IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DONNA MOORE, FRENCHOLA HOLDEN and KEITH MCMILLON, individually and on behalf of all others similarly situated, Plaintiffs, v. GMAC MORTGAGE, LLC, GMAC BANK and CAP RE OF VERMONT, INC., Defendants.	Civil Action No. 2:07-cv-04296-PD

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION COSTS, AND CASE CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS

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Plaintiffs Donna Moore, Frenchola Holden and Keith McMillon (collectively, "Plaintiffs" or "Named Plaintiffs"), on behalf of themselves and all others similarly situated, respectfully submit this Memorandum of Law in Support of their Unopposed Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Costs, and Case Contribution Awards for the Named Plaintiffs (the "Fee Motion"). In further support of this Motion, Plaintiffs rely upon the memorandum in support of Unopposed Motion for Final Approval of Class Action Settlement,[1] Certification of Settlement Class, Approval of Plan of Allocation, Appointment of Class Representatives, and Appointment of Lead Class Counsel and Class Counsel (the "Final Approval Memorandum") filed contemporaneously herewith and incorporated fully herein. Plaintiffs request an award of attorneys' fees in the amount of $1,875,000 which represents thirty percent (30%) of the Class Settlement Amount of $6,250,000.00. In addition, Plaintiffs request reimbursement of out-of-pocket costs and expenses incurred in connection with the prosecution of this Action in the amount of $454,097.14. Further, Class Counsel asks the Court to approve the payment of Case Contribution Awards in the amount of $5,000.00 to each of the Named Plaintiffs in recognition of their contributions to this Action.

I. INTRODUCTION

The proposed Settlement of this complex class action for $6,250,000 was preliminarily approved by this Court in an Order entered April 29, 2014. Dkt. No. 283 (the "Preliminary

[1] The terms of the Settlement are set forth in the Settlement Agreement which was previously filed with the Court on January 24, 2014. *See* Dkt. No. 272-3. The Settlement Agreement is also attached as Exhibit 1 to the Declaration of Edward W. Ciolko in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, Approval of Plan of Allocation, Appointment of Class Representatives, and Appointment of Lead Class Counsel and Class Counsel, and for an Unopposed Motion for Award of Attorneys' Fees, Reimbursement of Litigation Costs and Case Contribution Awards for the Named Plaintiffs (the "Ciolko Declaration" or "Ciolko Decl."), which further discusses the extensive efforts of Class Counsel in achieving a certain recovery for Class Members in the especially circumstances presented. All capitalized terms not defined herein are defined in the Settlement Agreement.

Approval Order"). The Settlement now presented for final approval was reached following nearly seven years of hard-fought litigation involving novel claims brought pursuant to the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2607(a) and (b), highly complex legal arguments, and substantial risks and hurdles presented by the Chapter 11 Bankruptcy cases of Residential Capital, LLC, Defendant GMAC Mortgage and certain of their affiliates, which were filed during the pendency of this litigation.[2]

The Parties agreed to the proposed Settlement only after arm's length negotiations by experienced counsel on both sides during the course of mediation efforts that spanned many sessions over a number of years. Given the pendency of the ResCap Bankruptcy Proceedings, Lead Counsel involved bankruptcy counsel to participate in the final settlement negotiations for terms requiring inclusion in the *Chapter 11 Plan Proposed by Residential Capital, LLC et al. and the Official Committee of the Unsecured Creditors* (the "Chapter 11 Plan") and approval by the bankruptcy court.[3] Resolving this case at this juncture and pursuant to the terms achieved not only enabled the Parties to avoid continued and costly litigation, but also protected the members of the Settlement Class from the very real possibility that even were contested litigation to proceed and the Class to prevail on their difficult claims, resulting in a judgment equal to or greater than the Settlement Fund, that judgment could well be uncollectable, resulting in no actual recovery.

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[2] These cases were filed in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), and jointly administered and styled *In re Residential Capital, LLC*, No. 12-12020-MG (the "ResCap Bankruptcy Proceedings").

[3] As described in greater detail below in the discussion of the ResCap Bankruptcy Proceedings because Cap Re was a non-debtor affiliate of the bankrupt entities, including GMAC Mortgage and of AFI, its assets and the disposition thereof ultimately were addressed in the Chapter 11 Plan and subject to the approval of the bankruptcy court.

The Settlement achieved by Class Counsel thus ensures a recovery to borrowers on each of 122,963 Reinsured Loans[4] included in the challenged reinsurance arrangements on a *pro rata* basis.[5] Each Class Member who does not opt out of the Settlement will receive a *pro rata* share of the Net Settlement Amount. Class Counsel believe, as set forth in the Final Approval Memorandum, that the proposed Settlement is fair, reasonable, adequate, and in the best interest of the proposed Settlement Class because it provides for an immediate and certain recovery in circumstances where no recovery was a real and likely possibility.

In light of the extensive efforts of Class Counsel[6] and the Named Plaintiffs to recover for the Settlement Class, as well as the tangible recovery obtained, Plaintiffs believe their request for an award of fees in the amount of thirty percent of the Class Settlement Amount and for reimbursement of expenses is reasonable and appropriate. The requested fee of $1,875,000 represents 30% of the Class Settlement Amount, and is justified under the factors considered by courts in this Circuit in determining fee awards. *See, e.g.*, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301 (3d Cir. 2005). Indeed, the requested attorneys' fees are comparable to three recent, analogous actions in this District. *See Alexander v. Washington Mut., Inc.*, No. 07-cv-4426, 2012 WL 6021103 (E.D. Pa. Dec. 4, 2012) (*Alexander* Fee Order) (approving award of attorneys' fees representing 30%

[4] For purposes of distributing the Settlement Fund, a Class Member is a person or persons "obligated on a Reinsured Loan." *See* Settlement Agreement, ¶ 1.6, but, the Class ***size*** – *i.e.* the "number" of individual payments to ultimately be made to the class – is determined by the number of Reinsured Loans.

[5] As discussed in the Final Approval Memorandum, in filing for preliminary approval of the Settlement, Plaintiffs estimated the number of Reinsured Loans (and hence number of Class Members) to be around 66,000 based on information/discovery obtained during the litigation, including during settlement negotiations. The actual class size ascertained in preparing the Class Member List brought to light that there were more Class Members than estimated at the time preliminary was sought. Following meet and confers regarding the discrepancy, the Parties ultimately resolved the issues related to the number of Reinsured Loans, as discussed at length in the Final Approval Memorandum.

of the settlement fund in a directly analogous case alleging similar claims pursuant to RESPA Sections 8(a) and (b)); *Alston v. Countrywide Fin. Corp.*, No. 07-cv-03508, Order Awarding Attorneys' Fees, Litigation Costs, and Case Contribution Awards for the Named Plaintiffs (E.D. Pa. July 29, 2011) (the "*Alston* Fee Order") (approving an award of attorneys' fees representing 27.5% of the settlement fund in a another directly analogous case); *Ligouri v. Wells Fargo & Co.*, No. 08-cv-00479, Order Approving Petition for an Award of Attorneys' Fees, Reimbursement of Litigation Costs, and Case Contribution Awards for the Named Plaintiffs (E.D. Pa. Feb. 7, 2013) (the "*Ligouri* Fee Order") (approving an award of attorneys' fees representing 30% of the settlement fund in another directly analogous case).

Moreover, the requested fee falls squarely within the benchmark range appropriate in this Circuit with regard to the settlement of complex class actions. *See, e.g.*, *In re Schering-Plough Enhance ERISA Litig.,* No. 08-cv-1432, 2012 WL 1964451 (D.N.J. May 31, 2012) ("Courts have generally awarded fees in the range of nineteen to forty-five percent."); *Moore v. Comcast Corp.*, No. 08-cv-773, 2011 WL 238821, at *5 (E.D. Pa. Jan. 24, 2011) ("The fee represents 33% of the monetary value of the settlement and in this case is comparable to the average fee customary in this circuit.").

Further, the fee request is plainly appropriate in light of the fact that the lodestar "cross-check" yields a fractional multiplier of 0.54. In other words, the requested fee represents only a fraction of the actual amount of attorneys' fees incurred by Class Counsel and Plaintiffs' Counsel in this matter. Additionally, in response to the Class Notice, which expressly advised that Class Counsel would seek ***up to 33 1/3%*** of the Class Settlement Amount in attorneys' fees,[7] Class Counsel have received no objections to date either to the Settlement or to the amount of attorneys

[7] *See* Affidavit of Jose Fraga, Senior Director of Operations for The Garden City Group, Inc. ("GCG Aff.") attached to the Ciolko Declaration as Exhibit 7.

fees to be sought.[8] Lastly, in light of their willingness to pursue this Action on behalf of the Settlement Class and assist Class Counsel with the litigation, Class Counsel asks that the Court approve a Case Contribution Award in the amount of $5,000 to each of the three Named Plaintiffs.

As demonstrated below, the record in this case and the case law in the Third Circuit both fully support the awards of the requested attorneys' fees, reimbursement of expenses, and Case Contribution Awards for the Named Plaintiffs. Accordingly, Plaintiffs respectfully request that their Fee Motion be granted.

II. HISTORY OF THE LITIGATION

In Section II of their Final Approval Memorandum, Plaintiffs describe the history of this litigation, including the ResCap Bankruptcy Proceedings, the settlement negotiations and their efforts following this Court's Order preliminarily approving the Settlement. While that description is incorporated in full by reference, it merits emphasis that Class Counsel have spent close to seven years actively and aggressively litigating this matter, from the thorough pre-filing investigation of Plaintiffs' claims, to the hundreds of hours reviewing documents and engaging in extensive discovery, including third-party discovery, consulting with experts and conducting expert discovery, voluminous briefing on motions to dismiss, summary judgment and class certification, and the dedication of substantial time protecting the rights of the Class in the ResCap Bankruptcy Proceeding.

As previously noted, Plaintiffs engaged in extensive and at times bitterly contested third-

[8] The deadline for objecting to the Settlement has not yet elapsed. Per the request of Class Counsel, the deadline for objections established by the Preliminary Approval Order, August 12, 2014, was extended to September 17, 2014. *See* Dkt. No. 289, attached to the Ciolko Decl. as Exhibit 9. To the extent objections are filed, Class Counsel will address them in the supplemental brief in conjunction with the Final Approval Hearing.

party discovery. They served subpoenas requesting documents on all seven Mortgage Insurance ("MI") Providers[9] and GMAC's actuarial consultant, Milliman, Inc. Each of these subpoenas triggered several rounds of negotiations, multiple meet and confers with each of the third-parties and revisions and tailoring of the requests themselves. Plaintiffs pursued this discovery vigorously, including the filing of motions to compel, as necessary. Ultimately, Defendants and the third-parties produced tens of thousands of pages of documents and lengthy, detailed Excel spreadsheets, many of which included highly technical information. Plaintiffs spent many hundreds of hours reviewing and analyzing these documents. Plaintiffs engaged noted experts in the area of reinsurance who each analyzed the documents and data and prepared reports which were provided to Defendants.

In addition, Plaintiffs took several depositions of Defendants' corporate representatives, and one of Defendants' experts, as well as, of representatives of the non-party MI Providers Radian, PMI Mortgage and MGIC and actuarial consultant, Milliman, Inc. Class Counsel also defended the depositions of Named Plaintiffs Donna Moore and Frenchola Holden. Following the Parties' agreement to settle and the preliminary approval of the Settlement, Class Counsel met and conferred with Defendants' counsel concerning the contours of the Settlement Class once discrepancies between the number of Reinsured Loans estimated at the time of Preliminary Approval and the number reflected in the final list prepared by Defendants from various sources, came to light to reach a resolution of the issues raised.

[9] The seven MI Providers included: (1) Genworth Mortgage Insurance Corporation ("Genworth"); (2) Mortgage Guaranty Insurance Corporation ("MGIC"); (3) PMI Mortgage Insurance Company ("PMI Mortgage"); (4) Radian Guaranty Inc. ("Radian"); (5) Republic Mortgage Insurance Company ("Republic"); (6) Triad Guaranty Insurance Corporation ("Triad"); and (7) United Guaranty Residential Insurance Company ("United Guaranty").

The substantive issues in the litigation were extensively briefed and argued by the Parties. Plaintiffs were fully apprised of the strengths and weaknesses of their claims, and had vigorously proceeded with this litigation before agreeing to the Settlement against the backdrop of and substantial risks presented by the ResCap Bankruptcy Proceedings.

III. NAMED PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES IS FAIR AND REASONABLE

Class Counsel is entitled to compensation based upon the benefits conferred on the Class in the form of a cash payment from the Settlement Fund. Class Counsel respectfully requests that the Court award attorneys' fees in the amount $1,875,000 and authorize reimbursement of Class Counsel's reasonable costs and litigation expenses in the amount of $454,097.14. The $1,875,000 requested fee represents 30% of the gross $6,250,000 Settlement Fund and is reasonable and appropriate given the extensive work performed, the result achieved, the circumstances presented and the significant risks undertaken by Class Counsel. Notably, the requested fee is consistent with the Third Circuit's guidelines governing attorneys' fees for class-wide "common fund" recoveries, and is in line with analogous common fund percentage of recovery fee awards.

A. Plaintiffs' Request for 30% of the Settlement Fund is Reasonable

As the Third Circuit has recognized, attorneys who create a common fund benefit for a class are entitled to a reasonable fee to be paid from this fund. *In re Diet Drugs Prods. Liability Litig.*, 582 F.3d 524, 546 (3d Cir. 2009) ("Under the common benefit doctrine, an award of attorney's fees is appropriate where plaintiff's successful litigation confers a substantial benefit on the members of an ascertainable class.") (citations omitted); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that

rewards counsel for success and penalizes it for failure.'") (quoting *In re Prudential Ins. Co. American Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998) ("*Prudential*")); *see also Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 464 (E.D. Pa. 2008) ("In class cases, counsel who recover a common fund settlement such as this are entitled to reasonable attorneys' fees paid from the fund.") (citing *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980)). "Application of the common fund doctrine 'prevent[s] … inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit.'" *In re Certainteed Fiber Cement Siding Litig.*, MDL No. 2270, 2014 WL 1096030, at *21 (E.D. Pa. Mar. 20, 2014) (citing *Boeing*, 444 U.S. at 478).

The common fund doctrine also serves the public policy interests of encouraging skilled attorneys to litigate class cases efficiently, and to deter similar future offenses by Defendants. Former Supreme Court Chief Justice Warren E. Burger aptly described the importance of encouraging skilled litigators to bring cases of behalf of classes of injured claimants, and the benefit of discouraging similar future misconduct, in *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338 (1980):

> Plainly there has been a growth of litigation stimulated by contingent-fee agreements and an enlargement of the role of this type of fee arrangement has played in vindicating the rights of individuals who otherwise might not consider it worth the candle to embark on litigation in which the optimum result might be more than consumed by the cost. The prospect of such fee arrangements offers advantages for litigation by named plaintiffs in class actions as well as for their attorneys. For better or worse, the financial incentive that class actions offer to the legal profession is a natural outgrowth of the increasing reliance on the "private attorney general" for the vindication of legal rights; obviously this development has been facilitated by Rule 23.

As noted by another Court in this district in approving a motion for a fee award in the connection with the class action settlement before it, "[f]or many years, both the Supreme Court and our [Third Circuit] Court of Appeals have favored calculating attorney's fees as a percentage

of the class recovery." *Moore v. Comcast Corp.*, No. 08-cv-773, 2011 WL 238821, at *4 (E.D. Pa. Jan. 24, 2011) (citations omitted); *see also In re Diet Drugs*, 582 F.3d at 540 ("In common fund cases such as this one, the percentage-of-recovery method is generally favored.") (quoting *In re AT&T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006)); *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *21 ("The Court of Appeals for the Third Circuit generally favors the percentage-of-recovery method for fee calculation in common fund cases"); *In re Imprelis Herbicide Marketing, Sales Practices and Products Liability Litig.*, 296 F.R.D. 351, 369 (E.D. Pa. 2013) ("The percentage-of-recovery method is often favored in cases involving a common fund, because it rewards counsel for success and penalizes counsel for waste or failure."); *Mehling*, 248 F.R.D. at 464 ("Of the two methods to analyze fee requests in class actions—the lodestar method and the percentage of recovery method—the percentage of recovery method 'is generally favored in common fund cases'"); *Alexander* Fee Order, 2012 WL 6021103, at *1 (noting that the common fund percentage of recovery method is "generally favored.") (citations omitted).

Indeed, the Third Circuit has thoroughly investigated and analyzed the application of the percentage of the fund approach to compensating attorneys who procure a common fund recovery on behalf of a class in two pioneering Task Force Reports.[10] Both Task Force Reports support the percentage of the fund approach as the preferable method of awarding fees in common fund cases such as the instant case, due in part to the shortcomings and difficulties incurred in the lodestar approach. *See* Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 254-59 (Oct. 8, 1985) ("*First Task Force Report*") (concluding that fees in traditional common fund cases should be awarded based on a percentage of the

[10] The Task Force was composed of a panel of judges, distinguished academicians, and counsel, and was convened, primarily, to address the issues presented by the lodestar method of calculating fees.

recovery); Report of Third Circuit Task Force, *Selection of Class Counsel*, 208 F.R.D. 340, 422 (Jan. 15, 2002) ("*Second Task Force Report*"). Thus, the *Second Task Force Report,* agreeing with the earlier report, concludes:

> The 1985 Task Force made a compelling case for rejecting the lodestar approach in common fund cases. We see nothing has changed in the interim to diminish the power of the arguments made in 1985. The lodestar remains difficult and burdensome to apply, and it positively encourages counsel to run up the bill, expending hours that are often of no benefit to the class.

The Manual for Complex Litigation also endorses the use of the percentage of the fund method in awarding attorneys' fees in common fund cases. *See* Manual for Complex Litigation (Fourth) ("Manual") § 14.21 at 187 (2004) ("the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common fund cases").

Here, Class Counsel have negotiated a settlement that will create a common fund of $6,250,000 plus any accrued interest, less fees and expenses, for the benefit of the Class. As discussed in greater detail below, Class Counsel's request for an award of attorneys' fees in the amount of $1,875,000, which represents 30% of the Class Settlement Amount, is reasonable and appropriate given the extensive work performed, the significant risks undertaken, and the result achieved despite the difficult hurdles presented by the ResCap Bankruptcy Proceeding.

B. Class Counsels' Fee Request Satisfies the Factors Set Forth by the Third Circuit

The Third Circuit has set forth factors that a court should consider in evaluating a request for attorneys' fees. These factors are: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *In*

re Rite Aid Secs. Litig., 396 F.3d 294, 301 (3d Cir. 2005) (citing *Gunter*, 223 F.3d at 195 n.1). The Third Circuit has identified three other potentially relevant factors in determining the fairness of a fee petition: (8) the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and (10) any innovative terms of settlement. *Prudential*, 148 F.3d at 338-340. However, these factors "need not be applied in a formulaic way .... and in certain cases, one factor may outweigh the rest." *Gunter*, 223 F.3d at 195 n.1. *See also In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 105 (E.D. Pa. 2013) ("I recognize that the *Gunter/Prudential* factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest.") (internal quotations omitted). Rather, the Third Circuit has counseled that "[w]hat is important is that the district court evaluate what class counsel actually did and how it benefitted the class." *Prudential*, 148 F.3d at 342.[11]

Class Counsel respectfully submit that the attorneys' fees requested herein are reasonable and further, that requested award is supported by the above *Gunter*/*Prudential* factors.

1. The Size and Nature of the Common Fund Created and the Number of Persons Benefited by the Settlement

The value of the benefit rendered to the Class is an "important factor" in determining whether the fee requested is reasonable. *See Alexander* Fee Order, 2012 WL 6021103, at *2

[11] The Third Circuit recently reaffirmed the use of the *Gunter/Prudential* factors when evaluating the reasonableness of a fee request. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 331 n.64 (3d Cir. 2011) *cert. denied,* 132 S. Ct. 1876 (2012) *reh'g denied,* 132 S. Ct. 2451 (2012) (approving the use of the factors to assess the propriety of a fee request, noting "[u]ltimately, the fact-intensive *Prudential/Gunter* analysis must trump all other considerations") (citation omitted).

(citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained")); *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995) ("*GM Trucks*") ("the court apportions the [settlement] fund . . . in a manner that rewards counsel for success"). In assessing the proposed Settlement, the Court should consider that "[a] settlement is, necessarily, a compromise between plaintiffs, who did not win their case, and defendants, who did not lose theirs." *Snell v. Allianz Life Ins. Co. of N. Am. & Fidelity Union Life Ins. Co.*, No. 97-cv-2784, 2000 WL 1336640, at *17 (D. Minn. Sept. 8, 2000) (internal citations omitted).

Pursuant to the Settlement Agreement, the Class will obtain an immediate and certain benefit of $6.25 million plus accrued interest, less attorneys' fees, litigation expenses and Case Contribution Awards for the Named Plaintiffs as ordered by the Court. This amount is a meaningful sum, especially given the risks presented as a result of the ResCap Bankruptcy Proceeding, the lack of insurance coverage and the fact that CapRe was the only available source of funding. *See* Final Approval Memorandum, Section II.B.2

The Class is comprised of all persons who obtained residential mortgage loans originated and/or acquired by GMAC Mortgage, Ally Bank and/or their affiliates on or after January 1, 2004, with private mortgage insurance which was reinsured by Cap Re. As discussed below, and in greater detail in the Final Approval Memorandum, based upon the class listed compiled by Defendants for Notice purposes, 126,227 Notices were disseminated. The $6.25 million Settlement Fund coupled with the significant number of Class Members who will recover, weigh in favor of the requested award, especially given the uncertainty of recovery arising as a result of the ResCap Bankruptcy Proceeding.

Pursuant to the proposed plan of allocation, all members of the Class will receive a financial benefit in the form of a cash payment that realistically would not otherwise have been available given the time, expense and complexity of individual litigation and the ResCap Bankruptcy Proceedings. The success in obtaining a recovery for Class Members is no small feat given the unique obstacles faced by Class Counsel in this case.

Here, the average Settlement Payment based on the gross Settlement Fund would be equal to $51 per Class Member. The Parties negotiated a proposed distribution of the Net Settlement Amount to Participating Class Members that establishes a Net Settlement Amount based upon payments awarded for fees, costs and administrative expenses and which is eminently fair and reasonable. In particular, after payment of reasonable attorneys' fees and litigation costs as awarded by the Court, Case Contribution Awards to Plaintiffs as approved by the Court, and Administrative costs of the Settlement Administrator[12] in connection with the implementation of the Agreement, the Net Settlement Amount will be allocated to Participating Class Members on a *pro rata* basis. Such amount will certainly be less than the maximum that might be recovered in other circumstances with none of the attendant risks encountered here.[13] However. "[c]ourts routinely recognize that settlements never equal the full value of the loss claimed by plaintiffs." *UAW v. Gen. Motors Corp.*, No. 05-cv-73991, 2006 WL 891151, at *17 (E.D. Mich. Mar. 31, 2006).

[12] Administrative Costs means any and all costs and expenses incurred by Class Counsel in connection with administering the Settlement and consummating the terms of the Agreement, including, but not limited to, the fees and expenses of the Escrow Agent and/or Settlement Administrator and payment of any taxes incurred by the Settlement Fund and any and all other costs in connection with consummating the terms of the Agreement, including the costs of all notices described therein. *See* Ciolko Decl. Ex. A.

[13] Similarly, the amount of attorneys fees sought do not reflect the full amount that might be recoverable were the circumstances and risks different. Thus, as noted above, the 30% requested for fees is but a fraction of the actual fees for the attorney hours devoted to the prosecution and ultimate resolution of this action at Class Counsel's regular hourly rates. *See* Ciolko Decl. at ¶ 20.

As this Court noted in evaluating another proposed class action settlement, the settlement amount of $3,600,000 was "a substantial and certain recovery, avoiding the expense, delay, and uncertainty of continued litigation." *In re Hemispherx Biopharma, Inc., Sec. Litig.*, No. 09-cv-5262, Dkt. No. 81, Order at 16 (E.D. Pa. Feb. 14, 2011) (Diamond, J.). This fact combined with the "forty-six thousand notice packets [that] were to identifiable Class Members" led this Court to conclude that "the number of persons recovering in this Settlement is likely to be in the thousands." *Id.* As discussed herein, the proposed Settlement in this Action will similarly provide a certain and immediate recovery for the Settlement Class. This factor therefore supports the request for attorneys' fees.

In sum, Plaintiffs respectfully submit that when the complexities and concomitant risks of establishing damages as set forth in Plaintiffs' Final Approval Memorandum (Section V.A.4), is weighed against the substantial and immediate benefits of the proposed $6.25 million Settlement to the Class as a whole, the highly favorable outcome achieved for the 122,963 members of the Class is readily apparent and supports the fee requested. *See, e.g.*, *Alexander* Fee Order, 2012 WL 6021103, at *2 (finding that a settlement in the amount $4,000,000 for a class of 42,584 members conferred a valuable benefit to the class.).

2. The Presence or Absence of Substantial Objections to the Request for Fees

As noted above, all objections must be filed no later than September 17, 2014. *See* Dkt. No. 289. Thus, a complete analysis of this factor is premature. However, following the Court's granting of preliminary approval to the proposed Settlement, Class Counsel undertook a comprehensive notice program directed to Class Members. *See* Ciolko Decl. Ex. 7. As discussed more fully in the Final Approval Memorandum, pursuant to this Court's April 29, 2014 Order granting preliminary approval to the Settlement, Garden City Group ("GCG"), the

Settlement Administrator, effectuated the Class Notice plan and, on June 13, 2014, disseminated 126,277 Class Notices. Individual Notices were sent to each member of the proposed Class at their last known address. The Notice informed Class Members that: (i) Class Counsel would seek fees not in excess of 33 1/3% of the Settlement Fund; (ii) litigation, Notice and Settlement Administration expenses would be deducted from the Settlement Fund; and (iii) Class Counsel would request up to $5,000 for Plaintiffs as Case Contribution Awards. *See* Notice at 4, attached as Ex. A to the GCG Affidavit, Ex. 7 to Ciolko Decl. In addition, the Class Notice advised of the option and process for objecting to the Settlement and its terms, as well as any requested attorneys' fees and/or Case Contribution Awards. Class Notice at VIII. Despite the fact that more than 126,000 plus Class Notices were disseminated, no objections to the Settlement or the requested attorneys' fees have been received to date.

Moreover, as of August 1, 2014, only six (6) "exclusion requests" representing four (4) Reinsured Loans, *i.e.*, "opt-outs" from the 122,963 Reinsured Loans have been received -- representing only 0.00003 % of the total number of Reinsured Loans of the Class. The absence of any objections to Class Counsel's request for attorneys' fees and litigation expenses strongly supports the fee request. *See, e.g.*, *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 747 (E.D. Pa. 2013) (noting if no objections are received, as has been the case to date, this fact would "… strongly support[] approval of the requested fee."); *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (finding the "lack of objections to the requested attorneys' fees supports the request"); *Moore*, 2011 WL 238821, at *5 (recognizing as significant that "not one member of the class ha[d] filed an objection to the settlement" despite the fact that notice was mailed to 35,360 class members and published in *USA Today*); *Mehling*, 248 F.R.D. at 465 ("There have been no objections to the Petition. This factor weighs in favor of

approval.").

As noted above, the Class Notice sent to 126,227 potential Settlement Class Members informed individuals, *inter alia*, that Class Counsel intend to seek an award from the Court for attorneys' fees of up to 33 1/3% of the Settlement Fund. Class Counsel, however, are requesting only an award of 30% of the Settlement Fund. Regardless, the fact that no objections were voiced with respect to the potentially greater request of 33 1/3% further confirms the adequacy of a 30% award. Simply stated, the complete absence of objections to the requested attorneys' fees underscores the propriety of the request. *See, e.g.*, *In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 16 (concluding the "miniscule number of objections here – only two – supports the reasonableness of the proposed award"); *Briggs v. Hartford Financial Services Group, Inc.*, No. 07-cv-5190, 2009 WL 2370061, at *14 (E.D. Pa. July 31, 2009) ("Next, not a single objection to the requested fee award has been submitted. The requested amounts were described in detail in the notice mailed directly to class members. In these circumstances, the absence of objections to the fee request supports a finding that it is appropriate and reasonable."); *Alexander* Fee Order, 2012 WL 6021103, at *2 ("No objections have been filed in this matter. This factor therefore favors the award of plaintiffs' counsel's requested fee."); *Ligouri* Fee Order at 3 (noting fact that there were no objections to the proposed fee award supported the fee request); *Alston* Fee Order at 2 (finding "the absence of any substantive objections by members of the Settlement Class to the Settlement or the fees requested by Class Counsel" supported adequacy of both settlement and fee request).

3. The Skill and Efficiency of the Attorneys Involved

Undoubtedly, this Settlement would not have been achieved without the skill and experience of Class Counsel, who include some of the preeminent RESPA class action attorneys in the country.

The Third Circuit acknowledges the importance of the skill and efficiency of the attorneys in fee determinations with regard to "the stated goal in percentage fee-award cases of ensuring that competent counsel continue to be willing to undertake risky, complex and novel litigation." *In re Flonase Antitrust Litig.*, 291 F.R.D. at 104 (citing *Gunter*, 223 F.3d at 198). *See also In re Rio Hair Naturalizer Prods. Liab. Litig.*, MDL No. 1055, 1996 WL 780512, at *17 (E.D. Mich. Dec. 20, 1996) ("As the Supreme Court has recognized, without a class action, small claimants individually lack the economic resources to vigorously litigate their rights. Thus, attorneys who take on class action matters enabling litigants to pool their claims provide a huge service to the judicial process.") (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974)). In short, the "single clearest factor reflecting the quality of class counsels' service to the class are the results obtained." *In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 16 (citing *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000)); *see also In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-cv-3202, 2009 WL 2137224, at *14 (E.D. Pa. July 16, 2009) (noting "the quality of representation in a case can be measured by the quality of the result achieved."); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) ("The result achieved is the clearest reflection of petitioners' skill and expertise."). Here, Class Counsels' high degree of competency and willingness to apply their skill and resources to successfully prosecuting this litigation on behalf of the Class supports the requested award.

This Settlement was achieved by Class Counsel who are well-versed in RESPA law and who, collectively, have decades of experience in prosecuting and trying complex actions in courts throughout the United States. *See* firm resumes, attached as Exs. 3- 6 to the Ciolko Decl. Indeed, Lead Class Counsel has the rare benefit of having settled other analogous cases in this very District,[14] and are currently actively involved in litigating several other directly analogous RESPA cases. *See, e.g.*, *Munoz v. PHH Corp.*, No. 08-cv-00759 (E.D. Cal.); *Thurmond v. SunTrust Banks, Inc.*, No. 11-cv-01352 (E.D. Pa.); *Samp v. JPMorgan Chase Bank, N.A.*, No. 11-cv-01950 (C.D. Cal.); *Menichino v. Citibank, N.A.*, No. 12-cv-00058 (W.D. Pa.); *Riddle v. Bank of America Corp.*, No. 12-cv-01740 (E.D. Pa.); *White v. PNC Fin. Servs. Grp., Inc.*, No. 11-cv-07928 (E.D. Pa.); *Manners v. Fifth Third Bank*, No. 12-cv-00442 (W.D. Pa.); *Barlee v. First Horizon Nat'l Corp.*, No. 12-cv-03045 (E.D. Pa.); *Hill v. Flagstar Bank, FSB*, No. 12-cv-02770 (E.D. Pa.); *Cunningham v. M&T Bank Corp.*, No. 12-cv-01238 (M.D. Pa.).

Class Counsel familiarized themselves in detail with Plaintiffs' claims, vigorously prosecuted the action against Defendants and obtained a meaningful certain recovery for the Class. More importantly, Class Counsel engaged in a thorough analysis of the best possible recovery for the Class in light of the risks of further litigation. Without the skill, experience and determination displayed by Class Counsel during the prosecution and Settlement of this action, such a recovery for the Class would not have been attained.

At preliminary approval, this Court found Class Counsel to be adequate when appointing Kessler Topaz Meltzer & Check, LLP as Lead Class Counsel and Bramson, Plutzik, Mahler & Birkhaeuser, LLP, Berke, Berke & Berke, and Travis & Calhoun, P.C. as Class Counsel. *See*

[14] *See, e.g.*, *Ligouri v. Wells Fargo, et al.*, No. 08-cv-00479, Final Approval Order (E.D. Pa. Feb. 7, 2013); *Alexander v. Washington Mut., Inc.*, No. 07-cv-04426, 2012 WL 6021098 (E.D. Pa. Dec. 4, 2012); *Alston v. Countrywide Fin. Corp.*, No. 07-cv-03508, Final Approval Order (E.D. Pa. July 29, 2011).

Dkt. No. 283. Because Class Counsel have several years experience litigating the claims at issue in this action as well as those at issue in other analogous RESPA actions (listed above) – significantly more than any other Plaintiffs' firm in the country – they were able to efficiently utilize their research and knowledge of issues pertinent to this case so as not to duplicate previous efforts. This enabled them to achieve significant economies of scale in connection with the factual and legal research necessary to prove Plaintiffs' claims against Defendants. Further, to avoid duplication of effort, Lead Class Counsel scheduled periodic conference calls at which case strategy and developments were discussed and litigation tasks were divided among Class Counsel according to their expertise and resources. *See* Ciolko Decl. ¶ 14. These procedures improved efficiencies in the total time and costs expended in this litigation.

As another judge within this District recently recognized, "in evaluating the skill and efficiency of the attorneys involved, courts have looked to the quality of the results achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *24 (citing *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000)). In short, the result achieved is the clearest reflection of Counsels' skill and expertise.[15] *See Alexander*, 2012 WL 6021103, at *2 (referring to Lead Class Counsel in this case, noting their skill with favor, "Class counsel include skilled attorneys with experience in class actions and RESPA litigation, as illustrated by the declaration and exhibits accompanying the fee application."); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (finding requested attorneys' fees of 33.3 percent of settlement fund justified in part because

[15] *See infra* at Section III.B.7.

class counsel were "highly skilled attorneys with substantial experience in class action litigation."); *Mehling*, 248 F.R.D. at 464 (class counsel represented plaintiffs "vigorously and effectively throughout this litigation."); *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 261 (D. Del. 2002) (class counsel "showed their effectiveness through the favorable cash settlement they were able to obtain"); *see also In re Ikon Office Solutions, Inc., Secs. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) (awarding 30% fee and stating "the most significant factor in this case is the quality of representation, as measured by the 'quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel'"). Here, Class Counsel's collective experience and skill is reflected in their effective prosecution of this Action and achievement of the substantial Settlement before the Court, providing strong support for the award requested. This factor thus strongly supports the requested fee award.

4. The Complexity and Duration of the Litigation

The complexity of the issues involved in this litigation, as well as the amount of time it has taken to litigate this Action favors an award in the amount requested. Here Class Counsel spent more than 7,400 hours litigating this complex and novel matter, "submitted many well-researched and thorough filings" and participated in mediation sessions. *Esslinger*, 2012 WL 5866074, at *13. "The Third Circuit has stated that 'complex and/or novel legal issues, extensive discovery, acrimonious litigation, and tens of thousands of hours spent on the case by class counsel' are 'the factors which increase the complexity of class litigation.'" *Wallace v. Powell*, No. 09-cv-286, 2012 WL 6552134, at *21 (M.D. Pa. Dec. 14, 2012) (quoting *In re Cendant Corp., PRIDES Litig.*, 243 F.3d 722, 741 (3d Cir. 2001)). Here these factors all support

the requested fee award given that Class Counsel engaged in almost seven years of litigation involving extensive discovery and motion practice addressing and developing the complex legal and factual issues involved in this Action and ultimately participated in arms length mediation in order to bring this Action to a beneficial resolution for the class. *See In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 17 (noting class counsel "vigorously prosecuted their case for over eleven months," concluding counsel "spent a substantial amount of time – almost 3,000 hours – litigating this matter").

More specifically, prior to the Parties reaching the Settlement with the assistance of Edward N. Cahn, a retired District Court Judge, this litigation had gone on for nearly seven years and was diligently and vigorously litigated by both sides in this Court. The factual background comprising this element is set forth at length in the Final Approval Memorandum at Section II and in the supporting Ciolko Declaration filed herewith. As noted therein, the active litigation of this Action involved depositions of Parties and third-parties, discovery of documents from the Parties and third-parties (many of whom resisted compliance with the subpoenas served upon them), analysis of voluminous and complex document production and the retention, consultation and assistance of experts. *Id.* In addition, this case has involved numerous and novel arguments and defenses to both as to liability and class certification. In these circumstances, the complexity and duration of the litigation weigh in favor of this attorneys' fees award. *See, e.g.*, *Alexander* Fee Order, 2012 WL 6021103, at *2 (finding that this factor weighed in favor of the fee request in an analogous case because the case involved "complex claims" and had been litigated for more than four years.); *Ligouri* Fee Order at 3 (approving fee request noting, *inter alia*, "[l]itigation in this matter has been protracted and complex, spanning more than four years"). Moreover, had an agreement to settle this Action not been reached, the Parties faced significant

future litigation, further underscoring the benefit of the Settlement. *See also In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *25 ("Absent settlement, litigation would likely continue for some time and would require plaintiffs and defendants to incur considerable expert witness fees and other expenses").

5. The Risk of Nonpayment

Courts have long recognized that there is some degree of risk that attorneys will receive no fee – or at least a fee that does not reflect their efforts – when representing a class, as this risk is inherent when undertaking any contingency fee action. *See, e.g.*, *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *25 ("Any contingency fee [arrangement] includes a risk of no payment"); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 309 (E.D. Pa. 2003) (same). Even more so than most other cases litigated on a contingent basis, all of which contain a degree of risk, the instant case presented significant obstacles since its filing. As noted above, and more fully outlined in the Final Approval Memorandum, this case took nearly seven years to litigate. If the Settlement is not consummated, there is a very real chance that neither the Settlement Class Members nor Class Counsel will recover anything. Although Plaintiffs and Class Counsel strongly believe in the merits of their claims, there are certainly no guarantees that in proceeding, the case would have concluded as favorably as with the Settlement.

The defense presented by counsel for Defendants was strong and advocated by extremely experienced and vigorous counsel, who, even at the time of Settlement, continue to deny liability on behalf of their clients. While Plaintiffs disagreed with Defendants' assertions that they would not be able to establish liability or damages, they recognized that some theories Defendants set forth have yet to be fully tested in the Circuit courts, let alone in the United States Supreme

Court. For instance, Plaintiffs are not aware of any case which resolves the question of whether the reinsurance arrangements at issue here result in a real transfer of risk. Defendants also assail the very basis of Plaintiffs' allegations, claiming that the provision of PMI is not a settlement service.

Even if PMI is deemed a settlement service, as Plaintiffs have strenuously argued, there is disagreement regarding the assessment of the amount of damages that can properly be awarded. Defendants in similar RESPA cases have challenged the constitutionality of the damages that Plaintiffs seek, contending that they violate due process and equal protection because they are excessive. Arguments that the type of award sought by Plaintiffs (three times all the PMI paid by Class Members during the Class period) exceeds Congress's intent with regard to this kind of business practice have also been raised. Moreover, at the time the parties agreed to settle this matter, Defendants' Motion for Summary Judgment was briefed and a hearing date was set. Defendants argued that their recent payment of substantial "losses" and the potential for additional such losses rendered Plaintiffs' claims moot as these payments were proof that the reinsurance contracts at issue transferred risk. Indeed, as described above and in Plaintiffs' Final Approval Memorandum, the Parties had already engaged in significant discovery with regard to this issue and had briefed it in the context of Defendants' motion for summary judgment. While Plaintiffs believe that the Court would decide in their favor, thus allowing them to proceed with the case, the result was uncertain.

Class certification was also an open issue. Plaintiffs recognize that class certification is no certainty and is fraught with potential risk; indeed, district courts are required to conduct a "rigorous analysis" in order to decide all the factual and legal disputes relevant to the requirements of Rule 23 before certifying a class. *See, e.g.*, *In re Hydrogen Peroxide Antitrust*

Litig., 552 F.3d 305, 309, 320 (3d Cir. 2009). Although it is Plaintiffs' belief that certification of the proposed Class would have been granted by the Court, there was no guarantee. Some courts have denied certification of similar RESPA claims. *See, e.g.*, *Contos v. Wells Fargo Escrow Co., LLC*, No. 08-cv-838Z, 2010 WL 2679886 (W.D. Wash. July 1, 2010). Based on Class Counsel's extensive experience in these kinds of cases, it is clear that Defendants were vigorously opposed to class certification and would have continued to aggressively oppose class certification for the reasons set forth in Plaintiffs' Final Approval Memorandum at Section V.A.5.

In sum, there were numerous uncertainties and unsettled issues that significantly increased the risk that after years of work and dedication of resources, Class Counsel and the Class might be left wholly uncompensated. As the court recognized in the *Alexander* case, the fact that "Class counsel, whose fee is contingent on a favorable outcome, have prosecuted this complex case for more than four years without any guarantee of payment" weighed in favor of the court's award of attorneys' fees. *Alexander* Fee Order, 2012 WL 6021103, at *2. *See also In re Flonase Antitrust Litig.*, 291 F.R.D. at 104 (finding facts that "[e]ven if Plaintiffs had succeeded in proving liability at trial, there is no guarantee they would have recovered damages" and that "[m]oreover, as a contingent fee case, counsel faced a risk of nonpayment in the event of an unsuccessful trial" supported approval of the requested attorneys' fee); *Mehling*, 248 F.R.D. at 465 ("Because Class Counsel undertook representation on a wholly contingent basis, they have not been compensated for any of the considerable hours devoted to this case… Accordingly, this factor weighs in favor of approval of the [fee] Petition."); *Schering-Plough Enhance ERISA Litig.*, 2012 WL 1964451, at *7 ("Plaintiff's Counsel undertook this action on a contingency fee basis [and] have carried the risk of non-payment throughout the four years of ongoing litigation … Courts routinely recognize that the risk created by undertaking an action on

a contingency fee basis militates in favor of approval."). The risks taken by Class Counsel, without any guarantee of payment weighs in favor of approval of the fees requested.

6. The Amount of Time Devoted to the Action by Class Counsel

Class Counsel has spent 7,423 combined hours in prosecuting this case on behalf of the Class.[16] Although Counsel did everything in their power to keep costs and fees, including attorneys' time, to a minimum, the complexity of this action required a significant amount of work by a number of attorneys. *See* Exhibits 13-16 to the Ciolko Decl.

As detailed above and in the Ciolko Declaration, Class Counsel undertook a thorough investigation of the Class' claims, filed a Complaint, an Amended Complaint and a Second Amended Complaint, fought a Motion to Dismiss, participated in extensive, contentious discovery including significant third-party discovery, engaged appropriate experts, briefed original and renewed Class Certification Motions, reviewed and responded to the expert reports submitted by Defendants, and filed briefs in opposition to Defendants' Renewed Motion to Dismiss and Motion for Summary Judgment. Additionally, Class Counsel engaged in arm's length settlement negotiations with the assistance of the Hon. Edward N. Cahn before reaching the proposed settlement. The extent of Class Counsel's time spent litigating this case is also evident in the descriptions of their work in the analysis of the other *Gunter* factors and their discussion of the *Girsh*[17] factors in their Final Approval Memorandum. That substantial amount

[16] As noted *infra*, Plaintiffs have not included the time spent in connection with *Badesha v. GMAC*, No. 06-cv-07817 (N.D. Cal.).

[17] *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).

of time also supports the requested award. *See Alexander* Fee Order, 2012 WL 6021103, at *3 (finding the 1,963 hours class counsel spent prosecuting the litigation weighed in favor of the requested fee award); *Ligouri* Fee Order at 4 (noting class counsel devoted 3,860 hours litigating the case over four years, which weighed in favor of approving the fee request).

As noted above, the number of hours Class Counsel spent litigating this Action is substantial, further supporting their request for attorneys' fees. *See, e.g.*, *In re Flonase Antitrust Litig.*, 291 F.R.D. at 104 ("class counsel spent more than 32,700 hours over the course of more than four years litigating this case. The record of this litigation also indicates that the time spent by Plaintiffs' counsel was necessary for the successful prosecution of this case, considering both the complexity of the issues and the robust defense mounted by the defendants. This factor weighs in favor of the requested fee."); *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *25 (noting counsel spent "12,656 hours in prosecuting this case on behalf of the settlement class" which included time "spent investigating class' claims, filing the complaint, litigating a motion to dismiss, consulting with expert witnesses and participating in mediation sessions" all of which "was reasonably spent to prepare for this complex class action" and "weigh[ed] in favor of the requested fee award.");

7. The Fee Requested is Well Within the Range of Fees Awarded in Similar Cases in this District and Around the Country

The comparison of the fee sought in the instant petition with fees awarded in recent class actions militates strongly in favor of granting Class Counsel's requested fee. Courts in the Third Circuit routinely apply a benchmark of between 19 and 45% for percentage fee awards in class actions. *See, e.g.*, *Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451 ("Courts have generally awarded fees in the range of nineteen to forty-five percent.") (citing *Hall v. AT&T Mobility LLC*, No. 07-cv-5325, 2010 WL 4053547, at *21 (D.N.J. Oct. 13, 2010) and *In*

re Remeron Direct Purchaser Antitrust Litig., No. 03-cv-0085, 2005 WL 3008808, at *12-18 (D.N.J. Nov. 9, 2005) (confirming 33.3% fee)); *In re Rite Aid Corp. Secs. Litig.*, 396 F.3d at 306-307 (citing affidavit of Professor John C. Coffee, Jr. of Columbia University Law School in which 289 class action settlements were compiled ranging from under $1 million to $50 million, with an average attorney's fees percentage of 31.71% with a median value of one-third); *Moore*, 2011 WL 238821, at *5 (concluding "[t]he fee represents 33% of the monetary value of the settlement" which it determined was "comparable to the average fee customary in this circuit"); *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 477 (D.N.J. 2008) (finding awards in the 25-30 % of the percentage-of-fund range to be fairly standard in the Third Circuit); *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 340 (E.D. Pa. 2007) (finding a fee of 35% to be consistent with private contingent fee arrangements in the Third Circuit); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *14 (E.D. Pa. June 2, 2004) ("The above figures are in accord with a recent Federal Judicial Center study that found that in federal class actions generally median attorney fee awards were in the range of 27 to 30 percent.").

Moreover, Class Counsel's fee request compares very favorably to fees awarded in similar RESPA class actions settled both in this District and across the country. *See Alexander* Fee Order, 2012 WL 6021103, at *3 (approving a fee award in the amount of 30% of the settlement, noting "[i]mportantly, this amount also fits within the range of approved fee awards in other cases involving similarly complex issues where there were few or no objectors to a proposed class action settlement."); *Ligouri* Fee Order at 4 (endorsing request for 30% of settlement fund in attorneys' fees, noting the fees requested "resemble awards in similar cases" citing *Alexander*). *See also Shahan v. Tower City Title Agency, Inc.*, No. 05-cv-1983 (N.D. Ohio Apr. 26, 2007) (approving 33-1/3% fee in RESPA class action settlement); *Gray v.*

Fountainhead Title Grp. Corp., No. 03-cv-1675 (D.M.D. Aug. 30, 2004) (same); *Baynham v. PMI Mort. Ins. Co.*, No. 99-cv-241 (S.D. Ga. June 22, 2001) (same).

Accordingly, Class Counsel's request for 30% of the Settlement Fund, or $1,875,000, is eminently reasonable.

8. The Settlement was Obtained by Class Counsel Without the Aid of Governmental Investigation

In *Prudential*, the Third Circuit singled this factor out for important consideration by district courts. *See Prudential*, 148 F.3d at 338. The Third Circuit Court of Appeals remanded the trial court's fee award for wrongly "credit[ing] class counsel with creating the entire value of the settlement" and overlooking the considerable contributions of a multi-state life insurance task force. *Id.* On the other hand, this case is more similar to *In re AT&T*, in which the Third Circuit found that "class counsel was not aided by the efforts of any governmental group, and the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel." *In re AT&T*, 455 F.3d at 173. To be sure, Class Counsel investigated, prosecuted, and settled this Action on their own and have not acted in concert with any governmental investigation or agency. Accordingly, this factor weighs in favor of approval of the fee request. *See In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *26 (Finding this factor satisfied where "[t]here is no contention, by objectors or otherwise, that the settlement could be attributed to work done by other groups, such as government agencies."); *Smith v. Dominion Bridge Corp.*, No. 96-cv-7580, 2007 WL 1101272, at *10 (E.D. Pa. Apr. 11, 2007) ("Where, as in this case, the lead counsel acted alone and the entire value of the settlement fund can be attributed to the efforts of lead counsel, this factor supports the requested attorneys' fees."). *See also Ligouri* Fee Order at 4 (referencing fact that class counsel "investigated, litigated, and negotiated the settlement without the aid of any other group such as a government agency" as

supporting the requested attorneys' fees); *Alexander* Fee Order, 2012 WL 6021103, at *3 (noting that settlement was achieved without assistance of a governmental agency, which supported a requested fee award). Just as in *In re Certainteed*, in this case Class Counsel's "independent investigation led to the filing of this litigation and ultimately to the creation of the settlement fund for the class," 2014 WL 1096030, at *26, therefore weighing in favor of the requested fee.

9. The Fee Requested Here is Consistent With a Privately Negotiated Contingent Fee in the Marketplace

As this Court noted, "*Prudential* asks courts to consider fee arrangements that were negotiated in private contingent fee agreements." *In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 17. "[W]hen 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." *In re Synthroid Mktg. Litig*., 264 F.3d 712, 718 (7th Cir. 2001). Thus "[t]he goal of the fee setting process is to determine what the lawyer would have received if he were selling his service in the market rather than being paid by Court Order." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *15. Consequently, courts should look to the private market when assessing the reasonableness of the percentage fee.

With respect to this factor, the Court in the analogous *Alexander* action recognized that "[i]n private contingency fee cases, lawyers routinely negotiate agreements for between 30% and 40% [] of the recovery." *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *26 (citing *Esslinger*, 2012 WL 5866074, at *14). *See also Alexander* Fee Order, 2012 WL 6021103, at *3; *Ligouri* Fee Order at 4 ("The requested fee award of 30% of the Settlement is consistent with privately negotiated fee awards.") (citing *In re Ikon Office Solutions, Inc.*, 194 F.R.D. at 194). The *Alexander* court went on to determine that the 30% requested fee was "within this range" and therefore concluded "this factor weigh[ed] in favor of the Court's award

of attorneys' fees." *Alexander* Fee Order, 2012 WL 6021103, at *3. This Court similarly recently recognized, "fees of 30% or more are common." *In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 17. *See also* Here, Class Counsel request 30% of the Settlement Fund. Accordingly, the same conclusion as the Court reached in *Alexander* is warranted here.

10. Innovative Terms of the Settlement

The terms of the Agreement negotiated by the Parties are innovative in several respects. The Agreement establishes a "phased" distribution of the Net Settlement Amount, establishing three distributions, which increases the likelihood that the members will be paid. First, the settlement payment with respect to any Participating Class Member shall be provided by check—the First Distribution. *See* Exhibit 1 ¶ 4.4. Sixty (60) days after the issuance of the Settlement Payments, the Settlement Administrator shall mail a reminder postcard to Participating Class Members notifying them that they have been mailed a check which will only remain valid for 120 days. *See* Exhibit 1 ¶ 4.7. If a Participating Class Member's Settlement Payment is not cashed within 120 days of its issuance, then the total funds constituting those uncashed Settlement Payments will be distributed *pro rata* to those Participating Class members who cashed their Settlement Payments—the Second Distribution. *See* Exhibit 1 ¶ 4.8. Finally, if any Settlement Payment checks from the Second Distribution remain uncashed sixty (60) days after the date of their issue, the total funds constituting the uncashed checks shall be applied towards Administrative Costs that have not already been paid from the Settlement Fund. If the amount of uncashed Settlement Payment checks exceeds the unpaid Administrative Costs, or if no Administrative Costs remain unpaid, then all funds remaining in the Escrow Account shall be distributed, on a *pro rata* basis, to those Participating Class Members who cashed their original Settlement Payment checks pursuant to the First Distribution ("Third Distribution"). The Third

Distribution shall exclude those Participating Class Members who did not cash their Settlement Payment checks pursuant to the Second Distribution. *Id.*

This innovative, notable, and efficient method of providing prompt payment to each participating Class Member will insure that an extremely high percentage of Class Members will receive compensation under the Agreement. It also ensures that the entire Settlement Fund inures to the benefit of the Class with no "reverter" to the Defendants. These innovations counsel in favor of granting the reasonable attorneys' fees requested. *See Ligouri* Fee Order at 4 (finding "the Settlement provides for an innovative distribution system, which will proceed in three phases," which further confirmed propriety of requested attorneys' fees.)

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Even though the Third Circuit has established a preference for calculating attorneys' fees using the percentage of the fund approach, application of the lodestar "cross-check" calculation starkly demonstrates that the fees requested are extremely reasonable.[18] The Third Circuit has stressed that "while useful, [this cross-check] should not displace a district court's primary reliance on the percentage-of-recovery method." *In re AT&T Corp.*, 455 F.3d at 164. Further, "the lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Alexander* Fee Order, 2012 WL 6021103, at *4 (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d at 306-07).

As a court within this District recently explained:

[18] A lodestar cross-check is a "suggested practice." *See In re Cendant Corp. PRIDES Litig.*, 243 F.3d at 735; *see also Second Task Force Report* ("The Task Force notes that in the Third Circuit the lodestar cross-check is only a 'suggested' and not a mandated procedure. We emphasize that the lodestar is at most a relevant factor if it is to be used at all, and it should not receive exaggerated importance in assessing the appropriate fee.").

> The lodestar method is a two-step process. The first step requires that court ascertain the lodestar figure by multiplying the number of hours reasonably worked by the reasonable normal hourly rate of counsel. The second step permits the court to adjust the lodestar by applying a multiple to take into account the contingent nature and risks of the litigation, the results obtained and the quality of the services rendered by counsel.

Fleisher v. Fiber Composites, LLC, No. 12-cv-1326, 2014 WL 866441, at *14 (E.D. Pa. Mar. 5, 2014). *See also In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *16 (A lodestar award "is calculated by multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys."). As the *In re Flonase Antitrust Litig.* court then explained, "[o]nce the lodestar is calculated, '[t]he total lodestar estimate is then divided into the proposed fee calculated under the percentage method. The resulting figure represents the lodestar multiplier to compare to multipliers in other cases.'" 291 F.R.D. at 105 (quoting Manual for Complex Litigation (Fourth) § 14.122 (2004)). *See also In re Hemispherx Biopharma, Inc., Sec. Litig.*, Order at 18 (noting then "courts divide the percentage-of-recover fee award by the lodestar figure to compute the so-called lodestar "multiplier.").

When performing the lodestar cross-check, the Third Circuit has recognized that "'multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *Prudential*, 148 F.3d at 341 (quoting 3 Herbert Newberg & Albert Conte, Newberg on Class Actions, § 14.03 at 14-5 (3d ed. 1992)); *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *27 (same). *See also Alexander* Fee Order, 2012 WL 6021103, at *4 (finding that multipliers ranging from one to four are "commonly awarded in common fund cases when the lodestar method is applied.").

A lodestar "cross-check" in this case confirms the reasonableness of Class Counsel's fee request. Lead Class Counsel and Class Counsel have devoted over 7,400 hours to the

prosecution of Plaintiffs' claims against Defendants, resulting in a total lodestar of $3.458,963.10.[19] When comparing the requested fee of $1,875,000 to the submitted lodestar, the requested fee award is clearly reasonable, resulting in a fractional "multiplier" of .54 to Class Counsel's lodestar. Obviously, as noted *infra*, this lodestar is inherently conservative as it does not reflect the additional work Class Counsel will undertake in implementing the Settlement nor does it reflect time Class Counsel spent while prosecuting *Badesha v. GMAC.*, No. 06-cv-07817 (N.D. Cal.) which was transferred to this Court. *See* October 1, 2007 Order in *Badesha* (Dkt. No. 63).[20] Had this time been included, the "multiplier" would shrink further.

Moreover, in the directly analogous *Alston*, *Ligouri*, and *Alexander* cases, the Court awarded fees with that resulted in a multiplier of 3.7, 2.05, and 1.36, respectively. *See Alston* Fee Order; *Ligouri* Fee Order at 4 ("the resulting multiplier of 2.05 is well within the range of multipliers approved in this Circuit as reasonable"); *Alexander*, 2012 WL 6021103, at *4 ("I find the lodestar multiplier of 1.26 is acceptable and does not require that I reduce the amount of the requested attorneys' fee award.").

Indeed, courts within the Third Circuit regularly assessed fees with a lodestar multiplier far above that calculated here. *See, e.g.*, *In re Rite Aid Corp. Secs. Litig.*, 362 F. Supp. 2d 587, 589-90 (E.D. Pa. 2005) (approving a fee award with a multiplier of 6.96); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, No. 03-cv-4578, 2005 WL 1213926, at *18 (E.D. Pa. May 19, 2005) (awarding fees with a lodestar multiplier of 15.6); *Kolar v. Rite Aid Corp*, No. 01-cv-1229, 2003 WL 1257272 (E.D. Pa. Mar. 11, 2003) (4.5 multiplier); *In re Ikon*

[19] The time and expense submissions and firm resumes of KTMC, BPMP and BBB are attached as Exhibits 11-16 to the Ciolko Decl. These submissions reflect the names of the attorneys and paralegals who worked on the case, the hourly rates of each attorney and paralegal, the lodestar value of the time expended, the expenses of these firms, and the background and experience of the firms.

[20] *See* Final Approval Memorandum Section II.B.

Office Solutions, Inc., Sec. Litig., 194 F.R.D. at 195) (approving a fee award that is 2.7 times the lodestar);. The *Fleisher* court went so far as to note "[w]here, as here, counsel requests a fee that represents less than their lodestar, 'there is no need to discuss multipliers and the appropriateness of an increase to the lodestar.'" 2014 WL 866441, at *15 (quoting *Chakejian v. Equifax Info. Servs.*, 275 F.R.D. 201, 207 (E.D. Pa. 2011)).

And of course, work on the case has not ended, nor will it end anytime soon. Class Counsel will continue to spend a substantial amount of additional time over the next year or more following final approval responding to inquiries from Class Members, interacting with the Settlement Administrator with respect to technical matters concerning the Settlement Fund, receiving and evaluating class data to be provided by Defendants with assistance of a consultant, and generally shepherding the Settlement affecting 122,963 potential Participating Class Members through distribution. In fact, since Notice has been disseminated to the Class, Lead Class Counsel has responded to hundreds of class member inquiries including 111 emails and nearly 300 phone calls from Class Members. Ciolko Decl. ¶¶ 36-37.

Lead Class Counsel estimates that the time needed to handle Settlement administration, as well as prepare for the Final Approval Hearing, will take well over 75 – 100 attorney, paralegal, and professional staff hours. This work represents a significant portion of time that Class Counsel will spend for the Class that is not reflected in the lodestar calculation, a factor recognized by the *Ligouri* court as further underscoring the appropriateness of the fee request. *See Ligouri* Fee Order at 4 (noting "Class Counsel's calculations are conservative" as they do not "account for the future work Class Counsel will undertake in implementing the Settlement").

IV. REIMBURSEMENT OF CLASS COUNSEL'S LITIGATION COSTS IS WARRANTED

It is well established that counsel who create a common fund like the one in this Action are entitled to reimbursement of litigation costs and expenses. *See* FED. R. CIV. P. 23(h). Courts in the Third Circuit have recognized that attorneys who create a common fund for the benefit of a class are also entitled to reimbursement of reasonable litigation expenses and costs from the fund. *See, e.g.*, *Fleisher*, 2014 WL 866441, at *15; *Ikon Office Solutions, Inc.*, 194 F.R.D. at 192 (internal citations omitted); *In re Datatec Sys., Inc. Secs. Litig.*, No. 04-cv-525, 2007 WL 4225828, at *9 (D.N.J. Nov. 28, 2007) (approving litigation expenses of $45,409.63 which reflect "costs associated with experts, consultants, investigators, legal research, mediation, meals, hotels, transportation, word processing, court fees, mailing postage, telephone"); *In re Safety Components, Inc. Securities Litig.*, 166 F. Supp. 2d 72, 91 (D.N.J. 2001) (finding counsel entitled to reimbursement of expenses "that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action").

The test for this inquiry is whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases. *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *8. Accordingly, numerous courts have recognized that "[c]ounsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case." *Alexander*, 2012 WL 6021103, at *5 (quoting *In re Cendant Corp. Derivative Action Litig.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)), *see also Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *4 (citing *In re Chambers Dev. Secs. Litig.*, 912 F. Supp. 852, 863 (W.D. Pa. 1995) ("Plaintiffs' counsel are also entitled to be reimbursed for all reasonable expenses necessary for the successful prosecution of this litigation.")).

In the prosecution of this complex case, Plaintiff's Counsel expended at least $454,097.14 in unreimbursed expenses which are carefully documented in each firm's individual expense reports. *See* Ciolko Decl. Ex. 12-16. These expenses were critical to Class Counsel's success in achieving the proposed Settlement. These expenses arise from retaining the services of preeminent insurance and reinsurance experts, meetings with affected borrowers, photocopying documents, on-line/paper research, messenger services, postage, express mail and overnight delivery, long distance telephone and facsimile expenses, transportation, meals, travel and other incidental expenses directly related to the prosecution of this Action. No objections have been received regarding Class Counsel's reimbursement of litigation expenses from the Settlement Fund.

Reimbursement of similar expenses is routinely permitted. *See, e.g.*, *Oh*, 225 F.R.D. at 154 (finding the following expenses reasonable and appropriately incurred: (1) travel and lodging; (2) local meetings and transportation; (3) depositions; (4) photocopies; (5) messengers and express services; (6) telephone and fax; (7) Lexis/Westlaw legal research; (8) filing; (9) postage; (10) the cost of hiring a mediator; and (11) NJ Client Protection Fund-*pro hac vice*). Notably, the courts in the analogous *Alston*, *Alexander*, and *Ligouri* cases awarded similar expenses. *Alexander* Fee Order, 2012 WL 6021103, at *5 (finding reimbursement of similar litigation expenses "appropriate"); *Alston* Fee Order at 3 (ordering reimbursement of litigation expenses to be paid from the settlement fund); *Ligouri* Fee Order at 5 (same).

Given that the requested reimbursement of expenses sought is for expenditures of the type routinely billed by attorneys to paying clients in similar cases, and, to date, no objections to Class Counsel's requested reimbursement have been lodged by Settlement Class Members, Plaintiffs respectfully submit the reimbursement is warranted.

V. THE REQUESTED CASE CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS ARE REASONABLE

The result obtained in this Action could not have been achieved without the substantial and continuing efforts of the Named Plaintiffs. The Settlement Agreement provides the Named Plaintiffs may be paid from the Settlement Fund an amount of $5,000 each. *See* Settlement Agreement at § 5.3.[21]

From the time the initial complaints were filed through the Settlement, the Named Plaintiffs were kept abreast of the details of the litigation and offered their insight and opinions. To be sure, Plaintiffs actively and effectively fulfilled their obligations as representatives for the Class. Their initiative, time, and efforts were essential to the successful prosecution of the case and resulted in a meaningful recovery for the Class. Plaintiffs complied with all reasonable demands and provided significant assistance to Class Counsel in the prosecution of this case by providing counsel with documents and information regarding their loans and the imposition of private mortgage insurance, responded to discovery requests, and regularly communicating with their attorneys regarding the Action. Further, Plaintiffs Moore and Holden each sat for a day long deposition. Ciolko Decl. ¶ 55. By doing so, Plaintiffs assisted with the enforcement of federal statutes designed to broadly decrease real estate settlement costs that otherwise would have gone unenforced. *See In re Greenwich Pharm. Secs. Litig.*, No. 92-cv-3071, 1995 U.S. Dist. LEXIS 5717, at *20 (E.D. Pa. Apr. 25, 1995) ("By filing suit on behalf of other members of the class, participating in discovery and subjecting themselves to depositions, the class representatives have aided effective enforcement of the securities laws against violations that might otherwise go unenforced"). As the *Fleisher* court recently noted, "it is particularly

[21] The Settlement Agreement also provides that Defendants agree to take no position with respect to the requested Case Contribution Awards. *See id*.

appropriate to compensate named representative plaintiffs with incentive awards where they have actively assisted plaintiffs' counsel in their prosecution of the litigation for the benefit of a class." *Fleisher*, 2014 WL 866441, at *15. The Named Plaintiffs here actively assisted Class Counsel and deserve to be compensated for their efforts for the Class.

"Incentive awards are not uncommon in class action litigation and particularly where, as here, a common fund has been created for the benefit of the entire class." *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d at 751 (quotations omitted); *In re Certainteed Fiber Cement Siding Litig.*, 2014 WL 1096030, at *28 ("The approval of contribution or incentive awards is common, especially when the settlement establishes a common fund."). Indeed, the *Flonase* court recognized that "courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation," noting it is done "as a matter of practice." 951 F. Supp. 2d at 751. As other courts within this district have recognized, "there would be no benefit to Class members if the Class representative had not stepped forward." *See Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 424 (E.D. Pa. 2010) (approving contribution award where class representative "devoted time and energy to the litigation, consulting with counsel as necessary, and fulfilled his obligations as Class representative"). *See also In re Imprelis Herbicide Marketing Sales Practice & Prods. Liability Litig.*, 296 F.R.D. at 371 (noting incentive awards "reward the public service of contributing to the enforcement of mandatory laws."). As one Court recently observed:

> District courts may approve incentive payments to plaintiffs in class action suits. Named plaintiffs play an important role in class actions, and "it is surely proper to provide reasonable incentives to individual plaintiffs whose willingness to participate as lead plaintiffs allows class actions to proceed and so confer benefits to broader classes of plaintiffs."

In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig, 269 F.R.D. 468, 486 (E.D. Pa. 2010) (citing *Briggs v. Hartford Fin. Servs. Grp. Inc*., No. 07-cv-5190, 2009 WL 2370061, at *16 (E.D. Pa. July 31, 2009)). As the *Alexander* court recognized, "[t]he purposes of these payments is to compensate named plaintiffs for services they provided and the risks they incurred during the course of class action litigation, and to reward the public service of contributing to the enforcement of mandatory laws." *Alexander* Fee Order, 2012 WL 6021103, at *5 (quoting *Sullivan*, 667 F.3d at 333 n.65). Also of significance is the personal risk assumed by the Plaintiffs in commencing and pursuing this Action. *See, e.g.*, *Plastic Tableware Antitrust Litig.*, No. 94-cv-3564, 1995 WL 723175, at *2 (E.D. Pa. Dec. 4, 1995). In this case, Plaintiffs assumed personal risks and exposed themselves to potential harm by (a) suing their own mortgage lenders at a time when many borrowers were forced to attempt to work with their lenders in order to obtain loan modifications, and (b) exposing themselves to potential negative notoriety and backlash by publicly accusing their lender of surreptitiously violating federal statutes. However, by their willingness to sacrifice for the sake of similarly-situated borrowers, Plaintiffs obtained a benefit for the Class.

These contribution awards are warranted as a matter of public policy and are well supported by applicable authority. *See generally In re SmithKline Beckman Corp. Secs. Litig.*, 751 F. Supp. 525, 535 (E.D. Pa. 1990) (noting that "[p]rivate litigation aids effective enforcement of [federal] laws because private plaintiffs prosecute violations that might otherwise go undetected due to the [government's] limited resources . . . [and] the named plaintiffs, through their vigilance, have conferred a monetary benefit on a large class") (citations omitted).

Further, the amount of the requested Case Contribution Award is modest when compared with that recently approved by courts in this district with respect to other consumer class action

litigation. *See, e.g.*, *Briggs*, 2009 WL 2370061, at *16 (finding $10,000 service award for class representative to be "a modest sum relative to the $2.35 million overall settlement fund" and noting that no objections to the request were received).[22] Indeed, in the analogous *Alston* and *Ligouri* matters, the courts approved awards in the amount of $7,500 for the named plaintiffs. *See Alston* Fee Order at 2 ("Each of the three Named Plaintiffs is individually awarded $7,500.00 as a Case Contribution Award"); *Ligouri* Fee Order at 6 ("The Named Plaintiffs are hereby awarded $7,500.00 each as a Case Contribution Award"). The awards requested herein are also consistent with awards in other complex class actions. *See, e.g.*, *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 467 (E.D. Pa. 2008) (approving incentive payments of $15,000 and $7,500); *In re Auto. Refinishing Paint Antitrust Litig.*, MDL No. 1426, 2008 WL 63269, at *7-8 (E.D. Pa. Jan. 3, 2008) (approving a $30,000 award for each class representative); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *18-19 (E.D. Pa. June 2, 2004) (finding that an award of $25,000 for each class representative is comparable to other awards in this District); *Godshall v. Franklin Mint Co.*, No. 01-cv-6539, 2004 WL 2745890, at *6 (E.D. Pa. Dec. 1, 2004) (approving incentive payments of $20,000 to each class representative).

In sum, as is recognized by a multitude of courts, Plaintiffs' efforts should not go unrecognized. *See, e.g.*, *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002) ("Incentive awards are not uncommon in class action litigation and particularly where . . . a common fund has been created for the benefit of the entire class . . . . In fact, [c]ourts

[22] *See also Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-cv-3202, 2009 WL 2137224 (E.D. Pa. 2009) ($20,000.00 awarded as enhancement to each of the three class representatives); *Burns v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, No. 04-cv-4135 (N.D. Cal. 2006) ($25,000.00 awarded as an enhancement); *Garett v. Morgan Stanley DW Inc.*, No. 04-cv-1858 (S.D. Cal. 2006) (awarding named plaintiffs enhancement awards of $20,000.00 each).

routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation") (internal quotations and citation omitted); *Bogosian v. Gulf Oil Corp.*, 621 F. Supp. 27, 32 (E.D. Pa. 1985) ("The propriety of allowing modest compensation to class representatives seems obvious . . . .").

Also importantly, the Class Notice stated that an application would be made for Case Contribution Awards for the Plaintiffs in an amount not to exceed $5,000 each, and no objections were received regarding this request. Therefore, Class Counsel respectfully submits that Plaintiffs' assistance in prosecuting this Action fully warrants the Court's approval of a Case Contribution Awards in the amount of $5,000 each. Accordingly, for the foregoing reasons, Class Counsel submit that the requested Case Contribution Awards are both appropriate and reasonable.

VI. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court award attorneys' fees in the amount of $1,875,000, approve the reimbursement of litigation costs in the amount of $454,097.14, and approve Case Contribution Awards in the amount of $5,000 to each of the Named Plaintiffs.

Dated: August 6, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF.

/s/ Edward W. Ciolko
Edward W. Ciolko