IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-02351-PAB-KLM (Consolidated With: Civil Action No. 07-cv-02412-MSK, 07-cv-02454-EWN, 07-cv-02465-WYD, and 07-cv-02469-DME)

In Re Crocs, Inc., Securities Litigation

MOTION IN SUPPORT OF PLAINTIFFS' REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND MEMORANDUM IN SUPPORT THEREOF

PLEASE TAKE NOTICE that Plaintiffs[1] in the above-entitled action ("Action"), through their counsel, hereby move this Court for an Order approving Plaintiffs' Counsel's request for attorneys' fees and for reimbursement of expenses, and for approval to pay the Claims Administrator the costs related to the notice program. Pursuant to Local Rule 7.1, Plaintiffs have conferred with the Settling Defendants and they do not oppose the relief requested; Deloitte & Touche LLP takes no position.[2]

I. PRELIMINARY STATEMENT

Based on the percentage of damages generally recovered in securities class actions (most of which had survived pleading motions), and the fact that the Action was on appeal with no assurance

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[1] All capitalized terms not otherwise defined shall have the meaning as set forth in the Stipulation and Agreement of Partial Class Settlement, dated May 14, 2012 ("Stipulation"). All citations and internal quotation marks omitted unless otherwise noted.

[2] In support of the Fee Motion, Plaintiffs respectfully submit the Declaration of Charles J. Piven In Support of Plaintiffs' Motions for Final Certification of the Settlement Class; Final Approval of Class Notice; Final Approval of the Proposed Partial Settlement; Final Approval of the Proposed Plan of Allocation; and Plaintiffs' Counsel' Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Piven Declaration"). The Piven Declaration fully describes the history of the Action, the claims asserted, the efforts of Plaintiffs' Counsel, and the negotiations leading to the partial settlement ("Settlement"). The Motion for Final Approval of the Proposed Partial Settlement, Plan of Allocation, and Final Certification of Settlement Class and Memorandum in Support Thereof ("Settlement Brief") discusses the complexity, magnitude, and risks associated with this Action, as well as many of the legal obstacles Plaintiffs faced.

that the Court's dismissal would be reversed, the $10 million cash Settlement represents an excellent result. Plaintiffs request an award of attorneys' fees of $3 million, or 30% of the Settlement Fund, and reimbursement of the expenses reasonably incurred in connection with the prosecution of the Action of $122,592.43, along with applicable interest on those amounts.[3] Plaintiffs submit that, under the circumstances here, the $3 million fee is reasonable for the services provided to the Settlement Class ("Class"). Utilizing the guidelines endorsed by the Tenth Circuit, the requested fee is also reasonable and eminently fair in light of, among other things, the excellent result achieved in an extremely difficult case that had already been dismissed by the Court and was on appeal, and the fact that the requested fee is well within the percentage range of fees awarded by courts in this Circuit and across the country. Further, the requested fee represents a 1.23 multiple of the $2,436,025.75 combined lodestar of Plaintiffs' Counsel who devoted 3,877.45 hours to the prosecution of this Action on a wholly contingent basis. Such amount is well within – and indeed less than – multipliers routinely awarded by courts. Thus, Plaintiffs' Counsel respectfully submit that the attorneys' fees and the expenses sought are fair and reasonable, and should be approved.

II. THE COURT SHOULD AWARD THE REQUESTED ATTORNEYS' FEES

A. The Percentage of Recovery Method Is the Appropriate Approach

The Tenth Circuit has "implied a preference for the percentage of the fund method in common fund cases." *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995).[4] Compensating counsel

[3] This request is less than the maximum fee award stated in the Notice of Pendency of Proposed Partial Settlement of Class Action ("Notice").

[4] The Private Securities Litigation Reform Act requires that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6).

on a percentage basis is reasonable because it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time and because it decreases the burden imposed on courts by eliminating a detailed and time-consuming lodestar analysis and assuring that the class does not experience undue delay in receiving their share of the settlement. *See Gerstein v. Micron Tech. Inc.*, No. 89-1262, 1993 U.S. Dist. LEXIS 21215, at *14 (D. Id. Sept. 10, 1993). It is also consistent with the practice in the private marketplace where contingent-fee attorneys are customarily compensated by a percentage of the recovery.

B. The Requested Attorneys' Fees are Fair and Reasonable Under Either the Percentage or the Lodestar/Multiplier Method

On a percentage basis, the amount of attorneys' fees requested here is consistent with awards routinely made by courts in this and other Circuits. *E.g., McNeely v. Nat'l Mobile Health Care, LLC*, No. 07-933, 2008 U.S. Dist. LEXIS 86741, at *46 (W.D. Okla. Oct. 27, 2008) ("Fees in the range of at least one-third of the common fund are frequently awarded in class action cases of this general variety."); *Vaszlavik v. Storage Tech. Corp.*, No. 95-2525, 2000 U.S. Dist. LEXIS 21140, *4 (D. Colo. Mar. 9, 2000) ("[C]lass action fee awards are typically 30% of the fund created by the settlement.").[5] Plaintiffs' Counsel undertook their representation of the Class on a wholly contingent basis, investing a

[5] *See also In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (1/3 award); *Faircloth v. Certified Fin. Inc.*, No. 99-3097, 2001 U.S. Dist. LEXIS 6793, *36 (E.D. La. May 16, 2001) (35% award); *Gaskill v. Gordon*, 942 F. Supp. 382, 387 (N.D. Ill. 1996) (38% award), *aff'd*, 160 F.3d 361 (7th Cir. 1998); *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (33% award); *Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370, 1380-81 (D. Minn. 1985) (35% award); *In re Ampicillin Antitrust Litig.*, 526 F. Supp. 494, 500 (D.D.C. 1981) (45% award); *Lewis v. Musham*, No. 79-396, 1981 U.S. Dist. LEXIS 11926, *1 (S.D.N.Y. Apr. 10, 1981) (49% award).

substantial amount of time and money to prosecute this Action with the expectation that if they were successful in obtaining a recovery for the Class, they would receive a percentage of that recovery, but without a guarantee of compensation, or even the recovery of out-of-pocket expenses.

A "cross-check" with a lodestar analysis also supports the fee requested here.[6] In cases applying the lodestar method, "'multipliers of between 3 and 4.5 have been common.'" *Rabin v. Concord Assets Group, Inc.*, No. 89-6130, 1991 U.S. Dist. LEXIS 18273, *4 (S.D.N.Y. Dec. 19, 1991) (4.4 multiple); *Kurzweil v. Philip Morris Cos., Inc.*, No. 94-2373, 1999 U.S. Dist. LEXIS 18378, *8 (S.D.N.Y. Nov. 30, 1999) (multiples between 3 and 4.5 are common); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."). Here, Plaintiffs' Counsel's lodestar is $2,436,025.75. Piven Decl. ¶180. Thus, Plaintiffs' Counsel's request for an award of $3 million is a very reasonable multiple of 1.23, which is well within the accepted range. *See In re Petro-Lewis Sec. Litig.*, No. 84-326, Order (D. Colo. Apr. 4, 1985) (Piven Decl., Ex. 5) (where a settlement was reached within four months of the actions being instituted, the court awarded a multiple of over 4 based on the risk of the contingent fee at the outset).[7]

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[6] Some courts perform a "lodestar cross-check" to assess the reasonableness of a percentage fee request in cases. *See, e.g., Vaszlavik*, 2000 U.S. Dist. LEXIS 21140, at *7-*8.

[7] *See also Petro-Lewis*, Findings of Fact, Conclusions of Law and Order Regarding Award of Fees and Costs to Plaintiffs' Counsel and For Expert Retained on Behalf of the Class, at 8 (D. Colo. Jan. 23, 1985) (Piven Decl., Ex. 6) ("[T]he parties achieved settlement through prompt negotiation, rather than through an endless barrage of discovery and procedural and substantive motions. . . . Counsel . . . should be commended both for their competence and for their highly professional efforts to save their clients costs, delays and, ultimately, higher attorneys' fees. The tremendous amount of lawyer time that might have been consumed by researching, drafting and arguing such discovery and motion disputes is time for which no bill is presented").

C. The Attorneys' Fees Request is Reasonable Under the *Johnson* Factors

The Tenth Circuit has set forth certain factors (the "*Johnson*" factors) that should be considered in determining whether the requested attorneys' fees are reasonable. These include.

> the time and labor required, the novelty and difficulty of the question presented by the case, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorneys due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, any time limitations imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorneys, the 'undesirability' of the case, the nature and length of the professional relationship with the client, and awards in similar cases.

Rosenbaum, 64 F.3d at 1445 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). An analysis of these factors makes clear that the request for attorneys' fees here is reasonable.

1. The Significant Time and Labor Involved

The first *Johnson* factor (the time and labor involved) supports the reasonableness of the attorneys' fees requested. As detailed in the Piven Declaration, the Settlement was entirely the product of Plaintiffs' and Plaintiffs' Counsel's diligent efforts in prosecuting this Action, and hard-fought, arm's-length settlement negotiations. In total, Plaintiffs' Counsel have spent over 3,877 hours litigating this Action. Piven Decl. ¶180. Those efforts have included sophisticated work related to Plaintiffs' claims for violations of §§ 10(b), 20(a) and 20(A) of the Securities Exchange Act of 1934, and Rule 10b-5, including investigating and drafting an amended complaint, extensive motion practice before this Court, and comprehensive briefing in the Tenth Circuit. Piven Decl. ¶177. Specifically, Plaintiffs' Counsel conducted substantial factual research concerning Crocs and its business activities. That investigation included interviews with numerous former Crocs employees and review of SEC filings, news reports, analyst reports, and other such publicly available documents. This process culminated in the preparation of a 176-page amended complaint. Plaintiffs' Counsel also opposed Defendants'

motions to dismiss, appealed the Court's decision on Defendants' motions to dismiss, consulted with experts on accounting and damages, and prepared for and attended mediation sessions with independent mediators, as well as participated in numerous negotiations between the parties without the mediators and with a Tenth Circuit mediator. Plaintiffs' Counsel also spent considerable time negotiating the terms of the Settlement once a tentative deal was reached, including the time spent drafting the necessary settlement documents. All of these efforts were undertaken on a contingent basis. Unlike counsel for Defendants, who are paid substantial hourly rates and regularly reimbursed for their expenses, Plaintiffs' Counsel have not been compensated for any time or expenses in their prosecution of this Action and would have received no compensation or even reimbursement of expenses had this Action not been successful.[8] Moreover, Plaintiffs' Counsel will also have to expend considerable time, not included in this request, preparing for and attending the Settlement Hearing, responding to any objections, and overseeing the Settlement and the distribution of the Settlement Fund.

2. The Novelty and Difficulty of the Questions

The second *Johnson* factor for determining the appropriate fee is the novelty and difficulty of the questions presented. There can be no doubt that this case presented complex issues of law and fact, including the existence of false and/or misleading statements made with scienter, and proof of loss causation. *See* Settlement Br. at 5-7; *e.g.*, Piven Decl. ¶¶158-68.

Thus, although Plaintiffs believe that they could have overcome these factual and legal

[8] There have been numerous cases in which counsel expended thousands of hours and received no remuneration despite their diligence and expertise. *E.g.*, *AUSA Life Ins. Co. v. Ernst & Young*, No. 00-9472, 2002 U.S. App. LEXIS 13845, at *15 (2d Cir. 2002) (affirming district court's dismissal after a trial and earlier appeal and remand); *Winkler v. NRD Mining, Ltd.*, No. 82-3318, 2000 U.S. Dist. LEXIS 21477, at *63 (E.D.N.Y. Mar. 31, 2000) (defense verdict after trial); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (jury verdict reversed).

obstacles, it is readily apparent that there were substantial risks to achieving a recovery had the Settlement not been reached at this point in the proceedings, especially considering that the case was on appeal, with no guarantee of reversal of the Court's dismissal. *See In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 632 (D. Colo. 1976) ("The litigation also involved unique and substantial issues of law in the technical area of SEC Rule 10b-5, Section 10(b) of the Securities Exchange Act of 1934 . . . difficult, complex and oft-disputed class action questions, and difficult questions regarding computation of damages.").[9] Accordingly, the second *Johnson* factor supports the fee award.

3. The Skill Required and Quality of Plaintiffs' Counsel

The third and ninth *Johnson* factors (the skill required to properly perform the legal services and the experience, ability and reputation of the attorneys) support the fee award. The successful prosecution of the complex claims in this Action required the participation of highly skilled and specialized attorneys. The quality of Plaintiffs' Counsel and their work is evidenced by the fact that they were able to obtain a favorable result for the Class in the face of substantial risks, including the lack of assurance that the Court's dismissal would be reversed.

The descriptions of the background and experience of Plaintiffs' Counsel are included as Exhibit A to each of the declarations attached to the Piven Declaration. As those submissions

[9] For example, a study of securities class actions filed after the passage of the PSLRA between 1996 through 2011, found that 32% of the cases that reached the point of a motion to dismiss were dismissed. *See* Cornerstone Research Securities Class Action Filings - 2011 Year in Review, at 18 (2012), *www.cornerstone.com/securities_class_action_filings_2011_year_in_review*. That is what happened here. Plaintiffs then appealed to the Tenth Circuit, where success was far from certain because, in 2011, the Tenth Circuit's reversal rate in civil cases was only 7.9%. Judicial Business of the United States Courts, Supplemental Tables, "U.S. Courts of Appeals—Appeals Terminated on the Merits, by Circuit, During the 12-Month Period Ending September 30, 2011," www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2011/appendices/B05Sep11.pdf.

demonstrate, Plaintiffs' Counsel are experts in the highly specialized field of securities class litigation. Accordingly, Plaintiffs' Counsel aggressively utilized that expertise to bring the Action to its very successful resolution. Further, the quality and vigor of opposing counsel is also important in evaluating the services rendered by plaintiffs' counsel. *See Horton v. Leading Edge Mktg., Inc.*, No. 04-00212, 2008 U.S. Dist. LEXIS 11761, at *7 (D. Colo. Feb. 4, 2008). Here, Settling Defendants were represented by a national defense firm well-known for its success in federal securities actions, and counsel vigorously defended the Action through each step in the litigation. The size of the result, in view of the most likely recovery, and when paired against the defense counsel they faced, is the best testament of the quality of Plaintiffs' Counsel and the representation the Class received.

4. The Preclusion of Other Employment and Time Limitations

The fourth and seventh *Johnson* factors are the extent to which Plaintiffs' Counsel was precluded from other employment and the time limitations imposed. Here, the prosecution of the Action required an enormous investment of time (over 3,800 hours) and money by Plaintiffs' Counsel that logically prevented the attorneys and their staff from spending that time pursuing other matters for which the firms they work for could have been compensated. The entire burden of developing the facts; managing and organizing the complex case; and negotiating a Settlement was borne by Plaintiffs' Counsel. *Oppenlander v. Standard Oil Co.*, 64 F.R.D. 597, 616 (D. Colo. 1974). Plaintiffs' Counsel also spent a substantial amount of time defending the selection of Lead Plaintiff, both in this Court and in the Tenth Circuit. Further, Plaintiffs' Counsel spent a considerable amount of time responding to the objection to their motion for preliminary approval, and will devote still more time overseeing the Settlement and the distribution of the Settlement Consideration. Thus, these factors also weigh in favor of approving the fee request. *Lucas v. Kmart Corp.*, No. 99-01923, 2006 U.S. Dist. LEXIS 51420, at

*18 (D. Colo. July 27, 2006) ("Large-scale class actions. . . necessarily require a great deal of work, and a concomitant inability to take on other cases.").

5. The Customary Fee and Awards in Similar Cases

The fifth and twelfth *Johnson* factors demonstrate that the fees requested are reasonable. Plaintiffs' Counsel is requesting 30% of the Settlement Fund. As discussed herein, courts in this Circuit and throughout the country have frequently awarded attorneys' fees consistent with, and even greater than, the fee percentage of the Settlement requested here. Further, as discussed herein, the lodestar cross-check also confirms the reasonableness of the requested fee. The multiplier requested here is 1.23. Accordingly, these two factors also support the fee award requested in this case.

6. Whether the Fee is Fixed or Contingent

"The contingent nature of counsel's compensation has long been recognized as justifying a larger fee." *King*, 420 F. Supp. at 632 n.8. Plaintiffs' Counsel have received no compensation during the course of this Action and have invested $2,436,025.75 in time and incurred significant expenses (totaling $122,592.43) in obtaining the Settlement for the benefit of the Class. In addition to the advancement of costs, lawyers working on the case have forgone the business opportunity to devote time to other cases. Any fee award or expense reimbursement to Plaintiffs' Counsel has always been at risk, and completely contingent on the result achieved and on this Court's discretion in awarding fees and reimbursing expenses.[10] Thus, the sixth *Johnson* factor also weighs in favor of the fee here.

[10] Despite the most vigorous and competent efforts, success in contingent litigation such as this is never guaranteed. Indeed, there are cases where plaintiffs' counsel were successful at trial, yet still received no compensation. *E.g.*, *Backman v. Polaroid Corp*., 910 F.2d 10, 18 (1st Cir. 1990) (dismissing action following 11 years of litigation and a $30 million judgment for plaintiffs). The risks here were even greater because this Court had already dismissed Plaintiffs' claims.

7. The Amount Involved and the Results Obtained

The eighth *Johnson* factor, the amount involved and the results obtained, further demonstrates that the level of fees requested is very reasonable. "While other criteria in determining reasonable attorney fees are legitimate considerations, the amount of the recovery, and end result achieved, is of primary importance." *Oppenlander*, 64 F.R.D. at 605; *see also King*, 420 F. Supp. at 630 ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client"). As described in detail in the Piven Declaration and the Settlement Brief, Plaintiffs and Plaintiffs' Counsel faced numerous obstacles in this litigation, yet as a result of arduous litigation and settlement negotiations, succeeded in obtaining a $10 million cash Settlement while this case was on appeal (with no assurance that the Court's dismissal would be reversed), which represents an approximate 1.3% recovery to Class members based on Plaintiffs' best possible result in the Action and a 100% claims rate. This figure does not take into account any risks associated with losing all or part of the Action, any of the relative strengths or weakness of any of the specific claims on the merits, or the fact that a post-trial judgment in this Action would only reflect the amount of damages of claiming Class members from a pre-judgment claims administration where far less than 100% of Class members would present claims.

Because of this Settlement, Class members will receive immediate compensation for their losses and will avoid the substantial risks of no recovery if Plaintiffs' appeal proved unsuccessful. Indeed, even if Plaintiffs had persuaded the Tenth Circuit to reverse, they still would face the risk of

losing at the summary judgment stage, at trial, or on appeal by Defendants.[11] Thus, the recovery here merits the requested award. *See, e.g.*, Securities Class Action Filings--2012 Year in Review (Cornerstone Research) (finding that in 2012, the median settlement as a percentage of estimated damages was 1.1% where estimated damages were in the range of $500-999 million (like here). *available at* www.cornerstone.com; *see also* Piven Decl. at ¶¶151-53 (providing additional statistics on estimated damages and settlement ranges); Settlement Br. at 7-8 (discussing typical recoveries).

8. The Undesirability of the Case

"Due to the degree of risk involved and the extensive time commitments associated [with] securities litigation, the court recognizes the undesirability of representing plaintiffs in such cases." *In re Storage Tech. Corp. Sec. Litig.*, No. 84-1981, 1990 U.S. Dist. LEXIS 18461, at *9 (D. Colo. Sept. 28, 1990). As discussed, this case was always extremely difficult and Plaintiffs' Counsel knew that they were undertaking a significant risk by taking the case on a contingency basis. Plaintiffs' Counsel also knew that significant out-of-pocket expenses would be necessary, as well as substantial time and work. Plaintiffs' Counsel took on this risk without any assurances that they would be re-paid for their expenses and further compensated. Moreover, they knew that even if they were paid, it would take substantial time to obtain their fee award. Thus, "[t]his [*Johnson*] factor carries significant weight and weighs in favor of a substantial fee award." *In re Qwest Commc'ns Int'l, Inc.*, 625 F. Supp. 2d 1143, 1153 (D. Colo. 2009); *see also In re United Telecomms., Sec. Litig.*, No. 90-2251, 1994 U.S. Dist. LEXIS 9151, at *12 (D. Kan. June 1, 1994) ("A one-third fee award is also reasonable in light of the

[11] Even the most promising cases can be eviscerated by a sudden change in the law after years of litigation. *E.g.*, *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469 (S.D.N.Y. 2010) (after completion of extensive foreign discovery, 95% of plaintiff class's damages were eliminated by the Supreme Court's reversal of 40 years of unbroken circuit court precedent).

undesirability associated with the relatively high degree of risk involved").

9. The Nature and Length of the Professional Relationship

The eleventh *Johnson* factor is the nature and length of the professional relationship between counsel and the client, which also militates in favor of the requested attorneys' fee.[12] Here, the nature of Plaintiffs' Counsel's relationship with their ultimate clients, the Class, increased the risks that were undertaken in prosecuting this Action. This is not the type of situation a defendant's attorney might face in which discounted fees are given or extra risks assumed because the attorney knows that he will benefit in the long run from repeat business. Rather, "[t]here is little likelihood that plaintiff's counsel will be sought after to do legal work for members of the plaintiff class. Class members are scattered throughout the United States, and a few reside overseas." *Clark v. Cameron-Brown Co.*, No. 75-65, 1981 U.S. Dist. LEXIS 12824, at *8 (M.D.N.C. Apr. 6, 1981). As a result, Plaintiffs' Counsel does not expect to garner any future benefit in terms of repeat business from the Class.

D. Public Policy Considerations

"A strong public policy concern exists for rewarding firms for bringing successful securities litigation." *In re Ashanti Goldfields Sec. Litig.*, No. 00-717, 2005 U.S. Dist. LEXIS 28431, at *14 (E.D.N.Y. Nov. 15, 2005); *Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988) (courts must encourage private lawsuits to effectuate the securities laws' purpose of protecting investors). The Supreme Court has emphasized that private securities actions, such as this one, provide "'a most effective weapon in

[12] Some courts in this Circuit have found this factor not applicable in similar cases. *E.g.*, *Bruner v. Sprint/United Mgmt. Co.*, No. 07-2164, 2009 U.S. Dist. LEXIS 60125, at *31 (D. Kan. July 14, 2009) ("The meaning of this factor . . . and its effect on the calculation of a reasonable fee has always been unclear . . . Courts applying the *Johnson* factors typically state that this particular standard is irrelevant or immaterial."); *Qwest*, 625 F. Supp. 2d at 1153; *Lucas*, 2006 U.S. Dist. LEXIS 51420, at *11.

the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985). Counsel in complex securities class action litigation are invariably retained on a contingent basis, largely due to the scope of the commitment of time and expense required. Indeed, lawyers that pursue private suits such as this one on behalf of investors augment the overburdened SEC by "acting as 'private attorneys general.'" *Ressler v. Jacobson*, 149 F.R.D. 651, 657 (M.D. Fla. 1992). In addition, the typical class representative is unlikely to be able or willing to pursue risky long and protracted litigation at his or her own expense.

Thus, "public policy favors the granting of [attorneys'] fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions." *Id.*; *see also Oppenlander*, 64 F.R.D. at 613 ("The allowance must be sufficiently generous, in those cases in which a recovery is effected, to encourage competent counsel to accept representation in these private actions, which vindicate the Congressional purposes of the federal securities laws and the federal antitrust laws. The allowance of fees should have for a consideration sufficient incentive to competent counsel to remain in the field of public interest litigation."); *King*, 420 F. Supp. at 636 (same). Plaintiffs' Counsel pursued claims in an attempt to redress the substantial losses they allege Defendants caused Class members as a result of challenged omissions and misstatements. As the federal courts have recognized time and again, private enforcement of the federal securities laws is a necessary adjunct to government intervention. Therefore, although many of Plaintiffs' allegations in the Complaint may not be borne out, public policy still favors compensating counsel for their commitment of time and expenses.

E. No Class Members Have Objected to the Requested Fee

Over 206,524 copies of the Notice have been disseminated to potential Class members. Affidavit of Jose C. Fraga Regarding the Mailings of the Notice and Proof of Claim, Senior Director

for The Garden City Group, Inc., dated Oct. 24, 2013, at ¶9 (Piven Decl. at Ex. 1). The Notice informed shareholders that Plaintiffs' Counsel intended to apply for an award of attorneys' fees not to exceed 33-1/3% of the Settlement consideration – i.e., more than the 30% fee requested here – and for reimbursement of their expenses in the approximate amount of $250,000 (more than double the actually requested $122,592.43), plus interest on such fees and expenses. While the deadline for objections is November 26, 2013,[13] no Class Member has raised any objection to Plaintiffs' Counsel's request. Piven Decl. ¶144. Plaintiffs' Counsel will report to the Court one week before the Settlement Hearing to address any objections that may be submitted.

III. THE REQUEST FOR REIMBURSEMENT OF EXPENSES IS REASONABLE

Plaintiffs' Counsel also request an award of expenses incurred in connection with litigating this Action. Expenses are compensable in a common fund case if they are the type normally billed by attorneys to paying clients. *E.g., Bratcher v. Bray-Doyle Indep. Sch. Dis. No. 42*, 8 F.3d 722, 725-26 (10th Cir. 1993). In the Piven Declaration and the accompanying exhibits, Plaintiffs' Counsel have itemized the $122,592.43 in expenses they reasonably and necessarily incurred in connection with prosecution of the Action. *See* Piven Decl. ¶¶202-07 & Exs. 2-4. All of the various categories of expenses for which counsel seek reimbursement are the type of expenses routinely charged to hourly clients, and, therefore, should be reimbursed. Further, no objections have been submitted with respect to Plaintiffs' Counsel's potential maximum expense request stated in the Notice, which is higher than the actual request for reimbursement of litigation expenses here. Therefore, Plaintiffs' Counsel

[13] Consistent with *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010), this motion is being filed a month before the deadline for objections.

respectfully request reimbursement of expenses in the amount of $122,592.43.[14] Further, Plaintiffs are also seeking approval to pay the Claims Administrator for the cost of the notice program and administration of the Settlement. *See* Piven Decl. ¶¶208-09.

IV. CONCLUSION

For all of the reasons set forth above, Plaintiffs' Counsel should be awarded $3 million in attorneys' fees, and $122,592.43 in reimbursement of expenses, plus interest. The Court should also approve the request to pay the Claims Administrator for the costs related to the notice.

Dated: October 25, 2013

Respectfully submitted,

BROWER PIVEN, A Professional Corporation

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[14] It is appropriate to include interest on any award of attorneys' fees and expenses granted by the Court. *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1296, 1328-29 (E.D.N.Y. 1985), *aff'd in part, rev'd in part on other grounds*, 818 F.2d 226 (2d Cir. 1987).

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2013, I electronically filed the foregoing Motion In Support of Plaintiffs' Request For an Award of Attorneys' Fees And Reimbursement of Expenses and Memorandum In Support Thereof with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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