UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CHICAGO BRIDGE & IRON COMPANY N.V. SECURITIES LITIGATION	)	**CASE NO. 1:17-CV-1580**
	)	Hon. Lorna Schofield

DECLARATION OF KIM E. MILLER IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION OF SETTLEMENT FUNDS, AND APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND AWARDS TO CLASS REPRESENTATIVES

INDEX OF EXHIBITS

I, KIM E. MILLER, hereby declare as follows:

1. I am a partner at Kahn Swick & Foti, LLC ("KSF"), Lead Counsel for Lead Plaintiff ALSAR Ltd. Partnership ("ALSAR") and Class Counsel.[1] I am an attorney admitted to practice in this Court.

2. I have been actively involved in the prosecution of this Action against defendants Chicago Bridge & Iron Company N.V. ("CB&I" or the "Company"), its former Chief Executive Officer Philip Asherman, its former Chief Financial Officer Ronald Ballschmiede, and its former Chief Accounting Officer Westley Stockton (collectively, "Defendants") since ALSAR moved for appointment as Lead Plaintiff in May 2017. I also participated in the negotiations that resulted in the Settlement discussed herein. Throughout the litigation, my firm and I have worked diligently and efficiently with Pomerantz LLP ("Pomerantz"), which has served as Additional Counsel for Additional Plaintiffs and Class Representatives Iron Workers Local 40, 361, & 417 Union Security Funds ("IW 40, 362, & 427") and Iron Workers Local 580 Joint Funds ("IW 580") ("Iron Workers" and collectively, with ALSAR, "Plaintiffs"). All Plaintiffs are also Class Representatives. KSF and Pomerantz are referred to collectively as "Plaintiffs' Counsel"). Unless otherwise indicated, the statements in this Declaration are made based upon my personal knowledge.

3. I respectfully submit this Declaration in support of Plaintiffs' concurrently filed motions for approval of: (1) the $44,000,000 all-cash Settlement; (2) the proposed plan for allocating the Settlement proceeds to eligible members of the class (the "Plan of Allocation"); (3) Counsel's application for an award of attorneys' fees of one-third (33 $^{1/3}$%) of the Settlement Fund and reimbursement of reasonable litigation expenses of $3,462,683.78; and (4) compensatory awards of $60,000 to ALSAR, $25,000 to IW 40, 361 & 417, and $20,000 to IW 580, pursuant to

[1] All capitalized terms not defined herein have the meanings ascribed to them in the Stipulation of Settlement (the "Stipulation") (ECF No. 423).

15 U.S.C. § 78u-4(a)(4).

4. The purpose of this Declaration is to set forth the nature of the investigation, litigation, and negotiations that led to the Settlement, demonstrating why the Settlement is fair, reasonable, and adequate and should be approved by this Court, as well as why Class Counsel's fee request, expense request, and request for service awards for Plaintiffs are reasonable and should be approved by the Court.

I. PRELIMINARY STATEMENT

5. The $44,000,000 all-cash Settlement, achieved just weeks before trial was scheduled to begin, represents an excellent result for the Class, especially in light of CB&I's bankruptcy and dwindling insurance funds. The Settlement resolves all claims asserted in the Amended Class Action Complaint for Violations of Federal Securities Laws (ECF No. 84) (the "Amended Complaint") against all Defendants. *See* ECF No. 423 at ¶ 1.41. The Settlement provides a considerable benefit to the Class by conferring a substantial, certain, and immediate recovery while avoiding the significant risks and expense of continued litigation, including the risk that the Class could recover nothing or less than the Settlement Amount at trial, or that post-trial proceedings, including appeals and coverage litigation, could delay any recovery for years, further depleting Defendants' limited resources.

6. The Court preliminarily approved the Settlement in its Order Preliminarily Approving Settlement and Providing for Notice of Settlement, dated March 30, 2022 ("Preliminary Approval Order"). *See* ECF No. 428. Following this preliminary approval, the Settlement Amount was deposited into an Escrow Account maintained by the Escrow Agent, KSF, and has since been earning interest for the benefit of the Class.

7. Plaintiffs, through their Counsel, vigorously litigated this action for over five years before the Parties reached an agreement in principle to settle in February 2022. Lead Counsel and

Class Counsel KSF has been involved in this Action since ALSAR moved for appointment as Lead Plaintiff in May 2017, and KSF and Additional Counsel Pomerantz entered into a joint prosecution agreement approximately one month later in June 2017.

8. On behalf of Plaintiffs, Plaintiffs' Counsel conducted an initial investigation and filed the Amended Complaint, which alleged violations of Sections 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder. Plaintiffs alleged that, between October 30, 2013 and June 23, 2015 (the "Class Period"), Defendants made a series of misstatements and omissions to investors regarding the Company's two largest projects, the construction of nuclear power plants in Georgia and South Carolina (the "Nuclear Projects"). The Amended Complaint alleges that Defendants made misleading statements about the progress of the Nuclear Projects without disclosing the projects were plagued with serious design and construction problems, leading to major delays, cost overruns, and disputes about changes orders with CB&I's partner and the owners of the projects. ¶¶ 99-175.[2] Defendants improperly booked revenue for these change orders, even though collection was improbable or unlikely to occur for years in the future. *Id.* Despite numerous indicators of impairment, Defendants also maintained over $3 billion in goodwill related to these projects, masking crippling deterioration in the Nuclear Projects and misleading investors as to the true financial condition of those projects and the Company as a whole. *Id.*

9. The Settlement was achieved only after Plaintiffs' Counsel defeated Defendants' motion to transfer the Action and motion to dismiss the Amended Complaint; completed large-scale discovery; obtained class certification after an 11-hour hearing before Special Master, the

[2] Unless otherwise noted, all "¶ __" references are to the Amended Complaint filed on August 14, 2017. *See* ECF No. 84.

Hon. Shira Scheindlin (Ret.), resulting in a 107-page Report & Recommendation followed by a 24-page order certifying the Class by the Court; defeated a Rule 23(f) petition; survived Defendants' motion for summary judgment; briefed 2 *Daubert* motions and 23 motions *in limine*; substantially prepared for trial; and engaged in multiple mediation sessions with a highly regarded mediator, the Hon. Layn R. Phillips (Ret.). To date, Plaintiffs' Counsel have litigated this action on a wholly contingent basis and have advanced substantial litigation expenses in connection with their efforts.

10. The Court-approved plan of notice fully disclosed to potential Class Members that Plaintiffs' Counsel would seek attorneys' fees of up to 33 $^{1/3}$% and reimbursement of up to $3,500,000 in litigation expenses. To date, no Class Member has objected to either proposed request. *See infra* at ¶ 55. Plaintiffs' Counsel's request for attorneys' fees in the amount of 33 $^{1/3}$% of the Settlement Fund is well justified given the facts of this case, the benefits conferred on the Class, the risks undertaken, the quality of representation, and the nature and extent of legal services performed. Plaintiffs' Counsel also requests reimbursement of the reasonable expenses incurred in connection with its prosecution and resolution of the Action in the amount of $3,462,683.78, which is well within the noticed expense cap. The complicated nature of the claims required hiring multiple world-class experts, whose fees comprise the majority of the requested expenses. Without this expert testimony, it is unlikely the Action would have survived the class certification and summary judgment stages of the litigation.

11. The reasonableness of the requested fee is further supported by the fact that the fee equates to a negative multiplier of ***0.55*** on Plaintiffs' Counsel's lodestar, as explained *infra* at ¶ 74. "In complex litigation, lodestar multipliers between 2 and 5 are commonly awarded, and fee awards resulting in multipliers as high as 6 have also been approved." *In re Signet Jewelers Ltd.*

Sec. Litig., Civil Action No. 16-cv-06728, 2020 U.S. Dist. LEXIS 128998, at *48-49 (S.D.N.Y. July 21, 2020) (collecting cases) (approving a lodestar multiplier of 1.8). The negative multiplier, moreover, "affords additional evidence that the requests fee is reasonable." *City of Providence v. Aéropostale, Inc.*, No. 11-cv-7132, 2014 WL 1883494, at *13 (S.D.N.Y. May 9, 2014). Thus, Plaintiffs' Counsel's request for attorneys' fees is eminently reasonable in light of the risk of non-payment undertaken by Plaintiffs' Counsel and this Court's approval of significantly higher lodestar multipliers in the past. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (Schofield, J.) (approving a lodestar multiplier of 5 but noting that "the median multiplier is around two"). Moreover, Plaintiffs' Counsel's fee request is fully supported by each of the Class Representatives.

12. I respectfully submit that the Settlement, for the reasons discussed herein and in the accompanying memorandum, is fair, reasonable, and adequate in all respects, and that the Plan of Allocation is fair, reasonable, and has a rational basis. Likewise, I respectfully submit that Plaintiffs' Counsel's request for attorneys' fees and reimbursement of litigation expenses, including Plaintiffs' request for costs and expenses incurred in connection with their representation of the Class (collectively, the "Fee and Expense Application"), is fair and reasonable and should be approved.

II. FACTUAL SUMMARY OF PLAINTIFFS' ALLEGATIONS

13. Headquartered in The Hague, Netherlands, CB&I was a global engineering, procurement, and construction company focused on the energy sector. ¶ 34. In July 2012, CB&I agreed to purchase The Shaw Group ("Shaw") for over $3 billion. ¶ 35. Shaw's subsidiary, Stone & Webster, had contracts to build the first new nuclear power plants in the United States since Three Mile Island. *Id.* The Nuclear Projects were to be constructed in a partnership or consortium with Westinghouse Electric Corporation ("WEC"), the company that designed the reactors. *Id.*

Prior to the Shaw acquisition, Defendants assured investors that CB&I had conducted extensive due diligence on Shaw and the Nuclear Projects; however, they omitted that this due diligence had revealed that the Nuclear Projects were already behind schedule and over budget. ¶¶ 36-37, 40-41.

14. Following the Shaw acquisition, Defendants concealed the fact that the Nuclear Projects were unsuccessful and unprofitable through the use of complicated accounting schemes: (1) by creating a "cookie jar reserve" exceeding a billion dollars, they were able to manufacture revenue and earnings, as the reserves wound down, from what otherwise would have been booked as expenses decreasing earnings; (2) by organizing CB&I's financial reporting units in a way that evaded reporting known deterioration in the Nuclear Projects, they avoided reporting goodwill impairments during the Class Period; and (3) by booking revenues for unapproved change orders, which internal documents showed were highly disputed and unlikely to be resolved for years, if ever, CB&I transformed massive cost overruns and were able to hide expenses in the balance sheet. *See* Pls. Br. Opp. Defs.' Mot. Summary Judgment (ECF No. 267) at 1-2.

15. Meanwhile, Defendants represented to investors that the Nuclear Projects were "progressing well," and that "[i]n virtually every case, CB&I has contractual entitlement" for any cost overruns. ¶¶ 17, 19, 109. Internal documents painted a very different picture, however, acknowledging that recovery on change orders was "a VERY high hurdle," that "dysfunctional leadership" on the Nuclear Projects led to "constant failure, schedule delay, cost overrun and frustration," that CB&I's fabrication and safety issues were reminiscent of "those identified in the review of the Challenger and Columbia Shuttle Accidents," that auditors identified "fraud risk[s]" related to both "revenue recognition" and "goodwill impairment," and that CB&I's accounting was so confusing that the Chief Accounting Officer could only figure out parts of it after having a "margarita vision." ECF No. 267 at 2-3.

16. Investors became aware of the true state of the Nuclear Projects via reports from two independent analysts, Vertical Research and Prescience Point, and from disclosures of CB&I's actual poor performance by the utility companies that owned the Nuclear Projects. ¶¶ 126-35, 141-43, 153-56. These disclosures caused CB&I's stock to decline significantly. *Id.* Ultimately, understanding that the nuclear business was a liability and not an asset, CB&I agreed to hand it over to Westinghouse for a "quitclaim" – essentially walking away from the business it had previously portrayed as a crown jewel. ¶¶ 176-82.

III. PROCEDURAL HISTORY

A. The Filing of the Initial Action, Appointment of Lead Plaintiff, Defendants' Motion to Transfer, and Plaintiffs' Filing of the Operative Complaint

17. The first complaint in this Action was filed on March 2, 2017 by City of Dearborn Heights Act 345 Police & Fire Retirement System, alleging violations of §§ 10(b) and 20(a) of Exchange Act and Rule 10b-5 promulgated thereunder. *See* ECF No. 1. An additional complaint, alleging substantially similar claims, was filed on April 4, 2017. *See Hubbel v. Chicago Bridge & Iron et al.*, Case No. 17-cv-02414, ECF No. 1. Thereafter, six applicants moved for consolidation of these cases and for appointment as lead plaintiff, including ALSAR, represented by KSF, and the Iron Workers, represented by Pomerantz. *See* ECF Nos. 31, 35. On May 8, 2017, three of the original six movants withdrew their motions for appointment as Lead Plaintiff. *See* ECF Nos. 44, 45, 46. On June 14, 2017, the Court entered an order consolidating the two cases and appointing ALSAR as Lead Plaintiff and KSF as Lead Counsel. *See* ECF No. 68. Around this time, believing it to be in the best interests of the Class, KSF and Pomerantz, on behalf of their respective clients, entered into a joint prosecution and fee-sharing agreement. *See* ECF No. 192-3.

18. On June 16, 2017, Defendants moved to transfer the case from the Southern District of New York to the Southern District of Texas. *See* ECF No. 70. Lead Plaintiff filed a

memorandum in opposition to this motion on June 30, 2017. *See* ECF No. 72. On July 27, 2017, a conference was held on the matter of whether transfer was warranted, after which the Court entered an order denying Defendants' motion. *See* ECF Nos. 83, 85.

19. While the motion to transfer was pending, Plaintiffs began investigating the claims alleged in the initial complaint, including by conducting a thorough review of CB&I's annual and quarterly reports, press releases, and financial statements; by obtaining and reviewing myriad news articles and analysis reports; and by hiring a private investigator to locate and interview confidential witnesses. Plaintiffs' Counsel then filed the detailed Amended Complaint on August 14, 2017. *See* ECF No. 84.

B. The Court Denies Defendants' Motion to Dismiss the Amended Complaint

20. Defendants moved to dismiss the Amended Complaint on October 5, 2017, arguing that Plaintiffs did not adequately plead a false or misleading statement or facts giving rise to a strong inference of scienter, and that Plaintiffs' claims were time barred. *See* ECF Nos. 91, 92, 93. Defendants then filed an amended motion to dismiss on October 9, 2017 in response to the Courts' denial of their motion to file additional exhibits. *See* ECF Nos. 97, 98, 99, 100.

21. Plaintiffs filed an opposition to Defendants' motion to dismiss on November 20, 2017. *See* ECF No. 104. On December 11, 2017, Defendants filed reply in further support of their motion to dismiss. *See* ECF No. 106.

22. In an Opinion and Order dated May 24, 2018, the Court denied Defendants' motion to dismiss in full, finding that the Amended Complaint adequately alleged that: (1) Defendants made material misstatements and omissions during the Class Period about the state of the Nuclear Projects; (2) Defendants acted with scienter; and (3) Defendants did not meet their burden of showing that Plaintiffs' claims were untimely. *See* ECF No. 108.

C. Fact and Expert Discovery

23. Following the Court's denial of Defendants' motion to dismiss, the Parties commenced fact discovery. On June 21, 2018, the Court entered a scheduling order requiring fact discovery to be completed six months later. *See* ECF No. 115. Plaintiffs served their First Set of Requests for Production of Documents (First RFPs) to Defendants on June 22, 2018. Plaintiffs also served nine document subpoenas to non-parties. Defendants served their Objections and Responses to the First RFPs on July 23, 2018.

24. As part of the initial production, Defendants produced over 1 million documents (nearly 2 terabytes of data) that were previously produced by them in a different lawsuit involving some of the same issues as the matter at hand. When Defendants produced these documents, they retained the same privilege redactions as when the documents were previously produced, many of which were not applicable to the present case. The initial production included very few responsive documents specifically tailored to the case at hand, and large categories of crucial documents appeared to be missing. Plaintiffs raised these issues and others to Defendants in a series of meet-and-confers, but the Parties were unable to resolve the disputes, so Plaintiffs brought the issues to the Court. *See* ECF Nos. 125, 127.

25. On September 21, 2018, the Action was referred to Magistrate Judge Wang for pre-trial proceedings. On October 12, 2018, Plaintiffs filed a letter motion to Magistrate Judge Wang seeking an extension of the fact discovery cutoff so that the unproduced discovery could be obtained prior to remaining depositions. *See* ECF Nos. 135, 137. On October 31, 2018, this Court withdrew the referral to Magistrate Judge Wang before her ruling on the letter motions, after which time Plaintiffs renewed those pending letter motions to the Court. *See* ECF No. 139. On November 15, 2018, the Court held a telephonic hearing regarding the open discovery disputes. *See* ECF No. 156. The Court concluded that the issues could not be resolved at the conference and ordered the

Parties to consider candidates for appointment of a special master to oversee discovery. *See* ECF No. 151. After the Parties failed to agree on a candidate, the Court proposed, and the Parties consented, to the appointment of the Hon. Shira Scheindlin (Ret.) to serve as Special Master. *See* ECF Nos. 165, 169.[3] On January 23, 2019, Judge Scheindlin entered an order extending discovery from the initial 6-month deadline until August 30, 2019. *See* ECF No. 171.

26. The Parties briefed a number of discovery production and privilege disputes and regularly appeared before Judge Scheindlin to argue these issues (*see, e.g.*, ECF Nos. 186, 189), which resulted in the Special Master issuing 7 discovery orders. In total, the Special Master and her staff expended approximately 179.8 hours resolving the various discovery, production, and privilege disputes advanced by the Parties, for which Plaintiffs were billed $201,146.53. Eventually, the number of documents produced by Defendants grew to approximately 1.9 million, constituting approximately 9 million pages. Due to the enormous number of documents to be reviewed in six months and the large number of potential deponents, Plaintiffs immediately built document review teams, and, after soliciting competitive bids, retained an e-Discovery vendor to provide an advanced AI discovery platform with predictive technology that would allow reviewers to better sift through large quantities of information in the short period of time initially allotted.

[3] Early in the Action, three related cases were brought by plaintiffs who "opted out" of the Class Action: *Gotham Diversified Neutral Master Fund, LP et al v. Chicago Bridge & Iron Company N.V. et al.*, Case No. 1:18-cv-09927, *Appaloosa Investment L.P.I., et al. v. Chicago Bridge & Iron Company N.V., et al.*, Case No. 1:18-CV-9928, and *CB Litigation Recovery I, LLC v. Chicago Bridge & Iron Company N.V., et al.*, Case No. 1:19-CV-01750 (collectively, the "Direct Action Cases"). After appointing the Special Master in the Class Action, the Court issued an order requiring the opt out plaintiffs to state their opinion on: (1) consolidation or coordination of the actions with each other and/or the Class Action; and (2) referral of any or all of the actions to Special Master Scheindlin. *See* ECF No. 158. The plaintiffs in these cases requested instead that the Direct Action Cases be stayed until 30 days after entry of an order on any motions for summary judgment filed by Defendants in the Class Action, or an order resolving the Class Action, whichever occurs sooner. *Id.* As such, fact discovery in the Direct Action Cases commenced in April 2022. *See* Case No. 18-cv-09927 (consolidated), ECF No. 101.

Plaintiffs then began to schedule and take depositions. In total, the Parties took 32 depositions.

27. Dr. Robert Fishel, M.D., Chief Investment Officer of ALSAR; Brian Sabbagh, Fund Administrator for IW 40, 361 & 417; and Patrick Doherty, then Fund Administrator for IW 580, each testified in day-long depositions. Counsel defended these depositions and assisted Dr. Fishel, Mr. Sabbagh, and Mr. Doherty in preparing for them.

28. On January 31, 2020, Plaintiffs served reports from their three experts: economist John Finnerty, Ph.D., opining on loss causation and damages (as well as market efficiency); investment banker William Purcell, opining on the importance to investors of the concealed information from an investment banking perspective; and accountant Harris Devor, opining on accounting-related matters. Defendants served three rebuttal reports from their own experts on April 20, 2020, and Plaintiffs served reply reports by Dr. Finnerty and Mr. Devor on June 15, 2020. Defendants deposed all three of Plaintiffs' experts in February 2020, after service of their initial reports, and then deposed Dr. Finnerty and Mr. Devor again in July 2020 after service of their reply reports.

29. With the benefit of this extensive investigation and discovery, Plaintiffs and Plaintiffs' Counsel have sufficient knowledge of the strengths and weaknesses of the claims asserted in this Action, having identified specific documents that corroborate those claims. This has permitted them to fully consider and evaluate the fairness of the Settlement to the Class.

D. Class Certification

30. On February 4, 2019, Plaintiffs moved to certify the Class. *See* ECF No. 179. Accompanying this motion for class certification was a detailed expert report by Dr. Finnerty, opining on marketing efficiency and damages. *See* ECF No. 184-15. Defendants responded on April 9, 2019, including a report by their own expert witness, Lucy Allen. *See* ECF Nos. 191, 192-1. Plaintiffs filed a reply on June 4, 2019, including a reply report by Dr. Finnerty, and Defendants

filed a sur-reply on July 2, 2019. *See* ECF Nos. 193, 194-10, 204.

31. Defendants moved to refer class certification to Judge Scheindlin for a Report & Recommendation. *See* ECF No. 195. Plaintiffs initially objected to this motion, believing referral to the Special Master could cause unnecessary delay, but later agreed after discussing ways to streamline the process with the Court. *See* ECF Nos. 196, 202. After fully briefing class certification, the Parties prepared for and participated in a 11-hour evidentiary hearing, including testimony by each side's expert economist, before Judge Scheindlin on September 5, 2019. The Parties also submitted post-hearing letters to address questions raised by Judge Scheindlin during and after the hearing. *See* ECF Nos. 219, 222.

32. On October 18, 2019, Judge Scheindlin issued a 107-page Report & Recommendation (the "R&R") finding that the Class should be certified, that Plaintiffs should be appointed Class Representatives, and that Lead Counsel should be appointed Class Counsel, but finding that price impact was not shown for any date after January 29, 2015. *See* ECF No. 217. Defendants objected to the R&R. Plaintiffs opposed. *See* ECF Nos. 218, 221.

33. On March 23, 2020, the Court entered an Order largely adopting Judge Scheindlin's R&R and granting class certification. *See* ECF No. 237. Defendants then petitioned the United States Court of Appeals for the Second Circuit to hear an interlocutory appeal of this Court's Order pursuant to Fed. R. Civ. P. 23(f), which Plaintiffs opposed. Consistent with Fed. R. Civ. P. 23, Plaintiffs moved the Court to disseminate class notice and to approve the proposed notice administrator. *See* ECF No. 239. On April 20, 2020, the Court approved the form and plan of notice proposed by Plaintiffs and the proposed notice administrator. *See* ECF No. 240. On August 11, 2020, the Second Circuit denied Defendants' Rule 23(f) petition for interlocutory

appeal. *See* ECF No. 251.

34. Following the Court's order granting class certification, and consistent with Fed. R. Civ. P. 23, Plaintiffs moved the Court to disseminate class notice. *See* ECF No. 239. On April 20, 2020, the Court approved the form and plan of notice proposed by Plaintiffs and the proposed notice administrator; however, on May 7, 2020, the Court ordered that the notice administrator refrain from disseminating the notice until after the conclusion of a mediation the Parties had scheduled in July of 2020. *See* ECF Nos. 240, 246. After that mediation turned out to be unsuccessful, the Court ordered the notice administrator to proceed with dissemination of the proposed form and manner of notice previously approved by the Court. *See* ECF No. 248. The notice administrator sent out approximately 210,000 copies of the postcard notice starting on July 23, 2020; set up www.chicagobridgeironsecuritieslitigation.com (the "Class Website") and a toll-free telephone number, 1-855-958-3609; and published a copy of the Notice over both *PR Newswire* and *Business Wire* on August 6, 2020.

35. In response to the Class Notice, Plaintiffs received nine requests for exclusion from the Class. Three of these requests were submitted by Counsel for the Direct Action Plaintiffs. None of the other six requests for exclusion included requisite transactional details required to confirm membership in the Class.

E. The McDermott Bankruptcy

36. On January 21, 2020, McDermott International, Inc. ("McDermott"), which acquired the assets of CB&I in May 2018, filed for bankruptcy protection. As part of McDermott's bankruptcy, several dozen McDermott subsidiaries including the entity into which CB&I had been merged also sought bankruptcy protection. That same day, Plaintiffs provided notice of the bankruptcy to the Court, indicating that, consistent with prevailing law, Plaintiffs would continue without delay discovery and prosecution of claims against the other non-bankrupt Defendants. *See*

ECF No. 230. Plaintiffs resisted efforts by Defendants to halt ongoing prosecution and discovery in light of McDermott's bankruptcy. *See* ECF No. 233. Ultimately, Defendants withdrew their efforts and agreed to proceed in this Court with respect to all Parties, including CB&I. *See* ECF No. 234.

37. On February 22, 2021 Defendants sought, and on February 25, 2021 were granted, leave to add bankruptcy-related defenses to their Answers. *See* ECF Nos. 301, 302. Among other things, these defenses asserted that Plaintiffs were enjoined under the bankruptcy plan from recovery against CB&I and were enjoined under a third-party release entered by the bankruptcy court from recovery against the Individual Defendants without a showing that the claims sounded in "actual fraud." ECF No. 303. To protect the Class's interests in McDermott's bankruptcy, Plaintiffs' Counsel retained bankruptcy counsel at Hunton Andrews Kurth LLP.

F. Summary Judgment

38. On September 4, 2020, Defendants moved for summary judgment, arguing lack of evidence of falsity or scienter. *See* ECF No. 252. Defendants also argued that, under the terms of McDermott's bankruptcy plan, only claims involving "actual fraud" could proceed. *Id.* Plaintiffs opposed this motion, arguing that there was compelling record evidence supporting Plaintiffs' claims and that materiality and scienter were quintessential jury questions not properly decided at summary judgment. *See* ECF No. 264. Defendants accompanied their summary judgment motion with a 140-paragraph-long statement of "undisputed facts" pursuant to Local Rule 56.1. ECF No. 259. Plaintiffs responded to each paragraph, demonstrating that every probative statement was, in fact, disputed, and that summary judgment was inappropriate. *See* ECF No. 269.

39. On August 23, 2021, the Court entered an Order denying Defendants' motion for summary judgment, except as to one statement. *See* ECF No. 306. Among other things, the summary judgment order found that the claims sounded in "actual fraud," paving the way for

claims against Individual Defendants to proceed despite the bankruptcy. *Id.*

G. The *Cohen* Trial

40. In January 2021, while Defendants' summary judgment motion was still pending, *Cohen et al. v. Chicago Bridge & Iron et al.*, Cause No. 17-10-12820, a case involving a plaintiff who opted-out of this Class Action and brought similar claims against the same Defendants, went to trial in the 457th District Court of Montgomery County, Texas. The trial lasted two weeks and numerous excerpts of video deposition testimony taken in this case by Plaintiffs' Counsel were presented to the Texas jury. The relevant period in *Cohen* was significantly longer than the Class Period in this case; however, the evidence included inflammatory emails between plaintiff, Mr. Cohen, and Defendants. Reliance was also an issue, as Defendants introduced "troves of emails" between Mr. Cohen and his religious advisor that, according to Defendants, showed that Mr. Cohen was relying on the advisor's advice rather than Defendants' statements when he acquired CB&I stock. *See* ECF No. 301. The jury returned a verdict in favor of Defendants. *See* ECF No. 300.

41. Shortly after the conclusion of the *Cohen* trial, Defendants wrote a letter to the Court informing it of the outcome. *See* ECF No. 300. Plaintiffs responded to this letter, noting that the verdict in the *Cohen* trial demonstrated why the Court should promptly deny Defendants' pending motion for summary judgment and require the Parties to ready this Action for a trial of its own. *See* ECF No. 301.

H. Pre-trial Preparations

42. After the Court denied Defendants' motion for summary judgment in substantial part (ECF No. 306), the Court entered a scheduling order on September 22, 2021, setting deadlines, *inter alia*, for motions *in limine* and the pre-trial order, and set this case on the ready-for-trial docket beginning February 7, 2022. Pursuant to that schedule, on December 13, 2021, Plaintiffs

filed 7 motions *in limine* and Defendants filed 16 motions *in limine*. *See* ECF Nos. 316-368. Defendants also filed two motions to exclude the expert testimony of Plaintiffs' experts, William Purcell and Harris Devor. *See* ECF Nos. 370, 374. On December 20, 2021, the Parties each filed responses to the other party's motions. *See* ECF Nos. 379-411.

43. Plaintiffs also began preparing in earnest for trial by drafting a proposed pre-trial order, proposed jury instructions, and *voir dire* questions; working on witness and exhibit lists; preparing video deposition excerpts for use at trial; drafting an opening statement; drafting direct and cross examination outlines; and beginning to prepare Plaintiffs' expert witnesses and Class Representatives to testify live at trial. Plaintiffs' Counsel also retained trial and jury consultants to assist with creating demonstratives and assessing the jury pool.

44. While the motions *in limine* were pending, Plaintiffs informed the Court on January 6, 2022, that a proposed settlement had been reached. *See* ECF No. 419; *infra* at § V.A.

IV. THE STRENGTHS AND WEAKNESSES OF THE CASE

45. Based on their experience and knowledge of the facts and applicable law, Lead Counsel and Additional Counsel – two law firms specializing in the prosecution of complex securities litigation – believe that the Settlement is in the best interest of the Class. The Class Representatives have also approved the Settlement.

46. Plaintiffs are aware that they were likely to face strong challenges if the case were to proceed to trial. This is an exceptionally complicated case involving nuanced accounting rules, which, even with the assistance of Plaintiffs' experienced expert witnesses, would be difficult for the average juror to understand. And, especially considering Defendants' victory at trial in the *Cohen* case, there can be no assurance that the jury would find that Defendants made misrepresentations and acted with scienter, or that those misrepresentations were the cause of investor losses. Moreover, prevailing at trial would not necessarily result in a larger recovery. The

jury could award a smaller per share amount of damages, overall damages could be reduced during the post-verdict claims process, and the verdict could be appealed.

47. Additionally, the trial, including the post-verdict claims process and any appeals, would likely consume a large portion of Defendants' remaining insurance funds. Because of the bankruptcy of CB&I's successor company, these funds are the only significant source of recovery left to the Class. In fact, with the proceeding of the Direct Action Cases, there is a distinct possibility that the insurance funds would be substantially depleted before completion of the appeals process, likely leaving the Class with an extremely limited recovery. Thus, even if Plaintiffs were to prevail at trial and on appeal, the amount actually available for collection would likely be far smaller than the amount awarded. Given these significant risks, the $44,000,000 Settlement is an excellent result for the Class.

V. SETTLEMENT NEGOTIATIONS AND TERMS OF THE SETTLEMENT

A. The Parties' Settlement Negotiations and Resulting Settlement

48. On December 15, 2021, with discovery complete, Plaintiffs' claims having survived summary judgment, and trial set to begin in approximately six weeks, the Parties engaged in a full-day in-person mediation before the Hon. Layn Phillips (Ret.), a highly experienced mediator whom the parties had previously retained for an unsuccessful early mediation attempt in July 2020. While the Parties did not reach a resolution at the December 15 mediation, Judge Phillips continued to engage with the parties and ultimately issued a mediator's proposal that called for the settlement of all claims and a full release in exchange for a cash payment of $44,000,000. The Parties accepted this mediator's proposal on December 31, 2021.

49. On February 4, 2022, Plaintiffs moved for preliminary approval of the settlement, arguing that the Settlement represents an outstanding recovery for the Class that is supported by each of the factors set forth in Federal Rule of Civil Procedure 23(e) and *Detroit v. Grinnell Corp.*,

495 F.2d 448 (2d Cir. 1974). *See* ECF Nos. 421, 422. On March 30, 2022, the Court granted Plaintiffs' motion and preliminarily approved the settlement and plan of allocation. *See* ECF No. 428.

B. Notice to the Class Meets the Requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure

50. Pursuant to its Preliminary Approval Order, the Court set: (i) June 27, 2022 as the deadline to file papers in support of the Final Settlement, the Plan of Allocation, and the application by Counsel for attorneys' fees or reimbursement of expenses (collectively, the "Applications"); (ii) July 1, 2022 as the deadline for Class Members to submit requests to be excluded from the Class or file any objections to the Settlement or any of the Applications; (iii) July 18, 2022 as the deadline to reply to responses to any opposition to the Applications; and (iv) a Final Approval Hearing to be held telephonically on July 25, 2022 at 4:30 pm. *See* ECF No. 428 at ¶ 23.

51. In accordance with the Preliminary Approval Order, Counsel instructed A.B. Data, Ltd. ("A.B."), the Court-appointed Claims Administrator for the Settlement, to: (1) email and mail copies of the Court-approved Postcard Notice ("Postcard Notice") by first-class mail, postage prepaid, to potential members of the Class and nominees; and (2) publish the Summary Notice in accordance with the Preliminary Approval Order (*i.e.*, in *Business Wire* and *PR Newswire*). The Postcard Notice contains, among other things, a description of the Settlement and information regarding the lawsuit and the right of Class Members to: (a) participate in the Settlement; (b) object to any aspect of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application; or (c) exclude themselves from the Class. The Postcard Notice also directs recipients to the Class Website for more complete details regarding the proposed Settlement.

52. As set forth in the Declaration of Eric Nordskog of A.B. regarding mailing of the notice of pendency and proposed settlement of class action and proof of claim (filed with the Court

on May 2, 2022), in accordance with the Preliminary Approval Order, A.B. initially disseminated over 50,000 copies of the Postcard Notice to brokers and shareholders of record who would be potential members of the Class and nominees. *See* Initial Nordskog Decl. (ECF No. 432) at ¶ 6. In accordance with the Preliminary Approval Order, on April 20, 2022, A.B. caused the Summary Notice to be published in *Business Wire* and *PR Newswire*. *Id.* at ¶ 10.

53. Plaintiffs' Counsel also caused A.B. to update the previously established Class website, www.chicagobridgeironsecuritieslitigation.com, with information concerning the Settlement and access to downloadable copies of the Claim Form, Notices, Stipulation, Preliminary Approval Order, and other key filings in this Action. As discussed with the Court at preliminary approval, the website also allows for Class Members to complete claims electronically. Additionally, A.B. took over maintenance of the previously established toll-free telephone number, 1-855-958-3609, to respond to inquiries from Class members regarding the Settlement.

54. During the process of providing Notice to Class Members, A.B. received requests from brokers and nominees to either: (1) send the Notice to the broker or nominee for distribution to their customers with relevant holdings, or (2) send the Notice directly to their customers with relevant holdings. To date, through direct mailings and mailings to brokers and nominees, A.B. has mailed nearly 250,000 claim forms to Class Members and received approximately 8,500 submitted claims forms. *See* Supplemental Declaration of Eric Nordskog ("Suppl. Nordskog Decl."), attached as Exhibit A, at ¶¶ 4, 9.

55. As set forth above, the deadline for members of the Class to request exclusion from the Class or to file an opposition to the Settlement, Plan of Allocation, and/or Fee and Expense Application is July 1, 2022. Thus, while the deadline for submitting requests to be excluded from

the Class has not yet passed, as of the date of this filing, A.B. has received just two exclusion requests. *Id.* at ¶ 7. Neither request included the requisite transactional details required to confirm membership in the Class, but one specified that it only applied to 6 shares. No objections have been filed. *Id.* at ¶ 8.

C. Participation in the Settlement and Submission of Claims

56. Class Members who wish to be potentially eligible to receive a distribution from the Settlement Fund are required to submit a completed Proof of Claim to A.B. postmarked or submitted no later than July 1, 2022.

57. The Claims Administrator, supervised by Plaintiffs' Counsel, will make all reasonable efforts to resolve any curable defects in Proof of Claim Forms to ensure that all Class members with otherwise valid Claims are not rejected and obtain their rightful compensation from the Settlement Fund. Plaintiffs' Counsel has been, and will continue to be, very involved in the claims administration process, regularly communicating with A.B. and Class Members and answering their questions, and ensuring the process runs smoothly and efficiently.

VI. THE PLAN OF ALLOCATION

58. As mentioned above, pursuant to the Court's Preliminary Approval Order and as set forth in the Notice, Class Members who wish to participate in the Settlement and be potentially eligible to receive a distribution from the Settlement Fund must provide a valid Proof of Claim to A.B. postmarked or submitted on or before July 1, 2022. *See* ECF No. 428 at ¶ 23.

59. Plaintiffs have proposed a plan for allocating the proceeds of the Settlement among members of the Class who submit timely and valid Proofs of Claim in connection with the Settlement. The objective of the proposed Plan of Allocation is to equitably distribute the net

proceeds of the Settlement to Authorized Claimants[4] based on their respective alleged economic losses as a result of the alleged violations of federal securities laws asserted in the Action, as opposed to losses caused by market-wide or industry-wide factors, or company-specific factors unrelated to the alleged fraud. Calculations under the Plan of Allocation are generally based upon the measure of damages set forth in Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder by the SEC.

60. The Plan of Allocation was prepared in consultation with expert economic consultants. Although the Plan of Allocation is not a formal damages analysis, it reflects the informed views of Plaintiffs' economic consultants, including their review of publicly available information regarding CB&I and a statistical analysis of the price movements of CB&I securities during the Class Period. The Plan of Allocation is also consistent with the traditional loss calculations used in Exchange Act claims, this Court's class certification ruling, and the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). Plaintiffs' Counsel believe that the Plan of Allocation is reasonable and has a rational basis and should be approved.

61. Under the Plan of Allocation, a "Recognized Loss Amount" will be calculated for each share of CB&I common stock purchased or otherwise acquired during the Class Period. The calculation of the Claimant's Recognized Loss Amounts will depend upon several facts, including when the shares of CB&I common stock were purchased or otherwise acquired during the Class Period, and in what amounts, and whether those shares were sold, and if sold, when they were sold, and for what amounts. For shares sold before the market opened on June 12, 2014, the Recognized Loss for each share shall be zero, as shares purchased during the Class Period but sold

[4] An "Authorized Claimant" is a Class Member who submits a timely and valid Proof of Claim to the Claims Administrator (in accordance with the requirements established by the Court) that is approved for payment from the Net Settlement Fund.

prior to the first corrective disclosure did not sustain recoverable losses under *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005). Similarly, for those shares purchased or otherwise acquired after the market opened on January 30, 2015 and sold through and including the close of trading on February 3, 2015, the Recognized Loss for each share is $0.25;[5] and for those shares purchased or otherwise acquired after the market opened on February 4, 2015 and sold before the market closed on June 23, 2015, the Recognized Loss for each share is also $0.25.

62. The Plan of Allocation sets forth the estimated alleged artificial inflation in the price of CB&I common stock during the Class Period. The computation of the estimated alleged artificial inflation in the price of CB&I common stock during the Class Period is based on certain misrepresentations alleged by Plaintiffs in the Amended Complaint and the price change of CB&I common stock based thereon, net of market-wide and industry-wide factors, in reaction to the public announcements that allegedly corrected Defendants' material misrepresentations and omissions.

63. Under the Plan of Allocation, Recognized Loss and Gain Amounts also take into account the PSLRA's statutory limitation on recoverable damages, whereby losses on eligible shares of CB&I common stock cannot exceed the difference between the purchase price paid for the stock and the average price of the stock during the 90-day period subsequent to the Class Period if the share was held through September 21, 2015 (*i.e.*, the end of the 90-day period), and losses on eligible shares of CB&I common stock purchased or otherwise acquired *during* the Class Period

[5] The Plan of Allocation acknowledges that dates following January 30, 2015, were determined to be not corrective by the Special Master in the R&R adopted by the Court. For that reason, Plaintiffs and Plaintiffs' Counsel, after consulting with their experts, believe claims based upon purchases after January 30, 2015 (but before the end of the Class Period) would not likely be viable at trial. However, because such purchasers (unless they exclude themselves) will nonetheless be bound by the releases of this Settlement, a nominal inflation of $0.25 has been assigned to purchases within that period.

and sold during the 90-day period subsequent to the Class Period cannot exceed the difference between the purchase price paid for the stock and the average price of the stock during the portion of the 90-day period elapsed as of the date of sale. A table showing the average 90-day look-back price for each day of the period is attached as Table 2 to the Plan of Allocation.

64. As further explained in the Plan of Allocation, a Claimant's "Recognized Claim" will be determined by totaling the Claimant's Recognized Loss Amounts and subtracting from that total the sum of the Claimant's Recognized Gain Amounts. If this calculation results in a positive number, that figure will be the Claimant's Recognized Claim. If this calculation results in a negative number, or zero, the Claimant's Recognized Claim will be zero. The Net Settlement Fund will be allocated on a *pro rata* basis to Authorized Claimants based on each Authorized Claimant's Recognized Claim in comparison to the total Recognized Claims of all Authorized Claimants. Under the Plan of Allocation, if a Claimant's *pro rata* payment calculates to less than $20.00, no distribution will be made to that Claimant.

65. Pursuant to the Plan of Allocation, any remaining funds in the Net Settlement Fund, after nine (9) months from the date of distribution of such Net Settlement Fund, after satisfying any remaining obligations to the Claims Administrator, shall be reallocated among and distributed to Authorized Claimants in an equitable and economic fashion. Thereafter, any remaining balance shall be donated to 501(c)(3) non-profit organization(s) to be recommended by Plaintiffs' Counsel and approved by the Court.

66. The structure of the Plan of Allocation is designed to achieve an equitable and rational distribution of the Net Settlement Fund among Authorized Claimants. Plaintiffs' Counsel submit that the Plan of Allocation is fair and reasonable and should be approved together with the Settlement. In addition, in response to the dissemination of nearly 250,000 copies of the Postcard

Notice to potential Class Members and nominees, there have been no objections to-date to the proposed Plan of Allocation.

VII. THE SETTLEMENT IS IN THE BEST INTERESTS OF THE CLASS AND WARRANTS FINAL APPROVAL

67. While Plaintiffs adamantly believe that they would have prevailed on the merits at trial, Defendants are equally adamant that Plaintiffs would not have succeeded, and thus, Plaintiffs faced a significant risk that they would not have convinced a jury that Defendants made materially false and misleading statements with the requisite state of mind and that these statements caused Plaintiffs' losses. But even if Plaintiffs prevailed at trial, at post-trial proceedings, and on appeal, by that time, there is a significant possibility that Defendants' remaining insurance coverage would have been long since exhausted or severely diminished, leaving no realistic alternative source of funds for recovery.

68. Having considered the foregoing risks and evaluated Defendants' defenses, it is the informed judgment of Plaintiffs' Counsel, based upon all proceedings to date and its extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement before this Court is fair, reasonable and adequate, and in the best interests of the Class.

VIII. PLAINTIFFS' COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

A. Plaintiffs' Counsel's Application for Reimbursement of Expenses

69. The Notice provides that Plaintiffs' Counsel will apply to the Court for attorneys' fees not to exceed 33 $^{1/3}$% of the Settlement Amount and reimbursement of expenses not to exceed $3,500,000 plus interest earned on these amounts at the same rate as the Settlement Fund. As set forth in the accompanying memorandum in support of its Fee and Expense Application (the "Fee Memorandum"), Plaintiffs' Counsel is requesting attorneys' fees in the amount of 33 $^{1/3}$% of the Settlement Fund and reimbursement of expenses in the amount of $3,462,683.78, which is within

the range of what is customarily awarded in similar complex actions. *See, e.g.*, *Lea v. Tal Educ. Grp.*, No. 18-cv-5480, 2021 U.S. Dist. LEXIS 229314, at *36 (S.D.N.Y. Nov. 30, 2021) ("The percentage of the fund requests -- one-third -- is a percent that has been approved as reasonable in this Circuit") (collecting cases). The recovery of $44,000,000 represents a meaningful percentage of total collectable damages and is an excellent result for the Class. Plaintiffs' Counsel's negative lodestar multiplier of ***0.55*** also demonstrates an exceptional value to the Class.

70. The expenses incurred by Plaintiffs' Counsel in connection with this litigation are set forth below. Plaintiffs' Counsel, in seeking reimbursement of $3,462,683.78 in reasonable expenses, avers that the expenses incurred in this Action are reflected on the books and records maintained by the two firms and are an accurate recording of the expenses incurred. The requested expenses consist primarily of the reasonable fees paid to Plaintiffs' experts who provided Plaintiffs with extensive assistance during this litigation, and also include other expenses like travel for hearings and depositions, filing fees, and database charges. Such expenses were necessary for the prosecution of this Action and of the type normally chargeable to a client in non-contingency litigation.

B. Plaintiffs' Counsel's Application for Attorneys' Fees

71. For its efforts on behalf of the Class, Plaintiffs' Counsel is applying for compensation from the Settlement Fund on a percentage basis. The percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. 12-MDL-2389, 2015 U.S. Dist. LEXIS 152668, at *25 (S.D.N.Y. Nov. 9, 2015) ("The Second Circuit has authorized district courts to employ a percentage-of-the-fund method when awarding fees in common fund cases, although the Circuit has encouraged district

courts to cross-check the percentage fee against counsel's 'lodestar' amount of hourly rate multiplied by hours spent.").

72. Plaintiffs' Counsel requests a fee of 33 1/3% of the Settlement Fund. As set forth in the accompanying Fee Memorandum, district courts within the Second Circuit generally apply the percentage-of-recovery method for determining fee awards in similar cases. The percentage sought is merited in this case in light of the effort required (manifested by Plaintiffs' Counsel's negative lodestar multiplier of ***0.55***) and the result obtained and is indeed lower than percentages awarded by many courts in this Circuit in common fund cases. Each Class Representative endorses Plaintiffs' Counsel's fee request.

1. The Requested Fee is Reasonable

73. Plaintiffs' Counsel undertook time-consuming, challenging, and risky work to prosecute the claims against Defendants and to achieve this Settlement. As detailed above, this Action was settled only after Plaintiffs' Counsel had: (i) conducted an extensive and ongoing investigation into the Class's claims, (ii) thoroughly researched the facts and law applicable to the Class's claims and Defendants' defenses thereto, (iii) prepared and filed an Amended Complaint detailing each Defendant's alleged violations of the federal securities laws, (iv) defeated Defendants' motion to transfer the case to the Southern District of Texas, (v) successfully opposed Defendants' motion to dismiss the Amended Complaint, (vi) extensively negotiated and conducted document discovery, (vi) prepared for and took 32 depositions, (vii) prepared each Class Representative for deposition and defended each such deposition; (viii) prepared and served a motion for class certification supported by an expert report on market efficiency, (ix) participated in a full-day hearing before the Special Master, the Hon. Shira Scheindlin, which resulted in a 107-page Report & Recommendation followed by a 24-page order certifying the Class by the Court, (x) defeated a Rule 23(f) Petition, (xi) retained 3 testifying expert witnesses who each submitted

multiple reports and were deposed (in some cases multiple times), (xii) successfully opposed Defendants' motion for summary judgment, (xiii) filed 7 motions *in limine*, (xiv) opposed Defendants' 16 motions *in limine* and two *Daubert* motions, (xv) began preparing for trial, and (xvi) engaged in vigorous settlement negotiations with defense counsel, resulting in a favorable financial recovery for the Class.

74. Since the inception of the Action, Plaintiffs' Counsel have dedicated over 45,108 hours to the investigation, prosecution, and resolution of the claims against Defendants, resulting in a lodestar of $26,282,263.10. The requested fee of 33 $^{1/3}$% of the Settlement Fund, or $14,666,667, yields a negative multiplier of approximately 0.55, which is eminently reasonable in light of the risks undertaken by Plaintiffs' Counsel.

75. The lodestar enumerated below includes a schedule that indicates the amount of time spent by each attorney at KSF who worked on this Action and the lodestar calculations based on their current billing rates. Pomerantz's lodestar is calculated in a similar manner as described in the Declaration of Joshua B. Silverman, attached hereto as Exhibit B. KSF's schedule was prepared from contemporaneous daily time records regularly prepared and maintained by KSF and was carefully reviewed and reduced by me, where I deemed it appropriate. The hourly rates for the attorneys included in the schedule are commensurate with the hourly rates charged by lawyers of reasonably comparable skill, experience, and reputation and have been accepted in other securities or shareholder litigation. For personnel who are no longer employed by Plaintiffs' Counsel, the lodestar is based upon the billing rates for such personnel in their final year of employment. The lodestar of attorneys who worked less than ten (10) hours on the Action has been excluded entirely from the lodestar calculation of KSF. Plaintiffs' Counsel has billed its time devoted to travel at 50% of each attorney's prevailing hourly rate. Finally, Plaintiffs' Counsel has

excluded from its calculations any work its attorneys expended on the Memorandum of Law in Support of Plaintiff's Motion for An Award of Attorneys' Fees and Reimbursement of Litigation Expenses and Compensatory Awards for Plaintiffs.

KAHN SWICK & FOTI, LLC			
Staff:	**Total Duration:**	**Rate:**	**Lodestar:**
Lewis Kahn (P)	187.8	$1,200	$225,360.00
Kim Miller (P)	2,614.2	$1,050	$2,744,910.00
J Lopatka (P)	1,095.8	$850	$931,430.00
Melissa Harris (C)	440.5	$850	$374,425.00
Craig Geraci (P)	3,323.7	$850	$2,825,145.00
Andrew Gibson (C)	15.4	$725	$11,165.00
Alexander Burns (A)	50.4	$675	$34,020.00
Matthew Woodard (A)	1,191.5	$625	$744,687.50
Michael Robinson (A)	286.7	$625	$179,187.50
Morgan Embleton (A)	2,010.2	$575	$1,155,865.00
Bruce Dona (A)	413.4	$550	$227,370.00
Nowal Jamhour (A)	2,552.4	$475	$1,212,390.00
Rhosean Scott (S)	23.5	$450	$10,575.00
Jyoti Kehl (A)	3,498.4	$450	$1,574,280.00
Marie Luis (A)	128.4	$400	$51,360.00
Kassidy Montgomery (A)	991.3	$385	$381,650.50
Emily Hall (A)	135.3	$385	$52,090.50
Nathalia Brandstetter (S)	338.8	$350	$118,580.00
Nick Cigich (PA)	1,757.5	$350	$615,125.00
Kent Patterson (A)	904.7	$325	$294,027.50
Emma Moppert (A)	59.4	$325	$19,305.00
Sylvia Zarzeka (A)	1,476.0	$325	$479,700.00
Zoey Akin (A)	97.3	$325	$31,622.50
Anna Potter (A)	1,950.5	$325	$633,912.50
Kimberly Yi (PA)	110.0	$300	$33,000.00
Dawn Hartman (PL)	65.0	$300	$19,500.00
Bronwyn Gibson (PL)	52.7	$275	$14,492.50
Briana Whetstone (PA)	303.9	$200	$60,780.00
Tyschelle Doucette (PA)	43.0	$200	$8,600.00
Amy Bennett (CA)	549.3	$200	$109,860.00
Total:	**27,387.0**	**Total Lodestar:**	**$15,318,416.00**

(P) Partner
(A) Associate
(C) Of Counsel
(S) Staff Attorney
(PL) Paralegal

(PA) Project Associate

2. The Support of Class Representatives and Reaction of the Class

76. Each of the Class Representatives were consulted about, and approve, Plaintiffs' Counsel's Fee and Expense Application. *See* Declarations of Dr. Robert Fishel, M.D., Brian Sabbagh, and Sean Boyle, attached hereto as Exhibits C, D, and E, respectively. Under the retainer agreements by and among Plaintiffs' Counsel and their respective clients, Lead Counsel and Additional Counsel both agreed to litigate the Action on an entirely contingent basis, meaning that Plaintiffs' Counsel would not be compensated at all, or reimbursed for any expenses it incurred on behalf of the Class, unless it obtained a recovery for the Class. The Class Representatives' support of the 33 1/3% fee request adds further support to Plaintiffs' Counsel's fee request.

77. Plaintiffs actively monitored the litigation and consulted with Plaintiffs' Counsel over the course of this Action, as well as throughout the settlement negotiations. *Id.* Plaintiffs' Counsel acted under the supervision of and negotiated within the settlement authority granted by Lead Plaintiff and Additional Plaintiffs. Plaintiffs' support of the requested attorneys' fees should be given considerable weight. In the post-PSLRA era, the support of court-appointed class representatives is a significant consideration in determining a fair fee. *See In re Veeco Instruments Sec. Litig.*, No. 05-MDL-01695-CM, 2007 U.S. Dist. LEXIS 85554, at *25-26 (S.D.N.Y. Nov. 7, 2007) ("[A] fee request which has been approved and endorsed by a properly-appointed lead plaintiff is presumptively reasonable….") (internal quotation marks omitted).

78. To date, following the dissemination of nearly 250,000 copies of the Postcard Notice, each of which informed potential Class Members of Plaintiffs' Counsel's intent to seek a fee of up to 33 1/3% of the Settlement Fund and reimbursement of litigation expenses up to $3,500,000, there have been no objections to the amount of attorneys' fees and expenses set forth in the Notice.

3. Standing and Experience of Counsel

79. The expertise and experience of counsel is an important factor in setting a fair fee. As Plaintiffs' Counsel's firm resumes (attached hereto as Exhibits F and G) demonstrate, the attorneys at KSF and Pomerantz are experienced and skilled securities class action litigators and have successful track records in securities cases throughout the country.

4. Standing and Caliber of Opposing Counsel

80. The quality of work performed by Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Defendants are represented by Baker Botts L.L.P. ("Baker Botts"). Baker Botts has defended numerous securities cases resulting in favorable decisions for defendants, including in the aforementioned *Cohen* case that they took to a jury verdict. This large defense firm spared no effort in the vigorous defense of their clients. In the face of this formidable opposition, and considering the circumstances, Plaintiffs and Plaintiffs' Counsel developed, litigated, and successfully negotiated an excellent recovery in this Action for the Class.

5. The Monetary Settlement Achieved

81. The $44,000,000 Settlement was achieved as a result of extensive negotiations, as detailed herein. The Settlement is a favorable recovery to the Class – representing approximately 6.28% of $701 million, the maximum awardable damages estimated by Plaintiffs' damages consultant, but a sizable 33.94% of the maximum estimated *collectable* damages, after accounting for the bankruptcy of the corporate Defendant, eroding insurance, and other limited sources of recovery. *See* ECF No. 426. Defendants disagree with Plaintiffs' per share damages estimates and would almost certainly advocate a more conservative calculation (or no damages at all) at trial. Not to mention that the value of the total number of claims submitted and sustained in a post-verdict claims process could theoretically end up being far less than Plaintiffs' estimate of

aggregate damages. Given these facts, the Settlement is fair, reasonable, and adequate. Further, as a result of this Settlement, thousands of Class Members potentially will be eligible to benefit and receive some compensation for their losses and will avoid the substantial risk of recovering nothing in the absence of this Settlement.

6. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High Risk, Contingent Securities Cases

82. The financial burden on contingent counsel is far greater than on a firm that is paid on an ongoing basis. This litigation was undertaken by Plaintiffs' Counsel on a wholly contingent basis. In doing so, Plaintiffs' Counsel faced the possibility that they would invest an enormous amount of time and money to the prosecution of this complex litigation only to secure no recovery. There have been many hard-fought lawsuits where excellent professional efforts by members of the plaintiffs' bar produced no fee to counsel, even after years of litigation – sometimes even after obtaining a successful verdict at trial. *See, e.g.*, *Robbins v. Koger Properties, Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing jury verdict of $81 million for plaintiffs and entering judgment for defendant).

83. The risks of contingent litigation are also highlighted by the fact that a dramatic change in the law can result in the dismissal of a claim or a reduction in the value of a claim after a great deal of time and funds were expended on the case. For example, the Supreme Court eliminated a cause of action based on aiding and abetting under Section 10(b) of the Exchange Act. *See Cent. Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994). Many courts then dismissed long pending cases that otherwise stated a proper cause of action at the time they were brought. *See, e.g., Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs in a case tried in 1988 on the basis of the Supreme Court's decision in *Cent. Bank*). Similarly, in *In re Vivendi Universal, S.A. Sec. Litig.* the

defendants moved post-trial (after the case had been litigated for almost 10 years) for a judgment as a matter of law on the claims of any class members who purchased shares extraterritorially, based on the Supreme Court's newly handed down opinion in *Morrison v. National Australia Bank*, 561 U.S. 247 (2010). 765 F. Supp. 2d 512, 521 (S.D.N.Y. 2011). The Court granted this motion, significantly reducing the number of class members, and thus, the amount of recoverable damages. *Id.* at 587.

84. Despite these risks, Plaintiffs' Counsel continued to litigate this Action for the benefit of the Class and would have brought the case to trial had the Parties been unable to reach a satisfactory settlement agreement just weeks before trial was set to begin. The fact that defendants and their counsel know that leading members of the plaintiffs' bar are able and willing to go to trial, even in high-risk cases, gives rise to meaningful settlements in actions such as this.

85. Courts have repeatedly held that it is in the public interest to have experienced and able counsel to enforce the securities laws and regulations. The Supreme Court "has long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission (SEC)." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). "Nothing in the PSLRA, we have previously noted, casts doubt on the conclusion 'that private securities litigation [i]s an indispensable tool with which defrauded investors can recover their losses' – a matter crucial to the integrity of the domestic capital markets." *Id.* at 320 n.4. The SEC, a vital but understaffed government agency, does not have the budget or the resources to ensure complete enforcement of the securities laws. If this important policy is to be carried out, the courts should award fees that will adequately compensate plaintiffs' counsel, taking into account the enormous risks undertaken

with a clear view of the economics of the situation.

IX. REIMBURSEMENT OF THE REQUESTED EXPENSES IS FAIR AND REASONABLE

86. Plaintiffs' Counsel also seeks reimbursement from the Settlement Fund of $3,462,683.78 for expenses reasonably and actually incurred in connection with its commencement, prosecution and resolution of the claims asserted in the Action, well within the noticed $3,500,000 expense cap. These expenses are detailed in ¶ 89 below for KSF, and for Pomerantz in the Declaration of Joshua B. Silverman, Exhibit B hereto.

87. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, or at least would not recover anything until the Action was successfully resolved. Plaintiffs' Counsel also understood that, even assuming the case was ultimately successful, reimbursement would not compensate for the lost use of the funds advanced to prosecute this Action. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

88. Plaintiffs' Counsel's expenses are reflected on the books and records maintained respectively by KSF and Pomerantz, which are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred in this Action. These expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in its billing rates.

89. The expense schedule below identifies the specific categories of expenses, *e.g.*, court fees, fees for experts and consultants, on-line legal and factual research, travel costs, reproduction costs, messenger and courier costs, and overnight mail costs incurred by KSF. Pomerantz's expenses are separately set forth in the Declaration of Joshua B. Silverman, attached

hereto as Exhibit B. Each firms' expenses were reasonable and necessary to the prosecution and resolution of this Action and are the type of expenses that counsel typically incur in complex litigation, and for which counsel are typically reimbursed when the litigation gives rise to a common fund.

KAHN SWICK & FOTI, LLC	
Category:	**Total:**
Experts/Consultants/Investigators	$922,769.89
Discovery Hosting	$394,497.35
Special Master	$100,573.36
Class Notice	$76,310.36
Mediator	$17,600.00
Bankruptcy Counsel	$12,485.00
Computerized Legal Research and Analyst Reports	$70,378.75
Filing Fees/Process Server/PSLRA Notice	$8,768.10
Messengers/Couriers/Overnight Delivery	$7,174.78
Photocopies/Printing/Office Supplies ($0.15/page)	$43,812.50
Travel/Meals/Lodging	$100,755.21
Court Reporters and Videographers	$10,275.27
Total Expenses Incurred:	**$1,765,400.57**

90. Of the total amount of expenses incurred by KSF and Pomerantz, $1,850,377.68, or approximately 53%, was expended on expert witnesses. Plaintiffs' Counsel worked extensively with multiple experts throughout the case. First, as Plaintiffs prepared the Amended Complaint, they worked with experts at Global Economics Group, LLC in the complex and specialized area of estimated damages. Then, at the class certification stage, Plaintiffs worked extensively with John D. Finnerty, Ph.D. of AlixPartners, LLP on the issues of market efficiency, loss causation, and damages. In addition to writing a 40+ page report with numerous exhibits and appendixes, Dr. Finnerty testified extensively on these issues at a hearing before the Special Master, Judge Scheindlin. Dr. Finnerty's opinions were essential to Plaintiffs' success on their motion. Dr. Finnerty then wrote a subsequent report opining on loss causation and damages during merit-based expert discovery. Plaintiffs retained two other highly qualified experts at this stage of the litigation:

William Purcell, an investment banking and financial expert to opine on the importance and implications to investors of various material misrepresentations and omissions of material information during the Class Period, and Harris Devor, an expert in accounting. Mr. Purcell and Mr. Devor both wrote detailed reports setting forth their opinions. Dr. Finnerty and Mr. Devor also wrote reply reports, rebutting arguments made by Defendants' expert witnesses. These reports provided invaluable support for Plaintiffs' response to Defendants' Motion for Summary Judgment. All three expert witnesses were deposed (some multiple times), and each was prepared to testify live at trial. In all, each expert spent several hundred hours working on the case, which they billed at hourly rates commensurate with their high level of experience. *See, e.g., In re Facebook, Inc. Sec. Litig*, 343 F. Supp. 3d 394, 418 (S.D.N.Y. 2018) (total litigation expenses of $4.96 million, the majority of which were expert expenses, were approved as "reasonable in light of the duration and complexity of [that] action," which was shorter and resulted in a smaller settlement than here).

91. Further, $786,632.20, or approximately 22% of the requested expenses, was expended on document database services. With over 9 million pages of documents that required detailed review in a short period of time (*i.e.*, the initial six-month fact discovery period), it was essential to review and store the documents using an advanced AI e-Discovery platform with predictive technology that would allow reviewers to better sift through large quantities of information in the time allotted. Plaintiffs' Counsel solicited several competitive bids and retained the e-Discovery vendor that would best serve the interests of the Class. Once the advanced features of this platform were no longer necessary, Plaintiffs' Counsel transferred the document database to a far less expensive platform with far fewer features, resulting in immediate savings to the Class while maintaining the ability to view documents when needed.

92. The expenses detailed above and the other expenses for which Plaintiffs' Counsel seeks reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. Moreover, all of the expenses incurred by Plaintiffs' Counsel were necessary to the successful prosecution and resolution of the claims against the Defendants. These expenses have been approved by the Class Representatives.

93. The Notice apprises potential Class Members that Plaintiffs' Counsel will be seeking reimbursement of expenses in an amount not to exceed $3,500,000. As noted above, to date, there have been no objections to the request for reimbursement of expenses as set forth in the Notice. In view of the complex nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, Plaintiffs' Counsel respectfully submits that the costs and expenses incurred by Plaintiffs' Counsel should be reimbursed from the Settlement Fund.

X. SERVICE AWARD REQUESTED FOR LEAD PLAINTIFF AND CLASS REPRESENTATIVES

94. Lead Plaintiff ALSAR seeks an award in the amount of $60,000. Dr. Fishel, the President and Chief Investment Officer of ALSAR, has been exceptionally involved in the prosecution Action, to which he has devoted substantial time and effort. Class Representatives IW 40, 361 & 417 and IW 580 seek awards in the amounts of $25,000 and $20,000, respectively. Each has also devoted substantial time and effort to the prosecution of this Action. These awards are within the noticed cap for service awards of up to $125,000, and no objections have been received to these requests.

95. The requested award to ALSAR is highly justified in light of Dr. Fishel's efforts spent working on the Action over the last five years. In total, Dr. Fishel dedicated approximately 96 hours to this litigation. Dr. Fishel: (i) reviewed CB&I's SEC filings; (ii) reviewed case-related

documents and correspondence with Counsel; (iii) reviewed and edited the Amended Complaint; (iv) reviewed and commented on Defendants' motions to dismiss the Amended Complaint and Plaintiffs' opposition thereto; (v) gathered documents for production; (vi) prepared for and testified in a full-day deposition; (vii) reviewed and commented on Defendants' motion for summary judgment and Plaintiffs' opposition thereto; (viii) prepared to testify as a key witness at trial; (ix) closely communicated with Counsel during settlement negotiations; and (x) approved the Settlement. *See generally* Declaration of Dr. Robert Fishel, M.D., attached as Exhibit C hereto.

96. Dr. Fishel is a well-regarded cardiothoracic surgeon specializing in cardiac electrophysiology, or surgery for heart rhythm disorders. Dr. Fishel is also a businessman, running his own practice, Florida Electrophysiology Associates, and acting as an executive or board member for several other companies in the healthcare and real estate development fields. As such, his time is exceptionally valuable. Dr. Fishel's education and business acumen have allowed him to make significant contributions to this Action in ALSAR's role as Lead Plaintiff, and his testimony would likely have been particularly valuable at trial. Based on the foregoing, an award of $60,000 to compensate ALSAR for Dr. Fishel's time and efforts is more than justified.

97. Similarly, the requested award to the Iron Workers is well justified in light of their dedication and efforts spent working on the Action. IW 40, 361 & 417 and IW 580 both: (i) monitored the Action and received regular updates on case developments; (ii) reviewed the Amended Complaint and key motions, briefs, and orders; (iii) reviewed and responded to document requests and interrogatories; (iv) prepared for and sat for depositions; (v) served as Class Representatives, and (vi) coordinated with Plaintiffs' Counsel during settlement negotiations and approved the Settlement. *See generally* Declaration of Brian Sabbagh, Exhibit D hereto and Declaration of Sean Boyle, Exhibit E hereto.

98. Given the contributions and the time and effort expended by the Class Representatives, the requested awards totaling $105,000 for ALSAR, IW 40, 361 & 417, and IW 580 are warranted and should be approved.

XI. CONCLUSION

99. For the reasons set forth above and in the accompanying motions and supporting memoranda, I respectfully submit that: (a) the Settlement is fair, reasonable, and adequate and should be granted final approval; (b) the Plan of Allocation represents a fair method for allocating and distributing the Net Settlement Fund among eligible Class Members and should be approved; (c) the Fee and Expense Application should be granted; and (d) the requested service awards to Class Representatives should be granted.

100. I declare under penalty of perjury of the laws of the United States of America and the State of New York that the foregoing is true and correct.

Executed this 27th day of June, 2022 at Scarsdale, New York.

/s/ Kim E. Miller
Kim E. Miller