UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CITIGROUP INC. BOND LITIGATION	Master File No. 08 Civ. 9522 (SHS) ECF Case

REPLY MEMORANDUM OF LAW IN SUPPORT OF (1) BOND PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION; AND (2) BOND COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

Max W. Berger
Steven B. Singer
John C. Browne
John Rizio-Hamilton
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Attorneys for Bond Plaintiffs and Court-appointed Bond Counsel

Additional counsel listed on signature block

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Bond Plaintiffs and Bond Counsel respectfully submit this reply memorandum of law in further support of: (1) Bond Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Bond Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.

I. INTRODUCTION

The Garden City Group, Inc. ("GCG"), the Claims Administrator, has disseminated the Court-approved Notice to almost 500,000 potential Bond Class Members and nominees informing them of, among other things, the terms of the Settlement and the Plan of Allocation, and Bond Counsel's intention to apply to the Court for attorneys' fees of no more than 20% of the Settlement Fund and reimbursement of up to $10,500,000 in expenses, including any PSLRA awards to the Bond Plaintiffs.[1] The deadline to file objections was June 27, 2013.

The Bond Class's response to the Settlement has been overwhelmingly favorable. Bond Counsel has received only four objections to the Settlement or Plan of Allocation from potential Bond Class Members, none of whom claim that the $730 million Settlement is inadequate. The number of objections is infinitesimal compared to the size of the Bond Class. Indeed, these objectors purchased approximately 0.00014% of the total face value of Bond Class Securities issued during the Offerings Period, and collectively lost less than $20,000 as a result of these purchases. Significantly, not a single institution has objected to any aspect of the Settlement or the Plan of Allocation, or Bond Counsel's fee and expense request. Many of these institutions had large financial interests in this Action, and have their own in-house legal departments to closely review

[1] *See* Affidavit of Jason Zuena Regarding (A) Mailing of the Notice and Proof of Claim Form and (B) Report on Requests for Exclusion Received ("Zuena Aff."), attached as Exhibit 1 to the Supplemental Declaration of Steven B. Singer in Further Support of (1) Bond Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Bond Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Singer Reply Declaration" or "Singer Reply Decl."), at ¶ 2.

the proposed Settlement and fee request.[2] The absence of any meaningful objection to the Settlement is powerful confirmation that the Bond Class believes that the Settlement is an outstanding result. *See In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 457, 458 (S.D.N.Y. 2004) (Lynch, J.) (six objections out of a class of approximately one million was "vanishingly small" and "constitutes a ringing endorsement of the settlement by class members").

Further confirming the Bond Class's endorsement of the Settlement, Bond Counsel has received an extraordinarily small number of requests for exclusion, particularly given the size of the Bond Class. Only 31 requests for exclusion have been received (*see* Zuena Aff. at ¶ 5), 18 of which are from individuals who are not members of the Bond Class, did not suffer any losses from their purchases of Bond Class Securities, or did not provide sufficient information to determine whether they are Bond Class Members.[3] The minimal number of requests for exclusion is additional compelling evidence that the Settlement and the Plan of Allocation are fair and reasonable, and should be approved by the Court. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 118, 119 (2d Cir. 2005) ("the favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry").

The Bond Class's reaction to Bond Counsel's fee and expense request also has been overwhelmingly positive, and is strong evidence that the Bond Class believes that the fee and expense request is fair and reasonable. Indeed, Bond Counsel has received only two objections to

[2] The specific percentage of Bond Class Securities owned by institutions is not available because institutions are not required to publicly report their bond holdings. However, a substantial percentage of Citigroup's Bond Class Securities were undoubtedly owned by institutions during the Offerings Period. Indeed, according to a 2012 study by staff economists at the Federal Reserve, as of the end of 2010, institutions held approximately 75 percent of all outstanding corporate bonds. *See* Fang Cai, Song Han and Dan Li, *Institutional Herding in the Corporate Bond Market*, Board of Governors of the Federal Reserve System, International Finance Discussion Papers No. 1071 (December 2012), at 3. Moreover, more than 66 percent of Citigroup's common stock was owned by institutions.

[3] Of the remaining 13 requests for exclusion, by far the largest exclusion request comes from a Bond Class Member who filed an individual action in early 2011, nearly two years before the Settlement was reached. Excluding that request, the 12 remaining investors who requested exclusion purchased just 0.0018% of the Bond Class Securities issued during the Offerings Period.

the requested fee. The first objection, filed by Bruce M. Smackey, incorrectly asserts that Bond Counsel is seeking a fee of $293 million, or approximately 40 percent of the Settlement – more than twice the amount that Bond Counsel has requested.

The second objection, which contends that Bond Counsel should receive a fee of 15 percent, was filed by an attorney, John J. Pentz, who is a "serial" or "professional" objector, *i.e.*, an attorney who routinely seeks out class action settlements and fee requests for the purpose of lodging unsupported objections. *See, e.g.*, *Barnes v. FleetBoston Fin. Corp.*, No. 01-10395-NG, 2006 WL 6916834, at *1, 2 (D. Mass. Aug. 22, 2006) (Pentz is a "professional objector"). Pentz rests his objection on his supposition that the staff attorneys who worked on this matter are not employees of Bernstein Litowitz Berger & Grossmann LLP ("Bond Counsel" or "BLBG"), but "independent contractors" who work "offsite" and do not utilize firm resources. Pentz's assumptions are wrong. Contrary to what he contends, all BLBG staff attorneys who worked on this case were employees of the firm. They were issued W-2 Forms (not 1099 Forms), were entitled to benefits, including health insurance and 401(k) plans, received legal training (including firm-sponsored CLE programs), and were eligible to receive discretionary, year-end bonuses. Moreover, the firm's staff attorneys did not work "off-site," but on the 36th floor of BLBG's offices at 1285 Avenue of the Americas, where they shared office space with the firm's associates and partners, and utilized all firm resources, including secretaries, paralegals and other office services. As set forth in the Singer Declaration, the staff attorneys in this case did critical, substantive work that directly benefited the Bond Class, including analyzing documents to develop evidence necessary to prove Bond Plaintiffs' complex and difficult claims, and helping to prepare BLBG's partners and associates to take and defend depositions.

Pentz's further contention that staff attorney time should be treated as an expense rather than included in the lodestar is wrong as a matter of law. No court has ever held that staff attorney time

should be treated as an expense, and Pentz has failed to cite a single decision supporting his position. To the contrary, courts in this District and across the country have uniformly granted fee awards to Bond Counsel based on lodestars that included staff attorney time. *See* authorities cited in note 12, *infra*.

In sum, as set forth below and in Bond Counsel's opening papers, the proposed Settlement represents an outstanding result for the Bond Class, and the requested fee is fully justified under Second Circuit law. Accordingly, each of the objections should be rejected.

II. ARGUMENT

A. The Giffin Objection Should Be Rejected

Donald W. Giffin (the "Giffin Objection") objects to the Settlement because: (1) the $730 million cash payment comes solely from "Citigroup (and therefore its shareholders)," without contributions from any individuals; and (2) it does not provide "adequate injunctive relief" that would "prevent officers, directors, supervisors and managers from misleading the securities-buying public from similar actions in the future." Giffin Objection at 1. As set forth below, the Giffin Objection should be rejected.

As an initial matter, Mr. Giffin has not established that he has standing to object to the Settlement. While he makes a conclusory assertion that he is a Bond Class Member, he does not identify what Bond Class Securities he purportedly purchased, and provides no information or documentation showing when, if ever, those purchases were made. It is well-established that a bare assertion by an objector that he is a class member is not sufficient to establish standing to object to a proposed settlement. *See Cen. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244 (2d Cir. 2007) ("Because CareFirst is not a class member, it does not have an affected interest in the class Plaintiffs' claims against Medco so as to be able to assert its objections"). Moreover, "[a]llowing someone to object to settlement in a class

action based on this sort of weak, unsubstantiated evidence would inject a great deal of unjustified uncertainty into the settlement process." *In re Initial Pub. Offering Sec. Litig.*, No. 21 MC 92 (SAS), 2011 WL 3792825, at *2 (S.D.N.Y. Aug. 25, 2011) (internal quotation omitted) (finding objector's documentation insufficient to establish membership in the class by a preponderance of the evidence). *See also Feder v. Elec. Data Sys. Corp.*, 248 Fed. App'x 579, 581 (5th Cir. 2007) (same). Mr. Giffin's objection should be rejected for this reason alone.

In any event, Mr. Giffin's objections lack merit. Mr. Giffin's first objection – on the grounds that the "officers, directors, supervisors and managers who instigated and approved the subprime loans are paying nothing" (Giffin Obj. at 1) – should be rejected for multiple reasons. First, the concerns that the Court expressed regarding the lack of contribution from individual defendants to the settlement in the Stock Action are not present here. In connection with final approval of the Stock Action, the Court questioned whether "the absence of any payments from the individual defendants render[s] the settlement unfair to class members who still hold the Citigroup stock they purchased during the class period," noting that, because Citigroup was paying the full amount of the settlement, it arguably results in "a shift of money from the current shareholders [of Citigroup] to . . . former shareholders." April 1, 2013 Order, No. 07-cv-9901, ECF No. 239 & April 8, 2013 Tr. at 5. Here, unlike the Stock Action, the Bond Class is comprised of investors who purchased Citigroup's bonds and preferred securities, not its common stock. It is well-established that purchasers of a corporation's debt securities are creditors of the corporation, rather than "owners" as is the case with common stock holders. *See, e.g., Metro. Life Ins. Co. v. RJR Nabisco, Inc.*, 716 F. Supp. 1504, 1524 (S.D.N.Y. 1989) ("a bondholder acquires . . . no equitable interest and remains a creditor of the corporation"); *Rievman v. Burlington Northern R.R. Co.,* 618 F. Supp. 592, 598-99 (S.D.N.Y. 1985) (same). Thus, Citigroup's $730 million payment to settle the Bond Action can in no way be characterized as a transfer of money from current Citigroup shareholders to

former shareholders, nor can it be viewed as benefiting a certain group of shareholders over another group of shareholders.

Second, it is well-established that a determination of whether a settlement is adequate should focus on whether the overall compensation received by the class is fair in light of the risks of continued litigation, rather than which defendants are actually making the payments. Indeed, no court to our knowledge has ever held that a securities class action settlement is not fair, adequate, and reasonable because it did not include contributions from individuals. Bond Plaintiffs have demonstrated – and Mr. Giffin does not dispute – that the $730 million cash Settlement represents an outstanding result for the Bond Class in light of the many difficulties of establishing liability and damages in this litigation. *See* Declaration of Steven B. Singer dated June 7, 2013 (the "Singer Declaration" or "Singer Decl.") ¶¶ 111-38; *see also, e.g., In re Warner Commc'ns Sec. Litig.,* 798 F.2d 35, 37 (2d Cir. 1986) ("if the total compensation to class members is fair, reasonable, and adequate, the court is not required to supervise how the defendants apportion liability for that compensation among themselves").

Indeed, Bond Plaintiffs' decision to accept the Settlement rather than pursue some nominal payments from individuals is plainly reasonable given the acute risks Bond Plaintiffs faced in establishing liability against the Individual Defendants in this case. As set forth in detail in the Singer Declaration, this was an extremely difficult and complex case, and Defendants had multiple defenses to liability and damages. *See* Singer Decl. ¶¶ 4, 16, 36, 111-30, 132-34 (discussing Defendants' defenses). For example, there was a substantial risk that Bond Plaintiffs would be unable to establish the existence of any material misstatements or omissions in the offering documents at issue. *Id.* at ¶¶ 111-30. Moreover, as the Court is aware, the Second Circuit's decision in *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. 2011), held that Securities Act claims premised on misstatements of "opinion" – as Bond Plaintiffs' core claims are – require a

plaintiff to prove not only that a statement was materially misleading, but also that defendants "misstated [their] truly held belief" – a standard that is virtually equivalent to scienter. *See* Singer Decl. ¶¶ 113-14. It would have been even more difficult for Bond Plaintiffs to satisfy this standard with respect to the Individual Defendants than it would be with respect to Citigroup itself. To do so, Bond Plaintiffs would have had to convince a jury that specific individuals were acting dishonestly, and contrary to their personally held beliefs, regarding exceedingly complex subjects relating to Citigroup's valuation of hundreds of billions of dollars in mortgage-related assets. In short, Bond Plaintiffs faced significant challenges in establishing the Individual Defendants' liability.[4]

Third, because the individual officers and directors of Citigroup are entitled to be indemnified by Citigroup on Bond Plaintiffs' Securities Act claims, even if Bond Plaintiffs were able to extract individual contributions to the settlement, those amounts would be offset by a corresponding reduction in the amount Citigroup would pay to the Bond Class. Thus, even if ultimately achieved, individual payments would result in no additional benefit to the Bond Class. *See* Responses of the Citigroup Defendants to Objections to the Proposed Settlement, at 7-8.[5]

Finally, Mr. Giffin's second objection to the Settlement – that it "fails to provide adequate injunctive relief to protect Bond Class Members and others from similar future misconduct" – also lacks merit. As the Court is aware, private civil plaintiffs are not able to obtain injunctive relief under the Securities Act, and no such claims were asserted in the Complaint. Mr. Giffin also does

[4] The Individual Defendants had also raised affirmative defenses to liability that were unavailable to Citigroup. Specifically, they asserted a "due diligence" defense under the Securities Act, which entitles individual officers and directors to rely on the work of experts, including outside accountants, as a defense to liability. This affirmative defense posed another significant obstacle to achieving any recovery from the Individual Defendants. *See* Section 11(b)(3), 15 U.S.C. § 77k(b)(3); *see also In re Worlds of Wonder Sec. Litig.*, 814 F. Supp. 850, 864 (N.D. Cal. 1993) ("[E]very defendant except [the issuer] is entitled by statute to rely on [an accountant's] expertise on accounting issues."), *aff'd in relevant part*, 35 F.3d 1407, 1421 (9th Cir. 1994).

[5] Mr. Giffin claims in a footnote that there is "a conflict of interest between Citigroup and any individual defendants who could be liable to it" (Giffin Objection at 1, n.1), but he does not explain what that purported conflict is or how it supposedly impacts the reasonableness of the Settlement.

not articulate the nature of the injunctive relief that he believes Bond Plaintiffs should have insisted upon or explain how it could protect Bond Class Members, who purchased their Bond Class Securities years ago.

For the foregoing reasons, Mr. Giffin's objection to the Settlement should be rejected.

B. The Bazaj Objection Should Be Rejected

Suresh Bazaj (the "Bazaj Objection") objects to (1) the $20 minimum threshold for additional re-distribution to Authorized Claimants; and (2) the fact that the Plan of Allocation does not identify a specific organization that would receive any *cy pres* distribution, if any is made, following distributions to the Bond Class. *See* Bazaj Objection at 1-2. Neither of these objections has merit.

The assertion that the $20 threshold for additional re-distribution to Authorized Claimants is "not equitable [because] it favors Claimants with larger claims" is not correct. Bazaj Objection at 1. The minimum threshold of $20 will benefit the entire Bond Class because it will reduce the claims administration costs associated with monitoring and printing and mailing checks for relatively *de minimis* amounts. *See* 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS § 6:22 (6th ed. Westlaw 2009) ("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."). Indeed, it is standard practice in securities class actions to employ minimum distribution amounts when allocating settlement proceeds, and courts in this District regularly approve minimum distribution thresholds such as that contemplated here. *See, e.g.*, *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 4526593, at *12 (S.D.N.Y Dec. 20, 2007) (approving a $50 minimum distribution amount and stating that "courts have approved minimum payouts in class action settlements in order to foster the efficient administration of the settlement"); *see also In re*

Bank of America Corp. Sec., Derivative & ERISA Litig., No. 09-MD-2058 (PKC), ECF No. 829-7 at Ex. A, p. 14; ECF No. 868 (S.D.N.Y. April 9, 2013) (approving settlement with $20 minimum re-distribution threshold).

The Bazaj Objection next contends that the "settlement plan should list the name(s) of the organizations for *cy pres* distribution" and states that "[o]ne worthy organization" is the Consumer Union. Bazaj Objection at 2. This objection also lacks merit. As an initial matter, there may be no need for any *cy pres* distribution to be made in this case. Moreover, even if one ultimately is made, there is no requirement that the plan of allocation or settlement notice identify potential *cy pres* recipients at this time. To the contrary, it would be unwise to attempt to identify an appropriate charitable organization now, when any potential *cy pres* distribution may not occur for several years, which is why it is standard practice in securities class actions for lead counsel to propose *cy pres* recipients for the court's approval when (and if) they move for a *cy pres* distribution in the future. Bond Counsel has already informed the Bond Class that it will adhere to that widely-accepted practice in this Action. *See* Notice ¶ 62 (*cy pres* recipients will be "non-sectarian, not-for-profit organization(s), to be recommended by Bond Counsel and approved by the Court").

As Judge Batts recently held in rejecting an identical objection to a securities class action settlement, "there [is] no legal authority to support the [objector's] argument; [and] no Court in this Circuit has ever made identifying the organization to receive the residual funds a condition precedent to a Settlement approval." *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2013 WL 1499412, at *3 (S.D.N.Y. Apr. 11, 2013).[6] In any event, to the extent any *cy pres*

[6] Mr. Bazaj's sole support for his argument is an opinion from the District of Kansas where the court, in a class action asserting claims under state law for breach of contract, breach of warranty and violations of consumer protection statutes, refused to grant preliminary approval to a settlement that contained a *cy pres* provision similar to that proposed here. *See* Bazaj Objection at 2 (citing *In re Motor Fuel Temperature Sales Practices Litig.*, No. 07-MD-1840 (KHV) (D. Kan.)). However, as noted above, in securities class actions, courts take the view that it is more appropriate for lead counsel to seek court approval for particular *cy pres* recipients, if, after distributions are made to the class, there are any residual funds to distribute. *See, e.g.*, *In re Deutsche Telekom AG Sec. Litig.*, No. 00-CV-9475, 2009 WL 8632107, at *2 (S.D.N.Y. Jan. 21, 2009) (Buchwald, J.) ("[I]f any funds remain . . . then such balance shall be contributed to non-

distribution is ultimately sought here, Mr. Bazaj's concerns, including consideration of whether the Consumer Union is an appropriate recipient, and that whichever recipient is chosen be an organization that "provide[s] as direct a benefit to the class as possible," can be fully addressed by the Court at that time, as is standard procedure in this Circuit. Accordingly, Mr. Bazaj's objection should be overruled.

C. The Smackey Objection Should Be Rejected

Bruce M. Smackey (the "Smackey Objection") objects to the proposed Settlement and fee request on several grounds, each of which is without merit. Mr. Smackey first asserts that he cannot assess the reasonableness of the Settlement because there is a "lack of transparency" in the Court-approved Notice. Smackey Obj. at 2. However, in the Preliminary Approval Order, the Court specifically held that the Notice "is the best notice practicable under the circumstances, … is reasonably calculated, under the circumstances, to apprise Bond Class Members of the proposed settlement, of the effect of the proposed Settlement (including the Releases contained therein) and of their right to exclude themselves from the Bond Class or object to any aspect of the proposed Settlement, … constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlement," and fully satisfies all requirements of the U.S. Constitution and Rule 23. Prelim. App. Order, ECF No. 155, at ¶ 8. Mr. Smackey's objection, which fails to explain how the Notice is supposedly unclear, or how any purported deficiency has impacted his ability to assess the Settlement, provides no basis for the Court to depart from its prior holding.

Mr. Smackey also asserts that there is a "lack of transparency" in the documents posted to the settlement website, located at www.citigroupbondactionsettlement.com, which include the Stipulation of Settlement, the Notice, the Court's Preliminary Approval Order, Bond Plaintiffs'

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sectarian, not-for-profit, 501(c)(3) organization(s) designated by Plaintiffs' Co–Lead Counsel"); *In re NTL, Inc. Sec. Litig.*, No. 02-CV-3013, 2007 WL 2582105, at *2 (S.D.N.Y. Sept. 5, 2007) (Kaplan, J.) (same); *see also In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, 2013 WL 1365900, at *5 (N.D. Cal. Apr. 3, 2013).

motion for final approval of the Settlement, Bond Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses, and the supporting Singer Declaration. Smackey Obj. at 2. However, those documents clearly describe the Settlement and Plan of Allocation, why they are reasonable and adequate, Bond Counsel's fee request, and why it is reasonable. For instance, the Singer Declaration describes in great detail the history of the litigation, the Settlement, the risks of continued litigation, and the work Bond Plaintiffs' Counsel have performed.[7]

Although Mr. Smackey does not assert that the $730 million Settlement is inadequate, he next states, without explanation, that he does not "accept" the Settlement amount "when compared to:" (i) the total face value of Citigroup's $1.1 billion Offering of Capital XV 6.5% Enhanced Trust Preferred Securities, in which he purchased certain securities; (ii) the $27.5 billion of "public and private preferred securities" that he claims Citigroup has issued, as well as $25 billion of Citigroup preferred securities that were held by the U.S. Treasury as a result of the bailout; and (iii) the total size of the $326 billion bailout that Citigroup received. Smackey Obj. at 2. However, none of these supposed metrics has any relevance to the adequacy of the proposed Settlement. As set forth in detail in the Memorandum of Law in Support of Bond Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation ("Settlement Mem."), under the factors considered relevant by the Second Circuit, the Settlement is plainly adequate and should be approved. *See* Settlement Mem. at 1-22.

Mr. Smackey also asserts that Merrill Lynch/Bank of America breached its duties to him and

[7] Mr. Smackey further contends that there is a "lack of transparency" because Bond Counsel supposedly has been non-responsive to "repeated calls," and there has been a "lack of communication" from what appears to be his broker, Merrill Lynch/Bank of America. Smackey Obj. at 2. Bond Counsel maintains a process for routing and responding to calls by all potential Bond Class Members and promptly responds to such calls. Indeed, we aware of three calls that Mr. Smackey placed to Bond Counsel and GCG regarding the Settlement between June 5 and June 14. Each call was promptly responded to and, at the conclusion of the final call, Mr. Smackey indicated that he had located the information he was seeking. Bond Counsel has no knowledge of Mr. Smackey's communications with Merrill Lynch/Bank of America, which in any event are not relevant to the question of whether the proposed Settlement should be approved.

potentially other class members in connection with a March 2009 exchange offer for certain Citigroup preferred securities. *See* Smackey Obj. at 3. This assertion also has no relationship to the Bond Action, which does not assert any claims arising from the March 2009 exchange offer, and has no bearing on the proposed Settlement. Mr. Smackey next provides what he characterizes as historical trading and volume data for Citigroup's common and preferred shares, which he contends should have been used to "determine the magnitude of gains realized by the defendants at the expense of shareholders." *See* Smackey Obj. at 3 & Ex. B. Any supposed "gains realized by the defendants" are irrelevant to potentially recoverable damages under the Securities Act, which are calculated according to a statutory formula based solely on declines in the prices of the securities purchased by class members. *See* 15 U.S.C. § 77k(e). Further, the proffered data is virtually unintelligible, as it contains no specific trade dates, does not identify what preferred securities it purports to concern, contains gaps of many months, includes data for common stock, which is irrelevant to this action, and does not contain any data about the bonds at issue in this case. *See* Smackey Obj., Ex. B. In any event, as set forth in the Singer Declaration, Bond Counsel obtained detailed trading data for the Bond Class Securities, Bond Plaintiffs' damages expert conducted an analysis of the potentially recoverable damages under the Securities Act, and the Settlement represents a substantial percentage of likely recoverable damages. *See* Singer Decl. ¶¶ 137-38.

The next point raised by Mr. Smackey is to request that the Court ask at the hearing how Bond Counsel "determine[d] the fairness and reasonableness of the" Settlement. *See* Smackey Obj. at 4. This, however, already has been explained in detail. As set forth in the Singer Declaration, Bond Counsel carefully evaluated the reasonableness of the Settlement based on a plethora of relevant information. At the time Bond Counsel and Bond Plaintiffs agreed to the Settlement, they had been litigating this Action for more than four years, had conducted extensive fact and expert discovery, were fully informed as to the strengths and weaknesses of their claims as to both liability

and damages, had a clear appreciation of the risks of continued litigation, and had engaged in a protracted, arm's-length mediation process overseen by an experienced and respected mediator, which culminated in both sides accepting the mediator's recommendation. *See* Singer Decl. ¶¶ 4, 8-108, 111-30.[8]

Mr. Smackey's objections to the requested fee are similarly misplaced. Mr. Smackey's objection to the fee is based on his assertion that Bond Counsel is seeking "$293 million" in attorneys' fees and reimbursement of litigation expenses, or 40 percent of the Settlement Fund, which he contends is too high. *See* Smackey Obj. at 3. However, in reality, Bond Counsel is seeking less than half that amount in attorney's fees.

Finally, Mr. Smackey questions whether the "attorneys conclude[d] that the likelihood of attorney's fees larger than $300 million for any additional effort was unlikely to be awarded," such that the "proposed Settlement was not driven by what was fair and justified for the Plaintiffs, but was reached in the best interest of" plaintiffs' counsel and defense counsel. Smackey Obj. at 4. This is wrong. Bond Plaintiffs agreed to the Settlement for one reason: because it is an outstanding result for the Bond Class, especially given the risks of continued litigation. *See* Singer Decl. ¶¶ 3, 111-38 & Exs. 2-9 (Declarations of Bond Plaintiffs). Further, the Settlement was the product of arm's-length negotiations overseen by a former federal District Judge who, as noted above, made a mediator's recommendation that the Action be settled for $730 million. *Id*. ¶¶ 103-08.

D. The Hopson Objection Should Be Rejected

Lexie L. Hopson & Michelle B. Hopson JT WROS, represented by Vincent S. Verdiramo, Esq. and John J. Pentz, Esq. (collectively, the "Hopson Objection"), have objected to Bond Counsel's request for attorneys' fees. Notably, the Hopson Objectors do not question the

[8] Mr. Smackey also asserts that the Court should "set" the Settlement amount as equal to the "total of all approved claims," which is undetermined. *See* Smackey Obj. at 4. The request that the Court impose any settlement amount on the parties, let alone an undetermined amount, obviously lacks merit.

exceptional quality of the Settlement, or the outstanding work that Bond Counsel has performed on behalf of the Bond Class, or Bond Counsel's entitlement to a significant fee. Their sole argument is that Bond Counsel should be awarded a net fee of fifteen percent instead of the requested twenty percent of the Settlement Amount. The Hopson Objection should be rejected for numerous reasons.

To start, counsel for the Hopson Objectors, John J. Pentz, is a serial objector. Previously appearing under the banner of the "Objectors Group" and now the "Class Action Fairness Group," Pentz has filed objections in at least fifty-four class actions in addition to this one. As numerous courts across the country have recognized, Pentz has routinely made meritless objections to class action settlements and fee requests, and lodged appeals to the denials of those objections, in order to leverage a fee for himself. *See, e.g.*, *In re Wal-Mart Wage & Hour Emp't Practices Litig.*, No. 2:06-CV-00225-PMP-PAL, 2010 WL 786513, at *1, 2 (D. Nev. Mar. 8, 2010) (Pentz has a "documented history of filing notices of appeal from orders approving other class action settlements, and thereafter dismissing said appeals when [he] and [his] clients were compensated by the settling class or counsel"); *Barnes*, 2006 WL 6916834, at *1, 2 (Pentz is a "professional objector" who seeks to "make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements").[9]

As explained further below, Pentz's latest objection, filed in this Action, is meritless.

1. There Is No Basis To Treat Bond Counsel's Staff Attorney Time As An Expense

The Hopson Objectors, through Pentz, principally claim that Bond Counsel's staff attorneys are supposedly "no different from contract attorneys" because they purportedly lack "the indicia of whether or not an attorney is a genuine employee of the firm." Hopson Obj. at 2-4. Based on this

[9] *See also In re Initial Pub. Offering Sec. Litig.*, 721 F. Supp. 2d 210, 214, 215 (S.D.N.Y. 2010) (Scheindlin, J.) (concluding that Pentz is a "serial objector" and there was evidence that he acted in "bad faith" and engaged in "vexatious conduct"); *In re AOL Time Warner ERISA Litig.*, No. 02 Cv. 8853 (SWK), 2007 WL 4225486, at *3 & n.2 (S.D.N.Y. Nov. 28, 2007) (Kram, J.) (Pentz's objection "contained several arguments that were irrelevant or simply incorrect," were "counterproductive," and were supported by "*no* evidence whatsoever") (emphasis in original).

premise, they assert that Bond Counsel's staff attorney time "should be treated as an expense," rather than included in Bond Counsel's lodestar calculation at reasonable hourly rates. *Id*. The Hopson Objectors' argument is baseless for several reasons.

First, the Hopson Objectors' argument that Bond Counsel's staff attorneys are not "genuine employees" of BLBG is incorrect, and rests on a series of erroneous factual assertions. Contrary to what the Hopson Objectors contend, all BLBG staff attorneys who worked on this matter were employees of the firm. As set forth in the Singer Reply Declaration, staff attorneys did not receive 1099s as the Hopson Objectors contend – the tax designation given to independent contractors – but were issued Forms W-2, the same tax designation given to all the firm's employees, meaning that the firm paid FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. *See* Singer Reply Decl. ¶ 3. In addition, BLBG's staff attorneys have access to a benefits program offered through the firm, which provides for worker's compensation, health insurance, and a 401(k) program, and are eligible to receive year-end performance bonuses.[10] *Id*. In short, Bond Counsel's staff attorneys are firm employees.

In further support of their contention that staff attorneys were not firm employees, the Hopson Objectors claim that BLBG's staff attorneys "most likely work[ed] at an off-site location," did not utilize firm resources or cause the firm to "incur[] any overhead," did not receive any training from the firm, including continuing legal education, and were thus "temp attorneys in everything but name only." Hopson Obj. at 3, 4. Each of these assertions is wrong. First, the BLBG staff attorneys who prosecuted the Bond Action did not work off-site, but on the 36th floor of the firm's offices at 1285 Avenue of the Americas in New York City. *See* Singer Reply Decl.

[10] The Hopson Objectors raise no challenge to the staff attorneys employed by Bond Plaintiffs' Counsel Kessler Topaz Meltzer & Check, LLP ("KTMC"). For the avoidance of any doubt, the Supplemental Declaration of David Kessler, attached as Exhibit 2 to the Singer Reply Declaration ("Kessler Supplemental Decl."), establishes that KTMC's staff attorneys were employees of that firm, and also received W-2s, had accesses to a benefits program, worked on-site, were fully supervised, and had access to secretarial and paralegal support services.

¶ 4. This is the same floor shared by the firm's partners, associates, and senior counsel. *Id*. As such, Bond Counsel's staff attorneys had access to – and utilized – the entire range of support staff used by the firm's partners and associates, including secretaries, paralegals, and other office services. *See id*.; *see also* Kessler Supplemental Decl. ¶ 5 (on-site work).

Moreover, the staff attorneys received extensive legal training. Bond Counsel's staff attorneys had the opportunity to participate in continuing legal education programs offered by the firm, and received detailed training on topics specific to the Bond Action. *Id.*; *see also* Singer Decl. ¶ 49. The staff attorneys were also closely supervised by Bond Counsel's other on-site attorneys throughout the litigation. As set forth in the Singer Declaration, Bond Counsel held regular weekly meetings with the staff attorneys to discuss their analysis of the documentary evidence produced by Citigroup. *See* Singer Decl. ¶¶ 53-57, 87-89. Finally, many of the staff attorneys who worked on this matter have been with Bond Counsel for years, and have extensive experience in securities class action litigation, having worked for Bond Counsel on multiple large securities litigations. *See, e.g.*, Singer Decl., Exs. 12A, 12B (staff attorney biographies).[11]

In addition to inaccurately portraying the staff attorneys' employment status, the Hopson Objectors attempt to trivialize their work by incorrectly asserting that they "did little more than review documents," which they suggest was of questionable value. Hopson Obj. at 3. As set forth in detail in the Singer Declaration, the staff attorneys were integral members of the team that prosecuted the Bond Action and performed substantive work that directly benefitted the Bond Class in numerous ways. *See* Singer Decl. ¶¶ 35-57, 87-89. The staff attorneys' analysis of the 42.5

[11] The Hopson Objectors' assertion that the staff attorneys are not firm employees because they are not listed on BLBG's website is baseless. Whether or not an attorney is listed on a website has no bearing on whether he or she is a firm employee. BLBG's website lists the firm's partners, associates, and senior counsel so that clients and other counsel can obtain biographical and contact information for the attorneys with whom they are regularly communicating. BLBG does not list its staff attorneys on its website because they do not regularly communicate with clients and other counsel – a decision that does nothing to alter the staff attorneys' status as firm employees. To the extent that staff attorneys' "online" presence at the firm could be considered relevant, all staff attorneys are assigned firm email addresses under the same domain used by the firm's partners and associates, *i.e.*, "@blbglaw.com," which they regularly use to communicate electronically regarding the matters on which they are working. Singer Reply Decl. ¶ 4.

million pages of documents produced in this case was an enormous undertaking that was essential to Bond Plaintiffs' ability to develop the evidence necessary to carry their burden of proof on several extremely complex and difficult claims – and the Hopson Objectors do not advance a single argument that shows otherwise. *See id*. ¶¶ 35-57. The staff attorneys' work significantly contributed to Bond Plaintiffs' ability to obtain the outstanding proposed Settlement in this case.

The staff attorneys also performed additional substantive work. Staff attorneys worked closely with Bond Counsel's associates and partners in preparing several detailed memoranda setting forth all the important evidence in support of each of Bond Plaintiffs' claims, which served as blueprints for Bond Plaintiffs' efforts to develop the proof they needed to prevail. *Id*. ¶¶ 56-57. Staff attorneys also worked closely with associates, senior counsel and partners to assist them in preparing to take or defend the 76 depositions conducted in the Bond Action. Indeed, as set forth in the deposition chart attached as Exhibit 10 to the Singer Declaration, staff attorneys attended and "second-chaired" several key depositions of senior Citigroup executives, including the depositions of the former Co-Chief Executive Officer of Citigroup's investment bank (who now serves as Citigroup's Co-President), the former Chief Financial Officer of Citigroup's SIV division, the former Head of Economic and Regulatory Capital at Citigroup's Global Consumer Group, which housed its residential mortgage operations, and the former Chief Executive Officer of Citigroup's Global Consumer Group. *See* Ex. 10 at 1, 2, 4, 7, 8, 9.

Second, the argument that staff attorney time should be treated as an expense is wrong as a matter of law. We are not aware of any court that has held that staff attorney time should be treated as an expense for the purposes of a class action fee application. Even those courts that have considered whether contract attorney time should be treated as an expense have uniformly held that it should not be, and that such time is properly included in counsel's lodestar. Indeed, in the principal case on which the objectors rely – the Second Circuit's decision in *Carlson v. Xerox*

Corp., 355 Fed. App'x 523 (2d Cir. 2009) – the Second Circuit rejected an objection to plaintiffs' counsel's fee award which asserted that contract attorney time should be treated as an expense. *See id*. at 525-26 (rejecting argument that "the district court should not have included contract attorney time in its 'lodestar' calculation"). Consistent with this decision, courts in some of the largest securities class actions in history have rejected the argument that contract attorney time should be treated as an expense. *See, e.g.*, *In re Enron Corp. Sec., Deriv. & ERISA Litig.*, 586 F. Supp. 2d 732, 782-85 (S.D. Tex. 2008) (holding that "counsel can recover fees for their [contract attorneys'] services at market rates rather that at their cost to the firm"); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 272 (D.N.H. 2007) ("An attorney, regardless of whether she is an associate with steady employment or a contract attorney whose job ends upon completion of a particular document review project, is still an attorney. It is therefore appropriate to bill a contract attorney's time at market rates and count these time charges toward the lodestar."); *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264-65 (E.D. Va. 2009) ("[T]he Court has absolutely no trouble finding that the contract attorneys should be billed at market versus cost. They are part of the team brought in to benefit the class. Their contributions are of a similar nature to the attorneys who are in the firms retained by plaintiffs, and they should be compensated in that manner.").

Third, consistent with this well-established law, courts in this District and across the country have routinely granted fee awards to Bond Counsel based on lodestars which included a significant amount of staff attorney time at the same rates the firm has submitted here. Indeed, BLBG's staff attorney rates have been accepted in cases throughout the country, including in numerous cases in the Southern District of New York.[12] These rates have remained constant since 2010, and are in the

[12] *See, e.g.*, *In re Bank of America Corp. Sec., Derivative, & ERISA Litig.*, Master File No. 09-MDL-2058 (PKC) (S.D.N.Y. 2013) (Castel, J.), ECF No. 829-11; *In re Lehman Bros. Sec. & ERISA Litig.*, No. 09-MD-2017 (LAK) (S.D.N.Y. 2012) (Kaplan, J.), ECF No. 807-12; *In re Wachovia Preferred Sec. & Bond/Notes Litig.*, Master File No. 09 Civ. 6351 (RJS) (S.D.N.Y. 2011) (Sullivan, J.), ECF No. 148-7; *Public Employees' Ret. Sys. of Miss. v. Merrill Lynch & Co.*, No. 08-cv-10841-JSR-JLC (S.D.N.Y. 2012) (Rakoff, J.), ECF No. 181-6.

range of $340-$395 an hour, depending on seniority.[13] These rates are in-line with the rates that the firm charges for its most junior associates, *i.e.*, first and second year associates, as well as the rates that large New York City defense firms charge for their most junior associates.[14] In short, Bond Counsel's staff attorney time is properly included in its lodestar at the requested rates.[15]

Finally, the Hopson Objectors' assertions regarding the compensation that Bond Counsel pays its staff attorneys, and their assertion that Bond Counsel's profit margin on staff attorney time is supposedly unreasonable, have been rejected by this Court and are irrelevant as a matter of law. As this Court held in the Stock Action:

> The law is quite clear that the issue for me is what a reasonable fee is. The issue is what the market pays for the various attorneys. That's *Arbor Hill* [*v. Albany*, 369 F.3d 91 (2d Cir. 2004)]. There is a whole line of cases on that. The issue of how much profit there is in this for the plaintiffs' attorneys I think is not relevant to my inquiry under the law; that is, I am not supposed to look at the difference between the costs to the plaintiffs' firms and what a reasonable fee is.

Feb. 28, 2013 Tr. in the Stock Action at 4:4-11 (emphasis added). The same reasoning applies here.

In sum, there is no basis for the Hopson Objectors' assertions that BLBG's staff attorneys are not genuine employees of the firm and staff attorney time should be treated as an expense.

2. The Hopson Objectors' Use Of A Purported "Benchmark" Contravenes Second Circuit Law

The Hopson Objectors also claim that the Court should reduce Bond Counsel's fee to fifteen

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[13] Two staff attorneys were billed at a rate of $425 per hour. These two individuals were the most senior staff attorneys who worked on the case, and accounted for only approximately $92,000 in lodestar.

[14] In January 2010, *The American Lawyer* published a comprehensive analysis of associate rates charged by 18 large New York City defense firms in 2009 – four years ago. This study was based on more than 13,000 entries of billing rates set forth in fee petitions to bankruptcy courts in the Southern District of New York and the District of Delaware for the period from August 2008 through August 2009. This study determined that, as of 2009, New York City defense firms charged as much as $440 per hour for their first-year associates, and that the average hourly rate for first-year associates was approximately $350. *See* 2009 Bankruptcy Billing Rates Report, THE AMERICAN LAWYER (Jan. 26, 2010), attached as Ex. 3 to the Singer Reply Decl.

[15] The Hopson Objectors' sole "support" for their argument is a letter submitted in the Stock Action by the Association of Corporate Counsel (the "ACC"). This letter is irrelevant and provides no support for their argument. First, the letter relates only to the market for contract attorneys, not staff attorneys employed by BLBG. Indeed, the ACC has not submitted this letter in the Bond Action. Second, even if the letter could be considered relevant, which it is not, it specifically states that Second Circuit and Supreme Court law "permit law firms to charge a surplus on contract attorneys as profit." *See* Hopson Obj., Ex. C at 5.

percent because "Bond Counsel's request for 20% of the $730 million settlement is excessive, in light of fee awards in cases of comparable size." Hopson Obj. at 1. The Hopson Objectors are wrong. As Bond Plaintiffs pointed out in their opening papers, in securities cases involving settlements of similar magnitude, courts regularly award fees in line with the 20 percent requested here. *See* Fee Mem. at 9-10; *see also In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (Scheindlin, J.) (33% fee on $586 million settlement); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.,* No. 03 MDL 1529 LMM, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) (McKenna, J.), *aff'd*, 272 Fed App'x 9 (2d Cir. 2008) (21.4% fee on $455 million settlement); *Ohio Pub. Employees Ret. Sys. v. Freddie Mac.,* No. 03-CV-4261, 2006 U.S. Dist. LEXIS 98380, at *4 (S.D.N.Y. Oct. 26, 2006) (Sprizzo, J.) (20% fee on $410 million settlement); *In re Oxford Health Plans, Inc. Sec. Litig.*, MDL No. 1222, 2003 U.S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (Brieant, J.) (28% fee on $300 million settlement).

Moreover, as this Court is aware, in the Second Circuit courts do not award percentage fees in a vacuum. To the contrary, courts are required to conduct a lodestar cross-check to ensure that the fee is reasonable. As this Court stated at the April 8, 2013 final approval hearing in the Citigroup Stock Action, as the size of a settlement increases, "the lodestar may be becoming, and I think is becoming, more important." *See* April 8, 2013 Tr. at 15. Indeed, in cases like this, where the efforts of plaintiffs' counsel have resulted in an outstanding recovery for the class, courts have recognized that counsel is entitled to receive a reasonable multiplier on its lodestar. Significantly, in this case, the lodestar cross-check strongly confirms that the requested fee is reasonable. The 1.67 multiplier that Bond Counsel has requested is not only in-line with the multipliers that district courts have awarded in similarly-sized settlements, but it is at the low end of the range. As noted in our opening papers, this Settlement, if approved by the Court, will be one of the fifteen largest securities class action settlements in history. In those fourteen other cases, courts awarded

percentage fees that, on average, represented a 3.15 multiplier – or almost double the multiplier requested here.[16] Further, in twelve of those fourteen cases, the multipliers that counsel received were higher than the one requested here. And in the six cases that settled between $550 million and $925 million, the average multiplier received was 2.9. *See* Fee Mem. at 12, n.8.

Rather than addressing the numerous cases demonstrating that the requested fee in this case is fully justified, the Hopson Objectors cite to a single page of an academic study for the proposition that "the average percentage fee for megafunds of this size is less than 15%." Hopson Obj. at 1. This argument lacks merit for several reasons. First, the Second Circuit has expressly rejected the notion that a court should determine a fee award by looking toward a supposed "benchmark" of fees awarded in supposedly "similar" cases. Rather, the Second Circuit has instructed courts to carefully consider a range of case-specific factors, including the retainer agreements negotiated by the lead plaintiffs, the lodestar, the difficulty of the case, the risks of the litigation, the amount and quality of work performed by lead counsel, and the result achieved for the class. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000); *see also Xerox*, 596 F. Supp. 2d at 411 ("There was also an objection to the effect that the attorneys' fee award should be limited to a 15% benchmark.

[16] These cases include the following: (1) *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 791 (S.D. Tex. 2008) ($7.2 billion settlement, 5.2 multiplier); (2) *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 354 (S.D.N.Y. 2005) ($6.1 billion settlement, 4 multiplier); (3) *In re Cendant Corp. Litig.*, 243 F. Supp. 2d 166, 174 (D.N.J. 2003) ($3.3 billion settlement, 4.2 multiplier); (4) *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 271 (D.N.H. 2007) ($3.2 billion settlement, 2.7 multiplier); (5) *In re AOL Time Warner, Inc. Sec. & ERISA Litig.*, No. 02 Civ. 5575 (SWK), 2006 WL 3057232, at *28 (S.D.N.Y. Oct. 25, 2006) ($2.5 billion settlement, 3.69 multiplier); (6) *In re Bank of America Corp. Sec., Derivative, & ERISA Litig.*, Master File No. 09-MDL-2058 (PKC), slip op. at 2 (S.D.N.Y. Apr. 11, 2013), ECF No. 869 ($2.4 billion settlement, 1.8 multiplier); (7) *In re Nortel Networks Corp. Sec. Litig.*, No. 01-CV-1855 (RMB), slip op. at 12 (S.D.N.Y. Jan. 29, 2007), ECF No. 194 ($1.1 billion settlement, 2.04 multiplier); (8) *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 387 (D. Md. 2006) ($1.1 billion settlement, 2.57 multiplier); (9) *In re Nortel Networks Corp. Sec. Litig.*, No. 05-MD-1659 (LAP), slip op. at 12 (S.D.N.Y. Dec. 26, 2006), ECF No. 77 ($1.043 billion settlement, 4.77 multiplier); (10) *In re McKesson HBOC, Inc. Sec. Litig.*, No. 99-CV-20743, ECF No. 1444, slip op. at 1 (N.D. Cal. Feb. 24, 2006); ECF No. 1560, slip op. at 1 (N.D. Cal. Apr. 13, 2007) & ECF No. 1727, slip op. at 1 (N.D. Cal. Jan. 18, 2008) ($1.043 billion settlement, 2.1 multiplier); (11) *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010); 2012 WL 345509, at *5 (S.D.N.Y. Feb. 2, 2012) & 2013 WL 1499412, at *7 (S.D.N.Y. Apr. 11, 2013) ($937 million settlement, 1 multiplier); (12) *In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1106 (D. Minn. 2009) ($925 million settlement, 6.5 multiplier); (13) *Carlson v. Xerox Corp.*, 596 F. Supp. 2d 400, 413 (D. Conn. 2009) ($750 million settlement, 1.25 multiplier); (14) *In re Wachovia Preferred Sec. & Bond/Notes Litig.*, No. 09 Civ. 6351 (RJS), 2012 WL 2589230, at *3 (S.D.N.Y. Dec. 30, 2011) ($627 million settlement, 2.3 multiplier). Virtually all (if not all) of these cases included substantial time spent by either contract attorneys or staff attorneys.

However, it is clear that under *Goldberger*, benchmarks should not be used. Each case must be given individualized consideration.") (emphasis added). Here, each of the *Goldberger* factors – none of which the Hopson Objectors address – strongly supports the requested fee. *See* Fee Mem. at 13-25.

Moreover, the study relied upon by the Hopson Objectors provides no support for their argument. The Hopson Objectors cite a single page of one academic study for the sweeping assertion that "the mean and median for settlements between $500 million and $1 billion is 12.9%." Hopson Obj. at 1-2. They fail to point out, however, that the study they rely upon only analyzed class action settlements that occurred during a limited two-year period, between 2006 and 2007, and calculated the purported "mean" and "median" fee award for cases settling between $500 million and $1 billion by considering only two cases – and the study does not even state whether those cases were securities fraud cases or other types of class action settlements. *See* Hopson Obj., Ex. B at 839.

The Hopson Objectors' argument that the Court should award the exact same 1.25 multiplier awarded in *Xerox*, 355 Fed. App'x 523, should also be rejected. Hopson Obj. at 2. First, this contention is based on the Hopson Objectors' supposition that Bond Counsel's staff attorneys are not employees of the firm and work off-site, and thus Bond Counsel is only entitled to a 1.25 multiplier on its lodestar. As set forth above, their factual assertions about Bond Counsel's staff attorneys are demonstrably incorrect, and no court in this District has ever applied a "discount" to Bond Counsel's lodestar because it included significant staff attorney time. Second, as referenced above and articulated by the Second Circuit in *Goldberger*, it is the facts and circumstances of this case that matter most in setting a fair fee. Third, in *Xerox*, which involved a $750 million settlement, the Second Circuit expressly held that a lodestar multiplier of 3.6 is the "average" and 3.1 the "median for similar cases." *Id.* at 526. Accordingly, the multiplier being sought here is well

below what is typically awarded in cases of large magnitude.

Moreover, this case was far more difficult, risky, and protracted than *Xerox*. In *Xerox*, the company issued a massive $6.4 billion restatement of its earnings, thus admitting that its financial statements for multiple years were materially false and misleading. The *Xerox* plaintiffs also benefited immensely from a related SEC civil fraud case that overlapped with the allegations in the private case, whereas here, the vast bulk of the claims prosecuted by Bond Counsel were not asserted in any other private or regulatory action. *See* Singer Decl. ¶ 42. Finally, *Xerox* settled at a much earlier stage – before class certification was briefed and after just seven depositions were conducted – a far cry from this protracted and arduous litigation, which involved a hotly-contested class certification process and extensive discovery that included 76 depositions.

3. The Fee Should Be Calculated As A Percentage Of The Gross Settlement Fund

Finally, the Hopson Objectors claim that any fee awarded by the Court must be calculated as a percentage of the "net" Settlement Fund, *i.e.*, the requested litigation expenses must be deducted from the Settlement Fund prior to calculating the percentage fee. This argument contradicts well-established law.

Contrary to what the Hopson Objectors contend, the law is clear that fees should be calculated as a percentage of the total Settlement Fund, and that expenses are reimbursed separately. Indeed, courts in this Circuit routinely award attorneys' fees as a percentage of the total (gross) settlement amount. *See, e.g., Cen. States,* 504 F.3d at 249 (affirming district court's award of "30% of the settlement fund"); *Bd. of Trustees of AFTRA Ret. Fund v. JPMorgan Chase Bank*, No. 09 Civ. 686 (SAS), 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding "25% of the [$150 million] Settlement Amount, or $37.5 million"); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG), 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (awarding "25% of the Settlement Amount"); *In re Monster Worldwide, Inc. Sec. Litig.*, No. 07-cv-02237 (JSR), 2008 WL 9019514, at

*1 (Nov. 25, 2008) ("a fee award of 25% of the gross Settlement Fund is consistent with awards made in similar cases") (emphasis added); *Freddie Mac*., 2006 U.S. Dist. LEXIS 98380, at *4 ("The Court hereby awards 20% of the Settlement Fund"); *Oxford Health Plans*, 2003 U.S. Dist. LEXIS 26795, at *13 ("Plaintiff's Counsel are hereby awarded 28% of the Gross . . . Settlement Fund").

Moreover, courts have repeatedly rejected objections identical to the one asserted here, and held that any assertion that fees must be calculated "net" of expenses is without merit. *See, e.g., Xerox*, 596 F. Supp. 2d at 411 (rejecting objection contending that "attorneys' fees should be paid out of the 'net fund' (i.e. after payment of expenses) as opposed to the 'gross fund'" as "lack[ing] merit"); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 n.34 (E.D.N.Y. 2003) (rejecting an objection asserting that fees should be "calculated on the net recovery to the Class, excluding costs and expenses"); *In re AT&T Corp.*, 455 F.3d 160, 172 n.8 (3d Cir. 2006) (rejecting objection that attorneys' fees must be calculated based on the net settlement amount, and noting that "[e]xpenses are generally considered and reimbursed separately from attorneys' fees"). In sum, the Hopson Objection should be rejected.[17]

III. CONCLUSION

For the reasons set forth above and in Bond Plaintiffs' and Bond Counsel's opening papers, we respectfully request that the Court: (1) approve the Settlement and Plan of Allocation; and (2) grant Bond Counsel's request for attorneys' fees and reimbursement of litigation expenses.

[17] Peter A. Gemora also submitted an objection to the Settlement and Plan of Allocation (the "Gemora Objection"), which states that the reasons for the objection are set forth in an "attached statement." Gemora Objection at 1. However, the Gemora Objection contains no such statement or other explanation, and thus, must be rejected.

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Respectfully submitted,

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

By: */s/ Steven B. Singer*
Max W. Berger
Steven B. Singer
John C. Browne
John Rizio-Hamilton
1285 Avenue of the Americas
New York, NY 10019
Tel: (212) 554-1400
Fax: (212) 554-1444

Attorneys for Bond Plaintiffs and Court-appointed Bond Counsel

KESSLER TOPAZ MELTZER & CHECK, LLP
David Kessler
Darren J. Check
Matthew L. Mustokoff

280 King of Prussia Road
Radnor, PA 19087
Tel: (610) 667-7706
Fax: (610) 667-7056

Additional Counsel for City of Tallahassee Retirement System, Miami Beach Employees' Retirement Plan, Southeastern Pennsylvania Transit Authority, City of Philadelphia Board of Pensions and Retirement, and James M. Brown

POMERANTZ GROSSMAN HUFFORD DAHLSTROM & GROSS LLP
Marc I. Gross
Jeremy Lieberman

600 Third Avenue
New York, NY 10016
Tel- 212-661-1100
Fax-212-661-8665

Additional Counsel for American European Insurance Company

#733899