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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ADRIANNE CRONAS, LINDA PASICHNYK and THERESA REARDON, individually and on behalf of all similarly situated persons, Plaintiffs, -against- WILLIS GROUP HOLDINGS, LTD., WILLIS OF NORTH AMERICA INC., WILLIS OF NEW YORK, WILLIS OF NEW JERSEY, WILLIS OF MASSACHUSETTS, Defendants.	06 CV 15295 (RMB)(DCF) ECF Case

PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS' MOTION FOR
APPROVAL OF ATTORNEYS FEES AND EXPENSES

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Plaintiffs, by and through their undersigned attorneys, respectfully submit this memorandum of law in support of their motion, pursuant to F.R.C.P. 23(h), for approval of the $3,200,896.91 in attorneys fees and expenses agreed to by the parties in the Consent Decree.

I. INTRODUCTION

After vigorous advocacy and negotiation, the parties have agreed on a settlement that achieves injunctive relief and incidental monetary relief for 317 current and former female employees of Defendants Willis Group Holdings Limited, Willis North America Inc., and Willis of New York, Inc., (hereinafter jointly referred to as "Willis"). The parties negotiated the proposed Consent Decree at arms length, and the award of attorneys' fees and expenses contained therein is moderate and reasonable both in terms of its amount 6 and the percentage of the total recovery obtained. It is also well within the range of fees and expenses approved by numerous district courts in this Circuit and elsewhere in comparable cases. Accordingly, we respectfully submit that it merits approval by this Court.

Because this action is a civil rights action under both federal and city law, and resulted in the establishment of a settlement fund, attorneys' fees may properly be awarded either under the fee shifting provisions of those laws or pursuant to the percentage of recovery method with a lodestar "cross check." The Supreme Court has long held that a "litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). As explained more fully below, case law clearly supports the award of fees under both the common fund and lodestar doctrines when a case results in the creation of a pool of funding for the benefit of class members. The Second Circuit has expressed a preference for the common fund method of recovery with a lodestar cross-check. *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 47-50 (2d Cir. 2000).

Here, plaintiffs' attorneys are seeking less than their lodestar, thus confirming the reasonableness of the fee sought herein under the "lodestar cross check." Under that doctrine, the lodestar is used to assess whether the multiplier *enhancement* of the lodestar generally sought under the percentage of recovery method is reasonable. *See, e.g., In re Elan Securities Litigation*, 385 F.Supp. 2d 363 (S.D.N.Y. 2005) (Berman, J.) (approving 3.47 multiplier). *See, e.g., In re Nortel Networks Corp. Securities Litigation*, 539 F.3d 129, 132 n. 4 (2d Cir. 2010) ("A 'lodestar' is calculated by multiplying the number of hours reasonably billed to the class by the appropriate hourly rate. A district court, in its discretion, may award fees higher than the lodestar by applying a multiplier based on factors such as the riskiness of the litigation.)

Because contingency risk is the foremost of factors to be applied to the adjustment of the lodestar under the percentage-of-recovery method, a positive multiplier to the lodestar is almost invariably applied where, as here, such risk is present. *See, e.g., Bellifemine v. Sanofi-Aventis US LLC,* 2010 U.S. Dist. LEXIS 79679 (August 6, 2010) at *15 (approving 2.05 multiplier; "[t]he foremost of these factors [to be applied in adjusting the lodestar] is the attorney's 'risk of litigation, i.e., the fact that, despite the most vigorous and competent of efforts, success is never guaranteed[,]'" *quoting City of Detroit v. Grinnell,* 495 F.2d 448, 471 (2d Cir. 1974)).

An attorney's fee award is also available under the fee-shifting provisions of federal and city civil rights laws under which the class and individual claims in this case were predicated. 42 U.S.C. § 1988 and 2000e-5(k); New York City Administrative Code §8-502(f). Under those fee-shifting provisions, the lodestar – the reasonable hourly rates multiplied by the hours reasonably expended on the litigation – is "the most useful starting point for determining the amount of a reasonable fee," *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010) (non-common fund case reaffirming lodestar approach in fee shifting cases).

Because the Second Circuit cases describing the common fund and lodestar cross-check methodology speak only in terms of multiplier *enhancements* to the lodestar, that methodology should rarely, if ever, be used to *reduce* a fee recovery to significantly less than lodestar, especially in fee-shifting cases like this one.

Fee awards in the federal courts under the common fund percentage of recovery method commonly range from 20 to 50 percent where good recoveries have been achieved for the class. *See, e.g., Velez v. Novartis*, 2010 WL 4877852 (S.D.N.Y. Nov. 30, 2010) at *21; *Maywalt v. Parker & Parsley Petroleum,* 963 F.Supp. 310, 313 (S.D.N.Y. 1997). Here, the fee award sought for work done on the class claims, 21.7% of the total settlement, is in the lower part of that range, and is fully supported by the excellent results obtained as a consequence of class counsel's tenacious and hard-fought efforts. Plaintiffs' counsel secured substantial injunctive and monetary relief. The Consent Decree provides for significant programmatic improvements in the way defendants will compensate and promote their officers and employees in the future, and more than $8 million in monetary relief for the class, amounting to more than two-thirds of the economic loss sustained by the class from defendants' gender discrimination in compensation during the class period under plaintiffs' expert's model calculations most likely to be accepted by the jury. This settlement was not achieved easily or quickly, but rather after more than five years of hard-fought litigation on class certification and liability, including years of robust discovery and motion practice. Thus, the fee request is amply justified in this case.

Finally, as detailed in Section III.F below, the requested award is supported by the *Grinnell/Goldberger* factors generally considered in assessing the reasonableness of a common fund or lodestar class action fee award. The fee award sought is moderate, reasonable and fully warranted under the circumstances. This motion for attorneys fees and costs should be granted.

II. BACKGROUND

A. The Litigation

This lawsuit was brought by three former employees[1] on behalf of themselves and on behalf of a class of female Willis employees. It alleged that Willis engaged in a pattern and practice of discrimination on the basis of gender with respect to compensation and promotions in violation of 42 U.S.C. § 2000e-5 *et seq.,* 42 U.S.C. § 1981a, Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 ("Title VII"); New York State and City Human Rights Laws, NYC Code §§ 8-107 and N.Y. Exec. Law §§ 290 *et seq*.; and New York City Admin. Code §§ 8-107 *et seq*. During the years of litigation, the parties engaged in and completed thorough discovery, including the formulation of and response to numerous document requests and interrogatories, the review and analysis of over 200,000 emails and documents provided by defendants, the depositions of two Class Representatives and 13 current or former officers of Willis, the retention of highly-trained experts who conducted extensive analyses of alleged gender disparities in pay and promotions, and the depositions of those experts.

Plaintiffs filed a motion on August 9, 2010 for certification of a class of officer-level or equivalent women employed by Willis of New York, Inc. from January 1, 2002 through December 31, 2007. Defendants opposed class certification and filed cross-motions for summary judgment on the claims of the individual named plaintiffs. Those motions were fully briefed by the parties and submitted to the Court, which has not ruled on those motions.

While the class certification and summary judgment motions were pending, the parties

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[1] Adrianne Cronas filed the initial complaint. Linda Pasichnyk and Theresa Reardon were named as additional Class Representatives in the First Amended Complaint. Plaintiff Theresa Reardon's claims were compelled to arbitration and dismissed from this lawsuit on November 20, 2008. She is therefore no longer a class representative, but her individual claims are being resolved separately along with this action. Ms. Pasichnyk's individual claims are also being resolved in the separate state court action being settled along with this one.

commenced settlement negotiations aided by a skilled mediator, Hunter Hughes, Esq. Those negotiations were ultimately successful. Plaintiffs and Willis have agreed to the entry of the proposed Consent Decree as a full settlement of their disputes herein. On October 18, 2011, this Court granted preliminary approval to the terms of the settlement encompassed by that Consent Decree, and set the case down for a Final Fairness Hearing on December 12, 2011, at 3 p.m.

B. The Settlement

As set forth in more detail in plaintiffs' motion for preliminary approval, the Consent Decree mandates significant changes in Willis of New York, Inc.'s policies and procedures, monitors Willis of New York, Inc.'s compliance, and provides for a total settlement fund of $11,595,030.85, including a recovery of $8,068,362.88 to compensate the class on the class claims, and $325,771.06 to compensate Ms. Cronas on her additional individual claims. Considering the litigation risks that confronted both the class and the individual plaintiff both at the outset and at the time the case settled, this is an excellent result for both. It provides more than two-thirds of the total economic loss to the class calculated by plaintiff's expert, at a critical stage of the proceedings, when the question of whether this case may proceed as a class action was still unresolved, at a time when the legal standards for certifying such a class were in flux.

The award sought here is $3,200,896.91, $2,899,082.03 for attorneys fees and $301,814.88 for expenses through October 18, 2011. Counsels' combined lodestar is $2,699,787.50 for the class claims and $397,242.75 for the Cronas individual claims, for a total lodestar of $3,097,030.Thus, the fees requested are almost $200,000 less than lodestar, and well within the range of fees routinely approved in comparable cases.

III. ARGUMENT

The attorneys' award for fees and expenses in the Consent Decree for which approval is

sought herein is reasonable, moderate and not excessive. It fully accords with the percentage-of-recovery method, the lodestar cross-check, the *Grinnell/Goldberger* factors, and the fee-shifting provisions of the civil rights laws. The declarations of Robert L. Herbst, Rosalind S. Fink and Christine E. Webber submitted herewith, and the time and expense records of their law firms submitted to the Court *in camera*,[2] all demonstrate that plaintiffs' attorneys seek no multiplier but rather less than their actual time and expenses for the work they performed over all these years in achieving an excellent result for the class and Ms. Cronas. Considering that those attorneys advanced large sums for expenses and thousands of hours of time and achieved excellent results on risky claims, the proposed fee award is warranted.

A. <u>Applicable Legal Principles</u>

The amount of the proposed award of attorneys' fees and expenses, $3,200,896.21, was set forth in the Consent Decree filed on August 25, 2011. "An agreed upon award of attorneys' fees and expenses is proper in a class action settlement, so long as the amount of the fee is reasonable under the circumstances." *Bellifemine*, at *14-15.

To determine whether the proposed fee award is reasonable, courts in this District have followed the principles articulated by the Second Circuit in *Grinnell* and confirmed in *Goldberger*. As Judge Koeltl noted in *Bellifemine:*

[2] The records of the time expended by class counsel in this action, maintained contemporaneously with the work performed, are voluminous and, even with redactions, contain confidential information that would disclose strategy, mental impressions, work product and the like. Consistent with established practice in common fund cases, class counsel could have summarized the records in their supporting declarations and awaited a request from the Court to make the records available for *in camera* review. *See In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 284 (3d Cir. 2009) (summaries of time records sufficient in common fund case because Court used information only to cross-check reasonableness of fee award); *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 200 (3d Cir. 2000) (appropriate for counsel to wait to submit detailed time records until Court requested them). To save time and to permit the Court to make as searching a review as it deems necessary, however, we are submitting them *in camera* now. Class members who wish to inspect our time records prior to the fairness hearing may do so in the office of the undersigned or in the offices of the Clerk of the Court.

> Under this approach, courts do not consider that a "just and adequate fee" can be ascertained by merely multiplying an attorney's hours by the attorney's typical hourly fees. *Grinnell*, 495 F.2d at 471. The courts regard this calculation as "the only legitimate starting point for analysis." *Id.* To this, "other, less objective factors" are applied to reach the ultimate award. *Id.* The foremost of these factors is the attorney's "risk of litigation, i.e., the fact that, despite the most vigorous and competent of efforts, success is never guaranteed." *Id.* (internal quotation mark omitted). Other generally accepted factors as stated in *Grinnell* are:
>
> 1. The standing of counsel at the bar – both counsel receiving the award and opposing counsel,
> 2. Time and labor spent,
> 3. Magnitude and complexity of the litigation,
> 4. Responsibility undertaken,
> 5. The amount recovered,
> 6. What it would be reasonable for counsel to charge a victorious plaintiff.

Id., at *15-16.

There are two possible methods that may be used to calculate attorneys fees, (1) the "percentage" method, which calculates the fee award as some percentage of the settlement fund created for the benefit of the class, and (2) the "lodestar" method. *Id.*, at *17-18.

Here, as in *Bellifemine*, the proposed attorneys' award is reasonable under the *Grinnell/Goldberger* factors and under either method of calculating the award. Here, too, "[a]s set forth above, this was a complicated and difficult class action with numerous risks." *Id.*, at *16. At the time legal action was first commenced,[3] with our motion to intervene, and at all times subsequently, from the time we commenced this separate action to the time of settlement, "at no time has the Named Plaintiffs' [and the putative class's] success been guaranteed." *Id.*, at *16. Here, too, "the action was litigated zealously by counsel on both sides." *Id.*, at *16. Here, too, "Class Counsel engaged in significant discovery, complicated statistical analysis," and a mediation process, and in doing so, spent many thousands of hours to arrive at this settlement.

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[3] This is the time at which litigation risk is ordinarily assessed. *In re Elan*, 385 F.Supp. 2d at 374-75 ("it is well established that litigation risk must be measured as of when the case is filed," *quoting Goldberger*, 209 F.3d at 55.

Id., at *16. Here, too, following approval of this settlement, "Class Counsel will continue to be responsible for post-settlement work[.]" *Id*., at *16.

B. <u>The "Percentage-of-the-Fund" Method With a Lodestar Cross Check Clearly Supports the Fee Award Sought in this Case.</u>

While the Court has discretion to use either the percentage of recovery or lodestar methods in determining whether to approve the fee award, *McDaniel v. County of Schenectady,* 595 F.3d 411, 417 (2d Cir. 2010) (declining to foreclose use of lodestar method), "the trend in this Circuit is toward the percentage method." *Id.*; *Wal-Mart Stores, Inc. v. Visa USA Inc.,* 396 F.3d 96, 122 (2d Cir. 2005).

"It is by now well established that a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Central States Southeast and Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care LLC,* 504 F.3d 229, 249 (2d Cir. 2007) (approving $12.75 million fee award constituting 30% of settlement fund and a 1.79 multiplier of lodestar).

The percentage-of-the fund method can be used even where attorneys' fees are also awardable pursuant to the fee-shifting provisions of federal and city civil rights laws. *See, e.g., Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1327 (2d Cir. 1990) (awarding fees using common fund rather than fee-shifting provision of the RICO Act). Courts regularly award attorneys' fees in settlements using the common fund method, where a fee-shifting statute is available, in order to award plaintiffs' counsel an enhanced multiplier of their lodestar. *See, e.g., Velez* (fee award of 21.8% of settlement fund of up to $175 million in gender employment discrimination class action, representing 2.4 multiplier of lodestar); Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 255-56 (1985) (explaining that common fund

method should be used when a common fund is created even when statutory fee-shifting is available).

As the D.C. Circuit has explained, the common fund and lodestar methods for awarding fees serve different purposes and rationales: the common fund method approximates the contingent fee arrangements that compensate attorneys in the market and aligns the interests of the class and counsel in achieving success, while the lodestar method used in fee-shifting cases is meant to ensure that reliable compensation, paid by the opposing party, is available to attorneys who offer private enforcement of certain statutes even where the results obtained are modest or nonmonetary. *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993). Therefore, the limitations on the lodestar applied by the Supreme Court in fee-shifting cases do not apply to common fund cases. *See, e.g.*, *Swedish Hosp. Corp.*, 1 F.3d at 1269 ("We disagree with the proposition that *Burlington* and *King* mandate an unenhanced lodestar approach in common fund cases."); *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1301 (9th Cir. 1994) (holding that the district court abused its discretion in refusing to award a multiplier in common fund case). For these reasons, the Supreme Court's recent decision in *Perdue*, which addressed limitations on the calculation of attorneys' lodestar fees under fee-shifting statutes, is inapplicable in the common fund context. *See, e.g.*, *Dewey v. Volkswagen of Am.*, --- F. Supp. 2d ----, 2010 U.S. Dist. LEXIS 79304, at *27, *45 (D.N.J. July 30, 2010) (noting that post-*Perdue*, lodestar multipliers are rarely permitted in fee-shifting cases, but that in common fund cases where awards are based on percentage of the fund, multipliers are often appropriate, even where fees might alternately be available under a fee-shifting statute); *Navarro v. Servisair*, No. 08-cv-02716, 2010 U.S. Dist. LEXIS 41081 at *5-12 (N.D. Cal. Apr. 27, 2010) (citing *Perdue* in the context of lodestar multipliers, and awarding a multiplier in common fund

case after noting that the "Ninth Circuit has expressed general approval of multipliers between 1.0 and 4.0 in common fund cases").

In the Second Circuit, the preference for the percentage of recovery approach over the lodestar approach is based on these same considerations. *See, e.g., Wal-Mart Stores, Inc.,* 396 F.3d at 122 ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.") (*citations omitted*); *Goldberger v. Integrated Resources, Inc.,* 209 F.3d 43, 48-49, 50 (2d Cir. 2000) (same).

The clear teaching of these cases is that the percentage of recovery method is preferred so that plaintiffs' counsel can be awarded a positive multiplier. Accordingly, the Second Circuit, and most district courts within this Circuit, have used the percentage of recovery method to do so, with the lodestar cross check insuring that such multipliers, while positive, do not result in immoderate or excessive fees to the class's disadvantage. While we are not seeking a positive multiplier here, these cases imply that the less-than-lodestar fee award we seek here should not be further reduced.

When the lodestar method is used in this manner as a cross check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Id.,* 209 F.3d at 50. This is because the lodestar used only as a check for reasonableness of the multiplier enhancement. *In re Elan; Velez,* at *20; and *In re Telik, Inc.,* 576 F. Supp. 2d 570, 585-86 (S.D.N.Y. 2008). *See also Clark v. Ecolab Inc.,* 2010 U.S. Dist. LEXIS 47036 (S.D.N.Y. 2010).

While the limitations of the lodestar method in fee shifting cases do not apply in common fund cases where multiplier enhancements are appropriate, it is also true that the principles underlying the lodestar methodology in fee shifting cases call generally for approval of a full

lodestar fee award when plaintiffs' counsel act as private attorneys general in enforcing the civil rights laws and prevail. *See, e.g., Quaratino v. Tiffany & Co.*, 166 F.3d 422 (2d Cir. 1999) (awarding fee based on lodestar far exceeding modest damages award to plaintiff). Thus, although plaintiffs' counsel are not seeking a multiplier here, approval of the fee award sought under the lodestar cross check should not be denied when it is *less* than lodestar. This is especially true here, where a good recovery was obtained, there was significant contingency risk, and other *Grinnell/Goldberger* factors also support the proposed fee award.

C. The Fee Award Sought by Counsel Is at the Lower End of the Range Applied in Comparable Common Fund Cases.

Judge McMahon has recently canvassed the cases awarding attorneys' fees in class action common fund cases, *Velez,* at *21:

> The federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit. *See, e.g., Maywalt v. Parker & Parsley Petroleum,* 963 F.Supp. 310, 313 (S.D.N.Y.1997) (citing *In re Warner Communications Secs. Litig.,* 618 F.Supp. 735, 749 (S.D.N.Y.1985), *aff'd* 798 F.2d 35 (2d Cir.1986)); *Brown v. Steinberg,* Nos. 84 Civ. 464, 84 Civ. 4665, 84 Civ. 8001, 1990 U.S. Dist. LEXIS 12516, at *6 (S.D.N.Y. Oct. 12, 1990) (citing *Blum v. Stenson,* 465 U.S. 886, 903, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984), in which the Supreme Court, in dicta, approved this fee award method); *In re Marsh ERISA Litig.,* 265 F.R.D. at 149 (noting trend of awarding 20-50 percent of recovery to attorneys and finding fee of over $11M, or one-third of the recovery, "fair and reasonable in relation to the recovery and compares favorably to fee awards in other risky common fund cases in this Circuit and elsewhere.").
>
> District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater. *See, e.g., In re Priceline.com, Inc. Secs. Litig.,* No. 3:00-CV-1884, 2007 U.S. Dist. LEXIS 52538 (D.Conn. July 20, 2007) (awarding 30 percent of $80 million fund); *Frank,* 228 F.R.D. at 189 (awarding attorneys' fees of 38.26 percent of $125,000.00 settlement fund); *In re Oxford Health Plans, Inc., Secs. Litig.,* MDL Dkt. No. 1222, 2003 U .S. Dist. LEXIS 26795, at *13 (S.D.N.Y. June 12, 2003) (awarding 28 percent of $300 million fund); *Maley,* 186 F.Supp.2d at 369 (approving attorneys' fees of 33.3 percent of a $11.5 million settlement fund); *Strougo,* 258 F.Supp.2d at 262 (33.33 percent); *In re Lloyd's American Trust Fund Litig.,* No. 96 Civ. 1262, 2002 U.S. Dist. LEXIS 22663, at *76 (S.D.N.Y. Nov. 26, 2002) ("In this district alone, there are scores of ... cases where fees ... were awarded in the range of 33.3 percent of the settlement fund.");

> *In re Veeco,* at *13-14 (same); *deMunecas,* at *19 ("Class Counsel's request for 33 percent of the Fund is reasonable under the circumstances of this case and is consistent with the norms of class litigation in this circuit."); *Becher v. Long Island Light Co.,* 64 F.Supp.2d 174, 182 (E.D.N.Y.1999) (33.33 percent).

See also In re Telik, Inc., 576 F. Supp. 2d at 587-88, where Judge McMahon collected many cases in this Circuit awarding 30-33.33% of settlements ranging from $975,000 to $21 million, and elsewhere around the country awarding 30, 33.33, 35, 38 and 45% of settlement funds of similar size; and *Clark v. Ecolab Inc.,* at *28-29 (granting class counsel's request for 33.33% of $6 million settlement fund reasonable and "consistent with the norms of class litigation in this circuit."). In *Clark,* Judge Crotty noted that "Class Counsel risked time and effort and advanced costs and expenses, with no ultimate guarantee of compensation"; and that an "award of one-third of the fund is consistent with what reasonable, paying clients pay in contingency employment cases." *Id.*[4]

In *In re Marsh Erisa Litigation* 265 F.R.D. 128 (S.D.N.Y. 2010), Judge McMahon observed that, where, as here, the fund is not a "mega" recovery, courts have awarded percentage fees of one-third or higher. 265 F.R.D. at 149 (citing example of the EDS ERISA litigation, where the settlement was "only" $12.5 million and the court awarded the requested one-third fee).

The percentage of the settlement fund sought here for work on the class claims, 21.7%, is thus consistent with and lower than many of the fee awards made in other similar class actions with settlement funds of similar size, not "mega" recoveries. *Cf.* Theodore Eisenberg and Geoffrey P. Miller, *Attorneys Fees and Expenses in Class Action Settlements: 1993-2008,* NYU

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[4] Equally applicable here is Judge Crotty's holding that "[t]he fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward, . . . also supports their fee request." *Id.*

Center for Law, Economics and Organization, Working Paper No. 09-50 (November 2009), *available at* http://ssrn.com/abstract=1497224 (recent study surveying the award of attorneys' fees in class action settlements, which reviewed data on cases nationwide and found that (1) the mean and median fee awards for employment class action settlements are 27% and 25% of the recovery respectively, and (2) fee awards in "low/medium" risk cases average 26.2 % and 35.1% in "high" risk cases.). There was indisputably significant contingency risk here. Even if the risk were properly characterized as "low or medium risk," 21.7% would be in the low end of the appropriate range of such percentages in common fund cases. However, because this was a high-risk case, the fee requested falls well below the average award for this type of case on a percentage basis. *Cf. FTR Consulting Group, Inc,. v. Advantage Fund II Ltd.*, 2005 U.S. Dist. LEXIS 20013 * 15-16 (S.D.N.Y.) (Berman, J.) (approving fee award of 25% in stockholder derivative action neither unusually large or complex and where risk was "modest").

D. The Lodestar "CrossCheck" Clearly Validates the Percentage of Recovery Figure

"As a cross-check to a common fund fee determination, courts look to the lodestar calculation--specifically, to what the "lodestar" factor is. Although lodestar analysis is no longer the preferred method of calculating attorneys' fees in connection with class action settlements, if a percentage of fund figure compares favorably with a lodestar that uses reasonable hourly rates and a reasonable multiplier, it tends to validate the percentage of funds figure." *Velez,* at *22 (approving lodestar calculation based on hourly rates of $750, $750, $700 and $600 for senior attorneys and $500 and $400 for two other lawyers, finding those rates below the prevailing market rates charged by firms of similar caliber, including defense firms, that litigate regularly in this District). *See also In re Marsh ERISA Litig.,* 265 F.R.D. at 146 (rates ranging from $125.00 for administrative personnel to $775.00 for senior lawyers).

"The fact that the lodestar is calculated at **current** billing **rates**, whereas the hours were

worked over many years, including some when billing **rates** were lower, is of no moment." *Velez,* at *23, *citing In re Veeco Secs. Litig.,* 2007 U.S. Dist. LEXIS 16922, at *9 n. 7 ("The use of **current rates** to calculate the lodestar figure has been repeatedly endorsed by courts as a means of accounting for the delay in payment inherent in class actions and for inflation").

Generally, lawyers seeking fee awards in class actions seek a multiplier of their lodestar to account for litigation risk and other considerations. *Bellifemine,* at *18. In this Circuit, multipliers ranging from 2 to 5.5 and higher are acceptable and routinely awarded. *Wal-Mart Stores v. VISA USA, Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (noting that "multipliers of between 3 and 4.5 have become common"); *Velez,* at *23 (2.4 multiplier of fees already incurred "falls well within (indeed, at the lower end) of the range of multipliers accepted within the Second Circuit), and *citing Roberts v. Texaco, Inc.,* 979 F.Supp. 185, 198 (S.D.N.Y.1997) (*rev'd on diff., grounds by Kaplan v. Rand,* 192 F.3d 60 (2d Cir.1999)) (awarding a 5.5 multiplier in race discrimination class action); *Wal-Mart Stores,* 396 F.3d 96, 126 (2d Cir.2005) (multiplier of 3.5 in antitrust class action); *Maley, v. Del Global Techs. Corp.* 186 F.Supp.2d 358369-71 (S.D.N.Y. 2002) (approving "modest multiplier" of 4.65 in securities fraud class action); *In re Interpublic Secs. Litig.,* No. Civ. 6527 Class Action, 03 Civ. 1194 Derivative Action, 2004 U.S. Dist. LEXIS 21429, at *36-37 (S.D.N.Y. Oct. 26, 2004) (multiplier of 3.96); *In re Lloyd's Am. Trust Fund Litig.,* 2002 U.S. Dist. LEXIS 22663, (S.D.N.Y. Nov. 26, 2002) at *27 (multiplier of "just" 2.09 is "at the lower end of the range of multipliers awarded by courts in the Second Circuit."). *See also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (4 multiplier); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 488-89 (S.D.N.Y. 1998) (3.97 multiplier).

While a modest multiplier, for example, the 2.4 in *Velez* or the 2.05 multiplier in

Bellifemine, would be amply warranted in this case, plaintiffs' counsel seek less than their lodestar and have agreed to continue working on behalf of the class to monitor the company's compliance with the settlement for three years without additional fees. Accordingly, the lodestar cross check demonstrates that the fee sought herein is moderate, reasonable and warranted. Accordingly, we respectfully submit that the Court may confidently approve the fee award here without exhaustive scrutiny of the detailed, contemporaneous time records of all counsel which are submitted herewith *in camera*.

1. The Hourly Rates On Which the Lodestar Cross Check is Based are Reasonable

In setting a reasonable hourly rate, the starting point is the prevailing hourly rates in the district where the district court sits. *Perdue,* 130 S. Ct. at 1673. In addition to the *Velez* and *In re Marsh* cases cited above, in which hourly rates of $600 to $775 for senior lawyers and $400 to $500 for others were described by Judge McMahon as being below the rates charged by defense firms which litigate regularly in this district, recent cases opining on prevailing hourly rates in the Southern District of New York include *Heisman Trophy Trust v. Smack Apparel Co*., 665 F. Supp. 2d 420 (S.D.N.Y. 2009) (2009 rates of $940 to $980 for partner, $555 to $580 for associate, $325 to $350 for less senior associate, and $225 to $235 for paralegal).

Also instructive is the National Law Journal's survey of billing rates in December 2010, Herbst Decl. ¶ 18 and Ex.4, which reveals New York billing rates of senior partners above $900, average and mean partner rates from $613 to $785, and senior associate rates of $575 to $690. This survey demonstrates that the hourly rates used to calculate the lodestar cross check here, $500 to $725 for partners and $250 to $415 for associates, are well within the range of the prevailing market rates in this community. The Laffey Matrix, Herbst Decl., ¶ 18, Ex. 5, www.laffeymatrix.com, is an accepted tool for establishing hourly rates in the Washington,

D.C. legal community that may be recovered in fee petitions like this one. *Laffey v. Northwest Airlines*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd*, 241 U.S. App. D.C. 11, 746 F.2d 4 (D.C. Cir. 1984); *Interfaith Comm'ty Org. v. Honeywell*, 426 F.3d 694, 708-709 (3d Cir. 2005). Its hourly rates for June 1, 2010 to May 31, 2011 are $709 for lawyers more than 20 years out of law school, $589 for lawyers 11 to 19 years out, $522 for lawyers 8 to 10 years out, $381 for lawyers 4 to 7 years out, $294 for lawyers 1 to 3 years out, and $161 for paralegals. Washington-Baltimore hourly rates are, if anything, lower than prevailing rates in the Southern District of New York, yet the hourly rates sought here are in almost every instance lower than the rates prescribed by the Laffey Matrix. This also confirms the reasonableness of the hourly rates calculated here. *See also Barbour v. City of White Plains,* 07 Civ. 3014 (RPP) (S.D.N.Y. May 24, 2011) (approving $625 hourly rate in fee shifting case for civil rights lawyer with 12 years less experience than Mr. Herbst (27 years and 39 years respectively); *Rozell v. Ross-Holst,* 576 F. Supp 2d 527, 546 (S.D.N.Y. 2008) (awarding experienced civil rights litigator fees at $600 per hour three years ago).[5] Mr. Herbst, Ms. Fink and Ms. Webber have all affirmed that they have been paid at their requested rates in other cases, and the Declaration of Wayne Outten, Esq., a prominent employment and class action lawyer with wide experience in this legal community, confirms that the hourly rates sought here by Mr. Herbst, Ms. Fink, Ms. Webber and the other attorneys and paralegals are reasonable, justified by their qualifications and experience, and well within the range of hourly rates charged in New York City.

2. The Hours Reflected in the Lodestar Were Reasonably Expended

The legislative history of the fee shifting statutes establishes that "counsel for a

[5] The Laffey Matrix suggests that hourly rates for senior lawyers have increased $64 in the last three years in the Washington-Baltimore legal community. The hourly rate of Ms. Webber, who is based in Washington D.C., is fully supported by the Laffey Matrix and certainly by the higher "forum" rates generally prevailing in this District.

prevailing party should be paid, as is traditional with attorneys compensated by a fee-paying client, 'for all time reasonably expended on a matter.'" S. Rep. No. 94-1011, at 6 (1976), 1976 U.S.C.C.A.N. at 5913, quoting *Davis v. County of Los Angeles*, 8 E.P.D. ¶ 9444 (C.D. Cal. 1974). Counsel for plaintiffs, just like counsel with fee-paying clients, have reviewed their time records and exercised billing judgment in deciding to exclude some hours from the fee request, while confirming that the remaining hours were necessary and appropriate for the litigation. *See Hensley*, 461 U.S. at 434; Herbst Decl. ¶ 6, Webber Decl. ¶ 5; Fink Decl. ¶¶ 18-19.

In determining the reasonable number of hours, a court should not try to guess how minimal an effort could have been put forth and still been successful. *Sylvester v. City of New York,* No. 03 Civ. 8760(FM), 2006 WL 3230152, at *12 (S.D.N.Y. Nov. 8, 2006). In evaluating whether the hours were reasonably expended, the test is whether "at the time the work was performed, a reasonable attorney would have engaged in similar time expenditures" not whether, in hindsight, that specific effort appears unrelated to plaintiffs' success. *Grant v. Martinez*, 973 F.2d 96, 99 (2d Cir. 1992). Indeed, the Second Circuit has specifically recognized that it is not merely unsuccessful efforts in support of a prevailing claim that are compensable time, but even time related to unsuccessful claims may be compensable:

> So long as the plaintiff's unsuccessful claims are not wholly unrelated to the plaintiff's successful claims, hours spent on the unsuccessful claims need not be excluded from the lodestar amount.

Heng Chan, 2007 U.S. Dist. LEXIS 33883, at * 17-18 (SDNY May 4, 2007) (quoting *Lunday v. City of Albany,* 42 F.3d 131, 134 (2d Cir. 1994)); *see also Kurowski v. Krajewski*, 848 F.2d 767, 776 (7th Cir. 1988) ("A losing argument in support of a successful claim for relief is fully compensable time.").

Here, the hours expended were the necessary precursors for prevailing on the central claims of discrimination in compensation and promotion, and for obtaining very substantial

classwide injunctive and monetary relief. As the Supreme Court held:

> Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.

Hensley, 461 U.S. at 435.

E. The Application for Reimbursement of Litigation Expenses Should be Granted

"It is well-established that counsel who create a common fund ... are entitled to the reimbursement of [all reasonable] litigation costs and expenses ...." *Velez,* 2010 WL 4877852, at *24, quoting *In re Marsh ERISA Litig.,* 265 F.R.D. at 150; *see also In re Marsh & McLennan,* 2009 U.S. Dist. LEXIS 120953, at *59 (S.D.N.Y. Dec. 23, 2009). In class action settlements nationwide, litigation costs and expenses average about 2.8 percent of the total recovery. Eisenberg and Miller, *Attorneys Fees and Expenses in Class Action Settlements: 1993-2008,* at 26. Here, Class Counsel has incurred $301,814.88 in expenses, or 2.4%, less than the average percentage reported. These expenditures, over more almost five years of litigation, are reasonable for a case of this kind, and full recoupment should be granted.

F. The Requested Fee Award Is More than Justified by the Risks and Efforts Undertaken by Counsel and the Excellent Results Achieved in this Case.

The fee award sought herein is fully supported under the *Grinnell/Goldberger* factors noted above.

1. The Litigation Risk Undertaken by Plaintiffs' Counsel was Substantial

In this Circuit, litigation risk is the "pivotal" and "perhaps the foremost" factor to be considered in assessing a reasonable and appropriate award of attorneys fees in class actions. *In re Telik, Inc. Securities Litigation,* 576 F. Supp. 2d at 592; *In re Marsh Erisa Litigation,* 265 F.R.D. at 147, *citing In re Global Crossing Securities & Erisa Litigation,* 225 F.R.D. 436, 467

(S.D.N.Y. 2004). As Judge McMahon, *citing Goldberger,* 209 F.3d at 52 ("virtually all [securities class action] cases are settled"), has noted, "[r]isk is not uniform in all class actions[,]" and some securities fraud, antitrust and product-liability class actions are not all that risky, particularly when there has been an accounting restatement, government enforcement action or consent decree, or government-ordered recall. *In re Marsh*, 265 F.R.D. at 147.

That argument does not apply to employment discrimination class actions, and certainly not this one. As the *Hnot* and *Velez* cases demonstrate, employment discrimination class action cases do not settle early or easily. They are often tried, or settle only immediately before, during or after trial. Moreover, as exemplified here, they are almost uniformly complex, difficult, lengthy endeavors, involving (1) the investment of hundreds of thousands of dollars in expenses for expert statistical analysis, which itself is very complicated and usually subject to "dueling experts," (2) the discovery and analysis of enormous quantities of emails and documentation, and (3) depositions of many company officials. Witnesses willing to come forward are difficult if not impossible to find among class members still employed by the defendant company. Even among formerly employed class members, the risk of cooperation with plaintiffs' counsel and, more important, of providing affidavits and testimony in support of the class is perceived (accurately) to present risks to one's career. Standards for class certification are difficult and depend upon the shifting winds of the Supreme and Circuit Courts.

At the time this class action was commenced, the predecessor *Hnot* action had not been settled. *Hnot* had been going on for many years, discovery had been and was continuing to be hard-fought, settlement efforts had failed, and the case appeared to be headed for trial. While class certification had been granted for the years 1998-2001, an intervening Second Circuit case provided an opportunity for Willis to move to decertify the class, which it did, albeit

unsuccessfully. The possibility that new corporate structures and policies might make this case different from and even more difficult than *Hnot* was high. At the time this settlement was reached, the class certification and summary motions were unresolved, and the significant possibility that the case would be lost could not be reliably gauged. Moreover, the standards for class certification in employment discrimination cases, including a primary theory upon which class certification was being sought here, were under review in *Dukes v. Wal-Mart*.

Even if class certification had been granted, summary judgment denied to defendants, and the case proceeded to trial, plaintiffs would inevitably have confronted a variety of risks resulting in potential loss of the case. Beyond the basic risk that the trier of fact might not have accepted plaintiffs' theory of the case about the subjectivity of decision-making and a pattern of unlawful gender discrimination, there was also the risk that the jury would have credited defendants' statistical expert's testimony over that of plaintiffs' expert, and would have found that there was no class-wide gender disparity in pay and promotion, or that the gender disparity was not statistically significant, or not evidence of unlawful gender discrimination. It was certainly not at all clear, when this case was commenced or at any time thereafter, that plaintiffs would be able to establish class liability and a reliable measure of economic damages to the class, all of which was vigorously contested by defendants and their experts.

For all these reasons, the risk for plaintiffs' counsel in this case was high. Judge McMahon's holding in *In re Marsh,* at 148, is equally applicable here:

> Moreover, in addition to the risks discussed above, Plaintiffs' Counsel had to contend with the traditional risks inherent in any contingent litigation. [] Counsel accepted this case on a contingent basis, with the attendant risk that they would receive nothing at all. There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk. Cf. *Blum v. Stenson,* 465 U.S. 886, 902, 104 S.Ct. 1541, 79 L. Ed. 2d 891 (1984) (Brennan, J. concurring) ("[T]he risk of not prevailing, and therefore the risk of not receiving any attorney's fees, is a proper basis on which a

district court may award an upward adjustment to an otherwise compensatory fee."); *Gaskill v. Gordon,* 160 F.3d 361, 363 (7th Cir. 1998) ("Because they shift part of the risk of loss from client to lawyer, contingent-fee contracts usually yield a larger fee in a successful case than an hourly fee would."). The risk factor, then, strongly supports the requested fee.

2. The Complexity and Long Duration of this Case Support Class Counsel's Fee Request.

Counsel have labored on Ms. Cronas's claims since she was terminated in 2004, and on the class claims since 2006. These claims were litigated against skilled and determined adversaries -- highly-regarded and pre-eminent defense counsel and experts -- who mounted an aggressive and vigorous defense at every stage of the litigation. Defendants opposed our motion to intervene in *Hnot*; moved to dismiss our separate action filed thereafter; resisted our efforts to expand discovery and the scope of the class both geographically, outside the New York office, and temporally; fought tenaciously to limit the corporate officials' email accounts to be searched, and the scope of search terms to be used, in electronic discovery, and to impose the cost of such discovery upon plaintiffs; vigorously opposed the motions for class certification; and moved to obtain summary judgment. The complexity and duration of this case is reflected in its myriad docket entries. In short, the parties were in the "trenches" in this matter for years.

3. The Time and Labor Expended and Responsibility Undertaken by Counsel was Substantial

Class counsel devoted tremendous time and effort over the years to ensuring the successful resolution of this case on behalf of the class, and counsel will continue to devote substantial time and effort over the next three years to ensure successful implementation of the Settlement. Through October 18, 2011, class counsel have devoted almost 8,400 hours to this case on the class and Cronas claims, almost 7,500 on the class claims alone. *See* Herbst Decl., ¶ 21 n. 7. Both the tremendous amount of time class counsel have devoted to this case without assurance of compensation, and the opportunity cost of involvement in such intensive and

protracted litigation, factor in support of the fee request.

4. **Class Counsel Obtained a Substantial Benefit for the Class**

Class counsel obtained significant injunctive relief and a class award of $8,188.362.88. These represent substantial benefits for the class. The programmatic relief will have a beneficial effect on most, if not all, currently-employed Willis New York women, as well as those employed in the future. The monetary relief, an average of more than $25,000 for each of the 317 class members, represents more than two-thirds of the economic loss that plaintiffs would likely have recovered were they to have prevailed at trial. Given the risks that this Court may have denied plaintiffs' motion to certify a class for the monetary claims, or granted defendants' motion for summary judgment on the claims of both class representatives (possibly effectively terminating the class action in defendants' favor), or that plaintiffs might have lost at trial, or that plaintiffs might have prevailed on the merits but been awarded lesser damages, the sizeable settlement fund obtained by class counsel represents an excellent achievement.

5. **The Standing of Class and Opposing Counsel at the Bar is High**

Class counsel are leading practitioners in the fields of civil rights, complex federal litigation, employment discrimination and class actions who have brought their expertise to bear on this particularly complex and protracted case. As detailed in the attached declarations, class counsel are experienced litigators at some of the nation's preeminent civil rights, employment and class actions firms.

The team includes attorneys Robert L. Herbst, Rosalind S. Fink and Christine E. Webber. Mr. Herbst has been litigating and trying civil rights and employment discrimination cases to juries for more than 35 years. Both at Beldock Levine & Hoffman LLP and Giskan Solotaroff Anderson & Stewart LLP, Mr. Herbst brought to this case substantial experience in civil rights, employment discrimination and consumer class actions. He has also served on the Executive

Board of the National Employment Lawyers Association of New York ("NELA/NY"). Ms. Fink is a former president of the New York County Lawyers' Association and has been one of the City's pre-eminent employment law practitioners for more than 31 years. Ms. Webber, a partner at the firm of Cohen Millstein Sellers & Toll, a class action law firm with extensive experience litigating large civil rights class actions, served as lead counsel in the *Hnot* case, and serves as Co-Chair of the Class Action Committee of the National Employment Lawyers' Association. Thus, the team assembled by plaintiffs' counsel has had substantial direct experience in litigating the types of claims brought here. Herbst Decl. ¶ 3 (Ex. 1); Fink Decl. ¶ 13 (Ex.1); Webber Decl. ¶¶ 2, 4 (Ex. A); Outten Decl. at ¶¶ 9-11. The result was a collective greater than the sum of its parts. Together, this team was able to move this action forward and achieve significant relief on behalf of the class and Ms. Cronas.

Additionally, despite the duration of the litigation and the number of different firms and attorneys who participated as class counsel over time, class counsel were able to litigate efficiently by dividing responsibilities reflecting their individual strengths and experience. Herbst Decl. at ¶¶ 11, 15. Counsel also pursued a discovery plan which focused the time spent in reviewing the substantial document production and in preparing for and taking numerous depositions on the specific information needed to support certification and to prove liability and damages. *Id.*

The standing of opposing counsel at the bar is also considered under the *Grinnell/Goldberger* factors. *Bellifemine,* at *16; *In re Marsh,* 265 F.R.D. at 51 ("The high quality of defense counsel opposing plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Bettina Plevan and the Proskauer firm meet that test.

6. **The Requested Award Is Reasonable to Charge a Victorious Plaintiff**

At 21.7 percent of the common fund (after expenses are deducted), an amount less than lodestar with no multiplier, the class-claim fee award sought herein is clearly a reasonable fee to charge a victorious plaintiff class here. As Judge Crotty noted in *Clark, at* *28-29, an "award of one-third of the fund is consistent with what reasonable, paying clients pay in contingency employment cases." Here, plaintiffs seek significantly less.

G. **This Court's Prior Decisions Declining to Award Fees in the Amounts and Percentages Requested, with Negative Lodestars, Are Distinguishable**

In two prior common fund cases involving significantly smaller settlements, this Court has used the percentage of recovery method to award percentage fees of 16 and 19%, using "negative lodestars" to validate such reduced percentage awards. *See Beane v. Bank of New York Mellon*, 2009 U.S. Dist. LEXIS 27504 (S.D.N.Y.) (reducing 28.5% request to 16% of $2.2 million ERISA settlement fund); and *Ayers v. SGS Control Services Inc.*, 2008 U.S. Dist. LEXIS 69307 (S.D.N.Y.) (reducing 28% request to 19% of $7,250,000 settlement fund in FLSA case).

These cases are distinguishable for several reasons. Unlike this employment discrimination class action, neither was found to be particularly complex or risky. *Beane*, at *21-22; *Ayers*, at *28-29 (*citing cases* noting that FLSA cases are less complex than many, as they are "at bottom, a suit for unpaid overtime"). Both decisions pre-date the 2009 Eisenberg and Miller study, so the Court did not have the benefit of knowing that, in employment cases, even in cases of low or medium risk, the average percentage award nationwide is 26.2%, with high risk cases like this one averaging 35.1%.

Moreover, in both cases, this Court's review of counsels' time records revealed that senior attorneys billed a disproportionate amount of attorney time or total time, which appeared to be excessive hours and inappropriate staffing. *Beane*, at *20-21, 23-24 ($352,000 legal fee

approved on lodestar of $1,014,549.25 where senior attorneys billed 83% of attorney time while more junior attorneys billed 17% of attorney time); *Ayers*, at *27-28, 30-31 ($1,881,241 lodestar reduced to $1,377,500 where senior attorneys billed 49% of total time, junior attorneys 2.5%, and paralegals 48.5%). In both cases, the Court also found many of the paralegal time entries too imprecise and vague for meaningful review. *Beane*, at *21; *Ayers*, at *28.

Here, we respectfully submit there are no such defects. At BLH and GSAS -- the two firms that did the bulk of the work on this case, accounting for 6,397.4 of the 7,488.6 hours spent on the class claims by all four firms and 6930.6 of the 8395.7 hours spent on the class and Cronas claims combined -- senior lawyer time accounted for 30% of total attorney time on the class claims (1290.6/4216.4) and combined claims (1447.1/4688.8), and 20% of total time on the class claims (1290.6/6397.4) and combined claims (1447.1/6930.6). There was thus no disproportionate or excessive billing or inappropriate staffing by senior attorneys. Moreover, we have scoured our time records for vague or imprecise entries by paralegals or attorneys, and have excised them from the lodestar. Any such entries that remain are inadvertent and isolated, and the time records of plaintiffs' counsel cannot reasonably be said to be either too imprecise or vague for meaningful review. Thus, whatever the merits of the use of negative lodestars as part of the lodestar cross check in those two cases,[6] such use is not warranted here.

Any fee significantly lower than the negative lodestar class counsel have imposed upon themselves would be unreasonable in this fee-shifting class action case which had, among other

[6] To our knowledge, no decision of the Second Circuit has affirmed the use of a negative lodestar multiplier to justify reductions of fee awards in an employment discrimination or other employment class action, or in any other class action predicated on a civil rights law with a fee shifting provision for which the lodestar is the "presumptively reasonable fee." *Cf. In re Nortel Networks Corp. Securities Litigation*, 539 F.3d at 130, 132, 134 ("troubled" but approving this Court's reduction of fee request from 8.5% to 3% of $1billion settlement fund where $34 million fee award was 2.04 times lodestar).

supporting factors, very significant contingency risk. The award sought here is moderate and reasonable and merits approval by this Court.

IV. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court approve the $3,200,896.91 award of attorneys' fees and expenses agreed to by the parties in the Consent Decree.

Dated: New York, New York
October 31, 2011

s/ Robert L. Herbst
____
Robert L. Herbst (RH8851)

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