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

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 The Board of Trustees of the City of Pontiac Police & Fire Retirement System (the "Pontiac Police & Fire Board") and The Board of Trustees of the City of Pontiac General Employees Retirement System (the "Pontiac General Board") (collectively, the "Settling Plaintiffs"), on behalf of themselves and the Class, respectfully submit this memorandum of law in support of their motion for final approval of the proposed Settlement of the remaining claims asserted in the above-captioned action (the "Action") for $4,250,000 in cash and for approval of the proposed plan of allocation of the proceeds of the Settlement (the "Plan of Allocation"). The terms and conditions of the Settlement are set forth in the Stipulation and Agreement of Settlement of Class Action dated July 25, 2016 (the "Stipulation") (Doc. 573-1), which has been previously submitted to the Court.[1]

PRELIMINARY STATEMENT

The Settlement achieved by Settling Plaintiffs is an excellent result for the Class. The Settlement provides for a cash payment of $4,250,000 in resolution of all remaining claims asserted in the Action, *i.e.*, the Direct Lending claims brought on behalf of the Class.[2] The

[1] 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 and Matthew I. Henzi 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. 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 Direct Lending claims at issue in the Action; the negotiations leading to the proposed Settlement; the risks and uncertainties of continued litigation of the Direct Lending claims; and the proposed Plan of Allocation for the distribution of the Net Settlement Fund.

[2] On February 17, 2015, Plaintiffs and Northern Trust entered into the Stipulation and Agreement of Partial Settlement of Class Action (Doc. 425-1) setting forth the terms and conditions of the partial settlement of the Action, *i.e.*, any and all claims asserted with respect to Indirect Lending (the "Indirect Lending Settlement"). Following notice to the settlement class and a hearing, on August 5, 2015, the Court entered a Judgment on Stipulation and Agreement of Partial Settlement of Class Action (Doc. 500) finally approving the Indirect Lending Settlement and dismissing with prejudice the Indirect Lending claims asserted against Northern Trust in the Action.

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 Direct Lending claims that are being resolved under the Settlement. These negotiations included a mediation conducted by former Judge Wayne R. Andersen (Ret.), a retired United States District Judge for the Northern District of Illinois and a former state court trial judge, followed by additional discussions, both through direct communications between counsel to the parties and through numerous discussions conducted though Judge Andersen. Co-Lead Counsel have significant experience in complex class actions, 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 Direct Lending claims through trial and any subsequent appeals.

As detailed in the Joint Declaration, 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 Direct Lending claims. Before the Settlement was agreed to, Co-Lead Counsel had engaged in more than seven years of investigation, hard-fought litigation and settlement negotiations, which included, among other 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) successfully briefing Settling Plaintiffs' motion

for class certification; (v) addressing, on several different motions filed by Defendants, the argument that Defendants' affirmative actions had ameliorated damages; (vi) wide-ranging and extensive discovery, including the review and analysis of over 387,000 pages of documents produced by Defendants; and (vii) mediation before Judge Andersen, which was both preceded and followed by additional settlement discussions culminating in the agreement-in-principle to settle. *See* Joint Decl. ¶¶ 6, 9-38.

The Settlement is a favorable result in light of the substantial risks of continued litigation of the Direct 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 Direct 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. With respect to liability, Defendants have mounted a vigorous defense at every stage of this litigation and would have continued to do so, asserting multiple affirmative defenses and limitations on their liability. 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 Core Pools, Defendants argued that the losses incurred by the Class, which occurred at the height of the 2008 financial crisis, were unforeseeable and that the crisis was responsible for any losses allegedly suffered by the Class, rather than the alleged imprudence of Defendants. Furthermore, even if Settling Plaintiffs were able to establish Northern Trust's imprudence and resulting liability, Defendants would have continued to argued that plaintiffs' could not prove any damages arising from Northern Trust's alleged misconduct, in light of the extensive actions taken by Defendants purportedly to support the Class and compensate Class Members for losses they had incurred in the Core Pools. In addition, the parties had a material dispute regarding the

scope of the class that the Court certified on December 31, 2015, and continued litigation presented a risk that Defendants might succeed in excluding certain Class Members from the Class going forward. The Settlement avoids these and other risks while providing a substantial, certain and immediate monetary benefit to the Class in the form of a $4,250,000 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, and approve the proposed Plan of Allocation as a fair and reasonable method for the allocation of the Settlement proceeds.

I. STANDARD FOR JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS

The Seventh Circuit recognizes "an overriding public interest in favor of settlement" of class actions. *Armstrong v. Bd. of Sch. Dirs. Of City of Milwaukee*, 616 F.2d 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. *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 Andersen (Ret.), a retired United States District Judge for the Northern District of Illinois and former state court trial judge, and a seasoned and respected mediator. *See* Andersen Decl., submitted as Exhibit 1 to the Joint Decl., at ¶ 2. Judge Andersen, based on his experience as a former judge and mediator, believes that the proposed Settlement is fair and reasonable, and strongly supports its approval in all respects. *Id.* at ¶ 14. Moreover, Co-Lead Counsel, who conducted the negotiations for the Class, are highly regarded, have many years of experience in conducting complex class actions, and were thoroughly conversant with the strengths and weaknesses of the case at the time the Settlement was reached. Joint Decl. ¶ 62. 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 Class and should be approved by the Court. In light of the substantial risks of continued litigation of the Direct 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 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 $4,250,000 for the benefit of the 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 Direct 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 these claims.

Defendants have mounted a vigorous defense to Settling Plaintiffs' claims at every stage of this litigation, presenting significant challenges to Settling Plaintiffs' ability to establish liability with respect to the claims asserted. Settling 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 "Core Pools").[3] Joint Decl. ¶¶ 9, 10, 18, 24. The gravamen of both claims is that Northern Trust failed to prudently invest and manage the Core Pools in a conservative, short-term manner, as required to preserve capital and maintain liquidity in the pools. *Id*. ¶¶ 11-12. Throughout this litigation, Defendants have repeatedly argued that it was not liable to Settling Plaintiffs because the 2008 financial crisis was unforeseeable and that the financial crises, not Defendants' allegedly imprudent investment decisions, was the cause of any losses the Class Members suffered as a result of the decline in value of the securities held by the Core Pools. *Id*. ¶ 41. In particular, Defendants claim that the Core Pools' loss—which in the aggregate comprised 0.01% of the Core Pools—was principally a result of the default of Lehman Brothers' securities following an unanticipated and unprecedented September 15, 2008 bankruptcy of Lehman Brothers. *Id*. Further, Defendants assert that Defendants' investment decisions were in accord with the investment guidelines set, and risks acceptable to, the Class Members when they elected to invest in the Core Pools. *Id*. If Defendants were to prevail on any of these arguments, the Class would be denied any recovery on their Direct Lending claims.

In addition to the above arguments, Defendants have asserted multiple affirmative defenses to Settling Plaintiffs' claims, set forth in 221 paragraphs spanning nearly 60 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 Settling Plaintiffs for their securities lending losses. Joint Decl. ¶ 40. For example, Defendants claim that Settling Plaintiffs (and other members of the Class) were responsible for their losses because they understood how the cash collateral was being invested in the Core Pools, yet decided to maintain their investments. If the Action were

[3] The Core Pools consist of Core Collateral Section, Core USA Collateral Section, Global Core Collateral Section, and European Core Collateral Section, also referred to as Core, Core USA, Global Core, and European Core, respectively, along with any associated term loans or non-cash collateral.

to continue, Settling Plaintiffs would risk the possibility that Defendants might prevail on one or more of their affirmative defenses and thereby escape liability.

Moreover, as discussed in detail in the briefing submitted with respect to Settling Plaintiffs' preliminary approval motion, the parties had a material dispute regarding the scope of the class certified by the Court. *See L.A. Firefighters' Ret. Sys. v. N. Trust Invs., N.A.*, 312 F.R.D. 501 (N.D. Ill. 2015). Specifically, Defendants have taken the position that the certified class is limited to investors whose contracts with Northern Trust contain Illinois or Michigan choice of law clauses. Defendants have argued that the Court's reference to contracts "governed by the substantive law of Illinois or Michigan" in discussing claims for breach of contract (*See L.A. Firefighters*, 312 F.R.D. at 509) establishes that the certified class excluded investors whose contracts with Northern Trust did not contain Illinois or Michigan choice of law clauses. However, Settling Plaintiffs believe that the class certified by the Court was not limited to investors in the Core Pools whose contracts with Northern Trust specify the application of Illinois or Michigan law, as Defendants have asserted. Settling Plaintiffs base their position on the Court's conclusion that "[t]he plain language of the choice-of-law provision does not [] extend to plaintiff's breach of fiduciary duty claim, which, under the Restatement's most 'significant relationship test,' is governed by Illinois law." *Id.* at 508. Accordingly, in the absence of the Settlement, Settling Plaintiffs faced a risk that Defendants would succeed in arguing for a more limited class, thereby excluding some Class Members from any recovery.

Also, in the absence of the Settlement, Settling Plaintiffs would have faced the risk that Defendants might succeed on one or more of their defenses seeking to reduce or eliminate the damages claimed in the Action. From the outset of the litigation, Northern Trust has claimed that it took extraordinary steps to compensate the participants in the Core Pools for their losses;

treated investors in the Core Pools differently than other investors in the securities lending program, including investors in STEP; and taken numerous actions to compensate investors in the Core Pools for any losses or make them whole. Joint Decl. ¶ 42. For example, Defendants have asserted that Northern Trust contributed support payments to the Core Pool investors totaling $150 million, and provided the investors in the Core Pools with substantial fee reductions, including $12 million of value in fee reductions to the Class. *Id.* Furthermore, Defendants have argued that certain of the realized losses in the Core Pools were not recoverable at all because such losses were "unallocated," meaning that Class Members were not required to make out-of-pocket payments to cover such losses, and such losses were ultimately offset by increases in the market value of the Core Pools' remaining assets and thus did not constitute compensable damages. Northern Trust raised these arguments in a Rule 12 motion to dismiss, in connection with their motion for summary judgment, and in opposition to class certification. *Id.* While the Settling Plaintiffs were able to effectively prevent the dismissal of their claims, they did so based, in principal part, on grounds that additional discovery was needed in order for the parties and the Court to fully assess the defenses asserted by Defendants. It is clear that Defendants intended to continue to litigate this defense with the intention of minimizing or preventing any recovery by the Class.

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.

B. The Complexity, Length and Expense of Further Litigation of the Direct 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 Direct Lending claims that are being resolved under the Settlement. The continued prosecution of the Action would require a significant amount of additional time and expense given the complexity of the case. Indeed, in the absence of the Settlement, continued litigation of the Action would have required additional discovery, including further depositions of Northern Trust fact witnesses, followed by a trial that would involve substantial expert and factual testimony with respect to liability and damages. Furthermore, even if 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 Class were to recover a larger judgment after trial, the additional delay, through post-trial motions and appeals, would deny the Class any recovery for years with respect to the Direct 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, certain and immediate benefit for the Class in this complex and contested litigation, undiminished by further expense and without the delay, risk and uncertainty of continued litigation of the Direct Lending claims. Accordingly, this factor supports final approval of the Settlement.

C. The Reaction of Class Members Supports the Settlement

The reaction of Class Members to date also strongly favors the proposed Settlement. Pursuant to the Preliminary Approval Order, the Settlement Notice has been mailed to Class Members identified by Defendants,[4] and a Summary Notice was published in *The Wall Street*

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[4] Pursuant to the Court-approved notice program, the Settlement Notices mailed to identified Class Members were accompanied by personalized "Cover Letters" (together with the Settlement Notice, the

Journal and transmitted over the *PR Newswire*.[5] *See* ¶¶ 4, 6 of the GCG Declaration, submitted as Exhibit 2 to the Joint Decl. The Settlement Notice informed Class Members of their right to object or to request exclusion from the Class by December 21, 2016. To date, not one 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 exclusion, in a separate submission to be filed with the Court on or before January 4, 2017.

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

The proposed Settlement 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 parties. The Settlement was reached following extensive, arm's-length negotiations between the parties, which included a formal mediation before Judge Andersen – a highly respected and skilled mediator with extensive experience in the mediation of complex class actions. *See* Andersen Decl. ¶ 2. In connection with the mediation process, the parties made presentations to each other and to Judge Andersen regarding the strengths and weaknesses of their respective

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"Notice Packet"). Joint Decl. ¶ 49. The Cover Letters set forth the amount of the Class Members' investments on the two "Relevant Dates" during the Class Period that will form the basis for calculating the Class Members' proportionate share of the Settlement proceeds under the proposed Plan of Allocation. 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 December 9, 2016. Through December 6, 2016, no Investment Challenges have been received. *Id.*

[5] The Summary Notice advised entities that did not receive the Settlement Notice by direct mail (*i.e.*, they were not identified by Defendants as Class Members) that, if they believed that they met the definition of the Class, they had the right to make a Status Challenge, which, if successful, would put them in parity with the identified Class Members. Joint Decl. ¶ 50. Status Challenges were to be mailed to the Settlement Administrator, postmarked no later than December 23, 2016. Through December 6, 2016, no Status Challenges have been received. *Id.*

positions. *Id.* ¶¶ 3-8. While the parties were unable to reach a resolution at the mediation, they continued to discuss resolving the Action thereafter, both through direct communications between counsel to the parties and through numerous discussions conducted though Judge Andersen, who remained closely involved in the negotiations. *Id.* ¶¶ 9-13. 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 additional settlement negotiations that followed, the parties were able to reach agreement on the Settlement on the terms and conditions 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 Class. The Settlement was achieved following an extensive investigation and litigation of the Direct 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. ¶ 62. 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 served voluminous document production requests on each other. Joint Decl. ¶ 32. In response to discovery requests, Defendants have produced, and Plaintiffs have reviewed, 373,588 pages of documents, which include documents and written discovery responses re-produced in this Action from the Diebold, BP and FedEx Actions, and deposition transcripts and exhibits from the L.A. Action. *Id.* The documents produced by Defendants also included deposition transcripts of fact witnesses, expert reports, and deposition transcripts of expert witnesses. *Id*. In addition, in response to Defendants' discovery requests, Settling Plaintiffs' have produced, and Defendants have reviewed, over 10,000 pages of documents. *Id*. Also, in connection with class certification, Co-Lead Counsel deposed Defendants' expert witness, and Defendants deposed two expert witnesses proffered by Settling Plaintiffs. *Id*.

Following entry of the Court's class certification order, Defendants produced an additional 17,087 pages of documents, including nine transcripts of depositions, along with the accompanying deposition exhibits, of Northern Trust personnel, deposed in the L.A. Action. Joint Decl. ¶ 32. Settling Plaintiffs have also served, and Defendants have responded to, a

Second Set of Interrogatories to Defendants. *Id*. Also, prior to reaching the agreement-in-principle to settle, the parties had begun to schedule further depositions of Northern Trust fact witnesses. *Id*.

In addition to the extensive discovery described above, the Action involved the filing of two amended complaints, briefing of a contentious motion to dismiss and motion for class certification, and extensive, arm's-length settlement negotiations where the strengths and weaknesses of the parties' respective claims and defenses were fully explored. Thus, Settling Plaintiffs and Co-Lead Counsel reached the agreement to settle the Direct 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 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 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 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 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 approval of 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, 321 (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 Class. The Plan of Allocation is designed to provide a fair and reasonable allocation of the Net Settlement Fund among Class Members in proportion to their relative estimated losses experienced as a result of their participation in Northern Trusts' Direct Lending program. Joint Decl. ¶¶ 53-55. Details of the Plan of Allocation were provided to Class Members as part of the notice process and no objections to the proposed plan have been received to date.[6] *Id.* ¶ 56. Accordingly, Settling Plaintiffs submit that the proposed Plan Allocation is fair and reasonable and should be approved.

IV. CONCLUSION

For the foregoing reasons, Settling Plaintiffs respectfully request that the Court: (i) approve the proposed Settlement as fair, reasonable and adequate; and (ii) approve the proposed Plan of Allocation as a fair and reasonable method for the allocation of the Settlement proceeds.

[6] The methodology of the proposed Plan of Allocation, which takes into account the dates on which material losses were incurred in the Core Pools and the relative holdings of Class Members on those dates, parallels the plan of allocation approved by the Court in connection with the Indirect Lending Settlement, which similarly drew no objections from class members.

Dated: December 7, 2016

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP

By: */s/ Avi Josefson*
Avi Josefson
875 North Michigan Avenue, Suite 3100
Chicago, IL 60611
Telephone: (312) 373-3880
Illinois Bar No. 6272453
avi@blbglaw.com

– and –

Rebecca E. Boon
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
rebecca.boon@blbglaw.com

SULLIVAN, WARD, ASHER
& PATTON, P.C.
Michael J. Asher
Matthew I. Henzi
1000 Maccabees Center
25800 Northwestern Highway
Southfield, MI 48075
Telephone: 248-746-0700
masher@swappc.com
mhenzi@swappc.com

Counsel for Plaintiffs 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 and Co-Lead Counsel for the Class

#1039084

CERTIFICATE OF SERVICE

I, Avi Josefson, an attorney, hereby certify that a copy of the foregoing "**Memorandum of Law in Support of Settling Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation**" was served on counsel for all parties electronically via the CM/ECF system on December 7, 2016.

Dated: December 7, 2016

By: *_/s/ Avi Josefson_*
Avi Josefson