

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

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EASTWOOD ENTERPRISES, LLC  
Individually and on Behalf of All Others  
Similarly Situated,

Plaintiffs,

vs.

TODD S. FARHA, PAUL L. BEHRENS,  
THADDEUS BEREDAY, and  
WELLCARE HEALTH PLANS, INC.,

Defendants.

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Case No.: 8:07-cv-1940-VMC-EAJ

**LEAD COUNSEL’S MOTION AND INCORPORATED  
MEMORANDUM OF LAW FOR AN AWARD OF ATTORNEYS’ FEES  
AND REIMBURSEMENT OF LITIGATION EXPENSES**

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**MOTION**

Court-appointed Lead Plaintiffs' Counsel Bernstein Litowitz Berger & Grossmann LLP and Labaton Sucharow LLP ("Lead Counsel"<sup>1</sup>), having achieved a recovery of at least \$200 million (the "Settlement Fund") from Defendant WellCare Health Plans Inc. ("WellCare" or the "Company"),<sup>2</sup> on behalf of all Plaintiffs' Counsel,<sup>3</sup> respectfully move the Court for an order approving Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses and approving Lead Plaintiffs' application for reimbursement of their expenses directly related to their representation of the Class.

The instant Motion is supported by a Memorandum of Law and the Declaration of Steven Singer and Thomas A. Dubbs in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Lead Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl.") with annexed exhibits submitted herewith.

Lead Counsel certify pursuant to Local Rule 3.01(g) that they have conferred with counsel for Defendant WellCare, which takes no position with respect to this motion.

**MEMORANDUM OF LAW**

Lead Counsel respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 23(h), for an award of attorneys' fees in the amount of 17% of the Settlement Fund, including accrued interest. The Court-appointed Lead Plaintiffs, the New Mexico State Investment Council, the Public Employees Retirement Association of New

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meanings as set forth in the Stipulation and Agreement of Settlement (the "Stipulation"), dated December 17, 2010, and filed with the Court on January 7, 2011 (ECF No. 265-1).

<sup>2</sup> The term "Defendants" includes Todd S. Farha, Paul L. Behrens and Thaddeus Bereday (the "Individual Defendants"), together with WellCare.

<sup>3</sup> Plaintiffs' Counsel includes Lead Counsel and other counsel who, at the direction and under the supervision of Lead Counsel, performed work on behalf of Class Members in the action.

Mexico, the Teachers' Retirement System of Louisiana, the Policemen's Annuity and Benefit Fund of Chicago and the Public School Teachers' Pension & Retirement Fund of Chicago (collectively, "Lead Plaintiffs"), are sophisticated institutional investors who closely supervised this litigation, evaluated the fee request and believe it to be fair and reasonable.

Lead Counsel also seek reimbursement of \$1,698,959.56 in litigation expenses incurred in the Action. Finally, pursuant to the Private Securities Litigation Reform Act (the "PSLRA"), Lead Plaintiffs seek reimbursement of their reasonable costs directly related to their representation of the Class. For the reasons set forth below and in the accompanying papers, Lead Plaintiffs and Lead Counsel respectfully submit that the application for attorneys' fees and expenses is reasonable and should be granted in its entirety.<sup>4</sup>

#### **I. PRELIMINARY STATEMENT**

The proposed Settlement represents an excellent recovery for the Class. This substantial recovery was achieved through the skill, work, and tenacity of Lead Counsel.

The prosecution and settlement of this litigation against Defendants required extensive efforts on the part of Lead Counsel, particularly given the complexity of the legal and factual issues raised by the claims and the vigorous defense by Defendants and their counsel. As set forth in detail in the Joint Declaration, among other things, Lead Counsel: (i) filed a detailed and particularized consolidated class action complaint after conducting an extensive factual investigation which included, among other things, identifying, locating, and interviewing numerous former WellCare employees; (ii) successfully opposed Defendants' motions to dismiss; (iii) engaged in extensive discovery, which included serving document requests and

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<sup>4</sup> Lead Counsel is simultaneously submitting herewith the Joint Declaration which describes, among other things, the substantial efforts of Lead Counsel in litigating and resolving the Action, the significant risks Lead Counsel faced in prosecuting the Action on a contingent fee basis, and other matters relevant to this fee and expense application. Lead Counsel respectfully incorporate that document herein.

interrogatories on Defendants, issuing twenty subpoenas to nonparties, reviewing and analyzing over four million documents and nearly three Terabytes of data, and taking six depositions; (iv) briefed and filed a motion for class certification, including an expert report, which resulted in WellCare stipulating to class certification; (v) consulted with several experts, including a damages expert and a financial consultant; and (vi) participated in hard fought arm's length settlement negotiations, including three formal in-person mediation sessions before former United States District Court Judge Layn R. Phillips (Ret.), an experienced and respected professional mediator.

Lead Counsel have represented the Class on a purely contingent-fee basis and have received no compensation for their work in this Action, while they have continued to incur the enormous costs of funding the Action. Given the current status of the litigation, the complexity and amount of work involved, the skill and expertise required, and the risks counsel undertook, Lead Counsel strongly believe the requested award of 17% of the Settlement Fund plus interest earned and reimbursement of litigation expenses in the amount of \$1,698,959.56, is fair and reasonable under the circumstances of this Action. Indeed, as discussed below, federal courts in this Circuit and throughout the nation, recognizing the risks and effort generally expended by counsel to obtain favorable results, have frequently awarded greater fees and expense reimbursement in complicated securities fraud cases such as this.

Furthermore, the requested fee amount here is supported by Lead Plaintiffs, five sophisticated institutions that have been heavily involved in the prosecution of the Action and the negotiation of the Settlement. In addition, although Notices have been mailed to over 90,000 potential Class Members stating that Lead Counsel would seek fees of 17% of the Settlement Fund and reimbursement of expenses in an amount not to exceed \$2 million plus interest, not a

single eligible Class Member has filed an objection to these requests as of the filing of this motion.<sup>5</sup>

In sum, the requested fee is fair and reasonable, and the expenses requested are reasonable in their amount and were necessarily incurred for the successful prosecution of this Action. Accordingly, it is respectfully submitted that all of these requested items should be granted in full by the Court.

## II. ARGUMENT

### A. A Reasonable Percentage of the Fund Recovered is the Appropriate Method To Use in Awarding Attorneys' Fees in the Eleventh Circuit

Courts have long recognized that attorneys who represent a class and achieve a benefit for class members are entitled to be compensated for their services, and that where a class plaintiff successfully recovers a settlement fund, the costs of litigation should be spread among the fund's beneficiaries. Thus, attorneys who obtain a recovery for a class in the form of a common fund are entitled to an award of fees and expenses from that fund as compensation for their work. See *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991).

Courts have recognized that, in addition to providing just compensation, awards of attorneys' fees from a common fund serve to "encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 356 (E.D.N.Y. 2010). Indeed, the Supreme Court has emphasized that private securities cases such as this one are "an essential supplement to criminal prosecutions and civil enforcement actions,"

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<sup>5</sup> The deadline for filing objections is April 13, 2011. Should any be received, they will be addressed in Lead Counsel's reply papers that will be filed on or before April 27, 2011.

*Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007), and “‘an indispensable tool with which defrauded investors can recover their losses’ – a matter crucial to the integrity of domestic capital markets.” *Id.* at 320 n.4 (quoting *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 81 (2006)).

In *Camden*, the Eleventh Circuit announced the rule that “attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774; see *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (same). A percentage-based fee award accomplishes several objectives:

First, it is consistent with the private market place where contingent fee attorneys are regularly compensated on a percentage of recovery method. Second, it provides a strong incentive to plaintiffs’ counsel to obtain the maximum possible recovery in the shortest time possible under the circumstances. Finally, the percentage approach reduces the burden of the Court to review and calculate individual attorney hours and rates and expedites getting the appropriate relief to class members.

*Garst v. Franklin Life Ins. Co.*, No. 97-C-0074-S, 1999 U.S. Dist. LEXIS 22666, at \*83-84 (N.D. Ala. June 25, 1999) (citations omitted). Each of these objectives applies here.

**B. The 17% Fee Request Is Fair and Reasonable as a Percentage of the Fund**

A review of common fund cases confirms that the 17% fee sought by Lead Counsel is fair and reasonable and, indeed, substantially below the range of fee awards approved by courts within the Eleventh Circuit. In fact, the Eleventh Circuit has found that “the majority of common fund fee awards fall between 20% to 30% of the fund,” and has directed district courts to consider the 20% to 30% range a “benchmark” for percentage fee awards, which “may be

adjusted in accordance with the individual circumstances of each case.” *Waters*, 190 F.3d at 1294 (quoting *Camden I*, 946 F.2d at 774).<sup>6</sup>

A review of recent fee awards in common fund securities class actions within this Circuit confirms that the requested 17% fee is well below the range of typical fees awarded. *See, e.g., Waters*, 190 F.3d at 1293-98 (affirming 30% award); *In re Friedman’s, Inc. Sec. Litig.*, No. 1:03-cv-3475, 2009 WL 1456698, at \*2-4 (N.D. Ga. May 22, 2009) (awarding 30%); *In re CP Ships Ltd., Sec. Litig.*, No. 8:05-MD-1656, 2008 WL 4663363, at \*4 (M.D. Fla. Oct. 21, 2008) (awarding 22.5%), *aff’d*, 578 F.3d 1306 (11th Cir. 2009); *LaGrasta v. Wachovia Capital Markets, LLC*, No. 2:01-CV-251-FTM-29-DNF, 2006 WL 4824480 (M.D. Fla. Nov. 6, 2006) (awarding 30%); *Ressler v. Jacobson*, 149 F.R.D. 651, 653 (M.D. Fla. 1992) (awarding 30%).<sup>7</sup>

Similarly, in other securities class actions with settlements of comparable size, courts in this and other circuits have frequently awarded percentage fees well in excess of those requested here. *See, e.g., In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1336 (S.D. Fla. 2001) (awarding 25% of \$110 million settlement fund); *In re HealthSouth Corp. Stockholder Litig.*, No. CV-03-BE-1500-S, Slip op. at 2 (N.D. Ala. July 26, 2010) (awarding 19.5% of \$117 million

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<sup>6</sup> Similarly, as this court held in *Winn-Dixie*, “[D]istrict Courts are beginning to view the mediation of this 20 to 30 percent range, i.e., 25 percent as a benchmark fee which will be adjusted in accordance with the individual circumstances of each case as opposed to the lodestar hourly fee used in statutory fee awards.” *In re Winn-Dixie Stores, Inc. ERISA Litig.*, Case No. 3-04-cv-194-J-33MCR, Transcript of Proceedings, March 12, 2008, 44:2-7.

<sup>7</sup> It is also well within the range of fees awarded in this Circuit in non-securities class actions. *See, e.g., In re Winn-Dixie Stores, Inc. ERISA Litig.*, No. 3:04-cv-194, 2008 WL 815724, at \*8 (M.D. Fla. Mar. 20, 2008) (awarding 26%); *Eslava v. Gulf Tel. Co.*, No. 04-0297-KD-B, 2007 WL 4105977, at \*2 (S.D. Ala. Nov. 16, 2007) (awarding 30%); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339-10 (S.D. Fla. 2007) (awarding 30%); *In re HealthSouth Corp. ERISA Litig.*, No. CV-03-BE-1700-S, 2006 WL 2109484, at \*6-7 (N.D. Ala. June 28, 2006) (awarding 25%); *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1204 (S.D. Fla. 2006) (awarding 31.33% of \$1.06 billion settlement fund); *In re Terazosin Hydrochloride Antitrust Litig.*, No. 99 MDL 1317, 2005 U.S. Dist. LEXIS 43082, at \*19-22 (S.D. Fla. Apr. 19, 2005) (awarding 33.3%); *Fabricant v. Sears Roebuck & Co.*, No. 98-1281-Civ., 2002 WL 34477904, at \*4 (S.D. Fla. Sept. 18, 2002) (awarding 28.5%).

settlement fund); *Carpenters Health & Welfare Fund v. The Coca-Cola Co.*, 587 F. Supp. 2d 1266 (N.D. Ga. 2008) (awarding 21% of \$137.5 million settlement fund).<sup>8</sup>

Thus, when judged against other fee awards in this and other circuits, and in comparison to fees awarded in class action settlements of similar magnitude, Lead Counsel's fee request of 17% is fair and reasonable.

### C. The Scope of the 17% Fee Request

Lead Counsel are seeking an award of attorneys' fees of 17% of the Settlement Fund. The Settlement Fund is comprised of two components. The first component consists of the \$200 million settlement amount, comprised of (i) \$52.5 million in cash, plus interest as it accrues; (ii) a \$35 million promissory note due and payable in cash no later than July 31, 2011; and (iii)

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<sup>8</sup> See also *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 298 (3d Cir. 2005) (citing expert analysis concluding that percentage recoveries between 25% to 30% were "fairly standard" in class actions involving settlements between \$100 and \$200 million); *In re Mercury Interactive Corp. Sec. Litig.*, No. 5:05-CV-3395-JF, 2011 WL 826797, at \*3 (N.D. Cal. Mar. 3, 2011) (awarding 22% of \$117.5 million settlement fund); *Maxim Integrated Prods., Inc. Sec. Litig.*, No. C 08-00832 JW (N.D. Cal. Nov. 1, 2010), (Order Granting Lead Plaintiffs' Motion for Attorney Fees and Reimbursement of Litigation Expenses) (granting 17% of \$173 million settlement fund); *In re Converse Tech., Inc. Sec. Litig.*, No. 06-CV-1825, 2010 U.S. Dist. LEXIS 63342, at \*19 (E.D.N.Y. June 23, 2010) (awarding 25% of \$225 million recovery); *In re Schering-Plough Corp. Sec. Litig.*, No. 01-CV-0829 (KSH/MF), 2009 WL 5218066, at \*5-6 (D.N.J. Dec. 31, 2009) (awarding 23% of \$165 million settlement fund); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260-64 (E.D. Va. 2009) (awarding 18% of \$202.75 million recovery); *In re CMS Energy Sec. Litig.*, Case No. 02-CV-72004 (GCS), 2007 U.S. Dist. LEXIS 96786, at \*14-15 (E.D. Mich. Sept. 6, 2007) (awarding 22.5% of \$200 million recovery); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 178 (S.D.N.Y. 2007) (awarding 24% of \$133 million settlement fund); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 03-MDL-1529 (LMM), 2006 WL 3378705, at \*3 (S.D.N.Y. Nov. 16, 2006) (awarding 21.4% of \$455 million recovery); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160 (3d Cir. 2006) (affirming award of 21.25% of \$100 million settlement fund); *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at \*24, 34 (N.D. Tex. Nov. 8, 2005) (awarding 22.2% of \$149.75 million settlement fund); *In re Charter Commc'ns, Inc. Sec. Litig.*, No. MDL 1506, 2005 WL 4045741, at \*12-14, 18 (E.D. Mo. June 30, 2005) (awarding 20% of \$146.25 million settlement fund); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590-91 (E.D. Pa. 2005) (awarding 25% of \$126.6 million settlement fund); *In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475, 2005 U.S. Dist. LEXIS 45798, at \*12-3 (S.D.N.Y. June 9, 2005) (awarding 28% of \$120 million settlement fund); *In re Lucent Techs, Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 439-44 (D.N.J. 2004) (awarding 17% of \$517 million recovery); *In re DPL Inc. Sec. Litig.*, 307 F. Supp. 2d 947, 954 (S.D. Ohio 2004) (awarding 20% of \$110 million settlement fund); *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222 (CLB), 2003 U.S. Dist. LEXIS 26795, at \*13 (S.D.N.Y. June 12, 2003) (awarding 28% of \$300 million settlement fund); *In re MicroStrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 789-90 (E.D. Va. 2001) (awarding 18% of \$153.5 million settlement fund); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 734-36 (E.D. Pa. 2001) (awarding 25% of \$193 million settlement fund); *Kurzweil v. Philip Morris Cos.*, No. 94 Civ. 2373 (MBM), 1999 WL 1076105, at \*1 (S.D.N.Y. Nov. 30, 1999) (awarding 30% of \$123.8 million settlement fund); *In re Waste Mgmt. Inc. Sec. Litig.*, No. 97 C 7709, 1999 WL 967012, at \*3 (N.D. Ill. Oct. 18, 1999) (awarding 20% of \$220 million settlement fund).

\$112.5 million in freely tradable registration-exempt bonds with a maturity date of December 31, 2016, with a fixed coupon of 6% (the “WellCare Bonds”). Lead Counsel seek fees in cash and bonds in the same proportion as the Settlement Fund.<sup>9</sup>

The second component consists of the following three potential contributions that would increase the amount of the Settlement Fund pursuant to the Stipulation: (i) if WellCare recovers any sums from the Individual Defendants or their estates based on claims that could have been asserted by WellCare prior to August 6, 2010, or for contribution arising under the Settlement, WellCare shall pay the Class 25% of those net proceeds; (ii) if WellCare receives any sums from the United States Government as a consequence of any recovery that the United States Government obtains from the Individual Defendants or their estates, WellCare shall pay the Class 25% of those net proceeds; and (iii) in the event that within three years WellCare experiences a change in control at a share price of \$30.00 or its equivalent, WellCare shall pay the Class an additional \$25 million in cash. (Stip. ¶6(d)-(e).) Lead Counsel seek fees on this second component of the Settlement Fund to be paid upon the occurrence of each contingent event and the concurrent transfer of these monies to the Settlement Fund.

**D. The Percentage Fee Approved by Lead Plaintiffs Is Entitled to a Presumption of Reasonableness**

In enacting the PSLRA, Congress intended to encourage sophisticated institutional investors with substantial financial stakes in the litigation to serve as lead plaintiffs and play an active role in supervising and directing the litigation, including selecting and monitoring class counsel. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 261-62, 282 (3d Cir. 2001). Accordingly, fees negotiated between a properly selected PSLRA lead plaintiff and its counsel should be accorded a presumption of reasonableness. *See Cendant*, 264 F.3d at 282-83; *Mills*

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<sup>9</sup> Lead Counsel request that the reimbursement of expenses be paid in cash only.

*Corp.*, 265 F.R.D. at 261 (“in a PSLRA case . . . a fee request that has been approved and endorsed by properly-appointed lead plaintiffs . . . enjoys a presumption of reasonableness”). Such a presumption helps “ensure that the lead plaintiff, not the court, functions as the class’s primary agent vis-a-vis its lawyers.” *Cendant*, 264 F.3d at 282.

Here, Lead Plaintiffs are five sophisticated institutions with extensive experience in negotiating fees with counsel and in evaluating the results of securities fraud class action settlements. Lead Plaintiffs negotiated the 17% fee with Lead Counsel and approve and endorse the requested fee as fair and reasonable in light of, among other things, the substantial work Lead Counsel has done in the Action, the risks of continuing the litigation and the excellent result obtained on behalf of the Class. (Joint Decl. ¶67.) Accordingly, the requested fee is entitled to a presumption of reasonableness.

**E. The Relevant Factors Confirm That the Requested Fee is Fair and Reasonable**

In *Camden I*, the Eleventh Circuit recognized that there “is no hard and fast rule mandating a certain percentage of a common fund which may reasonably be awarded as a fee because the amount of any fee must be determined upon the facts of each case.” 946 F.2d at 774. However, the *Camden I* court recommended that district courts consider several factors to determine what constitutes a reasonable percentage award. *Id.* These factors include:

- (1) the time and labor required;
- (2) the novelty and the difficulty of the questions involved;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to the acceptance of the case;
- (5) the customary fee;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

*Camden I*, 946 F.2d at 772 n.3 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). *Camden I* also recognized additional factors that a court may consider in awarding a percentage fee award, including “the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel . . . and the economics involved in prosecuting a class action.” *Id.* at 775.

“The factors which will impact upon the appropriate percentage to be awarded as a fee in any particular case will undoubtedly vary.” *Id.* Here, an analysis of the most relevant factors confirms that the fee requested by Lead Counsel is fair and reasonable.

### **1. The Time and Labor Required**

A review of the efforts and time expended by Lead Counsel establishes that the requested fee is justified. The Joint Declaration details the myriad tasks undertaken by Lead Counsel to prosecute the claims against Defendants, the time and labor expended, and the creativity of those efforts. As set forth in greater detail in that Declaration, Lead Counsel, among other things:

- investigated and analyzed the claims at issue, including a review of all relevant public information, and engaged in extensive research of the applicable law with respect to the claims asserted in the Action (Joint Decl. ¶¶7, 18.);
- filed a detailed and particularized consolidated class action complaint after conducting an extensive factual investigation which included, among other things, identifying, locating, and interviewing numerous former WellCare employees (*Id.* ¶7.);
- vigorously defended motions to dismiss (*Id.* ¶¶7, 20-22.);
- served document requests and interrogatories on Defendants and issued twenty subpoenas to nonparties (*Id.* ¶¶24, 26.);
- reviewed and analyzed approximately four million documents and nearly three Terabytes of data (*Id.* ¶¶7, 28.);
- took six depositions of individuals in Massachusetts and Florida, including the former head of the Audit Committee of WellCare’s Board of Directors, the former

outside counsel to WellCare, and the Florida Agency for Health Care Administration officials responsible for overseeing the Company's Medicaid contract with the State of Florida, and prepared for several other then-pending depositions. (*Id.* ¶¶7, 30.);

- briefed and filed a motion for class certification, including an expert report, which resulted in WellCare stipulating to class certification (*Id.* ¶¶7, 31.);
- consulted with several experts, including a damages expert and a financial consultant (*Id.* ¶¶7, 34-36, 49, 62.); and
- engaged in extensive settlement negotiations with Defendants, including three formal in-person mediation sessions before the Judge Phillips, an experienced and respected professional mediator (*Id.* ¶¶7, 48-50.)

The number of hours Lead Counsel expended on this litigation (nearly 38,000 hours with a resulting lodestar of \$16,007,773.75) attests to their extensive efforts. (*Id.* ¶76.) The time and labor expended by counsel here amply supports the requested fees. Furthermore, unlike in many class actions in which there are parallel criminal investigations against the same Defendants and Lead Counsel benefits from substantial assistance from the investigating government entities, here Lead Counsel received little support or benefit from the governmental investigations, and in fact have been impeded in their efforts by stays in the litigation granted because of federal criminal investigations.

While it is not required in the Eleventh Circuit, an analysis of the requested fee under the “lodestar/multiplier” approach further supports the reasonableness of a 17% award. *See, e.g., Waters*, 190 F.3d at 1298 (“while we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison”). Here, based on the \$200 million Settlement Fund, the requested 17% award results in a multiplier of only approximately 2.12397.<sup>10</sup> This is well below the range of multipliers frequently awarded in class action settlements of similar magnitude in this and other circuits. *See, e.g., Pinto*, 513 F. Supp.

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<sup>10</sup> The multiplier is calculated by dividing the \$34,000,000 fee request by the \$16,007,773.75 in lodestar that Plaintiffs' Counsel incurred.

2d at 1344 (noting that lodestar multipliers “in large and complicated class actions” tend to range from 2.26 to 4.5, and that while “three appears to be the average” many cases have awarded higher multipliers) (citing *Behrens v. Womentco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1998), *aff’d*, 899 F.2d 21 (11th Cir. 1990)); *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694-96 (N.D. Ga. 2001) (awarding fee representing a multiplier between 2.5 and 4); *Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 679, 702 (M.D. Ala. 1988) (“A multiplier of approximately 3.1 in a national class action securities case is not unusual or unreasonable.”); *see also In re Comverse Techs. Inc. Sec. Litig.*, No. 06-1825, 2010 U.S. Dist. LEXIS 63342, at \*14 (E.D.N.Y. June 23, 2010) (awarding 25% of \$225 million, representing a 2.78 multiplier); *CMS Energy*, 2007 U.S. Dist. LEXIS 96786, at \*14-16 (awarding 22.5% of \$200 million, representing a 2.6 multiplier); *In re Adelphia Commc’ns Corp. Sec. and Derivative Litig.*, No. 03 MDL 1529, 2006 WL 3378705, at \*3 (S.D.N.Y. Nov. 16, 2006) (awarding 21.4% of \$455 million, representing a 2.89 multiplier); *In re Charter Commc’ns Inc.*, No. 02-1186, 2005 WL 4045741, at \*18 (E.D. Mo. June 30, 2005) (awarding 20% of \$146.25 million, representing a 5.61 multiplier); *Rite Aid*, 362 F. Supp. 2d at 589-90 (awarding 25% of \$126.6 million, representing a 6.96 multiplier).<sup>11</sup>

## 2. The Novelty and Difficulty of the Issues

As courts have recognized, “multi-faceted and complex” issues are “endemic” to cases based on alleged violations of federal securities law, *Sunbeam*, 176 F. Supp. 2d at 1334; *see Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992), and “securities actions have become

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<sup>11</sup> As supported by Plaintiffs’ Counsel’s sworn declarations, their hourly rates are the same as the regular rates charged for services in non-contingent matters and/or which have been accepted in other securities or shareholder litigation. *See, e.g., In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 386 n.6 (D. Md. 2006) (approving fees in securities class action and holding that class counsel’s hourly rates “are within a reasonable range for the national firms that prosecuted the case”); *In re MicroStrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 788 (E.D. Va. 2001) (hourly rates were “within the range of reasonableness for PSLRA cases, where the market for class action attorneys is nationwide and populated by very experienced attorneys with excellent credentials”); *see also id.* at 788 n.33 (“the range generally corresponds to the rates charged by the group of experienced securities class action counsel in cases brought in this and other districts”); *In re BankAmerica Corp. Sec. Litig.*, 228 F. Supp. 2d 1061, 1065 (E.D. Mo. 2002) *aff’d*, 350 F.3d 747 (8th Cir. 2003) (same).

more difficult from a plaintiff s perspective in the wake of the PLSRA.” *In re Sterling Fin. Corp. Sec. Class Action*, No. 07-2171, 2009 WL 2914363, at \*4 (E.D. Pa. Sept. 10, 2009) (citation omitted). This Action was no exception.

Lead Plaintiffs and Lead Counsel faced several novel and difficult issues in this Action, including vigorously contested motions to dismiss involving complicated facts and difficult legal issues that challenged the establishment of all of the elements of their Section 10(b) claims. The litigation and Settlement were further complicated by the financial condition of WellCare and the risk that it would be unable to satisfy a judgment due to its limited available cash. Due to these financial risks, Lead Counsel created an intricate Settlement that maximized the benefit to Class Members through a combination of payments of immediate cash, cash over time and WellCare securities. (Joint Decl. ¶¶6, 20, 41, 44-47.)

At the time this Settlement was reached, Lead Plaintiffs faced the prospect that Defendants would have continued to argue that Lead Plaintiffs failed to offer sufficient facts to infer scienter. This is a significant litigation risk in any action involving claims under Section 10(b) of the Exchange Act. Here, however, Lead Plaintiffs believed that they had strong evidence of scienter in light of the evidence they had adduced and the Deferred Prosecution Agreement ("DPA") that Wellcare entered into with the U.S. Attorney for the Middle District of Florida and the Florida Attorney General. Defendants, however, would likely have argued that the DPA would be held inadmissible at trial, and that the jury would not be able to consider this evidence at all. Furthermore, WellCare argued that any accounting errors were the product of innocent mistakes, rather than intentional fraud. Defendants would have likely argued that the regulations they are accused of violating were unclear, and did not prohibit their conduct. Defendants would have also contended that the small size of the alleged accounting fraud

buttressed their scienter arguments. Accordingly, Defendants would have contended that, even if accounting errors were made, they were not made intentionally, and therefore there was no scienter. (Joint Decl. ¶¶44-45.)

Lead Plaintiffs and Lead Counsel would also have faced the complexities of showing that Defendants had made material misstatements in violation of Section 10(b) of the Exchange Act. Lead Plaintiffs expected Defendants to assert a defense that state and federal governmental entities were aware of WellCare's practices and did not question their practices at the time. These compliance issues would have been heavily litigated were this Action to continue and the complex and changing nature of the reimbursement regulations further added to the risk that Lead Plaintiffs may not be able to establish liability. (Joint Decl. ¶45.)

The calculation and proof of the damages suffered by the Class would also have presented complicated and difficult issues. Defendants adamantly argued that Lead Plaintiffs could not establish that the stock drop that occurred on October 24, 2007, was causally related to the fraud, and that therefore loss causation could not be established. Defendants furthermore contended that even if causation were to be established, damages should be limited to only those damages directly related to the relatively modest restatement (demonstrating that the restated accounting errors never exceeded 1% of WellCare's revenue). These issues of loss causation and damages would require explaining complicated legal and financial concepts to a jury, with the risk that a jury would decide in the Defendants' favor and award a lesser or no amount of damages to the Class. (Joint Decl. ¶47.)

Finally, Lead Counsel also faced a significant risk that even were they to succeed at trial, WellCare would be unable to satisfy the judgment due to its extremely limited available cash. Lead Counsel engaged an experienced financial consultant, Hugh R. Lamle, in evaluating

WellCare's financial condition and structuring the Settlement. An analysis of the financial condition of the Company revealed that at the time the Settlement was reached, WellCare had only approximately \$150 million in unregulated (available) cash, most of which it needed to fund its business. Moreover, any available directors and officers insurance would likely have been exhausted had the litigation continued. Therefore, there was a material risk that, even if Lead Plaintiffs succeeded at trial, they would ultimately recover an amount less than the Settlement Amount. It was through the extensive and complicated efforts of Lead Counsel that this Settlement, comprised of a combination of payments of immediate cash, cash over time and WellCare securities, was structured to avoid the risks related to WellCare's financial condition and maximize the recovery for the Class. (Joint Decl. ¶41.)

**3. The Skill Required to Perform the Legal Services Properly, and the Experience, Reputation and Ability of the Attorneys**

Under these factors, the court should consider “the skill and acumen required to successfully investigate, file, litigate, and settle a complicated class action lawsuit such as this one,” *David v. Am. Suzuki Motor Corp.*, No. 08-CV-22278, 2010 WL 1628362, at \*8 n.15 (S.D. Fla. Apr. 15, 2010), and “the experience, reputation and ability of the attorneys” involved. *Camden I*, 946 F.2d at 772 n.3. As the court in *Edmonds v. United States* recognized, the “prosecution and management of a complex national class action requires unique legal skills and abilities.” 658 F. Supp. 1126, 1137 (D.S.C. 1987).

Those unique skills were called upon here. As noted above, this is a highly complex case involving difficult factual and legal issues and a significant amount of factual and expert discovery. The complexities of settlement were compounded in this Action by the financial situation of the Company. (Joint Decl. ¶41.) Lead Counsel worked with Mr. Lamle, a financial analyst, and employed their own significant experience in class action settlements to construct a

unique settlement structure of cash and securities payments to ensure the maximum benefit for the Class. (*Id.* at ¶6.) Furthermore, Lead Counsel negotiated a settlement with three contingent events by which the Settlement Amount may receive additional funds for the benefit of the Class, beyond the estimated \$200 million dollar recovery. *See* Section II.C, above. (Stip. ¶6(d)-(e).) Given the complexity of the Action, the presence of numerous contested issues and the creatively-structured Settlement, it took highly skilled counsel to represent the Class and bring about this excellent recovery.

Lead Counsel are qualified and experienced attorneys in complex class litigation involving claims under, among other statutes, the federal securities laws. *See* Lead Counsel's firm resumes, attached as Exhibit I to the Joint Declaration. The resumes of each firm attest to the national reputations and extensive experience that each firm has in the area of complex securities fraud class action cases and other complex litigation. Without question, the experience, reputation and ability of Lead Counsel was a major factor in obtaining the result achieved in this Settlement.

This court should also consider the "quality of the opposition the plaintiffs' attorneys faced" in awarding Lead Counsel a fee. *See Sunbeam*, 176 F. Supp. 2d at 1334; *Ressler*, 149 F.R.D. at 654. Each of the Defendants has been represented by very able and prestigious law firms with vast resources at their disposal. (Joint Decl. ¶71.) Hence, the ability of Lead Counsel to obtain such a favorable Settlement for the Class in light of such formidable legal opposition confirms the quality of the representation. Accordingly, this factor also supports the fee requested.

#### **4. The Preclusion of Other Employment**

The considerable amount of time spent prosecuting this case against the Defendants — 37,989.10 (Joint Decl. ¶74) — was time that Lead Counsel could have devoted to other matters.

Lead Counsel dedicated themselves to the prosecution of the Action despite the risks of no recovery and were able to achieve a substantial recovery while deferring any payment of their fees and expenses until a settlement was put in place. Accordingly, this factor also supports the requested fee.

#### **5. The Customary and Contingent Nature of the Fee**

The “customary fee” in a class action lawsuit of this nature is a contingency fee because virtually no individual possesses a sufficiently large stake in the litigation to justify paying his attorneys on an hourly basis. *See Ressler*, 149 F.R.D. at 654; *see also Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988).

The contingent nature of Lead Counsel’s fees should be given substantial weight in assessing the requested fee award. Courts have consistently recognized that the risk that class counsel could receive little or no recovery is a major factor in determining the award of attorneys’ fees:

A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee ... and the fact that the risks of failure and nonpayment in a class action are extremely high. Cases recognize that attorneys’ risk is “perhaps the foremost’ factor” in determining an appropriate fee award.

*Pinto*, 513 F. Supp. 2d at 1339; *see also Ressler*, 149 F.R.D. at 654-55; *Behrens*, 118 F.R.D at 548 (S.D. Fla. 1988) (“A contingency fee arrangement often justifies an increase in the award of attorneys’ fees.”). “Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result.” *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981). This is so because of the risk that after investing thousands of hours, plaintiffs’ counsel may receive no compensation whatsoever. *See Ressler*, 149 F.R.D. at 656-57.

As the court in *Behrens* noted:

In a securities fraud action, a contingency fee arrangement has added significance. The federal securities laws are remedial in nature and, in order to effectuate their statutory purpose of protecting investors and consumers, private lawsuits should be encouraged. If the ultimate effectiveness of these remedies is to be preserved, the efficacy of class actions and of contingency fee arrangements — often the only means of legal representation available given the incredible expense associated with these actions — must be promoted.

118 F.R.D at 548 (citations omitted).

Success in contingent litigation such as this is never guaranteed. In other cases, plaintiffs' counsel in shareholder litigation have suffered major defeats after years of litigation in which they expended millions of dollars of time and received no compensation at all. Even a victory at the trial stage is not a guarantee of success. *See, e.g., Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict for \$81.3 million in securities class action). As noted above, Lead Plaintiffs claims against Defendants faced a number of hurdles that could have resulted in no recovery or substantially limited the recovery. Indeed, because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. Thus, the substantial risks of the Action justify the requested fee.

#### **6. The Amount Involved and Results Achieved**

“It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained.” *Ressler*, 149 F.R.D. at 655; *see also Friedman's*, 2009 WL 1456698, at \*3 (same). As noted above, this excellent result was accomplished despite the substantial difficulties of establishing liability for securities fraud and the risks that would be involved in establishing scienter and damages. It was only through the extensive efforts of Lead Counsel in preparing a detailed consolidated complaint following a comprehensive investigation, successfully opposing the Defendants' motions to dismiss, and in developing the case through

fact and expert discovery that allowed Lead Plaintiffs to achieve the Settlement of at least \$200 million in cash and securities.

This result, which is the largest federal securities settlement in Florida history and the second largest securities settlement in the Eleventh Circuit, is an excellent result for the Class and warrants an award of the fee requested herein. (Joint Decl. ¶5). In fact, the Settlement Amount is nearly **three times** the amount that sophisticated market participants estimated a shareholder class action lawsuit could recover against WellCare in a settlement of these claims. In a May 20, 2009 report, analyzing WellCare's financial status and potential liabilities, Goldman Sachs estimated that a shareholder class action against WellCare such as the present Action would likely settle for between \$48 and \$120 million dollars, but that based on their models, a settlement of \$75 million was the most likely scenario. *See* Goldman Sachs Global Investment Research attached as Ex. C to Joint Decl. The present \$200 million settlement far surpasses these estimates. Finally, the Settlement is structured so that there are three additional events that, if they occur, would result in an even greater recovery for the Class beyond the estimated \$200 million in cash and securities. *See* Section II.D3, footnote 6, above, (Stip. ¶6(d)-(e)). Regardless of the outcome of these contingent events, the Settlement Amount is an outstanding recovery for the Class.

#### **7. The Undesirability of the Case**

In certain instances, the "undesirability" of a case can be a factor in justifying the award of a requested fee. There are risks inherent in financing and prosecuting complex litigation of this type. When Lead Counsel undertook representation of Lead Plaintiffs in this Action, it was with the knowledge that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. Only the most experienced plaintiffs' litigation firms would risk the time and the expense involved in light of

the possibility of a recovery at an uncertain date, or of no recovery at all. Apart from the risk of no recovery, the deferral of fees in such an undertaking while at the same time advancing millions of dollars in expenses would deter most firms. Thus, the “undesirability” of the case also weighs in favor of the requested fee.

#### **8. Awards in Similar Cases**

As discussed above in Section II.B, Lead Counsel’s requested fee of 17% of the Settlement Fund is well below fee awards in class action cases in this Circuit. *See Camden I*, 946 F.2d at 774-75 (noting a benchmark range of between 20%-30% of the common fund). Moreover, in comparable class action settlements, judges in this and other Circuits have awarded fees well in excess of the requested 17% fee. *See* Section II.B, *supra*. Thus, this factor strongly supports the reasonableness of the fees requested.

#### **9. The Time Required to Reach Settlement**

A substantial amount of time was required to resolve the Action against the Defendants. During this time, Plaintiffs’ Counsel dedicated nearly 38,000 hours to the case and incurred over \$1.5 million in litigation-related expenses on a wholly-contingent basis. (Joint Decl. ¶¶74, 77). In consideration of the significant amount of time expended on the prosecution of the claims and the negotiation of the Settlement, the requested fee should be awarded in full.

#### **10. No Objection to the Fee Request Has Been Filed to Date**

In further confirmation of the reasonableness of the requested fee, no member of the Class has, to date, filed an objection to it. More than 90,000 copies of the Notice were mailed to potential Class Members and their nominees and the Publication Notice was published in *Investor’s Business Daily* and transmitted over the *PR Newswire*. See Declaration of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion (“Fraga Decl.”), attached as Exhibit B to the

Joint Decl., ¶¶2-7. The Notice stated that Lead Counsel would apply for fees in the amount of 17% of the Settlement Fund and that the deadline for filing objections to the fee application is April 13, 2011. As of the date of this Memorandum, not a single objection to the requested fee award has been filed. (Joint Decl. ¶86.) The lack of any objection is itself important evidence that the requested fee is fair. *See Pinto*, 513 F. Supp. 2d at 1343 (“That this sizeable class did not give rise to a single objection on the fees request further justifies the full award.”); *Ressler*, 149 F.R.D. at 656 (noting that the lack of objections is “strong evidence of the propriety and acceptability” of the fee request).<sup>12</sup>

As the foregoing demonstrates, under Eleventh Circuit law, Lead Counsel should receive a reasonable percentage of the recovery received by the Class. An examination of other fee awards demonstrates that the fee requested by Lead Counsel is conservative compared to fee awards in the Eleventh Circuit and elsewhere. Lead Counsel’s fee application also should be presumed to be reasonable as it is being made pursuant to the terms of a negotiated fee with Lead Plaintiffs. Finally, the fee requested is reasonable in light of all the factors the Eleventh Circuit has recommended for consideration in evaluating a fee, including the time and effort expended by counsel, the difficulty of the issues presented, the result obtained, and the contingent risk of the litigation. The requested fee of 17% of the Settlement Fund is reasonable under all these circumstances and should be awarded.

#### **F. Reimbursement of Litigation Expenses Should be Awarded**

Litigation expenses should be reimbursed if they are “reasonable and necessary to obtain the settlement.” *Ressler*, 149 F.R.D. at 657; *see also Behrens*, 118 F.R.D. at 549; 1 Alba Conte, *Attorney Fee Awards*, § 2.19, at 73-74 (3d ed. 2006) (“an attorney who creates or preserves a

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<sup>12</sup> Should any objections be filed, they will be addressed in Lead Counsel’s reply papers to be filed on or before April 27, 2011.

common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved”).

Plaintiffs’ Counsel have incurred, without reimbursement, litigation expenses in the Action totaling \$1,698,959.56. Because Lead Counsel were aware that they might not recover any of these expenses unless and until the litigation was successfully resolved against the Defendants, they took steps to minimize expenses whenever practical to do so without jeopardizing the vigorous and efficient prosecution of the case. (Joint Decl. ¶¶77-78.)

One of the most substantial portions of the litigation expenses incurred by Lead Counsel – \$667,528.31, or nearly 40% of the total expenses – was compensation for consulting experts in the areas of accounting, market efficiency, damages, financial consultation and to assist with drafting the Plan of Allocation. The expertise and assistance provided by these experts was critical to the prosecution and successful resolution of the Action. (*Id.* ¶80.)

Litigation expenses also included the amount of \$699,916,72, or over 40%, for the cost for document and litigation management support in order to effectively and efficiently manage the over four million documents and nearly three Terabytes of data obtained in response to Lead Plaintiffs’ subpoenas and requests for documents. (*Id.* ¶81.)

The expenses also included the costs of on-line legal and factual research in the amount of \$68,919.71. These are for charges for computerized factual and legal research services such as Lexis-Nexis and Westlaw. It is standard practice for attorneys’ to use Lexis-Nexis and Westlaw to assist them in researching legal and factual issues, and, indeed, courts recognize that these tools create efficiencies in litigation and, ultimately, save clients and the class money. (*Id.* ¶82.)

In addition, Plaintiffs' Counsel were required to travel in connection with prosecuting this matter, including for court hearings, depositions, and mediations, and, thus, incurred the related costs of travel tickets, meals, and lodging. Included in the expense request is \$40,593.98 for out-of-town travel expenses necessarily incurred for the prosecution of this litigation. (*Id.* ¶83.)

The other expenses for which reimbursement is sought are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, long distance telephone and facsimile charges, postage and delivery expenses, filing fees, and photocopying. (*Id.* ¶84.)

The expenses for which Lead Counsel seeks reimbursement were necessary for the successful prosecution and settlement of this litigation and are of the type routinely charged to clients billed by the hour. Lead Plaintiffs have approved Lead Counsel's request for reimbursement of expenses. In addition, the Notice apprised potential Class Members that Lead Counsel would seek reimbursement of expenses in an amount not to exceed \$2 million. The amount now sought – \$1,698,959.56 – is less than the amount stated in the Notice. To date, there has been no objection to the application for expenses. (*Id.* ¶85.)

Because the litigation expenses incurred by Lead Counsel are of the type for which reimbursement is routinely ordered in class actions and other common fund cases and were essential to the successful prosecution and resolution of the Action with respect to the Defendants, reimbursement of the expenses should be granted.

**G. Lead Plaintiffs Should be Reimbursed for Their Respective Costs Directly Related to the Representation of the Class**

Lead Plaintiffs respectfully submit that the court should reimburse them for their respective costs directly related to the representation of the Class. The PSLRA allows for

reimbursement of the “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); *see also In re HealthSouth Corp. Stockholder Litig.*, Slip Op. No. CV-03-BE-1501-S (awarding a total of \$42,302.73 in expenses to several Lead Plaintiffs); *In re HealthSouth Corp. Bondholder Litig.*, Slip Op. No. CV-03-BE-1502-S (awarding \$31,360 and \$9,408, respectively, to two Lead Plaintiffs); *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266, 1275 (N.D. Ga. 2008) (awarding \$7,558 in expenses to Lead Plaintiffs); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144(CM), 2009 WL 5178546, at \*21 (S.D.N.Y. Dec. 23, 2009) (awarding over \$200,000 to two PSLRA Lead Plaintiffs as reimbursement for their time spent representing the class); *see also Mills Corp.*, 265 F.R.D. at 265 (reimbursing class representatives for their costs incurred “in connection with, among other things, traveling to depositions, the review of documents provided by class counsel, and attendance at mediation sessions”); *In re Xcel Energy, Inc. Sec. Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (awarding \$100,000 to plaintiffs because they “have been actively involved throughout the litigation” by “communicat[ing] with counsel throughout the litigation [and] review[ing] counsels’ submissions”).

As stated in the Notice, Lead Plaintiffs in this Action seek reimbursement of their expenses in accordance with 15 U.S.C. § 78u-4(a)(4). Lead Plaintiffs are five sophisticated institutional investors that were substantially involved in all aspects of the prosecution of the action and negotiation of the Settlement, including reviewing pleadings, responding to discovery requests, and participating in mediation sessions with Judge Phillips. (Lead Plaintiffs Decl., Exhibit A to the Joint Decl.) In support of their application, Lead Plaintiffs have submitted a

declaration detailing their service, time, and expenses spent in the action, which totals \$35,600.25. (*Id.*)

As detailed in Lead Plaintiffs' sworn declaration, the Attorney General of the State of New Mexico, on behalf of the New Mexico State Investment Council and the Public Employees Retirement Association of New Mexico, spent a total of \$18,900 in prosecuting this Action. The Public School Teachers' Pension & Retirement Fund of Chicago spent a total of \$16,700.25 in prosecuting this Action. (*Id.*)<sup>13</sup>

The time and effort put forth by Lead Plaintiffs were essential to the successful continued prosecution of the case against Defendants and resulted in a significant recovery for the Class. Accordingly, in light of the important public policy advanced by private securities litigation, Lead Plaintiffs should be reimbursed in full for lost time and expenses spent supervising and participating in the litigation on behalf of the Class. *See In re Marsh & McLennan, Co. Sec. Litig.*, No. 04-8144, 2009 WL 5178546, at \*22 (S.D.N.Y. Dec. 23, 2009); *Mills Corp.*, 265 F.R.D. at 265.

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<sup>13</sup> Lead Plaintiffs Louisiana Teachers and Chicago Police do not seek reimbursement for their time and expenses on this case.

**CONCLUSION**

For the foregoing reasons, it is respectfully requested that this Court approve as fair and reasonable Lead Counsel's application for attorneys' fees and reimbursement of litigation expenses. It is also respectfully requested that the Court grant the applications of Lead Plaintiffs for reimbursement of their expenses directly related to their representation of the Class.

Dated: March 30, 2011

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 30, 2011, I electronically filed the foregoing document with the Clerk of the Court by using the CM/ECF system, which will send an electronic notice to all counsel of record who are registered to receive electronic notices. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants: NONE.

By: /s/ James W. Johnson

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