%-33% agreed to by sophisticated parties in the *Exxon*, *Burlington Northern* and *Research in Motion* cases. *See infra*. In fact, in the Seventh Circuit at that time, there were only three securities class settlements with recoveries in excess of $100 million (*Waste Management* ($220 million); *Bank One Corp.* ($120 million) and *Conseco* ($120 million)). Securities Class Action Services, ISS, The SCAS Top 100 Settlements Report for 1H 2013, at 3-4 (July 1, 2013). Thus, the sliding scale fee agreement in this case was designed to incentivize Class Counsel to maximize the recovery for the Class. It did. In sum, the fee agreement is a fair approximation of the market rate for legal services under Seventh Circuit law. If anything, the agreement is on the lower end of the market rate for legal services. As such, the

Agreement should be accepted by the Court as a reflection of the *ex ante* agreement for legal services in this case.

The *Continental* court opined that "testimony or statistics concerning the fee arrangements in commercial litigation" involving large companies or investors would also assist the Court in determining the "market rate." *See Continental*, 962 F.2d at 572-73. There are a number of examples of high stakes commercial litigation where sophisticated businesses negotiated legal fees in excess of the 24.3% sought here. One analogous case is *Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1243 (S.D. Fla. 2006) (awarding 31.33% fee of a $1.06 billion settlement). In *Exxon Corp.*, class counsel represented several Exxon dealers in a class action suit on behalf of 11,000 dealers over a period of 15 years. Agreements providing for 31.3% of any recovery for attorney fees were negotiated with class counsel. *Id*. at 1209. Class counsel litigated the case to verdict and obtained a judgment just over $1.3 billion. The case was eventually settled for $1.075 billion, and the court awarded attorney fees of 31.3% or $320 million pursuant to the attorneys' fee negotiated with class counsel. The court noted that, like this case, it "was an 'all or nothing' case for the Plaintiffs," at trial and that "the most appropriate way to establish a bench mark is by reference to the market rate for a contingent fee in private commercial cases tried to judgment and reviewed on appeal." *Id*. at 1203 (citing *Synthroid I*, 264 F.3d at 718). At trial, the plaintiff dealers had to prove their case "almost exclusively on the testimony of Exxon's own witnesses. Proving a direct case based on cross-examination of the opposition is no easy feat, but through extraordinary detailed pre-trial analysis and preparation, Class Counsel were able to prove Exxon's wrongs through its own words, documents and testimony." *Id*. at 1207. Here, plaintiffs likewise proved their case through fact witnesses who were almost all current and former Household employees represented by defense counsel. The *Exxon* case also involved a hotly contested claims administration process over a period of years where damages only were provided to class members that filed timely claims after Exxon's

objections were overruled, just as in *Household*. A special master also was appointed to address claim issues. *Id*. at 1189. Again, as in this case, if defendants' appeal were denied, then class members would receive their full compensatory damages and nearly all of their prejudgment interest. *Id*. The *Exxon* court noted that, because there were no reported cases similar to that one, and in a typical class action, class counsel often settles early for cents on the dollar, decisions involving fee awards in class action settlements should not control. *Id*. at 1210. Noting that many "mega" class action settlements awarded fees in excess of 25%, the *Exxon* court found that the "more appropriate measure of a reasonable percentage is the market rate for a contingent fee in commercial cases." *Id*. at 1211 (citing Professor Silver's report in *Exxon*, *Synthroid I*, 264 F.3d at 718 and *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 U.S. Dist. LEXIS 10532, at *43 (E.D. Pa. June 2, 2004)).

In analyzing the market rate, the *Exxon* court noted that the requested fee of 31.3% was within the range, if not below, the market rate for private contingency fee agreements in commercial cases, which is usually 33.3%. The *Exxon* court rejected an objection that the amount of the fee should decline as the recovery amount increases, because a declining fee percentage fails to align the interests of class counsel and the class. 454 F. Supp. 2d at 1213. The declining sliding scale approach creates "the perverse incentive for Class Counsel to settle too early for too little" and "'if such a formula were mandated, defendants would quickly come to understand that plaintiffs' counsel lacked an incentive to maximize the recovery (at least beyond some threshold) and they could exploit this lack of incentive" which happens "regularly given that the typical class action settles for less than 3 cents on the dollar." *Id*. at 1213 & n.22.[3]

[3] Although the Seventh Circuit approved a negotiated fee structure which utilized a downward sliding scale approach in *Synthroid II* (30% of the first $10 million, 25% of the next $10 million, 22% of any amount between $20-$46 million, and 15% of everything else) and implicitly endorsed such a method in *Motorola*, it also held in *Synthroid I*, that "[t]his is not to say that systems with declining marginal percentages are always best," since "[t]hey also create declining marginal returns to legal work, ensuring that at some point attorney's opportunity cost will exceed the benefits of pushing for a larger recovery even though extra work could

In *Motorola*, the Seventh Circuit affirmed the approval of a flat fee percentage of 27% in a $200 million settlement of a securities class action. In light of "the risk of walking away empty-handed," the court rejected an objection that the 27% fee awarded by the District Court was legally excessive. However, in doing so, the Seventh Circuit questioned whether evidence existed of suits seeking more than $100 million in which solvent clients agreed *ex ante* to pay their lawyers a flat portion of all recoveries as opposed to a rate that declines as the recovery increases. *Motorola*, 2013 U.S. App. LEXIS 16878, at *5-*8. Such evidence does exist. In addition to the 31.3% fee approved in *Exxon*, the plaintiffs (ETSI Pipeline Project (a Joint Venture of four pipeline companies and ETSI Transportation Services, Inc.)), in *ETSI Pipeline Project v. Burlington N., Inc.*, No. B-84-979-CA, 1989 U.S. Dist. LEXIS 18796 (E.D. Tex. June 5, 1989), a complex antitrust case, negotiated a 33% flat contingent fee and agreed to reimburse their counsel for all out-of-pocket expenses. After the plaintiffs obtained a $1 billion verdict at trial and after five years of litigation, the case subsequently settled for $635 million, and the court awarded plaintiffs' counsel a fee of 33% – approximately $212 million. *See* Silver Report at 27 (citing Declaration of Harry Reasoner, ¶4) (submitted in *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, MDL No. 551 (D. Ariz. Nov. 30, 1990)). In another case involving Research In Motion Ltd. (the company that manufactures the popular Blackberry), the plaintiff entity negotiated a 33% fee agreement with the law firm of Wiley Rein & Feilding ("WRF") to prosecute a complex patent dispute. When the case settled for $612.5 million, WRF received more than $200 million in fees. *Id.* at 24 (citing Yuki Noguchi, *D.C. Law Firm's Big BlackBerry*

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benefit the client." *Synthroid I*, 264 F.3d at 721. In fact, in *Tanox, Inc. v. Akin Gump, et al.*, 105 S.W.3d 244 (Tex. App. Houston 2003), a sophisticated client with an enormous intellectual property claim agreed to pay his attorneys an upward scale of contingent percentages. "Under the fee agreement, Tanox agreed to pay the lawyers a contingency fee pursuant to a sliding scale: 25% of the first $32 million recovered by Tanox, 33⅓% of recovery from $32 million to $60 million, 40% of recovery from $60 million to $200 million, and 25% of recovery over $200 million." *Id*. at 248-49. *See* Silver Report at 26. The facts of this case warrant approval of the upward sliding fee structure negotiated with counsel, which has a highest marginal rate (25%) that is well below the customary commercial contingency fee rate of 33%.

Payday; Case Fees of More than $200 Million Are Said to Exceed Its 2004 Revenue, Washington Post, Mar. 18, 2006, at D03). Even in *Synthroid II*, sophisticated plaintiffs with tens of millions of dollars at stake agreed to pay 22% to their lawyers even though a settlement was already on the table when the lawyers were hired. *Synthroid II*, 325 F.3d at 978. These cases support the fact that 30%-33% is the benchmark for contingent fee agreements that solvent, sophisticated companies would agree to pay in a private marketplace even when claimed damages exceed $100 million.

2. The Requested Fee Is Also Consistent with Seventh Circuit Authority and Empirical Data Regarding Awards in Cases This Size that Have Settled Prior to Trial

Fee awards of 25% or more are fairly common in securities fraud class actions that settle prior to trial. Thus, Class Counsel's attorneys' fees request is within the range of percentage awards made in this District and Circuit.[4] In cases settled prior to trial (which clearly involve less risk), courts in large recovery cases have awarded fees from 20%-33%.[5]

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[4] *See Motorola*, 2013 U.S. App. LEXIS 16878, at *4-*5 (27.5% of settlement fund); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 598-99 (7th Cir. 2005) (30% of settlement fund); *Greater Pa. Carpenters Pension Fund v. Whitehall Jewellers, Inc., et al.*, No. 04 C 1107, slip op. (N.D. Ill. July 24, 2006) (30% of settlement fund); *Weiner v. The Quaker Oats Co., et al.*, No. 98 C 3123 (RP), slip op. (N.D. Ill. Sept. 14, 2001) (33%); *In re Nanophase Techs. Corp. Sec. Litig.*, No. 98 C 3450, slip op. (N.D. Ill. Mar. 27, 2001) (33%); *In re Spyglass, Inc. Sec. Litig.*, No. 99 C 0512, slip op. (N.D. Ill. May 23, 2000) (Guzman, J.) (33%); *In re First Merchs. Acceptance Corp. Sec. Litig.*, No. 97 C 2715, slip op. (N.D. Ill. Apr. 21, 2000) (33%); *In re Caremark Int'l Inc. Sec. Litig.*, No. 94 C 4751, slip op. (N.D. Ill. Dec. 15, 1997) (33%); *In re Nuveen Fund Litig.*, No. 94 C 360, slip op. (N.D. Ill. June 3, 1997) (33%); *In re Soybean Futures Litig.*, No. 89 C 7009, slip op. (N.D. Ill. Nov. 27, 1996) (33%); *Liebhard, et al. v. Square D Co., et al.*, No. 91 C 1103, slip op. (N.D. Ill. June 15, 1993) (33%); *First Interstate Bank of Nev., N.A. v. Nat'l Republic Bank of Chicago, et al.*, No. 80 C 6410, slip op. (N.D. Ill. Feb. 12, 1988) (39%).

[5] *Motorola*, 2013 U.S. App. LEXIS 16878, at *4-*5 (awarding 27.5% fee of $200 million settlement); *In re Adelphia Communs. Corp. Sec. & Deriv. Litig.*, No. 03-MDL-1529, 2006 U.S. Dist. LEXIS 84621, at *16 (S.D.N.Y. Nov. 17, 2006) (awarding 21.4% fee in $460 million settlement); *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897, 2000 U.S. Dist. LEXIS 1734, at *6 (N.D. Ill. Feb. 10, 2000) (awarding 25% fee of $697 million settlement); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% fee of $510 million settlement); *In re Checking Account*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (awarding 30% fee of $410 million settlement); *Ohio Pub. Emps. Ret. Sys. v. Freddie Mac*, No. 03-CV-4261 (JES), 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (awarding 20% fee of $410 million settlement); *In re Vitamins Antitrust Litig.*, No. 99-197 (TFH), 2001 U.S. Dist. LEXIS 25067, at *61-*62 (D.D.C. July 16, 2001) (awarding 34% fee of $365 million settlement); *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, No. M:02-cv-01486-PJH, 2007 U.S. Dist. LEXIS

These cases are relevant to the Court's inquiry here and support the reasonableness of Class Counsel's application. *See Taubenfeld*, 415 F.3d at 600 ("attorneys' fees from analogous class actions settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court"); *see also AT&T Mobility II*, 792 F. Supp. 2d at 1039-40. However, these cases, as well as studies of fee awards in class actions do not provide direct evidence of market rates, and provide a downward bias due to many courts' departing from market rates in "mega-fund" cases. *See* Silver Report at 34. Judge Easterbrook rejected the capping of rates in "mega-fund" recoveries in *Synthroid I* since "private parties would never contract for such an arrangement." *Synthroid I*, 264 F.3d at 718. Thus, although these decisions certainly support the fee requested, this case can be distinguished from these cases and others that typically settle before summary judgment or trial for a small fraction of the potential damages. Here, even after the attorneys' legal fees are paid, Class Members will still receive ***more than 100%*** of their allowable out-of-pocket losses. There has never been a PSLRA case of this magnitude that has yielded such a result. As such, the market rate for a contingent fee in commercial cases is a more appropriate percentage. *See Exxon*, 454 F. Supp. 2d at 1211.[6]

103027, at *2 (N.D. Cal. Aug. 16, 2007) (awarding 25% fee of $326 million settlement); *In re Oxford Health Plans, Inc. Sec. Litig.*, No. MDL 1222 (CLB), 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28% fee of $300 million settlement); *In re DaimlerChrysler AG Sec. Litig.*, No. 00-993 (KAJ), 2004 U.S. Dist. LEXIS 31757, at *5 (D. Del. Feb. 5, 2004) (awarding 22.5% fee of $300 million settlement). *See also* chart at 35-38 of the Silver Report.

[6] In light of the enormous risks and procedural challenges, very few securities fraud class actions are tried to a verdict. In one of the rare exceptions, *In re Apollo Group Secs. Litig.*, No. CV-04-2147, 2012 U.S. Dist. LEXIS 55622, at *25-*26 (D. Ariz. Apr. 20, 2012), the court approved Class Counsel's 33.3% fee request following the parties' settlement of the case after judgment. *Id*. In reaching the decision, the court acknowledged that "securities class actions rarely proceed to trial," and held that "[a]n upward departure from the 25% benchmark" for fees in the 9th Circuit was appropriate because the result was exceptional and "it was extremely risky for Class Counsel to pursue this case through seven years of litigation." *Id*. The same analysis plainly supports Class Counsel's request for 24.37% here.

Although the total amount of the legal fee requested is large, it should be considered in the context of the extraordinary judgment here. *See id*. at 1212 (citing *Krell v. Prudential Insur. Co. of America*, 148 F.3d 283, 339-40 (3rd Cir. 1998)). Its reasonableness is even more apparent when compared to payment of legal fees to law firms working on large, complex bankruptcy cases where law firms are paid their hourly rate each year as incurred without the substantial risk of nonpayment years down the road. Although the legal fees paid to law firms defending complex securities class actions such as this case are not publicly known, the bankruptcy rules require disclosure of payments from the debtor's estate to lawyers. In the recent Lehman Brothers bankruptcy, the law firm of Weil, Gotshal & Manges LLP, received payment for at least $421 million for their work on the case despite the fact that there was no risk of non-payment. *In re Lehman Bros. Holdings, Inc., et al.*, No. 08-13555, Order (Bankr. S.D.N.Y. Dec. 6, 2012) (Dkt. No. 32607). In the *Madoff* litigation, the law firm (Baker Hostetler) working for the trustee has been paid over $483 million for its work despite the fact that there was no risk of non-payment. *Sec. Inv. Protection Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-1789, Order (Bankr. S.D.N.Y. Dec. 17, 2013) (Dkt. No. 5605). In this light, the requested fee of 24.37% of the Judgment is reasonable particularly considering the risk of non-payment that still exists in this case. In fact, the risk still exists that defendants will be successful on their appeal and Class Counsel will receive nothing for all their work.

3. The Risk Involved in Securities Class Action Cases and the Contingent Nature of the Litigation Supports a 24.37% Fee Award

As noted by the Seventh Circuit in *Synthroid I*, "[t]he market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear." 264 F.3d at 721. Despite their ultimate success, Class Counsel assumed a significant risk that defendants would successfully defend this case during motions to dismiss, class certification, summary judgment, pre-trial *Daubert* proceedings, trial and post-trial proceedings. The Class (and Class Counsel) stared down the

possibility of recovering nothing and overcame the substantial risk of trying the case to a jury. In fact, the risk remains that the Judgment may be overturned on appeal.[7]

These risks were, and are, real. For example, at trial, the jury returned a verdict in favor of defendants for all claims on behalf of purchasers of Household stock from July 30, 1999 through March 22, 2001. There was always a risk that the jury would find in favor of defendants for the entire Class Period, or that the jury would choose the specific disclosure model of damages which had a lower inflation per share than the leakage model of damages adopted by the jury. "Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Motorola*, 2013 U.S. App. LEXIS 16878, at *5-*6.

It is an established practice in the private legal market to reward attorneys for taking on the risk of non-payment by paying them a premium over their normal hourly rates for prevailing in contingency cases. *See* Richard Posner, *Economic Analysis of Law* §21.9, at 534-35 (3d ed. 1986). Contingent fees that may far exceed the market value of the services rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose. *In re WPPSS Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994).

Securities class actions are extremely risky. In fact, according to NERA, somewhere between one third to one half of all modern day securities litigations filed are dismissed. Dr. Jordan

[7] Class Counsel continue to represent the October 17, 2013 judgment claimants on appeal. As always, their interests and the Class Counsel's interests are entirely aligned.

Milev, *et al.*, *Recent Trends in Securities Class Action Litigation: 2012 Full-Year Review* at 24, Figure 22 (NERA Economic Consulting Jan. 29, 2013) ("*NERA Full-Year 2012*").[8]

As noted above, the risk of no recovery in complex cases of this type is very real. As the court in *Xcel* recognized, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005). Plaintiffs' counsel have experienced this risk firsthand. For example, in the *Oracle Securities Litigation*, Robbins Geller expended tens of millions of dollars in attorney time and expenses only to see the case dismissed at summary judgment. *In re Oracle Corp. Sec. Litig.*, No. C 01-988 SI, 2009 U.S. Dist. LEXIS 50995 (N.D. Cal. June 16, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010). In the *Phillip Morris Tobacco Litigation*, class counsel spent tens of millions of dollars of attorney time and additional millions of dollars of expenses over a period of four years, only to lose a jury verdict in March 1999 in favor of defendants. *Local 17 Int'l Ass'n of Bridge & Iron Workers Ins. Fund v. Phillip Morris, et al.*, 97-CV-1422 (N.D. Ohio). In the *Apple Securities Litigation*, class counsel also spent tens of millions of attorney time and expenses over a number of years in the late 1980's. After obtaining a jury verdict at trial, the District Court granted defendants judgment notwithstanding the verdict.[9] *In re Apple Computer Sec. Litig.*, No. C-84-20148 (N.D. Cal. May 28, 1991). All of these cases show the enormous risk involved in taking these cases to summary judgment and trial.

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[8] For example, in 2000, the most recent year for which all filed cases have now been resolved, 37% of the cases were dismissed. The risk of losing appears to have increased substantially since 2000. For cases filed in 2003, a year in which 95.5% of the cases have now been resolved, the dismissal rate was 41%. The results for 2005 and 2006 were even worse. For 2005, with 96.3% of the cases filed that year having been resolved, the dismissal rate was 49% and for 2006, with 94.7% of the cases filed that year having been resolved, the dismissal rate was 44.3%. NERA Full-Year 2012, at 24, Figure 22. *See* Silver Report at 45-46.

[9] Likewise, class counsel won a securities class action jury verdict only to see it vacated on appeal. *See Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997).

Class Counsel are aware of numerous hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of a case, a decision following a trial on the merits, or just the risk of proving the case, the excellent and highly-skilled efforts of members of the plaintiffs' bar yielded no fee. For instance, there are numerous appellate decisions affirming summary judgment and directed verdicts for defendants in securities class actions.[10] Plaintiffs who proceed to trial may not prevail or may find a favorable verdict overturned on appeal. *See BankAtlantic Bancorp Sec. Litig.*, No. 07-61542, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law after jury rendered verdict in favor of plaintiffs); *In re JDS Uniphase*, No. 02-2020, 2008 U.S. Dist. LEXIS 70231, at *5 (N.D. Cal. Sept. 16, 2008) (jury verdict in favor of all defendants); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning verdict in favor of plaintiffs as a result of a 1994 Supreme Court opinion after a case was filed in 1973 and tried in 1988); *In re Apple Computer Sec. Litig.*, No. C-84-20148(A)-JW, 1991 U.S. Dist. LEXIS 15608, at *1-*2 (N.D. Cal. Sept. 6, 1991) (verdict against two individual defendants, but court vacated judgment on motion for judgment notwithstanding the verdict); *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 309 (2d Cir. 1979) (multimillion dollar judgment reversed after lengthy trial); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (en banc) (reversing plaintiffs' verdict for securities fraud and ordering entry of judgment for defendants after 11 years of litigation); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1988) (reversing plaintiffs' verdict for securities fraud); *Robbins v. Koger Props.*, 116 F.3d 1441 (11th Cir. 1997) (same).

[10] *See In re Oracle Corp. Sec. Litig.*, 627 F.3d 376 (9th Cir. 2010); *In re Digi Int'l, Inc. Sec. Litig.*, No. 00-3162, 2001 U.S. App. LEXIS 15095 (8th Cir. July 5, 2001); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001); *Greebel v. FTP Software, Inc.*, 194 F.3d 185 (1st Cir. 1999); *Longman v. Food Lion, Inc.*, 197 F.3d 675 (4th Cir. 1999); *In re Silicon Graphics Sec. Litig.*, 183 F.3d 970 (9th Cir. 1999); *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609 (4th Cir. 1999); *Levitin v. PaineWebber, Inc.*, 159 F.3d 698 (2d Cir. 1998); *Silver v. H&R Block*, 105 F.3d 394 (8th Cir. 1997).

It is axiomatic that lawyers who specialize in contingent matters operate in a legal environment fraught with uncertainty. Clearly, the risks associated with this contingent litigation were many and in determining whether the requested fee of 24.37% of the Judgment Amount is consistent with Seventh Circuit precedent, the Court should take this dynamic into account. *See, e.g.*, *Sutton v. Bernard*, 504 F.3d 688, 694 (7th Cir. 2007) ("Because the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated.").

In sum, the risk of recovering nothing was all too real in this case that was tried to verdict. Clearly, the higher litigation risk here is a circumstance that supports a 24.37% fee award. *AT&T Mobility II*, 792 F. Supp. 2d at 1032.

4. The $2.46 Billion Judgment Was Not Likely at the Outset of the Litigation

In considering the reasonableness of the requested contingency fee, the Court should assess the probability that the result obtained – a $2.46 billion judgment – was likely from the outset of the litigation. *Florin*, 34 F.3d at 565. Here, the $2.46 billion Judgment Amount obtained by Class Counsel were certainly not likely from the outset of the litigation. This militates in favor of the 24.37% fee request.

Some studies show that securities class action cases most often settle before trial for a small fraction of investors' losses. "A case with investor losses of $100 million is expected to have a settlement that is around $5.1 million, or 5.1% of investor losses. A case with $1 billion in investor losses is expected to settle for $12 million, only 1.2% of losses." Silver Report at 45 (citing NERA *Full-Year 2012* at 32) ("median settlement for cases with investor losses over $1 billion has been 0.7%"). Class damages were estimated at between $2.4 billion to $3.26 billion (without prejudgment interest). *See* Steinholt Decl., ¶2 (Ex. 11 to Burkholz Decl., Dkt. No. 1673). Based on

these sources, any early settlement would likely have been less than $100 million. In fact, there have been only three securities class actions that have recovered more than $100 million in the Seventh Circuit, with *Waste Management* being the largest at $220 million. Even if there was an expectation that this case would settle in the same range as the *Waste Management* case, the Judgment Amount is still over 10 times the expected result, and warrants the requested fee. Furthermore, only a dozen or so cases across the country have been tried to verdict since the passage of the PSLRA in 1995. And many of these have resulted in defense verdicts or small verdicts for plaintiffs.[11] The trial verdict and $2.46 billion Judgment Amount is by a substantial multiple, the largest in a securities class action. In sum, the Judgment Amount obtained here was unlikely at the outset of the litigation and its magnitude supports the reasonableness of the requested fee.

5. Class Counsel Provided the Class for More than a Decade with Quality Legal Services that Produced Excellent Benefits

In evaluating a fee request, the Seventh Circuit has held that the trial court may consider the "quality of legal services rendered" by plaintiffs' counsel and "the amount of work necessary to resolve the litigation." *Taubenfeld*, 415 F.3d at 600; *Synthroid I*, 264 F.3d at 721. Robbins Geller Rudman & Dowd LLP, is a nationally recognized leader in complex securities litigation class

[11] *See In re Health Management Sec. Litig.*, No. 96-CV-0889 (E.D.N.Y. 1999) (defense verdict); *In re Real Estate Associates Limited Partnerships*, No. 98-7035 (C.D. Cal. 2002) (tried to a $185 million jury verdict reduced by trial court to $120 million, later settled for $83 million); *In re Clarent Corp.*, No. 01-CV-3361 (N.D. Cal. 2005) (plaintiff verdict for nominal damages – settled for $6.9 million); *BankAtlantic Bancorp*, No. 07-61542 (S.D. Fla. Apr. 25, 2011) (plaintiff jury verdict of $2.41 per share set aside by court and judgment entered for defendants and affirmed on appeal); *Miller v. Thane International*, No. 02-CV-01156 (C.D. Cal. 2005) (defense verdict affirmed on appeal); *In re JDS Uniphase Corp. Sec. Litig.*, No. 02-CV-01486 (N.D. Cal. 2007) (defense verdict); *Koppel v. 4987 Corp.*, 96-CV-7570 (2nd Cir. 2002) (defense verdict); *In re American Mutual Funds Fee Litig.*, No. 04-CV-05593 (9th Cir. 2011) (defense verdict affirmed on appeal); *In re Apollo Group Inc. Sec. Litig.*, No. 04-CV-02147 (D. Ariz. 2008) ($280 million jury verdict for plaintiffs after two months of trial. Verdict overturned by Judge, post-trial, but reinstated by Ninth circuit in June 2010, and the case settled in November 2011 for $145 million); *In re Vivendi Universal, S.A., Sec. Litig.*, Case No. 02-Civ-5571 (S.D.N.Y. 2011) (jury verdict for per share damages – class greatly narrowed by court); *Claghorn v. Edsaco Ltd.*, No. 3:98 CV 3039 (N.D. Cal. 2002) (plaintiff verdict for $170 million – $165 million in punitive damages – settled for $10 million); and *In re Homestore Inc. Sec. Litig.*, No. 01-CV-11115 (C.D. Cal. 2011) (plaintiff verdict but no recovery).

actions. *See* Silver Report at 47-48. Robbins Geller is recognized by institutions for its ability and willingness to conduct thorough investigations and rigorous prosecution of PSLRA cases from inception through trial despite the risk that the class claims, while viable, may not prevail. In this case, Class Counsel devoted over 100,000 hours of work by its attorneys and supporting paraprofessionals, and invested over $14 million in expenses associated with the factual investigation, discovery, motion practice, trial and claims procedure necessary to turn the Class Members' claims into a Final Judgment. Declaration of Michael J. Dowd Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for an Award of Attorneys' Fees and Expenses ("Dowd Decl."), ¶¶4-5, filed herewith. The recognized skills of Class Counsel were called upon to successfully prosecute the case for the Class. As set forth in more detail in the Burkholz Declaration (all paragraph references below refer to the Burkholz Decl.), Class Counsel's efforts included the following:

- Researching, preparing and filing an extensive, 158-page complaint (¶¶11-17, 22-26);
- Responding to defendants' ***three*** initial motions to dismiss in 2003 (¶¶27-34) and ***two*** additional motions to dismiss in 2005 based on new legal authority (¶¶39-44);
- Prepared or responded to discovery with defendants and 37 third-parties (¶¶55-67);
- Prepared or responded to over 40 discovery-related motions, many of which were briefed a second time before Judge Guzman. The evidence obtained by these motions (Household's regulatory documents, additional documents withheld by Household, Household consumer division documents, documents from numerous state agencies, Ernst & Young documents, and Wells Fargo documents) were essential to the success of the trial (¶¶68-145);[12]

[12] As always, the documents uncovered by Class Counsel were critically important. For example, Class Counsel (a) obtained documents from third-party Wells Fargo that showed that Wells Fargo conducted due diligence of Household in the spring of 2002 in connection with a potential acquisition, but walked away after reviewing Household's internal documents; (b) analyzed Household's internal financial documents to be able to demonstrate that Household's Chief Financial Officer, defendant Schoenholz, misled investors about Household's "re-aging" of loan statistics at the April 2002 Financial Relations Conference; (c) uncovered a training video conducted by Household District Manager Dennis Huemen that showed branch managers how to trick Household

- Defended or took 83 depositions (¶¶59-60, 63, 152, 221);

- Worked with three experts on their reports and depositions (¶¶146-152);

- Prepared for trial, including preparation of exhibit lists, jury instructions, deposition testimony and other items included in the Pretrial Order filed with the Court (¶¶169-174);

- Prepared seven motions *in limine* and three *Daubert* motions, and responded to seven motions *in limine* filed by defendants regarding the admissibility of expert testimony and other issues (¶¶177-196);

- Prepared for and attended eight days of pretrial conferences that addressed *Daubert* motions, motions *in limine*; jury instructions and evidentiary issues regarding exhibits, demonstratives and depositions (¶197);

- Prepared for and attended 26 days of trial, which included questioning 17 witnesses, attending conferences with the Court on jury instructions, opposing defendants' Rule 50 motion, and four weekly summations to the jury (¶¶198-203);

- Prepared extensive oppositions to defendants' Rule 50/59 motions in 2009 after trial and defendants' renewed Rule 50/59 motions in 2013 (¶¶209-210, 246);

- For discovery in the Phase II proceedings, worked with over 120 institutional class members and the three Lead Plaintiffs to respond to defendants' discovery, defended 12 depositions and briefed motions to the Court related to Phase II discovery issues (¶¶215-222);

- Prepared a response to defendants' reliance briefing (¶¶223-225);

- For the claims filing process in Phase II, communicated extensively (by the three partners that tried the case) with many class members, third-party filers and custodial banks for proper submission of claim information, including the supplemental claim form question on reliance, and prepared a detailed, extensive response to defendants' objection to 28,735 claims (¶¶226-233);

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customers into overpaying for loans; (d) found the handful of remaining memoranda drafted by the notorious Andrew Kahr outlining a strategy to systematically overcharge Household's customers through insidious predatory loan practices, as well as the memorandum written by defendant Schoenholz ordering the destruction of all Kahr memos – the Schoenholz memo was buried by defendants in a production made just before trial; and (e) uncovered a one-page memorandum that showed that defendants had concluded that the drop in Household's stock price in the Summer of 2002 was not due to market or industry factors, but rather the leakage of information about systemic predatory lending practices at Household, which completely supported Professor Fischel's leakage damages model.

- Prepared submissions and participated in meetings with the Special Master to adjudicate disputed claims (¶¶240-245); and

- Prepared submissions seeking prejudgment interest and the entry of judgment (¶247).

In sum, plaintiffs' counsel have vigorously litigated this case for over 11 years.

Few law firms could have, or would have, devoted the tremendous amount of time and financial resources to bring this case to judgment, as opposed to taking some modest amount to settle the action. Had plaintiffs lost at any stage, the loss of time, money and effort by Class Counsel would have been enormous. In prosecuting this action to judgment, Class Counsel expended over 116,000 hours of attorney, paralegal and paraprofessional time, generating a "lodestar" of substantially in excess of $50 million and litigation expenses of almost $15 million, all of which were subject to the real risk of total loss. *See* Dowd Decl., ¶¶4-5. In addition, Class Counsel were successful in defending against defendants' attempts to rebut the presumption of reliance in Phase II proceedings.

As a result of Class Counsel's diligent efforts on behalf of the Class and their skill and expertise, Class Counsel obtained a historic result for the Class, representing 100% of the maximum recoverable damages plus prejudgment interest of an additional 66%. This recovery is all the more impressive in light of empirical evidence demonstrating that, on average, cases like this typically settle for 1%-2% or less of investor losses. *See NERA Full-Year 2012* at 32. Clearly, the quality of Class Counsel's work on this case is reflected in the $2.46 billion Judgment Amount obtained for the Class.

The quality of opposing counsel is also an important factor in evaluating the work performed by Class Counsel. *Arenson v. Bd. of Trade*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Class Counsel were opposed in this case at various times by nationally known and highly capable law firms, including:

- Wachtell, Lipton, Rosen & Katz;
- Milbank, Tweed, Hadley & McCloy;
- Cahill Gordon & Reindel LLP;
- Skadden, Arps, Slate, Meagher & Flom; and
- Former U.S. Solicitor General Paul Clement of the Bancroft firm.

These firms spared no effort or expense in their zealous defense of the Litigation. The ability of plaintiffs to obtain a favorable result for the Class while litigating against these powerful defense firms and their well-financed clients further evidences the quality of Class Counsel's work and weighs in favor of the Court granting the request sought here.

6. The Stakes of the Litigation Favor a 24.37% Fee Award

As the Litigation advanced through discovery and into trial, the stakes of this action only increased. Not only would Class Counsel have not received any compensation if they failed to prevail at trial, they would have been forced to write off over $50 million worth of attorney and support staff time, as well as over $14 million in expert and consulting fees and other expenses that Class Counsel had invested in this case over more than a decade. Like class counsel in the *Exxon* case, it was an "all or nothing case" with a very significant possibility of no recovery.

7. Class Representatives Glickenhaus & Co. and IUOE Independently Assessed and Approved the 24.37% Fee Request

Each of the Lead Plaintiffs with claims on the Judgment Amount have approved the fee request sought here. *See* Glickenhaus Decl., ¶4; Plymale Decl., ¶4. Both have also independently assessed the issue of attorneys' fees and, based on the risks incurred, the quality of the work performed and the results obtained and believe that a 24.37% fee is reasonable and should be approved by the Court. *Id.*

III. CLASS COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Class Counsel also request an award of their litigation expenses in connection with the prosecution of the Litigation. Class Counsel have submitted a separate declaration herewith attesting to the amount and accuracy of their expenses. Dowd Decl., ¶¶5-6; *See also Synthroid I*, 264 F.3d at 722 (should counsel submit sufficiently detailed expense reports and records, "a federal court should not require more" for purposes of determining the reasonableness of the request for reimbursement). Class Counsel's litigation expenses total $14.6 million. An empirical study of the cost and expense of class actions finds that 4% of the relief obtained for a class is the average request for expenses. *See* Theodore Eisenburg and Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empircal Legal Studies, 27, 70 (2004). *See also* Silver Report at 20-21. Here, 4% of the $2.46 billion Judgment Amount equates to $98.4 million. Under this benchmark, Class Counsel's request for expenses (less than 1% of the Judgment Amount) is very reasonable. *See, e.g.*, *AT&T Mobility II*, 792 F. Supp. 2d at 1040-41 (finding that a fee request of 2.5% of maximum recovery reasonable in light of the Eisenburg and Miller study). As such, the Court should approve Class Counsel's request for their expenses.

Notably, a significant component of Class Counsel's expenses were for consultants and experts. Class Counsel identified and retained leading experts in the field of loss causation and damages, accounting and predatory lending.[13] The experts and consultants worked closely with Class Counsel throughout the Litigation and were instrumental in assisting Class Counsel to achieve the result obtained for the Class.

[13] Further information regarding these experts, consultants, and investigators is contained in the Dowd Declaration.

IV. THE CLASS REPRESENTATIVES ARE ENTITLED TO AN AWARD OF REASONABLE COSTS AND EXPENSES

Pursuant to the PSLRA, the Court has discretion to award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15. U.S.C. §78u-4(a)(4). Class Representatives, Glickenhaus & Co. and PACE, request reimbursement of $27,065.00 and $15,287.07, respectively. *See* Glickenhaus Decl.; Wieck Decl. Each Lead Plaintiff devoted substantial time to the oversight of, and participation in, the Litigation, including reviewing pleadings, preparing for depositions, complying with defendants' discovery requests, consulting with Class Counsel regarding strategy and settlement discussions. *Id*. The amounts requested will only reimburse the plaintiffs for their expenses (including lost wages) directly relating to their representation of the Class. Not only are such awards appropriate under the PSLRA, they are also recognized as appropriate within the Seventh Circuit. *AT&T Mobility II*, 792 F. Supp. 2d at 1041 (citing *Continental*, 962 F.2d at 571).

V. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court approve Class Counsel's application for attorneys' fees and expenses, as well as the expenses sought by the plaintiffs pursuant to the PSLRA.

DATED: December 31, 2013

Respectfully submitted,

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DECLARATION OF SERVICE BY ELECTRONIC MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and employed in the City and County of San Diego, State of California, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 W. Broadway, Suite 1900, San Diego, California 92101.

2. That on December 31, 2013, declarant caused to be served by electronic mail to the parties the following document:

PLAINTIFFS' MOTION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND REASONABLE COSTS AND EXPENSES FOR LEAD PLAINTIFFS

The parties' e-mail addresses are as follows:

Tkavaler@cahill.com	Zhudson@bancroftpllc.com
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Pclement@bancroftpllc.com	Lfanning@MillerLawLLC.com

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of December, 2013, at San Diego, California.

s/ TERESA HOLINDRAKE
TERESA HOLINDRAKE