UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

LOUISIANA FIREFIGHTERS' RETIREMENT SYSTEM, THE BOARD OF TRUSTEES OF THE PUBLIC SCHOOL TEACHERS' PENSION AND RETIREMENT FUND OF CHICAGO, THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC POLICE & FIRE RETIREMENT SYSTEM, and THE BOARD OF TRUSTEES OF THE CITY OF PONTIAC GENERAL EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NORTHERN TRUST INVESTMENTS, N.A., and THE NORTHERN TRUST COMPANY,

Defendants.

Case No. 09-7203

Hon. Jorge L. Alonso

Magistrate Judge Susan E. Cox

MEMORANDUM OF LAW IN SUPPORT OF SETTLING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, plaintiffs Louisiana Firefighters' Retirement System, The Board of Trustees of the Public School Teachers' Pension and Retirement Fund of Chicago, and The Board of Trustees of the City of Pontiac Police and Fire Retirement System (collectively, the "Settling Plaintiffs"), on behalf of themselves and the Settlement Class,[1] respectfully submit this memorandum of law in support of their motion for final approval of the proposed partial settlement of the above-captioned action (the "Action") for $24 million in cash (the "Settlement"), for final certification of the Settlement Class for settlement purposes only, and for approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation"). The terms of the Settlement are set forth in the Stipulation and Agreement of Partial Settlement of Class Action dated February 17, 2015 (the "Stipulation") (Doc. 425-1), which has been previously submitted to the Court.[2]

PRELIMINARY STATEMENT

The Settlement achieved by Settling Plaintiffs is an excellent result for the Settlement Class. The Settlement provides for the cash payment of $24 million for the benefit of the

[1] In its Preliminary Approval Order, filed March 17, 2015 (the "Preliminary Approval Order") (Doc. 433), the Court preliminarily certified for settlement purposes only a Settlement Class consisting of all entities that are not governed by ERISA and that participated in Indirect Lending during the Settlement Class Period (*i.e.*, the period beginning January 1, 2007 through and including October 31 2010) and are alleged to have been damaged as a result of their participation in Indirect Lending at issue in the Action. Excluded from the Settlement Class are: (i) entities that previously released or were caused to release Northern Trust from liability for alleged injury, damage, or loss arising from Indirect Lending during 2007-2009; (ii) Defendants and their successors, their respective officers and directors (former, current and future), members of the Immediate Families of the respective officers and directors (former, current and future), and the legal representatives, heirs, successors or assigns of any such excluded person, and any entity in which any Defendant has or had a controlling interest; and (iii) entities which exclude themselves by submitting a Request for Exclusion that is accepted by the Court. Preliminary Approval Order ¶ 1.

[2] Unless otherwise defined herein, any capitalized terms shall have the meanings ascribed to them in the Stipulation or in the Joint Declaration of Avi Josefson, Derek W. Loeser and Mark T. Johnson in Support of (I) Settling Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (II) Co-Lead Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration" or "Joint Decl."), filed herewith.

Settlement Class in resolution of the Indirect Lending claims of Settlement Class Members against Defendants.[3] The Settlement is the product of extensive, arm's-length negotiations by well-informed counsel who have a thorough understanding of the strengths and weaknesses of the Indirect Lending claims that are being resolved under the Settlement. These negotiations included a mediation conducted by former United States Magistrate Court Judge Morton Denlow, an experienced and respected mediator, followed by additional extensive settlement discussions between the Settling Parties over the course of several months. Co-Lead Counsel have significant experience in complex class action litigation, and have negotiated numerous substantial class action settlements throughout the country. It is their informed opinion that the Settlement is an excellent result in light of the substantial expense, risk, delay and uncertainty of pursuing the Indirect Lending claims through trial and any subsequent appeals.

As detailed in the Joint Declaration,[4] at the time the agreement to settle was reached, Settling Plaintiffs and Co-Lead Counsel had extensively litigated the Action and had a well-developed understanding of the facts and challenges posed by the claims and defenses, and the factors that would impact a future recovery with respect to the Indirect Lending claims. Before the Settlement was agreed to, Settling Plaintiffs' Counsel had engaged in more than five years of investigation, hard-fought litigation and settlement negotiations, which included, among other

[3] The proposed Settlement is a partial settlement only – the prosecution of the Action is ongoing with respect to claims relating to Direct Lending. Also, the Settlement is subject to the Court's final approval of the proposed settlement of the related action styled *Diebold v. Northern Trust Investments, N.A.*, Civil Action No. 09-1934, pending in this Court (the "Diebold Action"), which asserts claims based on many of the same facts and circumstances underlying the claims in this Action, but on behalf of entities that are subject to ERISA.

[4] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action and the prosecution of the Indirect Lending claims at issue in the Action; the negotiations leading to the proposed Settlement; the risks and uncertainties of continued litigation of the Indirect Lending claims; and a description of the services Settling Plaintiffs' Counsel have provided for the benefit of the Settlement Class.

things, (i) a thorough investigation of the claims in the Action, including an in-depth analysis of Northern Trust's securities lending program, documents filed in related actions, and public statements by Northern Trust employees regarding the subprime mortgage crisis; (ii) researching, drafting and filing the initial complaints and two amended complaints; (iii) extensive briefing in opposition to Defendants' motion to dismiss and in opposition to the third-party complaints and affirmative defenses asserted by Defendants; (iv) wide-ranging and extensive discovery, including the review and analysis of over 346,000 pages of documents produced by Defendants; (v) mediation before Judge Denlow, which was followed by additional extensive settlement discussions culminating in the agreement-in-principle to settle; and (v) following the agreement-in-principle, extensive and arduous negotiations of the specific terms of the Settlement set forth in the Stipulation. Joint Decl. ¶ 7.

The Settlement is a favorable result in light of the substantial risks of continued litigation of the Indirect Lending claims asserted against the Defendants. While Settling Plaintiffs and Co-Lead Counsel believe that the claims asserted against Defendants are meritorious, they recognize that the Indirect Lending claims presented a number of substantial risks to establishing both liability and damages, and there was no certainty that Settling Plaintiffs would have prevailed at trial. For example, with respect to the main question regarding Northern Trust's liability, *i.e.*, whether Northern Trust failed to prudently invest and manage the Collateral Pools, Defendants asserted that Northern Trust maintained written investment guidelines and that it had never violated those guidelines. Defendants also argued that the financial crisis, not Defendants' allegedly imprudent investment decisions, was the cause of the Settlement Class Members' losses, and that the financial crises could not have been foreseen. Defendants also asserted multiple affirmative defenses that blame Plaintiffs for their securities lending losses, including,

among others, comparative fault, independent superseding cause, failure to mitigate, waiver, ratification, acquiescence, assumption of the risk, and estoppel. In addition, Defendants would have continued to raise several arguments that potentially could have defeated Settling Plaintiffs' motion to certify a litigation class under Rule 23. Furthermore, Defendants might have prevailed on one or more of their arguments seeking to reduce or eliminate the damages claimed in the Action. For example, Defendants would have continued to argue that no damages were suffered by investors in the Commingled Lending Funds that were index funds if, as Defendants alleged, those funds met their objectives of adequately tracking their indices, notwithstanding specific losses from securities lending by the funds. The significance of these risks was heightened by the prospect of additional months or years of protracted litigation through costly fact and expert discovery, contested motions, a trial and the likely ensuing appeals. The Settlement avoids these and other risks while providing a substantial, certain and immediate monetary benefit to the Settlement Class in the form of a $24 million cash payment.

For all the reasons discussed herein and in the Joint Declaration, it is respectfully submitted that the Court should approve the Settlement as fair, reasonable and adequate; finally certify the Settlement Class for settlement purposes only; and approve the Plan of Allocation.

I. STANDARD FOR JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS

The Seventh Circuit recognizes "an overriding public interest in favor of settlement" of class action litigation. *Armstrong v. Bd. of Sch. Dirs. Of City of Milwaukee*, 616 F2d 305, 313 (7th Cir. 1998); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 616 F.2d 1006, 1013 (7th Cir. 1980).

In deciding whether a class action settlement merits final approval under Federal Rule of Civil Procedure 23(e), courts must determine whether the proposed settlement is fair, reasonable,

and adequate. *Isby*, 75 F.3d at 1196; *Hiram Walker*, 768 F.2d at 889; *Gautreaux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982). The Seventh Circuit has identified the following factors that a Court may consider in evaluating the fairness of a class action settlement:

> 1) the strength of the plaintiff's case on the merits measured against the terms of the settlement; 2) the complexity, length, and expense of continued litigation; 3) the amount of opposition to the settlement among affected parties; 4) the presence of collusion in gaining a settlement; 5) the stage of the proceedings; and 6) the amount of discovery completed.

GE Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1082 (7th Cir. 1997); *see also Isby*, 75 F.3d at 1199.

The proceedings to approve a settlement should not be transformed into an abbreviated trial on the merits. *See, e.g., Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987); *Armstrong*, 616 F.2d at 314-15. Courts should hesitate to substitute their own judgment for the judgment of the litigants and their counsel. As the Seventh Circuit has written:

> Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

Armstrong, 616 F.2d at 315.

Finally, "[a] strong presumption of fairness attaches to a settlement agreement when it is the result of this type of [arm's length] negotiation." *Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 410 (E.D. Wis. 2002) (citing *Anderson v. Torrington Co.*, 755 F. Supp. 834, 838 (N.D. Ind. 1991)) (settlement reached after two-day mediation).

The record here demonstrates that the Settlement was the product of precisely this type of negotiation, which included a mediation followed by extensive negotiations with Defendants'

Counsel. The mediation occurred before Judge Denlow, a retired United States Magistrate Judge for the Northern District of Illinois and a seasoned and respected mediator. *See* Joint Decl. ¶ 29. Moreover, Co-Lead Counsel, who conducted the negotiations for the Settlement Class, are highly regarded, have many years of experience in conducting complex class action litigation, and were thoroughly conversant with the strengths and weaknesses of the case at the time the Settlement was reached. *Id.* ¶ 59, and Ex. 3 to Exs. 5A-5C. Co-Lead Counsel's decision, therefore, should be given great deference. *Armstrong*, 616 F.2d at 315.

As explained below, and in the Joint Declaration, when examined under the applicable criteria, the Settlement is an outstanding result for the Settlement Class and should be approved by the Court. In light of the substantial risks of continued litigation of the Indirect Lending claims, it is far from certain that a more favorable monetary result against Defendants could or would be attained after trial and the inevitable post-trial motions and appeals. The Settlement achieves an immediate and substantial recovery for Settlement Class Members, and is unquestionably superior to the distinct possibility that, were this litigation to proceed to trial, there might not be any recovery at all. Analysis of the relevant factors demonstrates that the Settlement merits this Court's approval.

II. THE SETTLEMENT MEETS THE SEVENTH CIRCUIT STANDARD FOR APPROVAL

A. The Strength of Settling Plaintiffs' Case Compared to the Amount of Settlement

The Settlement, a cash recovery of $24 million for the benefit of the Settlement Class, is well within the range of reasonableness in light of all of the risks of continued litigation. While Settling Plaintiffs and Co-Lead Counsel believe that the Indirect Lending claims asserted against the Defendants have merit, they also recognize that there were significant risks as to whether they would ultimately be able to prove liability and establish damages on their claims.

Defendants have mounted a vigorous defense to Plaintiffs' claims at every stage of this litigation, presenting significant challenges to Plaintiffs' ability to establish liability with respect to the claims asserted. Plaintiffs assert claims for breach of duty and breach of contract against Defendants in connection with Northern Trust's securities lending program, pursuant to which securities were loaned to borrowers and the cash collateral received to secure those loans was invested in a small group of investment pools managed by Northern Trust (referred to as the "Collateral Pools").[5] Joint Decl. ¶¶ 10, 19, 23. The thrust of both claims is that Northern Trust failed to prudently invest and manage the Collateral Pools in a conservative, short-term manner, as required to preserve capital and maintain liquidity in the pools. *Id.* ¶¶ 12-13. Throughout this litigation, Defendants have repeatedly argued and would have continued to argue that it was not liable to Plaintiffs because Northern Trust maintained written guidelines for the investment of the Collateral Pools, and Northern Trust had never violated those guidelines. *Id.* ¶ 37. In addition, Defendants would have continued to argue that the financial crisis was unforeseeable and that the financial crises, not Defendants' allegedly imprudent investment decisions, was the cause of any losses the Settlement Class Members suffered as a result of the decline in value of the securities held by the Collateral Pools. *Id.* If Defendants were to prevail on either of these arguments, the Settlement Class would be denied any recovery on their Indirect Lending claims.

Defendants asserted nineteen Affirmative Defenses to Plaintiffs' claims, set forth in 221 paragraphs spanning 65 pages. (Doc. 167.) The asserted defenses, which include, among others, comparative fault, independent superseding cause, failure to mitigate, waiver, ratification, acquiescence, assumption of the risk, and estoppel, attempt to assign fault to Plaintiffs for their

[5] For the members of the Settlement Class, all of which participated in securities lending indirectly, securities lending occurred through sixty-five "collective funds" managed by Defendants (also referred to as "Lending Funds"). Joint Decl. ¶ 11. Each member of the Settlement Class invested in one or more of the Lending Funds, and the Lending Funds in turn lent the fund's own securities and invested the collateral received in the Collateral Pools. *Id.*

securities lending losses. Joint Decl. ¶ 36. For example, Defendants claim that Plaintiffs were responsible for their losses because they understood how the cash collateral was being invested in the Collateral Pools, yet decided to maintain their investments. *Id.* If the Action were to continue with respect to the Indirect Lending claims, Settling Plaintiffs would risk the possibility that Defendants might prevail on one or more of these Affirmative Defenses and thereby escape liability.

If the litigation of the Indirect Lending Claims were to continue, Defendants would also continue to raise several arguments that might potentially defeat Settling Plaintiffs' motion to certify a litigation class under Rule 23. Joint Decl. ¶ 38.[6] In addition, Settling Plaintiffs would face the risk that Defendants might succeed on one or more of their defenses seeking to reduce or eliminate the damages claimed in the Action. Defendants have asserted, for example, that no damages were suffered with respect to those Lending Funds that were index funds if, as Defendants allege, those funds met their objectives of adequately tracking their indexes. Joint Decl. ¶ 39. Additionally, Northern Trust contends that certain of its actions, including purported contributions of $150 million in cash to certain securities lending clients, reduced or eliminated damages with respect to the Indirect Lending claims. *Id.*

When viewed in the context of these significant litigation risks and the uncertainties involved with any litigation, the Settlement is a very favorable result. Accordingly, this factor supports final approval of the Settlement.

[6] Among other things, Defendants have argued that Settling Plaintiffs were participants in only a subset of the Lending Funds at issue, and, therefore, they could represent only their retirement plans and only investors in the those same, few Lending Funds. Joint Decl. ¶ 38. Defendants have also argued that Settling Plaintiffs cannot satisfy the "commonality" prong of Rule 23(a)(2) for a litigation class, because there is no single right way to invest securities lending cash collateral, and there is no such thing as an investment that is *per se* imprudent. *Id.* Furthermore, Defendants have argued that the actual impact of securities lending cash collateral investment on the Lending Funds (and therefore on the plans) varied by Lending Fund, by plan, and by participant, requiring a complicated and individualized damages analysis for each class member. *Id.*

B. The Complexity, Length and Expense of Further Litigation of the Indirect Lending Claims Supports Approval of the Settlement

In determining the fairness of a settlement, courts also consider "the likely complexity, length and expense of the litigation." *Isby*, 75 F.3d at 1199. There is no doubt that this class action involves complex factual and legal issues regarding Northern Trust's securities lending program and the Indirect Lending claims that are being resolved under the Settlement. The continued litigation of the Indirect Lending claims would require a huge amount of additional time and expense given the complexity of the case. Indeed, it was expected that full discovery on the merits of this matter would take many months to complete, as both Settling Plaintiffs and Defendants have stated that merits-related discovery would require the production of a large number of additional documents and depositions. Joint Decl. ¶ 41. Also, summary judgment briefing in this matter was anticipated to be extensive. *Id.* Furthermore, even if this case proceeded to trial and Settling Plaintiffs were successful at trial, Defendants would undoubtedly appeal, leading to additional delay and expense. Settling Plaintiffs were certainly not guaranteed victory at trial, but even if the Settlement Class were to recover a larger judgment after trial, the additional delay, through post-trial motions and appeals, would deny the Settlement Class any recovery for years with respect to the Indirect Lending claims. *See In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 961 (N.D. Ill. 2011) ("[w]ere the Class Members required to await the outcome of a trial and inevitable appeal ... they would not receive benefits for many years, if indeed they received any at all"). By contrast, the Settlement secures a substantial and certain benefit for the Settlement Class in this complex and contested litigation, undiminished by further expense and without the delay, risk and uncertainty of

continued litigation of the Indirect Lending claims.[7] Accordingly, this factor supports final approval of the Settlement.

C. The Reaction of Settlement Class Members Supports the Settlement

The reaction of Settlement Class Members to date also strongly favors the proposed Settlement. Pursuant to the Preliminary Approval Order, the Settlement Notice has been mailed to Settlement Class Members identified by Defendants,[8] and a Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*.[9] *See* ¶¶ 46-47 of the GCG Declaration, submitted as Exhibit 1 to the Joint Declaration. The Settlement Notice informed Settlement Class Members of their right to object or to request exclusion from the Settlement Class by July 15, 2015. To date, not one Settlement Class Member has objected to any aspect of the Settlement, Plan of Allocation or Co-Lead Counsel's request for attorneys' fees and expenses, and no requests for exclusion have been received. If any objections are received after the date of this submission, Settling Plaintiffs will address them, as well as any requests for

[7] *See In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (settlement favored where "the trial of this class action would be a long, arduous process requiring great expenditures of time and money on behalf of both the parties and the court").

[8] Pursuant to the Court-approved notice program, the Settlement Notices mailed to identified Settlement Class Members were accompanied by personalized "Cover Letters" (together with the Settlement Notice, the "Notice Packet"). Joint Decl. ¶ 46. The Cover Letters set forth the amount of the class members' investments on certain dates during the Settlement Class Period that will form the basis for calculating the class members' proportionate share of the Settlement proceeds under the proposed Plan of Allocation. Settlement Class Members were advised in the Notice Packets that if they agreed with the information set forth in the Cover Letter, they need not take any further action to be eligible to receive a distribution. However, if a class member took issue with the data included in the Cover Letter, it was required to submit an "Investment Challenge" to contest the accuracy of the data. Investment Challenges were to be mailed to the Settlement Administrator, postmarked no later than June 12, 2015. Through June 29, 2015, no Investment Challenges have been received. *Id.*

[9] The Summary Notice advised entities that did not receive the Settlement Notice by direct mail (*i.e.*, they were not identified by Defendants as Settlement Class Members) that, if they believed that they met the definition of the Settlement Class, they had the right to make a Status Challenge, which, if successful, would put them in parity with the identified Settlement Class Members. Joint Decl. ¶ 47. Status Challenges were to be mailed to the Settlement Administrator, postmarked no later than June 29, 2015. Through June 29, 2015, no Status Challenges have been received. *Id.*

exclusion, in a separate submission to be filed with the Court on July 29, 2015.

D. The Settlement Is the Product of Good Faith, Arm's-Length Negotiations

The Settlement, as the descriptions of the proceedings above and in the Joint Declaration amply demonstrate, is the result of hard-fought and contentious litigation and arm's length negotiations that no one could credibly suggest were tainted by collusion among the Settling Parties. The Settlement was reached following extensive, arm's-length negotiations between the Settling Parties, which included a formal mediation before Judge Denlow – a highly respected and skilled mediator with extensive experience in the mediation of complex class actions. At the mediation, the Settling Parties made presentations to each other and to Judge Denlow regarding the strengths and weaknesses of their respective positions. Joint Decl. ¶ 29. As discussed earlier, courts have held that a settlement is presumed fair where, as here, it is the product of arm's-length negotiations between competent and experienced counsel. Through the mediation and the extensive and arduous settlement negotiations that followed over the course of several months, the Settling Parties were able to reach agreement on the Settlement on the terms set forth in the Stipulation.

E. Counsel for Settling Plaintiffs Strongly Endorse the Settlement

The opinion of the attorneys who engaged in the settlement negotiations and litigated the action is entitled to significant weight. *See, e.g., Isby*, 75 F.3d at 1200 ("the district court was entitled to give consideration to the opinion of competent counsel that the settlement was fair, reasonable, and adequate."); *In re Mexico Money Transfer Litig.*, (W. Union & Valuta), 164 F. Supp. 2d 1002, 1020 (N.D. Ill. 2000) ("The court places significant weight on the unanimously strong endorsement of these settlements by [Settling] Plaintiffs' well-respected attorneys.") (citing *Isby*, 75 F.3d at 1200).

Here, experienced counsel, who have weighed the risks of continued litigation, endorse the Settlement and the substantial benefits it confers on the members of the Settlement Class. The Settlement was achieved following an extensive investigation and litigation of the Indirect Lending Claims, and was achieved through arm's-length negotiations by experienced counsel on both sides. Co-Lead Counsel, who have many years of experience in litigating complex class actions, and who have negotiated numerous class action settlements that have been approved by federal and state courts throughout the United States, have determined that the Settlement is fair, reasonable, and adequate. Joint Decl. ¶ 59. Accordingly, this factor weighs heavily in favor of final approval.

F. The Stage of the Proceedings and the Amount of Discovery Completed

To ensure that a plaintiff has had access to sufficient information to evaluate both its case and the adequacy of a proposed settlement, courts in the Seventh Circuit consider the stage of the proceedings and the discovery taken. *Isby*, 75 F.3d at 1199; *AT&T Mobility I*, 789 F. Supp. 2d at 958. Here, both the knowledge of Co-Lead Counsel and the proceedings themselves have reached a stage where a well-founded evaluation of the claims and propriety of settlement could be made. As discussed above and in the Joint Declaration, Co-Lead Counsel have conducted a significant amount of discovery in this litigation. Beginning in July 2011, the parties have served voluminous document production requests on each other. Specifically, Plaintiffs have served 36 requests for production on Defendants. Joint Decl. ¶ 25. In response to Plaintiffs' discovery requests, Defendants have produced and Plaintiffs have reviewed over 346,000 pages of documents, which included documents and written discovery responses re-produced in this Action from the Diebold Action, *BP Corp. N. Am. Inc. Savings Plan Inv. Oversight Comm. v. N. Trust Invs.*, 08-cv-06029 (N.D. Ill.), and *FedEx Corp. v. The N. Trust Co.*, 08-cv-02827 (W.D.

Tenn.). *Id.* The documents produced by Defendants included deposition transcripts of fact witnesses, expert reports, and deposition transcripts of expert witnesses. *Id*.

In response to Defendants' discovery requests, Settling Plaintiffs' have collectively produced over 168,000 pages of documents. Joint Decl. ¶ 26. Also, during the thirty month time period that discovery was ongoing, the parties engaged in numerous discovery conferences, hearings, and motions (including multiple motions to compel), and Plaintiffs issued four third party subpoenas: to Navigant Consulting, Inc., KPMG LLP, Gordian Knot, Inc., and Ernst & Young, LLP. *Id.* ¶¶ 27-28.

Additionally, the Action involved the filing of two amended complaints, briefing a contentious motion to dismiss, as well as participation in several arm's-length settlement negotiations over a lengthy period of time where the strengths and weaknesses of the Settling Parties' respective claims and defenses were fully explored. Joint Decl. ¶¶ 19-20, 23, 29-30, 32. During the course of the negotiations following an agreement-in-principle, Defendants also provided additional information bearing on the composition of the class and the investments and losses of class members. *Id*. ¶ 31. Thus, the Settling Plaintiffs and Co-Lead Counsel reached and finalized the agreement to settle the Indirect Lending claims at a point when they had a well-founded understanding of the legal and factual issues surrounding the claims and the scope of the potential losses suffered by the Settlement Class. Having sufficient information to properly evaluate the case, Settling Plaintiffs and Co-Lead Counsel were able to reach a settlement on terms favorable to the Settlement Class without the substantial expense, risk, uncertainty, and delay of continued litigation. *See Great Neck Capital*, 212 F.R.D. at 410 ("[T]he settlement was reached after PwC's motion to dismiss had been decided and after merits discovery was well

underway. Thus, plaintiffs' counsel's evaluation of the case was based on a reasonable amount of information."). This factor strongly supports final approval of the Settlement.

III. THE COURT SHOULD AFFIRM AND FINALIZE ITS CERTIFICATION OF THE SETTLEMENT CLASS

In presenting the proposed Settlement to the Court for preliminary approval, Settling Plaintiffs requested that the Court preliminarily certify the Settlement Class for settlement purposes so that notice of the proposed Settlement, the final approval hearing, and the rights of Settlement Class Members to request exclusion or object could be issued. In its Preliminary Approval Order, filed on filed March 17, 2015, this Court preliminarily certified the Settlement Class. Settling Plaintiffs submit that nothing has changed to alter the propriety of certification of the Settlement Class and, for all the reasons stated in the Settling Plaintiffs' memorandum of law in support of their motion for preliminary approval (Doc. 427), incorporated herein by reference, Settling Plaintiffs now request that the Court affirm its determinations in the Preliminary Approval Order and finally certify the Settlement Class for purposes of carrying out the Settlement. In addition, Settling Plaintiffs request that the Court affirm its certification of Settling Plaintiffs as Class Representatives for Settlement Class and its appointment of Co-Lead Counsel as Class Counsel for the Settlement Class.

IV. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

Settling Plaintiffs also seek approval of the Plan of Allocation for distributing the Settlement proceeds. The Plan of Allocation was set forth in the Settlement Notice mailed to Settlement Class Members identified by Defendants. Assessment of a plan of allocation in a class action under Federal Rule of Civil Procedure 23 is "governed by the same standards of review applicable to the settlement as a whole" – the plan must be fair and reasonable. *In re Ikon Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (quoting *In re Computron*

Software, 6 F. Supp. 2d 313, 327 (D.N.J. 1998)); *see also Great Neck Capital*, 212 F.R.D. at 410; *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). District courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). An allocation formula need only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *White v. NFL*, 822 F. Supp. 1389, 1420 (D. Minn. 1993); *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 596 (S.D.N.Y. 1992).

The objective of a plan of allocation is to provide an equitable basis upon which to distribute the net settlement fund among members of the Settlement Class. Here, the Plan of Allocation was developed by Co-Lead Counsel with the assistance of Settling Plaintiffs' damages expert. Joint Decl. ¶ 51. The Plan of Allocation is designed to provide a fair and reasonable allocation of the Net Settlement Fund among Settlement Class Members in proportion to their relative estimated losses experienced as a result of their participation in Northern Trusts' Indirect Lending program. *Id.* ¶ 51-52. Details of the Plan of Allocation were provided to Settlement Class Members as part of the notice process and no objections to the proposed plan have been received to date. *Id.* ¶ 53. Accordingly, Settling Plaintiffs submit that the proposed Plan Allocation is fair and reasonable and should be approved.

V. CONCLUSION

For these reasons, Settling Plaintiffs respectfully request that the Court: (i) approve the proposed Settlement as fair, reasonable and adequate; (ii) finally certify the Settlement Class; and (iii) approve the proposed Plan of Allocation.

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Respectfully submitted,

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