UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., et al., on behalf of themselves and all others similarly situated, Plaintiffs, *vs.* PANALPINA WORLD TRANSPORT (HOLDING) LTD., et al., Defendants.	Case No.: 08-CV-00042 (BMC) (PK)

MEMORANDUM IN SUPPORT OF
CO-LEAD COUNSEL'S PETITION FOR A THIRD
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

TABLE OF CONTENTS

I. INTRODUCTION 1
II. FEES AND EXPENSES REQUESTED 3
A. Prior Fee Awards 3
B. Fee Request As To Current Available Settlement Fund 5
1. Third Round Settlements With DHL and Hellmann 5
2. Additional Payments Made Under The Prior Rounds of Settlements 5
3. Additional Adjustment Following Second Interim Fee Award 6
4. Calculation Of Current Available Settlement Fund And Requested Fees And Expenses 7
C. Fee Request as to Future Available Settlement Fund. 8
III. ARGUMENT 8
A. The Court Should Award Attorneys' Fees Based On A Percentage Of The Common Fund. 8
B. A Future-Looking Order Awarding 25% Of The Future Available Settlement Fund Is Reasonable. 9
C. Co-Lead Counsel Seek A Reasonable Percentage Of The Current Available Settlement Fund And The Future Available Settlement Fund. 11
D. Class Counsel's Request Is Consistent With The *Goldberger* Factors 13
1. The Time And Labor Expended By Counsel Supports The Requested Fee. 14
2. The Magnitude And Complexities Of The Litigation Support The Requested Fee. 16
3. The Risk Of Litigation Supports The Requested Fee. 16
4. The Quality Of Counsel's Representation Supports The Requested Fee. 19
5. The Size And The Scope Of The Settlements Supports The Requested Fee. 20

6. Public Policy Considerations Support the Award of the Requested Fee. 20

E. The Requested Fee Is Reasonable Under A Lodestar Cross-check. 21

F. The Requested Expense Reimbursement Is Reasonable. 23

G. In The Future, Co-Lead Counsel Will Make Subsequent Applications For The Court's Consideration For Expenses Related To Claims Settlement, Administration, And Processing. 24

H. Class Members Have Received Notice and Have an Opportunity to Object. 24

IV. CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

Cases

In re Air Cargo Shipping Services Antitrust Litigation,
No. 06-MD-1775, 2011 WL 2909162 (E.D.N.Y. July 15, 2011).....20, 21, 22

In re Air Cargo Shipping Services Antitrust Litigation,
No. 06-MD-1775, 2012 WL 3138596 (E.D.N.Y. Aug. 2, 2012).....12, 13

Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc.,
481 F.2d 1045 (2d Cir. 1973).....21

Anixter v. Home-Stake Prod. Co.,
77 F.3d 1215 (10th Cir. 1996) 17

In re Arakis Energy Corp. Sec. Litig.,
No. 95CV3421, 2001 WL 1590512 (E.D.N.Y. Oct. 31, 2001) 23

Backman v. Polaroid Corp.,
910 F.2d 10 (1st Cir. 1990) (en banc).....17

Beckman v. KeyBank, N.A.,
293 F.R.D. 467 (S.D.N.Y. 2013) 22

Blue Shield of Va. v. McCready,
457 U.S. 465 (1982).....21

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980).....8

In re Bristol-Myers Squibb Sec. Litig.,
362 F. Supp. 2d 299 (S.D.N.Y. 2005).....22

In re Cedant Corp. PRIDES Litig.,
243 F.3d 722 (3d Cir. 2001).....22

In re Checking Account Overdraft Litig.,
Case No. 09-MD-02036-JLK, 2011 WL 5873389 (S.D. Fla. Nov. 22, 2011).....13

In re Credit Default Swaps Antitrust Litig.,
No. 13-MD-2476 (DLC), 2016 WL 2731524 (S.D.N.Y. Apr. 26, 2016).....22

In re Currency Conversion Fee Antitrust Litig.,
263 F.R.D. 110 (S.D.N.Y. 2009) 9, 16, 17

In re Elan Sec. Litig.,
385 F. Supp. 2d 363 (S.D.N.Y. 2005).....23

In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.,
681 F. Supp. 2d 141 (D. Conn. 2009).....11

Farinella v. Paypal, Inc.,
611 F. Supp. 2d 250 (E.D.N.Y. 2009).....21

Goldberger v. Integrated Res., Inc.,
209 F.3d 43 (2d Cir. 2000).....9, 13, 14, 17

In re High Fructose Corn Syrup Antitrust Litig.,
295 F.3d 651 (7th Cir. 2002).....11

In re Initial Public Offering Sec. Litig.,
671 F. Supp. 2d 467 (S.D.N.Y. 2009).....20

In re Linerboard Antitrust Litig.,
No. MDL 1261, Civ. A. 98-5055, Civ. A. 99-1000, Civ. A. 99-1341, 2004 WL 1221350
(E.D. Pa. June 2, 2004).....13

In re Marsh ERISA Litig.,
265 F.R.D. 128 (S.D.N.Y. 2010).....17

Masters v. Wilhelmina Model Agency, Inc.,
473 F.3d 423 (2d Cir. 2007).....9

McDaniel v. Cnty. of Schenectady,
595 F.3d 411 (2d Cir. 2010).....8, 14

In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.,
246 F.R.D. 156 (S.D.N.Y. 2007).....20

Miltland Raleigh-Durham v. Myers,
840 F. Supp. 235 (S.D.N.Y. 1993).....23

Monserrate v. Tequipment, Inc.,
No. 11 CV 6090, 2012 WL 5830557 (E.D.N.Y. Nov. 16, 2012).....21

In re NASDAQ Mkt. Makers Antitrust Litig.,
187 F.R.D. 465 (S.D.N.Y. 1998).....17, 20

In re Nortel Networks Corp. Secs. Litig.,
539 F.3d at 132 n.4.....21

Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd.,
No. 08-cv-42 (JG)(VVP), 2013 WL 4525323 (E.D.N.Y. Aug. 27, 2013)..... *passim*

Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd.,
No. 08-cv-42 (JG)(VVP), 2015 WL 6964973 (E.D.N.Y. Nov. 10, 2015)..... *passim*

In re Priceline.com, Inc. Sec. Litig.,
Master File No. 3:00-cv-1884, 2007 WL 2115592 (D. Conn. July 20, 2007).....20

In re Prudential Sec., Inc. Ltd. P'ships Litig.,
912 F. Supp. 97 (S.D.N.Y. 1996).....20

In re Urethane Antitrust Litig.,
MDL No. 1616, 2016 WL 4060156 (D. Kan. July 29, 2016).....22

In Re: Urethane Antitrust Litig. (Polyether Polyol)
MDL No. 1616, Order Awarding Attorneys' Fees and Reimbursement
of Litigation Expenses to Plaintiffs' Co-Lead Counsel (D. Kan. Dec. 12, 2011) 10

Velez v. Novartis Pharm. Corp.,
04 CIV 09194 CM, 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010).....23

In re Visa Check/Mastermoney Antitrust Litigation,
297 F. Supp. 2d 503 (E.D.N.Y. 2003), *aff'd sub nom.*
Wal-Mart Stores, Inc. v. Visa U.S.A., Inc., 396 F.3d 96 (2d Cir. 2005) 12, 13

In re Vitamin C Antitrust Litig.,
2012 WL 5289514 (E.D.N.Y. Oct. 23, 2012).....23

In re Vitamins Antitrust Litig.,
No. Misc. 99-197 (TFH), MDL No. 1285, 2001 WL 34312839 (D.D.C. July 16, 2001) 13

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005).....9, 22

Wesely v. Spear, Leeds & Kellogg,
711 F. Supp. 713 (E.D.N.Y. 1989) 16

Zenith Radio Corp. v. Hazeltine Research, Inc.,
395 U.S. 100 (1969).....21

Statutes

Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. No. 108-237, §
213(a)-(b), 118 Stat. 661, 666-668 (June 22, 2004).....18

Other Authorities

Fed. R. Civ. P. 12.....18

Fed. R. Civ. P. 23(h) 9

Other Authorities (cont.)

Fed. R. Civ. P. 26(f) 15

Manual for Complex Litigation (Fourth) § 14.121 (2004) 13

Alba Conte & Herbert B. Newberg, 4 *Newberg on Class Actions* § 14.6 (4th ed. 2002) 13

I. INTRODUCTION

Plaintiffs' Co-Lead Counsel and other Plaintiffs' Counsel (collectively "Class Counsel") respectfully move the Court for a third award of attorneys' fees and reimbursement of litigation expenses. Since the last time the Court granted an interim fee, *see* ECF No. 1330 (filed November 10, 2015), Settling Defendants have paid or soon will pay an additional $117,774,616.77 to the Class, from which no attorneys' fees or litigation expenses have been awarded. These latest payments bring the settlement totals in this case to over $406 million. Class Counsel now respectfully request the Court to award from that additional amount, referred to as the Current Available Settlement Fund: (1) fees of 25%, for a fee award of $29,443,654.19; and (2) reimbursement of litigation expenses totaling $1,762,803.75.

Many Settling Defendants also have agreed to make future settlement payments from proceeds they will recover in *In re: Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.) ("*Air Cargo*"), into a "Future Available Settlement Fund." Like all settlement payments to date, these future payments are the direct result of Class Counsel's years-long efforts for the Class. Accordingly, Class Counsel respectfully request a forward-looking fee award of 25% of up to $90 million of that Future Available Settlement Fund, for a maximum future-looking fee award of $22,500,000. If the Future Available Settlement Fund exceeds the $90 million cap, Class Counsel would move the Court for any additional fees.

In the nearly nine years this case has been pending, Class Counsel have worked tirelessly for the Class to litigate these complex international claims. As summarized below and described in detail in the Bruckner Declaration and the Joint Declaration,[1] Class Counsel have settled with

[1] References to the "Bruckner Decl." or "Bruckner Declaration" are to the Declaration Of W. Joseph Bruckner In Support Of Co-Lead Counsel's Petition For A Third Award Of Attorneys' Fees And Reimbursement Of Expenses, dated September 1, 2016 and filed herewith, which summarizes Class Counsel's work on behalf of the Class from August 16, 2015 through July 31,

all 29 Defendant groups named in the Fourth Amended Class Action Complaint, fully resolving all of Plaintiffs' 11 claims. The total settlements of roughly $406.1 million will grow as settling Defendants make additional payments due under their settlement agreements.[2]

Judge Gleeson noted that "[f]rom the outset, the potential for this complex litigation to consume considerable time and resources has been great. Complex legal and factual issues abound." *Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-42 (JG)(VVP), 2013 WL 4525323, at *7 (E.D.N.Y. Aug. 27, 2013) ("*Precision I*"); *see also Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd.*, No. 08-cv-42 (JG)(VVP), 2015 WL 6964973, at *6 (E.D.N.Y. Nov. 10, 2015) ("*Precision II*") (quoting *Precision I*). The Court's observation three years ago remains undoubtedly correct. The Joint Declaration in support of Class Counsel's 2015 fee petition (ECF No. 1282), supplemented here by the Bruckner Declaration, describes in detail the motion practice, discovery, depositions, interviews, appearances, conferences, negotiations, settlements, stipulations, and other work Class Counsel performed for the Class's benefit. Class Counsel's zealous litigation over nearly nine years has resulted in the additional settlement funds from which Class Counsel now seek this award.

It is important to note that this case is not derivative of *Air Cargo*. The two cases are somewhat factually related, since freight forwarders almost always buy air cargo services. As a

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2016. References to the "Joint Decl." or "Joint Declaration" are to the Joint Declaration Of Co-Lead Counsel In Support Of Co-Lead Counsel's Petition For A Second Interim Award of Attorneys' Fees And Reimbursement of Expenses, ECF No. 1282, which summarized Class Counsel's work on behalf of the Class from the inception of the case through August 15, 2015, and which was the subject of Class Counsel's second fee petition, filed approximately one year ago.

[2] The exact timing and amount of any future *Air Cargo* payments to Plaintiffs in this case cannot be determined at this time, and no fees have previously been sought or awarded from them.

result, most of the Defendants in this case are class members and claimants in *Air Cargo*.[3] But the defendants in each case operate in different markets and at different levels in the cargo shipping industry, and the two cases alleged different conspiracies, with different plaintiffs, different class members, different defendants, different surcharges, and different meetings and communications among different key players. *Compare* ECF No. 1310 (operative *Precision* Complaint) *with* Complaint, *In re: Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.) [ECF No. 271]. Like *Air Cargo* and many other cases, this case involved complicated antitrust issues, well-funded defendants, and a plethora of foreign defendants and evidence. But unlike *Air Cargo*, in this case there were no government criminal complaints at the time this civil litigation was filed; there were no guilty pleas to criminal charges until more than two and one-half years after Plaintiffs' case began (whereas the *Air Cargo* plaintiffs were assisted by the amnesty applicant almost from the inception of the case); and there were 11 distinct claims and conspiracies (compare *Air Cargo* alleging a single global conspiracy).

II. FEES AND EXPENSES REQUESTED

A. Prior Fee Awards

On December 27, 2013, the Court ordered a first interim award of attorneys' fees, and awarded Class Counsel 15% of the recoveries they had obtained in the First Round Settlements.[4]

[3] Plaintiffs consistently took the position that the Class in this case was entitled to Defendants' *Air Cargo* proceeds because, they alleged, Defendants agreed to pass on (sometimes after marking up) many external surcharges, including *Air Cargo* surcharges, to Plaintiffs and Class members in this case. Though Defendants denied Plaintiffs' allegations, many Defendants in this case agreed to use *Air Cargo* proceeds to fund settlements with Plaintiffs.

[4] First Round Settlements were reached with Deutsche Bahn AG, Schenker AG, Schenker, Inc., Bax Global Inc., and DB Schenker (collectively "**Schenker**"); EGL, Inc. and EGL Eagle Global Logistics, LP, Inc. (collectively "**EGL**"); Vantec Corporation and Vantec World Transport (USA), Inc. (collectively "**Vantec**"); Expeditors International of Washington, Inc. (**"Expeditors**"); Nishi-Nippon Railroad Co., Ltd. (**"Nishi-Nippon**"); United Aircargo Consolidators, Inc. ("**UAC**"); Kuehne + Nagel International and Kuehne + Nagel, Inc. (collectively "**Kuehne + Nagel**"); Morrison Express Logistics Pte. Ltd (Singapore) and Morrison

See Electronic Order dated Oct. 3, 2013 (awarding fees and expenses); ECF No. 984 (granting motion for reconsideration and increasing first interim fee award to 15%). At the Court's instruction, the first interim award used as a lodestar cross-check only Class Counsel's time incurred directly in obtaining the First Round Settlements, not time incurred in litigating the case overall against all Defendants.

On November 10, 2015, the Court ordered a second interim award of attorneys' fees, and awarded Class Counsel 25% of the total settlement fund available as of August 15, 2015. ECF No. 1330. The then-available funds included: (1) all then-received payments and guaranteed future payments from the Second Round Settlements,[5] *plus* (2) all *Air Cargo* proceeds actually

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Express Corporation (U.S.A.) (collectively "**Morrison Express**"); UTi Worldwide, Inc. ("**UTi**"); and ABX Logistics Worldwide NV/SA ("**ABX**"). The Court entered final approval as to each. ECF Nos. 879-88.

[5] Second Round Settlements were reached with SDV Logistique Internationale ("**SDV**"); Panalpina World Transport (Holding) Ltd. and Panalpina, Inc. (collectively "**Panalpina**"); Geodis S.A. and Geodis Wilson USA, Inc. (collectively "**Geodis**"); Jet Speed Logistics, Ltd. also known as Jet Speed Air Cargo Forwarders (HK), Ltd, Jet Speed Logistics (USA), LLC, and Jet-Speed Air Cargo Forwarders, Inc. (USA) (collectively "**Jet Speed**"); DSV A/S, DSV Solutions Holding A/S, and DSV Air & Sea Ltd. formerly known as DFDS Transport (HK) Ltd. (collectively "**DSV**"); Toll Global Forwarding (USA), Inc., Baltrans Logistics, Inc., and Toll Holdings, Ltd. (collectively "**Toll**"); Agility Holdings, Inc., Agility Logistics Corp., Geologistics Corp., and Geologistics International Management (Bermuda) Limited (collectively "**Agility**"); United Parcel Service, Inc. and UPS Supply Chain Solutions, Inc. (collectively "**UPS**"); Dachser GmbH & Co., KG, doing business as Dachser Intelligent Logistics and Dachser Transport of America, Inc. (collectively "**Dachser**"); Hankyu Hanshin Express Holding Corporation, formerly known as Hankyu Express International Co., Ltd., Hankyu Hanshin Express Co., Ltd.; and Hanshin Air Cargo USA, Inc. (collectively "**Hankyu Hanshin**"); Japan Aircargo Forwarders Association ("**JAFA**"); Kintetsu World Express, Inc. and Kintetsu World Express (U.S.A.), Inc. (collectively "**Kintetsu**"); "K" Line Logistics, Ltd. and "K" Line Logistics (U.S.A.), Inc. (collectively "**'K Line'**"); MOL Logistics (Japan) Co., Ltd. and MOL Logistics (USA) Inc. (collectively "**MOL Logistics**"); Nippon Express Co., Ltd. and Nippon Express USA, Inc. (collectively "**Nippon Express**"); Nissin Corporation and Nissin International Transport U.S.A., Inc. (collectively "**Nissin**"); Yamato Global Logistics Japan Co., Ltd. and Yamato Transport U.S.A. Inc. (collectively "**Yamato**"); Yusen Air & Sea Service Co., Ltd. and Yusen Air & Sea Service (U.S.A.) Inc. (collectively "**Yusen**"), and with Hankyu Hanshin, JAFA, Kintetsu, "K" Line, MOL Logistics, Nippon Express, Nissin, and Yamato, the "**Japanese Defendants**"); and, for the severed Japanese Claims only, Deutsche Post AG, Danzas Corporation (doing business as

received from the First and Second Round Settlements, *minus* (3) certain offsets. *See, e.g.*, ECF No. 1281 at 6. Unlike the Court's narrower lodestar approach in the first interim award, in the second interim award the Court considered as a lodestar cross-check all attorneys' fees accrued from the inception of the case through August 15, 2015. The second interim award yielded a deflator. *Precision II*, 2015 WL 6964973, at *7.

B. Fee Request As To Current Available Settlement Fund

1. Third Round Settlements With DHL and Hellmann

The Court has preliminarily approved settlements with DHL and Hellmann, the remaining two Defendants (the "Third Round Settlements").[6] ECF Nos. 1343, 1358. Those Third Round Settlements provide for cash payments of $53,550,000, all of which has been received and deposited in interest-bearing escrow accounts. Bruckner Decl. ¶ 5. Each of the Third Round Settlements includes funds reserved to pay for notice to the Class of these proposed settlements and other related expenses, and requires the settling Defendant to cooperate with Plaintiffs in prosecuting their claims if the Court does not finally approve both settlements. *Id*. The Court has scheduled a fairness hearing on these two settlements for November 4, 2016, the same day that the Court will hear this petition. ECF No. 1367.

2. **Additional Payments Made Under The Prior Rounds of Settlements**

Most of the First and Second Round Settlements (collectively "Prior Round Settlements") require those settling Defendants to pay to the Class some or all proceeds they recover in *Air*

DHL Global Forwarding), DHL Express (USA) Inc., DHL Forwarding Japan K.K., DHL Japan Inc., Exel Global Logistics, Inc., and Air Express International USA, Inc. (collectively "**DHL**"). The Court granted final approval to the Second Round Settlements on November 10, 2016. ECF No. 1330.

[6] Plaintiffs reached Third Round Settlements with Hellmann Worldwide Logistics GmbH & Co. KG, Hellmann Worldwide Logistics Ltd. Hong Kong, and Hellmann Worldwide Logistics, Inc. for all claims against them; and with DHL for the non-severed claims.

Cargo. Thus, in addition to the Prior Round Settlement recoveries on which the Court calculated the first and second interim fee awards, some of those Defendants now also have received a fourth round of *Air Cargo* distributions and have now deposited, or soon will deposit,[7] those funds, totaling $54,224,616.77, into their respective settlement escrow accounts.[8]

3. **Additional Adjustment Following Second Interim Fee Award**[9]

In calculating the second requested fee award, Class Counsel explicitly did not seek fees on a $10 million portion of settlement payments by the Japanese Defendants which was potentially subject to refund under a ratchet-down provision in their settlement agreement. Instead, Class Counsel specifically reserved the right to seek fees on that amount at a future time,

[7] As described more fully in the Bruckner Declaration, DSV has deposited nearly all of its *Air Cargo* Round 4 proceeds into the Settlement Fund, as required under its settlement agreement, and is waiting to receive one re-issued *Air Cargo* Round 4 claim check in the amount of $6,264.43. Bruckner Decl. ¶ 15. When DSV receives that check, it will deposit the proceeds into the Settlement Fund. *Id*. Because the reissuance and deposit of that check is purely an administrative matter, Class Counsel now seek fees on all DSV's Round 4 proceeds. If the Court grants Class Counsel's fee petition, Class Counsel will not deduct any fees from DSV's forthcoming Round 4 payment until that money is actually paid in the account and available for distribution to qualified class member claimants.

[8] As this Court is aware, the *Air Cargo* litigation apparently has now settled in its entirety, and several defendants in that case will make payments over time, into 2018. Thus, class members in that case — including Settling Defendants in this case —likely will receive additional distributions in the future.

[9] Although it does not affect either the Current or Future Available Settlement Funds or the fees sought in this petition, one additional aspect of the Court's second interim award of fees may have an extremely small effect on the lodestar cross-check calculation described below. As described more fully in the Bruckner Declaration, Jet Speed did not timely make its final scheduled payment of $250,000, and it has entered into a payment plan with Plaintiffs to complete its payment obligations by the end of June 2017. The Court's second interim fee award already awarded as attorneys' fees 25% of that final scheduled payment. Class Counsel did not deduct any part of that Court-ordered fee award from that delinquent payment. Furthermore, Class Counsel will not deduct any portion of those previously awarded fees until Jet Speed deposits at least $187,500 — 75% of its final scheduled payment — into the settlement fund and that money is available to qualified claimants. *See generally* Bruckner Decl. ¶¶ 6-7. Class Counsel anticipate that Jet Speed will pay all amounts still due under its settlement agreement. Nevertheless, if Jet Speed does not do so, Class Counsel bear the primary risk of any eventual underpayment, which would reduce the fees paid to Class Counsel and similarly reduce the multiplier resulting from the lodestar cross-check.

after the size of any refund was known. ECF No. 1281 at 5 (reservation), 6 (calculation). Because so few Class members ultimately opted out, the ratchet-down provision was not triggered, ECF No. 1328, and the Current Available Settlement Fund now includes the $10 million previously held back on the basis of that provision.

4. **Calculation Of Current Available Settlement Fund And Requested Fees And Expenses**

At this time, Class Counsel request that the Court order a third fee award of 25% of the Current Available Settlement Fund to be paid now, and calculated as follows:

$54,224,616.77	New *Air Cargo* proceeds from Prior Round Settlements
+ $53,550,000.00	Third Round Settlement proceeds (DHL and Hellmann)
+$10,000,000.00	Previously reserved ratchet-down for Japanese Defendants
= $117,774,616.77	Current Available Settlement Fund
x 25%	Fee award percentage requested by Class Counsel
= $29,443,654.19	Total fee requested from Current Available Settlement Fund

The Court previously ordered two fee awards of 15% and 25%, respectively, for a total of $59,100,217.82. ECF No. 984; ECF No. 1330. If the Court now awards the third fee request of $29,443,654.19 from the Current Available Settlement Fund, then the aggregate fees awarded thus far in this case of $88,543,872.01 will represent a multiplier of 1.23 on Class Counsel's time spent from the inception of the case through July 31, 2016.

Class Counsel also request unreimbursed expenses incurred from August 15, 2015 through July 31, 2016. The unreimbursed expenses for this period total $1,762,803.75 and are set forth in the summaries of deferred billings and unreimbursed expenses (Bruckner Decl. Exs. J and K) and each of the law firm declarations filed therewith.[10]

[10] Class Counsel do not include in this request reimbursement of certain contributions made in late August 2015 by Co-Lead Counsel to the litigation fund established in this case. The Court's

C. Fee Request as to Future Available Settlement Fund.

In addition to the requested fee award from the Current Available Settlement Fund described above, Class Counsel respectfully request a forward-looking fee award of 25% of the Future Available Settlement Fund comprising any future *Air Cargo* payments Settling Defendants make under their settlement agreements, up to a cap of $90 million. The requested future-looking award, plus the fee award sought here from the Current Available Settlement Fund and the two prior fee awards, would result in an aggregate fee award of no more than $111,043,872.01. Even assuming Class Counsel's lodestar was frozen as of July 31, 2016,[11] this would represent a multiplier of no more than 1.54 with respect to the value of Class Counsel's work in this case from its inception, for an overall blended fee award not exceeding 23%.

III. ARGUMENT

A. The Court Should Award Attorneys' Fees Based On A Percentage Of The Common Fund.

The common fund doctrine provides that plaintiffs' attorneys in a class action may petition the court for compensation from any benefits to the class that resulted from counsel's efforts. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). While the Second Circuit permits either the "percentage of the fund" approach or the lodestar approach when calculating fees in a common fund case, *see, e.g.*, *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 419 (2d Cir. 2010) (holding that a district court may in its discretion chose either approach), the "trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of

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second interim award of litigation expenses already reimbursed Co-Lead Counsel for those late August 2015 contributions. *See* Joint Decl. ¶¶ 332-33 and n.42.

[11] This assumption is extremely conservative and unlikely, given that considerable class administration work will be required of Class Counsel through final distribution, which will not conclude until 2018 at the earliest.

litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citation omitted); *accord In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 128 (S.D.N.Y. 2009).

The percentage method dispenses with the "cumbersome, enervating, and often surrealistic process of lodestar computation." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (quotation marks and citations omitted). However, the Court of Appeals recommends considering the hours submitted by counsel as a cross-check on the reasonableness of the requested percentage. *Id.* Accordingly, Class Counsel's lodestar in this case and the cross-check it provides are discussed in Section III.E. below. Regardless of which method of calculation a court uses, the key consideration in awarding fees is what is reasonable under the circumstances. *Goldberger*, 209 F.3d at 47; *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees . . . .").

B. A Future-Looking Order Awarding 25% Of The Future Available Settlement Fund Is Reasonable.

In addition to the fee award requested based on the Current Available Settlement Fund, an order making a future-looking award from the Future Available Settlement Fund is also reasonable and appropriate at this time.

A fee award should be based on the entire settlement fund, not a portion of the fund. *See Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) ("The entire Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not."). Many Settling Defendants' settlement agreements require them to pay some or all of any future *Air Cargo* proceeds they receive, and those future payments constitute part of the entire settlement fund. Although the precise amount

and timing of future *Air Cargo* proceeds cannot be pinpointed with certainty now, such funds will provide real and tangible value to the Class.[12] The Court's second interim fee award, based in part on future payments from Settling Defendants, implicitly recognized the reasonableness of prospectively awarding fees as to future payments. *Precision II*, 2015 WL 6964973, at **5, 8. Other courts likewise have entered forward-looking fee orders in cases involving future settlement payments. *E.g., In Re: Urethane Antitrust Litigation (Polyether Polyol)*, MDL No. 1616, Order at ¶¶ 2, 3 (D. Kan. December 12, 2011) (Bruckner Decl. Ex. M).

Prospectively awarding attorneys' fees now as to future *Air Cargo* proceeds promotes judicial economy and also makes more money available to pay qualified claimants because it avoids unnecessary motion practice and preserves the Settlement Fund. The Court-approved notice program in this case has cost nearly $10.4 million to date, Bruckner Decl. ¶ 26 n.4, and the notice program as to the Third Round Settlements alone were estimated to cost nearly $2.4 million, ECF No. 1362 at 15. Notifying the Class of a fourth fee petition after all future *Air Cargo* proceeds have been received would incur additional notice costs and would diminish the funds available to qualified claimants.

Furthermore, Class members have received adequate notice of the future-looking award Class Counsel now seek.[13] The Class Notice approved by this Court for the Third Round Settlements informed potential Class members that Class Counsel would seek an award of up to 33% of the Third Round Settlements and "additional proceeds received in connection with prior

[12] Indeed, more than $91 million has been deposited in the Settlement Fund to date as a result of the provisions requiring payment of *Air Cargo* proceeds. *See* ECF No. 836 at 10 n.16 (*Air Cargo* proceeds exceeding $16 million in the first interim fee petition); ECF No. 1281 at 6 (new *Air Cargo* proceeds exceeding $21 million in the second interim fee petition); Bruckner Decl. ¶ 14 (new *Air Cargo* proceeds exceeding $54 million in the third fee petition).

[13] As with Class Counsel's prior fee petitions, this petition is being posted on the case website, www.freightforwardcase.com/en, simultaneously with being filed with the Court.

settlements" and reimbursement of expenses. ECF No. 1364-1 at 18. Class Counsel now seek an award of a smaller percentage — 25% — of up to $90 million in future settlement payments.

C. Co-Lead Counsel Seek A Reasonable Percentage Of The Current Available Settlement Fund And The Future Available Settlement Fund.

In assessing the reasonableness of Class Counsel's current fee request under a lodestar cross-check, the Court should compare the total of all fees previously awarded and fees requested in this petition, to the lodestar reflecting all work done in this case from inception until July 31, 2016. The Joint Declaration and the Bruckner Declaration describe the work Class Counsel have performed since the inception of this case through July 31, 2016. The reasonableness of Class Counsel's fee request is appropriately measured over the life of the case thus far. All of this work is directly related to Class Counsel's efforts to prosecute Plaintiffs' claims against all Defendants and to recover overcharges for purchasers from any Defendant.

For instance, discovery from one Defendant directly bears on the participation of other Defendants in the same conspiracy. Thus, Class Counsel's review of documents, interviews of witnesses, and depositions of each Defendant resulted in incrementally more favorable settlements with each succeeding Defendant and proving the liability of all non-settling Defendants. *See, e.g., In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litig.*, 681 F. Supp. 2d 141, 160-61 (D. Conn. 2009) (evidence found in competitor's files was considered important evidence against another defendant); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 662-63 (7th Cir. 2002) (evidence of statements from competitor employees' documents used to defeat ADM's motion for summary judgment). Indeed, it is for this reason that nearly every settlement agreement in this case to date has required the settling Defendant to provide substantial cooperation to Plaintiffs through discovery and trial. The substantial early cooperation provided by Schenker, the first settling Defendant, well illustrates the benefits the

Class has received from Class Counsel's strategy of leveraging each settlement against remaining Defendants. Similarly, each succeeding settlement enabled Class Counsel to favorably resolve all claims against all Defendants. For these reasons, the Court should consider the lodestar amount for all work performed in the case from inception through July 31, 2016 in assessing the reasonableness of the requested fee. *See, e.g., In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775, 2012 WL 3138596, at *5 (E.D.N.Y. Aug. 2, 2012) ("*Air Cargo 3*") (awarding 25% and applying a lodestar cross-check based on work performed since appointment of lead counsel).

Class Counsel are mindful of Judge Gleeson's fee decisions in *In re Visa Check/Mastermoney Antitrust Litigation*, 297 F. Supp. 2d 503, 520 (E.D.N.Y. 2003), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005), in which the Court considered not only the appropriate percentage that should be applied in a "mega-case" such as *Visa Check*, but also the multiplier that would result if plaintiffs' counsel's request was granted. *See Visa Check*, 297 F. Supp. 2d at 424-25 & n.33. The Court concluded that a multiplier of almost 10 was not warranted, but a multiplier of 3.5 was reasonable. *See id.* at 522, 524.

The nature of this litigation makes it easily distinguishable from a typical monolithic two-defendant mega-conspiracy such as in *Visa Check*. Unlike *Visa Check*, where class counsel obtained a $3,383,400,000 settlement (a large fund by any measure) against two defendants for domestic conduct, in this case Class Counsel have achieved full settlements as to 68 Defendants from 29 Defendant families alleged to have engaged in widespread international conduct constituting 11 distinct conspiracies, despite the fact that many Defendants paid relatively small government fines and others paid none. Although the large number of settling Defendants magnifies the total amount of the settlements here, each of the individual settlement agreements

is well below megafund amounts. As discussed in more detail below, the lodestar cross-check from inception shows that Class Counsel's request for 25% of the Current Available Settlement Fund (which results in a multiplier of 1.23) and for 25% of the Future Available Settlement Fund up to $90 million in future contributions (resulting in a maximum possible multiplier of 1.54) is reasonable given the risks, complexities and work involved to prosecute these multiple international conspiracies against many Defendants.

It is well within the Court's discretion to award the request of 25% of the Current Available Settlement Fund and to award 25% of the Future Available Settlement Fund. *See, e. g.*, *Air Cargo 3*, 2012 WL 3138596, at *5 (E.D.N.Y. Aug. 2, 2012) ("*Air Cargo 3*") (granting class counsel's requested interim fee of 25% of the gross amount of the settlement fund when such a request represented a modest 1.11 multiplier); *In re Checking Account Overdraft Litig.*, Case No. 09-MD-02036-JLK, 2011 WL 5873389 at *28 (S.D. Fla. Nov. 22, 2011) (approving fee award of 30% of $410 million settlement fund); *In re Linerboard Antitrust Litig.*, No. MDL 1261, Civ. A. 98-5055, Civ. A. 99-1000, Civ. A. 99-1341, 2004 WL 1221350, at *17 (E.D. Pa. June 2, 2004) (approving fee award of 30% of $202,572,489 fund); *In re Vitamins Antitrust Litig.*, No. Misc. 99-197 (TFH), MDL No. 1285, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (approving fee award of 34.6% of $365 million fund); *see also Visa Check*, 297 F. Supp. 2d at 525 & n.33 (distinguishing large size of $3 billion fund in that case and the size of the multiplier, and stating that if the fund was not as large, "a larger percentage might be appropriate").

D. Class Counsel's Request Is Consistent With The *Goldberger* Factors.

"Generally, the factor given the greatest emphasis [when awarding a percentage of a fund] is the size of the fund created, because 'a common fund is itself the measure of success. . . [and] represents the benchmark from which a reasonable fee will be awarded.'" *Manual for Complex Litigation (Fourth)* § 14.121 (2004) (quoting Alba Conte & Herbert B. Newberg,

4 *Newberg on Class Actions* § 14.6, at 547, 550 (4th ed. 2002)). Courts in this Circuit have repeatedly held that "a fee award should be assessed based on scrutiny of the unique circumstances of each case . . . [with] a jealous regard to the rights of those who are interested in the fund." *Goldberger*, 209 F.3d at 53; *see McDaniel*, 595 F.3d at 426. In determining the reasonableness of a fee request, the Court should consider: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50 (citation omitted); *Precision II*, 2015 WL 6964973, at *7 (applying *Goldberger*). An award of 25% of the Current Available Settlement Fund and a future-looking award of 25% of the Future Available Settlement Fund up to the requested cap are reasonable under the *Goldberger* factors.

1. The Time And Labor Expended By Counsel Supports The Requested Fee.

The large international scale of this litigation, the sheer number of Defendants, the enormous amount of discovery, and the contentious motion practice have required an intensive effort by Class Counsel. Since the inception of this case, Class Counsel have spent 158,233.55 hours prosecuting the litigation, and to date have received no compensation for 4,451.37 hours of that time because it occurred after August 15, 2015. *See* Bruckner Decl. Exs. H, I.

The Joint Declaration and the Bruckner Declaration taken together describe Class Counsel's work since the case's inception, which is briefly summarized as follows:

- Prepared a First Amended Class Action Complaint consisting of 326 numbered paragraphs containing specific and detailed allegations against Defendants, including names, dates, places and subject matters of conspiratorial meetings and other communications;
- Responded to 18 motions to dismiss the First Amended Complaint and 11 objections to Magistrate Judge Pohorelsky's resulting Report & Recommendation;

- Prepared a Corrected Third Amended Class Action Complaint, comprising 593 numbered paragraphs and additional detailed and specific allegations;

- Responded to 15 motions to dismiss the Corrected Third Amended Complaint (including the 13 initial motions and two later-filed motions by Hellmann and JAFA, respectively), one motion to sever certain claims, and 11 objections on Magistrate Judge Pohorelsky's resulting Report & Recommendation;

- Prepared and filed a Fourth Amended Class Action Complaint;

- Filed 27 non-ministerial motions (including 12 motions to compel and 1 motion to quash) and 2 objections;

- Made 16 appearances before Magistrate Judge Pohorelsky, 5 appearances before Judge Gleeson, and 1 appearance before Judge Cogan;

- Attempted to negotiate a confidentiality order with Defendants concerning confidential material to be produced in discovery and, when Defendants refused to agree, successfully moved the Court for a confidentiality order;

- Engaged in lengthy briefing and motion practice to obtain customer lists from non-settling Defendants to assist in providing Class notice;

- Participated in Rule 26(f) conferences, negotiating multiple disputed provisions;

- In addition to the motions described above, responded to a total of 3 pre-motions and submitted briefing in response to 8 motions;

- Reviewed 84,842 Plaintiff documents, ultimately producing 46,064 documents to Defendants;

- Utilized advanced analytical search tools, as well as keyword searches, to identify the most relevant documents of the more than 5.1 million documents produced by Defendants;

- Ultimately reviewed 1,062,552 million Defendant documents electronically (including translating and reviewing several documents in Japanese, German, and Italian) and reviewed additional documents on-site in Seattle, Washington;

- Held innumerable meetings and conferences with Defendants to obtain and understand Defendants' transactional data;

- Prepared witness and Defendant factual summaries to assist in depositions, discovery responses, work by experts engaged by Plaintiffs, and trial;

- Prepared for and conducted 50 depositions in 4 countries spread across three continents;

- Prepared and served 20 sets of discovery requests;
- Responded to 27 sets of discovery requests from Defendants, and prepared and served multiple amended and supplemental discovery responses as appropriate;
- Interviewed 43 witnesses and received approximately 18 attorney proffers;
- Engaged in lengthy settlement negotiations and mediations that led to the 10 First Round Settlements, the 11 Second Round Settlements, and the 2 Third Round Settlements;
- Carried out three extensive programs to notify potential claimants of the Prior Round Settlements and the Third Round Settlements and communicated extensively with Class Members relating to the claims-administration process;
- Extensively researched the facts and law regarding pertinent issues; and
- Worked with industry and economic consultants and experts to develop pleadings, evaluate transactional data, guide discovery, formulate settlement strategies, assess damages, and prepare for Plaintiffs' class certification motion.

See Joint Decl. generally and ¶ 15 specifically; Bruckner Decl. ¶ 3.

2. The Magnitude And Complexities Of The Litigation Support The Requested Fee.

Antitrust class actions "are notoriously complex, protracted, and bitterly fought." *Wesely v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989); *see In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 129 ("antitrust cases are typically complex"). Indeed, as this Court has recognized, this litigation is "irrefutably complex." *Precision I*, 2013 WL 4525323, at *15; *see also Precision II*, 2015 WL 6964973, at 7 ("this litigation was obviously risky and complex"). It involves international conspiratorial conduct across the globe with 68 different Defendants, 29 Defendant families, and 11 conspiracies. Because of the large number of Defendants, the complexity of the legal issues, and the extensive motion practice, this litigation is nearly nine years old.

3. The Risk Of Litigation Supports The Requested Fee.

The risk of litigation is "perhaps the foremost factor to be considered in determining

whether to award an enhancement." *Goldberger*, 209 F.3d at 54 (quotation omitted); *accord In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 129. Courts in this Circuit have repeatedly recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award. *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010); *In re NASDAQ Mkt. Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998). As this Court has acknowledged, this action "is obviously risky." *Precision I*, 2013 WL 4525323, at *15; *accord Precision II*, 2015 WL 6964973, at *7.

To establish a price-fixing violation, a plaintiff must demonstrate not only that a conspiracy existed, but also that the conspiracy caused antitrust impact and damages, measurable by reference to prices that would have existed but for the conspiracy. Here, even if Plaintiffs prevailed through class certification and other pre-trial proceedings and obtained a judgment of liability, such a judgment could be overturned on appeal. *See, e.g.*, *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1218-19 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Backman v. Polaroid Corp.*, 910 F.2d 10, 12 (1st Cir. 1990) (en banc) (reversing plaintiffs' verdict and ordering entry of judgment for defendants).

Moreover, the litigation risk "must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55. When Plaintiffs filed their original complaint in January 2008, no government criminal complaints had been filed, and no guilty pleas had been entered. The first fines related to government investigations did not occur until the Japan Fair Trade Commission issued fines in March 2009, over a year after the inception of the case. And the United States Department Of Justice ("DOJ") did not announce any guilty pleas until 2010 — more than two and one-half years after Plaintiffs' case began. The European Commission did not impose fines until 2012. As such, the case faced significant initial risks with respect to showing liability.

Plaintiffs also vigorously pursued claims and alleged conspirators where no DOJ guilty pleas or EC fines exist, all of which have been sustained under Fed. R. Civ. P. 12 (*i.e.*, Count 1: Security Surcharge; Count 9: Ocean AMS; Count 10: Global Agreement). Against this backdrop, all Defendants sought dismissal under one or more provision of Fed. R. Civ. P. 12, each making multiple of arguments, and often in multiple motions. Plaintiffs defeated a total of 33 motions to dismiss under Rules 12(b)(1) and (6).[14]

Even if Plaintiffs had succeed at trial and through appeal, settling Defendant DHL made clear prior to settlement that, as the amnesty applicant to the DOJ, it would seek an order that it was not subject to treble damages or joint and several liability pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA"), Pub. L. No. 108-237, § 213(a)-(b), 118 Stat. 661, 666-668 (June 22, 2004). Plaintiffs would have vigorously contested any such motion and argued that DHL's limited cooperation did not earn it ACPERA's benefit, but a ruling in DHL's favor would have significantly reduced Plaintiffs' potential recovery at trial.

Plaintiffs faced other risks. The significant international dimension of the case made discovery difficult, and would have made collecting judgments against foreign Defendants difficult as well. Defendants also would have vigorously challenged Plaintiffs' standing and class certification and argued that no damages existed because the surcharges would have been passed through to Plaintiffs in any event. Plaintiffs believe they would have prevailed, but those challenges posed very real risks to the Class.

Plaintiffs' recovery in the face of these risks is remarkable and justifies the requested fee. In the nearly nine years Class Counsel have litigated this case, they have committed 158,233.55

[14] The fact that the Defendants DHL and Hellmann prevailed on much narrower motions, *see* ECF Nos. 1236, 1269, does not detract from Plaintiffs' nearly total success in sustaining their complaint against an onslaught of challenges by these and the other Defendants.

hours of their time — amounting to over $72 million in lodestar — and incurred $6,420,333.74 in expenses, all of which were and are at risk of never being recovered. Bruckner Decl. ¶¶ 25, 26, 28; Joint Decl. Exs. P, Q; Electronic Order dated Oct. 3, 2013.

4. The Quality Of Counsel's Representation Supports The Requested Fee.

As the Court recognized, Class Counsel in this case "are highly experienced practitioners in complex litigation generally and antitrust litigation specifically." *Precision I*, 2013 WL 4525323, at *16; *Precision II*, 2015 WL 6964973, at *8 ("The settlement amounts proposed here attest to Class Counsel's abilities."). Notwithstanding Defendants' extensive efforts to defeat this case, Co-Lead Counsel settled all 11 claims against all 29 Defendant families, which in nearly every applicable instance exceeded the fines paid by settling Defendants in the United States,[15] and in many other instances involved settlements with Defendants who were never criminally charged in the United States.[16] Such a recovery is consistent with Co-Lead Counsel's extensive experience successfully litigating antitrust class actions, and supports the fee request. *See* ECF No. 101 (outlining Co-Lead Counsel's extensive experience and success in the class action field).

Similarly, in addition to the collective wealth of Defendants themselves, their counsel include top antitrust legal practitioners at some of the world's largest and most skilled law firms. *See* Joint Decl. ¶ 18. Throughout this litigation, Defendants' counsel have worked tirelessly to protect their clients' interests, and Co-Lead Counsel's ability to obtain these significant

[15] The only settlement that did not exceed the fines paid to the Department of Justice was the ice-breaker settlement with Schenker, which in addition to cash provided extensive and early cooperation. That cooperation enabled Plaintiffs and the Class to survive Defendants' first barrage of motions to dismiss and facilitated future settlements that in many instances far exceeded the settling Defendants' fines paid to the DOJ.

[16] The following Defendant groups were never charged in the United States: Hellmann, Expeditors, UAC, Morrison Express, UTi, ABX, SDV, DSV, Geodis, Jet Speed, Toll, Dachser, and UPS.

settlements further underscores the adequacy of the requested fee award. *See In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 174 (S.D.N.Y. 2007) ("The quality of opposing counsel is also important in evaluating the quality of Class Counsels' work."); *In re NASDAQ Market Makers Antitrust Litig.*, 187 F.R.D. 465, 488 (S.D.N.Y. 1998).

5. The Size And The Scope Of The Settlements Supports The Requested Fee.

The requested fee represents 25% of the Current Available Settlement Fund, which represents a multiplier of 1.23 since inception, and 25% of the Future Available Settlement Fund (up to the requested cap), representing a maximum possible multiplier of 1.54 over the same period. Class Counsel respectfully suggest the requested award is fair given the extensive effort that was required to achieve these excellent results.

The fee requested is consistent with fee awards in other class action litigations with settlements of this size. *See, e.g.*, *In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-MD-1775, 2011 WL 2909162, at *6-7 (E.D.N.Y. July 15, 2011) ("*Air Cargo 2*") (awarding 25% fee recovery in related antitrust case); *In re Initial Public Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding one-third fee in a securities fraud case); *In re Priceline.com, Inc. Sec. Litig.*, Master File No. 3:00-cv-1884, 2007 WL 2115592, at *4 (D. Conn. July 20, 2007) (awarding 30% of $80 million settlement); *see also In re Prudential Sec., Inc. Ltd. P'ships Litig.*, 912 F. Supp. 97, 103 (S.D.N.Y. 1996) ("Many courts have approved and awarded fees in class actions of one-third of the settlement fund in recognition of the substantial services performed by counsel and the risks undertaken.").

6. Public Policy Considerations Support the Award of the Requested Fee.

The award requested by Class Counsel will encourage the continued private enforcement of antitrust laws and support attorneys who take such cases on a contingent fee basis. The Supreme Court has held repeatedly that private enforcement of U.S. antitrust laws is essential to

effective antitrust enforcement, *e.g.*, *Blue Shield of Va. v. McCready*, 457 U.S. 465, 472 (1982); *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 130-31 (1969), and a market-rate fee award such as is requested here incentivizes competent, experienced counsel to undertake such high-risk, complex class action litigation. This Circuit has noted that "[i]n the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation." *Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc.*, 481 F.2d 1045, 1050 (2d Cir. 1973). In determining whether public policy supports the requested fee request, the court should balance providing lawyers with a "sufficient incentive to bring common fund cases" against preventing an "unwarranted windfall" to counsel. *Air Cargo 2*, 2011 WL 2909162, at *6 (E.D.N.Y. July 15, 2011). Given the time and effort Co-Lead Counsel have dedicated to this case, the requested fee of 25% fairly compensates Co-Lead Counsel, helps to ensure the availability of skilled counsel in future antitrust class actions, and is not a windfall.

E. The Requested Fee Is Reasonable Under A Lodestar Cross-check.

The use of the lodestar cross-check on the reasonableness of a percentage fee award is encouraged. *Farinella v. Paypal, Inc.*, 611 F. Supp. 2d 250, 269 (E.D.N.Y. 2009). Courts may award fees higher than the lodestar by applying a multiplier based on factors such as the riskiness of litigation. *See In re Nortel Networks Corp. Secs. Litig.*, 539 F.3d at 132 n.4. Courts commonly award multipliers from two to six times the lodestar. *See Monserrate v. Tequipment, Inc.*, No. 11 CV 6090, 2012 WL 5830557, at *3 (E.D.N.Y. Nov. 16, 2012) (collecting cases).

The total lodestar in this case, from inception, is $72,264,953.34. Bruckner Decl. ¶ 25 and Ex. I. This Court has implicitly recognized that in long-lasting, hard-fought litigation such as this, it is appropriate to calculate the lodestar cross-check over the duration of the entire case, rather than piecemeal from interim fee award to interim fee award. *See Precision II*, 2015

WL 6964973, at *7 (making interim award of 25% of settlement proceeds and applying a lodestar cross-check period from inception through the conclusion of counsel's requested cross-check period); *Air Cargo 2*, 2011 WL 2909162, at *6-7 (making a second interim award of 25% of settlement proceeds and applying a lodestar cross-check period from the appointment of co-lead counsel through the conclusion of counsel's requested cross-check period).

A fee award of 25% of the Current Available Settlement Fund would yield a multiplier of 1.23.[17] A forward-looking award of 25% of the Future Available Settlement Fund (to an upper limit of $90 million in future contributions) would yield a multiplier of 1.54, even conservatively assuming that Class Counsel perform no additional work on this case.[18] Both cross-check figures are reasonable. *See, e.g., Wal-MartStores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2006) (multiplier of 3.46 for attorneys' fees totaling $220 million); *In re Cedant Corp. PRIDES Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (surveying cases and concluding that multipliers ranging from 1.35 to 2.99 were common where the common fund exceeded $100 million); *In re Urethane Antitrust Litig.*, MDL No. 1616, 2016 WL 4060156, at *7-8 (D. Kan. July 29, 2016) (multiplier of 3.2); *In re Credit Default Swaps Antitrust Litig.*, No. 13-MD-2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (multiplier of approximately 6.0 on attorneys' fees totaling $253.8 million); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) (listing cases and noting that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers"); *In re Bristol-Myers Squibb Sec. Litig.*, 362 F. Supp. 2d 299, 236-37 (S.D.N.Y. 2005) (finding 2.29 multiplier "quite

[17] This lodestar calculation reflects Class Counsel's expectation that Jet Speed will pay the entire amount it owes, under the terms of the agreed-upon payment plan. If Jet Speed does not make pay the full amount it owes, Class Counsel will not take the full amount of fees previously awarded by the Court, and the lodestar cross-check will yield a slightly lower multiplier.

[18] This assumption ignores the considerable claims administration work which lies ahead.

reasonable" where litigation risk was typical, facts and legal theories were not complicated, and counsel did not expend extraordinary effort); *In re Elan Sec. Litig.*, 385 F. Supp. 2d 363, 376 (S.D.N.Y. 2005) (awarding 12% on revised lodestar, amounting to 3.47 multiplier).

Counsel's lodestar is based on rates they currently charge, Joint Decl. ¶ 325, Bruckner Decl. ¶ 25, an approach courts consider reasonable. *Velez v. Novartis Pharm. Corp.*, 04 CIV 09194 CM, 2010 WL 4877852, at *23 (S.D.N.Y. Nov. 30, 2010) ("The use of current rates to calculate the lodestar figure has been repeatedly endorsed by courts as a means of accounting for the delay in payment inherent in class actions and for inflation. . . .") (citation omitted)). These rates are well within the normal range for counsel litigating similar antitrust class actions. From inception, Class Counsel conducted the litigation as efficiently as possible, and the Bruckner Declaration describes the manner in which the time reported by Class Counsel was scrutinized to eliminate time entries that did not comply with Co-Lead Counsel's criteria. Bruckner Decl. ¶ 10.

F. The Requested Expense Reimbursement Is Reasonable.

Class Counsel's request for reimbursement of expenses of $1,762,803.75 is reasonable. "Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients." *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993). In the Second Circuit, courts "normally grant expense requests in common fund cases as a matter of course." *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012); *In re Arakis Energy Corp. Sec. Litig.*, No. 95CV3421, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001). Co-Lead Counsel now seek reimbursement of reasonable litigation expenses including economic and industry experts, deposition transcription, court reporter services, claims administration, data hosting, online legal research, travel expenses, and document imaging and copying. *See* Bruckner Decl. ¶¶ 26-27 (expenses borne by Class Counsel), ¶ 29 (same), ¶¶ 36-38 (expenses paid from litigation fund and thus from Co-Lead

Counsel's assessments). These expenses were reasonably necessary to advance the interests of the Class and to obtain the excellent result on their behalf. Due to the risk that they might never be recovered, Class Counsel endeavored to keep expenses to a minimum.

G. In The Future, Co-Lead Counsel Will Make Subsequent Applications For The Court's Consideration For Expenses Related To Claims Settlement, Administration, And Processing.

Processing and administration of Class Members' claims for the Prior Round Settlements is well underway and Co-Lead Counsel anticipate presenting a motion to approve a plan of distribution of settlement funds in the coming months. Processing and administration of Class Members' claims for the Third Round Settlements will begin in earnest following the April 3, 2017 deadline to submit claims. The Claims Administrator has mailed direct notice to potential Class members in accordance with the Court-approved notice plan. Class Members have been submitting claims for the Third Round Settlements and will continue to do so until the April 3, 2017 deadline. Before payment of such claims can be recommended to the Court for its approval, each claim will be verified and in some cases audited, to ensure that the Class Member is qualified and that its claimed purchases are allowable.

Expenditures for escrow fees, taxes on the escrowed funds, and preparation of those tax forms, also will be necessary in the foreseeable future. Accordingly, in the future and as appropriate Co-Lead Counsel will apply to the Court for approval to pay expenses related to the escrow accounts and for claims administration and processing. These items may be considered by the Court in due course before any such expense payments are made.

H. Class Members Have Received Notice and Have an Opportunity to Object.

The Class Notice approved by this Court informed potential Class members that Class Counsel would seek a fee award of up to 33% of the settlement fund, and would also seek reimbursement for expenses. ECF No. 1364-1 at 18. That Notice has been distributed to potential

Class members in accordance with the Court's order approving notice. Bruckner Decl. ¶ 16. This fee petition and all supporting papers will be posted to the settlement website within 24 hours of filing, as directed by the Court. ECF No. 1367. Objections from Class Members, if any, are to be filed by September 20, 2016. If there are any such objections, Class Counsel will respond before the November 4, 2016 final approval hearing.

IV. CONCLUSION

For all of these reasons, Co-Lead Counsel respectfully requests that the Court enter an Order awarding attorneys' fees and expenses as follows:

(1) Class Counsel are awarded 25% of the Current Available Settlement Fund of $117,774,616.77 as attorneys' fees, for a total fee award of $29,443,654.19, to be paid from funds currently paid into the settlement fund.

(2) Class Counsel are awarded 25% of the Future Available Settlement Fund, up to a maximum of $90 million received from Settling Defendants and deposited into the settlement fund, for a maximum future-looking award of attorneys' fees of $22,500,000.00; and

(3) Class Counsel are awarded $1,762,803.75 as reimbursement for litigation expenses.

Dated: September 1, 2016

Respectfully submitted,

s/ W. Joseph Bruckner

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