UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Stericycle, Inc. Securities Litigation	Civ. A. No. 1:16-cv-07145 Hon. Andrea R. Wood CLASS ACTION **ECF CASE**

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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Lead Plaintiffs and Lead Counsel respectfully submit this reply memorandum in further support of (i) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation (Dkt. #113), and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (Dkt. #116) (the "Motions").[1]

PRELIMINARY STATEMENT

The Court-approved Notice has been disseminated to nearly 305,000 potential Class Members informing them of the terms of the $45 million proposed Settlement, the Plan of Allocation, and Lead Counsel's intention to apply to the Court for attorneys' fees of no more than 25% of the Settlement Fund and reimbursement of up to $350,000 in expenses, including any PSLRA awards to the Lead Plaintiffs.[2] The deadline to file objections was July 1, 2019.

The Class's response has been overwhelmingly favorable. Only one Class Member (who bought 49 shares of Stericycle stock) has objected to the Settlement or Plan of Allocation, which demonstrates that the Settlement is an outstanding result and is heavily endorsed by the Class. Likewise, just one Class Member has objected to Lead Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. The sole objector to the fee, Mark Petri, purchased just 180 shares of Stericycle—or about 0.0001% of the eligible shares.

As discussed below, Mr. Petri is a serial objector who is represented by a law firm controlled by an attorney, Theodore Frank, who routinely and reflexively objects to class action settlements or acts as counsel to objectors. As discussed in more detail below, Mr. Frank founded his firm for the sole purpose of generating class action objections, and in recent years he

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[1] Unless otherwise defined herein, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement dated February 14, 2019 (Dkt. #108-1) (the "Stipulation") or the opening Declaration of John C. Browne (Dkt. # 119) (the "Browne Decl.").

[2] *See* Supplemental Declaration of Luiggy Segura (the "Segura Supp. Decl."), attached as Exhibit 5 to the Supplemental Declaration of John C. Browne (the "Browne Supp. Decl."), at ¶ 1.

has participated in more than 85 such objections as part of a revenue-generating business model he has created for himself.

On July 8, 2019, Mr. Petri's attorney admitted in open court that the proposed Settlement is fair and adequate and that Lead Counsel had every incentive to recover as much as possible for the Class. Mr. Petri's objection goes only to the fee request and is based entirely on innuendo and false speculation that his lawyers conjure up from widely-available public documents, primarily: (1) unproven and subsequently withdrawn allegations from a complaint filed in *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP*, 814 F.3d 132, 143 (2d Cir. 2016), a long-resolved dispute between Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and a former employee; and (2) *Arkansas Teacher Retirement System v. State Street Bank & Trust,* No. 11-10240-MLW (D. Mass.), which involves a different law firm.

Citing these entirely separate and factually distinct matters, Mr. Petri hypothesizes that there must be something inadequate about both Lead Plaintiffs. Mr. Petri acknowledges, however, that he has not yet found any facts to support this theory. To the contrary, he has simultaneously filed a motion for discovery (Dkt. #121) seeking the extraordinary outcome of allowing him to serve harassing discovery on the Lead Plaintiffs at the final approval stage of a Settlement that he himself concedes is fair and reasonable.

The reality is that Mr. Petri's objection lacks merit. In the years since the allegations in *Bernstein* and *State Street* have been in the public record, multiple courts throughout the country have appointed MissPERS and ATRS as class representatives and approved settlements that they endorsed. Courts on multiple occasions have directly confronted and overwhelmingly rejected the precise arguments that Mr. Petri advances here. Finally, as set forth below, the facts of this case are completely different from *Bernstein* and *State Street*. While those cases largely centered around allegations that certain attorneys were paid from the attorneys' fee award without being

disclosed to the court, in this case Lead Plaintiffs have disclosed every law firm that will receive a payment from any award of attorneys' fees, and Lead Plaintiffs have even disclosed the allocation of those fees. *See* Browne Supp. Decl. at ¶3; Supplemental Declaration of Donald L. Kilgore (the "Kilgore Decl."), attached as Ex. 1 to the Browne Supp. Decl. at ¶¶20-21; Supplemental Declaration of Rod Graves, (the "Graves Decl.") attached as Ex. 2 to the Browne Supp. Decl. at ¶5.

This case faced enormous risks. Lead Counsel filed the first complaint in this action nearly three years ago and undertook those risks on a purely contingent basis. At the time, this case was primarily viewed as involving a potential fraud against Stericycle's customers—not against the Company's investors. Thanks to Lead Counsel's creativity, diligence, and hard work, which was closely overseen by the Lead Plaintiffs, the Class of investors here has achieved a very substantial $45 million Settlement. It is no exaggeration to say that but for these efforts investors would not have recovered a single penny in this matter.

For the reasons set forth below, the two objections should be denied and—consistent with the wishes of the overwhelming majority of the Class—the Settlement should be approved and the request for attorneys' fees and expenses granted.

ARGUMENT

I. THE REACTION OF THE SETTLEMENT CLASS SUPPORTS APPROVAL OF THE SETTLEMENT, THE PLAN OF ALLOCATION, AND THE FEE REQUEST

Only one Class Member, Benjamin Brown, who held 49 Stericycle shares, has objected to the Settlement or Plan of Allocation. Courts throughout the country recognize that the receipt of a small number of objections strongly supports granting approval of a proposed Settlement and Plan of Allocation. *See, e.g., Am. Int'l Grp., Inc. v. ACE INA Holdings, Inc.*, 2012 WL 651727, at *6 (N.D. Ill. Feb. 28, 2012) (only 3 objections from a class of over 1,300 "indicates

that the class members consider the settlement to be in their best interest"); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118 (2d Cir. 2005) ("the absence of substantial opposition is indicative of class approval"); *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 967 (9th Cir. 2009) (affirming as "a favorable reaction to the settlement" the submission of 54 objections relative to 376,301 notices); *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *4 (S.D.N.Y. Nov. 9, 2015) (only three objections after mailing over 645,000 notices supported approval).

Only one objection has been received to the fee and expense request. As noted, this objector is represented by a professional objectors' attorney who routinely objects to class action settlements. That only one Class Member objected to the fee request demonstrates that the Class views it as fair and reasonable. *See, e.g.*, *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *1 (S.D. Ill. Nov. 22, 2010) (four objections compared to 158,000 class notices was a "remarkably small number of objections" and "an indication of the class' overwhelming and justified support for their Class Counsel and Class Counsel's Application"); *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) (only two objections to fee request, after mailing 210,000 notices, was "remarkably small given the wide dissemination of notice," which justified fee award of 33 1/3%); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008) ("That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable.").[3]

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[3] *See also Williams v. Rohm & Haas Pension Plan*, 2010 WL 1490350, at *3 (S.D. Ind. Apr. 12, 2010) (150 objections from a class of nearly 18,000 indicates "significant support for this negotiated resolution among class members"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (six objections from a class of approximately one million was "vanishingly small" and "constitutes a ringing endorsement of the settlement by class members").

It is particularly noteworthy here that "no objections were filed [to any aspect of the Settlement or fee request] by any institutional investors who had great financial incentive to object." *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *4 (D.N.J. Apr. 25, 2005). Institutional investors owned more than 90% of Stericycle shares during the Class Period[4] and had a significant financial interest in the outcome of this litigation. The lack of objections from these entities to any aspect of the Settlement or fee request is powerful confirmation of the reasonableness of those requests. *See Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming fee award of 27.5% of $200 million securities class action settlement and noting that none of the "[i]nstitutional investors such as pension funds and university endowments hold[ing] claims to more than 70% of the settlement fund [and having] in-house counsel with fiduciary duties to protect the beneficiaries" objected to the fee request "either by filing a motion asking the judge to reduce the fees or by supporting [the objector's] position").[5]

II. THE OBJECTION TO THE FEE AND EXPENSE REQUEST IS MERITLESS

The sole objection to Lead Counsel's fee request is lodged by a professional objector and is based entirely on speculation that is directly contradicted by the record.

A. Mr. Petri And His Counsel Are Professional Objectors

When "assessing the merits of an objection to a class action settlement, courts consider the background and intent of objectors and their counsel, particularly when indicative of a motive other than putting the interest of the class members first." *Dennis v. Kellogg Co.*, 2013 WL 6055326, at *4 n.2 (S.D. Cal. Nov. 14, 2013); *In re Initial Pub. Offering Sec. Litig.*, 721 F.

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[4] Based on reports filed by institutional investment managers pursuant to Section 13(f) of the Securities Exchange Act of 1934).

[5] *See also In re Bisys Sec. Litig.*, 2007 WL 2049726, at *1 (S.D.N.Y. July 16, 2007) (lack of objections from institutional investors supported the approval of fee request because "the class included numerous institutional investors who presumably had the means, the motive, and the sophistication to raise objections if they thought the [requested] fee was excessive").

Supp. 2d 210, 215 (S.D.N.Y. 2010) ("I concur with the numerous courts that have recognized that professional objectors undermine the administration of justice by disrupting settlement in the hopes of extorting a greater share of the settlement for themselves and their clients.").

Mr. Petri's counsel in this case is Frank Bednarz, who works for the Hamilton Lincoln Law Institute Center For Class Action Fairness ("Hamilton Lincoln"). Hamilton Lincoln is the successor to the Center for Class Action Fairness ("CCAF"), which was founded by Theodore Frank, a professional objectors' attorney. Hamilton Lincoln is controlled and operated by Mr. Frank, and Mr. Frank has submitted a declaration in support of Mr. Petri's objection in this case. As the Northern District of California recently found in rejecting one of his objections, Mr. Frank "has personally objected to class action settlements at least eleven times, and [the Competitive Enterprise Institute ("CEI"), which the CCAF merged into] has done so dozens of times." *Kumar v. Salov N. Am. Corp.*, 2017 WL 2902898, at *4 n.4, *5, *6 (N.D. Cal. July 7, 2017), aff'd, 737 F. App'x 341, 342 (9th Cir. 2018); *see also* Browne Supp. Decl., Ex. 9 at 8 (Frank has objected or acted as counsel to objectors in at least 85 cases).

Mr. Frank founded his firm for the sole purpose of generating objections to class action settlements and constricting class action litigation. While Mr. Frank professes to be acting here in the best interests of the Class, in other arenas he has been more candid about his severe anti-class action bias, stating: "the problem of destructive securities litigation will only be solved when Congress takes contingent-fee trial lawyers and their perverse incentives out of the equation." Theodore Frank, *Enron: Extortion, Interrupted,* N.Y. Sun, Jan 23, 2008.

Mr. Frank's ideological motivations have spurred millions of dollars in "charitable" contributions to CCAF from conservative entities and large corporations. Some of the contributors to Mr. Frank's objection factory include the Koch family foundations, *The American Conservative,* Monsanto, the American Bankers Association, and Exxon-Mobil Corporation. *See*

Eilperin Juliet, "Anatomy of a Washington dinner: Who funds the Competitive Enterprise Institute?", The Washington Post (June 20, 2013); *see also City of Livonia Emps. Ret. Sys. v. Wyeth*, 2013 WL 4399015, at *5 (S.D.N.Y. Aug. 7, 2013) (objections lodged by Mark Petri's wife were not "grounded in the facts of this case, but in her attorney's [Frank's] objection to class actions generally"); *Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 785 (N.D. Ohio Mar. 31, 2010) (Mr. Frank's objections are "long on ideology and short on law");[6] *Gascho v. Glob. Fitness Holdings*, 822 F.3d 269, 278 (6th Cir. 2016) (Frank's arguments were contrary to "the reasoned basis of ample precedent in our circuit and decisions from multiple other circuits"); *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934 (9th Cir. 2015) (rejecting Frank's objection).

In order to keep a steady flow of objections coming, Mr. Frank frequently enlists his own employees or relatives (including Mr. Petri's attorney here, Frank Bednarz, and his wife) to serve as objectors. Papers filed in another case suggest that the CCAF has represented its own employees or their relatives on ***at least 44 different occasions***. Browne Supp. Decl. Ex. 9 at 8.

Mr. Frank's *modus operandi* is to claim at the outset that he is representing clients "*pro bono*," then turn around at the first opportunity and seek attorneys' fees paid by the Class. Here, the Hamilton Lincoln firm is following the same blueprint and has stated to the Court that it is representing Mr. Petri "*pro bono*." Dkt. #120 at 4; Dkt. #121 at 2. *Pro bono* means work performed voluntarily and without payment. But history shows that Mr. Frank will swiftly

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[6] Mr. Frank's Declaration unsuccessfully attempts to deflect the court's criticism in *City of Livonia*. In that case, the court held that Objector Petri's wife, Julia Petri—the co-trustee on the trust account that purchased the Stericycle shares in this case—lacked standing to object, and that even if Mrs. Petri had standing, her objections were "frivolous." 2013 WL 4399015, at *2 (S.D.N.Y. Aug. 7, 2013). While Mr. Frank argues that the court "ultimately agreed with our client that class counsel's fee was too high" (Dkt. #120-1 at ¶14), in reality the court rejected Mrs. Petri's specific objections as "overstated and meritless." *Id*. at *5.

swoop in and apply for a fee if he can argue that his Objection benefited the Class. For example, in *Lonardo*, Mr. Frank represented to the Court that he was working "*pro bono*" (*Lonardo*, No. 06-cv-962 (N.D. Ohio), Dkt. #173 at 3) but later petitioned the court for attorneys' fees. 706 F. Supp. 2d at 816. Indeed, after Frank argued that class counsel was entitled to ***no*** multiplier on its lodestar (which the court disagreed with), Frank asked the court for a 2.2 multiplier for himself. *Id*.

In another example, in *In re Polyurethane Foam Antitrust Litigation*, CCAF again claimed in the beginning that it was representing its client "*pro bono*" (*Polyurethane*, No. 10 MD 2196 (N.D. Ohio), Dkt. #1960 at 1), but later made a request for attorneys' fees that was flatly rejected by the Northern District of Ohio because Mr. Frank sought attorneys' fees equal to "a breathtaking average hourly rate of $2,755," which is "particularly ironic given the amount of ink CCAF spilled attacking the hourly rates of Class Counsel in its Objection[.]" 169 F. Supp. 3d 719, 720 (N.D. Ohio 2016) (emphasis added); *see also Eubank v. Pella Corp*., No. 06 C 4481 (N.D. Ill.), Dkt. #683-1 at ¶13, Dkt. #683 at 11 (Mr. Frank stated that he "only" works *pro bono*, yet he requested $1.5 million in attorneys' fees on a $161,125 lodestar, which amounted to a multiplier of ***9.3***!).

In short, Mr. Frank is not truly motivated here by a desire to help the Class—the Class other than Mr. Petri has no objection to the fee request.

B. Lead Plaintiffs And Lead Counsel Are Adequate Representatives For The Settlement Class

Mr. Petri claims that Lead Counsel and Lead Plaintiffs are inadequate representatives of the Class's interests with respect to the fee application. In support, Mr. Petri relies on the plaintiff's subsequently withdrawn allegations in *Bernstein*, 814 F.3d at 143, a long-settled employment dispute where the plaintiff alleged that BLB&G paid an attorney without disclosing

those payments to the court, and *Arkansas Teacher Retirement System v. State Street Bank & Trust,* No. 11-10240-MLW (D. Mass.), a matter involving an entirely different law firm. Based on these matters, Mr. Petri speculates that there must be something inadequate about both Lead Plaintiffs. Mr. Petri's assertions are contradicted by the record and should be rejected.

1. The Publicly-Disclosed Political Contributions Cited By Mr. Petri Are Constitutionally Protected Speech And Played No Role In This Litigation

Co-Lead Plaintiff MissPERS is widely recognized as a committed and effective advocate for investors, having recovered over $3.5 billion in securities class actions that it has led with distinction as lead plaintiff or class representative. Supplemental Declaration of Donald L. Kilgore ("Kilgore Supp. Decl."), attached as Exhibit 1 to the Browne Supp. Decl. at ¶22. Courts throughout the country have appointed MissPERS as a class representative in securities class actions, and the settlements that MissPERS has achieved in those cases have been universally approved by courts as fair and reasonable.

Faced with this reality, Mr. Petri and his lawyers resort to pure speculation, asserting without basis that because certain attorneys from the law firms involved in this case made publicly-disclosed political contributions to the Mississippi Attorney General, there must be a "conflict of interest" between MissPERS and those firms that renders MissPERS an inadequate Lead Plaintiff. This is meritless.

No court has ever concluded that campaign contributions create a "conflict of interest" for MissPERS in a securities class action or render it an inadequate class representative. To the contrary, every court to consider the idea has rejected it outright. *See Pub. Emps. Ret. Sys. of Miss. v. Merrill Lynch & Co.*, 277 F.R.D. 97, 110 (S.D.N.Y. 2011) (certifying MissPERS as class representative and rejecting "entirely unpersuasive" insinuations of "pay-for-play"); *In re Diamond Foods, Inc. Sec. Litig.*, 295 F.R.D. 240, 255 (N.D. Cal. 2013) (same); *Middlesex*

County Retirement System v. Semtech Corp., No. 07-cv-7114, Dkt. #234 (C.D. Cal. Aug. 27, 2010) (Browne Supp. Decl., Ex. 10) at 8 ("(A)ttorneys are free to exercise their right to donate to politicians who support their views.").[7]

In the words of Judge Rakoff in *Merrill Lynch*:

> Defendants' belatedly-raised insinuations [regarding MissPERS, Bernstein Litowitz and alleged conflicts of interest] ***are not only hopelessly vague but also entirely unpersuasive in the context of the instant litigation.*** The notion that the allegedly close relationship between Plaintiffs' lead counsel and the Attorney General of the State of Mississippi will, in some uncertain manner, cause plaintiffs' counsel to enter into a settlement in this case "less favorable to absent class members" is belied, not only by its inherent improbability, but also ***by the high level of professionalism and diligence on the part of plaintiffs' lead counsel*** already amply demonstrated to the Court over two years' of litigation.

Merrill Lynch, 277 F.R.D. at 110 (emphasis added). Mr. Petri's efforts to evoke some sort of disabling conflict based on publicly-disclosed information is unpersuasive and should be rejected by this Court as it has by all others.

Moreover, Mr. Petri's unsupported speculation is directly contradicted by the record in this case, which demonstrates that political contributions had absolutely no impact on any aspect of this litigation. As set forth in the accompanying declaration from Assistant Attorney General Kilgore, neither MissPERS nor the Mississippi Office of the Attorney General ("OAG") considers political contributions when deciding which cases to pursue, which counsel to select or how those cases are overseen and supervised. *See* Kilgore Supp. Decl., ¶¶4-16.

To the contrary, MissPERS has instituted policies and procedures that are designed to remove even the appearance of any political favoritism. *Id.* As explained in the Kilgore

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[7] *See also In re Cendant Corp. Litig*., 264 F.3d 201, 269 (3d Cir. 2001) (rejecting arguments regarding campaign contributions); *In re Countrywide Fin. Corp. Sec. Litig*., 273 F.R.D. 586, 604-05 (C.D. Cal. 2009) ("attorneys are free to exercise their right to donate to politicians who support their views"); *Medoff v. CVS Caremark Corp*., 2016 WL 632238, at *3 (D.R.I. Feb. 17, 2016) (holding that contributions do not create conflict).

Supplemental Declaration, the OAG and MissPERS maintain a panel of eleven law firms that the OAG has selected based upon their expertise and experience in securities litigation, and which advise OAG and MissPERS regarding securities litigation. *Id.* ¶¶5-6. In deciding whether to become involved in a potential securities class action, the OAG and MissPERS assess the merits of each particular case, and if the case is deemed meritorious then counsel is chosen based solely on which firm first raised the matter with the OAG. *Id.* ¶¶7-8.

This "first to approach" process has been in place for nearly sixteen years and it is the process that MissPERS and the OAG followed here. *Id.* ¶¶8-10. BLB&G was selected as MissPERS' counsel because it was the first firm to apprise the OAG of the matter—indeed, BLB&G filed the initial complaint in this action after an extensive investigation and was the ***only*** firm to approach MissPERS regarding the case. *Id.* ¶9. Thus, contrary to Mr. Petri's conjecture, the record is undisputed that the publicly-disclosed campaign contributions cited by Mr. Petri were irrelevant to the selection of counsel or the oversight of this litigation. They certainly do not provide any basis to suggest that MissPERS is an inadequate Lead Plaintiff.[8]

2. The Withdrawn Allegations In An Employment Dispute Are Irrelevant Here

Mr. Petri also includes entirely speculative and baseless attacks against MissPERS and BLB&G that are drawn from unsupported allegations in a years-old employment complaint in *Bernstein,* No. 14 Civ. 6867 (VEC) (S.D.N.Y.) (the "*Bernstein* Complaint"). These allegations provide no basis for an objection to the attorneys' fees here, nor do they provide a reason to

[8] Mr. Petri's arguments concerning the public donations to the Democratic Attorneys General Association ("DAGA") (Petri Discovery Mot. at 8-9) are even more divorced from reality. These were donations to a national organization. According to Mr. Petri, since BLB&G (and at least eight other law firms he identifies) made publicly-reported donations to DAGA in 2015, and because Mississippi Attorney General Jim Hood was re-elected in 2015, that must be the reason MissPERS (and ATRS) approve of the fee request in this case. Mr. Petri has no basis to make this assertion. It is incorrect and belied by the record.

order any of the discovery Mr. Petri requests. *See* Lead Plaintiffs' Opposition to Discovery Motion, filed herewith.

First, the plaintiff voluntarily dismissed the allegations in the *Bernstein* Complaint years ago.[9] After dismissing his Complaint, the plaintiff signed the following statement:

> On August 22, 2014, I commenced a lawsuit captioned *Bernstein v. Bernstein Litowitz Berger & Grossmann LLP, et al.*, No. 14 Civ. 6867 (VEC) (S.D.N.Y) (the "S.D.N.Y. Action"). At the time I filed my complaint in the S.D.N.Y. Action, based on my investigation and analysis, I believed in good faith that the complaint was well-grounded in both fact and law. In the course of the proceedings that followed the filing of the S.D.N.Y. Action and as a result of communications between my legal counsel and counsel for defendants, I received information that seriously challenges my claims. Among other things, my counsel and I interviewed witnesses to the events from which my claims arose, and we also reviewed relevant documentation. Based on the foregoing information, it is now my belief that, although I had a good faith basis for asserting the allegations and claims in the S.D.N.Y. Action at the time the complaint was filed, the information presents insurmountable factual and legal challenges to my ability to recover other than a breach of contract claim seeking a bonus from the Firm in connection with its representation of Richard Reynolds in the Merck class action litigation, MDL No. 1658 (SRC) (D.N.J.), on the basis that Mr. Reynolds was my client at the time I joined the Firm.

See Mr. Bernstein's February 19, 2015 statement (Bednarz Decl., Ex. C, Dkt. #120-6). As Mr. Bernstein acknowledged, his allegations faced insurmountable factual and legal challenges. *See id*. Such voluntarily-dismissed allegations from a wholly-unrelated matter provide no basis to conclude that MissPERS is an inadequate class representative in this case.

Second, as the Second Circuit Court of Appeals emphasized when unsealing the *Bernstein* Complaint, Mr. Bernstein's allegations were "exactly that—simply allegations, the truth of which has not been proven." *Bernstein*, 814 F.3d at 136.[10]

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[9] Mr. Petri refers to Mr. Bernstein as a former "Partner" of BLB&G. Petri Obj. at 11. Mr. Bernstein was, in fact, an employee, or "of counsel," to BLB&G and not a Partner, or named Partner, of the firm.

[10] *See also Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 107 F.3d 1026, 1040 n.19 (3d Cir. 1997) (allegations asserted in another case that were never proven because that case settled

Multiple courts have recognized that these unsupported and withdrawn allegations have no bearing on the determination of whether MissPERS is an adequate class representative. Indeed, ***just days ago***—in a case where this same argument was raised and rejected at the lead plaintiff stage—MissPERS was certified as a class representative and BLB&G as class counsel in a case pending in the Southern District of New York. *In re Signet Jewelers Ltd. Sec. Litig.*, 2019 WL 3001084, at *9 (S.D.N.Y July 10, 2019). In another case, after the U.S. District Court for the District of New Jersey approved a settlement of more than $1 billion settlement in the *Merck (Vioxx) Securities Litigation*, an investor raised a belated objection to BLB&G's requested attorneys' fees based on the *Bernstein* Complaint. *In re Merck & Co., Inc. Sec., Deriv. & "ERISA" Litig.*, 2016 WL 8674608 (D.N.J. Dec. 23, 2016). The district court denied the objector's motion for an indicative ruling pursuant to Federal Rule of Civil Procedure 62.1 (seeking limited remand to reconsider the court's approval of the settlement). In so doing, the court emphasized that:

> Mr. Bernstein himself voluntarily dismissed the complaint that alleged the kickback scheme. He also issued a statement, dated February 19, 2015, stating that, in the course of the case, "I received information that seriously challenges my claims... [T]he information presents insurmountable factual and legal challenges to my ability to recover ..." This provides additional support for this Court's determination that [the objector], relying on the Bernstein evidence, cannot meet the standard set forth in Rule 60(b)(2).

Id. at *2.

Similarly, in the previously mentioned *Signet* case, another judge appointed MissPERS as lead plaintiff, directly rejecting the same arguments Mr. Petri raises here, and stating there was

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"cannot be taken as true"); *Wright v. Farouk Sys., Inc.*, 701 F.3d 907, 911 n.8 (11th Cir. 2012) ("pleadings are only allegations, and allegations are not evidence of the truth of what is alleged"); *Gore v. Millcreek Twp.*, 2016 WL 6892927, at *7 (W.D. Pa. Nov. 2, 2016) (allegations in a "complaint filed by another individual in another action" are not evidence and are "woefully inadequate" as factual support on a motion), report and recommendation adopted.

"no evidentiary basis to conclude that MissPERS is not adequate to serve as lead plaintiff," because "to rebut the presumption in favor of the movant with the greatest financial loss, there must be 'proof' of a ***non-speculative risk*** that the movant will not be adequate." *See Dube v. Signet Jewelers Ltd.*, No. 16-cv-6728, Dkt. #84 (S.D.N.Y. July 27, 2017) (Browne Supp. Decl., Ex. 12). (emphasis added) (quoting *Schaffer v. Horizon Pharma Plc*, No. 16-CV-1763 (JMF), 2016 WL 3566238, at *3 (S.D.N.Y. June 27, 2016)).[11]

In short, Mr. Petri's contradicted musings do not provide any basis to question the adequacy of MissPERS, its counsel, or the requested attorneys' fees.

Third, the facts of this case are completely different from the allegations in *Bernstein* and none of its potential concerns exist here. The *Bernstein* Complaint alleged that BLB&G made a payment to a Mississippi attorney that was not disclosed to the court.[12] In the present case, all potential payments out of any attorneys' fee award have been disclosed to the Court. Specifically, Lead Counsel has identified and included all firms who may share in a portion of the overall fee and expense award, and specifically stated how any award of attorneys' fees would be allocated among those firms. *See* Dkt. #119 at 39 n.8; *see also* Browne Supp. Decl. at ¶3. There is accordingly no basis for Mr. Petri to assert that Lead Counsel have withheld information from the Court, as Mr. Bernstein alleged in his voluntarily-dismissed case.

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[11] In yet another case, *Boynton Beach Firefighters' Pension Fund, et al. v. HCP, Inc., et al.*, No. 16-cv-1106 (N.D. Ohio), competing lead plaintiff movants argued that the *Bernstein* allegations undermined MissPERS' ability to be appointed as lead plaintiff. However, Judge Helmick of the Northern District of Ohio stated on the record that the *Bernstein* allegations were a "non-issue," and found they were mere "allegations of impropriety that were not substantiated by any court" and "withdrawn in terms of the suggestion or allegation." *HCP* Hrg. Tr. (Browne Supp. Decl., Ex. 11) at 18-19.

[12] Notably, the Second Circuit held that there was no requirement that BLB&G had to disclose this payment to the court. *See Bernstein*, 814 F.3d at 138 n.2 ("Federal Rule 23(h) . . . does ***not*** mandate automatic disclosure of all fee-sharing arrangements in class actions.") (emphasis added).

The other potential concern for which Mr. Petri cites the *Bernstein* Complaint is the allegation in *Bernstein* that a Mississippi lawyer was assigned "pointless" work after an agreement-in-principle had already been reached in underlying litigation. Petri Obj. at 2. Mr. Petri bases his objection and motion in part on speculation that similar concerns are present here. They are not. Kirschberg Supp. Decl., ¶¶4-5; Klausner Decl., ¶¶2-5. Here, additional counsel Gadow Tyler and the Klausner firm performed 98% and 94% of their work, respectively, before the Parties reached the settlement. Kirschberg Supp. Decl., ¶5; Klausner Decl., ¶5. That work was substantive, and it was performed while their time was entirely contingent on a successful outcome in the case. Kirschberg Supp. Decl., ¶¶4-5; Klausner Decl., ¶¶2-3.

3. The Separate *State Street* Matter (Which Involved Another Law Firm) Has No Bearing On The Issues Here

Turning to ATRS, Mr. Petri contends that it, too, must be an inadequate class representative because of proceedings in *Arkansas Teacher Retirement System v. State Street Bank & Trust*, No. 11-10230-MLW (D. Mass)—an entirely different matter involving ATRS and a different law firm. *See* Petri Obj. at 3, 13; Mot. at 2, 10-13. While Mr. Petri admits that "the *State Street* matter does not involve Bernstein Litowitz," he nonetheless claims that it "rais[es] serious questions" about whether ATRS can adequately protect the class in this case where BLB&G is Lead Counsel. Mot. at 10. Mr. Petri is wrong.

a. The Facts In This Case Are Completely Different Than The Facts In *State Street*

Mr. Petri fails as an initial matter to mention that the retired federal Judge who is acting as the Special Master in *State Street* expressly recommended that ATRS remain in its position as class representative in that case. *See* Browne Supp. Decl., Ex. 13 (10/10/18 Findings p. 5). The Special Master also recommended that the law firm acting as lead counsel there, Labaton Sucharow LLP ("Labaton"), continue in the role of lead counsel. *Id.* Further, the *State Street*

Special Master stated that he believes a 25% attorneys' fee award on the $300 million settlement in that case was reasonable. *Id.* at 3.

In any event, *State Street* has no bearing on any issue in this case because the facts there are completely different. In *State Street*, Labaton had an undisclosed "bare referral" agreement with an Arkansas attorney named Damon Chargois. Pursuant to that agreement, Labaton made an undisclosed $4.1 million payment to Chargois despite the fact that Chargois "performed *no work for the class* in the underlying litigation." Petri Obj. at 3 (emphasis in original). This payment was not disclosed to the *State Street* court or to ATRS—Chargois' name was not even mentioned in the fee papers.

None of those facts are present here. In this case, as noted, every single firm or person that will be receiving a payment from any award of attorneys' fees already has been disclosed to the Court. Browne Supp. Decl. at ¶¶4-5; Graves Supp. Decl. at ¶¶4-5; Kilgore Supp. Decl. at ¶21; Kirschberg Supp. Decl. at ¶3. There are no "bare referral" arrangements of the type that existed in the *State Street* matter, and there will be no payments made here to any firm or individual other than (1) BLB&G; (2) Gadow Tyler; and (3) Klausner LLP. *Id.* In short, *State Street* is factually distinct and completely irrelevant to the Court's determination of the reasonableness of the attorneys' fee request in this case.

b. The Uncontradicted Record In This Case Shows That ATRS Monitored The Litigation And Is An Adequate Class Representative

Contrary to Mr. Petri's speculation, the uncontradicted record demonstrates that ATRS has fully discharged its duties as Co-Lead Plaintiff in this case. As set forth in the opening and supplemental Graves Declarations, ATRS has actively monitored the litigation, personally attended a mediation session in Chicago, participated directly in discussions with the Mediator, reviewed all significant pleadings and briefs in the Action, and repeatedly consulted with

BLB&G concerning the settlement negotiations. Graves Decl., Dkt #119-3 at ¶¶3-7. Based on its involvement and oversight, ATRS strongly endorses the proposed Settlement and fee request. Graves Decl., Dkt. #119-3 at ¶¶8-11. Because, unlike in *State Street,* ATRS is fully informed of any and all payments that may be made from any award of attorneys' fees, any concerns about ATRS' adequacy are groundless.[13] Graves Supp. Decl., ¶5.

Further demonstrating the irrelevancy of the *State Street* matter to the issues in this case, multiple courts have approved settlements where ATRS was the sole or co-lead plaintiff during the pendency of the *State Street* matter. *See, e.g., In re Facebook, Inc. IPO Sec. & Deriv. Litig*., MDL No. 12-2389 (S.D.N.Y. Nov. 27, 28, 2018), Dkt. #601 & 604 (approving $35 million settlement and 25% attorneys' fee where ATRS was co-lead plaintiff);[14] *In re Virtus Inv. Partners, Inc. Sec. Litig.,* No. 15-cv-1249 (S.D.N.Y. Dec. 4, 2018) Dkt. #162 (approving $22 million settlement and 25% attorneys' fee in case where ATRS was sole lead plaintiff); *In re Quality Sys., Inc. Sec. Litig.*, No. SACV 13-01818 (C.D. Cal. Nov. 19, 2018) Dkt. #117 (approving $19 million settlement and 25% attorneys' fee in case where ATRS was co-lead plaintiff).

By contrast, ***not a single court***—not even the *State Street* court—has held that ATRS is an inadequate class representative due to the issues raised in the *State Street* matter.

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[13] Mr. Petri's citation to a declaration submitted in *State Street* by George Hopkins, a former executive director of ATRS (Mot. at 11-12), where Mr. Hopkins said that he did not know about the arrangement with Mr. Chargois, is irrelevant. Mr. Hopkins is retired from ATRS and Mr. Graves had primary oversight for this litigation. Graves Supp. Decl., ¶4; Graves Decl., Dkt. #119-3 at ¶¶6-7. Mr. Graves is aware of all three firms that may receive an allocation of attorneys' fees in this case. *Id.* at ¶¶4-5.

[14] At the final approval hearing in *Facebook*, Judge Sweet praised the work of ATRS' counsel, including BLB&G stating, "to have a difficult case like this thoroughly explored, all the facts, . . . brought out, and then to have it resolved in the best interests of the class . . . by skilled and very able lawyers, is really the hallmark of a justice system that . . . I think we can all be very proud of." Browne Supp. Decl., Ex. 22 at 23.

C. While Rule 23(h) Does Not Require Disclosure Of Fee Allocations, Lead Counsel Has Disclosed That Information Here

Mr. Petri also argues that Rule 23(h) requires the disclosure of "how the attorney fee award will be allocated among the plaintiffs' firms." Petri Obj. at 10. As the Second Circuit has recognized, Rule 23(h) has no such requirement. *See Bernstein*, 814 F.3d at 138 n.2 ("Federal Rule 23(h) . . . does ***not*** mandate automatic disclosure of all fee-sharing arrangements in class actions") (emphasis added). Mr. Petri also cites *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 998, 994 (9th Cir. 2010) as standing for the proposition that Rule 23(h) requires disclosure of the attorneys' fee allocation. That is incorrect. In *Mercury*, the Ninth Circuit held that potential objectors must be provided with information concerning the work done by counsel, but in that case, the plaintiffs provided potential objectors with ***no such information*** because the deadline for objections fell ***before*** plaintiffs filed their settlement papers—which is not an issue here. *Id*.[15]

In any event, regardless of whether Rule 23(h) requires its disclosure or not, the proposed allocation between Plaintiffs' Counsel in this case has been disclosed. Browne Supp. Decl., ¶3.

D. The Settlement Is The Product Of A Recommendation From An Independent Mediator, And There Is No Evidence Of Self-Dealing Between The Parties

Mr. Petri's attorney stated in open court on July 8, 2019 that they are not challenging the fairness of the Settlement itself and that Lead Counsel had every incentive to maximize the recovery achieved from Defendants—presumably because Lead Counsel would seek a fee award based on a percentage of the Settlement. Somewhat contradictorily, however, Mr. Petri claims that the 25% fee request is indicative of collusive "self-dealing" between Lead Plaintiffs and

[15] To the extent Mr. Petri finds it necessary or appropriate to rely on Ninth Circuit case law, it should be noted that the "benchmark" attorneys' fee percentage award in the Ninth Circuit is 25%—the same percentage Plaintiffs seek here. *See, e.g.*, *Online DVD-Rental,* 779 F.3d at 949.

Defendants. Petri Obj. at 6. This is baseless.

The Settlement here is the product of extensive, arm's-length negotiations conducted under the auspices of an experienced mediator of securities class actions, Mr. Gregory P. Lindstrom, Esq. of Phillips ADR (the "Mediator"), and there is zero evidence of self-dealing between any of the Parties.

As previously detailed, the proposed Settlement is the result of a Mediators' recommendation from Mr. Lindstrom following extensive arm's-length negotiations. Mr. Lindstrom has submitted a declaration describing the Parties' mediation efforts, including his opinion that the Settlement "represents a recovery and outcome that is reasonable and fair for the Settlement Class and all parties involved." *See* Dkt. #119-1 at ¶10. These facts demonstrate that the Settlement is free of any collusion or "self-dealing" between the Parties. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"); *Castillo v. Noodles & Co.*, 2016 WL 7451626, at *1 (N.D. Ill. Dec. 23, 2016) (Wood, J.) (noting that "the parties reached their settlement after attending private mediation before an experienced mediator [and] [a]t all times during the settlement negotiation process, negotiations were conducted at arm's-length").

Nor is there any other indicia of collusion that should raise concerns here. For example, the Settlement Stipulation does not contain a "clear-sailing" clause—a provision in which defendants agree not to contest class counsel's request for attorneys' fees—nor does it provide for the reversion of any of the Settlement proceeds to Defendants. *See* Stipulation, Dkt #108-1 at ¶¶13, 15-17; *see also Hefler v. Wells Fargo & Co.*, 2018 WL 6619983, at *7 (N.D. Cal. Dec. 18, 2018) (finding "no signs of collusion" between the settling parties because there was no clear

sailing provision, no funds would revert to Defendants, and 20% fee request was reasonable and proportionate to the $480 million settlement fund).[16]

Finally, Mr. Petri is wrong to suggest that current shareholders of Stericycle stock who also happen to be members of the Class but would fall under the $10.00 minimum payment threshold are somehow "worse off" by the Settlement (as opposed to if the case had simply been dismissed). Petri Obj. at 6. Putting aside the fact that some portion of the Settlement Amount has been paid by the Company's insurers and not entirely from the corporate treasury, Mr. Petri's unsubstantiated complaint ignores Class members who may have sold their stock entirely, and is in any event irrelevant as to whether the Settlement is fair, reasonable, adequate, and in the best interest of the Class as a whole.

E. The Requested Fee Is Properly Calculated As A Percentage Of The Recovery Before Deduction Of Notice And Administration Costs

Mr. Petri also argues that Lead Counsel incorrectly asks the Court to calculate its fee request based on the gross $45 million fund, before deducting litigation expenses and notice and administration costs. *See* Petri Obj. at 7. As an initial matter, Lead Counsel wishes to clarify that it was always Lead Counsel's intention to submit a proposed order awarding attorneys' fees net of Litigation Expenses (*i.e.*, 25% of the Common Fund after subtracting Plaintiffs' Counsel's

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[16] The terms of the Settlement here, involving the payment of a substantial and certain $45 million cash recovery, are clearly distinguishable from those in the cases cited by Petri, where the Seventh Circuit has found evidence of collusion. *See Redman v. RadioShack*, 768 F.3d 622, 635, 637 (7th Cir. 2014) (reversing approval of "all-coupon" reversionary settlement that included a "clear-sailing" clause and guaranteed counsel a $1 million payment); *Robert F. Booth Trust v. Crowley*, 687 F.3d 314, 317 (7th Cir. 2012) (reversing approval of non-monetary settlement of derivative lawsuit that included a "clear sailing" provision); *In re Walgreen Co. S'holder Litig.*, 832 F.3d 718 (7th Cir. 2016) (reversing non-monetary settlement of merger litigation that included a clear-sailing provision); *Eubank v. Pella Corp.*, 753 F.3d 718 (reversing approval of claims-made settlement in consumer class action where class could not receive more than $8.5 million and class counsel was awarded a $11 million fee).

expenses and the proposed PSLRA awards to Lead Plaintiffs, which total $214,925.88). Prior to today's filing, Lead Counsel had not yet submitted a proposed fee order the to Court. A copy of Lead Counsel's proposed fee and expenses order is submitted herewith as Exhibit 8 to the Supplemental Browne Declaration, and it seeks fees net of litigation expenses.

With respect to notice and administration costs, Mr. Petri relies on *Redman v. RadioShack*, 768 F.3d 622, 630 (7th Cir. 2014), in support of his claim that the costs of notice and administration of the Settlement also must be deducted from the gross Settlement Amount before fees are awarded. This is not so. Unlike the situation here—where Lead Counsel has achieved a fully-funded $45 million, non-reversionary cash fund from which attorneys' fees, litigation expenses, and notice and administration costs will be paid before a *pro rata* distribution to Class Members—*Redman* involved a coupon settlement where the ultimate gross recovery for the class was uncertain because it had to be monetized from future coupon redemptions, and Defendants had agreed to separately pay a set amount of attorneys' fees to class counsel and to pay for all notice and administration costs. *Id.*

Since the Court's decision in *Redman*, numerous courts in the Northern District of Illinois have awarded attorneys' fees based on the total amount of the Settlement Fund (including notice and administration costs). *See Wilkins v. HSBC Bank Nevada, N.A.*, 2015 WL 890566, at *9-12 (N.D. Ill. Feb. 27, 2015) (calculating fees based on the gross settlement amount); *Ossola v. Am. Express*, No. 13-cv-4836 (N.D. Ill. Dec. 2, 2016), Dkt. #379 at 5, Dkt. #362 at 1 (granting request for fees amounting to one third of the gross settlement fund); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *5 & n.2 (N.D. Ill. Mar. 23, 2015) (calculating fees

based on the gross settlement).[17]

F. The Requested 25% Fee Is Within The Range Of Fees In Comparable Cases And Is Reasonable Considering Counsel's Efforts, The Risks They Faced, And The Recovery Obtained

Mr. Petri, with disregard for Lead Counsel's efforts, the risks it undertook, and the results achieved, argues that this case does not warrant a 25% fee award because it was settled prior to the Court's decision on Defendants' motion to dismiss the Complaint. Petri Obj. at 7-8. Mr. Petri is wrong. In fact, the pending resolution of Defendants' motion to dismiss was one of the most serious risks Lead Plaintiffs faced in the case at the time of settlement.

First, any evaluation of an attorneys' fee request out of a common fund should consider the result that the attorneys achieved for the Class. Mr. Petri's Objection makes an oblique reference to the $45 million recovery here being a small percentage of the alleged $7.6 billion market capitalization loss. Petri Obj. at 7, 10. But, as noted, Mr. Petri does not object to the Settlement and, in any event, the market capitalization loss is not equivalent to damages. Rather, Defendants had significant loss causation arguments that could have seriously reduced or eliminated entirely the recoverable damages, the settlement amount was the result of a mediator's recommendation, and it was based in large part on Stericycle's ability to pay. Browne Decl., Dkt. #119 at ¶¶83-87.

Second, Mr. Petri greatly understates and misconstrues the risks Lead Counsel faced in prosecuting the Action. For example, he argues that the separate court proceedings brought against Stericycle arising out of the API fraud alleged here reduced the risk Lead Counsel faced. Petri Obj. at 9-10. The opposite is true. As an initial matter, ***none of those cases involved a***

[17] If the Court were to determine that attorneys' fees should be calculated net of notice and administration costs, as well as litigation expenses, the Claims Administrator here, JND, has estimated notice and administration costs will be approximately $900,000, and that amount can be set aside. *See* Segura Supp. Decl., ¶5.

claim on behalf of Stericycle's investors under the federal securities laws. They instead made allegations regarding what was at most a consumer fraud against Stericycle's customers, which is exactly how this case was viewed until July 2016 when BLB&G and Stericycle investors brought the first action focused on a recovery for investors under the federal securities laws.

Moreover, none of these cases even proved the existence of a consumer fraud—they all settled or were otherwise resolved without any admissions of wrongdoing on Stericycle's part or any trial judgments. Thus, contrary to Mr. Petri's assertions, Lead Counsel was assuming the risk of proving both the underlying alleged consumer fraud and a companion securities fraud on behalf of investors.

Indeed, as the Court knows, Defendants used the existence of these consumer cases against Lead Plaintiffs throughout this case. Defendants' principal argument on their motions to dismiss was that the January 2013 public disclosure of the New York Attorney General's settlement with Stericycle related to the API fraud, and the March 2013 announcement of the filing of the Customer Case rendered the entire case time-barred under the relevant two-year statute of limitations. Thus, the existence of these other pending actions in material ways ***increased*** the risk that this case could have been dismissed in its entirety on statute-of-limitations grounds, which would have precluded any recovery for the Class. Plaintiffs explained this risk in detail in their opening final approval papers, but Petri simply ignores it. *See* Browne Decl., Dkt. #119 at ¶¶73-76.

Mr. Petri also argues that the existence of pre-suit criminal or civil proceedings make a subsequent class action less risky. To be clear, there were no companion criminal proceedings here. And notably, the Securities and Exchange Commission ("SEC") has taken no action against Stericycle—the instant case is the only case that has sought to enforce the federal securities laws to recover for Stericycle's investors. Mr. Petri also disingenuously argues that the

$259 million settlement of the Customer Case, filed in 2013, supports his argument. Petri Obj. at 10. But the Customer Case did not settle until August 2017, after Plaintiffs already filed this suit, incurred the risk of non-recovery, and devoted significant time and expenses to its prosecution. The Customer Case settlement also significantly depleted Stericycle's cash position and made the likelihood of achieving more than the $45 million settlement in this case even more remote. At the time the Parties reached the Settlement, Stericycle was reporting only $52 million in free cash available (its latest Form 10-Q reports $48.2 million in available cash).[18]

The fact that no other law firm filed a securities fraud case against Stericycle relating to this matter is further evidence of the risks Lead Counsel faced in bringing it. *See Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) ("Lack of competition not only implies a higher fee but also suggests that most members of the securities bar saw this litigation as too risky for their practices."). Thus, but for Lead Counsel's efforts here to identify and prosecute this case, not a single penny would have been recovered for Stericycle's investors.

Third, contrary to Mr. Petri's assertion that the cases cited by Lead Counsel in its opening brief (awarding attorneys' fees of one third to 40% of a common fund) are "outliers with little in common with the present case" (Petri Obj. at 8), in fact, "[c]ourts routinely hold that one-third of a common fund is an appropriate attorneys' fees award in class action settlement." *Castillo*, 2016 WL 7451626, at *5 (Wood, J.) (citing *Taubenfeld v. AON Corp.*, 415 F.3d. 597, 599 (7th Cir. 2005) (noting class actions in the Northern District of Illinois have awarded fees of 30-39% of fund)).

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[18] Defendants also raised additional cogent arguments in their motions to dismiss regarding falsity, scienter, and loss causation that could have resulted in the complete dismissal of this Action. Browne Decl., Dkt. #119 at ¶¶77-84. Even if Lead Plaintiffs succeeded at the motion to dismiss stage, there was no guarantee that they could ultimately prove Defendants' liability and Class-wide damages after additional dispositive motions, a trial, and the appeals that would undoubtedly follow.

Indeed, courts do not hesitate to award fees equal to or greater than 25% of a common fund in class actions that settle prior to a decision on a motion to dismiss. *See*, *e.g.*, *Taubenfeld,* 415 F.3d at 600 (affirming 30% fee award on settlement obtained "at a relatively early point in time"—*i.e.*, before defendants' motion to dismiss was decided); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 587, 599 (N.D. Ill. 2011) (awarding 33.33% fee on settlement reached prior to decision on defendant's motion to dismiss).

Fourth, Mr. Petri cites to supposed "empirical data" showing that "the market rate for large settlements obtained prior to resolution of a motion to dismiss is 8%." Petri Obj. at 8. Mr. Petri's "empirical data"—one New York pension fund's "maximum fee grid" for securities litigation, which the fund submitted when it objected to an attorneys' fee request in a securities class action, *Knurr v. Orbital ATK, Inc.*, No. 1:16-cv-01031-TSE-MSN (E.D. Va.)—is completely irrelevant here. One institution's proposed fee percentage in support of a fee objection is not the "market rate"; it is the lowest end of the market rate spectrum. Mr. Petri also ignores that the court in *Orbital* overruled the New York fund's objection in its entirety as "procedurally invalid and substantively without merit," and awarded attorneys' fees in the amount of 28% of the $108 million settlement. *Orbital*, No. 1:16-cv-01031-TSE-MSN, slip op. at 2, 4 (E.D. Va. June 7, 2019), Dkt. #462 (Browne Supp. Decl., Ex. 14) at ¶¶4, 9.

Under the Seventh Circuit's "market rate" analysis, "when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("*Synthroid*

I").[19] Here, a 25% agreement for a contingency lawyer in a high-risk case such as this one easily fits within the market rate. According to actual aggregate, publicly-available "empirical data," for securities class action cases that settled from 2014 through 2018, for amounts ranging from $25 million to $100 million, plaintiffs' attorneys were awarded a median fee of 25%—the same percentage fee requested here. *See* Browne Supp. Decl., Ex. 15 (NERA, Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* (2019)), at 41.

G. A Lodestar Cross-Check Is Unnecessary, But Plaintiffs' Counsel's Lodestar Information Is Sufficient For The Court To Perform One

Mr. Petri argues that a lodestar cross-check is required here and claims that Lead Counsel failed to provide documentation sufficient for the Court to conduct the cross-check. Petri Obj. at 13-14. Mr. Petri is wrong on both the law and the facts.

Under Seventh Circuit law "[a] district court is under no obligation to cross-check the requested fees against the lodestar." *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 849 (N.D. Ill. 2015) (citing *Williams v. Rohm & Haas Pension Plan*, 658 F.3d. 629, 636 (7th Cir. 2011) ("[C]onsideration of a lodestar check is not an issue of required methodology")); *see also* 5 Newberg on Class Actions § 15:88 (5th ed.) ("a cross-check is not required"); *Schulte,* 805 F.

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[19] Mr. Petri also relies on *In re Synthroid Mktg. Litig.*, 325 F.3d 974 (7th Cir. 2003) ("*Synthroid II*") and argues that the instant case "warrants far lower fees than in *Synthroid II*" because the risk in that case was "significant." Petri Obj. at 7-8. *Synthroid II* was a consumer fraud case, not a securities case. In its opinion in *Synthroid II*, the Seventh Circuit recognized this distinction, writing that "[t]he record does not show how risky securities suits are…and therefore does not permit a reliable comparison between fees in securities cases and the fees in a suit such as this one." *Synthroid II*, 325 F.3d at 979. Many courts have in fact recognized that, "[a]s a general rule, securities class actions are notably difficult and notoriously uncertain to litigate." *In re Facebook IPO, Inc. Sec. & Derivative Litig.*, 2015 WL 6971424, at *3 (S.D.N.Y. Nov. 9, 2015) (citations and internal quotations omitted). This case was no exception.

Supp. 2d at 598 n.27 (N.D. Ill. 2011) ("[U]se of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive").[20]

In any event, if the Court finds it necessary to perform a lodestar cross-check, each of the Plaintiffs' Counsel firms provided the Court with a declaration detailing the work it performed, the hourly rates of its professionals, the number of hours those professionals accumulated, and the reasonable lodestar incurred. *See* Browne Decl., Dkt. #119, 119-6; Kirschberg Decl., Dkt. #119-7; Klausner Decl. This approach is consistent with the law of this and other Circuits in common fund cases, which does not require the district court to review detailed time records when awarding fees under the percentage-of-the-fund method, even when applying a lodestar cross-check. *See, e.g., Williams v. Rohm & Haas Pension Plan*, 2010 WL 1644571, at *2 (S.D. Ind. Apr. 21, 2010) (ordering class counsel to submit "a breakout by name of each attorney and other legal professionals who assisted in the prosecution of this litigation…along with a tally of the hours expended by each and their respective billing rates" for purposes of performing a lodestar cross-check); *Gascho v. Glob. Fitness Holdings, LLC*, 2016 WL 2802473, at *10 (6th Cir. May 13, 2016) (finding billing information similar to that supplied by Plaintiffs' Counsel in this case sufficient to uphold a fee award made based on a lodestar analysis where the district court independently validated the fee award under the percentage-of-the-fund method).

Without any support for his position, Mr. Petri argues that counsel's lodestar "is inflated due to high billing rates," pointing to staff attorney rates at $350-$395/hour and Associate rates

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[20] Mr. Petri's attorney, Theodore Frank, when applying for his own attorneys' fees within the Seventh Circuit, has himself argued that lodestar cross-checks are not required. Browne Supp. Decl., Ex. 16 at 11 ("District Courts in the Seventh Circuit are under no obligation to cross-check the requested fees against the lodestar.").

at up to $700/hour.[21] However, as recent courts have found, Lead Counsel's billing rates, which equate to an approximate blended hourly rate of $504 for all timekeepers, are reasonable fees for attorneys working on sophisticated class-action litigation. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (approving fee award following lodestar cross-check and finding that "[t]he blended average hourly billing rate is $529 per hour for all work performed and projected, with billing rates ranging from $275 to $1600 for partners, $150 to $790 for associates, and $80 to $490 for paralegals"); *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479, slip op at 21-22 (N.D. Cal. Dec. 18, 2018), Dkt. #252 (Browne Suppl Decl., Ex. 17) (finding reasonable counsel's rates that ranged from $650 to $1,250 for partners or senior counsel, from $400 to $650 for associates, and from $245 to $350 for paralegals, and a blended hourly rate for all timekeepers of $406).

H. The PSLRA Awards For The Lead Plaintiffs Are Appropriate

Mr. Petri contends that the "award sought by the lead plaintiffs is also unduly high," and asserts that MissPERS' request for $21,618.75 should be reduced. Petri Obj. at 14. MissPERS had a very active role in this litigation and there is no basis to reduce or deny its requested PSLRA award. The amount was calculated based on the hourly rates for similar work in Mississippi, and these or similar rates have been accepted by numerous courts. *See* Kilgore Supp. Decl., ¶25; *see also, e.g., La. Mun. Police Emps. Ret. Sys. v. Green Mountain Coffee Roasters, Inc.*, 2:11-cv-00289 (WKS) (D. Vt.), Dkt. #349 (Browne Suppl Decl., Ex. 18) at ¶9 (granting MissPERS a PSLRA award of $38,175.00 calculated on rates ranging from $225 per hour to $300 per hour); *Bach v. Amedisys, Inc.*, No. 1:10-cv-00395-BAJ-RLB (M.D. La), Dkt.

[21] Only two BLB&G Associates are billed at $700/hour. Catherine van Kampen is a 1998 law school graduate and John Mills is a 2000 law school graduate, and they both have deep and valuable experience litigating complex actions, including securities class actions.

#354 (Browne Supp. Decl., Ex. 19) at ¶6 (granting MissPERS a PSLRA award of $43,937.50 based on hourly rates ranging from $225 per hour to $275 per hour); *In re Schering-Plough Corp. Sec. Litig.,* No. 08-397 (DMC) (JAD) (D.N.J.), Dkt. #439 (Browne Supp. Decl. Ex. 20) at ¶6 (granting MissPERS a PSLRA award of $39,080.00 on 2013 hourly rates ranging from $175 per hour to $220 per hour).

I. A Fee Multiplier On Counsel's Lodestar Is Appropriate

In a final "kitchen sink" argument attacking the fee application, Mr. Petri contends that the Court should not award Plaintiffs' Counsel a multiplier on their lodestar. Petri Obj. at 14-15. Relying on cases dealing with attorneys' fees awarded under fee-shifting statutes, Mr. Petri asserts that the Court is required to limit the fees here to the attorneys' lodestar.

This argument misstates Seventh Circuit law. Under *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560 (7th Cir. 1994), which Mr. Petri fails to mention anywhere in his brief, the Seventh Circuit considered whether "when a case is initiated under a statute with a fee-shifting provision [but] is settled with the creation of common fund . . . statutory fee principles should govern in whole or in part the attorney fee award." *Id*. at 563. The Seventh Circuit held that "risk multipliers remain available in common fund cases," *id*. at 56, and "a risk multiplier is not merely available in common fund cases ***but mandated***, if the court finds that counsel had no source of compensation for their services." *Id*. at 565 (quotations omitted). This case is a common fund case and, thus, it is controlled by common fund principles. A multiplier is therefore appropriate here. *See also Fresno Cnty. Emps. Ret. Assoc. v. Isaacson/Weaver Family Tr.*, 925 F.3d 63 (2d Cir. 2019) (relying in part on *Florin*, the Second Circuit, affirmed this precise argument, holding that a multiplier was appropriate because counsel "not only . . .

skillfully negotiat[ed] that settlement fund but [bore] the risk that the suit would not generate any recovery.").[22]

J. The Requirements For Filing An Objection Are Reasonable

Finally, Petri objects to the requirement in the Preliminary Approval Order and the Notice that objectors send a hard copy of their submission to the Parties' counsel by the objection deadline. Petri Obj. at 15. This is a non-issue. Lead Counsel and Defendants' Counsel received an electronic copy of Mr. Petri's objection upon its filing via the Court's CM/ECF system. For *pro se* Class Members who do not have access to electronic filing, the requirement that the objection be sent to counsel in addition to the Court helps to ensure that the objection is in fact received and considered by the Court.

III. THE OBJECTION TO THE SETTLEMENT LACKS MERIT

The sole objection to the Settlement was submitted *pro se* by Mr. Benjamin Brown, a Class Member who purchased just 49 shares of Stericycle stock during the Class Period and has a recognized loss of approximately $462.00. Mr. Brown primarily contends that the $45 million Settlement Amount is inadequate compensation, and the proposed Settlement favors "wealthy individual investors and large institutions" over "small-scale investors" like Mr. Brown. As discussed below, Mr. Brown's Objection should be denied.

A. Mr. Brown's Claim That The Settlement Is Inadequate Lacks Merit

Mr. Brown argues that "[t]he settlement amount of $45 million is inadequate compensation" to the Class. Brown Obj. at ¶6. He compares "the proposed settlement amount

[22] Mr. Petri's reliance on the Supreme Court's decision in *Perdue v. Kenny A.*, 559 U.S. 542 (2010), is misplaced because *Kenny A.* is limited to fees awarded pursuant to fee-shifting statutes. Mr. Petri also cites *In re Sears, Roebuck & Co. Front Loading Washer Prods. Liab. Litig.*, 867 F.3d 791 (7th Cir. 2017). However, nothing in *Sears* stands to overrule *Florin* or otherwise supports the extension of the limited holding in *Kenny A.* to common fund cases. *See also Fresno Cnty. Emps. Ret. Assoc.*, 925 F.3d at 72-73.

($45 million, or $33.75 million after estimated attorneys' fees are subtracted)" to "the potential scale of the loss ($7.6 billion)" (Brown Obj. at ¶12) and states that he (along with other "small retail investors") "would be better served by proceeding to trial than settling the case for $45 million." Brown Obj. at ¶10. This argument is wrong for many reasons.

First, Mr. Brown's criticism that the Class would have been better served had Lead Plaintiffs continued to litigate through trial fails to adequately account for the many serious risks that plaintiffs faced which could have resulted in no recovery at all. These risks were explained in detail in Lead Plaintiffs' opening settlement papers (Dkt. #119 at ¶¶25-33) and they easily justify the Lead Plaintiffs' decision to accept the substantial payment of $45 million now rather than gambling on pushing the case to trial.

Moreover, the proposed $45 million is a substantial payment above the insurance policy limits available to Defendants and was the result of a recommendation and mediators' proposal by an experienced and independent Mediator. Lindstrom Decl, Dkt. #119-1. Tellingly, even the experienced professional objectors' attorney representing Mr. Petri agrees that the Settlement is fair and reasonable. As he stated in open court on July 8, 2019, Lead Counsel had every incentive to maximize the recovery from Defendants and Mr. Petri does not object to the Settlement.

It is of course always possible to argue that additional litigation *might* have led to a better settlement, but that is never certain. More importantly, it is not the job of Lead Plaintiffs to ignore serious risks and "swing for the fences" rather than accept a significant payment that resolves the case to the benefit of the Class. *See In re Quintus Sec. Litig.*, 201 F.R.D. 475, 481 (N.D. Cal. 2001) (Lead Plaintiffs are entrusted to "decide whether and when the case should be settled or taken to trial.").

Lead Plaintiffs' decision here was particularly wise given the reality of Stericycle's financial condition. At the time the Parties reached the agreement to settle in early December 2018, Stericycle's stock was trading at approximately $45 per share. This represented a substantial decline during the pendency of the litigation (for instance, in August 2018, the Company's stock had been trading at over $70 per share). The Company was also engaged in a massive "business transformation" initiative that had, among other things, resulted in massive layoffs and restructurings, including the termination of hundreds of employees.

And most worryingly for the Class, Stericycle was reporting that it had only $52 million in free cash available (its latest Form 10-Q reports $48.2 million in available cash). Thus, it is highly unlikely that Stericycle would be able to pay any judgment that was significantly larger than the $45 million recovery achieved by the Settlement—and if Mr. Brown had his wish and Lead Plaintiffs pushed the case to trial, overcoming all the many risks that would entail, Stericycle would surely be forced into bankruptcy and the Class would be left with nothing, further underscoring the reasonableness and adequacy of the Settlement.

Mr. Brown notes that his estimated recovery under the Settlement is $9.80 (based on the estimated per share recovery stated in the Notice) and speculates that he might not receive anything under the Settlement because of the $10.00 minimum payment threshold under the proposed Plan of Allocation.[23] Brown Obj. at ¶10. Mr. Brown then compares this amount to his

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[23] While Mr. Brown does not appear to specifically take issue with the $10.00 minimum payment amount under the proposed Plan of Allocation, it should be noted that *de minimis payment* thresholds are a standard provision in securities class action settlements because they reduce the claims administration costs associated with monitoring, printing and mailing checks for relatively small amounts. *See* 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS § 6:23 (10th ed. Westlaw 2013) ("Courts have recognized that minimum payment thresholds for payable claims benefit the class as a whole because they protect the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs. Courts should approve such thresholds, with $10 being a fair and commonly used figure.").

$462.23 Recognized Loss Amount under the Plan of Allocation and notes that his "estimated recovery under the settlement is a tiny faction … or 2.1% of what [he] might recover if Lead Plaintiffs allegations were accepted by a jury." Brown Obj. at ¶11.

But Mr. Brown is incorrect that the Class's recovery after trial would be equal to the market loss suffered by investors in Stericycle stock. *See* Browne Decl., Dkt. #119 at ¶¶83-84. As previously explained, if this case were litigated to a final judgment in favor of Lead Plaintiffs, damages recoverable under the securities laws would be limited to those that resulted from defendants' false or misleading statements or omissions. In light of the very substantial loss causation issues in this case (*id.*), the recovery after trial would be significantly less than the market capitalization loss.

B. The Settlement Does Not Favor "Large" Investors Over "Small" Investors

Mr. Brown also objects to the Settlement because he believes it favors large, institutional investors and wealthy individual investors over small investors like himself. In what is essentially a repeat of his earlier argument, Mr. Brown argues that "[w]ith a trial, even persons who bought only a single share could obtain actual and meaningful recoveries." Brown Obj. at ¶14.

The role of Lead Plaintiffs and Lead Counsel is to achieve the maximum recovery for the entire Class, and in the face of the significant litigation risks discussed above, the prudent course of action here was to settle on the terms of the proposed Settlement. It is just a fact of life that shareholders who purchased more shares (and lost more money) will recover more under the Settlement. Rather than being biased against smaller shareholders, this is eminently fair (after all, larger shareholders suffered greater damages because of the alleged fraud). It would be reckless and unwise for Lead Plaintiffs to refuse a substantial and clearly reasonable Settlement only to

gamble on further litigation in order to ensure that very small shareholders like Mr. Brown would receive additional compensation.

Brown's final objection is that Lead Plaintiffs have not provided adequate information for the Court and the Class to assess Stericycle's financial condition. This objection is also without merit. This point already has been explained at length and it should be noted that Lead Counsel did retain a financial expert to assist in analyzing Stericycle's financial situation in connection with settlement negotiations. *See* Browne Decl., Dkt. #119 at ¶130.

CONCLUSION

For the foregoing reasons and the reasons set forth in their opening papers in support of the Motions, Lead Plaintiffs and Lead Counsel respectfully request that the Court approve the proposed Settlement, the proposed Plan of Allocation, and the request for attorneys' fees and reimbursement of Litigation Expenses. Copies of the (i) proposed Judgment Approving Class Action Settlement; (ii) proposed Order Approving Plan of Allocation of Net Settlement Fund; and (iii) proposed Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses are attached to the Browne Supp. Decl. as Exhibits 6, 7 and 8, respectively.

Dated: July 15, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John C. Browne, an attorney, hereby certify that a copy of the foregoing Reply Memorandum Of Law In Further Support Of (I) Lead Plaintiffs' Motion For Final Approval Of Settlement And Plan Of Allocation And (II) Lead Counsel's Motion For An Award Of Attorneys' Fees And Reimbursement Of Litigation Expenses was served on counsel for all parties electronically via the CM/ECF system on July 15, 2019.

A copy of this Reply Brief is also being served by regular U.S. Mail on Objector Benjamin Brown at the address set forth in his objection.

Dated: July 15, 2019

By: */s/ John C. Browne*
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