

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

---

PETER IKAI VAN NOPPEN, Individually	)	
and On Behalf of All Others Similarly	)	
Situated,	)	Case No. 1:14-cv-01416
	)	
Plaintiff,	)	Hon. John Robert Blakey
	)	
vs.	)	
	)	
INNERWORKINGS, INC., ERIC D.	)	CLASS ACTION
BELCHER, and JOSEPH M. BUSKY,	)	
	)	
Defendants.	)	

---

**MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL’S MOTION FOR AN  
AWARD OF ATTORNEYS’ FEES AND PAYMENT OF LITIGATION EXPENSES**

**TABLE OF CONTENTS**

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
PRELIMINARY STATEMENT .....	1
ARGUMENT .....	2
I.    THE REQUESTED ATTORNEYS’ FEE IS FAIR AND REASONABLE UNDER THE STANDARDS CONSIDERED BY THE SEVENTH CIRCUIT.....	2
A.    The Requested Fee Is Comparable to the “Market-Price” for such Work and Awards Made in Other Similar Class Actions .....	5
B.    The Requested Fee Is Fair and Reasonable in Light of the Quality of Legal Services Rendered .....	6
C.    The Requested Fee Is Fair and Reasonable in Light of the Contingent Nature of the Representation.....	8
D.    The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request.....	10
II.    THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES .....	14
III.   NO SETTLEMENT CLASS MEMBER HAS OBJECTED .....	14
CONCLUSION.....	15

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Abbott v. Lockheed Martin Corp.</i> , No. 06 cv 701, 2015 WL 4398475 (S.D. Ill. July 17, 2015).....	6
<i>Alaska Elec. Pension Fund v. Flowserve Corp.</i> , 572 F.3d 221 (5th Cir. 2009) .....	8
<i>In re APA Assessment Fee Litig.</i> , 311 F.R.D. 8 (D.D.C. 2015).....	6
<i>Aspacher v. Rosenthal Collins Grp</i> , No. 00-CV-7520, 2001 U.S. Dist. LEXIS 19464 (N.D. Ill. Nov. 6, 2001) .....	13
<i>Beckman v. KeyBank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013) .....	6
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	3
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	3
<i>In re Cenco, Inc. Sec. Litig.</i> , 519 F. Supp. 322 (N.D. Ill. 1981) .....	13
<i>City of Detroit v. Grinnell Corp</i> 495 F.2d 448 (2d Cir. 1974).....	11
<i>In re Cont’l Ill. Sec. Litig.</i> , 962 F.2d 566 (7th Cir. 1992) .....	4, 11, 14
<i>Cooper v. IBM Pers. Pension Plan</i> , No. 99-CV-829, 2005 WL 1981501 (S.D. Ill. Aug. 16, 2005) <i>rev’d</i> , 457 F. 3d 636 (7th Cir. 2006) .....	4
<i>Florin v. Nationsbank (“Florin I”)</i> , 34 F.3d 560 (7th Cir. 1994) .....	3, 4, 11
<i>Florin v. Nationsbank of Ga., N.A. (“Florin II”)</i> , 60 F.3d 1245 (7th Cir. 1995) .....	9, 10, 12
<i>Gaskill v. Gordon</i> , 942 F. Supp. 382 (N.D. Ill. 1996), <i>aff’d</i> 160 F.3d 361 (7th Cir. 1998) .....	3, 4, 6

*Goldsmith v. Tech. Sols. Co.*,  
 No. 92 C 4374, 1995 WL 17012841 (N.D. Ill. Nov. 20, 1995).....6

*Goodell v. Charter Comm’cns, LLC*,  
 No. 08 cv 512, 2010 WL 3259349 (W.D. Wis., Aug. 17, 2010).....6

*Harmon v. Lyphomed, Inc.*,  
 945 F.2d 969 (7th Cir. 1991) .....12, 13

*Heekin v. Anthem, Inc.*,  
 No. 05 cv 01908, 2012 WL 5878032 (S.D. Ind. Nov. 20, 2012).....6

*Jorling v. Anthem, Inc.*,  
 836 F. Supp. 2d 821 (S.D. Ind. 2011).....7

*Kirchoff v. Flynn*,  
 786 F.2d 320 (7th Cir. 1986) .....4

*Kolinek v. Walgreen Co.*  
 311 F.R.D. 483 (N.D. Ill. 2015).....6

*Long v. Trans World Airlines, Inc.*,  
 No. 86 C 7521, 1993 WL 121824 (N.D. Ill. Apr. 19, 1993).....6

*Martin v. Reid*,  
 818 F.3d 302 (7th Cir. 2016) .....10

*Meyenburg v. Exxon Mobil Corp.*,  
 No. 05-cv-0015, 2006 WL 2191422 (S.D. Ill. July 31, 2006).....5

*In re PAR Pharm. Sec. Litig.*,  
 No. 06-3226, 2013 WL 3930091 (D.N.J. July 29, 2013) .....6

*Reid v. Unilever United States*,  
 No. 12 C 6058, 2015 WL 3653318 (N.D. Ill. June 10, 2015), *aff’d sub nom.*  
*Martin v. Reid*, 818 F.3d 302 (7th Cir. 2016) .....10

*Retsky Family Ltd. P’ship. v. Price Waterhouse LLP*,  
 No. 97 C 7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001).....6

*Schulte v. Fifth Third Bank*,  
 805 F. Supp. 2d 560 (N.D. Ill. 2011) .....5, 9

*Silverman v. Motorola Inc.*,  
 No. 07 C 4507, 2012 WL 1597388 (N.D. Ill. May 7, 2012), *aff’d sub nom.*  
*Silverman v. Motorola Solutions*, 739 F.3d 956 (7th Cir. 2013) .....4, 7

<i>Silverman v. Motorola Sols., Inc.</i> , 739 F.3d 956 (7th Cir. 2013) .....	3, 5, 8
<i>Skelton v. Gen Motors Corp.</i> , 860 F.2d 250 (7th Cir. 1998) .....	10, 11, 12
<i>Smith v. Vill. of Maywood</i> , 17 F.3d 219 (7th Cir. 1994) .....	12
<i>Standard Iron Works v. ArcelorMittal USA Inc.</i> , No. 08 C 5214, 2014 WL 7781572 (N.D. Ill. Oct. 22, 2014).....	12
<i>Sutton v. Bernard</i> , 504 F.3d 688 (7th Cir. 2007) .....	3
<i>In re Synthroid Mktg. Litig.</i> , 264 F.3d 712 (7th Cir. 2001) .....	5, 13, 14
<i>Taubenfeld v. Aon Corp.</i> , 415 F.3d 597 (7th Cir. 2005) .....	<i>passim</i>
<i>Tellabs, Inc. v. Makor Issues &amp; Rights, Ltd.</i> , 551 U.S. 308 (2007).....	9
<i>In re Trans Union Corp. Privacy Litig.</i> , No. 00-CV-4729, 2009 WL 4799954 (N.D. Ill. Dec. 9, 2009).....	3, 10
<i>In re Veritas Software Corp. Sec. Litig.</i> , 396 F. App'x. 815 (3d Cir. 2010) .....	6
<i>Wilfong v. Rent-A-Center, Inc.</i> , No. 00-680, 2002 U.S. Dist. LEXIS 28016 (S.D. Ill. Oct. 4, 2002).....	13
<i>Will v. Gen. Dynamics Corp.</i> , No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010).....	6
<i>Williams v. Rohm &amp; Haas Pension Plan</i> , 658 F.3d 629 (7th Cir. 2011) .....	3
<i>In re Xcel Energy, Inc.</i> , 364 F. Supp. 2d 980 (D. Minn. 2005).....	9
<b>RULES</b>	
Fed. R. Civ. P. 23(h) .....	1

**PRELIMINARY STATEMENT**

Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Lead Counsel Labaton Sucharow LLP (“Lead Counsel”) respectfully submits this memorandum of law in support of its motion, on behalf of itself and Liaison Counsel Cohen Milstein Sellers & Toll PLLC (collectively “Plaintiff’s Counsel”), for an award of attorneys’ fees and payment of litigation expenses from the Settlement Fund obtained for the Settlement Class.<sup>1</sup>

Under the terms of the Stipulation, dated May 11, 2016, Lead Counsel has created a common fund of \$6,025,000 (the “Settlement”) for the benefit of the Settlement Class herein, an agreement achieved through the skill and effective advocacy of Lead Counsel. This recovery is a favorable result for the Settlement Class when evaluated in light of all the relevant circumstances, most notably the challenges of pursuing the Action through trial and appeals. The Settlement was achieved following rigorous investigative efforts that allowed Lead Plaintiff’s claims to survive, in part, a motion to dismiss and the development of Lead Plaintiff’s claims to a point where Lead Counsel could engage in meaningful settlement negotiations.

Lead Counsel undertook representation of the Settlement Class on a contingent fee basis and no payment has been made to date for legal services or the litigation expenses incurred on behalf of the Settlement Class. As compensation for its efforts on behalf of the Settlement Class, Lead Counsel seeks an award equal to 30% of the Settlement Fund, or approximately \$1,807,500, plus accrued interest. Lead Counsel respectfully submits that this fee is fair and reasonable given the total lodestar of more than \$1,500,000, reflecting Plaintiff’s Counsel’s investment of more than 2,400 hours of professional time.<sup>2</sup> Lead Counsel also requests

---

<sup>1</sup> All capitalized terms used herein have the same meaning as set forth in the Stipulation, filed with the Court on May 11, 2016. ECF No. 91-1.

<sup>2</sup> The Court is respectfully referred to the accompanying Declaration of Jonathan Gardner in Support of Lead Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of

\$124,535.43 as payment of litigation expenses incurred in connection with the prosecution of the case. To date, no Settlement Class Member has objected to Lead Counsel's request for fees or payment of expenses.<sup>3</sup> The requested fees and expenses have also been approved by Lead Plaintiff. *See* Exhibit 1 to the Gardner Declaration.

Faced with complex legal and factual issues, and opposed by experienced defense counsel, Lead Counsel has succeeded in securing a favorable result for the Settlement Class. Lead Counsel believes its reputation as a leader in this field, its diligent efforts, and its dedication to the interests of the Settlement Class substantially contributed to the Settlement obtained. It is respectfully submitted that the requested fee is fair and reasonable when measured against comparable cases, and as corroborated by Lead Counsel's lodestar and multiplier. In addition, the expenses incurred in connection with the prosecution of the Action were both reasonable and necessary. Accordingly, Lead Counsel respectfully requests approval of the instant request.

## ARGUMENT

### **I. THE REQUESTED ATTORNEYS' FEE IS FAIR AND REASONABLE UNDER THE STANDARDS CONSIDERED BY THE SEVENTH CIRCUIT**

---

Allocation and Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses (the "Gardner Declaration" or "Gardner Decl."), submitted herewith. The declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*, the history of the Action; the nature of the claims asserted; the investigation undertaken; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and a description of the services provided by Lead Counsel. The Court is also respectfully referred to the memorandum of law submitted in support of approval of the Settlement, filed herewith ("Approval Brief").

All exhibits referenced herein are attached to the Gardner Declaration. For clarity, citations to exhibits that have internal exhibits will be referenced as "Ex. \_\_-\_\_." The first numerical reference refers to the designation of the entire exhibit attached to the declaration and the second alphabetical reference refers to the exhibit designation within the exhibit itself. Attached to the Gardner Declaration as Exhibits 4 and 5 are individual firm declarations of Lead Counsel and Liaison Counsel detailing their respective lodestars and expenses.

<sup>3</sup> The deadline for receipt of objections and exclusions is September 21, 2016. If any objections are received, they will be addressed in Lead Counsel's reply submission, which will be filed on October 5, 2016.

The Supreme Court and the Seventh Circuit have long recognized that attorneys who by their efforts create a common fund for the benefit of a class are entitled to reasonable compensation for their services. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole”)<sup>4</sup>; *Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007) (“the common fund doctrine...is based on the equitable notion that those who have benefited from litigation should share in its costs”). Courts have recognized that the purpose of “allowing fees to be paid from a common fund is to spread the costs of litigation proportionately among the class members benefitted by the lawsuit.” *Gaskill v. Gordon*, 942 F. Supp. 382, 385 (N.D. Ill. 1996), *aff’d* 160 F.3d 361 (7th Cir. 1998).

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based “on a percentage of the fund bestowed on the class....” *Id.* at 900 n.16. Although courts within the Seventh Circuit “have discretion to choose either the lodestar or percentage method of calculating fees” in common fund cases,<sup>5</sup> the Seventh Circuit has endorsed the percentage-of-the-fund method when awarding attorneys’ fees from a common fund. *See, e.g., Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming district court award of percentage of the recovery to class counsel); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 637 (7th Cir. 2011) (rejecting objector’s appeal and declining to “disturb the district court’s assessment of fees” on a percentage-of-the-fund basis); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 598-600 (7th Cir. 2005) (affirming percentage-of-the-

---

<sup>4</sup> Internal citations are omitted and all emphasis is added unless otherwise specified.

<sup>5</sup> *In re Trans Union Corp. Privacy Litig.*, No. 00-CV-4729, 2009 WL 4799954, at \*9 (N.D. Ill. Dec. 9, 2009); *see also Florin v. Nationsbank (“Florin I”)*, 34 F.3d 560, 566 (7th Cir. 1994) (“both the lodestar approach and the percentage approach may be appropriate in determining attorney’s fee awards, depending on the circumstances”).



fund fee award). “When a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund ... in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis”. *Gaskill*, 160 F.3d at 362. “[T]he approach favored in the Seventh Circuit is to compute attorney’s fees as a percentage of the benefit conferred on the class,’ particularly where that percentage of the benefit approach replicates the market.” *Cooper v. IBM Pers. Pension Plan*, No. 99-CV-829, 2005 WL 1981501, at \*3 (S.D. Ill. Aug. 16, 2005) *rev’d*, 457 F. 3d 636 (7th Cir. 2006).

The Seventh Circuit has also recognized “that there are advantages to utilizing the percentage method in common fund cases because of its relative simplicity of administration” and because it better aligns the interests of the class counsel with those of the client. *Florin I*, 34 F.3d at 566; *Silverman v. Motorola Inc.*, No. 07 C 4507, 2012 WL 1597388, at \*4 (N.D. Ill. May 7, 2012), *aff’d sub nom. Silverman v. Motorola Solutions*, 739 F.3d 956 (7th Cir. 2013); *see also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage “than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so forth”); *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (noting percentage method is favored because it aligns the interests of the class and counsel and provides an incentive for efficient prosecution, benefitting both the litigants and the judicial system).

The Seventh Circuit has used the following factors to evaluate the reasonableness of an award of attorneys’ fees as a percentage of a common fund: (1) “awards made by courts in other class actions”; (2) “the quality of legal services rendered”; and (3) “the contingent nature of the case.” *Taubenfeld*, 415 F.3d at 600. In assessing these factors, the Seventh Circuit has further explained that “courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.”

*Taubenfeld*, 415 F.3d at 599; *see also Silverman*, 739 F.3d at 958 (stating “attorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001).

Here, the requested attorneys' fee of 30% of the Settlement is in line with fee awards in other, similarly complex class action cases with settlements of this size, and larger. From the outset, this case required a determined investigation and the skill to respond to a host of legal and factual defenses raised by Defendants. Lead Counsel has received no compensation for its considerable efforts on behalf of the Settlement Class, and any award of fees has always been entirely contingent on counsel's success in obtaining a recovery for the Settlement Class. In sum, the fee award requested here would be reasonable and well-justified in light of fee awards made by courts in similar cases, the significant risks faced in the litigation, the obstacles overcome, and the quality of Lead Counsel's work.

**A. The Requested Fee Is Comparable to the “Market-Price” for such Work and Awards Made in Other Similar Class Actions**

The requested 30% fee is consistent with fee awards made by courts in similar cases. *See Taubenfeld*, 415 F.3d at 600 (affirming the lower court's award of 30% of the settlement fund and comparing the 30% award with thirteen cases from the Northern District of Illinois where attorneys were awarded 30-39% of the settlement fund.) In complex class action cases like this one, percentages in the range of 30% to 40% of the recovery have often been held appropriate. *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (stating that “an award of 33.3% of the settlement fund is within the reasonable range”); *Meyenburg v. Exxon Mobil Corp.*, No. 05-cv-0015, 2006 WL 2191422, at \*2 (S.D. Ill. July 31, 2006) (“33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation”).

Courts in the Seventh Circuit have often approved awards between 30% and 38% of settlements. *See, e.g., Kolinek v. Walgreen Co.* 311 F.R.D. 483, 503 (N.D. Ill. 2015) (approving fees of 36% of the \$11 million settlement fund); *Abbott v. Lockheed Martin Corp.*, No. 06 cv 701, 2015 WL 4398475, at \*4 (S.D. Ill. July 17, 2015) (approving fees of one-third of the \$62 million settlement fund); *Heekin v. Anthem, Inc.*, No. 05 cv 01908, 2012 WL 5878032, at \*2 (S.D. Ind. Nov. 20, 2012) (approving fees of one-third of the \$30 million settlement fund); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at \*1 (S.D. Ill. Nov. 22, 2010) (approving fees of one-third of the \$5,050,000 settlement fund); *Goodell v. Charter Comm'cns, LLC*, No. 08 cv 512, 2010 WL 3259349, at \*1 (W.D. Wis., Aug. 17, 2010) (approving fees of 30% of the \$18 million settlement fund); *Retsky Family Ltd. P'ship. v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856 (N.D. Ill. Dec. 10, 2001) (approving fees of one-third of the \$14 million settlement fund); *Gaskill*, 942 F. Supp. at 382, (approving fees of 38% of the \$20,956,000 settlement fund); *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17012841, at \*1 (N.D. Ill. Nov. 20, 1995) (approving fees of one-third of the \$4,600,000 million settlement fund); *Long v. Trans World Airlines, Inc.*, No. 86 C 7521, 1993 WL 121824, at \*2 (N.D. Ill. Apr. 19, 1993) (approving fees of 32% of the \$4,075,000 settlement fund).

Accordingly, the requested fee would be in-line with the range of fee awards within this Circuit.<sup>6</sup>

**B. The Requested Fee Is Fair and Reasonable in Light of the Quality of Legal Services Rendered**

In evaluating fee requests, the Seventh Circuit has considered the “quality of legal

---

<sup>6</sup> The requested fee is also in-line with fees awarded by courts outside of the Seventh Circuit. *See, e.g., In re APA Assessment Fee Litig.*, 311 F.R.D. 8, 22 (D.D.C. 2015) (approving fees of 30% of the \$9,020,000 settlement fund); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 483 (S.D.N.Y. 2013) (approving fees of one-third of the \$4,900,000 million settlement fund); *In re PAR Pharm. Sec. Litig.*, No. 06-3226, 2013 WL 3930091, at \*9 (D.N.J. July 29, 2013) (awarding fees of 30% of \$8.1 million settlement); *In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x. 815 (3d Cir. 2010) (affirming 30% award of \$21.5 million settlement).

services rendered” in light of the particular legal hurdles faced by counsel in proving liability. *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at \*3 (approving class counsel’s fee request and noting that “[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity”). Here, Lead Counsel sought to obtain the maximum recovery for the Settlement Class and the class is obtaining between 7% and 13% of its potential damages, which is at the higher end of recoveries in similar cases. *See Gardner Decl.* ¶7; Approval Brief §II.A. The prosecution of this Action required, among other things, a determined investigation and the skill to respond to the legal and factual defenses raised by Defendants. Lead Counsel has many years of experience in litigating and trying securities fraud class actions, has negotiated numerous class-action settlements that have been approved by state and federal courts throughout the United States, and has recovered nearly \$10 billion on behalf of the nation’s largest institutional investors, including public pension and Taft-Hartley funds, hedge funds, investment banks, and other financial institutions. *Gardner Decl.* ¶¶85-86, Ex. 4-C.

Throughout the course of this case, Lead Counsel was confronted with a number of difficult legal and factual obstacles to establishing, among other things, scienter, damages, and loss causation. *See Gardner Decl.* ¶¶22-38, 45-60. Courts have acknowledged that securities actions have become even more difficult from a plaintiff’s perspective in the wake of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the effect of which is to make it harder for investors to bring and successfully conclude securities class actions. *See, e.g., Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA’s “heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process”). Here, Lead Counsel prosecuted this case in

compliance with the PSLRA, which rendered it extremely risky and difficult from the outset. As retired Supreme Court Justice Sandra Day O'Connor explained, writing the opinion of the Fifth Circuit, "To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

In Defendants' motion to dismiss and throughout the Parties' negotiations concerning the value of the claims, Defendants asserted that Lead Plaintiff would not be able to support scienter, arguing, among other things, (1) that Mr. Belcher's stock sales do not demonstrate scienter, (2) that allegations that Mr. Belcher and Mr. Busky received InnerWorkings stock and were eligible for performance bonuses do not adequately plead scienter, and (3) other evidence would be inadequate to establish their participation and knowledge. Defendants also hotly contested loss causation with respect to the news released on November 6, 2013. To address these challenges, Lead Counsel was required to invest considerable legal and investigatory resources to marshal evidence supporting the claims. *See* Gardner Decl. ¶¶46-55.

Given Lead Counsel's navigation of difficult legal and factual obstacles throughout the course of the Action and considerable effort expended in litigating the case, it is respectfully submitted that the requested fees are fair and reasonable.

**C. The Requested Fee Is Fair and Reasonable in Light of the Contingent Nature of the Representation**

In addition to providing just compensation, awards of attorneys' fees from a common fund serve to encourage skilled counsel to take on the risk of representing plaintiffs in class action cases on a contingent fee basis. *See, e.g., Silverman*, 739 F.3d at 958 (stating that "[c]ontingent fees compensate lawyers for the risk of nonpayment" and "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic

counsel”). Given that large defense firms representing corporations attract talented lawyers who are very well compensated, fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs and to prosecute their cases. As the Seventh Circuit has emphasized, “court[s] must also be careful to sustain the incentive for attorneys to continue to represent such clients on an ‘inescapably contingent’ basis.” *Florin v. Nationsbank of Ga., N.A.* (“*Florin II*”), 60 F.3d 1245, 1247 (7th Cir. 1995).

Moreover, as the Supreme Court has long recognized, “[M]eritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission (“SEC”).” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

From the very outset, no matter how strong Lead Counsel believed the case to be, there existed the significant possibility Defendants might prevail on dispositive motions, at trial, or on appeal – and hence Lead Counsel would receive no compensation for its work on behalf of the Settlement Class. There are numerous class actions in which plaintiffs’ counsel expended thousands of hours and advanced significant litigation expenses and yet received no remuneration whatsoever, despite their hard work and expertise. *See, e.g., In re Xcel Energy, Inc.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) (“Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy”); *see also* Gardner Decl. ¶¶71-78. Here, as in *Schulte*, “there was no certainty that Plaintiffs would win, or that the case would settle; and if Plaintiffs had lost, Class Counsel ‘would receive no fees at all.’” 805 F. Supp. 2d at 597-98.

Plainly, Lead Counsel here was not “assured of a paycheck.” *See Florin II*, 60 F.3d at 1247. Nonetheless, it risked significant amounts of time and money to achieve a recovery for the Settlement Class. Unlike Defendants’ counsel, who are paid on an ongoing basis and whether they win, lose or draw, Lead Counsel has thus far received no compensation for its considerable efforts on behalf of the Settlement Class, and any award of fees or expenses to Lead Counsel has always been entirely dependent on its success in obtaining a common fund for the Settlement Class. *See Taubenfeld*, 415 F.3d at 600 (“the contingent nature of the case” and “that lead counsel was taking on a significant degree of risk of nonpayment with the case” should be considered). Yet, like Defendants’ counsel, Lead Counsel has had to meet a payroll and pay its rent and other bills on a current basis. Given the contingent nature of Lead Counsel’s representation, the requested fees are fair and reasonable.

**D. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request**

The lodestar cross-check also confirms the appropriateness of the requested fees. *See In re Trans Union Corp. Privacy Litig.*, No. 00 C4729, 2009 WL 4799954, at \*17 (N.D. Ill. Dec. 9, 2009) (“The purpose of a lodestar cross-check is simply to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiple of the lodestar”). The lodestar cross-check method entails multiplying the number of hours each attorney or other professional expended on the case by his or her hourly rate to derive the lodestar figure. *See, e.g., Reid v. Unilever United States*, No. 12 C 6058, 2015 WL 3653318, at \*7 (N.D. Ill. June 10, 2015), *aff’d sub nom. Martin v. Reid*, 818 F.3d 302 (7th Cir. 2016). The court then typically adjusts the lodestar, by applying a multiplier, to reflect factors such as the contingent nature of the case, and the consequent risk of non-payment (or under-payment), and the quality of work performed. *See Skelton v. Gen Motors*

*Corp.*, 860 F.2d 250, 258 (7th Cir. 1998) (discussing rationale for risk multiplier and method of assessing it).

“[A] risk multiplier is not merely available in a common fund case but mandated, if the court finds that counsel ‘had no sure source of compensation for the services.’” *Florin I*, 34 F.3d at 565 (quoting *In re Cont’l*, 962 F.2d at 569) (“the need for such an adjustment is particularly acute in class action suits”). In *City of Detroit v. Grinnell Corp.*, the Second Circuit explained:

No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

495 F.2d 448, 470 (2d Cir. 1974). *See also In re Cont’l*, 962 F.2d at 569 (holding it was reversible error not to compensate for risk of nonpayment).

In addition to successfully navigating the Action through the heightened pleading requirements of the PSLRA and past the motion to dismiss stage, Lead Counsel has during the course of this litigation:

- Reviewed numerous documents concerning InnerWorkings, including: (a) documents previously made available to French prosecutors as part of legal proceedings in France and to the SEC, during the SEC’s investigation into the restatement of the Company’s Class Period financials; (b) InnerWorkings’ SEC filings, annual and quarterly financial statements, and related earnings announcements; (c) InnerWorkings’ press releases; and (d) news articles and analysts’ reports about InnerWorkings;
- Located 100 potential witnesses and interviewed 40 former InnerWorkings employees, fourteen of which were cited as confidential witnesses in the Amended Complaint, including Delaune, the former CEO of Productions Graphics and a participant in the fraud who agreed to cooperate with Lead Plaintiff’s investigation;
- Retained and consulted with a damages expert;
- Researched the law pertinent to the claims against Defendants and the potential defenses thereto;



- Prepared a detailed and comprehensive amended complaint based on the extensive factual and expert information Lead Counsel collected;
- Researched and drafted comprehensive briefs (and assembled supporting materials) in opposition to Defendants' motion to dismiss;
- Engaged in protracted negotiation of discovery issues with Defendants, including rebutting attempts to further stay the action in light of proceedings in France;
- Consulted with Lead Counsel's damages expert to estimate damages and assess various issues relating to loss causation;
- Began preparation of the motion for class certification;
- Communicated with the Lead Plaintiff with updates on litigation status throughout;
- Conducted arm's-length settlement negotiations with Defendants' counsel and prepared for and participated in formal mediation;
- Prepared and negotiated the Stipulation of Settlement and relevant exhibits.

Lead Counsel's and Liaison Counsel's declarations show that they collectively expended 2,424 hours of professional time prosecuting the Settlement Class's claims. (Additional time will be spent working with the Claims Administrator, answering Class Member inquiries, and moving for approval of a distribution, however additional fees will not be sought for that work.) Counsel's total lodestar, derived by multiplying the number of hours by each firm's current<sup>7</sup> hourly rates, amounts to \$1,542,726.00. The requested fee of \$1,807,500 plus interest therefore represents a reasonable multiplier of less than 1.2. This modest multiplier is consistent with those awarded by courts in similar contingent fee litigation.<sup>8</sup>

---

<sup>7</sup> Courts have held use of current rates is appropriate to compensate counsel for the loss of use of funds. *See Smith v. Vill. of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) ("A court may elect to use ... current rates ... as acceptable compensation for the delay in payment of fees"); *Skelton*, 860 F.2d at 255 n.5 ("The courts in this circuit generally use current rates").

<sup>8</sup> *See, e.g., Florin II*, 60 F.3d at 1248 ("we believe the requested multiplier of 1.53 is reasonable"); *Standard Iron Works v. ArcelorMittal USA Inc.*, No. 08 C 5214, 2014 WL 7781572, at \*2 (N.D. Ill. Oct. 22, 2014) (finding a multiplier of 1.97 to be "well within the range of reasonable multipliers"); *see also Harmon v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir.

With respect to Plaintiff's Counsel's rates, courts have held the hourly rates to be applied in calculating the lodestar are those normally charged for similar work by attorneys of comparable skill and experience in the community where the attorney practices. *See In re Synthroid*, 264 F.3d at 718 ("when deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time"). "The attorney's actual billing rate for comparable work is 'presumptively appropriate' to use as the market rate." *Aspacher v. Rosenthal Collins Grp.*, No. 00-CV-7520, 2001 U.S. Dist. LEXIS 19464, at \*5 (N.D. Ill. Nov. 6, 2001) (quoting *People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1310 (7th Cir. 1996)).

As shown in Plaintiff's Counsel's individual firm declarations, the hourly fee rates reported are the same as those that been approved in other complex class action litigation. Exs. 4-5. Plaintiff's Counsel's hourly billing rates here range from \$845 to \$945 for partners, \$550 to \$775 for of counsels, and \$335 to \$725 for other attorneys. *See* Ex. 4-A and Ex. 5-A. We respectfully suggest that these rates are reasonable. Indeed, defense-firm billing rates analyzed and gathered by Lead Counsel from bankruptcy-court filings nationwide in 2015 in many cases exceeded these rates. *See* Ex. 7.

In sum, it is respectfully submitted that the time and effort devoted to this case by Plaintiff's Counsel to obtain the Settlement confirm that the 30% fee request is reasonable.

---

1991) (multipliers between 1.0 and 4.0 have been approved); *Wilfong v. Rent-A-Center, Inc.*, No. 00-680, 2002 U.S. Dist. LEXIS 28016, at \*28 (S.D. Ill. Oct. 4, 2002) ("a multiplier of the lodestar significantly higher than the requested multiple of approximately 2 would be appropriate"); *In re Cenco, Inc. Sec. Litig.*, 519 F. Supp. 322, 327 (N.D. Ill. 1981) (4 multiplier).

## **II. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES**

Lead Counsel seeks payment from the Settlement Fund of \$124,535.43 in litigation expenses reasonably incurred by Counsel in connection with commencing and prosecuting the claims against the Defendants. The expenses are detailed in Exhibits 4-B and 5-B to the Gardner Declaration. Courts regularly award payment of the expenses counsel incurred in prosecuting a class action. *See, e.g., In re Synthroid Mktg. Litig.*, 264 F.3d at 722 (vacating the lower court's decision to reduce requested expenses by up to half and remanding the action with instructions to consider comparable expenses paid by private clients in large class actions); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d at 570 (reversing the lower court's denial of reimbursement for out-of-pocket expenses of using computerized a legal research service).

Major expenses were related to experts (\$76,000 or 60% of total expenses), work-related travel/meals, including meeting with Delaune in Paris and court hearings (any First Class Airfare was reduced to Economy rates) (totaling \$20,023), and mediation (\$5,000). The other expenses for which Lead Counsel seeks payment are the types that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, legal and factual research, expenses related to electronic discovery and Lead Counsel's factual investigation, duplicating costs, long distance telephone and facsimile charges, and postage and delivery expenses. *See Gardner Decl.* ¶¶87-92.

## **III. NO SETTLEMENT CLASS MEMBER HAS OBJECTED**

In accordance with the Court's Preliminary Approval Order, more than 19,000 copies of the Notice were distributed to potential Class Members. *See Affidavit of Jose C. Fraga Regarding (A) Mailing of the Notice and Proof of Claim; (B) Publication of the Summary Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusions and*

Objections Received to Date, dated Sept. 2, 2016, Ex. 3. In addition, a Summary Notice was timely published in *Investor's Business Daily* and transmitted over *PR Newswire*. See *id.* at 7.

The Notice advised Settlement Class Members that Lead Counsel would apply for an award of attorneys' fees of 30% and payment of litigation expenses not to exceed \$225,000. Ex. 3-A at 2. The Notice further apprised Class Members of their right to object to the motion for fees and expenses. To date, no Settlement Class Member has objected. The Court-established deadline for filing objections is September 21, 2016, and if any objections are received, they will be addressed in Lead Counsel's reply submission to be filed on October 5, 2016.

### CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully requests that the Court approve its motion for an award of attorneys' fees equal to 30% of the Settlement Fund. In addition, Lead Counsel requests payment in the amount of \$124,535.43, plus accrued interest, for expenses incurred in connection with representation of the Settlement Class in this Action.

Dated: September 6, 2016

Respectfully submitted,

By: /s/ Jonathan Gardner  
Jonathan Gardner (*pro hac vice*)  
jgardner@labaton.com  
**LABATON SUCHAROW LLP**  
140 Broadway  
New York, New York 10005  
Telephone: (212) 907-0700  
Facsimile: (212) 818-0477

*Attorneys for Lead Plaintiff and  
Lead Counsel for the Settlement Class*

Carol V. Gilden  
(Illinois Bar No. 06185530)  
cgilden@cohenmilstein.com  
**COHEN MILSTEIN SELLERS &  
TOLL PLLC**  
190 South LaSalle Street

Suite 1705  
Chicago, Illinois 60603  
Telephone: (312) 357-0370  
Facsimile: (312) 357-0369

*Liaison Counsel for the Settlement Class*

**CERTIFICATE OF SERVICE**

I hereby certify that I am a member of Labaton Sucharow LLP, and on the 6th day of September 2016, I caused to be electronically filed the Memorandum of Law In Support of Lead Counsel's Motion for An Award of Attorneys' Fees and Payment of Litigation Expenses, which was served on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Jonathan Gardner  
Jonathan Gardner

## Mailing Information for a Case 1:14-cv-01416

*Van Noppen v. InnerWorkings, Inc. et al.*

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Guillaume Buell**  
gbuell@labaton.com
- **Elizabeth Abbene Coleman**  
ecoleman@jenner.com,arettig@jenner.com,mgarcia@jenner.com,mrimondi@jenner.com
- **Patrick Vincent Dahlstrom**  
pdahlstrom@pomlaw.com,mjsteven@pomlaw.com
- **Jonathan Gardner**  
jgardner@labaton.com,lmehringer@labaton.com,fmalonzo@labaton.com,acarpio@labaton.com,agreenbaum@labaton.com
- **Carol V Gilden**  
cgilden@cohenmilstein.com,lhoeksema@cohenmilstein.com,efilings@cohenmilstein.com
- **Jeremy Alan Lieberman**  
jalieberman@pomlaw.com,disaacson@pomlaw.com,lpvega@pomlaw.com
- **Louis Carey Ludwig**  
lludwig@pomlaw.com
- **Nicole M. Zeiss**  
nzeiss@labaton.com
- **Howard Steven Suskin**  
hsuskin@jenner.com,sdalal@jenner.com,docketing@jenner.com,alichtman@jenner.com

### Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)