UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., *et al.*, Plaintiffs, v. PANALPINA WORLD TRANSPORT (HOLDING) LTD., *et al.* Defendants.	CASE NO. 08-CV-00042 (JG)(VVP)

MEMORANDUM IN SUPPORT OF CO-LEAD COUNSEL'S PETITION FOR INTERIM PAYMENT OF ATTORNEYS' FEES` AND REIMBURSEMENT OF EXPENSES

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I. INTRODUCTION

After five and a half years of hard work in this litigation, Plaintiffs have secured settlements from ten of the twenty-eight Defendant groups[1] in this antitrust class action alleging complex international conspiracies. The resulting combined Settlement Fund provides a guaranteed fund of $112,356,911.58 in settlements for the benefit of the Class and additional future settlement payments from Settling Defendants based upon a percentage of most Settling Defendants' future recovery in *In re Air Cargo Shipping Services Antitrust Litig.*, 06-MD-1775 (JG) (VVP) (E.D.N.Y.) ("*Air Cargo*").[2] Co-Lead Counsel separately will seek final approval of these settlements and implementation of a plan of distribution to provide the benefits of the settlements to Class Members.

Co-Lead Counsel and other Class Counsel (collectively "Class Counsel") zealously litigated these complex international claims on an entirely contingent basis for years before any government indictments or guilty pleas or any assistance from the Amnesty Applicant.

When Class Counsel filed this case, there were no government complaints and all the risks of dismissal pursuant to *Bell Atl. Corp. v. Twombly*, 550 U.S. 5 44 (2007), complex foreign discovery, summary judgment, class certification, trial and collecting on judgments against foreign defendants were fully present. Most of those risks continue today to be fully present even after the subsequent government complaints. While they are favorable to the merits of the liability portion of Plaintiffs' Claims, the government actions still leave substantial risks

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[1] Plaintiffs have reached settlements 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**; **Nishi-Nippon**; **United Aircargo Consolidators, Inc.**; **Kuehne + Nagel**; **Morrison Express**; **UTi Worldwide, Inc.**; and **ABX Logistics Worldwide NV/SA** (collectively, "Settling Defendants"). The Court has preliminarily approved each of those settlements. ECF Nos. 530, 587, 604, 643, 649, 673, 692, 715.

[2] In the *Air Cargo* Litigation, which is also before this Court, plaintiffs claim that various airlines conspired to fix prices for air cargo services. Many if not all of the Defendants in this case are class members in *Air Cargo*. Most of the Settling Defendants have agreed to turn over some or all of the proceeds they receive from the *Air Cargo* case.

(including class certification, proof of damages and collection against foreign Defendants) even when those risks are considered long after the required measuring point *i.e.*, the start of the case. In these conditions of substantial risk and without any of the comforts of hindsight bias, Class Counsel invested significant time and incurred out-of-pocket expenses on behalf of the class. In doing so, they have faced constant opposition for five and a half years from Defendants who have been represented by highly skilled and experienced antitrust counsel who have made every argument in their clients' interests.

Notwithstanding the absence of any formal factual discovery (because of the Court's stay) and Defendants' significant and ongoing opposition, Class Counsel have obtained significant settlements that, unlike in most cases, far exceed the amounts of the fines the United States Department of Justice ("DOJ") obtained based on its information and plea agreements, all of which followed long after Plaintiffs filed this action.[3] The exceptional value provided by these settlements reflects the skill, expertise and hard work of Class Counsel in the face of the significant litigation risks associated with the case.[4]

Based on the greater risks, the greater percentage recovery, the greater recovery compared to criminal fines (see footnote 3), and the much longer delays in any prospective payment of fees and reimbursement of litigation expenses in this case as compared to *Air Cargo*, Co-Lead Counsel now respectfully request that this Court:

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[3] For example, in *Air Cargo,* the settlements in the civil action represented 26.94% of the corresponding DOJ fines. In contrast, in this civil case the settlements of the Defendants who have paid DOJ fines constitute more than 200% of the amount of the government fines. In *Air Cargo*, unlike in this case, the plaintiffs were aided from the outset by cooperation from the amnesty applicant. This significantly reduced the risks faced by counsel in *Air Cargo*. By contrast, in this case Plaintiffs proceeded for approximately 26 months without any such cooperation from the Amnesty Applicant which necessarily increased the litigation risks.

[4] As described in the Declaration of W. Joseph Bruckner in Support of Co-Lead Counsel's Petition for Interim Payment of Attorneys' Fees and Reimbursement of Expenses, in addition to the four firms this Court appointed as Co-Lead Counsel, four other firms have contributed their time and resources to the successful prosecution of this case, and their time and expenses are included in this motion. In this memorandum, the term "Class Counsel" refers not only to Co-Lead Counsel but to those other firms as well.

(1) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $32,596,320.32 from settlement proceeds ($98,776,728.25) currently paid into the Settlement Fund;[5]

(2) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $4,459,980.25 from the settlement proceeds ($13,515,091.67) scheduled to be paid by EGL, Schenker and United Aircargo upon Final Approval of their respective Settlements;[6]

(3) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $21,480.25 from the settlement proceeds ($65,091.66) scheduled to be paid by United Aircargo one year after the Fairness Hearing or Final Approval of the United Aircargo settlement; and

(4) Reimburse Class Counsel for reasonable interim litigation expenses totaling $811,095.84.

II. FACTUAL BACKGROUND

A. Plaintiffs Have Litigated For Five And One-Half Years To Achieve The Settlements In This Case.

On January 3, 2008, after many months of counsels' investigation, research and preparation, Plaintiffs filed their initial complaint alleging that Defendants and others conspired to fix prices and surcharges relating to U.S. Freight Forwarding Services, in violation of Section 1 of the Sherman Antitrust Act, 15 U.S.C. § 1. ECF No. 1. Bruckner Decl. ¶¶ 4 and 5.[7] On

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[5] This amount includes all Settlement Fund payments and interest accrued through April 30, 2013.

[6] United Aircargo will make a payment of $65,091.67 ten Japanese business days after the Fairness Hearing, or if no Fairness Hearing is held, after the Final Approval of the Settlements.

[7] References to the Bruckner Decl. are to the Declaration of W. Joseph Bruckner in Support of Co-Lead Counsel's Petition for Interim Payment of Attorneys' Fees and Reimbursement of Expenses, dated June 12, 2013 and filed herewith.

June 3, 2009, the Court appointed the undersigned as Interim Co-Lead Counsel, and ordered them to file an amended complaint within 42 days. ECF No. 115. The Court also stayed discovery pending resolution of any motions filed by Defendants in response to the Amended Complaint. ECF No. 115. Although Co-Lead Counsel's motion to partially lift the stay of discovery is *sub judice*, the stay remains in place.

Co-Lead Counsel also sought to learn whether the DOJ had granted conditional amnesty under its Corporate Leniency Program to one of the Defendants. To that end, Co-Lead Counsel wrote to all Defendants shortly after their appointment as Co-Lead Counsel and exhorted any such Amnesty Applicant to come forward immediately and begin cooperating with Plaintiffs prior to Plaintiffs' July 2009 deadline to file the FACAC. If the Amnesty Applicant did not do so, Co-Lead Counsel stated, it would prejudice – not benefit – the Class, and as a result Plaintiffs would ultimately oppose any petition to the Court by the Amnesty Applicant for the damages limitations available upon satisfactory cooperation under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, P.L. 108-237 ("ACPERA"). But the Amnesty Applicant refused to come forward (and did not do so until after the FACAC was filed).

Faced with the refusal of the Amnesty Applicant to cooperate with the Plaintiffs at that time, Co-Lead Counsel sought an early settlement and cooperation from another Defendant, which resulted in the initial "ice-breaker" settlement with the Schenker Defendants. Meanwhile, the Amnesty Applicant joined other Defendants in moving to dismiss Plaintiffs' FACAC (and continues to bring motions to dismiss today), all the while possessing information that it should have to help bolster Plaintiffs' allegations.

Although the Schenker Settlement is a good result for the Class in and of itself, the fact that the Amnesty Applicant refused to come forward and cooperate at that material stage in the

litigation changed the tenor of settlement talks with Schenker, forced Co-Lead Counsel to enter into an "ice-breaker" settlement and then to expend additional time and resources investigating and compiling facts that they would not have been required to do, had the Amnesty Applicant come forward in a timely fashion. Bruckner Decl. ¶ 6.

On July 21, 2009, Plaintiffs filed their First Amended Class Action Complaint ("FACAC") using information obtained from Settling Defendant Schenker (and its counsel) to add new claims, new Defendants, and more detailed allegations. ECF No. 117. The FACAC alleged dozens of dates, times, places of, and participants in conspiratorial meetings, phone calls, and e-mails, and described the unlawful agreements the conspirators reached at those meetings.[8] In response, most Defendants moved to dismiss Plaintiffs' Complaint. ECF Nos. 120, 220, 233-35, 239, 240, 242, 247, 297, 383, 386, 387, 390, 391, 392, 396, 397. Plaintiffs' Co-Lead Counsel filed seventeen briefs in opposition to those motions (ECF Nos. 322, 323, 324, 325, 326, 327, 328, 329, 330, 405, 406, 407, 408, 409, 410, 413, 414), and on September 15, 2010, Magistrate Judge Pohorelsky heard argument for a full afternoon. On January 4, 2011, Magistrate Judge Pohorelsky issued a Report and Recommendation (ECF No. 468) granting in part and denying in part Defendants' motions to dismiss Plaintiffs' Complaint, and recommended that Plaintiffs be allowed to replead any dismissed claims. Both sides objected to aspects of the Report and Recommendation (ECF Nos. 471, 472, 473, 474, 476, 477, 478, 479, 480, 481, 482, 483), and Co-Lead Counsel filed twelve separate responses to Defendants' objections (ECF Nos. 488, 489, 490, 492, 493, 494, 495, 496, 497, 498, 499, 500). On August 13, 2012, this Court adopted Magistrate Judge Pohorelsky's Report and Recommendation in its

[8] On October 7, 2010, Plaintiffs filed the Second Amended Class Action Complaint ("SACAC") (ECF No. 460), which made only ministerial changes to the First Amended Class Action Complaint necessary to allow Co-Lead Counsel to serve certain foreign Defendants, in conformity with requirements of certain foreign government authorities.

entirety. As a result, the joint motion to dismiss the Complaint was granted in part and denied in part, and Plaintiffs were granted leave to replead. ECF No. 628.

But Co-Lead Counsel did not stop their work while the motions to dismiss were pending. Instead, Co-Lead Counsel continued investigating and further developed their case. As part of their investigation, Co-Lead Counsel obtained over 1.3 million documents from the Settling Defendants and the Amnesty Applicant (who finally provided documents in March 2010), long after the FACAC was drafted and filed. Of the over 1.3 million total documents produced thus far a significant percentage have been reviewed and further review is ongoing.[9]

In addition to reviewing the documents, Co-Lead Counsel also conducted many extensive fact interviews to bolster the case. To date, they have interviewed 32 current and former employees of the Settling Defendants and the Amnesty Applicant here and abroad, and have obtained evidence proffers from counsel for many of the Settling Defendants. Co-Lead Counsel thoroughly investigated and researched the freight forwarding industry, including examining company practices, the Defendants' corporate structures, their roles in the industry, and their market shares. These investigations were further informed by consultations with an economist and industry experts regarding industry practices and surcharges, and by careful review and analysis of relevant documents in the possession of Class Counsel and Settling Defendants.

With this ongoing investigation, limited to their own efforts and no formal discovery, Co-Lead Counsel were able to initiate settlement discussion with multiple Defendants, seeking the best deals, rejecting others, and seeking to navigate the best course in this litigation for the Class.

Also based on their investigation, Plaintiffs filed their Motion to Add Proposed Plaintiffs

[9] Given the large number of documents produced in this case, Co-Lead Counsel have continually worked to ensure that the document review is efficiently and effectively run by using technology to reduce duplicative work. Further, document review has been capped at $400 per hour. Bruckner Decl. ¶ 16.

to Third Amended Class Action Complaint ("TACAC") (ECF No. 676) and TACAC under seal (ECF No. 677) on November 15, 2012.[10] The TACAC alleges eleven separate violations of Section 1 of the Sherman Act against named groups of Defendants and adds significant details regarding the dates, times, places, and participants of conspiratorial meetings, phone calls, and e-mails, and the unlawful agreements reached at those meetings. Defendants served fourteen separate motions to dismiss on February 27, 2013. These motions have been briefed, are currently pending before this Court, and are scheduled for argument before Magistrate Judge Pohorelsky on June 13, 2013.[11]

Co-Lead Counsel also have sought to lift the continuing stay of discovery to obtain production of documents Defendants have produced to government entities. Defendants opposed this request, and the motion is pending before the Court.[12] Before completion of the interviews of Settling Defendants' witnesses (another benefit to the Class produced by these settlements), Co-Lead Counsel are waiting to see if they may obtain the documents produced to the government by non-settling Defendants in order to assist in such interviews.

All of Class Counsel's work to date has been beneficial to Co-Lead Counsel's opposition to non-settling Defendants' subsequent motions to dismiss each successive iteration of Plaintiffs' Complaint, as well as reaching settlements with other Defendants, developing the TACAC, and otherwise assuring the continued successful litigation of the case for the benefit of the Class.

B. Plaintiffs' Case Preceded Government Complaints.

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[10] Plaintiffs filed a Corrected TACAC on March 27, 2013. ECF No. 746. The Corrected TACAC corrected references to certain Defendant entities and added certain Hellman entities to the complaint. ECF No. 717. A Corrected Redacted TACAC was publicly filed on May 9, 2013. ECF No. 772.

[11] These motions were subsequently filed with the Court on May 24, 28, and 29, 2013. *See* ECF Nos. 779, 781, 782, 783, 786, 787, 789, 792, 793, 799, 804, 806, 809, 810, 816, 817, 818, 819, 821, 822, 823, 824, 825, 826, 827, 828.

[12] ECF Nos. 733, 739, 740, 741, 742, 769.

Co-Lead Counsel developed the case long before filing of any government complaints. Plaintiffs' first complaint was filed in January 2008, and Co-Lead Counsel spent many months prior to that date investigating, researching and preparing the case. Bruckner Decl. ¶ 4.

In 2009 the Japan Fair Trade Commission ("JFTC") imposed $94.7 million in fines on ten freight forwarding companies for their anticompetitive conduct. Since September 2010, fifteen Defendant groups have agreed to plead guilty to the DOJ's charges against them under 15 U.S.C. § 1 and to pay a total of $101 million in criminal fines for some of the same conduct underlying this civil case: (1) Schenker AG; (2) BAX Global, Inc. (a Schenker affiliate); (3) Kuehne + Nagel International AG; (4) EGL, Inc.; (5) Geo-Logistics (acquired by Agility Logistics); (6) Nippon Express; (7) Kintetsu World Express, Inc.; (8) Nishi-Nippon Railroad Co., Ltd.; (9) Hankyu-Hanshin Express; (10) Vantec Corporation; (11) Nissin Corporation; (12) Yamato; (13) MOL Logistics (Japan) Co. Ltd.; (14) Yamato Global Logistics; and (15) Panalpina Worldwide Transport (Holding) Ltd.

In March 2012, the European Commission ("EC") also found that fourteen groups of companies engaged in anticompetitive conduct and issued substantial fines totaling €169 million for their participation in four different price-fixing cartels.[13]

C. Plaintiffs' Co-Lead Counsel Have Recovered Very Substantial Settlements Compared To The Government Fines.[14]

To date, Co-Lead Counsel have obtained a minimum of $112,356,911.58 in settlements from ten different Defendant groups. *See* Bruckner Decl. Exhibit O. Co-Lead Counsel settled with Schenker in July 2009. ECF No. 527 at 2. Using information from Schenker and through

[13] *See* March 28, 2012 European Commission Press Release, attached to the Bruckner Decl. as Exhibit N.

[14] Following in this Subsection II.C is simply a summary of the settlements achieved to date. Those settlements have been described in detail in each motion for preliminary approval filed so far with the Court, *see* ECF Nos. 526, 527, 574, 576, 588, 590, 637-640, 644-47, 667-70, 686-89, 711-14, and will be analyzed in more detail in Plaintiffs' motionsfor final approval of each settlement.

the continuing investigation of Co-Lead Counsel, Co-Lead Counsel settled with several more Defendants, starting with Vantec in April 2011 and ending most recently with ABX in January 2013. *See* ECF Nos. 516, 526, 574, 588, 637-640, 644-47, 667-70, 686-89, 711-14. Co-Lead Counsel used the information obtained in each settlement to inform their negotiations with other Defendants, including those with whom Co-Lead Counsel decided to enter subsequent settlements. Bruckner Decl. ¶¶ 7-8. Each settlement has been preliminarily approved by the Court. ECF Nos. 530, 587, 604, 643, 649, 673, 692, 715.

The Schenker and ABX Settlements provide an immediate cash payment into the Settlement Fund and cooperation in the continuing lawsuit. The Expeditor Settlement provides for a payment into the Settlement Fund of a specified percentage of all of its cash benefits from *Air Cargo*, $10,872,222.08 of which has already been paid. The remaining settlements provide an immediate cash payment into the Settlement Fund followed by payment of all or in some instances a portion of the Settling Defendants' recovery from *Air Cargo* and their cooperation in the continuing lawsuit.[15] *See* Bruckner Decl. Exhibit O.

These settlements were obtained after extensive arm's length negotiations with Defendants, including multiple mediation sessions. As part of Co-Lead Counsel's assessment of the strength of the settlements, Co-Lead Counsel researched and verified Defendants' sales data, consulted with experts to determine the extent of financial harm, and otherwise reviewed evidence and other sources to ensure the best possible settlement for the Class. Notably, in

[15] In addition to the immediate cash payments received as part of the settlement agreements with the following Settling Defendants, each has an *Air Cargo* component. EGL has agreed to pay up to $10 million in proceeds from any cash benefits it receives from *Air Cargo*. Nishi-Nippon has agreed to pay up to $500,000 in cash benefits it receives from *Air Cargo*. Vantec has agreed to pay all of the cash benefits it receives from *Air Cargo* to the Class with a guaranteed minimum of $300,000 (which has been surpassed). United Aircargo Consolidators has agreed to pay 75% of all cash benefits it receives from *Air Cargo* subject to an adjustment specified in the Settlement Agreement. Kuehne + Nagel has agreed to pay 99.7% of cash benefits it receives from *Air Cargo*. Morrison Express has agreed to pay 72.5% of cash benefits it receives from *Air Cargo* after October 5, 2012 and UTi Worldwide, Inc. has agreed to pay 80.5% cash benefits it receives from *Air Cargo* after December 5, 2012.

virtually every applicable instance (except Schenker), the settlements negotiated by Co-Lead Counsel are significantly larger (in some instances triple or quadruple) the fines paid to the DOJ by those Defendants who were criminally charged.[16]

Once the settlements were preliminarily approved by the Court, Co-Lead Counsel established escrow accounts for the settlement funds; obtained customer data from Settling Defendants, and successfully moved the Court to obtain customer data from non-settling Defendants. Based on the foregoing, Counsel proposed a program to provide class notice directly to class members where possible (ECF Nos. 536, 546, 561); coordinated with the Claims Administrator and experts to design a Class Notice Program that ensured that Class Members received appropriate information regarding their rights under the Settlements (ECF No. 596, 666); and drafted settlement notices and a claim form for the Court's approval (ECF Nos. 654, 656).

In addition to providing notice to the Class, Co-Lead Counsel researched and responded to motions filed by intervening Class Members who challenged the opt out provisions of the Schenker Settlement. ECF Nos. 566, 580, 605, 618.

The Court overruled the intervenors' objections to preliminary approval and also, with limited modifications, approved the notice plan. Pursuant to such approval, notice has been sent

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[16] The Settling Defendants who paid DOJ fines have agreed to make, in aggregate, fixed cash payments totaling $76,732,896 [Nishi Nippon ($20,082,896); Vantec ($9,900,000); EGL ($10,000,000); KN ($28,000,000); Schenker ($8,750,000)] and all but Schenker have agreed to make further cash payments based upon proceeds from *Air Cargo*. *Air Cargo* proceeds received from these Settling Defendants to date already exceed $16,000,000 [Nishi Nippon ($500,000); Vantec ($714,263.21); EGL ($8,574,850.25); KN ($6,244,829.80)]. The $92,766,839.26 in payments from Settling Defendants who also paid fines to the DOJ is more than twice the amount that such Settling Defendants paid to the DOJ in aggregate: $45,645,367. [Nishi Nippon ($4,673,114) + Vantec ($3,339,648) + EGL ($4,486,120) + KN ($9,865,044) + Schenker ($3,535,514) + Bax ($19,745,927)]. In contrast, according to the DOJ, the fines paid in the *Air Cargo* case have reached $1.8 billion. U.S. Department of Justice, *Division Update Spring 2011*, http://www.justice.gov/atr/public/division-update/2011/criminal-program.html (last visited June 11, 2013). In the civil *Air Cargo* litigation, the total settlements to date are significantly less: $485 million. *In re Air Cargo Shipping Services Antitrust Litigation*, http://aircargosettlement3.com/main (last visited June 11, 2013).

and Co-Lead Counsel has continued to work with the Claims Administrator to address Class Member questions about the litigation, the claims filing process and the settlements. Bruckner Decl. ¶ 12.

III. ARGUMENT

A. Courts In This Circuit Award A Percentage Of The Common Fund As Attorneys' Fees, And May Also Utilize A Lodestar Crosscheck.

The equitable fund doctrine provides that plaintiffs' attorneys in a class action lawsuit 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). The Second Circuit applies both the "percentage of the fund" and 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). But 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 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 use of the percentage method dispenses with the "cumbersome, enervating, and often surrealistic process of lodestar computation." *Goldberger v. Integrated Resources, 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. *Id.* at 47; *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees . . . ."). In addition, the 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.").

B. Co-Lead Counsel Seeks A Reasonable Percentage Of The Common Fund.

Co-Lead Counsel's request for payment of 33% of the Settlement Fund is reasonable. Co-Lead Counsel has secured a guaranteed fund of $112,356,911.58 for the benefit of the Class. Of this amount, $98,776,728.25 has already been paid by Settling Defendants. Another $13,580,183.33 in amounts certain will be paid pursuant to the terms of the various settlement agreements. Beyond these payments, all Settling Defendants, with the exception of Schenker and ABX,[17] will make additional future payments of all or a substantial portion of the cash benefits they receive from *Air Cargo*. Co-Lead Counsel requests an initial disbursement of $32,596,320.32 — which represents 33% of the cash settlement already obtained. Co-Lead Counsel also requests a future award of $4,481,460.50 — which represents 33% of remaining cash payments that will be made by Settling Defendants EGL, Schenker and United Aircargo upon final approval of their respective settlements.[18] Because settlement payments in this case from future *Air Cargo* proceeds necessarily are indeterminate at this time, they are not included

[17] Nishi-Nippon Railroad Co., Ltd., has paid its *Air Cargo* proceeds up to the $500,000 cap in its settlement agreement.

[18] Pursuant to the terms of its settlement agreement, United Aircargo will make two separate payments of $65,091.76 within 10 Japanese business days after the Court's Fairness Hearing, or if no such hearing, after Final Approval of the settlement, and an additional payment of $65,091.66 within one year after the Fairness Hearing, or if no such hearing, Final Approval of the settlement.

in the calculation of the guaranteed fund referred to above of $112,356,911.58, and Co-Lead Counsel are not currently seeking a fee award from such future *Air Cargo* proceeds.[19]

"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. Here, after five and a half years of diligent work in developing this case without the benefit of formal discovery, Co-Lead Counsel have obtained very substantial relief for the Class. Moreover, in the Class's ongoing claims the non-settling Defendants remain jointly and severally liable. Unlike many cases, the amounts of the settlements paid by Defendants who have agreed to plead guilty to criminal charges is much more than the DOJ fines. *See* footnote 16. But the risks involved and the delays in payment have been greater than, for example, in *Air Cargo*. For these reasons, an award of 33% of the common fund is reasonable. *See, e.g.*, *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding lead counsel 33.3% of $586 million settlement) ("*IPO*").

While courts, including this Court, have found in other circumstances that fee percentages in "megafund" cases should be smaller than percentages awarded in other cases, the

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[19] After proceeds are paid into the Settlement Fund, Class Counsel will seek an award of 33% of those proceeds, likely in conjunction with future settlements with or judgments against the remaining Defendants.

megafund analysis is not appropriate here.

First, the settlements here are one-fourth of the $485 million in settlements obtained in *Air Cargo*, but this Court has not applied a megafund reduction to fee requests involving multiple settlements with defendants in that case. *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 (JG) 2012 WL 3138596, at *5 (E.D.N.Y. Aug. 2, 2012) (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).[20] Here, the five and a half year labor involved to bring in the first round of settlements is much greater than the settlements in *Air Cargo*, and, as noted, the settlements here are much larger relative to the government fines than those in *Air Cargo*. These factors militate strongly against a megafund discount and strongly in favor of a fee of 33% of the common fund, which would constitute a reasonable fee for Class Counsel.

Second, as this Court well knows, the Second Circuit has never required the application of the megafund doctrine. The Seventh Circuit has explicitly rejected the megafund doctrine as being contrary to market economics. *See In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001) ("We have held repeatedly that, 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. . . . We

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[20] While this Court did rely on the megafund theory in awarding attorneys' fees following the Lufthansa Settlement in *In re Air Cargo Shipping Serv. Antitrust Litig.*, 06-MD-1775 (JG) (VVP), 2009 WL 3077396, at *13-14 (E.D.N.Y. Sept. 25, 2009), those circumstances are plainly distinguishable. The fee request in this case is based upon many settlements and five years of hard work by Class Counsel, during which time they have received no payment for their considerable investment of time, and no reimbursement of their out-of-pocket expenditures. By contrast, the Lufthansa fee request was based on a single large settlement obtained in a brief period of time at a very early point in the case, before Lead Counsel had been appointed, before a consolidated complaint was filed, before any documents or other formal discovery had been produced, and before any other settlements had been reached (in a case with several defendants). Co-Lead Counsel here also recognize that while this Court has not yet applied the megafund doctrine to subsequent fee requests in *Air Cargo*, it indicated that it may do so should the circumstances suggest such an analysis is proper. As discussed above, given the modest multiplier in this case, Co-Lead Counsel submit that the megafund doctrine should not apply here.

have never suggested that a 'megafund rule' trumps these market rates, or that as a matter of law no recovery can exceed 10% of a 'megafund' even if counsel considering the representation in a hypothetical arms' length bargain at the outset of the case would decline the representation if offered only that prospective return. . . . Markets would not tolerate that effect. . . .").

Third, the nature of this litigation — a case with relatively small government fines for many Defendants and no fines for others, and sixty-eight individual defendants, twenty-eight Defendant families, and eleven conspiracies — make it the opposite of and distinguishable from a typical monolithic two-defendant mega conspiracy. Unlike *In re Visa Check/Mastermoney Antitrust Litig.*, a megafund case, 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 there are sixty-eight defendants which engaged in widespread international conduct and ten settlements so far. The large number of Settling Defendants magnifies the total amount of the settlements, even though each of the ten individual settlements is well below megafund amounts. Moreover, counsel's requested fee award in *Visa Check/Mastermoney* would have resulted in a 9.68 multiplier of counsel's lodestar (again large by any measure, and especially compared to the 1.33 multiplier requested here). 297 F. Supp. 2d. 503, 521-25 (E.D.N.Y. 2003) (Gleeson, J.). Because of the large multiplier, this Court reduced the attorneys' fee request to an award of 6.511% of the common fund (a 3.5 lodestar multiplier). *Id.* In this case, as discussed in more detail in Subsection III.E below, the lodestar crosscheck shows that Co-Lead Counsel's request for 33% of the common fund — which results in a modest lodestar multiplier of 1.33 — is very reasonable given the risks, complexities and work involved to prosecute these international conspiracies.

C. <u>Class Counsel's Request Is Consistent With The *Goldberger* Factors.</u>

In any common fund case, reasonableness of a fee request is determined by applying the

six factors outlined in *Goldberger,* 209 F.3d at 50. *See In re Nortel Networks Corp. Secs. Litig.*, 539 F.3d 129, 134 (2d Cir. 2008). The *Goldberger* factors include:

(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).

1. <u>The Time And Labor Expended By Counsel Supports The Requested Fee.</u>

The extensive efforts undertaken by Co-Lead Counsel in prosecuting this case are detailed in the Bruckner Declaration. The total lodestar of $27,898,925.45 from inception of the case through March 31, 2013, reflects the dedication Class Counsel has shown in litigating this case. As discussed above, the fee request reflects over five and a half years of careful case development — all of which has been done without formal discovery and much of which was conducted without the benefit of a completed government investigation. Class Counsel reviewed hundreds of thousands of documents, interviewed over thirty witnesses, and have opposed numerous and serial motions to dismiss. Co-Lead Counsel also negotiated many settlements, including mediations, held evidence proffers, prepared notice for the Class and counseled Class Members, including intervenors, regarding the settlements and claims administration.

Co-Lead Counsel requested that all Class Counsel provide all of their time[21] from inception of the case through March 31, 2013, including complete and accurate categorizations

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[21] And expenses, which are addressed in Subsection F below.

of work performed, the name and title of the person who performed the work, and that individual's hourly rate. Bruckner Decl. ¶ 15. In an effort to eliminate unnecessary time, Class Counsel were instructed that time for work not performed at the request or direction of Co-Lead Counsel, duplicative work, read and review time, time spent in the preparation of time and expense reports, routine clerical tasks, and time associated with work related to any client not retained should not be included in any submitted time. Bruckner Decl. ¶ 16.

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, this litigation is tremendously complicated. It involves international conspiratorial conduct across the globe with sixty-eight different Defendants, twenty-eight Defendant families, and eleven conspiracies. Even without the benefit of formal discovery, Plaintiffs nonetheless successfully navigated a number of complex issues that justify the current fee request. First, Co-Lead Counsel effectuated service on multiple foreign defendants involved in this suit. Second, even though there was an Amnesty Applicant who could have — and under ACPERA should have — provided substantial cooperation to the Class, the Amnesty Applicant did not identify itself and begin cooperating until the litigation had progressed substantially. As a result, Co-Lead Counsel spent significant time developing the litigation and negotiating settlements with other Defendants. Further, because of the Amnesty Applicant's refusal to identify itself until later in the case, Co-Lead Counsel spent time researching ACPERA's requirements and negotiating cooperation with other Defendants. Third, in addition to opposing Defendants' serial and myriad motions to dismiss Plaintiffs' allegations as implausible under. *Twombly*, 550 U.S.

544 (2007), and other grounds, Co-Lead Counsel researched and opposed Defendants' claims that because much of the conduct at issue took place overseas, dismissal was warranted under the Foreign Trade Antitrust Improvements Act ("FTAIA"), 15 U.S.C. § 6a. Fourth, because of the nature of the freight forwarding industry, the conspiracies alleged often required the involvement of both the Defendant parent company and its subsidiaries. Co-Lead Counsel also spent time researching and investigating each Defendant's corporate structure in order to establish the integration and involvement of corporate parents and subsidiaries in conduct alleged in the complaints. Finally, because Defendants' unlawful actions occurred across the globe and have been the subject of governmental investigations on several continents, Co-Lead Counsel have researched their ability to obtain discovery from foreign subsidiaries and foreign enforcement agencies, and to verify the Court's personal jurisdiction of these foreign subsidiaries.

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. The litigation risk "must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55 (citing *DiFilippo v. Morizio*, 759 F.2d 231, 234 (2d Cir. 1985)). Most of these risks continue to be fully present even after the subsequent government complaints which, while favorable to the merits of the Class' claims, still leave substantial risks. 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 NASDAQ Mkt. Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998).

In this instance, the risks Class Counsel undertook in advancing this litigation justify the requested fee. In the five and a half years Class Counsel has spent litigating this case, they have committed 65,720.84 hours of their time — amounting to over $27,898,925.45 in lodestar — and

incurred $811,095.84 in expenses, all of which were and are at risk of never being recovered. Class Counsel faced considerable risk from the outset of this case; it was filed prior to the commencement of any government complaints, it implicates vast international discovery and (if it is not otherwise dismissed) culminates in the further risks of collecting on judgments against foreign Defendants. The first fines related to government investigations did not occur until the JFTC issued fines in March 2009, over a year after the inception of the case. And the DOJ did not announce any guilty pleas until 2010 — more than two years after Plaintiffs' case began. The EC did not impose fines until 2012. As such, the case has had significant risks from inception. Class Counsel did not have the benefit of any government criminal charges, investigations, or theories of liability on which to rely when making allegations or calculating damages. Instead, Class Counsel invested significant amounts of their own time and resources investigating the freight forwarding industry and Defendants, researching the allegations alleged in the Complaint, consulting with experts, and developing theories of liability and damages. Throughout these efforts, Co-Lead Counsel have had no guarantee of recovery. *See also In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-CV-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (acknowledging that risk is high when plaintiffs developed their own theory of liability and damages absent a government prosecution).

Indeed, despite over five and a half years of litigation, non-settling Defendants, including the Amnesty Applicant and numerous guilty pleaders, continue to vigorously deny liability to Plaintiffs and the Class, and still aggressively seek to have Plaintiffs' claims dismissed. While Co-Lead Counsel believe they will defeat Defendants' motions to dismiss their TACAC, success

is far from certain.[22]

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

Notwithstanding Defendants' ongoing efforts to defeat this case and a five and a half year delay in the commencement of discovery, Co-Lead Counsel has managed to obtain ten substantial settlements for the Class, which in nearly every applicable instance exceeded the fines paid by Settling Defendants in the related criminal investigations. 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 represented by Defendants themselves, they are represented by top antitrust legal practitioners; the law firms representing Defendants are some of the largest and most skilled law firms in the world. Throughout this litigation, Defendants' counsel have worked tirelessly to protect their client's interests, and Co-Lead Counsel's ability to obtain these significant settlements at this stage of the litigation 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 Requested Fee Is Supported By The Size And The Scope Of The Settlement.

While Co-Lead Counsel believe that at the end of the day this case will be even more

[22] With respect to the SACAC, this Court sustained the plausibility of almost all of Plaintiffs' claims, but dismissed all of the claims in the SACAC on various grounds, except those asserted in Claim 1 as against ABX Logistics Group, Exel Global Logistics Inc., DHL Danzas, and Geo-Logistics. The Court granted Plaintiffs leave to replead the remaining claims, which Plaintiffs have done.

successful for the Class, the settlements obtained so far ensure that the Class will receive a significant recovery regardless of what the future holds. Counsel respectfully submit that they are not overreaching in their fee request, but rather request a fee that fully compensates them for their work on this case and provides a modest multiplier for handling this case on a contingent basis.

The fee requested is consistent with fee requests in other class action litigations with settlements of this size. *See, e.g., IPO*, 671 F. Supp. 2d at 516 (Scheindlin, J.) (awarding one-third fee in a securities fraud case)*; In re Priceline.com, Inc. Sec. Litig.*, 2007 WL 2115592, at *4 (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. <u>Public Policy Considerations Support the Award of the Requested Fee.</u>

The award of the percentage of fee requested by Co-Lead Counsel will encourage the private enforcement of antitrust laws and support attorneys who decide to 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. *In re Air Cargo Shipping Services Antitrust Litig.*, No. 06-MD-1775 (JG)(VVP), 2011 WL 2909162, at *6 (E.D.N.Y. July 15, 2011). In light of the time and effort Co-Lead Counsel have dedicated to this litigation, the requested fee of 33% fairly compensates Co-Lead Counsel, helps to perpetuate the availability of skilled counsel in future antitrust class actions, and does not result in a windfall to counsel.

D. Reported Statistical Data Support A Market Rate In Antitrust Class Actions Of 30% to 40%.

Academic and government reports are often relied upon by courts as a factor in determining the "market price" for class action contingent fees. *In re Cabletron Systems, Inc. Securities Litigation*, 239 F.R.D. 30, 42-44 (D.N.H. 2006), (relying on "comprehensive studies evaluating fee awards in class action cases" and collecting those studies).

Relevant here is a study of forty antitrust class actions. *See* Robert H. Lande & Joshua P. Davis, *Benefits From Private Antitrust Enforcement: An Analysis of Forty Cases*, 42 U.S.F.L. Rev. 879 (July 2008).[23] Courts in the majority of antitrust class actions resulting in recoveries of more than $100 million awarded a contingent fee of 30% or more. Lande & Davis, *supra*, at 911, Table 7B.

E. Co-Lead Counsel's Request For Attorneys' Fees Is Reasonable Under A Lodestar Crosscheck.

The use of the lodestar crosscheck on the reasonableness of a percentage of 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

[23] Attached as Exhibit M to the Bruckner Decl.

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 lodestar in this case is $27,898,925.45. Bruckner Decl. ¶ 19. A lodestar cross-check against the award Class Counsel seeks in this petition yields a multiplier of 1.33, which has been deemed reasonable under analogous circumstances. *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d. 722, 742 (3d Cir. 2001) (finding lodestar multipliers of 1.35 to 2.99 common in megafunds over $100 million); *NASDAQ Market Makers*, 187 F.R.D. at 489 ("'In recent years multipliers of between 3 to 4.5 have become common.'") (citation omitted); *see also In re Air Cargo Shipping Servs. Antitrust Litig.,* 2012 WL 3138596, at *5 (granting an interim attorneys' fee request where class counsel had "a reasonably modest 1.11 multiplier of the lodestar").

The lodestar in this case is based on rates currently charged by counsel, Bruckner Decl. ¶¶ 19 and 23, which courts have considered 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.

F. <u>Class Counsels' Request For An Award Of Expenses Incurred Is Reasonable.</u>

Co-Lead Counsel's request for an award of $811,095.84 for payment of expenses 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). Within the Second Circuit, courts "normally grant expense requests in common fund cases as a matter of course." *In re Vitamin C Antitrust Litigation*, 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 seek reimbursement

for the costs of economic and industry experts, class notice and claims administration, online legal research, travel expenses, document imaging and copying, and an online document repository. *See* Bruckner Decl. ¶ 26. The expenses incurred by Class Counsel were reasonably necessary to advance the interests of the Class and to obtain an excellent result on their behalf. Due to the risk that they might never be recovered, Class Counsel endeavored to keep expenses to a minimum. Accordingly, Class Counsel respectfully request reimbursement of expenses in the amount of $811,095.84.[24]

G. Co-Lead Counsel Will Make Subsequent Applications For Claims Settlement And Administration And Processing.

The processing and administration of Class Members' claims will begin in earnest following the November 22, 2013 deadline to submit claims. The Claims Administrator has mailed direct notice to 2,323,671 potential Class Members. Class Members have been submitting claims and will continue to do so through the November 22, 2013 deadline. Before payment of such claims can be recommended to the Court for its approval, each claim will have to be verified and in some cases audited, to ensure that the Class Member is qualified and that its claimed purchases are allowable.

Accordingly, as appropriate Co-Lead Counsel will apply to the Court for approval to pay expenses related to claims and administration and processing before any such expense payments

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[24] In addition to the expenses described here and in greater detail in the Declaration of W. Joseph Bruckner, payments totaling $2,806,172.89 have been made from the settlement escrow accounts for class notice as directed by the Court, related expenses regarding preliminary or final approval, and related bank fees. In addition, invoices related to notice totaling $597,741.07 are outstanding and in the process of review. To the extent appropriate, they will be paid from the settlement escrow accounts within 30 days. These payments were made and will be made pursuant to language in each of the Settling Defendant's Settlement Agreements reserving a specific amount of such Settling Defendant's payment that may be used for payment of notice and related costs (and which would be non-refundable to the Settling Defendant in the event the settlement was not finally approved). While these payments are not included in the requested reimbursement in this petition, and have already been paid or may be paid from those escrow accounts, we describe those expenditures here to fully describe all litigation-related expenses incurred in this case.

are made.

IV. CONCLUSION

For all of the reasons set forth above, Co-Lead Counsel respectfully requests that the Court:

(1) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $32,596,320.32 from settlement proceeds ($98,776,728.25) currently paid into in the Settlement Fund;

(2) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $4,459,980.25 to be paid fifteen business days after the Final Approval of the EGL, Schenker and United Aircargo settlements from the settlement proceeds ($13,515,091.67) scheduled to be paid into the Settlement Fund upon Final Approval of the Settlements;

(3) Award 33% of the Settlement Fund as interim attorneys' fees in the amount of $21,480.25 to be paid from the United Aircargo settlement proceeds ($65,091.66) one year after the Fairness Hearing of the United Aircargo settlement, or if no hearing is held, one year after Final Approval of the United Aircargo settlement; and

(4) Reimburse Class Counsel for interim litigation expenses totaling $811,095.04.

Dated: June 12, 2013

Respectfully submitted,

s/ W. Joseph Bruckner

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., *et al.*, Plaintiffs, v. PANALPINA WORLD TRANSPORT (HOLDING) LTD., *et al.* Defendants.	CASE NO. 08-CV-00042 (JG)(VVP)

CERTIFICATE OF SERVICE

I, W. Joseph Bruckner, hereby affirm that on June 12, 2013, I caused a true and correct copy of the following documents to be served via the Court's ECF system on all parties of record. Manual recipients will be transmitted copies on June 13, 2013, via U.S. mail, postage pre-paid.

1. PLAINTIFFS' NOTICE OF MOTION FOR INTERIM PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES;
2. MEMORANDUM IN SUPPORT OF CO-LEAD COUNSEL'S PETITION FOR INTERIM PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES;
3. DECLARATION OF CO-LEAD COUNSEL W. JOSEPH BRUCKNER IN SUPPORT OF CO-LEAD COUNSEL'S PETITION FOR INTERIM PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; EXHIBITS A-0;
4. [PROPOSED] ORDER GRANTING CO-LEAD COUNSEL'S PETITION FOR INTERIM PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; and
5. CERTIFICATE OF SERVICE.

Date: June 12, 2013

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

By: /s/ W. Joseph Bruckner

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