UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WATERFORD TOWNSHIP POLICE & FIRE RETIREMENT SYSTEM, Individually and On Behalf Of All Others Similarly Situated, Plaintiff, vs. SMITHTOWN BANCORP, INC., et al., Defendants.	Civil Action No. 1:10-cv-00864-SLT-RER (**Consolidated**) CLASS ACTION DECLARATION OF SAMUEL H. RUDMAN IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF DISTRIBUTION AND AWARD OF ATTORNEYS' FEES AND EXPENSES

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I, SAMUEL H. RUDMAN, declare as follows:

1. I am a member of the New York Bar admitted to practice before this Court and a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Lead Counsel for Lead Plaintiffs Waterford Township Police & Fire Retirement System ("Waterford") and Michael L. Cox ("Cox") (collectively, "Lead Plaintiffs") in the above-captioned consolidated action (the "Action"). I submit this Declaration in support of Lead Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Settlement and Plan of Distribution ("Settlement Memorandum") and Lead Counsel's Memorandum of Law in Support of Motion for Award of Attorneys' Fees and Expenses ("Fee Memorandum"). I have personal knowledge of the matters set forth herein based on my active participation in material aspects of the prosecution and settlement of this litigation. If called upon, I could and would competently testify that the following facts are true and correct.

2. The defendants in this Action are People's United Financial, Inc. ("People's United"),[1] Smithtown Bancorp, Inc. ("SBI" or the "Company"), Bradley E. Rock, and Anita M. Florek (collectively, "Defendants"). Rock and Florek are referred to collectively herein as the "Individual Defendants."

3. Lead Plaintiffs allege violations of the federal securities laws against Defendants on behalf of purchasers of the common stock of SBI between March 13, 2008, through and including February 1, 2010 (the "Class Period").

4. Lead Plaintiffs have entered into a settlement, on behalf of themselves and the other members of the Class, with Defendants, which provides a recovery of $1,950,000 in cash to resolve

[1] People's United Financial, Inc. has changed its name to People's United Bank, National Association.

this securities class action against all Defendants (the "Settlement"). The Settlement is contained in a settlement agreement entered into by all parties dated January 9, 2015 (the "Stipulation"), and previously filed with the Court.

5. This Declaration sets forth the nature of the claims asserted, the principal proceedings in the Action, the legal services provided by Lead Counsel or others working at its direction, and the settlement negotiations between the parties. This Declaration also demonstrates why the Settlement and Plan of Distribution are fair and in the best interests of the Class, and why the application for attorneys' fees and expenses are reasonable and should be approved by this Court.

I. PRELIMINARY STATEMENT

6. Lead Counsel thoroughly investigated and vigorously litigated the securities fraud claims asserted in the Action, brought under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), as well as U.S. Securities and Exchange Commission ("SEC") Rule 10b-5.[2] Lead Counsel performed a thorough factual investigation at the pleading stage to gain a detailed understanding of SBI's business, banking practices, allowance for loan and lease losses ("ALLL"), and non-performing loans.

7. In this regard, Lead Counsel reviewed SEC and Federal Financial Institutions Examination Council ("FFIEC") filings by SBI, and analyzed publicly available news articles and reports and securities analysts' reports and advisories about SBI. Lead Plaintiffs' allegations are also based, in part, on information obtained from interviews with confidential sources, including former employees of the Company.

8. In addition, certain of Lead Plaintiffs' allegations are predicated upon facts alleged in a complaint filed by Robert I. Toussie (the "Toussie Complaint") against SBI and other defendants

[2] *See* 15 U.S.C. §§78j(b) and 78t(a); 17 C.F.R. §240.10b-5.

alleging a fraudulent scheme to misrepresent the Company's financial well-being. *See Robert I. Toussie v. Smithtown Bancorp, Inc., et al.*, Index No. 500164/2010 (Sup. Ct. Kings County), First Verified Amended Complaint, filed May 25, 2011.

9. As detailed herein, following the denial of Defendants' motion to dismiss Lead Plaintiffs' Second Consolidated Amended Class Action Complaint (the "SAC"), Lead Counsel began formal discovery and served initial disclosures, requests for the production of documents on Defendants, and subpoenas on non-parties. Also during this time period, Defendants served their motion for interlocutory appeal through electronic mail, which was opposed by Lead Plaintiffs.

10. The parties first commenced settlement discussions in August 2014, after the Court denied, in large part, Defendants' motion to dismiss and strike the SAC. On October 23, 2014, the parties participated in a mediation before Jed D. Melnick, Esq., a highly experienced mediator. The parties' extensive arm's-length negotiations ultimately resulted in a Memorandum of Understanding dated November 5, 2014 (the "MOU") and a settlement agreement dated January 9, 2015, which was filed with the Court on January 12, 2015. During the course of the parties' negotiations, Lead Counsel made it clear that, while it was prepared to assess the strengths and weaknesses of its case fairly, it would continue to litigate rather than settle for less than fair value. Lead Counsel persisted in its negotiations until it achieved an amount it thought was in the best interests of the Class.

11. The proposed $1,950,000 Settlement, derived from the substantial efforts of Lead Counsel, is a notable achievement. Although Lead Plaintiffs believe they would have defeated Defendants' motion for interlocutory appeal, and that the SAC's allegations would have been borne out by the evidence, they also recognize that they faced a difficult road in prevailing on the merits. This case presents substantial hurdles, not only because Defendants deny their liability altogether, but also because it involves the setting of ALLL on a large number of loans at a public financial

institution. Thus, the Settlement is eminently fair, reasonable, and adequate based on the impediments to recovery, the legal hurdles and risks involved in proving liability and damages, as well as the potential risk, delay, and expense had this case continued to summary judgment and trial. Lead Plaintiffs and Defendants do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail on the claims asserted, or that Lead Plaintiffs would have prevailed at all.

12. The Settlement was negotiated on all sides by experienced counsel with a firm understanding of the strengths and weaknesses of their clients' respective claims and defenses. The Settlement confers substantial and immediate benefits to the Class, while eliminating the risk that the Class would get nothing. Furthermore, even if Lead Plaintiffs had successfully opposed Defendants' likely summary judgment motion and had prevailed at trial, any recovery would still be years away, as Defendants would likely have appealed. Lead Counsel respectfully submits that under these circumstances, the Settlement is in the best interests of the Class and should be approved as fair, reasonable, and adequate.

13. Lead Counsel also respectfully submits that the Court should approve the Plan of Distribution and award attorneys' fees in the amount of 30% of the Settlement Fund, plus expenses incurred in the prosecution of this litigation (in the amount of $30,401.27), which have been incurred or advanced by Lead Counsel in connection with this Action, plus interest thereon, as a result of Lead Counsel's considerable efforts in creating this substantial benefit for the Class, and as recognition for the risks faced and overcome.

14. The Class appears to overwhelmingly approve the Settlement. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (the "Notice Order"), the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement

Fairness Hearing (the "Notice") and Proof of Claim and Release form ("Proof of Claim") were mailed to more than 9,100 potential Class Members and nominees.[3] Additionally, the Summary Notice was published in *Investor's Business Daily* and transmitted over the *PR Newswire* on July 17, 2015. Sylvester Decl., ¶13. The Notice apprised Class Members of their right to object to the Settlement, the Plan of Distribution, and/or Lead Counsel's application for attorneys' fees of 30% of the Settlement Fund plus expenses of up to $55,000. The time to file objections to the proposed Settlement expires on September 8, 2015. To date, there have been no objections to the Settlement, the Plan of Distribution, or to Lead Counsel's request for an award of attorneys' fees and expenses. In this era of heightened shareholder activism, the complete lack of objection is noteworthy.

15. Lead Counsel has litigated this case for more than five years on a wholly-contingent basis. The fee application for 30% of the total recovery is fair, reasonable, and adequate, and warrants Court approval. This fee request is well within the range of fees typically awarded in actions of this type and is wholly justified in light of the benefits obtained, the substantial risks undertaken, and the quality, nature, and extent of the services rendered, as more fully set forth in the Fee Memorandum. In sum, the Settlement is the product of hard-fought litigation and protracted arm's-length negotiation and takes into consideration the risks specific to this case.

16. The following sets forth the principal proceedings in this matter and the major legal services provided by Lead Counsel, the negotiation of the Settlement, the terms of the Settlement,

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[3] *See* paragraphs 3 through 10 to the Declaration of Carole K. Sylvester Re (A) Mailing of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Internet Posting, and (D) Requests for Exclusion Received to Date, submitted herewith on behalf of the Court-appointed Claims Administrator for the Settlement, Gilardi & Co. LLC ("Sylvester Decl.").

why the Settlement and the Plan of Distribution are fair and in the best interests of the Class, and the reasonableness of Lead Counsel's fee and expense request.

II. SUMMARY OF LEAD PLAINTIFFS' ALLEGATIONS

17. Below is a summary of the facts alleged by Lead Plaintiffs in the SAC.

A. The Company and Its Business

18. Defendant SBI, through its subsidiaries, engaged in a full range of commercial and consumer banking services. During the Class Period, the Company also provided trust services to its clients, including demand, savings and time deposits accepted from consumers, businesses and municipalities located primarily within Long Island, New York.

19. During the Class Period, SBI's primary source of revenue was the interest income it received on its loan portfolio, accounting for more than 90% of the Company's total interest income.

B. SBI Knowingly or Recklessly Understated Its Loan Loss Reserves

20. There was a lack of proportionality between SBI's skyrocketing Class Period nonperforming loans and the loan loss reserves SBI represented as adequate during the same period. As noted above, SBI's primary source of revenue during the Class Period was the interest income it received from its loan portfolio. ¶31.[4] As interest income declined in recent years, however, SBI's average rates of return on its loan portfolio declined steadily, falling from 8.12% in fiscal 2007, to 6.62% in fiscal 2008, to 5.66% in fiscal 2009. ¶32. To offset the adverse effects this reduction in SBI's net interest income was having on its operating results, SBI rapidly grew the Company's loan portfolio. ¶33.

21. SBI's loan portfolio more than doubled between December 2007 and June 2009 – an 18 month period – rising from $986,509,000 as of December 31, 2007, to $1,974,497,000 as of June

[4] "¶___" cites to paragraphs in the SAC.

30, 2009. ¶34. By September 30, 2009, it had exceeded the $2 billion mark, reaching $2,094,986,000. *Id.*

22. While SBI's total loan portfolio more than doubled, its portfolio of reported nonperforming loans shot up even more dramatically. As of December 31, 2007, Defendants reported nonperforming loans of $687,000, representing only .07% of SBI's total loan portfolio. ¶35. By March 31, 2009, SBI's reported nonperforming loans rose 1,124%, to $8,410,000. *Id.* Over the next three months, the amount of reported nonperforming loans more than tripled, to $29,584,000 (as of June 30, 2009). *Id.* By September 30, 2009, it had almost doubled again, reaching $58,337,000. *Id.* By March 31, 2010, after the end of the Class Period, SBI's reported nonperforming loans had reached $203,569,000, or more than 10% of SBI's total loans. *Id.*

23. Yet, at the same time its total loan portfolio more than doubled, and its portfolio of reported nonperforming loans increased 29,532% (from 12/31/07 through 3/31/10), SBI's loan loss reserves did not keep pace. As of December 31, 2007, SBI's ALLL was $8,250,000. ¶36. As of June 30, 2009 – by which time SBI's total loan portfolio had already more than doubled, and its nonperforming loans had increased by 4,206% – SBI's ALLL had reportedly gone up only 71%, to $14,109,000. *Id.* Although SBI desperately tried to play catch-up after the Federal Deposit Insurance Corporation ("FDIC") began its investigation (as of June 30, 2009) – increasing SBI's ALLL to $23,091,000 as of September 30, 2009, to $38,483,000 as of December 31, 2009, and to $51,231,000 as of March 31, 2010 – SBI's ALLL as a percentage of nonperforming loans decreased throughout the Class Period, even after September 30, 2009. *Id.*

24. Because the interest income from the Company's loan portfolio was SBI's primary source of revenue (¶31), and the performance of the loan portfolio was therefore SBI's core business, there is a strong inference that Defendants were aware of this inadequacy (¶38). Investors,

by contrast – who had no basis to understand the meaning of the underlying data – were left to rely on what Defendants reported. *See, e.g.*, ¶¶66, 68, 100, 113, 134 (loan loss reserves reported to be adequate).

25. By materially overstating SBI's operating results, and fostering a materially misleading impression about its financial well-being, Defendants were able to raise about $93 million in capital that would have otherwise been unavailable (at least on such favorable terms). *See* ¶¶2-3, 102, 136-38, 168.

C. Defendants Employed Unsound Banking Practices

26. During the Class Period, Defendants caused SBI to engage in a myriad of unsafe and unsound banking practices that resulted in the material overstatement of SBI's operating results and created a false impression about the true state of the Company's financial well-being. For example, Defendants were aware of, but failed to disclose that, SBI: (i) failed to identify, monitor, and timely report past due loans and loans with emerging credit weaknesses; (ii) lacked the necessary scope and depth of the loan-review function, such that the loan-review process did not comport with industry standards; (iii) failed to adequately staff SBI's Independent Loan Review function with personnel who were sufficiently, independently qualified; and (iv) failed to properly identify loans that were not in conformance with the Company's lending policy or laws, rules, or regulations. *See* ¶42 (listing additional examples as well).

D. Former SBI Employees Support Lead Plaintiffs' Allegations

27. Key SBI employees have confirmed and amplified Lead Plaintiffs' allegations. According to an individual referred to here as the "Toussie Informant," SBI pulled out "all stops" in 2008 and 2009 to "mask" the volume of past due loans. ¶47. To that end, SBI commissioned and received a significant number of real property appraisals that substantially overstated the value of the

loans' underlying collateral. ¶48. SBI was aware that these appraisals were "rife with methodological defects," such as failing to perform proper title searches. *Id.* In particular, at a meeting held on or about September 2009, defendant Rock advised SBI's loan officers that the FDIC had directed the Company to reappraise the properties securing dozens of its loans. ¶49.

28. Defendant Rock, however, "specifically directed" that any new appraisals not be delivered to the Company before November 13, 2009, when it expected to file its disclosure for the third quarter of 2009 with the SEC, to forestall publicly disclosing the devastating losses associated with the reappraised loans. *Id.* Furthermore, the Company, in a Ponzi-scheme type fashion, enabled distressed borrowers to remain nominally current on outstanding loans by enabling them to pay interest to the Company using SBI's own money, despite the borrowers' ongoing breaches of loan agreements and even their abandonment of the relevant projects. ¶51. The effect of this pattern and practice was to reduce the overall appearance of the Company's delinquent and/or non-performing levels of loans and criticized/classified assets. *Id.*

29. In addition to the Toussie Informant's allegations, Aldo Columbano ("Columbano"), a Controller and Vice President at SBI during the Class Period, shed further light on SBI's fraudulent practices. He stated that the Company did not possess the infrastructure necessary to manage such rapid growth. ¶43. At the same time that the Company was doubling its loan portfolio, and that its reported nonperforming loans were skyrocketing, SBI employed only one credit review officer to review SBI's entire loan portfolio. ¶¶44, 69. This officer was semi-retired and worked in that capacity on only a part-time basis. *Id.*

E. The Investigation by the FDIC Supports Lead Plaintiffs' Allegations

30. Bank regulators have also mandated that Defendants address SBI's troubling shortcomings. At the end of the Class Period, on January 29, 2010, the FDIC, which had conducted

an examination of the Company, and the New York State Banking Department ("NYSBD"), required SBI "to correct and prevent the unsafe or unsound banking practices and/or violations of law or regulation and all contraventions of federal banking agency policies and procedures and guidelines" that were identified in the FDIC's Report of Examination (the "Consent Orders"). ¶55. On February 1, 2010 (the last day of the Class Period), SBI disclosed that on January 29, 2010, it had agreed to the issuance of the Consent Orders, resolving the claims against it. ¶¶53, 159.

31. The FDIC Consent Order states that it is based upon an examination of the Company conducted by the FDIC as of June 30, 2009, and that the examination resulted in a non-public Report of Examination (the "ROE"). ¶55. According to the NYSBD Consent Order, "as a result of the ROE," which "reflect[ed] [the FDIC's] examination of the Bank as of June 30, 2009," "the Department and the FDIC identified certain supervisory concerns relating to the conduct of the Bank's business, including unsafe and unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank."

F. SBI's Stock Declines as Facts Were Revealed About the Fraud

32. On November 2, 2009, SBI revealed that it was going to record a $10 million charge for loan losses. ¶174. In response to this announcement, the price of SBI stock declined from a closing price on the previous trading day of $10.35 per share to $8.91, a decline of approximately 14%. *Id.* Thereafter, the price of SBI common stock continued to decline as a portion of the artificial inflation came out of the stock price. *Id.*

33. On February 1, 2010, SBI announced that it recorded a $38 million charge to increase its loan loss reserves in the fourth quarter and a $7 million charge to write down the value of its OREO property. ¶175. In addition, SBI disclosed that it had entered into the Consent Orders, which revealed that the Company had been engaged in a myriad of unsafe and/or unsound banking

practices. *Id*. In response to these announcements, on the next trading day, shares of Company stock fell approximately 15%, to close at $4.60 per share, on extremely heavy trading volume. *Id*.

III. LEAD PLAINTIFFS' PROSECUTION OF THE CASE

34. On February 25 and March 29, 2010, two securities class action complaints were filed against SBI and certain of its officers and directors on behalf of all those who purchased SBI common stock between March 13, 2008 and February 1, 2010, inclusive. On April 26, 2010, Waterford and Cox moved the Court to issue an order to: (1) consolidate the two related securities fraud class actions; (2) appoint Waterford and Cox as lead plaintiffs; and (3) appoint the law firm of Robbins Geller Rudman & Dowd LLP as lead counsel. On May 31, 2011, Magistrate Judge Ramon E. Reyes, Jr., issued a Report and Recommendation ("R&R"), which recommended that the motion be granted.

35. On June 13, 2011, Defendants filed a partial objection to Judge Reyes' R&R, limited to the extent it purports to make findings that the Lead Plaintiffs have, for purposes of Rule 23 class certification, alleged claims that are "typical" of the members of the proposed class and that Lead Plaintiffs would "fairly and adequately" represent the class. By Order dated July 27, 2011, Judge Sandra L. Townes adopted Judge Reyes' R&R in its entirety and appointed Waterford and Cox as Lead Plaintiffs and Robbins Geller as Lead Counsel.

36. Following their appointment, Lead Plaintiffs continued their aggressive, wide-ranging investigation into the facts and circumstances surrounding SBI's business, including ALLL and policies and procedures related to loans during the Class Period. On October 17, 2011, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint (the "AC"), naming SBI, People's United, and the Individual Defendants as Defendants, and alleging violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. The AC alleged that SBI

engaged in a variety of unsafe and/or unsound banking practices, which rendered SBI unable to timely identify and monitor past due loans, loans with emerging credit weaknesses, or loans in violation of Company policy, and rendered SBI unable to assess the overall quality of the Company's loan portfolio. Additionally, the AC alleged that SBI failed to calculate or maintain its allowance for loan losses in conformity with Generally Accepted Accounting Principles ("GAAP").

37. The AC alleged that, as a result of the foregoing, during the Class Period, SBI materially overstated its operating results and fostered a materially misleading impression about the true state of the Company's financial well-being. Lead Plaintiffs alleged that these omissions and misrepresentations caused SBI common stock to trade at artificially inflated prices during the proposed Class Period and that Lead Plaintiffs and members of the proposed Class were damaged as a result.

38. On December 23, 2011, Defendants served a motion to dismiss and strike the AC for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), and striking certain statements from the AC pursuant to Rule 12(f). After full briefing on Defendants' motion to dismiss the AC, on March 29, 2013, the Court dismissed the AC, without prejudice and with leave to amend, "primarily due to the problematic form of the pleading." *See* SAC MTD Op. at 6.[5]

39. After the dismissal of the AC, Lead Counsel continued its investigation and revised the AC in an attempt to cure any pleading deficiencies specified by the Court. On April 30, 2013, Lead Plaintiffs filed the SAC, which addressed the pleading form issues raised by the Court, and added numerous substantive allegations further strengthening Lead Plaintiffs' claims.

40. For example, the SAC added detailed allegations, supported by graphs, showing the growth in SBI's loan portfolio during the Class Period, the dramatic rise in nonperforming loans

[5] "SAC MTD Op. at ___" cites to pages in the Memorandum and Order dated July 17, 2014.

during this period, the decrease in loan loss reserves as a percentage of nonperforming loans, and the gross inadequacy of SBI's loan loss reserves. ¶¶33-39. These and other allegations in the SAC, supported Lead Plaintiffs' scienter allegations. The SAC was further strengthened by the addition of allegations based on the Toussie Complaint and attributed to the Toussie Informant.

41. Defendants served a motion to dismiss and motion to strike the SAC on June 6, 2013. On July 12, 2013, Lead Plaintiffs served a memorandum in opposition to Defendants' motion to dismiss and motion to strike the SAC. That same day, Lead Plaintiffs also served a motion to lift the PSLRA's automatic discovery stay for the limited purpose of taking a single deposition ("PSLRA Motion"). Lead Plaintiffs sought to take the deposition of the Toussie Informant through the PSLRA Motion. Defendants served a reply in support of their motion to dismiss and strike the SAC and opposed the PSLRA Motion on August 6, 2013. Lead Plaintiffs served a reply in support of the PSLRA Motion on August 13, 2013.

42. On July 17, 2014, the Court denied Defendants' motion to dismiss the SAC in its entirety and denying Defendants' motion to strike in part. The Court held that Lead Plaintiffs adequately alleged claims under Sections 10(b) and 20(a) of the Exchange Act. The Court stated: "[c]onsidering all of the facts collectively, the Court finds that the [SAC] pleads a strong inference that Defendants engaged in conduct and/or made statements with 'a mental state embracing intent to deceive, manipulate or defraud.'" SAC MTD Op. at 15.

43. Dissatisfied with the Court's ruling, Defendants served a motion for interlocutory appeal through electronic mail on August 12, 2014 (the "Motion for Interlocutory Appeal"). In that motion, Defendants argued that Lead Plaintiffs should not be permitted to rely on the Toussie Informant allegations since they were from a confidential informant in another action. Defendants answered the SAC on August 18, 2014. On September 5, 2014, Lead Plaintiffs served their

opposition to the Motion for Interlocutory Appeal and argued that it was entirely appropriate for the SAC to reference the Toussie Informant and that Defendants' motion was simply an effort to re-litigate arguments already made in their motion to dismiss. Defendants served their reply in support of the Motion for Interlocutory Appeal on September 15, 2014. The parties agreed that the full set of motion papers would be filed if the mediation proved unsuccessful. This motion was not filed, however, because by the time of Defendants' reply, the parties had agreed to participate in a mediation.

44. On September 12, 2014, the parties met and conferred to discuss the case management plan, and various matters related to discovery, including electronic discovery, Defendants' document collection efforts, and a proposed confidentiality agreement. The parties appeared at a scheduling conference before Judge Reyes on September 23, 2014. That same day, the parties executed and filed with the Court a case management plan.

45. Lead Plaintiffs and Defendants served initial disclosures on October 7, 2014. On October 14, 2014, Lead Plaintiffs served a request for the production of documents. Lead Plaintiffs served non-party subpoenas for the production of documents on Crowe Horwath LLP (SBI's accounting firm) on October 16, 2014, and on Robert Toussie on October 23, 2014. A non-party subpoena for deposition testimony and for the production of documents was served on the Toussie Informant on October 22, 2014.

46. The parties participated in a formal mediation session on October 23, 2014, before experienced mediator Jed D. Melnick, Esq. of JAMS. In advance of the mediation, the parties exchanged detailed mediation statements setting forth the strengths and weaknesses of their respective cases. The negotiations at the mediation went back-and-forth with each side arguing for their positions. During the course of these negotiations, Lead Counsel made it clear that it would

continue to litigate rather than settle for less than fair value. At the conclusion of the mediation, the parties were able to reach an agreement-in-principle to settle the Action for $1.95 million.

47. Even though the mediation resulted in an agreement-in-principle, it took another several weeks of arm's-length negotiations before the parties agreed upon and signed the MOU on November 5, 2014. The MOU provided, among other things, that the consummation of the Settlement shall be subject to completion of appropriate confirmatory discovery by Lead Counsel. Defendants were to produce to Lead Counsel documents sufficient to satisfy Lead Counsel that the proposed Settlement is fair and reasonable.

48. Following the execution of the MOU, the parties continued to negotiate to agree upon the details of the Settlement and conducted confirmatory discovery. Defendants produced documents to Lead Counsel on November 13, 2014. Lead Counsel reviewed and analyzed the confirmatory documents produced by Defendants, which consisted of, *inter alia*, documents concerning the Company's loan loss reserves, the setting of ALLL, internal audits of SBI's lending and loan operations, loan policies and guidelines, and documents concerning loan reviews.

49. The parties executed the Stipulation on January 9, 2015.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

50. On January 12, 2015, Lead Plaintiffs filed an unopposed motion for preliminary approval of the Settlement ("Preliminary Approval Motion"). In connection therewith, Lead Plaintiffs requested that the Court approve the forms of notice, which, among other things, described the terms of the Settlement, advised Class Members of their rights in connection with the Settlement, set forth the proposed Plan of Distribution, informed Class Members of the amount of attorneys' fees and expenses that Lead Counsel would request, and explained the procedure for filing a Proof of

Claim in order to be eligible to receive a payment from the Net Settlement Fund. In addition, Lead Plaintiffs requested that the Court certify the Class for settlement purposes.

51. On January 13, 2015, Judge Townes referred Lead Plaintiffs' Preliminary Approval Motion to Magistrate Judge Reyes for a report and recommendation. On April 17, 2015, Magistrate Judge Reyes issued a Report and Recommendation recommending the preliminary approval of the Settlement, subject to certain modifications in the proposed Notice. On June 3, 2015, Judge Townes adopted Judge Reyes' recommendation to preliminarily approve the Settlement in its entirety and stated that the Court would enter the order preliminarily approving the Settlement upon the parties' submission of a revised proposed order and exhibits incorporating Judge Reyes' changes. Judge Townes also ordered that the documents should be revised to reflect that the final settlement hearing will be held before Judge Reyes.

52. On June 16, 2015, Lead Counsel submitted a letter to the Court attaching a proposed order preliminarily approving the Settlement and related documents, which were modified according to the Court's instructions. That day, Judge Townes "So Ordered" the letter and preliminarily approved the terms of the Settlement and directed that Lead Counsel cause the mailing of the Notice and the Proof of Claim to all potential Class Members identifiable with reasonable effort. The Court also set a final approval hearing for the Settlement for September 28, 2015. The Court also directed Lead Counsel to cause the Summary Notice to be published once in *Investor's Business Daily* and once over a national newswire service.

53. Submitted herewith is the Sylvester Declaration, which attests that Notices and Proofs of Claim have been mailed to over 9,100 potential Class Members and nominees and that the Summary Notice was published on July 17, 2015, as directed by the Court. Sylvester Decl., ¶¶10, 13.

54. The Notice informed Class Members of, among other things, the terms of the Settlement, the Plan of Distribution, and that Lead Counsel would apply for an award of attorneys' fees of not more than 30% of the Settlement Fund, or $585,000, and expenses not to exceed $55,000, plus interest on each amount at the same rate earned on the Settlement Fund.

55. The Notice states that objections to any aspect of the Settlement, the Plan of Distribution, or the application for an award of attorneys' fees and expenses must be filed by September 8, 2015. To date, no objections have been filed by any member of the Class to the Settlement, the Plan of Distribution, or to the request for attorneys' fees and expenses. This fact supports Lead Counsel's conclusion that it obtained an outstanding result for the Class.

V. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

56. As set forth above, the terms of the Settlement were negotiated by the parties at arm's-length through adversarial, but good faith negotiations. The Settlement was reached only after extensive settlement negotiations, including an in-person mediation session, with the substantial assistance of the mediator, Jed D. Melnick, Esq. Consistent with the parties' hard-fought and aggressive litigation of the Action, Lead Counsel spent many hours over several months finalizing the specific terms of the Settlement to be able to present it to the Court for approval.

57. The extent and substance of Lead Counsel's knowledge of the merits and potential weaknesses of Lead Plaintiffs' claims are unquestionably adequate to support the Settlement. This knowledge is based, first and foremost, on Lead Counsel's extensive investigation during the prosecution of the Action, including, *inter alia*: (i) reviewing SBI's public statements, SEC filings, regulatory filings and reports, and securities analysts' reports and advisories about SBI; (ii) reviewing media reports about SBI; (iii) researching the applicable law with respect to the claims

asserted in the Action and the potential defenses thereto; (iv) interviewing former SBI employees; (v) drafting two amended complaints; (vi) briefing on Defendants' two motions to dismiss and to strike; (vii) briefing Defendants' Motion for Interlocutory Appeal; (viii) negotiating the Settlement with Defendants, including submitting a comprehensive mediation statement, in which the parties thoroughly presented their arguments supporting their claims and defenses; and (ix) conducting confirmatory discovery. The accumulation of the information from the above sources permitted Lead Plaintiffs and Lead Counsel to be well informed about the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants.

58. The Settlement avoids the hurdles Lead Plaintiffs would have to clear if the Action continued – including surviving Defendants' pending Motion for Interlocutory Appeal, any motions for summary judgment, a trial on the merits, and appeals – and the significant costs associated with each of those hurdles– including the costs of conducting discovery. Given the significant risks and additional time and expense involved in taking the Action further in litigation, we respectfully submit that the Settlement is fair, reasonable, and adequate.

59. Lead Counsel is actively engaged in complex federal civil litigation, particularly the litigation of securities class actions. Lead Counsel believes that its reputation as attorneys who are unafraid to carry a meritorious case zealously through the trial and appellate levels gave it a strong position in engaging in settlement negotiations with Defendants.

60. I respectfully submit that, under the circumstances, the Settlement represents an excellent result for the Class. The Settlement will provide Class Members with a benefit without the risk of zero recovery if the litigation were to continue and be unsuccessful.

B. Serious Questions of Law and Fact Placed the Outcome of the Action in Significant Doubt

61. Another factor considered in assessing the merits of class action settlements – whether serious questions of law and fact exist – supports the conclusion that the Settlement is fair, reasonable, and adequate to the Class.

62. Throughout the course of the litigation, Defendants asserted that they possessed absolute defenses to Lead Plaintiffs' claims, including, but not limited to, Lead Plaintiffs' failure to plead material misstatements and omissions, failure to establish scienter, and that Lead Plaintiffs' damages were dramatically lower than suggested, if they existed at all. If the case continued, it was likely that, after discovery, Defendants would have moved for summary judgment and if Lead Plaintiffs were successful in opposing summary judgment, Defendants would have likely continued to trial. Thus, the Settlement is unquestionably better than another distinct possibility – no recovery for the Class.

1. Defendants Would Argue that Lead Plaintiffs Could Not Prevail on Their Claims

63. Lead Plaintiffs recognize that they would face substantial risks if the Action were to continue. Lead Plaintiffs and Lead Counsel thoroughly considered and analyzed potential risks to continued litigation of the Action in determining the Settlement's fairness, and, in light of such risks, believe the Settlement is in the best interests of the Class.

64. Without the Settlement, Defendants would have continued to argue that Lead Plaintiffs could not prevail on their claims. Specifically, they would have argued that Lead Plaintiffs have failed to prove that Defendants made any false statements because SBI accurately disclosed all allegedly omitted information and the precise risks that eventually came to pass; that the alleged misrepresentation are mere puffery; that the statements are inactionable opinions; that Lead Plaintiffs

have not proven facts to support a strong inference of scienter; that Lead Plaintiffs will not be able to prove their motive and opportunity allegations to establish scienter; and that Lead Plaintiffs will not be able to prove their control-person claim under §20(a) of the Exchange Act.

65. Although Lead Plaintiffs believe they had, through their investigation, uncovered evidence to counter Defendants' likely defenses, and that discovery would have uncovered further evidence, any dispositive motions – including the pending Motion for Interlocutory Appeal and any summary judgment motions – would have been hard-fought and extensive, and Lead Plaintiffs would have no guarantee of success. Even if Defendants' pending and potential motions were denied, Lead Counsel recognizes that a finding of liability by jury is never assured, and that Defendants would renew those arguments at trial.

66. The risks of establishing liability imposed by conflicting testimony and evidence would be exacerbated by risks inherent in all shareholder litigation, including the unpredictability of a lengthy and complex jury trial, the risk that the jury would react to the evidence in unforeseen ways, the risk that the jury would find one or more of Defendants' defenses to be meritorious, and the risk that the jury would find that no damages were caused by Defendants' actions. Thus, Lead Plaintiffs faced the risk that Defendants' arguments would find favor with a jury and result in the Class losing at trial.

2. Defendants Would Argue that Lead Plaintiffs Could Not Establish Damages

67. Lead Plaintiffs also faced the risk that they would not be able to prove damages even if liability was established. Defendants would likely argue that there is no factual basis for the proposed Class Period (March 13, 2008 to February 1, 2010) and that the Class Period should be from July 29, 2009 to February 1, 2010, since the FDIC examination and the Toussie Informant allegations all concern events that happened in the second half of 2009. Defendants would likely

argue that this smaller class period would reduce damages considerably to maximum damages of less than $6 million. Defendants would have also likely argued that the decline in SBI's share price and the resulting losses incurred by shareholders were caused by factors unrelated to Lead Plaintiffs' claims, and were not caused by any alleged misstatements in, or omissions from, statements during the Class Period. Moreover, Defendants would contend that if negative causation did not eliminate damages, it severely limited them.

68. The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions. Moreover, the reaction of a jury to such complex expert testimony is highly unpredictable. Expert testimony about damages could rest on many subjective assumptions, any one of which could be rejected by a jury as speculative or unreliable. Conceivably, a jury could find that there were no damages or that damages were only a fraction of the amount that Lead Plaintiffs sought.

69. Although Lead Counsel believes that it would be able to provide convincing expert testimony as to damages, and establish damages, it also realizes that in the "battle of the experts," a jury might disagree with Lead Plaintiffs' experts. Accordingly, the risk of proving damages could not be eliminated until after a successful trial and the exhaustion of all appeals. Thus, even if Lead Plaintiffs prevailed in establishing liability, additional risks would remain in establishing both loss causation and the existence or amount of damages.

70. Considering the above, a protracted litigation presented significant risks to the Class.

C. The Judgment of the Parties that the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

71. Another factor in considering whether to approve class action settlements is the judgment of the parties that the settlement is fair and reasonable. As outlined above, the Settlement

is the product of arm's-length negotiations between adversaries with significant experience in class action litigation.

72. Lead Counsel strongly believes that the Settlement represents a favorable resolution for the Class under the circumstances. As outlined above, the Settlement is fair, reasonable, and adequate in all respects, and should be approved by the Court.

73. Furthermore, copies of the Notice have been mailed to over 9,100 potential Class Members and nominees. The deadline for objections is September 8, 2015, but, at present, no objections to the Settlement or the Plan of Distribution have been submitted by any Class Member. Should any objections be timely filed between the date of this Declaration and the final approval hearing, Lead Counsel will address them in a supplemental memorandum to be filed with the Court on or before September 14, 2015.

D. The Settlement Amount in the Context of Total Damages Provides Additional Support for the Settlement

74. As in any complex securities litigation, an expert is required to opine on the amount of damages suffered by the Class.

75. In connection with the Action, Lead Counsel's internal damages expert opined that the total damages amount was approximately $16.1 million. This calculation assumes that the proposed Class Period is certified and that 100% of the damages are attributed to the fraud alleged by Lead Plaintiffs. As discussed above, Defendants would have likely argued that the Class Period should be shorter, with damages of no more than $6 million. Thus, the Settlement represents a recovery of more than 12% of Lead Plaintiffs' estimated damages and more than 32% of Defendants' likely damages figure. Both of these are considerably higher than the median recovery of 2.7% and 2.2% in all sample securities class action lawsuits during 2005-2013 and 2014, respectively. Additionally, the Settlement compares very favorably with the median recovery of

11.7% and 9.9% in securities class actions with losses under $50 million, during 2005-2013 and 2014, respectively. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2014 Review and Analysis*, at 9 (Figure 8) (Cornerstone Research 2015). These statistics support that the Settlement is an excellent one for the Class.

VI. THE PLAN OF DISTRIBUTION

76. Pursuant to the Notice Order and as set forth in the Notice, all Class Members who wish to participate in the distribution of the Net Settlement Fund must submit a timely and proper Proof of Claim.

77. As provided in the Stipulation, after deducting all appropriate taxes, administrative costs, and attorneys' fees and expenses, the remainder of the Settlement Fund (the "Net Settlement Fund") shall be distributed among Class Members who submit valid Proofs of Claim according to the Plan of Distribution.

78. The Plan of Distribution is set forth in the Notice. If approved, the Plan of Distribution will govern how the proceeds of the Net Settlement Fund will be distributed. The proposed Plan of Distribution provides that, to qualify for payment, a claimant must be, among other things, an eligible member of the Class and must submit a valid Proof of Claim that provides all of the requested information.

79. The proposed Plan of Distribution was formulated to create a fair method to divide the Net Settlement Fund for distribution among the Class Members. The proposed Plan of Distribution attempts to eliminate the effects of market forces unrelated to the alleged misrepresentations and omissions, as well as to simplify claims administration with attendant reduced cost to the Class. Thus, the proposed Plan of Distribution is designed to fairly and rationally distribute the proceeds of this Settlement among the Class.

VII. FACTORS TO BE CONSIDERED IN SUPPORT OF THE REQUESTED ATTORNEYS' FEE AWARD

80. Despite working on this matter for more than five years, Lead Counsel has not received any payment for its services in prosecuting this litigation, nor has counsel recovered any expenses incurred in the prosecution of the Action. The Notice provides that Lead Counsel may apply for an award of attorneys' fees not to exceed 30% of the proceeds of the Settlement, plus expenses not to exceed $55,000, which were incurred in the litigation, plus interest earned on both amounts.

81. As set forth in the Fee Memorandum, Lead Counsel is requesting attorneys' fees of 30% of the Settlement Fund (or $585,000), and expenses in the amount of $30,401.27 The requested fee award of 30% is well within the range of fees awarded by courts in this District and in courts throughout the country.

82. Lead Counsel achieved this favorable result for the Class at great risk and substantial expenses to themselves. Lead Counsel was unwavering in its dedication to the interests of the Class and its investment of the time and resources necessary to bring this litigation to a successful conclusion. Lead Counsel's compensation for the services rendered has always been wholly contingent. The requested fee is reasonable based on the quality of Lead Counsel's work and the substantial benefit obtained for the Class.

83. The prosecution of this Action required Lead Counsel and its paraprofessionals to perform over 1,800 hours of work and incur $30,401.27 in expenses.

84. The resulting lodestar totals approximately $1.125 million. Lead Counsel's 30% fee is approximately 50% of their aggregate lodestar. Thus, Lead Counsel's requested fee is considerably less than the lodestar.

85. The result obtained by Lead Counsel for the Class is very favorable given the obstacles that existed to obtaining any recovery, and the considerable amount of litigation that transpired between the filing of the initial complaint by Lead Counsel on February 25, 2010, and the execution of the MOU on November 5, 2014. During that period, Lead Counsel, *inter alia*: (i) conducted an investigation; (ii) filed the initial complaint; (iii) filed a motion for consolidation of related cases, appointment of lead plaintiff, and approval of selection of lead counsel; (iv) continued its thorough investigation; (v) filed the AC; (vi) opposed Defendants' motion to dismiss the AC; (vii) continued its investigation and filed the SAC; (viii) filed a motion to lift the PSLRA discovery stay; (ix) opposed Defendants' Motion for Interlocutory Appeal; (x) opposed Defendants' motion to dismiss the SAC; (xi) served requests for the production of documents on Defendants and subpoenas on three non-parties; (xii) served initial disclosures; (xiii) participated in a Rule 26(f) conference with Defendants; (xiv) submitted a mediation statement; and (xv) reviewed and analyzed Defendants' documents in connection with confirmatory discovery.

86. Moreover, in moving to dismiss both the AC and the SAC, Defendants maintained that they had no liability whatsoever. As discussed extensively above, Defendants asserted various defenses including, *inter alia*, Lead Plaintiffs' failure to allege false and misleading statements, purported adequate risk warnings communicated by SBI, Lead Plaintiffs' purported failure to plead scienter, and the inactionability of statements as purported puffery. Moreover, even if Lead Plaintiffs had succeeded in defeating Defendants' Motion for Interlocutory Appeal, they would have had to undertake extensive discovery, oppose Defendants' inevitable summary judgment motion, and, if necessary, continue litigating the Action through trial and any appeal.

87. For the extensive efforts of Lead Counsel on behalf of the Class, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and seeks the Court's

approval of the fee percentage. The percentage method is the appropriate method of fee recovery because, among other things, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances. In addition, here the percentage method is particularly appropriate given the favorable result and the circumstances under which it was achieved.

88. Lead Counsel's compensation for the services rendered was wholly contingent on its success. Demonstrating Lead Counsel's tremendous commitment to this litigation, counsel has devoted more than 1,800 hours to litigating the Action. The expenses incurred in the prosecution of the litigation are set forth in the accompanying Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."). Lead Counsel declares that those expenses are reflected in its books and records and provide an accurate record of the expenses. In total, Lead Counsel has incurred expenses in the amount of $30,401.27. We respectfully submit that all of these expenses are reasonable and were necessarily incurred in connection with the prosecution of the Action.

A. Extent of Litigation

89. As described above, this case was aggressively litigated and settled only after extensive settlement negotiations, including mediation before Jed D. Melnick, Esq. Lead Counsel thoroughly researched the law applicable to the Class' claims and Defendants' defenses, prepared and filed a fact-specific AC specifying Defendants' alleged violations of the federal securities laws, filed an opposition to Defendants' first motion to dismiss, filed the SAC, which Lead Counsel thoroughly researched, prepared, and filed, successfully opposed Defendants' second motion to dismiss, opposed Defendants' Motion for Interlocutory Appeal, and served initial disclosures and discovery demands, before the parties mediated their dispute. In total, the over 1,800 hours thus far

devoted by counsel to the prosecution of this case represents a total lodestar of approximately $1.125 million – approximately $540,000 more than the amount of attorneys' fees requested by Lead Counsel, assuming a 30% fee award.

90. Lead Counsel's work in this case will not cease after final approval of the Settlement, however. Lead Counsel anticipates spending significant time assisting Class Members with claims administration issues and in working with the Claims Administrator to ensure a prompt distribution of the Net Settlement Fund to the Class. Thus, the lodestar is fair and reasonable and the amount requested by Lead Counsel should be approved.

B. Standing and Expertise of Lead Counsel

91. The expertise and experience of Lead Counsel is described in the accompanying Robbins Geller Declaration. Lead Counsel is among the most experienced and skilled practitioners in the securities litigation field. The attorneys at Lead Counsel's firm have years of experience litigating securities class actions, and have been involved in cases that have recovered hundreds of millions of dollars for shareholders.

C. Standing and Caliber of Opposing Counsel

92. Defendants are represented by very experienced counsel from Katten Muchin Rosenman LLP ("Katten Muchin"), who spared no effort in the defense of their clients. Katten Muchin vigorously defended its clients, insisted they had no liability and gave every indication they were ready to proceed with the litigation to trial, if necessary, if a settlement was not reached. In the face of this opposition, Lead Counsel developed its case so as to persuade Defendants to settle the case on a basis favorable to the Class under the circumstances.

D. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High Risk, Contingent Securities Cases

93. This litigation was undertaken by Lead Counsel on a wholly-contingent basis. From the outset, Lead Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the enormous investment of time and money the case would require. In undertaking that responsibility, Lead Counsel was obligated to ensure that sufficient attorney and paraprofessional resources were dedicated to the prosecution of this litigation and that funds were available to compensate staff and the considerable costs which a case such as this entails.

94. Because of the nature of a contingent practice in the area of securities litigation, where cases are predominantly "big cases" lasting several years, not only do contingent litigation firms have to pay regular overhead, but they also have to advance the expenses of the litigation. With an average lag time of three to four years for these cases to conclude, the financial burden on contingent fee counsel is far greater than on a firm that is paid on an ongoing basis.

95. The foregoing does not even take into consideration the possibility of no recovery. As discussed above, from the outset, this litigation presented a number of unique risks and uncertainties which could have prevented any recovery whatsoever. It is wrong to assume that a law firm handling complex contingent litigation such as this always wins. Tens of thousands of hours have been expended in losing efforts. The factor labeled by the courts as "the risks of litigation" is not an empty phrase.

96. There are numerous cases where plaintiffs' counsel in contingent cases, after the expenditure of thousands of hours, have received no compensation. It is only the knowledge by defendants and their counsel that the leading members of the plaintiffs' securities bar are actually

prepared to, and will, force a resolution on the merits and go to trial, which permits meaningful settlements in actions such as this.

97. There have been many hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or a decision of a judge following a trial on the merits, excellent professional efforts of members of the plaintiffs' bar produced no fee for counsel. Indeed, many recent federal appellate reports are filled with opinions affirming dismissals with prejudice in securities cases. *See, e.g.*, *ECA & Local 134 IBEW Joint Pension Trust of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009); *Kalnit v. Eichler*, 264 F.3d 131 (2d Cir. 2001); *Chill v. GE*, 101 F.3d 263 (2d Cir. 1996); *San Leandro Emergency Med. Grp. Profit Sharing Plan v. Philip Morris Cos.*, 75 F.3d 801 (2d Cir. 1996); *Acito v. IMCERA Grp.*, 47 F.3d 47 (2d Cir. 1995).

98. The many appellate decisions affirming summary judgments and directed verdicts for defendants show that even surviving a motion to dismiss is no guarantee of recovery. *See Levitin v. PaineWebber, Inc.*, 159 F.3d 698 (2d Cir. 1998). Moreover, even plaintiffs who succeed at trial may find their judgment overturned on appeal. *See, e.g.*, *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (en banc) (reversing plaintiffs' verdict for securities fraud and ordering entry of judgment for defendants); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1988) (reversing plaintiffs' jury verdict for securities fraud); *see also Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (same).

99. The foregoing refutes the argument that the commencement of a class action is a guarantee of a settlement and payment of a fee. Indeed, the course of this litigation demonstrates the fact that the mere filing of an action does not ensure that there will be any settlement or fee. Thus,

there was a demonstrable risk that the Class and its counsel would receive nothing. It took hard and diligent work by skilled counsel, to develop facts and theories which persuaded the Defendants to enter into serious settlement negotiations. If defendants believe they will prevail, experience shows that they will litigate to the end. The risk factor is real.

100. Losses such as those cited above are exceedingly expensive. The fees that are awarded are used to cover enormous overhead expenses incurred during the course of the litigation and are taxed by federal, state, and local authorities. Moreover, changes in the law through legislation or judicial decree can be catastrophic, frequently affecting contingent counsel's entire inventory of pending cases. These are real threats.

101. Courts have repeatedly held that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. Vigorous private enforcement of the federal securities and state corporation laws can only occur if private plaintiffs can obtain parity in representation with that available to large corporate interests. If this important public policy is to be carried out, the courts must award fees which will adequately compensate private plaintiffs' counsel, taking into account the risks undertaken with a clear view of the economies of a securities class action.

102. When Lead Counsel undertook to represent Lead Plaintiffs and the Class in this matter, it was with the knowledge that it would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of ever obtaining any compensation for its efforts. The benefits conferred on the Class by this Settlement are particularly noteworthy in that a Settlement Fund worth $1,950,000 (plus accrued interest) was obtained for the Class despite the existence of substantial risks of no recovery in light of the vigorous defense mounted by Defendants.

E. Lead Counsel's Request for Payment of Expenses Incurred Is Reasonable and Should Be Approved

103. My firm is submitting herewith a declaration setting forth the amount of the expenses incurred over the course of the litigation. These expenses were necessarily incurred for the successful prosecution of this litigation and are reasonable in amount.

VIII. CONCLUSION

104. For the reasons set forth above and in the accompanying Fee and Settlement Memorandums, I respectfully submit that: (a) the Settlement is fair, reasonable and adequate, and should be finally approved; (b) the Plan of Distribution represents a fair method for the distribution of the Net Settlement Fund among Class Members and should also be approved; and (c) the application for attorneys' fees of 30% of the proceeds of the Settlement, and expenses in the amount of $30,401.27, plus interest earned on each amount, should be granted in its entirety.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Melville, New York this 24th day of August, 2015.

s/ Samuel H. Rudman
SAMUEL H. RUDMAN