

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane**

Master Docket No. 09-md-02063-JLK-KMT (MDL Docket No. 2063)

**IN RE: OPPENHEIMER ROCHESTER FUNDS GROUP SECURITIES
LITIGATION**

This document relates to the following Actions:

In re AMT-Free Municipals Fund

09-cv-1243-JLK (*Prince*)
09-cv-1447-JLK (*Connel*)
09-cv-1510-JLK (*Amato*)
09-cv-1619-JLK (*Furman*)

In re AMT-Free New York Municipal Fund

09-cv-1621-JLK (*Isaac*)
09-cv-1781-JLK (*Kurz*)

In re Rochester National Municipal Fund

09-cv-550-JLK (*Bock*)
09-cv-706-JLK (*Stokar*)
09-cv-927-JLK (*Tackmann*)
09-cv-1042-JLK (*Krim*)
09-cv-1060-JLK (*Truman*)
09-cv-1482-JLK (*Laufer*)
09-cv-1908-JLK (*Lariviere*)

In re Rochester Fund Municipals

09-cv-703-JLK (*Begley*)
09-cv-1479-JLK (*Bernstein*)
09-cv-1481-JLK (*Mershon*)
09-cv-1622-JLK (*Stern*)
09-cv-1478-JLK (*Vladimir*)
09-cv-1480-JLK (*Weiner*)

In re New Jersey Municipal Fund

09-cv-1406-JLK (*Unanue*)
09-cv-1617-JLK (*Baladi*)
09-cv-1618-JLK (*Seybold*)
09-cv-1620-JLK (*Trooskin*)

In re Pennsylvania Municipal Fund

09-cv-1483-JLK (*Woods*)
09-cv-1368-JLK (*Egts*)
09-cv-1765-JLK (*Wunderly*)

**LEAD PLAINTIFFS' COUNSEL'S MOTION FOR AWARD OF
ATTORNEYS' FEES AND EXPENSES AND
REIMBURSEMENT OF LEAD PLAINTIFFS' EXPENSES**

TABLE OF CONTENTS

		<u>Page</u>
I.	INTRODUCTION	1
II.	BACKGROUND FACTS AND PROCEDURAL HISTORY	5
III.	THE COURT SHOULD AWARD ATTORNEYS’ FEES AND REIMBURSEMENT OF EXPENSES	6
A.	The Requested Attorneys’ Fees Are in Accordance With Other Similar Cases in This Circuit.....	8
B.	The Attorneys’ Fee Request Is Reasonable Under the “ <i>Johnson</i> Factors”	10
	1. The Amount Involved and Results Obtained	11
	2. The Time and Labor Involved.....	14
	3. The Novelty and Difficulty of Questions Raised by the Actions	16
	4. The Skill to Perform the Legal Services Properly and the Experience, Ability and Reputation of the Attorneys	18
	5. The Preclusion of Other Employment and Whether the Fee Is Fixed or Contingent.....	20
	6. The Customary Fee and the Level of Awards in Similar Cases	21
C.	The Lodestar Method Also Supports the Attorneys’ Fees Requested	21
D.	The Request for Reimbursement of Expenses Is Reasonable	24
E.	Lead Plaintiffs Are Entitled to Reimbursement of Reasonable Lost Wages and Expenses	26
F.	The Reaction of the Classes to Date Supports the Fee Request.....	28
IV.	CONCLUSION	29

TABLE OF AUTHORITIES

	<u>Page(s)</u>
CASES	
<i>Angres v. Smallworldwide PLC</i> , No. 99-K-1254 (D. Colo. June 7, 2003)	8
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980)	6
<i>In re Bos. Chicken, Inc. Sec. Litig.</i> , No. 97-1308, 2006 U.S. Dist. LEXIS 56267 (D. Colo. Aug. 10, 2006)	9
<i>Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42</i> , 8 F.3d 722 (10th Cir. 1993)	25
<i>Brown v. Phillips Petro. Co.</i> , 838 F.2d 451 (10th Cir. 1988)	6, 7, 11
<i>In re Core Bond Fund</i> , No. 09-cv-1186-JLK-KMT, 2011 U.S. Dist. LEXIS 112949 (D. Colo. Sept. 30, 2011)	22, 27
<i>In re Einstein Noah Bagel Corp. Sec. Litig.</i> , No. 97-N-1614 (D. Colo. June 4, 1999)	9
<i>In re Gen. Instrument Sec. Litig.</i> , 209 F. Supp. 2d 423 (E.D. Pa. 2001)	19
<i>In re Global Crossing Sec. & ERISA Litig.</i> , 225 F.R.D. 436 (S.D.N.Y. 2004)	25
<i>Gottlieb v. Barry</i> , 43 F.3d 474 (10th Cir. 1994)	7, 11, 21
<i>Hicks v. Morgan Stanley & Co.</i> , No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890 (S.D.N.Y. Oct. 24, 2005)	7
<i>Horton v. Leading Edge Mktg Inc.</i> , No. 04-212, 2008 U.S. Dist. LEXIS 11761 (D. Colo. Feb. 4, 2008)	9
<i>In re Immune Response Sec. Litig.</i> , 497 F. Supp. 2d 1166	28

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<i>Johnson v. Ga. Highway Express, Inc.</i> , 488 F.2d 714 (5th Cir. 1974)	<i>passim</i>
<i>In re King Res. Co. Sec. Litig.</i> , 420 F. Supp. 610 (D. Colo. 1976).....	19, 20, 21
<i>Lewis v. Wal-Mart Stores, Inc.</i> , No. 02-944, 2006 U.S. Dist. LEXIS 87681 (N.D. Okla. Dec. 4, 2006)	9
<i>Lucas v. Kmart Corp.</i> , No. 99-01923, 2006 U.S. Dist. LEXIS 51420 (D. Colo. July 27, 2006)	9, 23
<i>Lucken Family Ltd. P’ship v. Ultra Res., Inc.</i> , No. 09-cv-01543, 2010 U.S. Dist. LEXIS 144366 (D. Colo. Dec. 22, 2010).....	6, 8, 10, 11
<i>McNeely v. Nat’l Mobile Health Care, LLC</i> , No. 07-933, 2008 U.S. Dist. LEXIS 86741 (W.D. Okla. Oct. 27, 2008)	9
<i>Miller v. Woodmoor Corp.</i> , No. 74-988, 1978 U.S. Dist. LEXIS 15234 (D. Colo. Sept. 28, 1978).....	17
<i>In re Novell, Inc. Sec. Litig.</i> , No. 99-995 (D. Utah May 26, 2005).....	10
<i>In re Oppenheimer Champion Income Fund Sec. Fraud Class Action</i> , No. 09-cv-386-JLK-KMT (D. Colo. Sept. 30, 2011)	22
<i>Oppenlander v. Standard Oil Co.</i> , 64 F.R.D. 597	11
<i>In re Prudential Sec. Inc. Ltd. P’ship Litig.</i> , 985 F. Supp. 410 (S.D.N.Y. 1997).....	28
<i>Queen Uno v. Coeur d’Alene Mines Corp.</i> , No. 97-WY-1431 (D. Colo. Aug. 11, 1999)	9
<i>In re Qwest Commc’ns. Int’l, Inc. Sec. Litig.</i> , No. 01-cv-01451, 2006 U.S. Dist. LEXIS 71267 (D. Colo. Sept. 28, 2006).....	17, 22, 23
<i>Ressler v. Jacobson</i> , 149 F.R.D. 651 (M.D. Fla. 1992).....	28
<i>In re Rhythms Sec. Litig.</i> , No. 02-35 (D. Colo. Apr. 3, 2009).....	8, 27

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<i>Rosenbaum v. MacAllister</i> , 64 F.3d 1439 (10th Cir. 1995)	7
<i>In re Samsonite Corp. Sec. Litig.</i> , No. 98-K-1878 (D. Colo. July 25, 2000)	22
<i>Schwartz v. Celestial Seasonings, Inc.</i> , No. 95-K-1045 (D. Colo. Apr. 25, 2000).....	9
<i>Sonnenfeld v. City and Cnty of Denver, Colo.</i> , No. 95-Z-468 (D. Colo. Dec. 8, 1997).....	9
<i>Stalcup v. Schlage Lock Co.</i> , 505 F. Supp. 2d 704 (D. Colo. 2007).....	23
<i>State of Mo. v. Jenkinsi</i> , 491 U.S. 274 (1989)	24
<i>In re Sun Healthcare Group, Inc., Sec. Litig.</i> , No. 99-00269 (D.N.M. Dec. 13, 2004)	10
<i>In re United Telecomms. Sec. Litig.</i> , No. 90-2251, 1994 U.S. Dist. LEXIS 9151 (D. Kan. June 1, 1994).....	10
<i>Uselton v. Commercial Lovelace Motor Freight</i> , 9 F.3d 849 (10th Cir. 1993)	7
<i>Vaszlavik v. Storage Tech. Corp.</i> , No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140 (D. Colo. Mar. 9, 2000)	<i>passim</i>
<i>Vizcaino v. Microsoft</i> , 290 F.3d 1043 (9th Cir. 2002)	20
<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994)	20
 STATUTES	
15 U.S.C. § 77z-1(a).....	7, 8, 26

TABLE OF AUTHORITIES

	<u>Page(s)</u>
OTHER AUTHORITIES	
Laarni Bulan, Ellen Ryan and Laura Simmons, <i>Securities Class Action Settlements: 2013 Review and Analysis</i> (Cornerstone Research 2013).....	13

I. INTRODUCTION

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Court-appointed Lead Counsel, Milberg LLP, Cohen Milstein Sellers & Toll PLLC and Berger & Montague, P.C., and Court-appointed Liaison Counsel, The Shuman Law Firm (collectively, “Lead Plaintiffs’ Counsel”) respectfully submit this motion for an order granting: (i) an award of attorneys’ fees to Lead Plaintiffs’ Counsel; (ii) reimbursement of expenses incurred in connection with the prosecution of these six coordinated class action lawsuits (the “Actions”); and (iii) reimbursement of Lead Plaintiffs’ expenses and/or lost wages.¹ This motion is supported by the Declaration of Lead Counsel in Support of Motion for Final Approval of Proposed Class Settlements, Approval of Plan of Allocation, and Award of Attorneys’ Fees and Expenses, filed concurrently herewith (the “Lead Counsel Declaration”).²

On behalf of the Classes, Lead Plaintiffs, through Lead Plaintiffs’ Counsel, negotiated a global Settlement of the Actions. The substantial recovery – \$89.5 million in cash (plus accrued interest) – obtained for the Classes was achieved through the skill, tenacity, and effective advocacy of Lead Plaintiffs’ Counsel, who worked together to allocate responsibilities, augmenting resources to prosecute this matter while limiting unnecessary duplication of efforts. Indeed, the prosecution and settlement of the Actions

¹ All terms not defined herein have the same definition as stated in the six Stipulations and Agreements of Settlement, dated March 4, 2014 (collectively, the “Stipulations” or the Settlement”). *See* Dkt. Nos. 492-497.

² Pursuant to D.C.COLO.LCivR 7.1(A), Lead Counsel have conferred with Defendants’ Counsel. Defendants take no position on the award of attorneys’ fees and reimbursement of expenses. Defendants do not agree to any particular language set forth within this Motion.

required extensive coordination and cooperation among Lead Plaintiffs' Counsel, considerable resources, and the expenditure of thousands of hours with neither compensation nor the assurance thereof. The Settlement was thus not only a product of highly skilled litigation efforts but Lead Plaintiffs' Counsel's dedication in managing the many complexities of the Actions together in a unified manner. This global Settlement (resolving six class actions) would not have been possible had Lead Plaintiffs' Counsel opted to prosecute each of the Actions separately.

As stated by Judge Layn Phillips, the mediator of these Actions:

The advocacy on all sides of the Consolidated Actions was stellar. I have had experience working with the principal Lead Plaintiffs' Counsel in other cases I have mediated and am familiar with the effort and zeal they put into their work. I expected that they would represent their clients and the classes in the same manner here, as they did. Similarly, the advocacy by counsel representing Defendants was of the highest caliber and consistent with my experience in other matters where I have worked with the lead defense counsel. All displayed the highest level of professionalism in carrying out their duties on behalf of their respective clients. I believe the settlements are the result of all counsels' experience, reputation and ability in these types of cases.

See Declaration of Lead Counsel in Support of Motion for Final Approval of Proposed Class Settlements, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Lead Counsel Decl."), Ex. 1 (Decl. of Layn R. Phillips ("Phillips Decl.") ¶ 17).

As payment for services rendered in achieving this result, Lead Plaintiffs' Counsel seek an award of attorneys' fees in the amount of thirty percent (30%) of the Settlement Fund, or \$26,850,000, plus interest as it accrues, plus reimbursement of costs and expenses in the amount of \$3,531,103.05, plus interest as it accrues. Lead Plaintiffs'

Counsel also seek reimbursement of reasonable lost wages and expenses for certain of the Lead Plaintiffs.

Courts in this Circuit have found that attorneys' fees equating to 30% of the settlement amount are appropriate. Such a request is fair and reasonable here given that the monetary result provides a certain and substantial benefit to the Classes. This benefit was obtained as a result of the diligent efforts of Lead Plaintiffs' Counsel. Among the achievements of Lead Plaintiffs' Counsel during the Actions warranting an award of 30% were the successful defense of the Amended Complaints against Defendants' motions to dismiss, including against Defendants' motions for reconsideration and interlocutory appeal; the defeat of the only summary judgment motion on which the Court has ruled; and the coordinated negotiation of production of over three million pages of documents, the ongoing review of which ultimately aided in Lead Plaintiffs' ability to obtain the Settlement. Moreover, the amount requested is warranted in light of the significant risks in bringing and prosecuting these complex Actions on a contingency basis over a period of more than five years. These Actions were brought under Sections 11, 12(a)(2) and 15 of the 1933 Act (15 U.S.C. §§ 77k, 77l and 77o), and, therefore, were extremely risky from the outset given the difficulty of bringing and successfully concluding such class actions.

In order to successfully prosecute the Actions and bring them to this favorable conclusion, Lead Plaintiffs' Counsel also: (i) reviewed and analyzed publicly available information related to the Funds; (ii) conducted an extensive factual investigation relating to the claims and the underlying events and transactions alleged in the initial and

Amended Complaints; (iii) consulted with experts to help prepare detailed Amended Complaints describing the risks inherent in the complex financial instruments in which the Funds invested; (iv) researched the law pertinent to the claims and defenses asserted; (v) filed the particularized Amended Complaints; (vi) litigated a complex set of motions to dismiss; (vii) assisted Lead Plaintiffs by preparing discovery responses and participating in depositions; (viii) participated in extensive discovery including the review of approximately three million pages of documents produced by Defendants; (ix) consulted with experts regarding, among other things, liquidity, ratings, the structure of inverse floaters, loss causation, the calculation of damages, and complex bond portfolio monitoring metrics such as effective duration and spread duration; and (x) engaged in hard-fought settlement negotiations with Defendants' Counsel. These efforts were coordinated among Lead Plaintiffs' Counsel so the Actions could be litigated efficiently without overwhelming this Court (or Defendants) with separate and diverse disputes. For example, discovery disputes, motion to dismiss briefing, and even mediation statements were consolidated and managed by Lead Plaintiffs' Counsel to ensure that Lead Plaintiffs' positions were consistent and not duplicative. By working together as a cohesive unit, Lead Plaintiffs' Counsel were able to efficiently resolve six separate class action lawsuits.

As a result of the complexity of the Classes' claims and the strong litigation efforts of Defendants, Lead Plaintiffs' Counsel were required to spend approximately 24,492.63 total hours and incur a total "lodestar" of \$12,557,437.40 (*i.e.*, the value of the hours spent in connection with the litigation if paid at normal hourly rates) in order to bring the

Actions to a successful resolution. An award of attorneys' fees in the amount of 30% of the Gross Settlement Fund is appropriate given the excellent result obtained and enormous amount of work performed by Lead Plaintiffs' Counsel. Moreover, the requested award is supported by Tenth Circuit law.

The members of the Classes also overwhelmingly support the request for attorneys' fees and reimbursement of expenses. The Court-approved Notice of Pendency and Proposed Settlements of Class Actions and Notice of Motion of Awards of Attorneys' Fees and Reimbursement of Expenses (the "Notice"), provides that the deadline for any objections to Lead Plaintiffs' Counsel's anticipated application for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus reimbursement of litigation expenses in an amount not to exceed \$4,500,000, plus interest. *See* Dkt. No. 499. The Court-ordered deadline to object to any aspect of the Settlement — July 2, 2014 — has not yet passed. As of June 6, 2014, zero objections have been received to any of the relief requested out of 577,712 potential Class Members and nominees contacted by the Claims Administrator. *See* Lead Counsel Decl. ¶ 110.

II. BACKGROUND FACTS AND PROCEDURAL HISTORY

The history of this litigation and the nature of the services performed during the course of these cases provides a testament to the amount of work needed to reach an outstanding Settlement for the benefit of the six Classes. From the time the Actions commenced in 2009, until the Settling Parties executed the Memorandum of Understanding setting forth the terms of the Settlement in August 2013, Lead Plaintiffs' Counsel consulted with experts to draft the Amended Complaints; briefed and defeated

motions to dismiss with respect to Lead Plaintiffs' claims for relief under Sections 11, 12(a)(2) and 15 of the 1933 Act; defended multiple Lead Plaintiff depositions; drafted an extensive mediation statement and reply mediation statement; engaged in arm's-length settlement negotiations and a mediation; and performed extensive discovery. These efforts directly led to the \$89.5 million Settlement.

A further detailed description of the factual background and procedural history of the Actions and the tremendous efforts of Lead Plaintiffs' Counsel is set forth in Lead Counsel's Declaration at ¶¶ 6-53. In order to avoid needless redundancy, that history will not be repeated here. Rather, Lead Counsel's Declaration is incorporated herein by reference.

III. THE COURT SHOULD AWARD ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Attorneys who obtain a recovery for a class and whose efforts result in a "common fund" are entitled to be compensated for their work from that fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or 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"). The common fund doctrine recognizes that "persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *Brown v. Phillips Petro. Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (internal quotations omitted); *Lucken Family Ltd. P'ship v. Ultra Res., Inc.*, No. 09-cv-01543, 2010 U.S. Dist. LEXIS 144366, at *5-6 (D. Colo. Dec. 22, 2010) ("the common fund doctrine is used as a method for proportionately spreading

payment of attorney fees among the class members”). In addition, it has been recognized that an award of attorneys’ fees serves the dual purpose of encouraging representatives to seek redress of injuries caused to public investors and discouraging future misconduct of a similar nature. *See Hicks v. Morgan Stanley & Co.*, No. 01 Civ. 10071 (RJH), 2005 U.S. Dist. LEXIS 24890, at *27 (S.D.N.Y. Oct. 24, 2005) (recognizing the importance of securities class actions and noting that counsel’s “remuneration should be both fair and rewarding”).

In the Tenth Circuit, the percentage of the fund method is the appropriate and preferable method for calculating and awarding fees in common fund cases. *See, e.g., Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *4 (D. Colo. Mar. 9, 2000) (“[T]he Tenth Circuit has expressed a preference for the percentage of the fund method in common fund cases.”) (internal quotations omitted). One of the many benefits of the percentage method is that it aligns the lawyers’ interest in being paid a fair fee with the interest of the class in obtaining a maximum recovery in the shortest amount of time. *See Brown*, 838 F.2d at 454-55 (affirming the propriety of awarding attorneys’ fees on a percentage basis in a common fund case) (internal quotations omitted); *Uselton v. Commercial Lovelace Motor Freight*, 9 F.3d 849, 853 (10th Cir. 1993) (same); *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995) (the Tenth Circuit has “implied a preference for the percentage of the fund method in common fund cases”); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994) (same).³

³ The Private Securities Litigation Reform Act (“PSLRA”) (*see* 15 U.S.C. § 77z-1(a)(7)) also espouses the percentage method and requires that “[t]otal attorneys’ fees and expenses

Although the percentage method in common fund cases is preferred in the Tenth Circuit, courts in this District have also used the “lodestar plus multiplier” or “enhanced lodestar” analysis as a “cross-check” in calculating and awarding attorneys’ fees. *See Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *4. As discussed below, the requested fees are fair and reasonable under either method.

A. The Requested Attorneys’ Fees Are in Accordance With Other Similar Cases in This Circuit

Consistent with the customary range of fee awards granted in this District for complex securities class actions, the attorneys’ fee request of 30% of the Settlement Fund (plus reimbursement of expenses) is fair to the Classes, and will reasonably compensate Plaintiffs’ Counsel for the time and labor expended, the risks involved in this contingent fee litigation, and the excellent results obtained.

“The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class.” *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *13. In securities cases in particular, this Court and others in this District have frequently awarded fees of 30% or more. *See, e.g., In re Rhythms Sec. Litig.*, No. 02-35 (D. Colo. Apr. 3, 2009) (Kane, J.) (awarding fee equal to 30% of common fund) (Ex. A-1)⁴; *Angres v. Smallworldwide PLC*, No. 99-K-1254 (D. Colo. June 7, 2003) (Kane, J.) (awarding attorneys’ fees of 33-1/3% of settlement fund)

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. § 77z-1(a)(6).

⁴ A compendium of the slip opinions and orders referenced herein is being filed contemporaneously with this memorandum as Exhibit A.

(Ex. A-2); *Schwartz v. Celestial Seasonings, Inc.*, No. 95-K-1045 (D. Colo. Apr. 25, 2000) (Kane, J.) (same) (Ex. A-3); *Horton v. Leading Edge Mktg Inc.*, No. 04-212, 2008 U.S. Dist. LEXIS 11761, at *8 (D. Colo. Feb. 4, 2008) (Nottingham, C.J.) (stating that counsel’s request for a fee of 23% was “less than the customary contingency fee of one-third of the recovery, and on the low end of the range of fees granted by federal courts in common fund cases”); *Lucas v. Kmart Corp.*, No. 99-01923, 2006 U.S. Dist. LEXIS 51420, at *18-19 (D. Colo. July 27, 2006) (noting the “customary fee award of 30% of the fund under the percentage of the fund approach”).⁵

Other districts within the Tenth Circuit have also recognized the reasonableness of attorneys’ fee awards that reflect similar percentages of recovery. *See, e.g., Lewis v. Wal-Mart Stores, Inc.*, No. 02-944, 2006 U.S. Dist. LEXIS 87681, at *4 (N.D. Okla. Dec. 4, 2006) (“A contingency fee of one-third is relatively standard in lawsuits that settle before trial and, given the length and complexity of this lawsuit, it is a reasonable percentage for a contingency fee.”); *McNeely v. Nat’l Mobile Health Care, LLC*, No. 07-933, 2008 U.S. Dist. LEXIS 86741, at *46 (W.D. Okla. Oct. 27, 2008) (stating that “[f]ees in the range of at least one-third of the common fund are frequently awarded in class action cases,”

⁵ *See also, e.g., In re Bos. Chicken, Inc. Sec. Litig.*, No. 97-1308, 2006 U.S. Dist. LEXIS 56267, at *12 (D. Colo. Aug. 10, 2006) (awarding fee of 29% of common fund or 1.34 times lodestar); *Sonnenfeld v. City and Cnty of Denver, Colo.*, No. 95-Z-468 at 5 (D. Colo. Dec. 8, 1997) (awarding fee of 33 1/3% of the common fund) (Ex. A-4); *Queen Uno v. Coeur d’Alene Mines Corp.*, No. 97-WY-1431, at 2 (D. Colo. Aug. 11, 1999) (awarding fee of 30% of the common fund or 1.64 times lodestar) (Ex. A-5); *In re Einstein Noah Bagel Corp. Sec. Litig.*, No. 97-N-1614, at 10 (D. Colo. June 4, 1999) (awarding fee of 30% of the common fund) (Ex. A-6).

citing cases and awarding a 33% fee).⁶ Here, Lead Plaintiffs' Counsel are seeking 30% of the \$89.5 million Settlement Fund, a reasonable percentage that this Court and other Courts in the Tenth Circuit routinely award in common fund cases.

As set forth below, *see* Section III. B., *infra*, the case at bar presents no reason to deviate from the "customary fee" recognized by the *Lucken* court and others. This litigation was neither easy nor quick. Rather, it was a paradigmatic securities case – fraught with peril, hard-fought, and arduous. It took a great deal of cooperation and coordination among Lead Plaintiffs' Counsel to resolve the Actions. The typical 30% fee is more than warranted here.

B. The Attorneys' Fee Request Is Reasonable Under the "Johnson Factors"

The Tenth Circuit has recognized certain factors that should be considered in determining whether the attorneys' fees requested are reasonable – the "Johnson factors":

(1) the time and labor required; (2) the novelty and difficulty of the question presented by the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to 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.

⁶ *See also In re Novell, Inc. Sec. Litig.*, No. 99-995 (D. Utah May 26, 2005) (fee equal to 30% of recovery) (Ex. A-7); *In re Sun Healthcare Group, Inc., Sec. Litig.*, No. 99-00269 (D.N.M. Dec. 13, 2004) (fee equal to 30% of recovery) (Ex. A-8); *In re United Telecomms. Sec. Litig.*, No. 90-2251, 1994 U.S. Dist. LEXIS 9151 (D. Kan. June 1, 1994) (fee of 32-1/3% of recovery).

Vaslavik, 2000 U.S. Dist. LEXIS, at *5 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)); *see also* *Gottlieb*, 43 F.3d at 483. Although the Court must address the *Johnson* factors, “rarely are all of the *Johnson* factors are applicable” in a particular case. *Brown*, 838 F.2d at 456.⁷ An analysis of the relevant *Johnson* factors make clear that the 30% common fund fee Lead Plaintiffs’ Counsel have requested in the Actions is reasonable.

1. The Amount Involved and Results Obtained

“In a common fund case, the greatest weight should be given to the monetary results achieved for the benefit of the class [and] this factor is often ‘decisive.’” *Lucken*, 2010 U.S. Dist. LEXIS 144366, at *5-6; *see also* *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 605 (“While other criteria in determining reasonable attorney fees are legitimate considerations, the amount of the recovery, and end result achieved, is of primary importance.”). As set forth more fully in Lead Plaintiffs’ Motion for Final Approval of Proposed Class Settlements and Approval of Plan of Allocation (the “Settlement Brief,” incorporated herein by reference), the result here is an excellent one for the Classes. This factor weighs heavily in favor of granting Lead Plaintiffs’ Counsel’s fee petition.

⁷ Here, the seventh and eleventh factors are not relevant for the Court’s consideration. The tenth factor is also arguably not relevant, as it typically refers to “undesirable” cases such as those in which attorneys champion unpopular causes, not the desirability of a case from a financial perspective. However, should the Court feel that the tenth *Johnson* factor is relevant, it too weighs in favor of Counsel’s fee request, for the reasons set forth in Sections III. B. 2, 3, and 5.

Lead Plaintiffs’ Counsel have achieved a substantial and certain cash payout of \$89.5 million plus interest for the benefit of the Classes without the substantial risk, delay, expense and uncertainty of continued litigation and trial. The efforts of Lead Plaintiffs’ Counsel directly led to a substantial economic benefit for Class Members, and they respectfully submit that the Classes could not have achieved a better result under the facts and circumstances of the Actions. Importantly, this result was achieved with efficiency and without the need of persistent Court intervention or the expenditure of excessive resources by either this Court or Lead Plaintiffs’ Counsel. As noted in Lead Counsel’s Declaration (*see, e.g.*, Lead Counsel Decl. ¶¶ 14, 17, 20, 29, 31), Lead Plaintiffs’ Counsel coordinated briefs, discovery, and settlement negotiations, which allowed the Settling Parties to act in an efficient manner. This Court, therefore, was not unnecessarily burdened with disputes arising in the six cases separately, nor were the Classes burdened with duplicative work or expenses.

The Settlement provides the Classes a recovery of \$89.5 million, with the Settlement proceeds divided among the Actions as follows:

Fund Name	Settlement Allocation
Oppenheimer AMT-Free Municipals Fund	\$17,109,000
Oppenheimer AMT-Free New York Municipal Fund	\$ 4,241,000
Oppenheimer Rochester National Municipal Fund	\$26,850,000
Oppenheimer New Jersey Municipal Fund	\$ 3,374,000
Oppenheimer Pennsylvania Municipal Fund	\$ 4,341,000
Rochester Fund Municipals	\$33,585,000
Total for All Six Funds	\$ 89,500,000

With the skilled assistance of Financial Markets Analysis, LLC (“FMA”), Lead Plaintiffs’ Counsel estimated the Classes’ most realistic recovery at trial in order to assess

the value of the Actions, taking into consideration certain defense arguments that may have been credited by a jury relating to, among other things, liability, the statute of limitations, the absence of loss causation, and losses attributable to general market forces.⁸ Based on this analysis, Lead Plaintiffs' Counsel estimate that the proposed Settlement is approximately 4% of Defendants' most generous damages estimate, and is a reasonable result for the Classes compared to the risks of continued litigation. Lead Counsel Decl. ¶ 68. As discussed in detail in the Declaration, this is an excellent result for the Classes, and supports the reasonableness of the attorneys' fees requested herein. For 2013, the median settlement as a percentage of estimated damages was 2.1%, slightly more than half of what Lead Plaintiffs' Counsel achieved here. *See* Lead Counsel Decl. Exhibit 2, Laarni Bulan, Ellen Ryan and Laura Simmons, *Securities Class Action Settlements: 2013 Review and Analysis*, at 12 (Cornerstone Research 2013).⁹

Further, in cases that arose during the "credit crisis" and settled in 2013, the median settlement was only 0.7% of estimated damages. *Id.* The proposed Settlement here is almost five times that – a truly noteworthy achievement given that the "credit crisis" was a particularly salient defense to these Actions, and one which Defendants made clear they would assert before a jury. There is no doubt that the Settlement provides a compelling benefit for the Classes, whether viewed globally or individually by each Class. Thus, Lead Plaintiffs' Counsel's skillful negotiation in obtaining an

⁸ Again, significant efficiencies (and cost savings to the Classes) were realized by Lead Plaintiffs' Counsel's decision to utilize the same experts in all the Actions.

⁹ Available at <http://securities.stanford.edu/research-reports/1996-2013/Settlements-Through-12-2013.pdf>.

\$89.5 million global Settlement provides a very favorable result and one that should be given great weight by the Court in assessing attorneys' fees.

2. The Time and Labor Involved

The Settlement achieved herein is a direct result of Lead Plaintiffs' Counsel's coordinated efforts in dedicating time and labor to the prosecution and settlement of the Actions. As described in greater detail in Lead Counsel's Declaration and the supporting declarations of each individual Lead Counsel, the time and labor expounded in litigating the Actions for nearly five years supports the reasonableness of the attorneys' fees requested here. Moreover, Lead Plaintiffs' Counsel worked together on numerous fronts including but not limited to briefing on the motions to dismiss, discovery, mediation, and the global settlement of six separate class action lawsuits. Significant efficiencies were realized by this Court as Lead Plaintiffs' Counsel opposed Defendants' numerous motions in unified briefs, propounded and served consolidated discovery requests, and filed an omnibus motion for class certification. *See* Lead Counsel Decl. ¶¶ 14, 17, 20, 29, 31. Indeed, the harmonious blending of efforts and organization among Lead Plaintiffs' Counsel was integral in reaching a global Settlement of the Actions while reducing the time and cost of litigating the Actions.

The number of hours Lead Plaintiffs' Counsel expended on the Actions (24,492.63 hours with a resulting lodestar of \$12,557,437.40) attests to their extensive, but economical, efforts. Lead Counsel Decl. ¶¶ 86-90. Throughout the course of litigation, Lead Plaintiffs' 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 and defenses asserted by Defendants;
- hired and consulted with experts for the purposes of filing the Amended Complaints;
- filed detailed and particularized Amended Complaints after conducting an extensive factual investigation and analysis of each Fund's portfolio holdings;
- successfully defended Defendants' multiple motions to dismiss and related motions for reconsideration;
- successfully opposed one of Defendants' two motions for partial summary judgment (the other remains pending);
- reviewed and analyzed millions of pages of documents produced by Defendants, including electronic records of each and every security held by each Fund on a daily basis;
- briefed and argued discovery motions;
- retained and consulted with portfolio experts H. Gifford Fong and Gifford Fong Associates concerning a complete forensic analysis of every security in the Funds' portfolios during the Class Periods, as well as analysis of key documents produced by Defendants;
- retained and consulted with damages experts at FMA in order to analyze over 20 million separate Fund transactions and documents produced by Defendants to assess damages under Sections 11 and 12 of the 1933 Act;
- engaged in extensive settlement negotiations with Defendants, including a two-day mediation session before Judge Phillips and numerous subsequent negotiations via telephone and e-mail;
- worked with wholly independent counsel to resolve the allocation issues between the Actions, culminating in an allocation mediation session before Judge Phillips; and
- documented the Settlement and oversaw an extensive notice and administration process.

Lead Counsel Decl. ¶¶ 6-53.

Assuming a \$26,850,000 attorneys' fee (plus interest), Lead Plaintiffs' Counsel's lodestar of \$12,557,437.40, at Lead Plaintiffs' Counsel's regular current rates, would yield a "multiplier" of approximately 2.1. As discussed in greater detail below, this lodestar multiplier is appropriate given the significant results achieved. It also reflects the efficiencies gained from Lead Plaintiffs' Counsel working together on numerous fronts, including, *inter alia*, consolidated briefing in opposition to Defendants' motions to dismiss, extensive and coordinated discovery, an omnibus motion for class certification, and months of hard-fought negotiations with Defendants to globally settle all six Actions for \$89.5 million. *See, e.g.*, Lead Counsel Decl. ¶¶ 14, 17, 20, 29, 31, 35, 43-46. Such efforts took a great deal of cooperation and coordination among Lead Plaintiffs' Counsel and indeed, virtually all of the time and expenses expended by Lead Plaintiffs' Counsel and other plaintiffs' counsel benefited all the Actions.

In sum, the diligent and vigorous efforts of Lead Plaintiffs' Counsel throughout the course of the Actions, as reflected in the time expended and the lodestar incurred by Lead Plaintiffs' Counsel, strongly support the requested fee award.

3. The Novelty and Difficulty of Questions Raised by the Actions

The novelty and difficulty of the legal and factual issues presented also supports the fee request. Courts have recognized that the novelty and difficulty of the issues in a case is a significant factor to be considered in making a fee award. *See Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *8 (where the law underlying a case is "particularly uncertain," the "novelty and difficulty of the legal and factual issues presented by this case weighs heavily in favor of the fees requested").

Securities cases in particular are notoriously complicated. “There are few simple class action cases involving securities law. This area of law may not be novel, but it generally is complex and difficult.” *In re Qwest Commc’ns. Int’l, Inc. Sec. Litig.*, No. 01-cv-01451, 2006 U.S. Dist. LEXIS 71267, at *17 (D. Colo. Sept. 28, 2006); *see also Miller v. Woodmoor Corp.*, No. 74-988, 1978 U.S. Dist. LEXIS 15234, at *12 (D. Colo. Sept. 28, 1978) (“Despite years of litigation, the area of securities law has gained little predictability. There are few ‘routine’ or ‘simple’ securities actions.”)

These cases were no different. Indeed, the complexity of the facts here – involving arcane derivative instruments, financial terms of art the very meanings of which were hotly contested, and a global financial implosion – made it necessary for Lead Plaintiffs’ Counsel to consult with experts just to properly draft the Amended Complaints in these actions. Specifically, there were complicated and contested issues of fact regarding whether and to what degree the global financial crisis was responsible for the decline in the Funds’ NAVs; whether there is an accepted meaning of the term “liquidity,” either within financial circles or to retail investors; whether and to what degree the Funds’ investments were or were not “liquid,” and the impact to the Funds’ NAVs, if any, of those investments; whether and to what degree the Funds’ investments in inverse floaters caused the Funds’ NAVs to decline; whether and to what degree the Funds exceeded their self-imposed limits on leverage; whether the Funds’ management correctly assigned ratings to certain unrated bonds and correctly used complex risk metrics, such as effective duration and spread duration, to monitor the risk inherent in the Funds’ portfolios; and whether various Lead Plaintiffs or individual Class Members knew

or should have known of the alleged misrepresentations contained in the Funds' Prospectuses, either due to the Funds' own movements in NAV or from third parties such as brokers or Morningstar. *See generally* Lead Counsel Decl. ¶¶ 10-12; 15; 71-79. Indeed, as this Court noted, "[t]he issue of loss causation is a seminal one in this litigation." *See* Amended Opinion and Order on Motions to Dismiss at 52 (Dkt. 359); *see also* Lead Counsel Decl. ¶ 76.

Lead Plaintiffs' Counsel obtained the Settlement despite these novel and difficult questions concerning loss causation, as well as the difficult questions surrounding proof of Defendants' false statements and whether or not they were widely known by the market to be false, all of which made it far from certain that any ultimate recovery would be obtained. Moreover, Lead Plaintiffs' Counsel undertook this effort without the benefit (as exists in many securities litigations) of any governmental investigation or admission or restatement by Defendants.

The substantial Settlement Amount is a reflection that Lead Plaintiffs, through Lead Plaintiffs' Counsel's coordinated efforts and willingness to invest substantial amounts of time and money, overcame significant legal and factual obstacles in order to achieve an immediate recovery for the Classes. Accordingly, this second *Johnson* factor also supports the fee award.

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

The third and ninth *Johnson* factors, the skill required to perform the legal services properly and the experience, ability, and reputation of the attorneys, further support the

reasonableness of the requested attorneys' fees. Lead Plaintiffs' Counsel are experienced and skilled practitioners in the fields of securities class actions and complex litigation. *See* Firm Resumes attached as Exhibits 4-7 to Lead Counsel's Declaration. From the outset, Lead Plaintiffs' Counsel engaged in a concerted effort to obtain the maximum recovery for the Classes and as a result of these efforts Lead Plaintiffs' Counsel were able to negotiate a very favorable Settlement.

As detailed in Lead Counsel's Declaration, Lead Plaintiffs' Counsel conducted an extensive investigation of the claims and potential defenses. As a result of their efforts, Lead Plaintiffs' Counsel were able to plead detailed allegations and defeat Defendants' motions to dismiss. Lead Plaintiffs' Counsel also demonstrated the quality of their work by coordinating efforts to negotiate and obtain critical and extensive discovery and, ultimately, by achieving the Settlement totaling \$89.5 million on behalf of the Classes.

Lead Plaintiffs' Counsel was also challenged during this litigation by prominent defense firms, Dechert LLP and Kramer Levin Naftalis & Frankel LLP. Both firms are highly respected with extensive experience representing clients in securities class actions. Courts have recognized that the standing of opposing counsel should be weighed in evaluating the reasonableness of the requested attorneys' fee, because such standing underscores the complexity of the litigation and the challenges faced by plaintiffs' attorneys. *See In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976); *see also In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 433 (E.D. Pa. 2001) ("The quality and vigor of opposing counsel is also relevant in evaluating the services rendered by plaintiffs' counsel."). The ability of Lead Plaintiffs' Counsel to obtain such a

favorable Settlement for the Classes in the face of skilled legal opposition further reflects the high quality of Lead Plaintiffs' Counsel's work and weighs in favor of the requested percentage fee.

5. The Preclusion of Other Employment and Whether the Fee Is Fixed or Contingent

The fourth and sixth *Johnson* factors, the extent to which Lead Plaintiffs' Counsel was precluded from other employment and whether the fee is fixed or contingent, also support approval of the requested attorneys' fees. Lead Plaintiffs' Counsel undertook these Actions on a purely contingent fee basis, assuming a significant risk that the Actions would yield no recovery and leave them entirely uncompensated for their efforts. Unlike counsel for Defendants, who are typically paid an hourly rate and reimbursed for their expenses on a regular basis, Lead Plaintiffs' Counsel have not been compensated for any time or expense since these cases began – over five years ago. Lead Plaintiffs' Counsel have expended approximately 24,492.63 hours, equating to \$12,557,437.40 in lodestar, and with other plaintiffs' counsel incurred \$3,531,103.05 in litigation expenses, knowing that if their efforts were not successful, no fee would be obtained and no expense reimbursed. Lead Counsel Decl. ¶¶ 86-90; Exhibits 4-9 attached thereto.

Courts have recognized this real risk by awarding fees that exceed the amount billed to the case. “In common fund cases, ‘attorneys whose compensation depends on their winning the case [] must make up in compensation in the cases they win for the lack of compensation in the cases they lose.’” *Vizcaino v. Microsoft*, 290 F.3d 1043, 1051 (9th Cir. 2002) (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,

1300-01 (9th Cir. 1994)); *King*, 420 F. Supp. at 632 n.8 (“The contingent nature of counsel’s compensation has long been recognized as justifying a larger fee.”). By committing to this contingent fee case that few law firms would be willing or able to undertake, Lead Plaintiffs’ Counsel were required to invest a substantial amount of time and money while foregoing other cases. Thus, the contingent nature of Lead Plaintiffs’ Counsel’s representation and the preclusion of other employment support approval of the request for attorneys’ fees.

6. The Customary Fee and the Level of Awards in Similar Cases

As discussed above, Lead Plaintiffs’ Counsel’s fee request of 30% is customary for securities cases in the Tenth Circuit. *See supra* Section III.A (citing cases). Indeed, courts in this Circuit have awarded attorneys’ fees greater than the fee requested here as a percentage of the settlement. *See id.* Accordingly, an analysis of the fifth and twelfth factors under *Johnson* (the customary fee, and the level of awards in similar cases) also demonstrates that the award of attorneys’ fees is reasonable.

C. The Lodestar Method Also Supports the Attorneys’ Fees Requested

Although the percentage method is the appropriate and preferable approach, some courts in this Circuit use the lodestar method as an alternative measure to demonstrate the reasonableness of the fee request.¹⁰ Under the lodestar method, courts often award fees

¹⁰ The lodestar method, which focuses on the time spent and lodestar generated, is more appropriate for statutory attorney fee award cases that involve shifting the burden of the prevailing party’s attorneys’ fees to the losing party for remedial purposes, than for cases such as this that involve a sharing of the burden among those benefited by the litigation. *See, e.g., Gottlieb*, 43 F.3d at 483 n.5 (noting that the U.S. Supreme Court has always awarded fees in common-fund cases on a percentage-of-the-fund basis).

that are a multiple higher than counsel's lodestar in order to recognize and compensate counsel's having assumed the representation without an assured payment of any fees. *See, e.g., Vaslavik*, at *4 (the lodestar method "multiplies the reasonable hours expended by a reasonable hourly rate, and *finally by an additional percentage to compensate for risk*") (emphasis added). Courts in the Tenth Circuit, including this one, have found multipliers between 3 and 4.5 customary and appropriate in common fund cases. *See In re Oppenheimer Champion Income Fund Sec. Fraud Class Action*, No. 09-cv-386-JLK-KMT (D. Colo. Sept. 30, 2011) (Kane, J.) (Ex. A-9) (4.6 multiplier); *In re Core Bond Fund*, No. 09-cv-1186-JLK-KMT, 2011 U.S. Dist. LEXIS 112949 (D. Colo. Sept. 30, 2011) (Kane, J.) (Ex. A-10) (4.2 multiplier); *In re Samsonite Corp. Sec. Litig.*, No. 98-K-1878 (D. Colo. July 25, 2000) (awarding attorneys' fees equal to approximately 3.45 times the lodestar of plaintiffs' counsel) (Ex. A-11); *In re Qwest*, 2006 U.S. Dist. LEXIS 71267, at *21 (stating that "lead counsel who create a common fund for the benefit of a class are rewarded with fees that often are at least two times the reasonable lodestar figure, and in some cases reach as high as five to ten times the lodestar figure").

Here, Lead Plaintiffs' Counsel spent 24,492.63 hours in the prosecution of the Actions on behalf of Lead Plaintiffs and the Class. Lead Counsel Decl. ¶ 87; Exhibits 4-7 attached thereto (Decls. of Plaintiffs' Counsel). The number of hours expended by Lead Plaintiffs' Counsel is reasonable in light of the length of the Actions, the hard-fought nature of the litigation, and the complexity of the issues involved. Lead Plaintiffs' Counsel sought throughout this litigation to avoid duplication of effort by counsel. *See* Lead Counsel Decl. ¶¶ 14, 17, 20, 29, 31. Had each of the six Actions been prosecuted

separately, lodestars would have been much higher as Lead Plaintiffs' Counsel would have been required to file separate briefs, review Defendants' documents without the benefit of working as a team, and potentially utilize different experts or the same experts at different times. Moreover, Lead Plaintiffs' Counsel have reviewed their time records and eliminated certain entries in the exercise of billing judgment. *Id.*¹¹

Here, the total lodestar of Lead Plaintiffs' Counsel, derived by multiplying the hours worked by each firm's attorneys and support staff by their current hourly rate, equals \$12,557,437.40. Lead Plaintiffs' Counsel's request for an award of \$26,850,000 would result in a multiplier of 2.1 times Lead Plaintiffs' Counsel's lodestar, which is reasonable and well within the range acceptable in this Circuit. Lead Counsel Decl. ¶ 87.

The hourly rates that were used to generate the lodestar are reasonable and appropriate. The lodestar calculation includes time expended by attorneys and professional support staff. *See Stalcup v. Schlage Lock Co.*, 505 F. Supp. 2d 704, 707 (D. Colo. 2007) ("Time spent by paralegals and other professionals frequently is billed to clients by the hour, and the assistance of such professionals is indispensable in a case like this case."); *see also In re Qwest*, 2006 U.S. Dist. LEXIS 71267, at *15 (same). Reasonable hourly rates are determined by reference to the prevailing market rates in the relevant legal community, which for complex class actions such as this one, is the national market for securities class-action firms with the skill and resources to undertake

¹¹ In addition, Lead Plaintiffs' Counsel anticipate that they will spend additional time in connection with the Settlement Hearing before this Court and in connection with the administration of the Settlement.

litigation of this magnitude. *See Lucas*, 2006 U.S. Dist. LEXIS 51420, at *13 (citation omitted) (“[T]he relevant community for purposes of determining a reasonable billing rate for Class Counsel likely consists of attorneys who litigate nationwide, complex class actions.”). A nationwide market is also appropriate given that Defendants retained firms of national scope, including the New York, San Francisco, and Philadelphia offices of Dechert LLP and the New York office of Kramer Levin Naftalis & Frankel LLP.

It is appropriate to calculate Lead Plaintiffs’ Counsel’s lodestar at current billing rates. The Supreme Court has recognized that in cases such as this, where counsel’s entitlement to attorneys’ fees must await the conclusion of the case several years after the services are rendered, courts typically offset the delay in payment by either basing the award on current, instead of historical, billing rates, or by adjusting historical fees to account for their present value (*i.e.*, by awarding prejudgment interest on the fee award). *See State of Mo. v. Jenkinsi*, 491 U.S. 274, 282-84 (1989).

Accordingly, the reasonableness of the requested attorneys’ fees is confirmed by a lodestar “cross-check.”

D. The Request for Reimbursement of Expenses Is Reasonable

Lead Plaintiffs’ Counsel also seek reimbursement of \$3,531,103.05 (including expenses incurred by other plaintiffs’ law firms, but not including Lead Plaintiffs’ expenses), plus interest, for litigation expenses incurred in connection with prosecuting the Actions. *See* Lead Counsel Decl. ¶¶ 105-106.¹² It is well-established that such

¹² \$581,257.64 of this amount consists of unpaid expenses, as described in Exhibit 9 to Lead Counsel’s Declaration.

expenses are compensable in a common-fund case if particular costs are the type normally billed by attorneys to paying clients. *See, e.g., Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993); *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *11 (“As with attorneys’ fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred.”); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (“The expenses incurred – which include investigative and expert witnesses, filing fees, service of process, travel, legal research and document production and review – are the type for which ‘the paying, arms’ length market’ reimburses attorneys. For this reason, they are properly chargeable to the Settlement fund.”).

Plaintiffs’ counsel’s declarations, annexed as Exhibit 8 to Lead Counsel’s Declaration,¹³ itemize the various categories of expenses incurred. These expenses were reasonably and necessarily incurred in prosecuting the claims and achieving the outstanding result in the Actions. Lead Plaintiffs’ Counsel further submit that these expenses, which include costs such as expert and consultant fees, mediation fees, electronic legal research, costs for court reporting, costs associated with discovery hosting and review, photocopying, postage, meals, and transportation, are the types of costs for which plaintiffs’ counsel should be reimbursed from the Settlement Fund. Moreover, the vast majority of the costs incurred are associated with experts and

¹³ Exhibit 9 to Lead Counsel’s Declaration includes a record of disbursements from Lead Plaintiffs’ Counsel’s litigation fund, which was created by Lead Plaintiffs’ Counsel to pay major expenses common to all the Actions.

consultants, who were essential to obtaining the outstanding Settlement. Where a “statistical expert analysis” is “essential” to advancing the claims, expert costs should be approved. *Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *12. Just as they did with their time records, Lead Plaintiffs’ Counsel carefully reviewed their expense records and, in an abundance of caution, are not seeking reimbursement for all their incurred expenses.

The Notices advised potential Class Members that Lead Plaintiffs’ Counsel would seek reimbursement of expenses of up to \$4.5 million, plus interest. Epiq Decl. Exs. B-E. The expenses sought here are below this “cap.” Accordingly, Lead Plaintiffs’ Counsel submit that the expense request is fair and reasonable and should be granted.

E. Lead Plaintiffs Are Entitled to Reimbursement of Reasonable Lost Wages and Expenses

Pursuant to the PSLRA, the Court has discretion to reimburse class representatives for “reasonable costs and expenses (including lost wages) directly relating to the representation of the class.” 15 U.S.C. § 77z-1(a)(4). Lead Plaintiffs’ Counsel requests that the Court approve awards of \$5,000 to Lead Plaintiff Peter Unanue (*In re Rochester National Municipal Fund*) and \$996.11 to Lead Plaintiff John Vazquez (*In Re AMT-Free New York Fund*) for the considerable amount of time spent over the past five years advancing and protecting the Classes’ interests.¹⁴ As explained in the Declarations of Peter Unanue and John Vazquez, attached as Exhibits 10-11 to Lead Counsel’s

¹⁴ Lead Plaintiffs for four of the six funds are not requesting reimbursement for lost wages and expenses. Lead Plaintiffs Victor Sasson (*In re New Jersey Municipal Fund*) and Dharamvir Bhanot (*In re Oppenheimer Pennsylvania Municipal Fund*) opted not to seek reimbursement for lost wages and expenses. Lead Plaintiffs Leonard Klorfine (*In re AMT-Free Municipals Fund*) and Stuart and Carole Krosser (*In re Rochester Fund Municipals*) have no lost wages or expenses.

Declaration, Lead Plaintiffs Peter Unanue and John Vazquez are seeking reimbursement for costs and expenses related to their active participation in the Actions. *See also* Lead Counsel Decl. ¶¶ 107-108.

Many cases before this Court have approved reasonable payments to compensate class representatives for the time and effort devoted by them on behalf of a class. Recently in *In re Core Bond Fund*, No. 09-cv-1186-JLK-KMT, *slip op.* (D. Colo. Sept. 30, 2011) (Ex. A-10), this Court awarded the lead plaintiff \$54,900 in lost wages and expenses. Similarly, in *In re Rhythms Sec. Litig.*, No. 02-35 (D. Colo. April 3, 2009) (Ex. A-1), this Court granted the lead plaintiff's request for reimbursement and awarded \$135,084. *See also In re Oppenheimer Champion Income Fund Sec. Fraud Class Action*, No. 09-cv-386-JLK-KMT, *slip op.* (D. Colo. Sept. 30, 2011) (Ex. A-9) (awarding \$16,500 collectively to two lead plaintiffs).

Lead Plaintiffs Peter Unanue and John Vazquez are not professional plaintiffs. They sought to become lead plaintiffs in the Actions to represent their respective Classes and to ensure that the Actions obtained the largest possible recovery. The Declarations submitted by Lead Plaintiffs Peter Unanue and John Vazquez serve as a testament to the amount of time and dedication they contributed until a Settlement was reached (*see* Unanue and Vazquez Decls., Exhibits 10-11 to Lead Counsel's Declaration). Their requests are summarized here for the Court's convenience.

Peter Unanue

Lead Plaintiff Peter Unanue is seeking reimbursement for costs and expenses totaling \$5,000 at the rate of \$182.29 per hour for the 40 hours he spent pursuing the

claims on the Rochester National Municipal Fund Class's behalf. Mr. Unanue is seeking reimbursement at the rate of \$182.29 per hour, based upon his calculated hourly rate as an Executive Vice President of Goya Foods. *See* Exhibit 10 to Lead Counsel's Declaration.¹⁵

John Vazquez

Lead Plaintiff John Vazquez is not seeking any lost wages by virtue of the time he spent in connection with the Actions. He did, however, incur expenses in the amount of \$996.11 for which he seeks reimbursement. *See* Exhibit 11 to Lead Counsel's Declaration.

F. The Reaction of the Classes to Date Supports the Fee Request

In determining the reasonableness of requested attorneys' fees,¹⁶ numerous courts have recognized that the "lack of objection from members of the class is one of the most important reasons." *In re Prudential Sec. Inc. Ltd. P'ship Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (citations omitted); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177 ("the lack of objection from any Class Member supports the attorneys' fees award"); *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (noting that lack of objections is "strong evidence of the propriety and acceptability" of fee request). Here, as of June 6, 2014, 577,712 copies of the Notice were mailed to

¹⁵ Mr. Unanue's hourly rate (derived from his current annual salary) multiplied by the hours spent on the litigation, plus reimbursement of reasonable expenses totals \$7,343.66. However, consistent with the Notice that was distributed to the National Fund Class, Mr. Unanue is requesting reimbursement of \$5,000.

¹⁶ Although not a *Johnson* factor, the fact that zero Class Members have objected to Lead Counsel's fee request also constitutes evidence that the level of fees requested is reasonable.

potential Class Members and nominees, who were advised that Lead Plaintiffs' Counsel would apply for a fee award of thirty percent (30%) of the Gross Settlement Fund, and no more than \$4.5 million plus accrued interest in the reimbursement of out-of-pocket expenses. *See* Epiq Decl. ¶ 25.

Although the Court-ordered deadline to object has not yet passed, as of the filing of this motion, there have been zero objections to the request attorneys' fees and reimbursement of expenses. *Id.* Accordingly, the limited number of objections weighs strongly in favor of the determination that the fee requested by Lead Plaintiffs' Counsel is fair and reasonable.

IV. CONCLUSION

For the reasons set forth above, and in Lead Plaintiffs' Counsel's Declaration, Lead Plaintiffs' Counsel respectfully request that the Court enter an Order approving an award of attorneys' fees of 30% of the Gross Settlement Fund, or \$26,850,000 (plus interest); reimbursement of expenses in the amount of \$3,531,103.05 (plus interest), on behalf of plaintiffs' counsel who contributed to the litigation and settlement of the Actions; and reimbursement of Lead Plaintiffs' expenses.

Dated: June 11, 2014

Respectfully submitted,

s/ Kip B. Shuman

Kip B. Shuman
Rusty E. Glenn
THE SHUMAN LAW FIRM
885 Arapahoe Avenue
Boulder, CO 80302
Telephone: (303) 861-3003
Fax: (303) 484-4886
kip@shumanlawfirm.com
rusty@shumanlawfirm.com

Liaison Counsel

Steven J. Toll
S. Douglas Bunch
Genevieve Fontan
**COHEN MILSTEIN SELLERS
& TOLL PLLC**
1100 New York Avenue, NW
Suite 500 West Tower
Washington, D.C. 20005
Telephone: (202) 408-4600
Fax: (202) 408-4699
stoll@cohenmilstein.com
dbunch@cohenmilstein.com
gfontan@cohenmilstein.com

Sanford P. Dumain
Roland W. Riggs
MILBERG LLP
One Pennsylvania Plaza
New York, NY 10119-0165
Telephone: (212) 594-5300
Fax: (212) 868-1229
sdumain@milberg.com
rriggs@milberg.com

***Attorneys for Lead Plaintiff Leonard
Klorfine in the AMT-Free Fund
cases, Lead Plaintiffs Stuart and
Carole Krosser in the Rochester
Fund cases, and Lead Plaintiffs'
Counsel for the Class***

***Attorneys for Lead Plaintiff John
Vazquez in the AMT-Free New York
Fund cases, Lead Plaintiff Victor Sasson
in the New Jersey Fund cases, Lead
Plaintiff Peter Unanue in the Rochester
National Fund cases, and Lead
Plaintiffs' Counsel for the Class***

Charles J. Piven
BROWER PIVEN
A Professional Corporation
1925 Old Valley Road
Stevenson, MD 21153
Telephone: (410) 332-0030
Fax: (410) 685-1300
piven@browerpiven.com

David A.P. Brower
475 Park Avenue South, 33rd Fl.
New York, NY 10016
Telephone: (212) 501-9000
Fax: (212) 501-0300
brower@browerpiven.com

*Additional Counsel for Lead
Plaintiff John Vazquez in the AMT-
Free New York Fund cases and
Lead Plaintiff Dharamvir Bhanot in
the Pennsylvania Fund cases*

Sherrie R. Savett
Gary E. Cantor
Glen L. Abramson
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3000
Fax: (215) 875-4604
ssavett@bm.net
gcantor@bm.net
gabramson@bm.net

*Attorneys for Lead Plaintiff Dharamvir
Bhanot and Additional Named Plaintiffs
William E. Miles, Jr. and John P.
Galganovicz in the Pennsylvania Fund
cases and Lead Plaintiffs' Counsel for
the Class*

Joseph J. Tabacco, Jr.
Nicole C. Lavallo
Matthew D. Pearson
BERMAN DEVALERIO
425 California Street, Suite 2100
San Francisco, CA 94104
Telephone: (415) 433-3200
Fax: (415) 433-6382
jtabacco@bermandevalerio.com
nlavalle@bermandevalerio.com
mpearson@bermandevalerio.com

*Additional Counsel for Lead
Plaintiffs Stuart and Carole Krosser
in the Rochester Fund cases*

Gary S. Graifman
**KANTROWITZ GOLDHAMER &
GRAIFMAN, P.C.**
747 Chestnut Ridge Road
Chestnut Ridge, NY 10977
Telephone: (845) 356-2570
Fax: (845) 356-4335
ggraifman@kgglaw.com

*Additional Counsel for Lead
Plaintiff Victor Sasson in the New
Jersey Fund cases*

Howard P. Longman
STULL, STULL & BRODY LLP
6 East 45th Street
New York, NY 10017
Telephone: (212) 687-7230
Fax: (212) 490-2022
jasondag@ssbny.com

*Additional Counsel for Lead Plaintiff
Victor Sasson in the New Jersey Fund
cases*

Lawrence L. Klayman
Jahan K. Manasseh
KLAYMAN & TOSKES, P.A.
2424 North Federal Highway
Suite 450
Boca Raton, FL 33431
Telephone: (561) 997-9956
Fax: (561) 361-9178

*Additional Counsel for Lead Plaintiffs
Stuart and Carole Krosser in the
Rochester Fund cases*

Certificate of Service

I hereby certify that the foregoing was filed with this Court on June 11, 2014 through the CM/ECF system and will be sent electronically to all registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants.

s/ Rusty E. Glenn
Rusty E. Glenn