KESSLER TOPAZ MELTZER
& CHECK, LLP
ELI R. GREENSTEIN (*Pro Hac Vice*)
JENNIFER L. JOOST (*Pro Hac Vice*)
PAUL A. BREUCOP (*Pro Hac Vice*)
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)
– and –
GREGORY M. CASTALDO (*Pro Hac Vice*)
280 King of Prussia Rd.
Radnor, PA 19087
Telephone: 610/667-7706
610/667-7056 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
ARTHUR C. LEAHY (*Pro Hac Vice*)
ELLEN GUSIKOFF STEWART (*Pro Hac Vice*)
BRIAN O. O'MARA (Nevada Bar #8214)
RYAN A. LLORENS (*Pro Hac Vice*)
MATTHEW I. ALPERT (*Pro Hac Vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

NIX PATTERSON & ROACH, LLP
BRADLEY E. BECKWORTH (*Pro Hac Vice*)
JEFFREY J. ANGELOVICH (*Pro Hac Vice*)
SUSAN WHATLEY (*Pro Hac Vice*)
LISA P. BALDWIN (*Pro Hac Vice*)
205 Linda Drive
Daingerfield, TX 75638
Telephone: 903/645-7333
903/645-4415 (fax)

Lead Counsel for Plaintiffs
[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	)	No. 2:09-cv-01558-GMN-VCF CLASS ACTION LEAD PLAINTIFFS' OMNIBUS RESPONSE TO THE OBJECTIONS OF: (1) NICKOLAS A. KACPROWSKI (DKT. NOS. 372, 378); (2) COLORADO PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION (DKT. NO. 373); (3) NATIONAL AUTOMATIC SPRINKLER INDUSTRY PENSION FUND (DKT. NO. 374); AND (4) WILLIAM E. STAFFORD, JR. (DKT. NO. 371) DATE: March 1, 2016 TIME: 9:00 a.m. CTRM: The Honorable Gloria M. Navarro

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. THE COURT-APPROVED NOTICE PROGRAM SATISFIED RULE 23 AND DUE PROCESS 4

III. THE OBJECTIONS TO LEAD COUNSEL'S FEE AND EXPENSE REQUEST ARE WITHOUT MERIT AND SHOULD BE OVERRULED 9

A. The 25% Benchmark Fee Is Appropriate Here 9

B. A Lodestar Cross-Check Is Not Required in the Ninth Circuit But, Nonetheless, Fully Supports the Fee Request 12

C. An Analysis of the *Vizcaino* Factors Supports the Fee Request 15

D. The Fees Are Appropriately Requested as a Percentage of the Gross Settlement Fund 17

E. The Objectors' Request that the Court Order the Production of Time Records Has Been Rejected by Magistrate Judge Ferenbach 18

F. The Timing of the Payment of Attorneys' Fees Is a Standard Term Routinely Approved by Courts 19

G. There Is No Clear Sailing Agreement on Fees 21

IV. LEAD PLAINTIFFS ARE MORE THAN ADEQUATE CLASS REPRESENTATIVES 23

V. THE SETTLEMENT CONSIDERATION IS INHERENTLY ADEQUATE 24

A. The Settlement Provides an Outstanding Recovery for the Class 24

B. The $10.00 Minimum Distribution Is Reasonable and Has Been Accepted by Courts Nationwide 27

VI. THE STAFFORD OBJECTION SHOULD BE SUMMARILY OVERRULED 29

VII. CONCLUSION 30

TABLE OF AUTHORITIES

Page

CASES

Allen v. Bedolla,
787 F.3d 1218 (9th Cir. 2015) 22

Barnes v. FleetBoston Fin. Corp.,
No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072
(D. Mass. Aug. 22, 2006).....13

Booth v. Strategic Realty Tr., Inc.,
No. 13-cv-04921-JST, 2015 U.S. Dist. LEXIS 140723
(N.D. Cal. Oct. 15, 2015).....10, 12

Brown v. Kinross Gold U.S.A., Inc.,
No. 2:02-cv-00605-PMP-RJJ, slip op.
(D. Nev. Jan. 29, 2009) 11

City of Livonia Emps'. Ret. Sys. v. Wyeth,
No. 07 Civ. 10329 (RJS), slip op.
(S.D.N.Y. Aug. 7, 2013) 28

City of Providence v. Aéropostale, Inc.,
No. 11 Civ. 7132(CM)(GWG), 2014 U.S. Dist. LEXIS 64517
(S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*,
607 F. App'x 73 (2d Cir. 2015) 2

CompSource Okla. v. BNY Mellon, N.A.,
No. CIV 08-469-KEW, 2012 U.S. Dist. LEXIS 185061
(E.D. Okla. Oct. 25, 2012) 11

DeJulius v. New Eng. Health Care Emps. Pension Fund,
429 F.3d 935 (10th Cir. 2005) 6

Destefano v. Zynga, Inc.,
No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196
(N.D. Cal. Feb. 11, 2016)..... *passim*

Eisen v. Carlisle & Jacquelin,
417 U.S. 156 (1974).....4, 5

Fidel v. Farley,
534 F.3d 508 (6th Cir. 2008) 6, 7

Goldberger v. Integrated Res., Inc.,
209 F.3d 43 (2d Cir. 2000).....12

Page

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 2

Hensley v. Eckerhart,
461 U.S. 424 (1983).....15

Hill v. State St. Corp.,
No. 09-12146-GAO, 2015 U.S. Dist. LEXIS 2166
(D. Mass. Jan. 8, 2015) 5

IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc.,
No. 3:09-cv-00419-MMD-WGC, 2012 U.S. Dist. LEXIS 151498
(D. Nev. Oct. 19, 2012).....10

In re Alliance Gaming Corp. Sec. Litig.,
No. 2:04-cv-00821-BES-PAL, slip op.
(D. Nev. June 28, 2007) 11

In re Am. Apparel S'holder Litig.,
No. CV 10-06352 MMM, 2014 U.S. Dist. LEXIS 184548
(C.D. Cal. July 28, 2014) 10, 12

In re Apollo Grp. Inc. Sec. Litig.,
No. CV 04-2147-PHX-JAT, 2012 U.S. Dist. LEXIS 55622
(D. Ariz. Apr. 20, 2012).....14

In re AT&T Corp. Sec. Litig.,
455 F.3d 160 (3d Cir. 2006).....18

In re Bear Stearns Cos.,
909 F. Supp. 2d 259 (S.D.N.Y. 2012).....13, 25

In re Bluetooth Headset Prods. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011) 22

In re CIT Grp. Inc. Sec. Litig.,
No. 1:08-cv-06613-BSJ-THK, slip op.
(S.D.N.Y. June 13, 2012).....11

In re Comverse Tech., Inc. Sec. Litig.,
No. 06-CV-1825 (NGG) (RER), 2010 U.S. Dist. LEXIS 63342
(E.D.N.Y. June 24, 2010) 11

Page

In re Dataproducts Corp. S'holders Litig.,
No. 11164, 1991 WL 165301
(Del. Ch. Aug. 22, 1991).....7

In re Ecotality, Inc. Sec. Litig.,
No. 13-cv-03791-SC, 2015 U.S. Dist. LEXIS 114804
(N.D. Cal. Aug. 28, 2015).....2, 14

In re Flag Telecom Holdings,
No. 02-cv-3400 (CM) (PED), 2010 U.S. Dist. LEXIS 119702
(S.D.N.Y. Nov. 8, 2010).....18

In re Gilat Satellite Networks, Ltd.,
No. CV-02-1510, 2007 WL 1191048
(E.D.N.Y. Apr. 19, 2007).....29

In re Global Crossing Sec. & ERISA Litig.,
225 F.R.D. 436 (S.D.N.Y. 2004).....28, 29

In re High-Tech Emp. Antitrust Litig.,
No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 26635
(N.D. Cal. Mar. 3, 2015).....25

In re Immune Response Sec. Litig.,
497 F. Supp. 2d 1166 (S.D. Cal. 2007).....12

In re Initial Pub. Offering Sec. Litig.,
721 F. Supp. 2d 210 (S.D.N.Y. 2010).....13

In re Livingsocial Mktg. & Sales Practice Litig.,
298 F.R.D. 1 (D.D.C. 2013).....20

In re Lucent Techs., Inc. Sec. Litig.,
327 F. Supp. 2d 426 (D.N.J. 2004).....17

In re Marsh & McLennan Cos., Inc. Sec. Litig.,
No. 04 Civ. 8144 (CM), 2009 U.S. Dist. LEXIS 120953
(S.D.N.Y. Dec. 23, 2009).....7, 17

In re Maxim Integrated Prods., Inc. Sec. Litig.,
No. C 08-00832 JW, slip op.
(N.D. Cal. Nov. 1, 2010).....14

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000).....26

Page

In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.,
No. 02 MDL 1484 (JFK), 2007 WL 4526593
(S.D.N.Y. Dec. 20, 2007).....28

In re Mutual Funds Inv. Litig.,
MDL No. 1586, 2011 WL 1102999
(D. Md. Mar. 23, 2011).....28

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

In re Network Assocs. Sec. Litig.,
76 F. Supp. 2d 1017 (N.D. Cal. 1999).....2

In re Nuvelo, Inc., Sec. Litig.,
No. C 07-04056 CRB, 2011 U.S. Dist. LEXIS 72260
(N.D. Cal. July 6, 2011).....10

In re Online DVD-Rental Antitrust Litig.,
779 F.3d 934 (9th Cir. 2015).....17, 18

In re PurchasePro.com, Inc. Sec. Litig.,
No. 2:01-cv-00483-JLQ, slip op.
(D. Nev. Oct. 12, 2006).....11

In re Qwest Commc'ns Int'l, Inc. Sec. Litig.,
625 F. Supp. 2d 1143 (D. Colo. 2009).....20

In re Rambus Inc. Derivative Litig.,
No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845
(N.D. Cal. Jan. 20, 2009).....2

In re Rite Aid Corp.,
396 F.3d 294 (3d Cir. 2005).....12

In re Sprint Corp. ERISA Litig.,
443 F. Supp. 2d 1249 (D. Kan. 2006).....28

In re StockerYale, Inc.,
No. 1:05cv00177-SM, 2007 U.S. Dist. LEXIS 94004
(D.N.H. Dec. 18, 2007).....9

In re Telik, Inc. Sec. Litig.,
576 F. Supp. 2d 570 (S.D.N.Y. 2008).....10

Page

In re TFT-LCD (Flat-Panel) Antitrust Litig.,
No. MDL 3:07-md-1827 SI, 2011 U.S. Dist. LEXIS 154288
(N.D. Cal. Dec. 27, 2011) 20

In re Transpacific Passenger Air Transp. Antitrust Litig.,
No. C 07-05634 CRB, 2015 WL 3396829
(N.D. Cal. May 26, 2015) 18

In re VeriFone Holdings, Inc. Sec. Litig.,
No. C-07-6140 EMC, 2014 U.S. Dist. LEXIS 20044
(N.D. Cal. Feb. 18, 2014).....20

In re Washington Public Power Supply Sys. Sec. Litig.,
19 F.3d 1291 (9th Cir. 1994) 11, 12

In re Williams Sec. Litig.,
No. 02-CV-72-SPF (FHM), slip op.
(N.D. Okla. Feb. 12, 2007) 11

Kagan v. Wachovia Sec. LLC,
No. 09-5337-SC, 2010 U.S. Dist. LEXIS 130340
(N.D. Cal. Nov. 23, 2010).....7

Landmen Partners, Inc. v. Blackstone Grp. L.P.,
No. 08-cv-03601-HB-FM, slip op.
(S.D.N.Y. Dec. 18, 2013).....11

Lane v. Facebook, Inc.,
696 F.3d 811 (9th Cir. 2012) 25

Local 703, I.B. of T. Grocery & Food Emps.
Welfare Fund v. Regions Fin. Corp.,
No. 2:10-cv-02847-KOB, slip op.
(N.D. Ala. Sept. 14, 2015) 2, 11, 24

Mehling v. New York Life Ins. Co.,
248 F.R.D. 455 (E.D. Pa. 2008).....28

Miller v. Ghirardelli Chocolate Co.,
No. C 12-04936 LB, 2014 U.S. Dist. LEXIS 141111
(N.D. Cal. Oct. 2, 2014).....20

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950).....4, 5, 9

Page

Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004) 27

New Eng. Carpenters Health Benefits Fund v. First Databank, Inc.
No. 05-11148-PBS, 2009 U.S. Dist. LEXIS 97364
(D. Mass. Oct. 20, 2009) 14

New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc.,
602 F. Supp. 2d 277 (D. Mass. 2009) 14

O'Keefe v. Mercedes-Benz U.S., LLC,
214 F.R.D. 266 (E.D. Pa. 2003) 13

Officers for Justice v. Civil Serv. Comm'n,
688 F.2d 615 (9th Cir. 1982) 27

Palmer v. Nigaglioni,
508 F. App'x 658 (9th Cir. 2013) 17

Powers v. Eichen,
229 F.3d 1249 (9th Cir. 2000) 17, 18

Rodriguez v. West Publ'g Corp.,
CV 05-3222 R (MCx), 2007 U.S. Dist. LEXIS 74767
(C.D. Cal. 2007), *aff'd in part and rev'd in part*,
563 F.3d 948 (9th Cir. 2009) 19

Silber v. Mabon,
18 F.3d 1449 (9th Cir. 1994) 4, 6

Silverman v. Motorola, Inc.,
No. 07 C 4507, 2012 U.S. Dist. LEXIS 63477
(N.D. Ill. May 7, 2012), *aff'd*,
739 F.3d 956 (7th Cir. 2013) 11

Six (6) Mexican Workers v. Ariz. Citrus Growers,
904 F.2d 1301 (9th Cir. 1990) 10

Staton v. Boeing Co.,
327 F.3d 938 (9th Cir. 2003) 18

Sullivan v. DB Invs., Inc.,
667 F.3d 273 (3d Cir. 2011) 29

Page

Torrisi v. Tucson Elec. Power Co.,
8 F.3d 1370 (9th Cir. 1993) 6

Vincent v. Reser,
No. C11-03572 CRB, 2013 U.S. Dist. LEXIS 22341
(N.D. Cal. Feb. 19, 2013).....18, 19

Vizcaino v. Microsoft Corp.,
290 F.3d 1043 (9th Cir. 2002) 10, 15, 16

Vollmer v. Selden,
350 F.3d 656 (7th Cir. 2003) 21

Weinberger v. Great N. Nekoosa Corp.,
925 F.2d. 518 (1st Cir. 1991).....22

Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.,
758 F. 2d 86 (3d Cir. 1985).....5

STATUTES, RULES AND REGULATIONS

15 U.S.C.
§77z-1(a)(3)(B)(iii)(I) 24
§78u-4(a)(3)(B)(iii).....23
§78u-4(a)(4) 1
§78u-4(a)(6) 10

Federal Rules of Civil Procedure
Rule 23 .....3, 4, 5, 23
Rule 23(c)(2).....5
Rule 23(h) 15

SECONDARY AUTHORITIES

Brian T. Fitzpatrick, *The End of Objector Blackmail?*,
62 Vand. L. Rev. 1623 (2009) 21

Federal Judicial Center, *Managing Class Action Litigation:*
A Pocket Guide for Judges (3d ed. 2010) 13

Newberg on Class Actions
§13.49.....25
§15.47.....13
§15.48.....13

Lead Plaintiffs[1] and Lead Counsel respectfully submit this omnibus response to the objections of: (1) Nickolas A. Kacprowski ("Kacprowski") (Dkt. Nos. 372, 378); (2) Colorado Public Employees' Retirement Association ("CoPERA") (Dkt. No. 373); (3) National Automatic Sprinkler Industry Pension Fund ("NASI") (Dkt. No. 374); and (4) William E. Stafford, Jr. ("Stafford") (Dkt. No. 371) (collectively, the "Objections" or the "Objectors"), and in further support of Lead Plaintiffs' Motion for (1) Final Approval of Class Action Settlement; (2) Approval of the Plan of Allocation of Settlement Proceeds; and (3) an Award of Attorneys' Fees and Expenses to Lead Counsel and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (Dkt. No. 358) (the "Motion"). For the reasons set forth below, and the entire record before the Court, the Motion should be granted and the Objections overruled.

I. INTRODUCTION

Following dissemination of the Notice to over ***two hundred thousand*** putative Class Members and publication of the Summary Notice in both a national newspaper and over a newswire service (and an extended objection and opt-out period), only ***four*** objections and ***eight*** requests for exclusion were received.[2] And importantly, only ***one*** objector raised any argument regarding the reasonableness of the Settlement itself. Such resounding approval by the Class weighs strongly in favor of final approval of this historic $75 million Settlement and the requests in the Motion. Indeed, "'the reaction of the class to the proffered settlement . . . is perhaps the ***most significant***

[1] Capitalized terms not defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement (the "Stipulation") (Dkt. No. 351) and the Joint Declaration of Brian O. O'Mara, Jeffrey J. Angelovich and Eli R. Greenstein (the "Joint Declaration") (Dkt. No. 361). Unless otherwise indicated, all emphases are added and all citations are omitted.

[2] *See* Supplemental Declaration of Michael Joaquin dated February 22, 2016 (the "Supp. Joaquin Decl."), ¶¶4, 17, submitted herewith.

factor to be weighed in considering its adequacy.'" *In re Rambus Inc. Derivative Litig.*, No. C 06-3513 JF (HRL), 2009 U.S. Dist. LEXIS 131845, at *10 (N.D. Cal. Jan. 20, 2009).[3] Not only has the Class demonstrated near unanimous support for the Settlement and the Motion, each of the four sophisticated institutional Lead Plaintiffs appointed by the Court to prosecute, monitor and oversee this complex litigation (*see* Dkt. No. 85) has expressly endorsed both the Settlement and Lead Counsel's requested attorneys' fees in sworn declarations. *See* Dkt. Nos. 362-365. Endorsements from the very type of investors Congress envisioned would lead securities class actions[4] demonstrate the presumptive reasonableness of the Settlement and Lead Counsel's request for attorneys' fees.[5]

Despite this remarkable Settlement and the overwhelming support of it by the Class and Lead Plaintiffs, the Objectors assert the following unsubstantiated complaints:

1. Kacprowski claims the Notice program was inadequate, despite the fact the Notice was mailed 48 calendar days before the objection deadline and 69 calendar days before the initially scheduled Settlement Hearing of December 15, 2015, ***and*** the fact the Settlement Hearing was continued and the deadlines for objecting and requesting exclusion were extended by Stipulation and Order (Dkt. No. 376);

---

[3] *See also Destefano v. Zynga, Inc.*, No. 12-cv-04007-JSC, 2016 U.S. Dist. LEXIS 17196, at *45-*46 (N.D. Cal. Feb. 11, 2016) ("Put another way, a 'court may appropriately infer that a class action settlement is fair, adequate, and reasonable when few class members object to it.'"); *In re Ecotality, Inc. Sec. Litig.*, No. 13-cv-03791-SC, 2015 U.S. Dist. LEXIS 114804, at *10-*11 (N.D. Cal. Aug. 28, 2015) (finding absence of a large number of objections to a proposed settlement weighed in favor of final approval); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.").

[4] *See, e.g.*, *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund*, 762 F.3d 1248, 1260 (11th Cir. 2014); *see also In re Network Assocs. Sec. Litig.*, 76 F. Supp. 2d 1017, 1020 (N.D. Cal. 1999).

[5] *See City of Providence v. Aéropostale, Inc.*, No. 11 Civ. 7132(CM)(GWG), 2014 U.S. Dist. LEXIS 64517, at *12 (S.D.N.Y. May 9, 2014) ("A settlement reached 'under the supervision and with the endorsement of a sophisticated institutional investor . . . is entitled to an even greater presumption of reasonableness.'"), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

2. Kacprowski, CoPERA and NASI object to Lead Counsel's request for attorneys' fees of 25% of the common fund, which is the well-recognized "benchmark" fee award in the Ninth Circuit;[6]

3. Kacprowski claims Lead Plaintiffs are inadequate class representatives despite this Court's prior Order finding them adequate (Dkt. No. 85); and

4. Kacprowski claims the Settlement consideration is too low and complains the Settlement provides no recovery for Class Members with claims less than $10.00.

Each of the foregoing Objections is completely devoid of merit and should be denied. First, Kacprowski's complaints regarding the Notice are moot in light of the continued Settlement Hearing and extended objection and opt-out deadline. In any event, the Notice process – even before it was extended – fully satisfied Rule 23 and due process. Second, the Objectors' complaints regarding the fee request are unsupported by evidence or legal authority. It is indisputable that: (i) the percentage of the fund method is the preferred method for awarding fees in the Ninth Circuit, (ii) 25% is the benchmark fee award in the Ninth Circuit, (iii) a lodestar cross-check is not required, and (iv) Lead Counsel have provided more than sufficient evidence in the event the Court chooses to conduct a discretionary lodestar cross-check, as recognized by Magistrate Judge Ferenbach in his Order denying CoPERA's motion to compel (Dkt. No. 389 at 5) ("Based on Lead Counsel's declarations, the court has sufficient information to perform a lodestar fee calculation."). Third, Kacprowski's suggestion that Lead Plaintiffs are inadequate is frivolous, ignores the mandate of the Private Securities Litigation Reform Act of 1995 ("PSLRA") and is completely at odds with the Court's Order appointing these four institutional funds as lead plaintiffs at the outset of the litigation six years ago, as well as the evidence provided in Lead Plaintiffs' motion for class certification. Finally,

[6] In connection with its objection to Lead Counsel's fee request, CoPERA, on December 21, 2015, moved the Court to compel discovery of Lead Counsel's daily time records, retainer agreements with Lead Plaintiffs and supplemental expense documentation (Dkt. No. 379). CoPERA's motion to compel was denied in its entirety by Order dated January 27, 2016 (Dkt. No. 389).

Kacprowski's claim that the Settlement consideration is too low is ridiculous. Quite the contrary, this landmark $75 million Settlement marks the largest securities settlement in this District and also represents an above-average percentage of damages as calculated by Lead Plaintiffs' damages expert.

In sum, all four Objections should be denied in their entirety for the reasons set forth below.

II. THE COURT-APPROVED NOTICE PROGRAM SATISFIED RULE 23 AND DUE PROCESS

Of the over two hundred thousand potential Class Members, just one, Kacprowski, contends the Notice program was inadequate. *See* Dkt. No. 372 at 2, 4; Dkt. No. 378 at 3-8. Kacprowski's complaint is based on the fact that he did not receive individual Notice until November 19, 2015. However, as detailed below, this delay was caused solely by the failure of ***Kacprowski's broker*** to timely respond to Gilardi's request for information, which was critical because Kacprowski held his shares in "street name" – *i.e.*, in the name of his broker. Moreover, any complaint regarding "late" notice is ***entirely moot*** because of the Court's Order continuing the Settlement Hearing and extending the objection and opt-out deadlines (Dkt. No. 376), as well as the Court's *sua sponte* Order continuing the Settlement Hearing a second time (Dkt. No. 388). Based on these facts alone, this Objection should be withdrawn. Even without these extensions, however, the Court-approved Notice program clearly satisfied Rule 23 and due process. *See* Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order") (Dkt. No. 352).

The Ninth Circuit repeatedly has explained that, in the context of Rule 23's notice requirements, "the appropriate standard is the 'best notice practicable' under *Eisen* and *Mullane*." *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994) (finding the "best practicable notice under the circumstances" was provided where an absent class member, a beneficial stock owner who held his

stock in street name, did not receive notice until it was too late to object but notice was provided to the class member's brokerage house) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950)).[7] The Notice program in this Action surpassed this standard. Indeed, the Notice campaign here was "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314; *see also Hill v. State St. Corp.*, No. 09-12146-GAO, 2015 U.S. Dist. LEXIS 2166, at *8 (D. Mass. Jan. 8, 2015) ("[T]he inquiry in class proceedings is not whether each member of the class has actually received notice, but whether notice 'is reasonably calculated to reach the absent class members.'").

Pursuant to the Notice Order, an extensive Court-approved program was implemented – consisting of the mailed Notice, a Summary Notice published in *Investor's Business Daily* and over *PR Newswire*, and a dedicated Settlement website. *See generally* Declaration of Carole K. Sylvester ("Sylvester Decl.") (Dkt. No. 355); *see also Zimmer Paper Prods., Inc. v. Berger & Montague, P.C.*, 758 F. 2d 86, 90 (3d Cir. 1985) ("It is well settled that in the usual situation first-class mail and publication fully satisfy the notice requirements of both Fed. R. Civ. P. 23 and the due process clause.") (citing *Eisen*, 417 U.S. at 173-75). Moreover, locating all potential Class Members in this Action was a multi-step process. The first step required Gilardi to obtain an initial list of Class Members from MGM's stock transfer agent. *See* Declaration of Michael Joaquin ("Joaquin Decl."), ¶4 (Dkt. No. 375-1). However, as is often the case in securities actions, "[t]he identities of the vast

[7] In his objection, Kacprowski omits the most important clause of this standard—that the Court "must direct to class members the best notice ***that is practicable under the circumstances***." *See* Dkt. No. 378 at 3. As the Supreme Court has noted "the import of [Rule 23(c)(2)'s] language is unmistakable. Individual notice must be sent to all class members whose names and addresses may be ascertained ***through reasonable effort***." *Eisen*, 417 U.S. at 173.

majority of Class Members are not known by MGM's stock transfer agent. This is because securities are often held in 'street name,' that is, in the name of banks and other institutions who hold the securities for the benefit of individuals and entities." *Id.*, ¶5. To address this reality, therefore, the Notice Order states:

> Nominees who purchased MGM publicly-traded securities for the benefit of another Person during the Class Period shall be requested to send the Notice and Proof of Claim and Release form to such beneficial owners of MGM securities within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim and Release form to such beneficial owners.

Notice Order, ¶9. Similar language was included in the Notice and was also highlighted in a cover letter accompanying the Notice and Proof of Claim and Release form (together, the "Claim Package") mailed to brokers, banks and other institutions (the "Nominees"). The initial Notices and letters to Nominees were mailed 48 calendar days before the initial objection/opt-out deadline established by the Notice Order, and 69 calendar days before the initially scheduled Settlement Hearing of December 15, 2015. These time frames are "significantly longer than the notice periods approved by the Ninth and Tenth Circuits in similar securities class action cases." *Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008).[8]

With respect to Kacprowski specifically, Gilardi mailed the Notice to his broker, Scottrade, Inc., on October 8, 2015. Supp. Joaquin Decl., ¶7 n.4. While the Notice Order requested Scottrade to either mail the Notice to its beneficial owners who are potential Class Members or provide the

[8] *See also Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1373, 1375 (9th Cir. 1993) (31 days afforded between mailing of notice and deadline to opt out or object); *DeJulius v. New Eng. Health Care Emps. Pension Fund*, 429 F.3d 935, 940, 946-47 (10th Cir. 2005) (32 days afforded between mailing of notice and deadline to opt out or object); *Silber*, 18 F.3d at 1451-52 (40 days afforded between mailing of notice and deadline to opt out or object).

names and addresses of such beneficial owners to Gilardi ***within 10 days*** from receipt of the Notice, Scottrade failed to do either for ***30 days*** – until November 9, 2015 – when it finally provided the names of its beneficial owners to Gilardi. *Id.* Gilardi then promptly mailed the Notice to Scottrade's beneficial owners, including Kacprowski. The fact that Scottrade did not provide such information in a "timely fashion is no fault of Lead Counsel. That is the risk a shareholder takes in registering his or her securities in street name." *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04 Civ. 8144 (CM), 2009 U.S. Dist. LEXIS 120953, at *70 (S.D.N.Y. Dec. 23, 2009); *see also In re Dataproducts Corp. S'holders Litig.*, No. 11164, 1991 WL 165301, at *10 n.6 (Del. Ch. Aug. 22, 1991) ("stockholders who choose to hold stock in street name must bear the risks (which accompany the advantages) associated with that decision, including the risk that they may not receive information as promptly as stockholders who choose to hold shares in their own name"); *Fidel*, 534 F.3d at 514 ("notice provided to the class members' nominees – *i.e.*, the brokerage houses – has been deemed sufficient even if brokerage houses failed to timely forward the notice to the beneficial owners").[9] Therefore, Kacprowski's claim of late Notice is completely without merit and should be overruled. Indeed, notwithstanding Kacprowski's claim of inadequate notice, he was still able to timely file his objections. Dkt. No. 372.

[9] Importantly, Nominees are not subject to the jurisdiction of the Court, and there is no legal recourse for a Nominee's failure to provide such information, other than for the Nominee's own client (*i.e.*, Kacprowski) to bring an action against ***it*** for failing to respond. Kacprowski's grievance is therefore more appropriately directed towards Scottrade, not Lead Counsel or the Claims Administrator. Indeed, investors have sued brokers who fail to live up to their contractual obligations to provide beneficial owners with notice of securities class action settlements. *See, e.g.*, *Kagan v. Wachovia Sec. LLC*, No. 09-5337-SC, 2010 U.S. Dist. LEXIS 130340 (N.D. Cal. Nov. 23, 2010) (denying motion to dismiss with respect to breach of contract claim for failure to provide notice of securities class action settlement).

Moreover, any complaint regarding Kacprowski's "late" notice is now moot in light of the extended hearing date, opt-out deadline and objection deadline. On December 7, 2015, on the parties' Joint Stipulation, the Court ordered the Settlement Hearing continued from December 15, 2015 to January 29, 2016. Dkt. No. 376. Pursuant to that Order, on December 9-10, 2015, Gilardi mailed a postcard notice to over 170,000 potential Class Members informing them of the new Settlement Hearing date and the extended deadlines for objecting to the Settlement, opting out of the Class, and submitting claims. *See* Supp. Joaquin Decl., ¶8.

Kacprowski brazenly claims credit for these extensions, declaring that his "efforts were integral in securing supplemental class notice and more time for class members to object, opt out, and file claims." Dkt. No. 378 at 3. This is not true. As set forth in the Court's December 7, 2015 Order (Dkt. No. 376), Lead Counsel informed the Court that the Settling Parties believed the volume of the belated Nominee requests in connection with the Settlement warranted an extension of certain deadlines. Dkt. No. 376 at 2. In other words, Kacprowski is not responsible for bringing this issue to the attention of Lead Counsel, Gilardi or the Court. In addition, Kacprowski completely ignores the fact that of the more than ***two hundred thousand*** putative Class Members who received the mailed Notice, Kacprowski is the ***only*** one who objected to the Notice program at all.[10] And, no objections have been filed since the original objection/opt-out deadline of November 24, 2015, and only five requests for exclusion from the Class have been received after that date.

Clearly, the Notice program here – a cohesive blend of high-profile publications, directed mailings to specific institutions and individuals, additional nominee outreach, a website dedicated to

[10] To be clear, Stafford filed his Objection on November 19, 2015, and CoPERA filed its Objection on the same day as Kacprowski, November 24, 2015. While NASI's Objection was not officially filed until December 1, 2015, it is dated November 23, 2015—a day before the original objection deadline and a day before Kacprowski's Objection was filed.

the Settlement, and the availability of telephonic and written support – was without a doubt, "reasonably calculated, under all the circumstances, to apprise interested parties" of the Settlement and afford them an opportunity to object or opt out. *Mullane*, 339 U.S. at 314; *see also Zynga*, 2016 U.S. Dist. LEXIS 17196, at *23 (utilizing notice program identical to the one used in the instant case, court determined that "[u]nder the circumstances presented, the Court is satisfied that this system of providing notice was reasonably calculated to provide notice to Settlement Class Members and was the best form of notice available under the circumstances").[11] Thus, Kacprowski's Objection on this ground should be overruled. *See Zynga*, 2016 U.S. Dist. LEXIS 17196, at *24 ("The [objector] objected on the grounds that the notice procedure did not give it sufficient time to respond or object, and thus failed to comport with due process. But given that the response deadline was extended, this objection is overruled.").

III. THE OBJECTIONS TO LEAD COUNSEL'S FEE AND EXPENSE REQUEST ARE WITHOUT MERIT AND SHOULD BE OVERRULED

A. The 25% Benchmark Fee Is Appropriate Here

Kacprowski, CoPERA and NASI object to Lead Counsel's 25% benchmark fee request. *See* Dkt. Nos. 378 at 12-17; 373 at 1-5; 374 at 1-2.[12] Recognizing that the percentage method is the

[11] *See In re StockerYale, Inc.*, No. 1:05cv00177-SM, 2007 U.S. Dist. LEXIS 94004, at *4, *7 (D.N.H. Dec. 18, 2007) (finding that due process is satisfied where notice mailed by first class mail to all class members who can be identified with reasonable effort and summary notice is published once in the national edition of *Investor's Business Daily* and on the *PR Newswire*).

[12] Ignoring the robust record Lead Counsel provided in support of their fee request, Objectors also claim it is "impossible" to determine a fair and reasonable fee from the information provided by Lead Counsel and suggested Lead Counsel should have provided more detailed information to support their fee request. *See* Dkt. Nos. 373 at 2; 374 at 2; 378 at 19-23. However, Magistrate Judge Ferenbach already rejected this argument (Dkt. No. 389).

proper method to award fees in common fund cases, including securities fraud cases,[13] the Objectors still misconstrue controlling Ninth Circuit authority holding that a benchmark 25% fee award is "presumptively reasonable." *See, e.g.*, *Vizcaino*, 290 F.3d at 1047 (awarding 28% fee on $96,885,000 settlement); *see also Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990) ("Nothing in this case requires departure from the 25 percent standard award."); *Zynga*, 2016 U.S. Dist. LEXIS 17196, at *56 ("In common fund cases in the Ninth Circuit, the 'benchmark' award is 25 percent of the recovery obtained."); *Booth v. Strategic Realty Tr., Inc.*, No. 13-cv-04921-JST, 2015 U.S. Dist. LEXIS 140723, at *23 (N.D. Cal. Oct. 15, 2015); *In re Nuvelo, Inc., Sec. Litig.*, No. C 07-04056 CRB, 2011 U.S. Dist. LEXIS 72260, at *5, *7-*8 (N.D. Cal. July 6, 2011) (recognizing the Ninth Circuit's 25% benchmark and noting that some cases suggest "the Ninth Circuit's benchmark 'is at approximately 30% of the fund'").[14] Each of these Objectors also ignores this District's precedent awarding 25% fees or higher in securities cases. *See IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-cv-00419-MMD-WGC, 2012 U.S. Dist.

---

[13] *See, e.g.*, *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Zynga*, 2016 U.S. Dist. LEXIS 17196, at *56 ("'The percentage method is particularly appropriate in common fund cases where "the benefit to the class is easily quantified."'"); *In re Am. Apparel S'holder Litig.*, No. CV 10-06352 MMM (JCGx), 2014 U.S. Dist. LEXIS 184548, at *66 (C.D. Cal. July 28, 2014) ("Moreover, using the percentage method is proper in a securities fraud case."); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) ("Indeed, the PSLRA expressly provides that class counsel are entitled to attorneys' fees that represent a 'reasonable percentage' of the damages recovered by the class. Thus, Congress plainly contemplated the percentage-of-recovery would be the primary measure of attorneys' fees awards in federal securities class actions.") (citing 15 U.S.C. §78u-4(a)(6)).

[14] Reflecting the lack of support for his contention, Kacprowski randomly picks 18.4% as an appropriate fee. Dkt. No. 378 at 16. In suggesting this percentage, Kacprowski completely ignores both Ninth Circuit precedent and the 2015 NERA study cited by Lead Counsel in their opening brief (Dkt. No. 360 at 2), showing that between 1996 and 2014, the median fee awarded in securities class action settlements of between $25 and $100 million was 26.8% of the settlement amount. 2015 NERA Study at 34, Figure 29. The same study found that for settlements reached in 2012-2014 in the same range, the median fee award was 25%. *Id.*

LEXIS 151498 (D. Nev. Oct. 19, 2012) (approving fee request for 25% of fund); *Brown v. Kinross Gold U.S.A., Inc.*, No. 2:02-cv-00605-PMP-RJJ, slip op. (D. Nev. Jan. 29, 2009), Order Approving Lead Plaintiffs' Motion for Award of Attorneys' Fees and Expenses (Dkt. No. 320-2) (approving fee request for 29%); *In re PurchasePro.com, Inc. Sec. Litig.*, No. 2:01-cv-00483-JLQ, slip op. (D. Nev. Oct. 12, 2006), Order for Reimbursement of Attorneys' Expenses and Awarding Attorney Fees (Dkt. No. 430) (approving fee request for 25%); *In re Alliance Gaming Corp. Sec. Litig.*, No. 2:04-cv-00821-BES-PAL, slip op. (D. Nev. June 28, 2007), Order Awarding Attorneys' Fees and Reimbursement of Expenses (Dkt. No. 112) (approving fee request for 25%).

Moreover, the requested benchmark fee of 25% is imminently reasonable when viewed in the context of recent analogous fee awards in securities fraud class actions where the recovery meets or exceeds the $75 million obtained here.[15] This precedent demonstrates that the requested benchmark fee of 25% is consistent, if not below, what is customary and awarded in similar cases, and is certainly reasonable given Lead Counsel's exemplary recovery for the Class here.[16] Thus, the Objections to Lead Counsel's 25% fee request should be overruled.

---

[15] *See, e.g.*, *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, No. 2:10-cv-02847-KOB, slip op. (N.D. Ala. Sept. 14, 2015) (awarding 30% of $90 million fund); *Landmen Partners, Inc. v. Blackstone Grp. L.P.*, No. 08-cv-03601-HB-FM, slip op. (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of $85 million fund); *In re CIT Grp. Inc. Sec. Litig.*, No. 1:08-cv-06613-BSJ-THK, slip op. (S.D.N.Y. June 13, 2012) (awarding 26.5% of $75 million fund); *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2010 U.S. Dist. LEXIS 63342, at *23 (E.D.N.Y. June 24, 2010) (awarding 25% of $225 million fund); *CompSource Okla. v. BNY Mellon, N.A.*, No. CIV 08-469-KEW, 2012 U.S. Dist. LEXIS 185061, at *21-*22 (E.D. Okla. Oct. 25, 2012) (awarding 25% of $280 million fund); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 U.S. Dist. LEXIS 63477, at *14-*15 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million fund), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *In re Williams Sec. Litig.*, No. 02-CV-72-SPF (FHM), slip op. at 2 (N.D. Okla. Feb. 12, 2007) (awarding 25% of $311 million fund).

[16] Kacprowski's repeated citation to *In re Washington Public Power Supply Sys. Sec. Litig.*, 19 F.3d 1291 (9th Cir. 1994) ("*WPPSS*") is unavailing. *WPPSS* must be evaluated in context. The settlement in *WPPSS* totaled $687 million, an extraordinary result at that time (over 20 years ago),

B. A Lodestar Cross-Check Is Not Required in the Ninth Circuit But, Nonetheless, Fully Supports the Fee Request

As an initial matter, the Ninth Circuit does not require a lodestar analysis or lodestar cross-check. *See, e.g.*, *Booth*, 2015 U.S. Dist. LEXIS 140723, at *23 ("Because the benefit to the class is easily quantified in common-fund settlements, the Ninth Circuit permits district courts to award attorneys a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar."). However, should the Court decide to engage in a discretionary lodestar cross-check, the Court has sufficient information with which to do so, as Magistrate Judge Ferenbach already has held. Dkt. No. 389 at 5.[17]

Indeed, Lead Counsel have provided individual firm declarations setting forth the number of hours worked on this six-year litigation and the hourly rates for each individual attorney and professional support staff who worked on this matter for each law firm, which collectively resulted

---

before courts more regularly saw so-called "mega-settlements." *Id.* at 1297. This Settlement, by contrast, while impressive, does not fall within the top 100 securities settlements reached since the PSLRA became law in 1995. *See* ISS Top 100 Settlements as of June 30, 2015. By contrast, if *WPPSS* had been a PSLRA-era case, it would be the 19th largest ever reached. *Id.* The *WPPSS* court affirmed the district court's decision to use the lodestar method to determine a reasonable fee, because "'the immense' size . . . of the settlement fund magnified beyond all reasonable limits the margin of error inherent in a percentage fee award." 19 F.3d at 1297. The court did, however, acknowledge that fees in the range of 20-40 percent are typical in many common fund cases, but concluded that the size of the fund there precluded a meaningful analysis of a percentage fee award in terms of comparisons with awards in other reported cases. *Id.*

[17] *See Am. Apparel*, 2014 U.S. Dist. LEXIS 184548 at *76 ("'In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours.'"); *see also In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1176 (S.D. Cal. 2007) ("Although counsel have not provided a detailed cataloging of hours spent, the Court FINDS the information provided to be sufficient for purposes of lodestar cross-check."); *In re Rite Aid Corp.*, 396 F.3d 294, 306 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting."); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) ("Of course, where [the lodestar method] is used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized.").

in a ***total lodestar that exceeds the entire fee request***. Such a "negative" multiplier is prima facie evidence that the requested fee is fair. *See, e.g.*, *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (approving fee with a negative multiplier and noting that the negative multiplier was a "strong indication of the reasonableness of the [requested] fee"). But, as mentioned above, the Court need not even go that far, because this is a common fund class action, in which every Circuit has recognized the percentage of the fund as appropriate for determining a reasonable fee. Thus, a lodestar cross-check is simply not required.[18]

Moreover, the Court should also be aware that NASI – which piggybacks ***entirely*** on CoPERA's Objection and raises no independent objections of its own – is a repeat objector and has raised, ***and lost***, in a number of cases, the exact arguments it raises here. This raises concerns regarding NASI's true motive. *See* Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges*, at 36 (3d ed. 2010) (it is well established that the Court should "be wary of self-interested professional objectors who often present rote objections to class counsel's fee requests and add little or nothing to the fee proceedings").[19]

---

[18] Contrary to Kacprowski's suggestion, this is not a statutory fee-shifting case. *See* Dkt. No. 378 at 20 (quoting from *Newberg on Class Actions* §§15.47, 15.48 ("Calculation of Statutory Fees in ***Statutory Fee-Shifting Cases***.")).

[19] *See also In re Initial Pub. Offering Sec. Litig.*, 721 F. Supp. 2d 210, 215 (S.D.N.Y. 2010) ("professional objectors undermine the administration of justice by disrupting settlement in the hopes of extorting a greater share of the settlement for themselves and their clients"); *Barnes v. FleetBoston Fin. Corp.*, No. 01-10395-NG, 2006 U.S. Dist. LEXIS 71072, at *3 (D. Mass. Aug. 22, 2006) ("Repeat objectors to class action settlements can make a living simply by filing frivolous appeals and thereby slowing down the execution of settlements. The larger the settlement, the more cost-effective it is to pay the objectors rather than suffer the delay of waiting for an appeal to be resolved (even an expedited appeal)."); *O'Keefe v. Mercedes-Benz U.S., LLC*, 214 F.R.D. 266, 295 n.26 (E.D. Pa. 2003) ("Federal courts are increasingly weary of professional objectors: Some of the objections were obviously canned objections filed by professional objectors who seek out class actions to simply extract a fee by lodging generic, unhelpful protects.").

For example, in *New Eng. Carpenters Health Benefits Fund v. First Databank, Inc.*, the court rejected NASI's objections regarding the fee application and also denied NASI's request for attorneys' fees:

> NASI's approach sought a full audit of attorneys' fees and costs. Its methodology was cumbersome, time-consuming and resource intensive. It was against the weight of the caselaw which approves a percentage of the fund as the methodology for determining attorneys' fees, with a lodestar calculation as a pragmatic cross-check . . . . I fully rejected NASI's approach, its filings provided no substantial benefit to the class.

No. 05-11148-PBS, 2009 U.S. Dist. LEXIS 97364, at *7-*8 (D. Mass. Oct. 20, 2009); *see also New Eng. Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F. Supp. 2d 277, 279 (D. Mass. 2009) ("[a]fter a review of [NASI's] objections, the Court certifies the proposed national settlement classes . . . and approves the class settlements . . . on the ground that they are fair, reasonable and adequate"). Likewise, in *In re Apollo Grp. Inc. Sec. Litig.*, NASI objected to the fee request, claiming it was "unsupported by an itemized statement of legal services rendered." No. CV 04-2147-PHX-JAT, 2012 U.S. Dist. LEXIS 55622, at *26 n.2 (D. Ariz. Apr. 20, 2012). Again, NASI's arguments were rejected:

> [A]n itemized statement of legal services is not necessary for an appropriate lodestar cross-check. . . . Accordingly, the Court is unpersuaded by the Sprinkler Fund's contention that these issues with the lodestar calculation indicate that Class Counsel lacks credibility. Nor does the Court find that the attorneys' fees award should be reduced as a result of these issues.

Id.; *see also In re Maxim Integrated Prods., Inc. Sec. Litig.*, No. C 08-00832 JW, slip op. at 2 (N.D. Cal. Nov. 1, 2010) ("Thus, the Court overrules the lone objection to the Fee and Expense Application," by NASI "as the application complies with the requirements of *In re Mercury*, 2010 WL 3239460, at *5-*6. Accordingly, the Fee and Expense Application filed in connection with the Settlement is hereby GRANTED.").

In sum, a lodestar cross-check is not required, but even if the Court determines to perform one, Magistrate Judge Ferenbach already has held the Court has sufficient information before it to do so. Dkt. No. 389 at 5. And, NASI's similar objections in other cases have been rejected and they, along with the related objections by Kacprowski and CoPERA, should be rejected here.

C. An Analysis of the *Vizcaino* Factors Supports the Fee Request

In the Ninth Circuit, a proper analysis of the reasonableness of a fee award considers the following factors: (1) the result achieved; (2) the risk involved; (3) the skill required and the quality of the work by counsel; (4) market rates; and (5) the contingent nature of the fee. *Vizcaino*, 290 F.3d at 1048-50. Lead Counsel's voluminous submission in support of their 25% fee request thoroughly addresses the factors, providing specific details of the substantial work performed on behalf of the Class over the past six years and the risk of no recovery undertaken in obtaining this record-setting recovery. *See* Dkt. No. 360. Lead Plaintiffs respectfully incorporate those detailed arguments herein. The Objectors completely ignore the *Vizcaino* factors and their application to the facts of this case. Dkt. No. 358. This omission is fatal to their arguments, as demonstrated by a mere summary of the *Vizcaino* factors below.

The first *Vizcaino* factor – the result achieved – is most certainly satisfied here. The result achieved for the Class in this case far surpasses any securities class action settlement in the history of this District. And, the result achieved is unquestionably the most important factor to be considered in determining a fee in a common fund class action. *See* Fed. R. Civ. P. 23(h), Committee's Notes to 2003 Amendment ("For a percentage approach to fee measurement, ***results achieved is the basic starting point***."); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Zynga*, 2016 U.S. Dist. LEXIS 17196, at *57-*58 ("The overall

result and benefit to the class from the litigation is the most important factor in granting a fee award.").

The second *Vizcaino* factor – the risk involved – also supports the fee request. As set forth at length in the Joint Declaration and in the Motion and supporting memoranda (Dkt. Nos. 359-361), Lead Counsel diligently prosecuted this Action for six years with no assurance of payment or even recovery of their expenses. In addition to the risk of non-payment, the risks of establishing liability, damages, and obtaining certification of the Class all weigh in favor of granting the fee request. Although Lead Plaintiffs defeated Defendants' motions to dismiss, they were sure to face uphill battles in proving their claims at summary judgment and trial. This case had no restatement of financial results, no related SEC enforcement action, no criminal charges, no claims against auditors or other third parties, and no claims under the Securities Act of 1933. Defendants intended to challenge falsity, materiality, scienter, causation and damages, and the parties' settlement negotiations further refined the contours of Defendants' defenses. In the end, the parties negotiated a settlement that appropriately balanced the losses suffered by the Class with the risk of proving damages in the amounts sought.

Finally, the Lead Plaintiffs appointed by the Court pursuant to the PSLRA are sophisticated institutional investors. As set forth in their respective declarations, Lead Plaintiffs were closely involved throughout the prosecution and resolution of the litigation and had a sound basis for assessing the reasonableness of the fee request. Dkt. Nos. 362-365. In approving the fee request, Lead Plaintiffs considered factors such as the substantial work performed, the size of the recovery obtained, and the considerable risks of proceeding with trial. *Id.* "[P]ublic policy considerations support fee awards where, as here, large public pension funds, serving as lead plaintiffs, conscientiously supervised the work of lead counsel, and gave their endorsement to lead counsel's

fee request." *Marsh & McLennan*, 2009 U.S. Dist. LEXIS 120953, at *47; *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("Significantly, the Lead Plaintiffs, both of whom are institutional investors with great financial stakes in the outcome of the litigation, have reviewed and approved Lead Counsel's fee and expenses request."). Accordingly, Lead Plaintiffs' endorsement of the fee and expense request makes it presumptively reasonable and supports its approval.

In sum, an analysis of the relevant factors confirm the requested benchmark fee of 25% is indeed reasonable.

D. The Fees Are Appropriately Requested as a Percentage of the Gross Settlement Fund

Kacprowski contends Lead Counsel's attorneys' fees "should be calculated net of expenses" rather than from the gross recovery. Dkt. No. 378 at 17. Contrary to Kacprowski's contention, however, calculating attorneys' fees from the net recovery is not the "clear preference" in the Ninth Circuit. *Id.* Instead, the Ninth Circuit clearly holds the PSLRA "does not mandate a particular approach to determining fees. . . . It simply requires that the fees and expenses ultimately awarded be reasonable in relation to what the plaintiff recovered." *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000); *Palmer v. Nigaglioni*, 508 F. App'x 658 (9th Cir. 2013) (holding that the "district court did not abuse its discretion in approving an attorneys' fee award in the sum of 28% of the ***gross*** common fund recovery") (citing *Powers*, 229 F.3d at 1258); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015) ("The district court did not err in calculating the attorneys' fees award by calculating it as a percentage of the total settlement fund, including notice and administrative costs, and litigation expenses."). As the Ninth Circuit noted in *In re Online DVD-Rental*: "We have repeatedly held 'that the reasonableness of attorneys' fees is not measured by the

choice of the denominator.'" 779 F.3d at 953 (quoting *Powers*, 229 F.3d at 1258); *see also Staton v. Boeing Co.*, 327 F.3d 938, 974-75 (9th Cir. 2003) ("The district court also did not abuse its discretion by including the cost of providing notice to the class . . . as part of its putative fund valuation . . . . We have said that the choice of whether to base an attorneys' fee award on either gross or net recovery should not make a difference so long as the end result is reasonable.").[20]

The practical effect of awarding fees on a net basis is to deprive attorneys of the expenses they advanced on behalf of the Class, in this case, over a six-year period. As set forth below and in Lead Plaintiffs' opening briefing (Dkt. Nos. 359-361), these expenses were all reasonable and necessary and clearly benefitted the Class in securing this record-setting recovery. The Court would be well within Ninth Circuit precedent in awarding attorneys' fees based on the gross amount of the Settlement Fund and overruling Kacprowski's Objection.

E. The Objectors' Request that the Court Order the Production of Time Records Has Been Rejected by Magistrate Judge Ferenbach

CoPERA, NASI and Kacprowski claim Lead Counsel should be required to produce detailed, contemporaneous time records in support of their fee application. *See* Dkt. Nos. 373 at 1-4, 374 at 1-2, 378 at 19-23. CoPERA filed a Motion to Compel Production of Fees and Costs Information (Dkt.

[20] Courts across the country are in accord. *See, e.g.*, *In re Flag Telecom Holdings*, No. 02-cv-3400 (CM) (PED), 2010 U.S. Dist. LEXIS 119702, at *66-*67 (S.D.N.Y. Nov. 8, 2010) ("Courts in this District and throughout the nation . . . have not hesitated to award 30% of the 'gross' recovery, or more, in complicated securities fraud cases such as this."); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 172 n.8 (3d Cir. 2006) (rejecting objections that attorneys' fees must be calculated based on net settlement amount and noting "[e]xpenses are generally considered and reimbursed separately from attorneys' fees"). Moreover, although Judge Breyer awarded fees on the net settlement amount in *In re Transpacific Passenger Air Transp. Antitrust Litig.*, he also expressly noted that "it is not an abuse of discretion to calculate fees based on the gross fund." No. C 07-05634 CRB, 2015 WL 3396829, at *1 (N.D. Cal. May 26, 2015). In fact, Judge Breyer has also awarded fees on gross settlement amounts. *See, e.g.*, *Vincent v. Reser*, No. C11-03572 CRB, 2013 U.S. Dist. LEXIS 22341, at *14-*15 (N.D. Cal. Feb. 19, 2013) (awarding 25% of gross settlement fund, plus expenses).

No. 379), which was denied on January 27, 2016 (Dkt. No. 389 at 5 ("Based on Lead Counsel's declarations, the court has sufficient information to perform a lodestar fee calculation.")). Accordingly, Objectors' requests for this information already have been addressed and rejected.[21]

F. The Timing of the Payment of Attorneys' Fees Is a Standard Term Routinely Approved by Courts

Standing alone, Kacprowski claims the timing of the payment of Lead Counsel's attorneys' fees is "unfair" and "distasteful" because Lead Counsel will receive their fees "potentially years" before the Class receives any benefit. Dkt. No. 378 at 9-10. This argument is speculative and against the great weight of authority routinely approving such provisions. In ignoring the substantial authority supporting these provisions,[22] Kacprowski fails to cite a single case rejecting such a commonplace settlement provision, nor offers a single reason why this provision is "unfair."[23] And, contrary to Kacprowski's contention, there is a legitimate reason why these provisions are routinely included in settlement agreements.

The Stipulation preliminarily approved by the Court states that "[t]he attorneys' fees, expenses, charges, and costs, as awarded by the Court, shall be paid to Lead Counsel from the Settlement Fund, as ordered, immediately following the entry of an order by the Court awarding

---

[21] Magistrate Judge Ferenbach also rejected CoPERA's request for supplemental expense detail. *See* Dkt. No. 389 at 6.

[22] Kacprowski admits that other courts routinely approve "quick pay" provisions. *See* Dkt. No. 378 at 10 n.4. Yet, Kacprowski dismisses the wisdom of courts throughout the nation, baldly claiming these courts' analyses are "superficial at best." *Id.*

[23] *Rodriguez v. West Publ'g Corp.*, CV 05-3222 R (MCx), 2007 U.S. Dist. LEXIS 74767 (C.D. Cal. 2007), *aff'd in part and rev'd in part*, 563 F.3d 948 (9th Cir. 2009), cited by Kacprowski, does not support Kacprowski's position. *See* Dkt. No. 378 at 9. While counsel did not receive their fees until after the Effective Date in that case, there is no evidence in the record or in Kacprowski's Objection that counsel there requested fees prior to the Effective Date, and their request was denied. It is likely, therefore, that the timing of payment of fees was a negotiated term of that settlement.

such fees, expenses, charges, and costs." Dkt. No. 351, ¶7.2. This provision is no different than thousands of other settlement agreements in class actions across the country.[24] Importantly, Kacprowski ignores the fact that if the Settlement or fee award is reversed on appeal, Lead Counsel are required to refund the fees to the Settlement Fund. Dkt. No. 351, ¶7.2 ("In the event that the Judgment or the order awarding such fees, expenses, charges, and costs paid to Lead Counsel pursuant to ¶7.1 is reversed or modified by final non-appealable order, or if the Settlement is cancelled or terminated for any reason, then Plaintiffs' Counsel shall be jointly and severally obligated to make appropriate refunds or repayments to the Settlement Fund, plus interest earned thereon at the same rate as earned on the Settlement Fund, within twenty (20) business days from receiving notice from Defendants' counsel or from a court of competent jurisdiction.").

Moreover, Kacprowski completely ignores the economic realities of this six-year class action litigation and the reasoning behind the commonplace use of such provisions in cases like this. Lead Counsel have been vigorously litigating this Action for over six years without any compensation, while advancing significant expenses that were necessary to achieve the substantial Settlement Fund created through Lead Counsel's efforts. Thus, the payment of attorneys' fees after six years of

[24] *See, e.g.*, *In re TFT-LCD (Flat-Panel) Antitrust Litig.*, No. MDL 3:07-md-1827 SI, 2011 U.S. Dist. LEXIS 154288, at *1-*2 (N.D. Cal. Dec. 27, 2011) ("With respect [to] the 'quick pay' provisions, Federal courts, including this Court and others in this District, routinely approve settlements that provide for payment of attorneys' fees prior to final disposition in complex class actions.") (collecting cases); *In re VeriFone Holdings, Inc. Sec. Litig.*, No. C-07-6140 EMC, 2014 U.S. Dist. LEXIS 20044, at *12 (N.D. Cal. Feb. 18, 2014) ("Finally, along with other courts in this District, the Court finds that the 'quick pay' nature of the attorneys' fee provision does not pose a problem."); *In re Livingsocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 22 n.25 (D.D.C. 2013) ("There is ample authority for the 'quick pay' provision.") (collecting cases); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 479 (S.D.N.Y. 1998) (collecting cases); *see also Miller v. Ghirardelli Chocolate Co.*, No. C 12-04936 LB, 2014 U.S. Dist. LEXIS 141111, at *16 (N.D. Cal. Oct. 2, 2014); *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1155 (D. Colo. 2009) (approving fee award over objections, and ordering that fee "SHALL BE PAID IMMEDIATELY to Lead Counsel") (emphasis in original).

litigation is anything but "quick." There is absolutely no risk in paying Lead Counsel immediately after entry of a judgment, given their obligation to refund the fees if the Settlement is terminated or the fee is reversed on appeal. To delay payment of Lead Counsel's attorneys' fees to satisfy a lone objector would defeat the entire purpose of the Stipulation's attorneys' fees provisions – provisions negotiated by the Settling Parties – which is so that "objectors who bring meritless appeals can no longer delay the point at which class counsel receive their fees." Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623, 1625 (2009). As such, those provisions are designed to reduce the "holdout tax" that blackmail objectors like Kacprowski can extract in class action litigation. *Id.*; *Vollmer v. Selden*, 350 F.3d 656, 660 (7th Cir. 2003) (describing objector as attempting to "intervene and cause expensive delay in the hope of getting paid to go away").

Further, Kacprowski's request that Lead Counsel repay any awarded fees with an interest rate higher than that earned on the Settlement Amount (*see* Dkt. No. 378 at 11-12) is not only unsupported by any authority whatsoever, it flies in the face of the negotiated terms of the Stipulation. In this respect, if the Settlement or the fee award were approved at the District Court level and then reversed upon appeal, it is Defendants (or the Settlement Fund) who would receive a return of the Settlement Amount – including any attorneys' fees paid to Lead Counsel – and they have already negotiated a specified interest rate that would necessarily accompany any such return of fees. *See* Dkt. No. 351, ¶7.2. Thus, this request is unreasonable, inconsistent with the adversarial negotiation of the Settling Parties, unsupported by any authority, and should be denied by the Court.

G. There Is No Clear Sailing Agreement on Fees

Kacprowski erroneously states the fee request is improper because the Stipulation contains a "clear sailing" provision. He is wrong. The Stipulation states Defendants will take ***no position*** on Lead Counsel's fees. *See* Dkt. No. 351, ¶7.5 ("Defendants shall take no position with respect to the

amount of fees or expenses sought, or to whether the Court should make any or all such awards."). This is not a "clear sailing" provision. Indeed, in *In re Bluetooth Headset Prods. Liab. Litig.*, a case Kacprowski cites in his Objection, the Ninth Circuit defined a clear sailing agreement as follows:

> These negotiated attorneys' fee and incentive awards were provided under what is known as a "clear sailing agreement," wherein the defendant agrees not to oppose a petition for a fee award up to a specified maximum value.

654 F.3d 935, 940 n.6 (9th Cir. 2011). Here, there is no negotiated ceiling or specified maximum value.

Defendants have not agreed to any set level of fees and are not paying fees directly to Lead Counsel. Instead, all attorneys' fees will be determined by the Court and paid from the common fund Settlement that was achieved for the Class. Thus, there is no potential conflict of interest, as was the concern of courts like *Weinberger v. Great N. Nekoosa Corp.*, 925 F.2d. 518, 524-25 (1st Cir. 1991), because there is no risk here that Lead Counsel could have traded off the Class' interests in exchange for Defendants' agreement to permit a higher fee.[25] Thus, Kacprowski's Objection should be overruled.

[25] *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. 2015), cited by Kacprowski, is readily distinguishable. Dkt. No. 378 at 24. There, the portion of the settlement fund not distributed to class members or paid out in attorneys' fees and administrative costs reverted back to the defendant. 787 F.3d at 1221. Therefore, the Ninth Circuit found that the settlement possessed the "'subtle signs that class counsel have allowed pursuit of their own self-interests . . . to infect the negotiations'" and remanded the settlement back to the district court to examine the settlement in light of those signs. *Id.* at 1224 (citing *Bluetooth*, 654 F.3d at 947). Those "subtle signs" are: (1) "'when counsel receive a disproportionate distribution of the settlement'"; (2) "'when the parties negotiate a "clear sailing" arrangement'"; and (3) when the parties create a reverter that returns unclaimed fees to the defendant. *Allen*, 787 F.3d at 1224 (citing *Bluetooth*, 654 F.3d at 943). None of those signs are present here.

IV. LEAD PLAINTIFFS ARE MORE THAN ADEQUATE CLASS REPRESENTATIVES

Kacprowski also baselessly contends Lead Plaintiffs are inadequate class representatives. *See* Dkt. No. 378 at 28-30. Not only is Kacprowski wrong, but the primary adequacy argument pervading many of his other objections – that large institutional investors are conflicted from representing small shareholders[26] – demonstrates an utter failure to understand the framework of the PSLRA and undermines many of his objections.

Congress has mandated that the presumptively most adequate lead plaintiffs in securities fraud cases are those class members who have (1) timely moved for appointment as lead plaintiff, (2) in the determination of the Court, have the largest financial interest, and (3) otherwise satisfy the requirements of Rule 23. 15 U.S.C. §78u-4(a)(3)(B)(iii). In other words, Kacprowski's alleged conflict – that large institutional investors are conflicted from representing small shareholders – was rejected by Congress over 20 years ago.

Following the Congressionally-mandated process, on October 25, 2010, the Court appointed Lead Plaintiffs – four sophisticated public pension funds – to lead this litigation, specifically finding Lead Plaintiffs to be "adequate because their interests appear to be aligned with the rest of the class, and they have significant resources to devote to this case, as they manage approximately $13.15 billion and apparently have recovered hundreds of millions of dollars for investors through PSLRA securities actions." Dkt. No. 85 at 5. Undoubtedly, Lead Plaintiffs are the prototypical institutional

[26] *See, e.g.*, Dkt. No. 378 at 2 ("Moreover, the class representatives are also large, institutional investors. They have little incentive to negotiate aggressively on behalf of class members with small claims."), 25 ("[T]he conflicts between the class representatives and other members of the class are another reason to view the 10% recovery in this case with suspicion."), 28 ("The class representatives are all institutional investors . . . [and] have little incentive to aggressively defend the rights of small investors, which may be why they appear to have accepted the provision of zero compensation for claims under $10.").

investors Congress envisioned as the appropriate leaders of securities class actions under the PSLRA. *See, e.g.*, *Local 703*, 762 F.3d at 1260 ("Congress and the courts have recognized that these sorts of investors are generally preferred as class representatives in securities litigation.") (citing 15 U.S.C. §77z-1(a)(3)(B)(iii)(I) and collecting cases). And, as detailed in Lead Counsel's class certification motion and briefing (Dkt. Nos. 283-284; 319), Lead Plaintiffs have adequately represented the interests of the Class for the last six years by, *inter alia*, reviewing court filings, producing documents to Defendants, providing deposition testimony, overseeing Lead Counsel's efforts, and obtaining the largest securities settlement in this District's history. All of their efforts on behalf of the Class demonstrate their adequacy. Moreover, Kacprowski's Objection is illogical. Regardless whether Lead Plaintiffs are large institutions or small investors, they have a common goal that protected all Class Members large and small equally – to obtain the largest recovery possible and therefore maximize ***every*** Class Member's recovery. As such, Kacprowski's Objection to Lead Plaintiffs' adequacy should be summarily overruled.

V. THE SETTLEMENT CONSIDERATION IS INHERENTLY ADEQUATE

A. The Settlement Provides an Outstanding Recovery for the Class

Without ***any*** concrete basis for doing so, Kacprowski contends the Settlement consideration is too low. Out of the more than two hundred thousand potential Class Members, Kacprowski is the sole objector to the amount of the Settlement.[27] That is because the other 99.999% of the Class recognize that this is an outstanding recovery for the Class, particularly given the unique facts and circumstances of this case, of which only Lead Counsel and Lead Plaintiffs have first-hand knowledge. And, as the Honorable Layn R. Phillips (Ret.) – a former United States District Judge

[27] Kacprowski purchased 25 MGM shares during the Class Period, fewer than 1/100,000 of one percent of the shares outstanding. *See* Defendants' Response to Objections (Dkt. No. 391).

and highly experienced and respected mediator who presided over the mediations in this case – stated in his sworn declaration, the Settlement here is "a well-reasoned and sound resolution of highly uncertain litigation and . . . the result is fair, adequate, reasonable and in the best interests of the Class." Dkt. No. 356, ¶14.[28] Kacprowski fails to address this evidence or much less submit any evidence of his own to controvert these statements. Nor can he, when the Settlement is the largest securities class action settlement in the history of the District of Nevada. And, as pointed out above, Lead Counsel obtained this outstanding Settlement without a financial restatement by the Company, or regulatory or governmental agency investigation related to the same conduct, a fact that Kacprowski wholly disregards.[29]

Here, Lead Counsel recovered approximately 10% of ***Lead Plaintiffs'*** estimate of maximum damages. Defendants estimated damages at ***zero***, arguing that there was absolutely no causal link between the various price declines in MGM's securities and the corrective disclosures alleged by

---

[28] *See also In re High-Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 U.S. Dist. LEXIS 26635, at *7 (N.D. Cal. Mar. 3, 2015) (finding Judge Phillips to be "an experienced mediator"); *Bear Stearns*, 909 F. Supp. 2d at 265 (approving settlement where parties "engaged in extensive arm's length negotiations, which included multiple sessions mediated by retired [F]ederal [J]udge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases").

[29] Kacprowski again misleadingly provides an incomplete quotation to authority. *See* Dkt. No. 378 at 24 (citing *Newberg on Class Actions* §13.49). In arguing that the Settlement consideration is inadequate, Kacprowski wholly omits the Ninth Circuit precedent, *Lane v. Facebook, Inc.*, 696 F.3d 811, 823 (9th Cir. 2012), which is cited in section 13.49 of the treatise from which Kacprowski quotes in his Objection. *See Newberg on Class Actions* §13.49 n.8. As the treatise states, the Ninth Circuit in *Lane* held that "[w]hile a district court must of course assess the plaintiffs' claims in determining the strength of their case relative to the risks of continued litigation, it need not include in its approval order a specific finding of fact as to the potential recovery for each of the plaintiffs' causes of action. Not only would such a requirement be onerous, it would often be impossible – statutory or liquidated damages aside, the amount of damages a given plaintiff (or class of plaintiffs) has suffered is a question of fact that must be proved at trial. Even as to statutory damages, questions of fact pertaining to which class members have claims under the various causes of action would affect the amount of recovery at trial, thus making any prediction about that recovery speculative and contingent." 696 F.3d at 823.

Lead Plaintiffs, and that the declines were caused by industry or macroeconomic factors other than the alleged fraud (*i.e.*, the global economic crisis, the severe slump in the gaming industry, and the collapse in the Las Vegas real estate market). Dkt. No. 359 at 14-15; Dkt. No. 361, ¶86. The issue of damages requires expert testimony, and there was no guarantee that a jury would accept Lead Plaintiffs' damage expert's analysis or methodology. If it did not, the Class would have recovered zero.

Lead Counsel have conducted sufficient investigation and discovery to reach an informed decision that $75 million is an outstanding recovery and recommended that Lead Plaintiffs accept the mediator's proposal. They reviewed millions of pages of documents produced, defended and took numerous depositions, and briefed a number of important motions, including motions to dismiss, class certification, and complex discovery motions.[30] They also defended each of the Lead Plaintiffs' depositions, retained and consulted with experts, prepared an extensive mediation brief, and reviewed, analyzed and responded to Defendants' mediation submissions. *See generally* Joint Declaration. *See also Zynga*, 2016 U.S. Dist. LEXIS 17196, at *42 ("The extent of discovery completed and the stage of the proceeding supports settlement here.").

The stage of the proceedings and the amount of discovery completed have provided Lead Plaintiffs sufficient information to make an informed decision about the Settlement. "Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with

[30] Kacprowski attempts to make much of the fact that Lead Counsel took three depositions in this case. This is a red herring, and ignores the Ninth Circuit's acknowledgement that "'in the context of class action settlements, "formal discovery is not a necessary ticket to the bargaining table" where the parties have sufficient information to make an informed decision about settlement.'" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).

litigation." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). Moreover, "'[g]reat weight" is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.'" *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). It should also be noted that the four Lead Plaintiffs – who had a front seat to the litigation and who had the largest losses among lead plaintiff candidates – also believe the Settlement Amount is fair, reasonable and adequate.

Lead Counsel achieved an excellent result, which will permit Class Members to recover now for losses suffered years ago. The Court should find the Settlement is fair, reasonable and adequate under the circumstances, and overrule Kacprowski's Objection.

B. The $10.00 Minimum Distribution Is Reasonable and Has Been Accepted by Courts Nationwide

Kacprowski challenges the Settlement's minimum distribution provision. Dkt. No. 378 at 25-28. Again, he is the only Class Member to object on this ground. This provision is both routinely approved in class action settlements, serves an important purpose and is also clearly set forth in the Notice:[31]

> No distribution shall be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00. As is customary in plans of allocation for securities class action settlements, a *de minimis* threshold is set in order to preserve the overall Settlement Fund from the costs of claims that are likely to exceed the value of those claims. It has been determined by counsel for the parties that $10.00 is a reasonable *de minimis* threshold. An Authorized Claimant that falls into this category may request to be excluded from this Action as described in questions 13 through 15 of this Notice or otherwise will be bound by the Settlement despite receiving no payment.

[31] Kacprowski seeks to bolster his meritless objection by assigning a nefarious intent – claiming the *de minimis* threshold provision "is buried in the settlement agreement's description of the plan of allocation from the settlement fund." Dkt. No. 378 at 25-26. Again, he is clearly wrong.

Kacprowski cites no relevant authority for his Objection. To the contrary, courts have repeatedly and routinely approved the use of minimum thresholds for claims payments in settlements such as this one. In approving the use of a $10.00 threshold in *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 463 (S.D.N.Y. 2004), the court recognized that "at some point, the need to avoid excessive expense to the Class as a whole outweighs the minimal loss to the claimants who are not receiving their *de minimus* amounts of relief."[32]

The use of a minimum threshold for sending distribution checks is not only standard practice in settlements of this kind, but is warranted to address the "disproportionate administrative expense to the fund associated with issuing very small checks" to class members. Supp. Joaquin Decl., ¶16. This is because very small checks are often not cashed initially, and in many cases are never cashed.

[32] *See also Zynga*, 2016 U.S. Dist. LEXIS 17196, at *52 (approving $10.00 minimum distribution); *City of Livonia Emps'. Ret. Sys. v. Wyeth*, No. 07 Civ. 10329 (RJS), slip op. (S.D.N.Y. Aug. 7, 2013) (overruling objection and approving $10.00 minimum distribution); *In re Mutual Funds Inv. Litig.*, MDL No. 1586, 2011 WL 1102999, at *3 (D. Md. Mar. 23, 2011) (Approving settlement agreement with $10.00 minimum threshold, stating "minimum payment thresholds, which are designed to ensure that the cost of processing, printing, and mailing a check does not exceed the value of a claim, have consistently and repeatedly been upheld in federal courts. . . . In light of this precedent, [the class member's] objection to the minimum payment threshold is without merit."); *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 4526593, at *12 (S.D.N.Y. Dec. 20, 2007) (rejecting objection to $50.00 cutoff and finding "courts have approved minimum payouts in class action settlements in order to foster the efficient administration of the settlement"); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1268 (D. Kan. 2006) (approving settlement plan with a $25.00 *de minimis* threshold); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 463-64 (E.D. Pa. 2008) (settlement agreement with a $50.00 threshold found to be fair, adequate and reasonable); *In re Wachovia Preferred Sec. & Bond/Notes Litig.*, No. 09 Civ. 6351 (RJS), Dkt. No. 136-1 at 109 (S.D.N.Y.) ($10.00 distribution threshold); *In re Wachovia Equity Sec. Litig.*, No. 08 Civ. 6171(RJS), Dkt. No. 98-3 at 13 (S.D.N.Y.) ($10.00 distribution threshold); *In re L.G. Philips LCD Co., Ltd. Sec. Litig.*, No. 07-cv-909 (RJS), Dkt. No. 62-2 at 10 (S.D.N.Y.) ($10.00 distribution threshold).

Id.[33] Therefore, the Court should overrule Kacprowski's Objection on this ground as well and find the $10.00 minimum distribution threshold is reasonable.

VI. THE STAFFORD OBJECTION SHOULD BE SUMMARILY OVERRULED

Lead Counsel also received a purported "objection" from William E. Stafford, Jr. Dkt. No. 371. With all due respect to Mr. Stafford and his right to voice his complaints about the Settlement, his letter objection amounts to nothing more than a generalized and sometimes incoherent complaint about the class action legal system, and it is apparent that he does not believe securities class actions are meritorious in any situation. *Id.* To be clear, he makes no specific, identifiable, legitimate objection to the Settlement or the fee and expense request. Instead, he summarily asks the Court to "withhold payment of all fees from . . . Lead Counsel and Lead Plaintiffs," calling the Settlement a "shakedown" and brazenly asserting that "[c]lass actions serve zero economic purposes other than to skim off fees for attorneys." Dkt. No. 371 at 1-2. To argue that Lead Counsel – after litigating this Action for over six years and obtaining the largest class action recovery in the history of this District – should not receive ***any*** fees, is nonsensical. Thus, Stafford's Objection should be summarily overruled.

---

[33] *See also In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 1191048, at *9 (E.D.N.Y. Apr. 19, 2007) ("*de minimis* thresholds for payable claims are beneficial to the class as a whole since they save the settlement fund from being depleted by the administrative costs associated with claims unlikely to exceed those costs"); *Global Crossing*, 225 F.R.D. at 463 ("Claimants who are entitled to receive only small settlement amounts can impose additional costs on the settlement fund, because such persons are less likely to cash their checks than are those claimants who receive larger amounts. The claims administrator therefore must incur additional expenses in contacting claimants who have not cashed their checks and urging them to do so. If the checks remain uncashed, the money must be reallocated to the other class members through second or third distributions, which create additional costs for the settlement fund."); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 328 (3d Cir. 2011) (en banc) ("'administrative costs to make *de minimis* payments are too large to justify . . . small payments'").

VII. CONCLUSION

For all of these reasons, and the entire record before the Court, Lead Plaintiffs' Motion for (1) Final Approval of Class Action Settlement; (2) Approval of the Plan of Allocation of Settlement Proceeds; and (3) an Award of Attorneys' Fees and Expenses (Dkt. No. 358) should be granted in its entirety, and the four meritless Objections overruled.

DATED: February 23, 2016

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
ARTHUR C. LEAHY
ELLEN GUSIKOFF STEWART
BRIAN O. O'MARA (Nevada Bar #8214)
RYAN A. LLORENS
MATTHEW I. ALPERT
NATHAN W. BEAR
IVY T. NGO

s/ Brian O. O'Mara
BRIAN O. O'MARA

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

NIX PATTERSON & ROACH, LLP
BRADLEY E. BECKWORTH
JEFFREY J. ANGELOVICH
SUSAN WHATLEY
LISA P. BALDWIN
JOHN HULL
TREY DUCK

s/ Bradley E. Beckworth (with permission)
BRADLEY E. BECKWORTH

205 Linda Drive
Daingerfield, TX 75638
Telephone: 903/645-7333
903/645-4415 (fax)

KESSLER TOPAZ MELTZER
& CHECK, LLP
ELI R. GREENSTEIN
JENNIFER L. JOOST
PAUL A. BREUCOP

s/ Eli R. Greenstein (with permission)
ELI R. GREENSTEIN

One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)

Lead Counsel for Plaintiffs

ALDRICH LAW FIRM, LTD.
JOHN P. ALDRICH (Nevada Bar #6877)
1601 South Rainbow Blvd., Suite 160
Las Vegas, NV 89146
Telephone: 702/853-5490
702/227-1975 (fax)

LAW OFFICES OF CURTIS B. COULTER, P.C.
CURTIS B. COULTER (Nevada Bar #3034)
403 Hill Street
Reno, NV 89501
Telephone: 775/324-3380
775/342-3381 (fax)

Liaison Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List and to those listed below who have also filed objections.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February 23, 2016.

s/ Brian O. O'Mara
BRIAN O. O'MARA

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail: bomara@rgrdlaw.com

William E. Stafford, Jr., CFA
6502 Chipstead Lane
Charlotte, NC 28277

National Automatic Sprinkler Industry
Attn: Michael W. Jacobson
8000 Corporate Drive
Landover, MD 20785

Mailing Information for a Case 2:09-cv-01558-GMN-VCF In re MGM Mirage Securities Litigation

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Ramzi Abadou**
  Ramzi.Abadou@ksfcounsel.com,yjayasuriya@ktmc.com,knguyen@ktmc.com,dcheck@ktmc.com,kweiland@ktmc.com,arobles@ktmc.com
- **Jeffrey Simon Abraham**
  jabraham@aftlaw.com
- **John P. Aldrich**
  jaldrich@johnaldrichlawfirm.com,traci@johnaldrichlawfirm.com,eleanor@johnaldrichlawfirm.com,sorme@johnaldrichlawfirm.com
- **Matthew I Alpert**
  malpert@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jeffrey J Angelovich**
  jangelovich@npraustin.com
- **Leland E. Backus**
  gbackus@backuslaw.com,efile@backuslaw.com
- **Lisa Baldwin**
  lbaldwin@npraustin.com
- **Ze'eva K Banks**
  zkbanks@chitwoodlaw.com,KGore@chitwoodlaw.com,LSmith@chitwoodlaw.com
- **Nathan W. Bear**
  nbear@rgrdlaw.com
- **Bradley E Beckworth**
  shelley@nixlawfirm.com,andreab@nixlawfirm.com
- **Todd L. Bice**
  lit@pisanellibice.com,Larry.Polon@mto.com,Laurie.Thoms@mto.com,smt@pisanellibice.com
- **Samuel Boyd**
  samuel.boyd@mto.com,monica.walker@mto.com
- **Paul A Breucop**
  pbreucop@ktmc.com,jhouston@ktmc.com,yjayasuriya@ktmc.com
- **Brad Brian**
  brad.brian@mto.com
- **William K Briggs**
  wbriggs@irell.com
- **Darren J. Check**
  dcheck@ktmc.com,namjed@ktmc.com
- **Curtis B. Coulter**
  ccoulter@coulterlaw.net,julie@coulterlaw.net,irene@coulterlaw.net
- **Charles C. Diaz**
  diazlaw@sbcglobal.net
- **Lloyd Nolan Duck , III**
  treyduck@nixlawfirm.com
- **Charles Elder**
  celder@irell.com
- **Jack G Fruchter**
  jfruchter@aftlaw.com

- **Joseph R Ganley**
  jganley@hutchlegal.com,dbowen@hutchlegal.com,kchappuis@hutchlegal.com
- **George M Garvey**
  george.garvey@mto.com,samantha.booth@mto.com,glenda.hunt@mto.com
- **Ross C Goodman**
  ross@goodmanlawgroup.com,ron@ronaldrichards.com,tiffanie@goodmanlawgroup.com
- **John Goodson**
  jcgoodson@kglawfirm.com,cheflin@kglawfirm.com
- **Eli R Greenstein**
  egreenstein@ktmc.com,jhouston@ktmc.com,rnathcook@ktmc.com,yjayasuriya@ktmc.com
- **Ellen Gusikoff Stewart**
  elleng@rgrdlaw.com
- **Keith R.D. Hamilton , II**
  keith.hamilton@mto.com
- **Sean M. Handler**
  shandler@ktmc.com
- **Griffith H Hayes**
  mtuer@cookseylaw.com,hrainey@cookseylaw.com
- **John C. Hull**
  johnhull@nixlawfirm.com
- **Jennifer Joost**
  jjoost@ktmc.com,amarshall@ktmc.com,jhouston@ktmc.com,jenck@ktmc.com,yjayasuriya@ktmc.com,acashwell@ktmc.com
- **Stacey M. Kaplan**
  skaplan@ktmc.cm,amarshall@ktmc.com,jhouston@ktmc.com,yjayasuriya@ktmc.com,kweiland@ktmc.com,cbucciarelli@ktmc.com
- **Matt Keil**
  mkeil@kglawfirm.com
- **Robert W. Killorin**
  rkillorin@chitwoodlaw.com
- **Arthur C. Leahy**
  artl@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Akke Levin**
  al@morrislawgroup.com,vln@morrislawgroup.com
- **Ryan A. Llorens**
  ryanl@rgrdlaw.com
- **William A. S. Magrath , II**
  wmagrath@mcdonaldcarano.com,kmorris@mcdonaldcarano.com
- **Benjamin J Maro**
  benjamin.maro@mto.com,laurie.thoms@mto.com,larry.polon@mto.com
- **Steve L. Morris**
  sm@morrislawgroup.com,paf@morrislawgroup.com
- **Andrew R. Muehlbauer**
  andrew@mlolegal.com,witty@mlolegal.com,hrainey@cookseylaw.com
- **Christopher Nelson**
  cnelson@btkmc.com
- **Ivy T. Ngo**
  ingo@rgrdlaw.com
- **Brian O. O'Mara**
  bomara@rgrdlaw.com,jillk@rgrdlaw.com,risac@rgrdlaw.com,e_file_sd@rgrdlaw.com

- **Margaret Claire O'Sullivan**
  cosullivan@irell.com
- **George F. Ogilvie , III**
  gogilvie@mcdonaldcarano.com,kbarrett@mcdonaldcarano.com
- **Margaret Onasch**
  monasch@ktmc.com
- **Erik Peterson**
  epeterson@ktmc.com
- **Gregory D. Phillips**
  Jennifer.Lawlor@mto.com
- **Jarrod L. Rickard**
  jlr@pisanellibice.com,lit@pisanellibice.com,smt@pisanellibice.com
- **Darren J. Robbins**
  e_file_sd@rgrdlaw.com
- **David Rosenfeld**
  drosenfeld@rgrdlaw.com
- **Matthew David Rowen**
  matthew.rowen@mto.com
- **Meghan Alexandra Royal**
  aroyal@rgrdlaw.com
- **Samuel H. Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joseph Russello**
  jrussello@csgrr.com
- **M Nelson Segel**
  nelson@nelsonsegel.com,diana@nelsonsegellaw.com
- **David Siegel**
  dsiegel@irell.com,rgrazziani@irell.com,jmanzano@irell.com
- **Rosa Solis-Rainey**
  rsr@morrislawgroup.com,fmi@morrislawgroup.com
- **Glenn K Vanzura**
  gvanzura@irell.com
- **Susan Whatley**
  susanwhatley@nixlawfirm.com,lbaldwin@npraustin.com
- **James M Wilson**
  jwilson@chitwoodlaw.com
- **Amanda C Yen**
  ayen@mcdonaldcarano.com,mwade@mcwlaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Adam Franklin
Colorado PERA General Counsel
1301 Pennsylvania Street
Denver, CO 80203

Nicholas A. Kacprowski
1001 Bishop Street
Suite 1800
Honolulu, HI 96813