UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE AMERICAN INTERNATIONAL GROUP, INC. 2008 SECURITIES LITIGATION	Master File No.: 08-CV-4772-LTS-DCF
This Document Relates To: All Actions	

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Lead Plaintiff, the State of Michigan Retirement Systems, as custodian of the Michigan Public School Employees' Retirement System, the State Employees' Retirement System, the Michigan State Police Retirement System, and the Michigan Judges Retirement System ("SMRS" or "Lead Plaintiff"[1]), on behalf of itself and the Class, respectfully submits this memorandum of law in support of its motion for final approval of the proposed class action settlement between the Class and Defendant American International Group, Inc. ("AIG" or the "Company"), the Individual Defendants, the Underwriter Defendants, and PricewaterhouseCoopers LLP ("PwC") (the "Settlement") and of the proposed Plan of Allocation.

PRELIMINARY STATEMENT

After more than six years of intense litigation, including more than two years of extensive fact discovery and two years of negotiations under the auspices of former U.S. District Court Judge Layn Phillips, one of the most experienced mediators in securities class actions, Lead Plaintiff and Defendants have agreed to settle all claims against the Defendants that are based upon, arise out of, or relate to those asserted in this Action in exchange for payment of Nine Hundred and Seventy Million, Five Hundred Thousand dollars ($970,500,000), which has been deposited in an interest-bearing escrow account. Lead Plaintiff respectfully submits that the proposed Settlement represents an excellent result for the Settlement Class and plainly satisfies the standards for final approval of a settlement under Rule 23 of the Federal Rules of Civil Procedure.

[1] All capitalized terms not otherwise defined herein have the same meanings as set forth in Paragraph 1 of the Stipulation and Agreement of Settlement (the "Stipulation"), dated September 12, 2014.

The Settlement represents one of the largest securities class action recoveries in an action stemming from the financial crisis of 2008. ¶¶2, 75.[2] The Settlement includes a payment from AIG, in the amount of $960 million, and a payment from PwC, in the amount of $10.5 million. Notably, the payment from AIG appears to be the largest ever achieved in a securities class action lawsuit in the absence of a criminal indictment, an SEC enforcement action or a restatement of the company's financial statements. The payment from PwC is notable, among other reasons, because all of the claims asserted by Plaintiffs against PwC had been dismissed in the Court's ruling on the motion for judgment on the pleadings filed by PwC and certain of the other defendants in the wake of the Second Circuit's decision in *Fait v. Regions Financial Corp.*, 655 F.3d 105 (2d Cir. Aug. 23, 2011), which was issued during the course of the litigation. [ECF 416].

At the time the Settlement was reached, Lead Plaintiff and Lead Counsel had a full understanding of the strengths and weaknesses of Lead Plaintiff's claims and Defendants' defenses. Over the course of six years of hard-fought litigation, Lead Plaintiff, through Lead Counsel, vigorously prosecuted the claims of Settlement Class Members. As set forth in greater detail in the Joint Declaration of Jeffrey W. Golan and E. Powell Miller, before the Settlement was reached, Lead Counsel (i) conducted an extensive investigation of both public and non-public sources of information relating to the claims and the underlying events prior to filing the Complaint (¶¶9, 17); (ii) drafted, filed and served the Complaint (¶8); (iii) successfully opposed Defendants' voluminous motions to dismiss and a related motion for reconsideration (¶¶18-27);

[2] All references to ¶__ herein are to the Joint Declaration of Jeffrey W. Golan and E. Powell Miller in Support of (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Lead Counsel's Application for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration") that Lead Plaintiff is filing herewith. The Joint Declaration provides a detailed description of the history of this litigation, the claims asserted, the investigation and discovery undertaken, the negotiation process, the substance of the Settlement and the Plan of Allocation, and the substantial risks in litigating the claims asserted against the Defendants. It is an integral part of the submission and it is incorporated by reference.

(iv) obtained, reviewed and analyzed more than 36 million pages of documents produced by Defendants and non-parties (¶¶33-37); (v) prepared for and took 45 fact witness depositions over 51 days (¶¶38-39); (vi) prepared and served comprehensive responses to Defendants' contention interrogatories (¶40); (vii) filed detailed papers in support of Lead Plaintiff's vigorously contested class certification motion (¶¶41-52); (viii) engaged in class certification discovery, during which Lead Counsel took or defended an additional nineteen class-related depositions, including eight expert depositions (¶¶44-46); (ix) participated in a three-day evidentiary hearing and oral argument on Lead Plaintiff's motion for class certification (¶¶50-52); (x) filed an opposition to certain defendants' motion for judgment on the pleadings (¶¶53-56); and (xi) filed and opposed motions to compel discovery (¶¶57-62).

Moreover, the Settlement is the result of two years of arm's-length in-person mediation sessions facilitated by former U.S. District Court Judge Layn Phillips. ¶¶63-71. The mediation process began in April 2012, when Lead Plaintiff and AIG agreed to a mediation. Prior to the first mediation session held on July 25 and 26, 2012, each side submitted extensive *ex parte* position statements to Judge Phillips, where they outlined their respective views of the merits of the claims and defenses in the Action. ¶63. Additional mediation sessions were held before Judge Phillips on September 3 and 4, 2013 and on November 12, 2013. ¶64. Negotiations came to a halt and the Action was stayed when, on November 15, 2013, the Supreme Court granted certiorari in *Halliburton Co. v. Erica P. John Fund, Inc.* ("*Halliburton II*"), in which the Supreme Court agreed to consider the viability of the fraud-on-the-market presumption of reliance necessary to certify a class of putative securities fraud plaintiffs under Section 10(b) of the Securities Exchange Act of 1934. ¶65. On June 23, 2014, the Supreme Court decided *Halliburton II,* where it sustained the fraud-on-the-market presumption and affirmed what a

plaintiff must demonstrate to invoke the presumption. ¶67. Thereafter, the parties reached out to Judge Phillips to explore the possibility of engaging in settlement discussions again. On July 15, 2014, counsel for AIG and Lead Counsel, on behalf of their respective clients, accepted a mediator's proposal from Judge Phillips to settle and release all claims asserted in the Action against the Settling Defendants other than PwC in return for a cash payment of $960 million. ¶68.

Shortly thereafter, Lead Plaintiff and PwC agreed to mediate the claims that Lead Plaintiff had asserted against PwC, but had been dismissed by Court Order dated April 26, 2013. The mediation was conducted on July 30, 2014, at which time no agreement was reached. Then, on August 1, 2014, counsel for PwC and Lead Counsel, on behalf of their respective clients, accepted a mediator's proposal from Judge Phillips to settle and release all claims asserted against PwC in this Action for the cash payment of $10.5 million for the benefit of the Class. ¶69.

In addition to the many reasons stated in this Memorandum and in the Joint Declaration, the settlement process itself supports a strong presumption of fairness and approval of the Settlement. *See D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (presumption of fairness found where the settlement was the product of "arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class's interests" and that "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure"). Moreover, the Settlement was negotiated under the direction and with direct and substantial involvement of Lead Plaintiff, whose representatives attended the mediations. *See* Declaration of Robert Brackenbury In Support of Final Approval of Class Action Settlement,

Plan of Allocation, Award of Attorneys' Fees and Reimbursement of Expenses, and Reimbursement of Expenses of Lead Plaintiff ("Brackenbury Dec."), attached as Exhibit 2 to Joint Declaration, at ¶¶11-12.

The Settlement represents a particularly excellent result when considered in light of the considerable risks associated with this Action. ¶¶83-98. As set forth in greater detail in the Joint Declaration, throughout the litigation, including in their responses to Lead Plaintiff's motions for class certification, Defendants raised a series of defenses that, if successful, could well have undercut Lead Plaintiff's ability to have the class fully certified, to defeat motions for summary judgment and/or obtain a meaningful (if any) recovery on behalf the Class. *Id.* For instance, Defendants attacked, *inter alia,* the claims that Lead Plaintiff asserted on behalf of purchasers of AIG securities during the early part of the class period (from March 2006 through July 2007) and during the later part of the class period (from March 2008 through September 16, 2008). ¶¶84-86. Defendants further raised challenges to the breadth and scope of the class that Lead Plaintiff sought to have certified, arguing that the AIG non-stock securities had virtually no price impact until the end of the class period, and that 60 of the 68 non-stock securities had so little pricing data that Lead Plaintiff's expert could not even run event studies for those securities. ¶¶89-91.

Moreover, Lead Plaintiff faced considerable risks in establishing liability and damages. Defendants raised a series of issues concerning the damages that Lead Plaintiff might have asserted at trial, including that the declines in the price of AIG stock through the last three months of the Class Period mirrored declines in the stock prices of other companies in the financial sector, and that such declines were merely the result of the realization of risks that were already known in the market stemming from AIG's previously disclosed exposure to the U.S. residential real estate market, including its known exposure to the subprime market. ¶¶93-94.

Defendants further argued, in connection with Lead Plaintiff's claims relating to the common stock portion of the case, that the declines in the prices of AIG stock on the alleged curative disclosure dates were not attributable to any alleged misrepresentations or omissions. Defendants also raised significant damages and loss causation defenses with respect to Plaintiffs' offering claims. ¶¶95-97. Any of the above arguments, if credited by the Court or a jury, could have materially limited or eliminated the Settlement Class's recovery.

The proposed Settlement, if approved, provides an immediate, certain recovery for the claims asserted in this Action, without incurring the risk that Defendants would succeed in defeating Lead Plaintiff's motion for class certification or would prevail at summary judgment, trial, or in subsequent appeals. ¶78. Lead Plaintiff, a sophisticated institutional investor with a significant financial stake in the outcome of the Action, has closely supervised and monitored both the prosecution and the settlement of the Action, including attendance at Court hearings and participation in the mediation sessions. ¶¶63-64, 113, 143; Brackenbury Dec. ¶¶8-13. Moreover, Lead Counsel, who are experienced in prosecuting securities class actions, believe that this Settlement is in the best interest of the Settlement Class.

By Court Order dated October 7, 2014, the Court granted preliminary approval of the Settlement ("Preliminary Approval Order"). In accordance with the Preliminary Approval Order, on November 6, 2014, the Court-authorized claims administrator, Gilardi & Co. LLC ("Gilardi" or the "Claims Administrator"), began its notice campaign. As of December 16, 2014, Gilardi has disseminated over 1.6 million copies of the Notice and Proof of Claim to potential Settlement Class Members. ¶82 n.3; see also Affidavit of Michael Joaquin Regarding Mailing of the Notice and Proof of Claim, Publication of the Summary Notice, and Responses to Notice ("Claims Administrator Aff."), attached as Exhibit 1 to the Joint Declaration, at ¶9. In addition,

on November 13, 2014, the Summary Notice was published in *The Wall Street Journal* and *PR Newswire.* Claims Administrator Aff. ¶10. As ordered by the Court and stated in the Notice, any objections to the Settlement, the Plan of Allocation or the request for attorneys' fees and reimbursement of litigation expenses must be submitted by January 5, 2015. To date, there have not been any objections submitted to the Court or provided to Lead Counsel. ¶82 n.3.

In light of the relevant considerations detailed below and under the standards articulated by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), Lead Plaintiff respectfully submits that the Settlement and the Plan of Allocation are fair, reasonable, and adequate, and should be approved by the Court.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED

A. The Standard for Approval of a Class Action Settlement

As a matter of public policy, courts strongly favor the settlement of lawsuits. *Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d. Cir. 1983). This is particularly true in connection with complex class action litigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d. Cir. 2005). When evaluating a proposed settlement under Rule 23(e), a court must determine whether the settlement, taken as a whole, is fair, reasonable and adequate, and was not the product of collusion. *Maywalt v. Parker & Parsley Petro. Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995); *Varljen v. H.J. Meyers & Co., Inc.*, No. 97 Civ. 6742, 2000 WL 1683656, at *3 (S.D.N.Y. Nov. 8, 2000); *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 132 (S.D.N.Y. Apr. 16, 2008). A proposed class action settlement is entitled to a presumption of fairness where, as here, it was the product of arm's-length negotiations conducted by capable, experienced counsel. *See, e.g., In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240, 2007 WL 2230177 (S.D.N.Y. July 27, 2007); *Strougo ex rel. Brazilian Equity Fund, Inc.*

v. Bassini, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003). Indeed, "absent evidence of fraud or overreaching, [courts] consistently have refused to act as Monday morning quarterbacks in evaluating the judgment of counsel." *Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993) (citation omitted). The principal factors in evaluating the fairness of a proposed settlement in the Second Circuit are well-settled:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Wal-Mart, 396 F.3d at 117 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974)).[3] In weighing these factors, courts recognize that settlements usually involve a significant amount of give and take between the negotiating parties; therefore, courts do not attempt to rewrite settlement agreements or try to resolve issues that are left undecided as a result of the parties' compromise. *See, e.g., In re Warner Commc'ns Sec. Litig.*, 798 F.2d, 35, 37 (2d Cir. 1986).

Lead Plaintiff respectfully submits that the proposed Settlement is eminently fair, reasonable and adequate when measured under the foregoing criteria. The separately negotiated settlements with AIG and PwC were reached only after capable counsel with extensive experience in complex securities litigation: (i) had fully explored the substantial risks associated with continued litigation of the Action and the strengths and weaknesses of their respective positions; and (ii) had engaged in lengthy arm's-length settlement negotiations with counsel for

[3] Lead Plaintiff recognizes that AIG is a very large company and, therefore, Defendants' ability to withstand a greater judgment was not a significant factor in Lead Plaintiff's decision to enter into the Settlement.

Defendants, overseen by Judge Phillips. The Settlement represents an excellent and immediate result for the Settlement Class and should be approved by this Court.

B. The Settlement is Substantively Fair Under *Grinnell*

1. The Complexity, Expense and Likely Duration of the Litigation

"[I]n evaluating the settlement of a securities class action, federal courts, including this Court, 'have long recognized that such litigation is notably difficult and notoriously uncertain.'" *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 CM PED, 2010 WL 4537550, at *15 (S.D.N.Y. Nov. 8, 2010) (quoting *In re Sumitomo Copper Litig.,* 189 F.R.D. 274, 281 (S.D.N.Y. 1999)). Because "[s]ecurities class actions are generally complex and expensive to prosecute," *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510 CPS, 2007 WL 1191048, at *10 (E.D.N.Y. Apr. 19, 2007), such actions "readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 310 (E.D.N.Y. 2006).

As reflected in the Joint Declaration, this prosecution has required exhaustive efforts. The parties briefed numerous motions, including voluminous motions to dismiss, motions for class certification, a motion to strike, and motions to compel discovery. ¶¶18-25, 41-52, 57-60. In addition, Lead Counsel reviewed and analyzed over 36 million pages of documents, took 45 fact witness depositions and engaged in expert and fact discovery in connection with class certification, including taking or defending an additional 19 fact and expert depositions. As reflected by the more than 165,000 hours Plaintiffs' attorneys and paralegals spent litigating this case, the litigation effort has been enormous. ¶127. While Defendants' motions to dismiss have already been decided and fact discovery nearly completed, Lead Plaintiff's class certification motion remained pending at the time of the Settlement and summary judgment motions had yet

to be filed by the parties. The resolution of each of these issues would require an additional investment of time and expense on behalf of each of the parties.

The complexity of the substantive issues in this Action also weighs in favor of approving the Settlement. Lead Plaintiff's 284-page Complaint alleged that Defendants violated the federal securities laws by making materially false and misleading statements concerning the Company's financial results, business operations, and condition, including its exposure to risky subprime mortgage debt, causing the prices of AIG securities to be artificially inflated over the course of the Class Period. The Action involved more than 70 different AIG securities and 101 public bond and stock offerings during the Class Period. ¶¶12-17. Moreover, this case involved accounting and financial issues that required a thorough understanding of the GAAP and GAAS provisions at issue, and required extensive consultation with forensic accounting and auditing experts. If the Action were to continue, Lead Plaintiff would face Defendants' multifaceted defenses concerning materiality and loss causation that were raised in opposition to class certification, requiring Lead Plaintiff to engage in additional expert discovery. ¶¶83-98.

Furthermore, absent the Settlement, there would have been significant additional necessary resources and costs expended to prosecute the claims against the Defendants. Trial on these issues would be both lengthy and costly, and would require expert testimony, further adding to the expense and duration of the Action. *See In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement favored where "trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court"). Moreover, even if the Class were able to recover a judgment at trial, there is always additional delay caused by not only the trial, but by the

inevitable appeals of any judgments. Thus, the Settlement provides a substantial immediate benefit for the Settlement Class without the expense and delay of further litigation.

2. The Reaction of the Settlement Class to the Settlement

The reaction of the Settlement Class to the Settlement is another factor favoring its approval by the Court. *See Grinnell*, 495 F.2d at 462. The deadline for filing objections is January 5, 2015. As of the date of the present filing, no objections have been submitted to the Court or provided to Lead Counsel out of the more than 1.6 million Notices sent to potential Settlement Class Members. *See* ¶82 n.3 & Claims Administrator Aff. ¶9. On the other hand, over 12,000 proofs of claim have already been submitted. *Id.* ¶13. Lead Plaintiff respectfully submits that the positive reaction of the Settlement Class to date supports approval of the Settlement. *See Maley v. Del. Global Techs. Corp.*, 186 F. Supp. 2d 358, 361 (S.D.N.Y. 2002) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.").

3. The Stage of the Proceedings and Amount of Discovery Completed

"[T]he stage of the proceedings and the amount of discovery completed" are other factors to be considered in determining the fairness, reasonableness and adequacy of a settlement. *Grinnell*, 495 F.2d at 463. "[F]ormal discovery is not a prerequisite; the question is whether the parties had adequate information about their claims." *In re Global Crossing Sec. & ERISA Litig.,* 225 F.R.D. 436, 458 (S.D.N.Y. 2004); *see also In re WorldCom, Inc. Sec.*, 347 B.R. 123, 145 (Bankr. S.D.N.Y. 2006) ("This factor is attuned to the parties' knowledge and awareness of the relative strength or weakness of each party's respective arguments and positions."). This factor strongly supports the Settlement.

Here, after more than six years of litigating this Action, Lead Plaintiff and Defendants have gained a thorough understanding of the strengths and weaknesses of the claims and the obstacles to success. *See In re Excess Value Ins. Coverage Litig.,* No. M-21-84RMB, 2004 WL 1724980, at *12 (S.D.N.Y. Jul. 30, 2014) ("The investigation, discovery, and motion practice conducted to date provide Plaintiffs with sufficient information to make an informed judgment on the reasonableness of the settlement proposal.") (internal citations and quotations omitted).

As set forth in greater detail in the Joint Declaration, the Settlement was reached only after completion of: (i) Lead Plaintiff's initial pre-filing factual investigation (¶9); (ii) Lead Plaintiff's analysis of AIG's public filings and public statements (*id.*); (iii) Lead Plaintiff's review of news articles, analyst reports and transcripts of public hearings concerning AIG (*id.*); (iv) Lead Plaintiff's interviews of several confidential witnesses in connection with drafting the Complaint (*id.*); (v) exhaustive briefing of Defendants' motions to dismiss (¶¶18-27); (vi) the review and analysis of over 36 million pages of documents produced by Defendants (¶¶9, 33-37); (vii) consultations with experts on loss causation, damages, accounting and auditing, and investment banking and securitization of mortgage loans (¶¶9, 148-150); (viii) multiple rounds of briefing for class certification (¶¶41-52); (ix) class-related discovery, including the taking or defending of 19 depositions, 8 of which were expert depositions (¶¶44-46); (x) a three-day evidentiary hearing on the class certification motion (¶¶50-52); (xi) the depositions of 45 fact witnesses (¶¶38-39); and (xii) intensive settlement negotiations facilitated by Judge Phillips, where the parties aired their significant differences concerning the strengths and weaknesses of each side's claims and defenses, as well as the potential damages that might be presented by each side to a jury (¶¶63-69). Thus, the Settlement was not achieved until the Parties had sufficient familiarity with the issues in the case in order to evaluate its merits and agree on a settlement amount that was

acceptable to Defendants and reasonable, fair and adequate to the Class. Lead Plaintiff and Lead Counsel therefore had the requisite information to make an informed decision about the relative benefits of litigating or settling the Action and "developed an informed basis from which to negotiate a reasonable compromise." *Global Crossing*, 225 F.R.D. at 459; *see also Maley*, 186 F. Supp. 2d at 363-64.

4. The Risks of Establishing Liability and Damages and in Maintaining the Class Action Through Trial

Grinnell holds that, in assessing the fairness, reasonableness, and adequacy of a settlement, courts should also consider the "risks of establishing liability," "the risks of establishing damages," and "the risks of maintaining the class action through the trial." *Grinnell,* 495 F.2d at 463. In so doing, the Court is not called on to adjudicate disputed issues or decide unsettled questions, but instead should "assess the risks of litigation against the certainty of recovery under the proposed settlement." *Global Crossing*, 225 F.R.D. at 459 ("Courts approve settlements where plaintiffs would have faced significant legal and factual obstacles to proving their case."). While the claims asserted in this Action were brought in good faith and Lead Plaintiff believes they have merit, as detailed in the Joint Declaration at ¶¶83-98 there were significant risks that Lead Plaintiff would have faced in attempting to achieve a better result through continued litigation.

Although the Complaint had survived Defendants' motions to dismiss,[4] Lead Plaintiff's motion for class certification remained pending at the time of the Settlement. There were also

[4] On September 27, 2010, the Court issued an Opinion and Order denying Defendants' motions to dismiss. The Court held that the Complaint adequately alleged material misstatements and omissions concerning AIG's credit default swap portfolio as well as its securities lending program. The Court upheld Lead Plaintiff's claims under sections 10(b) and 20(a) of the Exchange Act, as well as each of claims brought under sections 11, 12(a)(2) and 15 of the Securities Act for the stock, corporate units, notes and bonds issued by AIG during the Class Period. ¶19.

On October 12, 2011, PwC, the Underwriter Defendants, and the Director Defendants moved for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, seeking dismissal of certain claims relating

numerous other risks that could have prevented Lead Plaintiff from achieving any recovery on behalf of the Settlement Class, or at least a recovery of the magnitude of the amount achieved through the Settlement, including the possibility of the Court finding in favor of Defendants at summary judgment on the basis of liability and/or loss causation. Indeed, on July 8, 2014, this Court issued a summary judgment opinion in *In re Pfizer, Inc. Securities Litigation*, 04-cv-09866-LTS-HBP, 5-md-1688-LTS, 2014 WL 3291230 (S.D.N.Y. July 8, 2014), in which the Court entered judgment in favor of defendants and against the plaintiff on loss causation grounds. Further, even if the Court had permitted the claims to proceed to trial after what clearly would have been lengthy and contentious expert witness disputes and summary judgment motions, a jury could have either ruled against Lead Plaintiff or awarded damages in an amount less than those sought by Lead Plaintiff. Moreover, there was further risk that even if Lead Plaintiff were successful in overcoming summary judgment and establishing liability at trial (and having the judgment upheld on appeal), Lead Plaintiff's damages could still be substantially reduced or eliminated based on the defenses advanced by Defendants at the class certification stage.

Defendants made numerous arguments with respect to the claims of AIG stock purchasers in various portions of the Class Period, all of which posed potential issues for class certification and the merits portion of the case, which are set forth in greater detail in the Joint Declaration. ¶¶83-88, 93. For example, Defendants argued that with respect to AIG stock purchasers during the early part of the class period (from March 2006 through July 2007), the

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to the alleged false and misleading statements made in AIG's financial statements under the Second Circuit's decision in *Fait*. The motion was subsequently joined by AIG and the Executive Defendants. On April 26, 2013, the Court issued a Memorandum Opinion and Order ("April 26, 2013 Order") granting the motion and dismissing all claims against PwC and Lead Plaintiff's Securities Act claims against AIG, its outside directors, the Underwriter Defendants and certain of the Individual Defendants to the extent those claims were based on statements of opinion. ¶¶54-56.

alleged misrepresentations were not material and there was no price impact because there was not a statistically significant price movement after the disclosures made by the Company in August 2007, when AIG first presented the details of its CDS portfolio and securities lending portfolio to the market. ¶85. Defendants also argued that Lead Plaintiff could not assert viable claims on behalf of purchasers of stock after the close of the market on February 28, 2008, when AIG issued its Form 10-K, because the statements in the Form 10-K allegedly cured the alleged misrepresentations or omissions in the prior years' audited financial statements. ¶86. Defendants also made a series of arguments with the respect to the claims of common stock purchasers from August 2007 through February 2008, including that AIG's valuations of loan loss reserves were "judgments" that were not susceptible to claims by the Lead Plaintiff and that AIG had already disclosed significant information and details about the Company's CDS portfolio and how AIG was seeking to value it. ¶87. These arguments posed a potential issue for class certification and the merits portion of the case.

Defendants also advanced arguments in defense of claims made on behalf of purchasers of AIG bonds and other securities. For example, Defendants argued that none of the alleged misrepresentations and omissions asserted in connection with Lead Plaintiff's claims for offerings made from March 2006 to February 2008 was material. ¶¶89-91. In this regard, PwC argued that as of March 3, 2008, "most of the AIG bonds for which Plaintiffs' expert was able to obtain trading data were trading above their offering price." PWC's Memorandum of Law in Opposition to Lead Plaintiff's Motion for Class Certification, ECF 350 at 3 (filed May 24, 2012); ¶89. While Lead Plaintiff had credible responses to these arguments, Lead Plaintiff could not dismiss the possibility that either the class would not be certified in its entirety or, if certified,

that a reasonable jury could conclude that certain of the alleged misrepresentations were not material.

Lead Plaintiff also faced significant challenges to proving damages. ¶¶93-97. Proof of damages in a securities fraud case is always difficult and invariably requires highly technical expert testimony. The experts retained by Lead Plaintiff and Defendants had widely divergent views on loss causation and damages issues in this case. Courts have recognized the need for compromise where it is impossible to predict which expert's testimony or methodology would be accepted by the jury. *See generally In re Am. Bank Note Holographics, Inc., Sec. Litig.,* 127 F. Supp. 2d 418, 426-27 (S.D.N.Y. 2001) (stating that "[i]n such a battle, Plaintiffs' counsel recognize the possibility that a jury could be swayed by experts for Defendants, who could minimize or eliminate the amount of Plaintiffs' losses"); *see also In re PaineWebber Ltd. P'ships Litig.,* 171 F.R.D. 104, 129 (S.D.N.Y. 1997), *aff'd,* 117 F.3d 721 (2d Cir. 1997). Indeed, at the time of the Settlement, Lead Plaintiff already knew that damages would be a hotly contested issue in the litigation. For example, on class certification, Defendants argued that all material information about the Company had been disclosed no later than February 28, 2008, and that neither Lead Plaintiff nor any members of the Settlement Class had damages based on purchases of AIG common stock or any other AIG security after February 28, 2008 or arising out of the declines in the prices of AIG common stock and other securities from February 29, 2008 through the end of the Class Period. Because the damages associated with the declines in prices of AIG common stock after February 29, 2008 would have formed the bulk of Lead Plaintiff's damages in this Action, without settlement, Lead Plaintiff faced the risk that the damages would be significantly reduced by either the Court or a jury. ¶¶93-95, 97.

Defendants also raised significant damages and loss causation defenses with respect to Plaintiffs' offering claims. ¶¶96-97. Defendants pointed to the lack of statistically significant price movements in the prices of AIG's non-stock securities after the Company issued its Form 8-K on February 11, 2008 and its Form 10-K on February 28, 2008 to argue that Plaintiffs would be unable to show any damages arising from claimed misrepresentations or omissions in the offering documents of the bonds, debentures and notes issued from the start of the Class Period through February 2008. Defendants further argued that almost all of the decline in the prices of AIG's non-stock securities came at the very end of the Class Period, and that those declines did not result from any alleged misrepresentations and omissions in earlier offering documents. Lead Plaintiff expected that expert testimony to establish loss causation in light of the deterioration of the financial markets in the summer of 2008 would be a complex undertaking, and that Defendants' arguments in response to Lead Plaintiff's anticipated expert testimony on loss causation could pose a significant risk to the Class, especially in light of this Court's recent decision in *Pfizer,* 04-cv-09866-LTS (S.D.N.Y), in which the Court entered judgment in favor of defendants and against the plaintiff on loss causation grounds. ¶¶96-97.

Finally, because all claims against PwC were dismissed from this Action in the April 26, 2013 Order (¶56), without the Settlement, Lead Plaintiff may well not have recovered anything from PwC on behalf of the Settlement Class. Given all of the risks of establishing liability, damages and maintaining the class action through trial, this factor weighs in favor of approval of the Settlement.

5. The Range of Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The final two *Grinnell* factors - the reasonableness of the settlement in light of the best possible recovery and the risks of litigation - also weigh in favor of approval of the Settlement. As

the Second Circuit has explained, there is "a range of reasonableness with respect to a settlement" that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein,* 464 F.2d 689, 693 (2d Cir. 1972). A fairness determination turns not on a "mathematical equation yielding a particularized sum ... but rather ... [on] the strengths and weaknesses of the plaintiff's case." *In re PaineWebber*, 171 F.R.D. at 130.

In assessing the reasonableness of a settlement amount, the legal and practical obstacles to obtaining a larger recovery at trial must be weighed against the certainty of the proposed settlement. *See Global Crossing,* 225 F.R.D. at 461. The prompt, guaranteed payment of the settlement money now increases the settlement's value in comparison to "some speculative payment of a hypothetically larger amount years down the road." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01-CV-11814 (MP), 2004 WL 1087261, at *5 (S.D.N.Y. May 14, 2004); *see also Global Crossing,* 225 F.R.D. at 461; *In re "Agent Orange" Prod. Liab. Litig.*, 611 F. Supp. 1396, 1405 (E.D.N.Y. 1985).

As set forth above, Defendants put forth arguments that would have called into question whatever damages Lead Plaintiff might have sought at trial. Even if the amount of "potential damages" is greater than the amount of a proposed settlement, however, this does not preclude approval of a lesser settlement. *See Grinnell*, 495 F.2d at 455 ("[T]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.").

The reasonableness of the Settlement in light of the risks of litigation, thus, weighs heavily in favor of approval of the Settlement. Given the declines in the prices of AIG common stock and its other publicly-traded securities on dates of the alleged curative disclosures, the number of shares

outstanding, and the magnitude of the offerings made by AIG during the Class Period, the best possible recovery that might have been achieved by successfully taking the case to trial and through the inevitable appeals, might have been multiples of the amount that Lead Plaintiff obtained through the Settlement. However, as summarized in the Joint Declaration, Plaintiffs faced very significant risks pertaining to the class certification motion, to liability issues in the case, and to its damages analysis. ¶¶83-98. Moreover, getting the case to a position where such a trial could have taken place (not to mention the inevitable appeals) would have subjected all Settlement Class members to years of additional delay before any recovery might have been achieved. Among other things, Lead Plaintiff's motion for class certification remained outstanding at the time the Parties entered into the Settlement; the Parties would have taken nearly a year for expert discovery on the merits of the case; Lead Plaintiff would likely have faced multiple motions for summary judgment filed by each of the defendants; and the Parties would likely have also briefed numerous *in limine* motions, including potential *Daubert* motions brought by each side. *See Maley,* 186 F. Supp. 2d at 366 ("Settling avoids delay as well as uncertain outcome at summary judgment, trial and on appeal. The legal and factual difficulties inherent in this case…coupled with the unpredictability of a lengthy and complex trial, and the appellate process that would follow, with the risk of reversal, make the fairness of this substantial settlement readily apparent.").

Plaintiffs faced risks at each of these stages, which the mediator took into account in making the mediator's proposals for the settlement with AIG and for the settlement with PwC, and which Lead Plaintiff and Lead Counsel took into account in accepting the proposals. Thus, when the benefits of the immediate guaranteed recovery are weighed against the risks of continued litigation and potential for recovery after trial, it is clear that approval of the Settlement is warranted on the basis of this factor.

C. The Proposed Settlement Is The Product Of Informed Arm's-Length Negotiations And Is Presumptively Fair

The record demonstrates the Settlement's procedural fairness. The Settlement negotiations, which spanned nearly two years and were at arm's-length between Lead Counsel and counsel for the Defendants under the auspices Judge Phillips, is entitled to a presumption of fairness. ¶¶63-71. *See In re Giant Interactive Grp., Inc. Sec. Litig.,* 279 F.R.D. 151, 160 (S.D.N.Y. 2011) (settlement approved where the "settlement was the product of prolonged, arms-length negotiation, including as facilitated by [Judge Phillips] a respected mediator"); *In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig*., 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (The parties, represented by highly experienced and capable counsel, engaged in extensive arm's length negotiations, which included multiple sessions mediated by retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases.").

In April 2012, Lead Plaintiff and AIG agreed to a mediation of the Action before Judge Phillips. On July 25-26, 2012, representatives of Lead Plaintiff and AIG and their respective counsel participated in a two-day mediation session with Judge Phillips. ¶63; Brackenbury Dec. ¶11. Because the first mediation session did not result in an agreement to resolve the Action, additional mediation sessions were held in September and November 2013. ¶¶63-64. Just days after the November mediation session, the Supreme Court granted certiorari in *Halliburton II*, which, after submissions to the Court by Lead Plaintiff and AIG, resulted in the Court staying the Action. ¶65. Following the Supreme Court's June 23, 2014 *Halliburton II* decision, where the Court sustained the fraud-on-the-market presumption, the parties reached out to Judge Phillips to explore the potential of renewed settlement discussion. ¶68. On July 15, 2014, counsel for AIG and Lead Counsel, on behalf of their respective clients, accepted a mediator's proposal from

Judge Phillips to settle the claims against the Settling Defendants other than PwC for a cash payment of $960 million. *Id.*

On the heels of this settlement, Lead Plaintiff and PwC agreed to a mediation of the claims that Lead Plaintiff had asserted against PwC on behalf of the Class, but which had been dismissed by the April 26, 2013 Order. Judge Phillips conducted a mediation session on July 30, 2014, at which time no agreement was reached. Then, on August 1, 2014, counsel for PwC and Lead Counsel, on behalf of their respective clients, accepted a mediator's proposal from Judge Phillips to settle the Action for a cash payment of $10.5 million from PwC for the benefit of the Class. ¶69.

Lead Plaintiff was intimately involved in the negotiation process. Among other things, Lead Plaintiff approved the decision to enter into settlement negotiations, participated in the mediation sessions, was intimately involved in the negotiations, accepted and approved the settlement amounts proposed by the mediator, and approved the final Stipulation and Agreement of Settlement. ¶¶63-64, 143; Brackenbury Dec. ¶¶11-13. These facts also weigh in favor of approving the Settlement. *See In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) ("under the PSLRA, a settlement reached — as this one was under the supervision and with the endorsement of a sophisticated institutional investor…is entitled to an even greater presumption of reasonableness…Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement") (internal citations omitted).

Lead Counsel, who made the presentations during mediation sessions, participated in other communications with the mediator and Lead Plaintiff, and negotiated the final Settlement on behalf of the Settlement Class, has extensive experience in successfully prosecuting some of

the largest and most complex securities class actions in history. See ¶133 & Exhibits 4 and 5 to Joint Declaration. Lead Counsel, who have served as lead counsel in other historic securities class actions settlements and had the benefit of two years of extensive discovery, and was therefore in a position to assess the strengths and weaknesses of the claims and defenses, also recommends that the Court approve the Settlement. ¶79. Such a recommendation should be accorded "great weight." *See In re Nasdaq Market-Makers Antitrust Litig.,* 187 F.R.D. 465, 474 ("'Great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation.").

II. THE NOTICE OF SETTLEMENT SATISFIES DUE PROCESS REQUIREMENTS AND IS REASONABLE

Rule 23(c)(2) requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974) (class notice is designed to fulfill due process requirements); *In re NASDAQ Litig.,* No. 94 Civ. 3996 (RWS), 1999 WL 395407, at *2 n. 3 (S.D.N.Y. June 15, 1999). The standard for measuring the adequacy of a class action settlement notice is reasonableness. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 340 (S.D.N.Y. 2005); *Wal-Mart,* 396 F.3d at 114. "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Id.* at 114 (internal citation omitted). "Notice is adequate if it may be understood by the average class member." *Id.* (internal citation omitted).

Here, in accordance with the Court's Preliminary Approval Order, starting on November 6, 2014, Gilardi caused the Notice and Proof of Claim packets, as approved by the Court, to be

mailed by first class mail to potential Settlement Class Members. Claims Administrator Aff. ¶3. The Notice contains a thorough description of the Settlement, the Plan of Allocation, and Settlement Class Members' rights to participate in and object to the Settlement, or exclude themselves from the Settlement Class. *Id,* Exhibit A. On November 13, 2014, the approved Summary Notice was published in the national edition of *The Wall Street Journal* and released over the *PR Newswire*. *Id.* ¶10 & Exhibits B and C. Information regarding the Settlement, including downloadable copies of the Notice and Proof of Claim Form, was also posted on a website devoted solely to the administration of the Settlement (*www.aig2008securitiessettlement.com*), as well as on Lead Counsel's websites (*www.barrack.com* and *www.millerlawpc.com*). *Id.* ¶12.

The notice program, which combined an individual, mailed Notice and Proof of Claim packet to all potential Settlement Class Members who could be reasonably identified, as well as to custodian holders, and a Summary Notice published in the nation's pre-eminent national business publication and over the internet, contained all of the information required by § 21D(a)(7) of the PSLRA, and is adequate to meet the due process and Rule 23(c)(2) and (e) requirements for providing notice to the Settlement Class.

III. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE

To be approved, a plan of allocation for a class recovery must be fair and reasonable. *WorldCom*, 388 F. Supp. 2d at 344. "When formulated by competent and experienced class counsel," a plan of allocation "need only have a reasonable, rational basis.'" *Global Crossing,* 225 F.R.D. at 462 (internal citations omitted). *See also Maley,* 186 F. Supp. 2d at 367 ("The proposed Plan of Allocation, which was devised by experienced plaintiffs' counsel who are familiar with the relative strengths and weaknesses of the potential claims of Class members, satisfied the same standards of fairness, reasonableness, and adequacy that apply to the overall

settlement."); *In re Marsh & McLennan Companies, Inc. Sec. Litig*., No. 04 CIV. 8144 (CM), 2009 WL 5178546, at *13 (S.D.N.Y. Dec. 23, 2009). In determining whether a plan of allocation is fair, courts look largely to the opinion of counsel. *Am. Bank Note*, 127 F. Supp. 2d at 429-30; *In re NASDAQ Litig.,* No. 94 Civ. 3996 (RWS), 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000).

Here, the Plan of Allocation is designed to achieve an equitable distribution of the Net Settlement Fund. Lead Counsel worked closely with Lead Plaintiff's damages expert in establishing the Plan of Allocation and believes that the Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members. ¶¶99-109. Lead Plaintiff also believes that the Plan of Allocation represents a fair and reasonable method of valuing claims submitted by Settlement Class Members. Brackenbury Dec. ¶13.

The Plan of Allocation for AIG's common stock calculates the Recognized Loss amount based on the level of alleged artificial inflation in the prices of AIG's common stock at the time a particular claimant purchased and sold shares, or retained shares beyond the end of the Class Period. ¶102. With respect to the other AIG securities at issue in the case, the calculation of Recognized Loss will depend upon several factors, including (i) which security was purchased or otherwise acquired, and in what amounts; (ii) when the security was purchased or otherwise acquired; (iii) whether the security was sold, and if so, when it was sold, and for what amounts; and (iv) whether the security was redeemed, called or held to maturity. ¶101. These methods of allocating settlement proceeds based on the timing of the purchases and sales of the securities at issue have been repeatedly accepted by the courts. *See, e.g., WorldCom,* 388 F. Supp. 2d at 348; *In re Holocaust Victim Assets Litig*., 413 F.3d 183, 186 (2d Cir. 2005); *In re Gulf Oil/Cities Serv.*

Tender Offer Litig., 142 F.R.D. 588, 596 (S.D.N.Y. 1992); *In re Charter Commc'ns, Inc. Sec. Litig.*, No 4:02-CV-1186 (CAS), 2005 WL 4045741, at *2 (E.D. Mo. June 30, 2005).

The Plan of Allocation also takes into account the relative estimated maximum potential damages of each group of purchasers of different AIG securities, the strengths and weaknesses of claims asserted on their behalf, certain defenses raised by Defendants during class certification proceedings and in the mediation sessions, and the fact that the only claims asserted against PwC in the Action were on behalf of purchasers during the Class Period of certain of the Eligible Securities other than AIG common stock. On this basis, under the Plan of Allocation, Lead Plaintiff and Lead Counsel have proposed that the Net Settlement Fund should be allocated to Authorized Claimants as follows: (a) purchasers of AIG common stock shall be allocated eighty percent (80%) of the Net AIG Settlement Amount; and (b) purchasers of Eligible Securities other than common stock shall be allocated twenty percent (20%) of the Net AIG Settlement Amount and 100% of the Net PwC Settlement Amount. ¶104.

The Plan of Allocation also provides that purchases of AIG common stock during the time period from August 7, 2007 through February 28, 2008, shall be fully valued based on the Recognized Loss formula set forth in Table 1 of the Notice, and that purchases of AIG common stock during the time periods from March 16, 2006 through August 6, 2007 and from February 29, 2008 through September 16, 2008 shall be valued at eighty percent (80%) of the Recognized Loss formula set forth in Table 1. No similar adjustments will be made for purchasers of Eligible Securities other than AIG common stock. ¶106. As stated in the Joint Declaration, Lead Plaintiff and Lead Counsel believe that such a differentiation in the valuation of Recognized Loss amounts is fair and reasonable, given the relative strength of the claims of purchasers of AIG common stock from August 7, 2007 through February 28, 2008, compared

with the relative strengths of the claims of purchasers of AIG common stock from March 16, 2006 through August 6, 2007 (the early part of the Class Period), and of purchasers of AIG common stock from February 29, 2008 through September 16, 2008 (the end of the Class Period). *Id.* The strengths of the claims during this middle portion of the Class Period derive not only from the types of statements Defendants made about AIG's exposure to the sub-prime market through its CDS portfolio and securities lending program, but also from the relative lack of challenges by Defendants with respect to this portion of the Class during class motion proceedings in the case. *Id.*

For these reasons, as more fully stated in the Joint Declaration, Lead Plaintiff and Lead Counsel believe that the Plan of Allocation is a fair and reasonable way to apportion the Net Settlement Fund to Settlement Class members who timely file valid Proofs of Claim.

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS FOR SETTLEMENT PURPOSES

To effectuate the proposed Settlement, Lead Plaintiff seeks final certification of a Settlement Class of all Persons (a) who purchased AIG Securities on a U.S. public exchange from March 16, 2006 through September 16, 2008 or (b) who purchased or acquired AIG Securities in or traceable to a public offering during the Settlement Class Period, and suffered damages as a result.[5]

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[5] Excluded from the Settlement Class are: (i) any Person, to the extent such Person's claims are based on transactions made outside the United States involving securities not listed on a U.S. public exchange; (ii) the Defendants; the Officers and Directors of AIG during the Settlement Class Period; the members of the Immediate Families of the Individual Defendants; any firm, trust, partnership, corporation, or entity in which any Defendant has a majority interest (except that the Settlement Class shall not exclude any Investment Vehicle as defined in the Stipulation), the legal representatives, heirs, successors-in-interest, or assigns of any such excluded Person; (iii) Maurice R. Greenberg; Howard I. Smith; C.V. Starr & Co., Inc. and Starr International Co., Inc. and their current and former officers, directors, partners, members, affiliates, subsidiaries, employees, agents, attorneys, insurers, representatives, heirs, successors in interest and assigns, pursuant to the Memorandum of Understanding dated November 25, 2009 relating to *Starr Int'l Co., v. AIG*, No. 4021-09 (Juzgado 16 del Primer Circuito Judicial de Panama) and *Greenberg v. AIG, Inc., et al.*, No. 09 civ. 1885 (LTS) (S.D.N.Y.); and (iv) any Person that would otherwise be a Settlement Class Member, but properly excludes himself, herself, or itself by submitting a valid and

A settlement class, like other certified classes, must satisfy all the requirements of Rule 23(a) and (b). *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). Nevertheless, the manageability concerns of Rule 23 (b)(3) are not at issue. *See Amchem Products v. Windsor,* 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problem… is not a consideration when settlement-only certification is requested"); *In re Global Crossing,* 225 F.R.D. at 451. Here, although Defendants raised a series of issues in opposition to Lead Plaintiff's motion for class certification of a litigation class, Lead Plaintiff and Defendants all agree that certification is appropriate for the purpose of effectuating the Settlement. Lead Plaintiff respectfully submits that the proposed Class meets all the requirements of Rule 23.

A. The Class Satisfies the Requirements of Rule 23(a)

The general criteria for certification of a class are set forth in Rule 23(a), as follows:

One or more members of a class may sue or be sued as representative parties on behalf of all members only if:

(1) the class is so numerous that joinder of all members is impracticable;
(2) there are questions of law or fact common to the class;
(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
(4) the representative parties will fairly and adequately protect the interests of the class.

Each of these requirements is satisfied here.

1. The Members of the Settlement Class are so Numerous that Joinder of all Members is Impracticable

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1); *Fogarazzo v. Lehman Bros.,* 263 F.R.D. 90, 96

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timely request for exclusion from the Settlement Class in accordance with the requirements set forth herein and in the Notice.

(S.D.N.Y. 2009). "Impracticability means difficulty or inconvenience of joinder [not] ... impossibility of joinder." *In re Blech Sec. Litig.*, 187 F.R.D. 97, 103 (S.D.N.Y. 1999). Moreover, in securities fraud cases "relating to publicly owned and nationally listed corporations, the numerosity requirement may be satisfied by a showing that a large number of shares were outstanding and traded during the relevant period." *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, No. 01 Civ. 11814 (LAP), 2004 WL 2997957, at *3 (S.D.N.Y. Dec. 27, 2004) (internal citations and quotations omitted); *see also In re Deutsche Telekom AG Sec. Litig.*, 229 F. Supp. 2d 277, 280 (S.D.N.Y. 2002) ("Class certification is frequently appropriate in securities fraud cases involving a large number of shares traded publicly in an established market.").

The numerosity requirement is satisfied here. As of April 30, 2008, AIG reported that it had 2.49 billion shares of common stock issued and outstanding, and thereafter issued an additional 196 million shares of common stock in an offering of May 12, 2008. Moreover, as identified in ¶¶591-592 of the Complaint, AIG issued over $20 billion of notes and other debt securities in registered public offerings during the Class Period and, as of September 16, 2008, had approximately $50 billion of notes and debt securities outstanding. Finally, as of December 16, 2014, the Claims Administrator for the Settlement, had mailed over 1.6 million Notices and Proof of Claim packets to potential Settlement Class Members. *See* Claims Administrator Aff. ¶9. Accordingly, the Settlement Class is extremely large and the numerosity requirement of Rule 23(a)(1) is readily satisfied.

2. There Are Numerous Questions of Law or Fact Common to the Members of the Settlement Class

Rule 23(a)(2) requires that there be a question of law or fact common to the class. *See Marisol v. Guiliani*, 126 F.3d 372, 376 (2d. Cir. 1997) (commonality requirement is met "if plaintiffs' grievances share a common question of law or of fact"). Commonality is "not

defeated by slight differences in class members' positions," *Blackie v. Barrack*, 524 F.2d 891, 902 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976), or because "all of the allegations of the class do not fit together like pieces in a jigsaw puzzle." *Green v. Wolf Corp.*, 406 F.2d 291, 300 (2d Cir. 1968); *see also In re Dynex Capital Inc. Sec. Litig.*, No. 05 Civ. 1897(HB), 2011 WL 781215, at *2 (S.D.N.Y. March 7, 2011) ("Class certification will not necessarily be precluded by differing individual circumstances of class members"); *In re Deutsche Telekom*, 229 F. Supp. 2d at 281 ("Commonality does not mandate that all class members make identical claims and arguments, only that common issues of fact or law affect all class members"). This commonality requirement "has been applied permissively" by the courts in securities fraud actions. *In re Nortel Networks Corp. Sec. Litig.*, No. 01 Civ. 1855 (RMB), 2003 WL 22077464, at *3 (S.D.N.Y. Sept. 8, 2003) (internal quotations omitted); *see also In re Vivendi Universal, S.A. Sec. Litig.*, 242 F.R.D. 76, 84 (S.D.N.Y. 2007); *Wagner v. Barrick Gold*, 251 F.R.D. 112, 116 (S.D.N.Y. 2008). Indeed, securities fraud actions are the paradigm sort of cases in which courts have found Rule 23(a)(2)'s commonality requirement easily satisfied. *See In re DVI Inc. Sec. Litig.*, 249 F.R.D. 196, 201 (E.D. Pa. 2008), *aff'd,* Nos. 08-8033 & 08-8045, 639 F.3d 623 (3d Cir. 2011).

The "commonality" requirement is plainly satisfied here. The claims of all Settlement Class Members arise out of the same nucleus of operative facts and are based upon the following common legal issues:

(a) Whether Defendants violated the federal securities laws;

(b) Whether the Company's SEC filings, press releases and other public statements made by Defendants during the Class Period contained misstatements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(c) Whether the market prices of AIG securities during the Class Period were artificially inflated due to the material misrepresentation and/or non-disclosures alleged in the Complaint;

(d) With respect to Plaintiffs' claims under Section 10(b) of the Exchange Act, whether those Defendants acted with the requisite state of mind in omitting and/or misrepresenting material facts in the documents filed with the SEC, press releases and other public statements;

(e) With respect to Plaintiffs' claims pursuant to Section 20(a) of the Exchange Act, whether the Executive Defendants are controlling persons of the Company;

(f) With respect to Plaintiffs' claims pursuant to the Securities Act, whether the offering documents for the offerings made during the Class Period contained untrue statements of material fact or material omissions; and

(g) The extent of damage sustained by Class members and the appropriate measure of damages.

See Complaint ¶78.

3. Plaintiffs' Claims are Typical of the Class

Rule 23(a)(3) requires that "the claims ... of the representative parties [be] typical of the claims ... of the class." Typicality is satisfied where "each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol*, 126 F.3d at 376 (quoting *In re Drexel Burnham Lambert Group*, 960 F.2d 285, 291 (2d Cir. 1992)). "When the same unlawful conduct was directed at or affected both the named plaintiff and the prospective class, typicality is usually met." *In re Globalstar Sec. Litig.*, Case No. 01 Civ. 1748 (PKC), 2004 U.S. Dist. LEXIS 24164, at *11 (S.D.N.Y. Dec. 1, 2004) (citing *Robidoux*, 987 F.2d at 936-37); *see also In re Vivendi*, 242 F.R.D. at 85.

Here, the claims asserted by Lead Plaintiff are based upon the same allegedly false and misleading statements contained in, or material facts omitted from, the Company's SEC filings, press releases, and other public statements that form the basis of the claims of all Class members. Lead Plaintiff purchased substantial amounts of various AIG securities during the Class Period,

and suffered losses like all other members of the Class, either as a result of sales made after dissemination of certain partial corrective disclosures and/or through retention of such securities until the end of the Class Period. Thus, because the impact of Defendants' alleged material misrepresentations and omissions were alleged to have affected all members of the Class in the same manner and the losses of both Lead Plaintiff and the Class members arise out of the same alleged wrongful course of conduct, Lead Plaintiff's claims are typical of the claims of the Class.

4. Lead Plaintiff Has and Will Continue to Fairly and Adequately Protect the Interest of the Class

The final Rule 23(a) prerequisite is "adequacy." Rule 23(a)(4) requires the conclusion that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *Fogarazzo*, 263 F.R.D. at 97. The adequacy requirement is met if it appears that (1) the named plaintiff has interests common with, and not antagonistic to, the class' interests, and (2) the plaintiff's attorney is qualified, experienced and generally able to conduct the litigation. *Wagner*, 251 F.R.D. at 118; *In re WorldCom Sec. Litig.*, 219 F.R.D. 282, 1267 (S.D.N.Y. 2003). The requirement of adequacy "is motivated by concerns similar to those driving the commonality and typicality requirements, namely, the efficiency and fairness of class certification." *Marisol*, 126 F.3d at 378.

Here, Lead Plaintiff's interests are clearly aligned with those of the Settlement Class since Lead Plaintiff, like other Settlement Class Members, was damaged as a result of the Defendants' alleged conduct. *See Global Crossing*, 225 F.R.D. at 453. Indeed, as a purchaser of AIG securities that suffered losses as a result of such investments, including AIG stock and other securities, Lead Plaintiff's interests are directly aligned with the interests of all Class members. Lead Plaintiff and the absent Class members have precisely the same interest in proving that Defendants violated the securities laws and in achieving the maximum recovery possible. *See*

Darquea v. Jaden Corp., Case No. 06 Civ. 722 (DLB), 2008 U.S. Dist. LEXIS 17747, at *9 (S.D.N.Y. Mar. 6, 2008) (finding adequacy requirement satisfied where "[a]ll claims alleged rise from the same wrongful conduct" and plaintiffs' interests in a recovery were "similar to the [interests of] the proposed class").

Moreover, the required adequacy is amply satisfied by Lead Counsel, who have extensive experience and expertise in securities class action litigation and are capable "of competently and vigorously prosecuting the litigation." *In re Auction Houses Antitrust Litig*., 193 F.R.D. 162, 165 (S.D.N.Y. 2000). ¶133 & Exhibits D and E (firm biographies). Lead Counsel has, *inter alia,* conducted an extensive investigation of both public and non-public sources of information relating to the claims and the underlying events alleged in the Complaint (¶¶9, 17); successfully opposed Defendants' motions to dismiss (¶¶18-27); consulted with and hired experts in the fields of investment banking and securitization of mortgage loans, loss causation and damages, and in accounting and auditing matters, (¶9); conducted over two years of extensive discovery, including reviewing over 36 million pages of documents, taking 45 fact witness depositions, and compiling an extensive response to Defendants' contention interrogatories (¶¶32-39); filed detailed papers in support of Lead Plaintiff's vigorously contested class certification motion, during which Lead Counsel took or defended 19 class-related depositions, including expert depositions, and presented testimony and argument on the motion (¶¶41-52); engaged in two years of a hard-fought negotiation process with experienced defense counsel and before an experienced mediator (¶¶63-69); documented the agreements reached with the Defendants in a Stipulation of Settlement (¶¶70-71); summarized the Settlement and its components in the Notice presented to the Court for transmittal to all potential Settlement Class Members (¶¶71, 73); and, with the assistance of an outside consultant, devised a proposed Plan of Allocation that will

ensure that all Settlement Class Members who file claims are treated fairly and reasonably. ¶¶99-109. Thus, Rule 23(a)(4)'s adequacy requirement is satisfied.

B. The Requirements of Rule 23(b) Are Also Satisfied

In addition to satisfying Rule 23(a), a class action must satisfy the requirements of at least one of the subdivisions of Rule 23(b). In this case, the requirements of Rule 23(b)(3) are satisfied. That Rule provides:

> (b) A class action may be maintained if Rule 23(a) is satisfied and if: ... (3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. …

In "determining whether common questions of fact predominate, a court's inquiry is directed primarily toward whether the issue of liability is common to members of the class." *In re Indep. Energy Holdings Sec. Litig.*, No. 00 Civ. 6689(SAS), 210 F.R.D. 476, 486 (S.D.N.Y. May 28, 2002). Rule 23(b)(3) does not require that all questions of law or fact be common; it only requires that the common questions predominate over individual questions. Courts generally focus on the liability issue in deciding whether the predominance requirement is met, and if the liability issue is common to the class, common questions are held to predominate over individual questions. *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y. 1981). It is well established that "predominance is a test readily met in certain cases alleging … securities fraud." *Amchem*, 521 U.S. at 625; *see also In re Livent, Inc. Noteholders Sec. Litig.,* 210 F.R.D. 512, 517 (S.D.N.Y. 2002). Here, the predominance test is plainly met. All claims of Lead Plaintiff and other Settlement Class Members, and all defenses that the Defendants might have raised in response thereto, are applicable to the entire Settlement Class. Defendants' liabilities for the alleged false and misleading statements and omissions in this case would have either been established, or defeated, on a class-wide basis. As a result, Lead Plaintiff has met the

predominance requirement because common questions of law and fact are present and predominate over any individual issues that might have arisen in this Action.

Lead Plaintiff has also met the superiority requirement. When considering a proposed settlement class for purposes of superiority, the court "need not inquire whether the case, if tried, would present intractable management problems … for the proposal is that there be no trial." *Amchem*, 521 U.S. at 620. Here, maintenance of the Action as a class action is superior to other methods. Individual Settlement Class Members have not shown to this point an interest in controlling this Action. Indeed, as of the date of this filing, there have not been any objections to the Settlement filed. ¶82 n.3. Further, allowing this case to proceed as a class action will avoid potentially duplicative litigation, potentially inconsistent rulings, and save judicial resources. "Multiple lawsuits would be costly and inefficient, and the exclusion of class members who cannot afford separate representation would be neither 'fair' nor an 'adjudication' of their claims." *In re NASDAQ Market-Makers Antitrust Litig.*, 169 F.R.D. 493, 527 (S.D.N.Y. 1996) .

C. Lead Counsel Should be Appointed Class Counsel

Lead Plaintiff also requests that this Court appoint Barrack, Rodos & Bacine and The Miller Law Firm, P.C. as class counsel in accordance with Fed. R. Civ. P. 23(g). That provision states that the court certifying a class must also "appoint class counsel." Class counsel must "fairly and adequately represent the interests of the Class." Fed. R. Civ. P. 23(g)(1)(A), (B). In appointing class counsel, the court must consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
>
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
>
> (iii) counsel's knowledge of the applicable law; and
>
> (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

The firms moving for appointment as class counsel have an abundance of complex litigation experience, including numerous successful securities class actions. ¶¶133 & Exhibits D and E. As discussed in Section IV(B)(4) *supra,* and in the Joint Declaration, the firms have already undertaken a vigorous prosecution of this action, including conducting an initial, extensive investigation of the claims, filing the Complaint, defeating Defendants' motions to dismiss, defeating Defendants' motion for reconsideration of a portion of the Court's Order on the dismissal motions, issuing comprehensive document requests to the Defendants, issuing discovery requests via subpoenas to numerous third parties, conducting numerous meets and confers with counsel for Defendants and non-parties, reviewing 36 million pages of documents produced far by Defendants and non-parties, conducting 45 fact witness depositions, responding to the Defendants' joint set of document requests addressed to Plaintiffs, producing documents of the Plaintiffs, and pursuing class certification.

Through these efforts, Barrack Rodos & Bacine and The Miller Law Firm have demonstrated their commitment to this action and have invested the vast resources necessary to litigate the case to a successful conclusion. The firms' ample and notable records in litigating and achieving successful outcomes for investors, and their commitment to this Action to date, strongly indicate that these firms will adequately represent the interests of the Class.

Accordingly, under the considerations identified in Rule 23(g)(1), Lead Counsel has demonstrated they are qualified for appointment as class counsel.

CONCLUSION

For all of the foregoing reasons, Lead Plaintiff respectfully requests that this Court: (i) approve the proposed Settlement as fair, reasonable and adequate; (ii) approve the proposed

Plan of Allocation as fair and reasonable; (iii) certify the Settlement Class for purposes of the Settlement under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (iv) appoint the law firms of Barrack, Rodos & Bacine and The Miller Law Firm, P.C. as class counsel; and (v) grant such further relief as the Court deems just and proper.

Dated: December 22, 2014

Respectfully submitted,

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