UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE VIVENDI UNIVERSAL, S.A. SECURITIES LITIGATION	C.A. No. 02 Civ. 5571 (SAS)

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

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I. INTRODUCTION

This long and intensely contested securities fraud class action (the "Action") has not reached finality. However, in light of the advanced stage of the Action, Plaintiffs, with the Court's consent[1], submit this memorandum of law in support of Plaintiffs' motion for an award of Plaintiffs' Class Counsels' attorneys' fees and reimbursement of litigation expenses incurred to date in the successful prosecution of the Action. Plaintiffs' Class Counsel have obtained a partial judgment after trial of this Action in the amount of $49,771,641.14, including pre-judgment interest, pursuant to Rule 54(b) ("the Initial Judgment"). This Initial Judgment was entered on December 22, 2014 (Dkt. 1228,1229), and finally approved claims by 1924 Class Members who had purchased Vivendi Universal S. A. ("Vivendi") American Depository Shares ("ADSs") between October 30, 2000 and August 14, 2002, (the "Class Period"). The parties have agreed to the inclusion of additional claims with approved damages of approximately $1.85 million including pre-judgment interest. Both Plaintiffs and Defendant Vivendi have appealed or upon entry of a final judgment will appeal prior decisions of the Court potentially affecting all of the claims approved in the judgments and approximately $75 million of claims (including pre-judgment interest) subject to the Court's Opinion and Order entered August 11, 2015 (Dkt. 1272), granting summary judgment to Vivendi for failure of certain institutional class member claimants to establish entitlement to the presumption of reliance on the market.[2] The present

[1] Pursuant to the Court's April 6, 2016 Order, notice was sent to all Class Member Claimants as set forth in the Declaration of Stephen J. Cirami attached to the Declaration of Arthur N. Abbey. In response to the Notice, two objections were received (See exhibit B to the Cirami Declaration). Plaintiffs' Counsel do not believe a specific response to these objections is necessary. Class Member Claimants have until April 22 to submit objections.

[2] In addition, Plaintiffs have appealed the Court's denial of class certification to purchasers of Vivendi ADSs residing in Canada and all countries other than the United States, France, the Netherlands and England. Plaintiffs have also appealed the exclusion of Vivendi ordinary share purchase Class Members pursuant to *Morrison*. If Plaintiffs prevail in whole or in part in that appeal, claims representing substantial additional damages could become viable.

amount of damages plus pre-judgment interest for all claims approved by the Court pursuant to the jury verdict and subsequent proceedings or otherwise agreed by the parties is $51.6 million.

Plaintiffs' Lead Counsel are moving at this time for conditional approval[3] of attorneys' fees and reimbursement of the reasonable expenses of the Action, for the considerable time and resources expended in prosecuting this action, including the substantial domestic and foreign document and deposition discovery, extensive motion practice before and after trial, preparation of expert reports and intensive pre-trial proceedings leading to the four month trial resulting in a jury verdict in favor of the Class in January 2010. This enormous task was followed by additional years defending the verdict in this Court and on appeal, establishing a claims process and litigating Vivendi's challenges to the eligibility of claims, primarily pursuant to the fraud-on-the-market doctrine of reliance which permits a defendant to attempt to rebut the presumption of reliance of individual Class Member claimants. This litigation continues and it is possible that, in addition to the current appeals recently argued in the Second Circuit on March 3, 2016, and ongoing District Court proceedings concerning the eligibility of certain claims, there will be future appeals or other litigation prior to the final resolution of this Action. If additional litigation expenses are incurred in ongoing and future proceedings, as seems inevitable, Plaintiffs' may request that the Court grant reimbursement of litigation expenses reasonably incurred after and in addition to those expenses included in the instant request.

During the almost fourteen years since the Action began, Plaintiffs' Class Counsel have worked 214,148 hours on this case, and that work is not over. Moreover, all of those hours were

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[3] The actual payment or release of funds for approved fees and expenses is conditioned on the resolution of appeals finally affirming the damage awards approved in the Court's judgments or finally affirming any reduced or increased damage awards, subject to any modification the Court deems appropriate at that time. Payment of the awarded fees and expenses will be allocated on a pro-rata basis among prevailing claimants based on the ratio of each claimant's damages and interest to the total damages and interest to be paid. Payments will be made at the appropriate time or times pursuant to a plan to be proposed by Plaintiffs' Lead Class Counsel, subject to the approval of the Court.

at risk that no compensation would ever be received, and that risk continues. The same is true of the expenses of this action. The out-of-pocket litigation costs of obtaining the favorable jury verdict, all advanced by Plaintiffs' Counsel, including the extensive document and deposition discovery on three continents, numerous consulting and trial experts, and the four month trial, as well as the cost of the international notice and claim procedure, total $21,456,585.20 to date.

Class Counsel are requesting an award of fees representing one-third (33 1/3%) of the total damage and interest amount (net of Court awarded litigation expenses) payable to Class Member claimants once all judgments and related orders awarding and denying damages in the Action become final, and all appeal opportunities have been exhausted. The requested fee percentage, if awarded, will be calculated against the *net* total damages and interest to go to eligible claimants, i.e., after the approved litigation expenses have been subtracted. Assuming all currently approved claims included in the Initial Judgment and those claims agreed to by the parties become final, the total value of class damage and pre-judgment interest claims from which Class Counsel request this award of fees and expenses will be approximately $51.6 million.

II. HISTORY OF THE ACTION

This action was commenced in August 2002 by U.S. and foreign shareholders of Vivendi who alleged that they purchased ordinary shares or ADSs at artificially inflated prices as a result of the defendants' material misrepresentations and omissions during the Class Period. Although the ordinary shares in question traded primarily on the Paris Bourse and the ADRs on the New York Stock Exchange ("NYSE"), the Court found that it had subject matter jurisdiction over claims by foreign purchasers of foreign securities on foreign exchanges under the then-prevailing "conduct test" because significant conduct occurred in the United States, not least of which was

the relocation of Vivendi's headquarters from Paris to New York during the crucial time period when investors claimed to have been misled. So-called "foreign cubed" cases were uncommon and the defendants' opposition was vigorous and hard-fought. Nonetheless, on May 21, 2007, the Court certified a single class consisting of "all persons from the United States, France, England, and the Netherlands who purchased or otherwise acquired ordinary shares or ADSs" of Vivendi during the Class Period.

Plaintiffs' Class Counsel subsequently spent many thousands of hours of attorney and paralegal time analyzing millions of pages of documents; conducted depositions around the world of present and former Vivendi officers, employees and directors, and third party bankers, auditors and rating agency analysts; drafted scores of briefs and motion papers; defeated motions to dismiss; battled repeatedly to gain and to defend the certification of the Class; defended against and prevailed on appeals; defeated motions for summary judgment; participated in countless court hearings; consulted with accounting, liquidity, market and damage experts, and prosecuted a four-month trial to a successful jury verdict—one of just 12 securities fraud class actions, at the time, to have been tried to a verdict since the passage of the Private Securities Litigation Reform Act of 1995. During the trial, plaintiffs presented to the jury videotaped deposition testimony from over twenty fact witnesses, live testimony from four fact witnesses and three expert witnesses. The defendants, who were well-funded and armed with tenacious defense counsel from four of the most prominent and highly respected law firms in the country, put up three fact and six expert witnesses for their case. Together, the parties introduced over 750 documents into the record. The jury deliberated for 14 days before completing the seventy-two page verdict form and reaching its verdict.

On January 29, 2010, the jury found that defendant Vivendi violated Section 10(b) of the

Securities and Exchange Act of 1934 with respect to 57 statements made between October 30, 2000 and August 14, 2002. The jury determined per-share inflationary damages on a daily basis ranging from €0.15 to €11.00 for ordinary shares and $0.13 to $10.00 for ADSs during the Class Period, during which time there were on average 1.05 billion ordinary shares and ADSs outstanding on the Bourse and NYSE. Given the monumental challenges inherent in this type of litigation, Class Counsel obtained an outstanding jury verdict for class members.

Approximately five months after the jury verdict, on June 24, 2010, the Supreme Court issued its opinion in *Morrison v. National Australia Bank*, 561 U.S. 247 (2010), holding that Section 10(b) does not apply extraterritorially, upsetting four decades of legal precedent in the Second Circuit and this Court's earlier rulings concerning class certification. Subsequently, on February 17, 2011, this Court amended the class definition in this case to exclude ordinary share purchasers. There were on average 110 million ADSs outstanding on the NYSE during the Class Period, reflecting a significant post-verdict change in the magnitude of recoverable damages.

On December 10, 2012, a decade after Vivendi's fraud was revealed, the claims administration process began with the mailing of over 120,000 claim forms to ADS holders. Approximately 11,000 claims were eventually returned. On December 22, 2014, this Court entered partial final judgment pursuant to Rule 54(b) with respect to 1,924 of those claims, representing damages and prejudgment interest of $49,771,641.14. After this partial judgment, appeals and cross-appeals were lodged in the Second Circuit Court of Appeals on multiple issues decided by the District Court, including appeals (by both sides) of the initial certification of the class, the application of the *Morrison* decision by the, Court in decertifying Class Members who had purchased Vivendi ordinary (common) shares on exchanges outside the U.S., the admissibility at trial of Plaintiffs' market and damages expert's testimony, errors in the theory of

Section 10(b) liability as to which the Court instructed the jury and the validity of the jury verdict as rendered.

At the same time these appeals were being pursued, there remained at issue in this Court 109 claims not included in the Initial Judgment of December 22, 2014, which had been approved for eligibility and damages by the Claims Administrator, Garden City Group, LLC. Vivendi proceeded to challenge virtually the entire remaining group of claims, primarily on the issue of rebuttal of the presumption of reliance, the sole liability issue remaining after trial. That reliance rebuttal process required additional document discovery, a deposition and additional court appearances and briefing. On August 11, 2015, the Court issued its Opinion on Vivendi's motion for summary judgment on claims submitted by 82 claimants advised or managed by Southeastern Asset Management, Inc., holding that such claims were not entitled to the presumption of reliance under the fraud-on-the-market doctrine. This order may result in further appeal proceedings. Additional discovery, deposition and briefing is currently proceeding in connection with Vivendi's reliance challenge to ten claims advised or managed by another large institutional investment organization. Plaintiffs believe that these proceedings may be the last before a final judgment can be entered and all remaining issues in the Action that remain subject to appeal will either go to the Second Circuit or become final.

III. ARGUMENT

A. Class Counsel Seeks a Fee Award of 33⅓% of the Final Net Judgment Damage Awards

1. Class counsel's efforts justify an award of fees

Rule 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." The U.S. Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a

common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Second Circuit has likewise held that "[i]t is well established that the common fund doctrine permits attorneys whose work created a common fund for the benefit of a group of plaintiffs to receive reasonable attorneys' fees from the fund." *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 86 (2d Cir. 2010); *see also In re Zyprexa Prods. Liab. Litig.*, 594 F.3d 113, 128–29 (2d Cir. 2010); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered in creating that fund and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 0165(CM), 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007). The doctrine applies where the proceeds of the litigation have been awarded to the class as a whole, as typically occurs in a settlement, and also where awarded "by a formula that permits determination of the amount of the aggregate benefit conferred on the class," as occurred here. *In re Zyprexa*, 594 F.3d at 129.

Assuming the Initial Judgment and agreed approved claims are unchanged upon conclusion of all appeals, damages and interest required to be paid by Vivendi to Class Member claimants, net of the requested reimbursement of $21.4 million of litigation expenses, total approximately $34.7 million. Class Counsels' requested fee based on that outcome would be one-third of $34.7 million, or $11.56 million. After final resolution of appeals, that $34.7 million could also be increased or decreased. For example, if Plaintiffs should prevail on appeal of the denial of the approximately $75 million of claims, with interest, dismissed for failure to establish

entitlement to the presumption of reliance of fraud on the market, the final judgment could be increased by up to that amount.

2. The percentage-of-the-fund method is appropriate.

Plaintiffs' Class Counsel seek a percentage of the common fund, less expenses, as their fee.[4] "Courts may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method. *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir.2005). "Nonetheless, the trend among district courts in the Second Circuit is to award fees using the percentage method." *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *12 (S.D.N.Y. Dec. 19, 2014) (collecting cases). Indeed, the claims notice approved by the Court in this case and disseminated to Class Members in December 2012 states that "Class Counsel will request an award of attorneys' fees of up to one-third of the amount of damages and prejudgment interest payable to the Class".

3. The "cross check" with Class Counsel's lodestar demonstrates that the requested 33⅓% fee is reasonable

The percentage sought by Plaintiffs' Class Counsel as its fee is 33⅓% of the net judgment, or approximately $11.56 million if based on the current value of approved claims, $51.6 million. The Second Circuit encourages use of the lodestar "as a 'cross check' on the reasonableness of the requested percentage."[5] *Goldberger*, 209 F.3d at 50, *quoting In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 820 (3d Cir. 1995). Counsel's loadstar is the product of hours reasonably expended by counsel and a reasonable rate for counsel's efforts, *see Wal-Mart*, 396 F.3d 96, 123 fn.27. In this matter, involving the

4 This Court has held that the percentage should be applied to the common fund after expenses have been subtracted, rather than the gross amount. See *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 514 (S.D.N.Y. 2009).

5 The Second Circuit has recognized that, "where used as a mere cross-check to a percentage fee calculation, the hours documented by counsel need not be exhaustively scrutinized by the district court[.]" Cassese v. Williams, 503 F. App'x 55, 59 (2d Cir. 2012), quoting Goldberger, 209 F.3d at 50.

enormous work and effort required to bring this action to trial and a favorable verdict, and the extensive post-trial proceedings, the cross check supports Class Counsel's fee request. Plaintiffs' Class Counsel's lodestar in this case is $96.3 million. The requested fee award based on the current judgment and approved claims is $11.56 million, representing only 12% of the lodestar, a drastic reduction in lodestar in a case which should merit a multiplier.[6]

The cross check amply supports Plaintiffs' Class Counsel's request for an award of 33⅓% of the net judgment. This request precludes any enhancement that might otherwise be awarded to reflect the risk of nonpayment inherent in contingent representation, the complexity of trying a securities fraud class action lawsuit, the period of time counsel have litigated without compensation and the quality of the result obtained. *See Goldberger*, 209 F.3d at 54 ("We have historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement."), *quoting In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 226, 236 (2d Cir.1987).

4. The requested fee is also reasonable under the Goldberger factors.

The Second Circuit has traditionally determined the reasonableness of fees paid from a common fund by considering the following six factors: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement—or common fund—amount; and (6) public policy considerations. *In re World Trade Ctr. Disaster Site Litig.*, 754

6 See *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 CM PED, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) (finding "Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request" and awarding 30% of net settlement fund); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d at 515 (S.D.N.Y. 2009) (finding "counsel is requesting a high percentage fee, but that fee ($195 million) still represents a negative multiplier to the total adjusted lodestar as calculated by this Court ($202 million)" and awarding 33⅓% of net settlement fund);

F.3d 114, 126 (2d Cir. 2014), *citing Goldberger*, 209 F.3d at 50. As discussed below, Class Counsel's request is also reasonable under the *Goldberger* factors.

a. Time and Labor Expended by Counsel

Evidence of hours worked is the "most useful starting point" in determining reasonable attorneys' fees. *In re World Trade Ctr. Disaster Site Litig.*, 754 F.3d at 127, *quoting Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Here, Plaintiffs' Class Counsel has expended 214,148 hours to date prosecuting this Action. The extent of the work done is described above and is to a large degree known to this Court. By way of example, however, annexed hereto is a list of all the witnesses, experts and third parties deposed in this Action, with the dates and locations of the deposition. The trial transcript of the action runs 7,634 pages. The plethora of issues and the complexity of those issues addressed by the Court and the parties in this litigation are evidenced in the decisions of this Court, including in particular the Court's Memorandum Opinion and Order dated February 22, 2011 (Dkt, 1084) and Order dated July 5, 2012 (Dkt. 1147).The hours and lodestar are, we submit, reasonable and justified in this case.

b. Magnitude and Complexities of the Litigation

"The complexity of the litigation is another factor examined by courts evaluating the reasonableness of attorneys' fees requested by class counsel." *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494, at *16 (S.D.N.Y. May 9, 2014). "Due to its notorious complexity, securities class action litigation is often resolved by settlement, which circumvents the difficulty and uncertainty inherent in long, costly trials." *In re AOL Time Warner, Inc.*, No. 02 CIV. 5575 (SWK), 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006). This was one of the rare securities fraud class actions tried to a verdict. "In addition to the complex issues of fact involved in this case, the legal requirements for recovery under the securities laws

present considerable challenges, particularly with respect to loss causation and the calculation of damages." Id. at *9.

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

The scope and complexity of the facts and legal issues addressed in the Action and fought over a period of fourteen years, are manifest here and justify an award of the fees requested.

c. The Risk of the Litigation

The risks inherent in this Action are obvious and apply to every hour of work expended and which continue to be expended here. None of the time included in Plaintiffs' Counsel $96,349,171 lodestar was without risk. Courts have repeatedly recognized that "the risk of the litigation" is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions. *In re Telik, Inc. Securities Litig.*, 576 F.Supp.2d 570, 592 (S.D.N.Y. 2008). Indeed, the "Second Circuit has identified 'the risk of success as perhaps the foremost factor to be considered in determining [a reasonable award of attorneys' fees.]'" *In re Global Crossing Securities and ERISA Litig.*, 225 F.R.D. 436, 467 (citations omitted). *See also, In re Am. Bank Note Holographies, Inc.*, 127 F.Supp.2d 418, 432-33 (S.D.N.Y. 2001) (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award.") (citation omitted).

The risks in this Action have been painfully real. After a hard won verdict at trial, five months later the victorious Class was decimated by the *Morrison* decision in the U.S. Supreme Court—a decision that arose in a different securities fraud action on appeal of a decision in this district dismissing the Section 10(b) securities fraud class action complaint on behalf of a class of foreign purchasers on the Australian stock exchange. Many decisions in this District have approved attorneys' fees at the same percentage requested by Class Counsel here, in cases settled before trial,which clearly involves less risk than that posed in this Action. See e.g. *Fogarazzo Lehman Bros. Inc.*, No. 03 Civ. 5194(SAS), 2011 WL 671745, at *4(S.D.N.Y. Feb. 23, 2011) (awarding 33.3% of $6.75 million settlement).

Accordingly, the risk of litigation strongly supports Class Counsel's fee request.

d. The Quality of Lead Counsel's Representation of the Class Supports the Requested Fee

The fourth *Goldberger* factor is the "quality of representation" delivered in the litigation. *Goldberger*, 209 F.3d at 50. To evaluate the "quality of representation," courts in the Second Circuit "review the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008).

The quality of the representation is best measured by the results achieved. *Goldberger*, 209 F.3d at 55. Plaintiffs' Class Counsel, well known and experienced counsel, tried this Action to verdict, where the jury found that every challenged disclosure negatively impacted the share price of Vivendi stock, and awarded per share damages. In closing, the trial judge praised counsel for all parties, noting: "I can only say that this is by far the best tried case that I have had in my time on the bench. I don't think either side could have tried the case better than these counsel have. The jury has spoken and that's the end of the trial. It was a pleasure having you in the courtroom." Trial transcript p. 7634, ls 9-14.

The quality of Class Counsel's representation of the Class, then, strongly supports the reasonableness of the fee request.

e. The Requested Fee in Relation to the Result for the Class

The fee requested in this Action is 33 1/3 percent of the net value of the damages and interest ultimately determined to be payable to Class Member claimants when all judgments are final and unappealable., Based on the $51.6 million of damages and interest for those claims currently approved in the Initial Judgment of December 22, 2014 or otherwise approved by the parties, the 33 1/3 percent fee, after payment of the requested litigation expenses, is $11.56 million. This fee represents only 12 percent of Class Counsel's $96.3 million lodestar to date. The combined requested expenses of $21.4 million and a fee of $11.56 million total $32.96 million. This total request at $32.96 million is 63 percent of currently approved damages of $51.6 million. That total charge to the Class's gross damage award is, Class Counsel submit, fully justified and reasonable in the circumstances of this especially hard fought litigation, given the high quality of the efforts of Class Counsel in maintaining these complex class claims through challenging motions to dismiss the pleadings, class certification that included Vivendi security purchasers in three foreign countries, discovery on three continents, success at trial described by the highly respected presiding judge as "by far the best tried case that I have had in my time on the bench", and subsequent arduous defense of Class Member claimants continuing to the present date. This Action is unique among securities fraud cases in the scope and complexity of the issues addressed and the intensity with which they have been fought. The requested fees and expenses merit this Court's approval.[7]

7 In the event that the ultimate judgment for damages should increase upon successful appeal of those claims currently rejected on reliance grounds, the resulting fee and expenses would, of course, decrease as a percentage of the gross damages paid.

f. Public Policy Considerations

Finally, the federal securities laws are remedial in nature, and, to effectuate their purpose of protecting investors, the courts must encourage private lawsuits. See *Basic Inc. v. Levinson*, 485 U.S. 224, 230–31 (1988). Courts in the Second Circuit have held that "public policy concerns favor the award of reasonable attorneys' fees in class action securities litigation." *Flag Telecom*, 2010 WL 4537550, at *29. Specifically, "[i]n order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives." *In re WorldCom, Inc. Sec. Litig.*, 388 F.Supp.2d 319, 359 (S.D.N.Y.2005). The significant expense combined with the high degree of uncertainty of ultimate success means that contingent fees are virtually the only means of recovery in such cases. Indeed, this Court recently noted the importance of private enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis in *Shapiro v. JPMorgan Chase & Co.*, Nos. 11 Civ. 8331 (CM) (MHD), 11 Civ. 7961 (CM), 2014 WL 1224666, at *24 (S.D.N.Y. March 24, 2014):[C]lass actions serve as private enforcement tools when ... regulatory entities fail to adequately protect investors ... plaintiffs' attorneys need to be sufficiently incentivized to commence such actions in order to ensure that defendants who engage in misconduct will suffer serious financial consequences ... awarding counsel a fee that is too low would therefore be detrimental to this system of private enforcement."(citing *In re Initial Pub. Offering Sec. Litig.*, 671 F.Supp.2d at 515–16). Public policy therefore supports awarding Plaintiffs' Class Counsel's reasonable attorneys' fee request.

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

"It is well accepted that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class." Flag Telecom Holdings, 2010 WL 4537550 at *30 (citing Teachers' Ret. Sys.,) No. 01-CV-11814(MP) 2004 WL 1087261 at *6 (S.D.N.Y. May 14, 2004); Am. Bank Note, 127 F.Supp.2d 418, 430 (S.D.N.Y 2001)). '"Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.' "In re EVCI Career Colleges Holding Corp. Securities Litigation, Nos. 05 CIV. 10210(CM), 2007 WL 2230177 *18 (S.D.N.Y. Jul. 27, 2008); (quoting *In re Arakis Energy Corp., Sec. Litig.*, No. 95 CV 3431(ARR), 2001 WL 1590512, at 17 n.12 (E.D.N.Y. Oct. 31, 2001)). Courts have awarded such expenses so long as counsel's documentation of them is "adequate." *In re NASDAQ Market–Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y.1998). *Yang v. Focus Media Holding Ltd.*, No. 11 CIV. 9051 CM GWG, 2014 WL 4401280, at *18 (S.D.N.Y. Sept. 4, 2014).

The Notice provided to affected Class Member claimants by the claims administrator (see Declaration of Stephen J. Cirami submitted herewith) informed those Class Members that Class Counsel would seek reimbursement of no greater than $23.5 million, for their expenses incurred in the prosecution of the Litigation. After careful review, Class Counsel have submitted a request for reimbursement of $21.4 million, well within the amount of expenses of which Class Members were notified. These litigation expenses incurred were well within the norm for a large and complex securities litigation and reflect the costs necessary to research the complex issues presented, to retain experts crucial to Class Counsel's ability to plead and prove the claims asserted, and to prosecute a 4 month trial. Indeed, there is no norm for complex class actions tried to a verdict that is then subject to substantial additional proceedings and appeals arising

from the action itself and from external judgments by the U.S Supreme Court. Class Counsel have carefully reviewed these expenses and determined that the requested expenses were necessary litigation expenses, reasonably incurred, reasonably related to the interests of the members of the Class, and adequately documented. A summary of these expenses is included as an exhibit to the affidavit of Arthur N. Abbey submitted herewith. Class Counsel will also continue to incur expenses in connection with the appeals in this action and ongoing proceedings on claims. Class Counsel's application for reimbursement of expenses of $21,456,585.20 should be granted.

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

Finally, Plaintiffs will also move for an award to the five current and former lead plaintiffs and class representatives in this action, in recognition of and as reasonable compensation for their time and devoted efforts in pursuing these difficult, novel and complex securities law claims in the face of intense opposition from the defendants. Plaintiffs proposed five representative plaintiffs receive an award of $35,000. The five representative plaintiffs are: Retirement System for General Employees of the City of Miami Beach; Bruce Doniger; William Cavanagh; Gerard Morel and Olivier Gerard.

Pursuant to the PSLRA, the Court has discretion to award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). Not only are such awards appropriate under the PSLRA, "[c]ase law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150-151 (S.D.N.Y. 2010); *see, also, Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124–25 (S.D.N.Y.2001). "Such awards are

compensatory in nature, reimbursing class representatives who 'take on a variety of risks and tasks when they commence representative actions, such as complying with discovery requests and often must appear as witnesses in the action.'" *In re Marsh ERISA Litig.*, 265 F.R.D. at 150-51. (citing *Stooge v. Bassini,* 258 F.Supp.2d 254, 264 (S.D.N.Y.2003) (granting award of $15,000 to class representative); *see also*, *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.,* No. 08 CIV. 7670 (BSJ)(JCF) 2010 WL 532960, at * 2 (S.D.N.Y. Feb. 9, 2010) ("Enhancement awards for class representatives serve the dual functions of recognizing the risks incurred by named plaintiff and compensating them for their additional efforts.")

Each of these class representatives played significant roles in assisting Plaintiffs' Counsel to achieve the exceptional jury verdict reached in this case. Throughout this litigation, these class representatives devoted significant time and effort to the issues in the case including, in the cases of former lead plaintiffs Gerard Morel and Olivier Gerard, becoming the targets of a lawsuit filed against them in France by defendant Vivendi. The class representatives should be compensated for their diligent efforts and active participation in this action for the benefit of all Class members.

IV. CONCLUSION

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

Dated: April 15, 2016
New York, New York

Respectfully submitted,

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