

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Civil Action No. 14-00067

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND
EXPENSES AND SERVICE AWARD**

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I. INTRODUCTION

Plaintiffs, DCG&T f/b/o Jack Battaglia/IRA *et al.* (“Battaglia”), by their counsel and pursuant to Rules 23.1(c) and 54(d)(2) of the Federal Rules of Civil Procedure, respectfully submit this Memorandum of Law in Support of their (1) Application for an award of attorneys’ fees to be paid out of the Settlement Fund (the “Fee Request”); (2) Application for reimbursement of reasonable costs and expenses incurred by Plaintiffs’ Counsel in connection with the prosecution of this shareholder derivative action (the “Expense Request”); and (3) Application for reimbursement of time spent and expenses incurred by Plaintiff, Jack Battaglia (“Battaglia”), in connection with the prosecution of this action (the “Service Award Request”). In addition to this Memorandum of Law, the Fee Request, the Expense Request, and the Service Award Request are supported by (a) the individual Declarations of Plaintiffs’ Counsel, Kevin P. Roddy (“Roddy Decl.”), Lee Squitieri (“Squitieri Decl.”), and Jeffrey Hamilton Geiger (“Geiger Decl.”); (b) the Joint Declaration of Kevin P. Roddy and Lee Squitieri; (c) the declaration of Plaintiffs’ expert witness, Collin Hite (“Hite Decl.”); and (d) the declaration of Plaintiff Battaglia (“Battaglia Decl.”).

As set forth in the Stipulation of Settlement (the “Stipulation”), Dkt. No. 113 (filed July 31, 2015), the Remaining Defendants¹ agreed to pay \$12,000,000 to settle this shareholder derivative action (the “Settlement Fund”). Stipulation, ¶ 3. For their efforts in achieving this considerable benefit for the benefit of the Nominal Defendant, Apple REIT Nine, Inc. (“A-9”),

¹ As set forth in the Stipulation (page 2), the term “Remaining Defendants” refers to the Director Defendants Glade Knight, James C. Barden, Michael S. Waters, Robert M. Wily, and Bruce H. Matson. In its December 18, 2014, memorandum opinion granting in part and denying in part Defendants’ motion to dismiss Plaintiffs’ Verified Amended Complaint, this Court upheld Plaintiffs’ claim for breach of fiduciary duty against the Remaining Defendants. *See DCG&T f/b/o Battaglia v. Knight*, 68 F. Supp. 2d 579 (E.D. Va. 2014).

and the A-9 unit holders who voted against the 2014 Merger (the “Merger”), Plaintiffs’ Counsel² respectfully requests a fee award equal to 33-1/3% of the Settlement Fund (\$4,000,000) plus reimbursement of \$144,352.42 in litigation expenses that were reasonably incurred in connection with the successful prosecution of this shareholder derivative action.³ In addition, Plaintiff Battaglia seeks payment of a Service Award in the amount of \$27,902 as reimbursement of his costs and expenses, including lost wages, as a result of the time spent and out-of-pocket expenses incurred while serving as the lead Plaintiff.

The Settlement is the culmination of more than 18 months of hard-fought litigation and vigorous and protracted arm's-length settlement negotiations carried out under the supervision of two experienced jurists/mediators. *See* Roddy Decl., ¶¶ 3(a)-(v), 4; Squitieri Decl., ¶¶ 2-34. Plaintiffs’ Counsel prosecuted this shareholder derivative action on a purely contingent fee basis, and achieved this result in the face of significant hurdles and risks to recovery.⁴ Although Plaintiff Battaglia and his counsel believe that the case for liability and damages against the Remaining Defendants is strong and sustainable, there was a real and growing risk that continued litigation would diminish, rather than enhance, the prospects for recovery. Roddy Decl., ¶ 4. Plaintiffs’ Counsel believe the Settlement provides a superior recovery for A-9 and its unit

² As set forth in the Stipulation (page 6), the term “Plaintiffs’ Counsel” refers to the law firms of Squitieri & Fearon LLP, Wilentz, Goldman & Spitzer, P.A., and Sands Anderson PC.

³ In addition to the above-referenced declarations, Plaintiffs’ Counsel is simultaneously submitting herewith their Motion for Final Approval of Settlement and the Plan of Allocation, which is accompanied by a separate Memorandum of Law.

⁴ The risks inherent in this litigation are evidenced by the fact that every other shareholder action brought against and/or concerning the Apple REIT entities has failed. *See, e.g., Moses v. Apple Hospitality REIT*, 2015 U.S. Dist. LEXIS 28499 (E.D.N.Y. Mar. 9, 2015); *In re Apple REITs Litig.*, 2015 U.S. Dist. LEXIS 37783 (E.D.N.Y. Mar. 25, 2015); *Wenzel v. Knight*, 2015 U.S. Dist. LEXIS 4476 (E.D. Va. Jan. 14, 2015), *subsequent opinion*, 2015 U.S. Dist. LEXIS 70536 (E.D. Va. June 1, 2015).

holders, given the substantial risks, costs, and delays entailed in attempting to prove liability and damages, and the substantial risk that further litigation would reduce or even exhaust the funds available for distribution to A-9 unit holders who voted against the Merger. Roddy Decl., ¶ 4.

The amount sought in the Fee Request, which has been approved by Plaintiff Battaglia, who is an accountant and a sophisticated investor, Battaglia Decl., ¶ 5, is consistent with attorneys' fees that have been awarded in shareholder derivative actions and class actions by courts in the Fourth Circuit and other courts throughout the country, and is especially warranted in light of the substantial recovery obtained, the efforts of counsel in obtaining this highly favorable result, and the significant obstacles and risks presented in bringing and prosecuting this shareholder derivative action. *See* Hite Decl., ¶ 8; Part III.A-B, pages 10-19, *infra*.

The requested fee also is reasonable when compared to Plaintiffs' Counsels' reported lodestar, reflecting a modest enhancement of approximately 2.07 times the lodestar to account for the unique difficulty of this case and the high degree of success achieved.⁵ This modest lodestar multiplier is wholly reasonable when compared to fee awards in similar cases and in light of the substantial contingency risks of the litigation, as discussed herein. *See* Part III.B, pages 20-21, *infra*.

The unreimbursed expenses incurred by Plaintiffs' Counsel in connection with the litigation of this shareholder derivative action and sought in the Expense Request total \$144,352.42. Roddy Decl., ¶ 10; Squitieri Decl., ¶ 36; Geiger Decl., ¶ 3. These expenses include expert witness fees, filing fees, computerized assisted legal research expenses, out-of-

⁵ The Roddy Decl., the Squitieri Decl., and the Geiger Decl. contain their respective law firm's reported fees (lodestar) and reimbursable expenses. Each of these declarations includes a narrative of the legal services provided in connection with the prosecution of this shareholder derivative action. Roddy Decl., ¶¶ 3(a)-(b), 4; Squitieri Decl., ¶¶ 2-34; Geiger Decl., ¶ 2. Each law firm has also submitted for this Court's *in camera* inspection billing entries based on their contemporaneously maintained billing records.

town travel and other expenses of the type typically and reasonably charged to clients who are billed by the hour. *Id.* These expenses were reasonable and necessary to the prosecution of this action and Plaintiffs' Counsel respectfully request that they be approved for reimbursement from the Settlement Fund. *See* Part III.C, pages 21-23, *infra*.

Additionally, Plaintiffs' Counsel respectfully requests a \$27,902 Service Award to Plaintiff Battaglia to reimburse him for his work in prosecuting this case and achieving the \$12,000,000 Settlement. This reimbursement and the amount are consistent with those granted in similar circumstances. Plaintiff Battaglia played an instrumental role in the initiation and prosecution of this action and in negotiating the Settlement. Roddy Decl., ¶ 11; Battaglia Decl., ¶¶ 2-4.⁶ This Court has the discretion to grant such an award, and the reimbursement is reasonable in light of the work that Plaintiff Battaglia performed to assist in achieving the result obtained. *See* Part III.D, pages 23-25, *infra*.

This Memorandum of Law and the supporting declarations demonstrate that the Fee Request is reasonable and consistent with Fourth Circuit jurisprudence. For these reasons, Plaintiffs' Counsel respectfully submits that the Fee Request, the Expense Request, and the Service Award Request are fair and reasonable and should be granted.

II. BACKGROUND OF THIS SHAREHOLDER DERIVATIVE ACTION

A. The Efforts Of Plaintiffs' Counsel In Achieving The Settlement

As detailed in Paragraph 3(a)-(b) of the Roddy Decl. and Paragraphs 2-34 of the Squitieri Decl., the Settlement was the product of Plaintiffs' Counsel's and Battaglia's diligent efforts in prosecuting this action over the past 18 months, and in pursuing hard-fought, arm's-length

⁶ The Battaglia Decl. is attached as Exhibit D to the Roddy Decl.

settlement negotiations. The Settlement was reached only after Plaintiffs' Counsel had done the following:

(a) Thoroughly investigated the merits of the case, including a close study of the Cease and Desist Order issued by the U.S. Securities & Exchange Commission ("SEC") involving the Defendants, and the events that culminated in that Order.

(b) Closely reviewed the Defendants' SEC filings, including a painstaking review of the voluminous (600+ page) proxy statement related to the Merger at issue, and researched past legal actions that involved the Defendants.

(c) Carefully researched Rule 23.1 of the Federal Rules of Civil Procedure and applicable Virginia corporate law and drafted Plaintiff Battaglia's demand letter that was sent to the A-9 Board of Directors on December 16, 2013. When that demand letter was ignored, Plaintiffs' Counsel researched and drafted Plaintiffs' Class Action and Shareholder Derivative Complaint and First Amended Verified Complaint (the "Amended Complaint"). Dkt. Nos. 1 and 23.

(d) Drafted Plaintiffs' discovery requests and served them upon Defendants. Plaintiffs' Counsel negotiated with Defendants' counsel and agreed upon a Stipulated Protective Order that was entered by this Court in May 2014. Plaintiffs' Counsel prepared for and participated in an Initial Pretrial Conference conducted by Senior Judge Payne in May 2014, and an Initial Pretrial Conference conducted by this Court in December 2014. Dkt. Nos. 28, 29, 36, 37, 38, 39, 63, and 64.

(e) Reviewed and analyzed Defendants' motion to dismiss the Amended Complaint, and researched and drafted the memorandum of law in opposition. Plaintiffs' Counsel reviewed the Answer to the Amended Complaint filed by Defendants and engaged in legal research as to

the sufficiency and propriety of the affirmative defenses asserted by the Defendants. Dkt. Nos. 33, 34, 35, 41, and 42.

(f) Researched, engaged, met, and worked closely with Plaintiffs' expert witnesses as to corporate governance and damages caused by the Merger that was the subject of this shareholder derivative action (and class action), and ensured that their Rule 26 expert disclosures were properly and timely served upon Defendants. Dkt. Nos. 92, 95, and 100.

(g) Researched potential mediators and worked with Defendants' counsel to select a competent and well-regarded private mediator. Dkt. No. 44.

(h) Researched and drafted Plaintiffs' initial mediation brief, and participated in mediation sessions conducted in Richmond by Justice Elizabeth Lacy (Ret.) of the Virginia Supreme Court beginning in July 2014.

(i) Researched and drafted the memorandum of law in support of Plaintiffs' motion for class certification. In addition, Plaintiffs' Counsel reviewed and analyzed Defendants' opposition to that motion and researched and drafted Plaintiffs' reply memorandum of law. Dkt. Nos. 45, 46, 47, 49, 55, and 59.

(j) Drafted and served supplemental discovery requests upon Defendants, as well as Freedom of Information Act document requests and subpoenas directed to third-party witnesses. Plaintiffs' Counsel researched, drafted, reviewed, and revised Plaintiffs' motion to compel discovery, reviewed Defendants' opposition brief, and researched, drafted, reviewed, and revised Plaintiffs' reply memorandum of law in support of that motion. Dkt. Nos. 51, 52, 53, 54, 57, 58, and 59.

(k) Prepared Plaintiff Battaglia for his class certification deposition, which was taken by Defendants in Washington, D.C., in July 2014, and defended him during that proceeding.

(l) Researched and drafted Plaintiffs' supplemental memorandum of law in opposition to Defendants' motion to dismiss the Amended Complaint. Plaintiffs' Counsel reviewed and analyzed the Order and Memorandum Opinion issued by this Court in December 2014 that granted in part and denied in part Defendants' motion to dismiss. *DCG&T f/b/o Battaglia v. Knight*, 68 F. Supp. 2d 579 (E.D. Va. 2014). Plaintiffs' Counsel researched and drafted Plaintiffs' memorandum of law in opposition to Defendants' subsequent motion to dismiss Count IV of the Amended Complaint. Dkt. Nos. 60, 61, 62, 67, 68, 77, 90, 98, 107, 108, and 109.

(m) Reviewed and analyzed the insurance policies produced by Defendants.

(n) Drafted Plaintiffs' supplemental mediation brief, and prepared for and conducted a second mediation session with Justice Lacy in Richmond.

(o) Researched and drafted Plaintiffs' opposition to Defendants' motion for reconsideration of this Court's Order Granting Plaintiffs' Motion to Compel Discovery. Dkt. Nos. 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, and 102.

(p) Researched and drafted Plaintiffs' memorandum of law in opposition to Defendants' motion for a protective order as to the non-party subpoenas issued by Plaintiffs, and Defendants' motion for a protective order as to discovery relating to the SEC investigation and Consent Order. Plaintiffs' Counsel appeared before this Court and argued the discovery motions in March 2015. Dkt. Nos. 81, 82, 83, 84, 85, 86, 87, 96, 97, 102, 103, 104, and 105.

(q) Dedicated significant time and resources to reviewing and analyzing over eight thousand (8,000) documents, consisting of many thousands of pages, that Defendants produced in discovery after this Court ordered merits discovery to proceed.

(r) Constructed chronologies of key events based upon our analysis of thousands of documents produced by Defendants, as well as other information that was publicly available.

(s) Prepared for and conducted the depositions of seven (7) key fact witnesses, including preparing deposition notices; strategizing as to each deposition; undertaking an extensive review of the specific documents related to each deponent; preparation of outlines and questions for each deposition; preparation of deposition exhibits; and review of deposition transcripts following each deposition.

(t) Analyzed Defendants' privilege logs in conjunction with discovery that was produced by Defendants, and conducted legal research into the attorney-client privilege and the application of the so-called "fiduciary exception" to that privilege.

(u) Engaged in settlement negotiations with Defendants' counsel.

(v) Drafted, reviewed, and revised Plaintiffs' supplemental mediation brief and, in May 2015, engaged in a successful mediation before Magistrate Judge David J. Novak. Thereafter, Plaintiffs' Counsel worked on the structure of the proposed Settlement and Plan of Allocation; drafted, reviewed, and revised the proposed preliminary approval order, Plan of Allocation, and final approval order; and engaged and worked with the Settlement administrator, Garden City Group, to devise the notice plan and draft, review, and revise notice-related documents. Dkt. Nos. 107, 108, 109, 110, 111, 112, 113, and 114.⁷

Plaintiffs' Counsel's efforts to successfully resolve this shareholder derivative action have been without compensation of any kind to date, and payment of attorneys' fees was, and always

⁷ In addition, Plaintiffs' Counsel will also have to spend considerable time and expenses not included in this Application preparing for and conducting the Fairness Hearing on September 14, 2015, responding to any objections that might be received by the August 28, 2015, deadline, and overseeing the Settlement and distribution of the Settlement Fund in accordance with the Plan of Allocation. Plaintiffs' Counsel will not seek additional compensation for this work.

has been, wholly contingent upon the result achieved. Roddy Decl., ¶ 4. As compensation for these efforts, Plaintiffs' Counsel respectfully requests that this Court award attorneys' fees of 33-1/3% (or \$4,000,000) of the \$12,000,000 Settlement Fund, plus \$144,352.42 in unreimbursed expenses. Supported by ample case law in the Fourth Circuit, as well as persuasive decisions from other courts, the Fee Request is appropriate compensation for the excellent result achieved in this shareholder derivative action, and the Expense Request is entirely appropriate. *See* Hite Decl., ¶¶ 6-8.

B. The Substantial Risks Undertaken By Plaintiffs' Counsel In Prosecuting This Case

As numerous courts have recognized, “the odds of winning [a] derivative lawsuit [are] extremely small” because “derivative lawsuits are rarely successful.” *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). *Accord In re Atmel Corp. Deriv. Litig.*, 2010 U.S. Dist. LEXIS 145551, *42 (N.D. Cal. Mar. 31, 2010); *In re NVIDIA Deriv. Litig.*, 2009 U.S. Dist. LEXIS 24973, *17 (N.D. Cal. Mar. 18, 2009).⁸ Had Plaintiffs continued to litigate this action, we would have faced a host of potential risks and costs, including the potential for successful attacks on the pleadings, the high costs associated with lengthy and complex litigation, the potential of losing the case on summary judgment, and the risks and costs associated with trial, should the case progress that far. Indeed, even a favorable judgment at trial may face post-trial

⁸ In the words of the Fifth Circuit: “Settlements of shareholder derivative actions are particularly favored because such litigation is notoriously difficult and unpredictable. The courts, therefore, do not lightly reject such settlements.” *Maier v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983). The Fourth Circuit agrees, adding: “Settlement here is favored for the reasons that settlements are generally favored: disputes are resolved; the resources of litigants and courts are saved; and, in the case of a derivative action, management can return its attention and energy from the courtroom to the corporation itself.” *Zimmerman v. Bell*, 800 F.2d 386, 392 (4th Cir. 1986). To the same effect are *In re Davita Healthcare Partners, Inc. Deriv. Litig.*, 2015 U.S. Dist. LEXIS 74372, *10 (D. Colo. June 5, 2015); and *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) (collecting cases).

motions and even if liability was established, the amount of recoverable damages is uncertain. The Settlement eliminates these and other risks of continued litigation, including the very real risk of no recovery after several years of litigation. Given these risks, we respectfully submit that the Settlement represents an excellent result for A-9 and its unit holders who voted against the Merger. *See Hite Decl.*, ¶ 8.

III. ARGUMENT

A. The Percentage Of The Common Fund Is The Appropriate Method For Awarding Attorneys' Fees In Shareholder Derivative Actions

“It is well established that the shareholder-plaintiff in a derivative action is entitled to reimbursement by the corporation for the reasonable expenses of litigation, including attorney fees, when the successful prosecution of the suit has yielded a tangible benefit to the corporation.” 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *FEDERAL PRACTICE AND PROCEDURE: CIVIL* § 1841, at 226 (2007) (footnote and citations omitted) (“7C Wright, Miller & Kane”). Plaintiffs’ successful prosecution of this shareholder derivative action clearly justifies an award of attorneys’ fees. *See id.* at 226-229; *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970); *Lewis v. Chiles*, 719 F.2d 1044, 1049 (9th Cir. 1983); *In re Pfizer, Inc. Shareholder Deriv. Litig.*, 780 F. Supp. 2d 336, 343 (S.D.N.Y. 2011). *See generally* 5 MOORE’S *FEDERAL PRACTICE* § 23.1.17 (2015).

The Supreme Court has long recognized that “a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Although there are two methods for calculating attorneys' fees in class actions and derivative actions, the percentage of the fund method and the lodestar method, the Supreme Court has suggested that in the case of a common fund, the attorneys' fee should be determined on a percentage of recovery

basis. *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' where a reasonable fee is based on a percentage of the fund bestowed on the class...."). The same rule is followed under Rule 23.1 in shareholder derivative actions. *See Pac. Enters.*, 47 F.3d at 378-379 (upholding a \$4 million fee award based upon a \$12 million recovery in a shareholder derivative suit).⁹

Although the Fourth Circuit has not mandated application of one particular method to the evaluation of attorneys' fees in common fund cases, courts within this Circuit consistently apply the percentage of the fund method for calculating attorneys' fees in such cases, including class actions and derivative actions. *See In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 260 (E.D. Va. 2009) ("other districts within this Circuit, and the vast majority of courts in other jurisdictions consistently apply a percentage of the fund method for calculating attorneys' fees in common fund cases"). As Judge Childs of the District of South Carolina recently summarized the applicable law:

For well over a century, the United States Supreme Court has recognized the "common fund" exception to the general rule that a litigant bears his or her own attorney's fees. *Trustees v. Greenough*, 105 U.S. 527 (1881). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), "that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."

Within this Circuit, the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney's fees. See Goldenberg v. Marriott PLP Corp., 33 F. Supp. 2d 434, 438 (D. Md. 1998)

⁹ It is true that, strictly speaking, a shareholder derivative action is not a typical "common fund" case because the award is collected by the derivative plaintiff on behalf of the corporation, the true party in interest. *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 852, 863 (W.D. Pa. 1995). However, the Third Circuit has recognized that plaintiffs in a derivative action may recover attorneys' fees from the award obtained through prosecuting the case as in a more traditional common-fund suit, *i.e.*, a class action. *See Shlensky v. Dorsey*, 574 F.2d 131 (3d Cir. 1978). *Accord In re Cendant Corp. Deriv. Action Litig.*, 232 F. Supp. 2d 327, 337 n.1 (D.N.J. 2002).

(noting endorsement of percentage-of-recovery method by several courts in the Fourth Circuit); *In re Microstrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 786-87 (E.D. Va. 2001); *Strang v. JHM Mortgage Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("the percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases"); *Jones v. Dominion Res. Svcs.*, 601 F. Supp. 2d 756, 760 (S.D. W. Va. 2009).

Savani v. URS Prof. Solutions LLC, 2015 U.S. Dist. LEXIS 101445, *6-8 (D.S.C. Aug. 4, 2015) (emphasis added; parallel citations omitted). *See also Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481 (D. Md. 2014) ("District courts in the Fourth Circuit, and the majority of courts in other jurisdictions, use the percentage of recovery method in common fund cases."); *Domonoske v. Bank of Am.*, 790 F. Supp. 2d 466, 475 (W.D. Va. 2011) (same); *The Mills*, 265 F.R.D. at 260 (collecting cases). The MANUAL FOR COMPLEX LITIGATION also endorses the use of the percentage-of-the-fund method in awarding attorneys' fees in common fund cases. Federal Judicial Center, MANUAL FOR COMPLEX LITIGATION §14.121, at 187 (4th ed. 2004) (commenting that "the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases"). *See also Hite Decl.*, ¶ 8.

A percentage fee award is appropriate because it encourages Plaintiffs' Counsel to obtain the maximum recovery at the earliest possible stage of the litigation and, hence, most fairly correlates Plaintiffs' Counsel's compensation to the benefit achieved for A-9 and the unit holders who voted against the Merger. *See Strang*, 890 F. Supp. at 503 ("[T]he percentage method is more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases."). It also is consistent with private marketplace practices where contingent fee attorneys are customarily compensated based on a percentage of the recovery. *See Helmick v. Columbia Gas Transmission*, 2010 U.S. Dist. LEXIS 65808, *11-12 (S.D. W. Va. July 1, 2010).

B. The Fee Request Is Fair And Reasonable And It Should Be Granted

1. Introduction

To determine the reasonableness of the Fee Request submitted by Plaintiffs in this shareholder derivative action, courts within the Fourth Circuit apply the seven-factor approach derived from Third Circuit jurisprudence, which analyzes:

- (1) the results obtained;
- (2) objections to the settlement terms and/or fees requested by counsel;
- (3) the quality, skill, and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;
- (6) public policy considerations; and
- (7) awards in similar cases.

See The Mills, 265 F.R.D. at 261(citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 733 (3d Cir. 2001)); *accord Decohen*, 299 F.R.D. at 481.¹⁰ As set forth below, application of those factors clearly support the Fee Request in this case. Hite Decl., ¶ 8. “Moreover, where, as here, the parties have agreed on the amount of attorneys’ fees and expenses, courts give the parties’ agreement substantial deference.” *Cohn*, 375 F. Supp. 2d at 861 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).

2. The Results Obtained By Plaintiffs’ Counsel Support The Fee Request

Courts have consistently recognized that the results achieved is one of the most important factors to be considered in making a fee award. *See Hensley*, 461 U.S. at 436 (“most critical

¹⁰ These factors are similar to the factors elucidated by the Fifth Circuit in *Johnson v. Ga. Hwy. Exp., Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974), which were adopted by the Fourth Circuit in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978). *See The Mills*, 265 F.R.D. at 261.

factor is the degree of success obtained"); *Decohen*, 299 F.R.D. at 481 ("In the Fourth Circuit, the most critical factor in calculating a reasonable fee award is the degree of success obtained.") (quoting *McKnight v. Circuit City Stores, Inc.*, 14 Fed. Appx. 147, 149 (4th Cir. 2001)). Here, Plaintiffs' Counsel have succeeded in obtaining a Settlement providing a total cash recovery of \$12,000,000 for A-9 and the unit holders who voted against the Merger, in the face of significant risks of potentially dispositive legal issues. *See* Hite Decl., ¶ 8. Also, such unit holders will receive their distribution from the Settlement without having to file a claim. Finally, even though notice of the Proposed Settlement and the Plan of Allocation has been sent via first-class mail to more than 38,000 unit holders in A-7, A-8, and A-9, as of August 20, 2015, just two unit holders have objected to the Plan of Allocation and *no* unit holders have objected to the Fee Request. These factors indicate that Plaintiffs' Counsel have achieved a superior result, and weigh heavily in favor of the requested fee award. *See Decohen*, 299 F.R.D. at 481; *Kay Co.*, 749 F. Supp. 2d at 465; *Helmick*, 2010 U.S. Dist. LEXIS 65808, at *14-15.

3. The Reaction Of The Unit Holders Confirms That The Requested Fees Are Reasonable

Pursuant to the Order Regarding Preliminary Approval and Notice entered by this Court on July 31, 2015 (Dkt. No. 114), Settlement administrator Garden City Group mailed copies of the Notice of Pendency and Settlement of Shareholder Derivative Action and the Plan of Allocation via first-class mail to approximately 38,000 unit holders on August 6, 2015. Page 5 of the Notice informed unit holders that "Counsel for Plaintiffs intends to apply to the Court for approval of an award of fees and expenses in an amount not to exceed \$4,300,000...." The Notice also advised unit holders that they could object to the Fee Request and Expense

Request.¹¹

While the objection deadline has not yet passed,¹² as of August 20, 2015, Plaintiffs' Counsel have received just two written objections to the Plan of Allocation. *See* Joint Declaration of Kevin P. Roddy and Lee Squitieri in Support of Plaintiffs' Application for Final Approval of Settlement and Plan of Allocation, ¶¶ 38-40. We have received no requests for exclusion from the Proposed Settlement. As of this filing, Plaintiffs' Counsel have received no objections to the Fee Request, the Expense Request, or the Service Award Request.¹³

The lack of any meaningful objections is compelling evidence that the Fee Request, the Expense Request, and the Service Award Request are fair and reasonable and should be granted by this Court. *See The Mills*, 265 F.R.D. at 257 ("[A]n absence of objections and a small number of opt-outs weighs significantly in favor of a proposed settlement's adequacy."); *Decohen*, 299 F.R.D. at 480-481 (approving fee award representing one-third of common fund, in large part because of the lack of objections to the proposed settlement).

4. The Skill Required And Quality Of Plaintiffs' Counsel Supports The Fee Request

The relevant words of the Ninth Circuit bear repeating: "[T]he odds of winning [a] derivative lawsuit [are] extremely small" because "derivative lawsuits are rarely successful." *Pac. Enters.*, 47 F.3d at 378. In this case, the skill required to properly perform the legal services

¹¹ In addition, the Notice was posted on Garden City Group's Internet website - www.gardencitygroup.com - and on the website maintained by Wilentz, Goldman & Spitzer, P.A. - www.wilentz.com.

¹² The last day for unit holders to file objections to the Proposed Settlement is August 28, 2015. If any other objections or any requests for exclusions are received after the filing of this Application, Plaintiffs will respond in their reply submission, in accordance with the schedule set by this Court.

¹³ We note that a low level of objections is a "rare phenomenon." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005).

and the experience, ability, and reputation of the attorneys involved also support the Fee Request. The successful prosecution of this shareholder derivative action required the participation of highly skilled and experienced attorneys. *See Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). The Settlement was achieved by Plaintiffs' Counsel with decades of experience in prosecuting and trying complex litigation, including shareholder derivative actions and class actions. Plaintiffs' Counsel are highly experienced in the field of shareholder rights litigation. The substantial recovery obtained for A-9 and the unit holders who voted against the Merger is the direct result of the significant efforts of highly skilled and specialized attorneys who possess substantial experience in the prosecution of complex cases. Roddy Decl., Ex. A; Squitieri Decl., Ex. A; Hite Decl., ¶ 5.

The quality of opposing counsel can also be important in evaluating the quality of Plaintiffs' Counsel's work in this case. *Savani*, 2015 U.S. Dist. LEXIS 101445, at *14 ("The skill required by Class Counsel is also reflected in the quality of opposing counsel."). Throughout this shareholder derivative action, Defendants have been represented by highly skilled and capable counsel from the Washington, D.C., and Richmond, Virginia, offices of McGuire Woods LLP, a law firm with a national reputation for vigorous advocacy in the defense of complex actions such as this one. As this Court has witnessed, this case has been hard fought at every stage. The ability of Plaintiffs' Counsel to obtain such a favorable settlement for A-9 and the unit holders who voted against the Merger in the face of such formidable opposition confirms the superior quality of their representation.

5. The Complexity And Duration Of This Shareholder Derivative Action Supports The Fee Request

To evaluate the complexity and duration of the litigation, the amount of motion practice and discovery is considered in addition to the time between the filing of the complaint and

reaching settlement. *See Decohen*, 299 F.R.D. at 482. “The case is more complex when the applicable laws are new, changing, or unclear.” *Id.* (citation omitted). There can be no doubt that this case presented complex - and even novel - issues of law and fact, including the Remaining Defendants’ liability under Virginia law for alleged breaches of the duty of loyalty and care in connection with their approval of the Merger. These issues were hard fought by opposing counsel through multiple motions to dismiss Plaintiffs’ Amended Complaint and numerous discovery disputes that stretched out over many months. This Court’s Orders and other written rulings reflect the complexity of the factual and legal issues presented herein. The record amply indicates that counsel for Plaintiffs and Defendants engaged in extensive motion practice concerning discovery issues and, on multiple occasions, required this Court’s intervention. As set forth herein, after extensive motion practice, Defendants produced thousands of relevant documents, which Plaintiffs’ Counsel reviewed, analyzed, and used in conducting seven (7) depositions of key fact witnesses.

From the outset, this shareholder derivative action was especially difficult and highly uncertain, with no assurance whatsoever that Plaintiffs’ state law claim(s) would survive Defendants’ attacks on the pleadings, motion(s) for summary judgment, trial, and appeal. That is to say, even if Plaintiffs were ultimately successful in proving the Remaining Defendants’ alleged breaches of fiduciary duty at trial, this shareholder derivative action would likely continue through one or more levels of appellate review. In complex cases such as this, it must be recognized that even a victory at the trial stage does not guarantee ultimate success. Both trial and judicial review are unpredictable and could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself. In the absence of the Settlement, the unit holders would have to wait several more years before they obtained any relief, even if they succeeded at

trial and on appeal. Despite the difficulty of the issues raised, Plaintiffs' Counsel secured an excellent result for A-9 and the unit holders who voted against the Merger. As a result, this factor supports the requested award. alteration. *See Decohen*, 299 F.R.D. at 482.

6. The Risk Of Non-Payment And The Contingent Nature Of The Fee Supports The Fee Request

In 2013, Plaintiffs' Counsel undertook to represent Plaintiffs on a contingent fee basis, assuming the very substantial risk that this shareholder derivative action would not yield recovery and would leave them uncompensated. Plaintiffs' Counsel invested a substantial amount of time and money to prosecute this action with the expectation that if they were successful in obtaining a recovery, they would receive a percentage of that recovery, but without any guarantee of compensation, or even the recovery of out-of-pocket expenses.¹⁴ Plaintiffs' Counsel know from personal experience that, despite the most vigorous and competent efforts, their success in contingent litigation is never guaranteed. Roddy Decl., ¶ 4. Shareholder derivative actions do not always settle; in fact, they are often dismissed at the pleading phase or terminated via summary adjudication. Certainly in this case, Defendants vigorously contested their liability at every stage of the litigation. These factors indicate a relatively high risk of nonpayment. *See Decohen*, 299 F.R.D. at 482; *The Mills*, 265 F.R.D. at 263; Hite Decl., ¶ 8.

This high risk of nonpayment also indicates that public policy favors the requested award, because the relevant policy considerations involve the balancing of "the policy goals of encouraging counsel to pursue meritorious" shareholder litigation "while also protecting against excessive fees," *Domonoske*, 790 F. Supp. 2d at 476 (citing *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 132 (2d Cir. 2008)). Although this Court should avoid awarding attorney's

¹⁴ Unlike counsel for Defendants who are paid an hourly rate and reimbursed for their expenses on a regular basis, Plaintiffs' Counsel have not been compensated for their time or expenses in this case.

fees that overcompensate, or create a perception of overcompensation, the requested fee award is in line with those awarded in class actions and derivative actions involving a similar degree of complexity and risk to counsel. Accordingly, these factors also weigh in favor of the requested fee award. *See Decohen*, 299 F.R.D. at 482.

7. Awards In Similar Cases Support The Fee Request

The amount of attorneys' fees requested here is consistent with awards routinely made by district courts within the Fourth Circuit (and courts in other circuits) in complex cases, including shareholder derivative cases and class actions where the risks of the litigation are immense and counsel faced a substantial risk of receiving little or no recovery. *Hite Decl.*, ¶ 8. In common fund cases, fee awards can range anywhere from 20% to 50% of the settlement fund. *See Savani*, 2015 U.S. Dist. LEXIS 101445, at *15 ("When plaintiffs' counsel accept a case on a contingency basis, it is customary to charge one-third (33.3%) or more of any amount recovered for the client."). The \$4,000,000 Fee Request in this case, which represents 33-1/3% of the \$12,000,000 Settlement Fund, clearly falls within this range and is entirely consistent with fees awarded in this District and in the Fourth Circuit. *See, e.g., Metropolitan Life Ins. Co. v. Leich-Brannan*, 812 F. Supp. 2d 729, 741 (E.D. Va. 2011) (Gibney, J.) (awarding one-third of amount recovered in ERISA case); *McDaniels v. Westlake Svcs., LLC*, 2014 U.S. Dist. LEXIS 16081, *38 (D. Md. Feb. 7, 2014) ("in light of the complexity of the case, the risk undertaken by counsel given the chance that plaintiffs would not prevail, and in view of the various factors considered with respect to the reasonableness of the settlement, such as the time devoted to litigating and settling, 33 1/3% appears to be a reasonable percentage of the recovery in this case."); *Decohen*, 299

F.R.D. at 481 (attorney fee award of one-third of settlement fund was proper, given "superior result" obtained in complex litigation); Hite Decl., ¶ 8.¹⁵

8. A Lodestar Cross-Check Supports The Reasonableness Of The Fee Request

Although the overwhelming trend among common fund cases in this Circuit is to apply the percentage approach to determine attorneys' fees, courts may use a lodestar analysis as a "cross-check." *See, e.g., The Mills*, 265 F.R.D. at 261 ("using the percentage of fund method and supplementing it with the lodestar cross check ... take[s] advantage of the benefits of both methods"); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006) (courts within the Fourth Circuit "have suggested a flexible analysis that uses the percentage of recovery method but applies the lodestar method as a cross-check").

Here, as set forth in their declarations, Plaintiffs' Counsel have collectively expended 2,872.44 hours in the prosecution of this case, with a resulting lodestar of more than \$1,928,084.70, representing a multiplier of approximately 2.07.¹⁶ This result is wholly reasonable considering the significant efforts expended and results achieved in this action. Roddy Decl., ¶¶ 5-6; Hite Decl., ¶¶ 6-8. This multiplier is at the low end of multipliers typically

¹⁵ *See also Pac. Enters.*, 47 F.3d at 379 (affirming 33% fee award in shareholder derivative action); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (citing affidavit of Prof. John C. Coffee, Jr. of Columbia University Law School, in which 289 class action settlements were compiled ranging from under \$1 million to \$50 million; average attorneys' fees percentage is 31.71% and median award is one-third of common fund); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (one-third of common fund awarded); *Gaskill v. Gordon*, 942 F. Supp. 382, 387 (N.D. Ill. 1996) (38% fee award), *aff'd*, 160 F.3d 361 (7th Cir. 1998); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) ("the award of one-third of the [settlement] fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district"); 7C Wright, Miller & Kane, § 1841 at 238-239 (collecting shareholder derivative cases in which fee awards were based on a percentage of the corporation's recovery).

¹⁶ That is to say, the amount of the Fee Request (\$4,000,000) is 2.07 times greater than Plaintiffs' Counsel's collective lodestar. *See Cendant*, 232 F. Supp. 2d at 341.

awarded by courts within the Fourth Circuit. *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 466 (D. Md. 2014) ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee."); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (same); *Domonoske*, 790 F. Supp. 2d at 476 (lodestar multiplier of 1.8 was "well within the normal range of lodestar multipliers") (citations omitted).¹⁷

We submit that the Fee Request is fair and reasonable, whether calculated as a percentage of the Settlement Fund or in relation to Plaintiffs' Counsel's lodestar. Hite Decl., ¶¶ 6-8.¹⁸

C. The Expense Request Is Reasonable And Necessary And It Should Be Approved

Plaintiffs' Counsel also requests that the Court grant the Expense Request seeking

¹⁷ The same result obtains in shareholder derivative action cases litigated and settled in other circuits. *See Davita Healthcare*, 2015 U.S. Dist. LEXIS 74372, at *15-16 ("the Court finds and holds that in this case, a multiplier of 3 will adequately compensate Plaintiffs' counsel for their extensive work on this complex case ... and is in line with the multipliers awarded in similar cases") (citing *In re United Health Grp. Inc. S'holder Deriv. Litig.*, 631 F. Supp. 2d 1151, 1160 (D. Minn. 2009) (awarding 2.75 multiplier to lodestar figure in shareholder derivative suit in which plaintiff's counsel worked on contingency in the face of considerable risk and uncertainty)). As stated in *Cohn*, 375 F. Supp. 2d at 862, "[i]n shareholder litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation." *Id.* (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052-1054 (9th Cir. 2002) (listing 23 settlements and multipliers for each, in which the average multiplier is 3.28); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 187-189 (D. Mass. 1998) (multiplier of 8.9 in a derivative action); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990) ("Most lodestar multiples awarded in cases like this are between 3 and 4.")).

¹⁸ The Fee Request has also been approved by Plaintiff Battaglia, an accountant and an experienced investor who has a significant financial stake in this action. Battaglia Decl., ¶ 5. As a result of his monitoring of the litigation and direct involvement in the mediation and settlement negotiations presided over by Justice Lacy and Magistrate Judge Novak, Battaglia has first-hand knowledge of the strengths and weaknesses of this action, including the significant risks and costs of continued litigation and recovery, and he directly observed Plaintiffs' Counsel's vigorous efforts to obtain the best possible recovery under difficult circumstances. *See id.* The fact that Battaglia, a sophisticated investor, has approved and recommended the fee is a factor that should be given considerable weight in any analysis of the reasonableness of the requested fee. *See In re Veeco Instruments, Inc. Sec. Litig.*, 2007 U.S. Dist. LEXIS 85554, *25-26 (S.D.N.Y. Nov. 7, 2007).

\$144,352.42 in reimbursement of costs and expenses incurred in connection with the prosecution of this shareholder derivative action. *See* Roddy Decl., ¶¶ 9-10; Squitieri Decl., ¶ 36; Geiger Decl., ¶ 5. The Fourth Circuit has stated that recoverable costs may include "those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir.1988); *see also Savani*, 2015 U.S. Dist. LEXIS 101445, at *26 ("Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine.") (citations omitted); *Microstrategy*, 172 F. Supp. 2d at 791 ("There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."); *Strang*, 890 F. Supp. at 503 (same). The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.

The expenses for which Plaintiffs' Counsel seek reimbursement are the type of expenses routinely charged to hourly paying clients. For instance, Plaintiffs' Counsel was required to travel in connection with prosecuting and settling this matter and, thus, incurred the related costs of airplane tickets, train tickets and/or automobile expenses, as well as meals and lodging. *See* Roddy Decl., ¶¶ 9-10; Squitieri Decl., ¶ 36. Other expenses include Court filing fees, long distance telephone and facsimile charges, postage and delivery expenses, computer assisted legal research fees, and other related fees. *See* Roddy Decl., ¶¶ 9-10; Squitieri Decl., ¶ 36; Geiger Decl., ¶ 5. The expenses in these category are reasonable in amount and are properly charged against the common fund created by the Settlement. *See Savani*, 2015 U.S. Dist. LEXIS 101445, at *27 ("Because these expenses were incurred with no guarantee of recovery, Class Counsel had a strong incentive to keep them to a reasonable level. Class Counsel has provided the court with

a summary of the costs and expenses advanced, and these costs and expenses appear reasonable.”); *Microstrategy*, 172 F. Supp. 2d at 791 (approving expenses for "computer legal research, document reproduction, secretarial overtime, court reporting, expert witness and consultant fees, and travel, meals, and lodging" [which] "appear to be reasonable in a case with this level of complexity, and they bear a reasonable relationship to the time and effort expended and the result achieved").

The Court-approved Notice that was mailed to 38,000 unit holders on August 6, 2015, informed them that Plaintiffs’ Counsel intended to apply for the reimbursement of litigation expenses in an amount not to exceed \$300,000. The amount of expenses now sought – \$144,352.42 – is less than one-half the amount stated in the Notice.¹⁹

D. Plaintiff Battaglia's Application For Reimbursement Of Costs And Expenses Is Reasonable And Should Be Approved

Plaintiff Battaglia seeks a Service Award of \$27,902, representing reimbursement for time spent (105 hours) and out-of-pocket expenses incurred (\$1,652) in the prosecution of this shareholder derivative action. Battaglia Decl., ¶¶ 2-4.²⁰ Courts in the Fourth Circuit have the discretion to award reasonable compensation to persons who serve as plaintiffs in class actions and/or shareholder derivative actions. *See Savani*, 2015 U.S. Dist. LEXIS 101445, at *27-28 (collecting cases); *Decohen*, 299 F.R.D. at 483; *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 690-691 (D. Md. 2013). Such an award is intended to compensate plaintiffs for work done on behalf of class members (or, in this case, A-9 and its unit holders), to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize

¹⁹ The deadline for unit holders to object to the Expense Request is August 28, 2015. As of this date, Plaintiffs’ Counsel have not received any objections to the Expense Request.

²⁰ As set forth in ¶¶ 2-3 of the Battaglia Decl., Mr. Battaglia seeks compensation for 105 hours at a rate of \$250, which is the hourly rate he charges in his tax return preparation business.

their willingness to act as a private attorney general. *See id.*²¹

The record demonstrates that Plaintiff Battaglia has been actively involved in every aspect of this shareholder derivative action, including analyzing the 600+-page proxy statement and related documents concerning the proposed Merger; communicating with A-9's management in an effort to dissuade them from proceeding with the Merger; searching for and locating attorneys who would be willing to prosecute this case; reviewing documents before they were filed by his attorneys; providing information and documents that were responsive to Defendants' document requests; preparing for his deposition and giving sworn deposition testimony; maintaining frequent contact with Plaintiffs' Counsel via telephone and e-mail to monitor the status of the litigation; attending and participating in mediation sessions; and consulting with Plaintiffs' Counsel as to the terms and conditions of the Proposed Settlement. Battaglia Decl., ¶¶ 2-3; Roddy Decl., ¶ 11. Whenever required, he traveled from his home in Staten Island, New York, to Richmond, Virginia, and Washington, D.C. *Id.* Battaglia actively participated in the mediation sessions conducted in 2014 and 2015 by Justice Lacy and Magistrate Judge Novak, and he carefully reviewed and approved the terms of the proposed Settlement and extensively

²¹ Judge Martinez of the District of Colorado recently approved a similar service award to the plaintiff in a derivative action, and his explanation is entirely applicable to Plaintiff Battaglia's request in this case:

When considering the appropriateness of an incentive award for representation, the Court must consider: (1) the actions the representative took to protect the interests of the corporation; (2) the degree to which the corporation has benefited from those actions; and (3) the amount of time and effort the representative expended in pursuing the litigation. Here, the Court finds it reasonable to provide an incentive award, considering Plaintiff's extensive participation in the case and the hours it expended working with counsel and participating in formal and informal discovery both prior to and throughout these proceedings.

Davita Healthcare, 2015 U.S. Dist. LEXIS 74372, at *16-17 (citing *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

analyzed and discussed the terms with Plaintiffs' Counsel. Battaglia Decl., ¶¶ 2-3; Roddy Decl., ¶ 11. Battaglia devoted 105 hours to this action, including labor and time that would otherwise have been dedicated to his regular employment and business activities. Battaglia Decl., ¶¶ 2-3. The unreimbursed expenses, costs, lost wages, and income in the amount of \$27,902 that Battaglia seeks were reasonably and necessarily incurred in connection with the prosecution of this shareholder derivative action. The amount requested in the Service Award is in line with amounts that have been approved by courts in similar cases. *See Savani*, 2015 U.S. Dist. LEXIS 101445, at *28 (collecting cases); *Helmick*, 2010 U.S. Dist. LEXIS 65808, at *9 (“[A]ccording to the parties, Helmick regularly cooperated with experts, participated in mediation, provided valuable background information, participated in discovery, and engaged in frequent travel to Kanawha County from her home in Roane County, West Virginia. The record shows that, for the damage to her property, Helmick would be entitled to receive over \$12,000 from the Settlement Fund, in addition to her incentive award ... Because of the damage to her property and her involvement with this matter, the court approves the \$50,000 incentive award to Helmick.”); *Domonoske*, 790 F. Supp. 2d at 476-477 (plaintiffs were “meaningfully involved in the litigation”); *Cendant*, 232 F. Supp.2d at 344 (granting \$25,000 “incentive payment” to plaintiff in shareholder derivative action: “Deutch has performed a public service through his willingness to step forward and represent Cendant and its shareholders....”).

IV. CONCLUSION

Shareholder derivative cases are difficult, complex, and laden with risk. As the Fourth Circuit has recognized, such litigation is “notoriously difficult and unpredictable.” *Zimmerman*, 800 F.2d at 392. In the face of this axiom, Plaintiffs' Counsel accepted the risk and expended thousands of hours vigorously litigating this action, despite the very real possibility that if we did not achieve a favorable result, we could receive no compensation whatsoever. As demonstrated

herein and in the Settlement Motion, this action has been hard-fought at every turn. From the beginning, Plaintiff Battaglia and Plaintiffs' Counsel have been faced with determined adversaries represented by experienced and determined defense counsel. Without any assurance of victory, Plaintiff Battaglia and his counsel pursued this action to a successful conclusion.

In light of all the foregoing considerations, the Settlement represents an excellent recovery on behalf of A-9 and the unit holders who voted against the Merger, and reflects the skill and dedication of Plaintiff Battaglia and Plaintiffs' Counsel. Thus, Plaintiffs' Counsel respectfully requests that this Court (1) approve the Fee Request in the amount of \$4,000,000; (2) approve the Expense Request in the amount of \$144,352.42; and (3) award Battaglia a Service Award in the amount of \$27,902, to be paid from the Settlement Fund.

DATED: August 20, 2015

Respectfully submitted,

SANDS ANDERSON PC

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on August 20, 2015, I electronically filed the foregoing with the Clerk of this Court using the CM/ECF system, which will send notification of such filing (NEF) to all CM/ECF registered attorneys indicated on the NEF.

SANDS ANDERSON PC

By: /s/ Jeffrey Hamilton Geiger
Jeffrey Hamilton Geiger (VSB No. 40163)
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No: 3:14-cv-00067

**PLAINTIFFS' APPLICATION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on September 14, 2015, at 10:00 a.m., at the U. S. District Court for the Eastern District of Virginia, located at 701 East Broad Street, Richmond, Virginia 23219, Plaintiff, Jack Battaglia ("Battaglia"), by the undersigned counsel, will appear and respectfully move this Court for an Order (1) awarding attorneys' fees in the amount of \$4,000,000, which represents 33.3% of the \$ 12,000,000 Settlement Fund; (2) paying litigation expenses incurred by Plaintiffs' Counsel in the amount of \$ 144,352.42; and (3) awarding a service award in the amount of \$27,902 to Plaintiff Battaglia.

This Application is based upon the Stipulation of Settlement previously submitted to this Court, as well as the accompanying Memorandum of Law and the supporting Declarations of Kevin P. Roddy, Lee Squitieri, Jeffrey H. Geiger, Collin Hite, and Plaintiff Battaglia, all pleadings and papers filed in this action, the arguments of counsel, and any other matter that the Court may consider at the Final Approval Hearing.

Dated: August 20, 2015

Respectfully submitted,

SANDS ANDERSON PC

/s/ Jeffrey H. Geiger

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on August 20, 2015, I electronically filed the foregoing with the Clerk of this Court using the CM/ECF system, which will send notification of such filing (NEF) to all CM/ECF registered attorneys indicated on the NEF.

SANDS ANDERSON PC

/s/ Jeffrey Hamilton Geiger
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

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GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No: 3:14-cv-00067

**[PROPOSED] ORDER GRANTING PLAINTIFFS' APPLICATION
FOR AN AWARD OF FEES AND EXPENSES AND SERVICE AWARD**

This matter came before this Court for hearing on September 14, 2015, to consider approval of the proposed Settlement (the "Settlement") set forth in the Stipulation of Settlement dated July 22, 2015, and filed with this Court on July 23, 2015 (the "Stipulation") (Dkt. No. 111). This Court has reviewed and considered all documents, evidence, objections, and arguments presented in support of or against the Settlement, and the application of Plaintiff, Jack Battaglia ("Battaglia"), for an award of attorneys' fees and expenses incurred in this shareholder derivative litigation, and, having found the Settlement of this litigation to be fair, reasonable, and adequate, and good cause appearing therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. For purposes of this Order, the terms used herein shall have the same meaning as set forth in the Stipulation. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all Parties.

2. This Court hereby (a) approves the request for attorneys' fees in the amount of \$4,000,000, which represents 33-1/3% of the Settlement Amount of \$ 12,000,000, and (b) approves the request for payment in the amount of \$ 144,352.42 for reimbursement of costs and expenses incurred by Plaintiffs' counsel in connection with the prosecution of the Action, which amount this Court finds fair and reasonable. The fees and expenses shall be paid to Plaintiffs' Counsel in accordance with the terms of the Stipulation.

3. This Court approves Plaintiff Battaglia's requested service award payment in the amount of \$27,902, finding such amount to be fair and reasonable for his efforts on behalf of the A-9 unit holders, who voted against the merger as explained in the Plan of Allocation, with respect to the litigation of this action.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE JOHN A. GIBNEY, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No. 14-00067

**DECLARATION OF KEVIN P. RODDY IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR AN AWARD OF ATTORNEYS'
FEES AND EXPENSES AND SERVICE AWARD**

I, KEVIN P. RODDY, hereby declare that:

1. I am an attorney at law, licensed to practice in the States of New Jersey, New York, and California. (I am an associate member of the Virginia State Bar and, from 1982 to 2012, I was an active member of the Virginia State Bar.) I am a graduate of the University of North Carolina at Chapel Hill (B.A. 1977) and the University of North Carolina School of Law (J.D. 1980). I am a shareholder (partner) at the law firm of Wilentz, Goldman & Spitzer, P.A., resident in its main office located in Woodbridge, New Jersey. I am Co-Lead

Counsel for Plaintiffs in this shareholder derivative action and I make this Declaration in Support of Plaintiffs' Application for an Award of Attorneys' Fees and Expenses and Service Award. I was admitted *pro hac vice* in April 2014. I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would competently testify as follows:

2. Since 1988, I have specialized in representing plaintiffs in class actions and derivative actions brought in federal and state courts. A true and correct copy of my professional resume, which is maintained on my Firm's Internet website, is attached hereto as Exhibit A. Attached hereto as Exhibits B and C, respectively, are the resumes of my partner, Daniel R. Lapinski, and my associate, Michael F. Fried – both of whom worked with me on this case.

3. As set forth herein, and as set forth in the Joint Declaration of Kevin P. Roddy and Lee Squitieri in Support of Plaintiffs' Application for Final Approval of Settlement and Plan of Allocation, my Firm has been involved in the representation of Plaintiffs, Jack Battaglia *et al.*, since September 2013. Over the past 23 months, we have engaged in the following activities pursuant to our retainer to represent Plaintiffs:

(a) Beginning in the Fall of 2013, and working closely with our co-lead counsel, Squitieri & Fearon, LLP, we thoroughly investigated the merits of this case, including a close study of the February 2014 Cease and Desist Order (the "Order") issued by the U.S. Securities and Exchange Commission ("SEC") involving the Defendants, and the events that culminated in the Order.

(b) We closely reviewed Defendants' SEC filings, including a review of the voluminous (600+ page) proxy statement related to the 2014 merger (the "Merger") of Apple

REIT Seven, Inc. (“A-7”), Apple REIT Eight, Inc. (“A-8”), and Apple REIT Nine, Inc. (“A-9”) that is at issue in this case, and we researched past legal actions that involved the Defendants.

(c) We carefully researched Rule 23.1 of the Federal Rules of Civil Procedure and applicable Virginia corporate law, and we assisted in drafting the Demand Letter that Plaintiff, Jack Battaglia (“Mr. Battaglia”), sent to the Board of Directors of A-9 on December 16, 2013. When Mr. Battaglia’s shareholder demand letter was ignored, we researched and assisted in drafting Plaintiffs’ Class Action and Shareholder Derivative Complaint and, subsequently, Plaintiffs’ First Amended Verified Complaint (the “Amended Complaint”). *See* Docket (“Dkt.”) Nos. 1 and 23.

(d) We assisted in drafting Plaintiffs’ written discovery requests directed to Defendants. We negotiated with Defendants’ counsel concerning the scope of discovery and we agreed upon a Stipulated Protective Order that was entered by Senior Judge Payne in May 2014. We prepared for and participated in the Initial Pretrial Conference that was conducted by Senior Judge Payne in May 2014 and the Initial Pretrial Conference that was conducted by this Court in December 2014. *See* Dkt. Nos. 28, 29, 36, 37, 38, 39, 63, and 64.

(e) We analyzed Defendants’ motion to dismiss Plaintiffs’ Amended Complaint, and we researched and drafted the memorandum of law in opposition. We reviewed the Answer to the Amended Complaint filed by Defendants and conducted legal research as to the sufficiency and propriety of the affirmative defenses asserted by the Defendants. *See* Dkt. Nos. 33, 34, 35, 41, and 42.

(f) We researched, engaged, met, and worked closely with Plaintiffs’ expert witnesses concerning corporate governance issues and damages caused by the Merger that was

the subject of this shareholder derivative action. We ensured that their Rule 26 expert disclosures were properly and timely served upon Defendants. *See* Dkt. Nos. 92, 95, and 100.

(g) We researched potential mediators and we worked with Defendants' counsel to select a competent and well-regarded private mediator. *See* Dkt. No. 44.

(h) We researched and drafted Plaintiffs' initial mediation brief, and we participated in mediation sessions conducted by retired Justice Elizabeth Lacy ("Justice Lacy") of the Virginia Supreme Court in Richmond, Virginia, beginning in July 2014.

(i) We researched and drafted the memorandum of law in support of Plaintiffs' motion for class certification. In addition, we analyzed Defendants' opposition to that motion and we researched and drafted Plaintiffs' reply memorandum of law. *See* Dkt. Nos. 45, 46, 47, 49, 55, and 59.

(j) We assisted in the preparation of discovery requests directed to Defendants, as well as Freedom of Information Act document requests and subpoenas directed to third-party witnesses. We researched, drafted, reviewed, and revised Plaintiffs' motion to compel discovery; we reviewed Defendants' opposition brief, and we researched, drafted, reviewed, and revised Plaintiffs' reply memorandum of law in support of that motion to compel. *See* Dkt. Nos. 51, 52, 53, 54, 57, 58, and 59.

(k) We prepared the lead Plaintiff, Mr. Battaglia, for his class certification deposition held in Washington, D.C., in July 2014, and we defended him during that proceeding.

(l) We researched and drafted Plaintiffs' supplemental memorandum of law in opposition to Defendants' motion to dismiss the Amended Complaint. We reviewed and analyzed the Order and Memorandum Opinion issued by this Court in December 2014 that granted in part and denied in part Defendants' motion to dismiss, published as *DCG&T f/b/o*

Battaglia v. Knight, 68 F. Supp. 2d 579 (E.D. Va. 2014). We researched and drafted Plaintiffs' memorandum of law in opposition to Defendants' subsequent motion to dismiss Count IV of the Amended Complaint. *See* Dkt. Nos. 60, 61, 62, 67, 68, 77, 90, 98, 107, 108, and 109.

(m) We reviewed and analyzed the insurance policies produced by Defendants to determine the amount of coverage available as to the claims asserted by Plaintiffs.

(n) We drafted Plaintiffs' supplemental mediation brief, and prepared for and conducted a second mediation session with Justice Lacy in Richmond, Virginia, in March 2015.

(o) We researched and drafted Plaintiffs' opposition to Defendants' motion for reconsideration of this Court's Order Granting Plaintiffs' Motion to Compel Discovery. *See* Dkt. Nos. 69, 70, 71, 72, 73, 74, 75, 76, 79, 80, and 102.

(p) We researched and drafted Plaintiffs' oppositions to Defendants' motion for protective order as to the non-party subpoenas issued by Plaintiffs, and Defendants' motion for protective order as to discovery relating to the SEC investigation and the Order. With our co-counsel, we appeared before this Court and argued the discovery-related motions in March 2015. *See* Dkt. Nos. 81, 82, 83, 84, 85, 86, 87, 96, 97, 102, 103, 104, and 105.

(q) We dedicated significant time and resources to reviewing and analyzing the over eight thousand (8,000) documents, consisting of many thousands of pages, that Defendants produced in discovery after this Court ordered them to do so.

(r) We constructed chronologies of key events based upon our analysis of the documents produced by Defendants, as well as other information that was publicly available.

(s) We prepared for and either conducted or second-chaired the depositions of seven (7) fact witnesses, including assisting in the preparation of deposition notices; conferring with our co-counsel about the strategy for each deposition; undertaking an extensive review of

the specific documents related to each deponent; preparation of outlines and questions for each deposition; the preparation of deposition exhibits; and review of deposition transcripts following each deposition.

(t) We analyzed Defendants' privilege logs in conjunction with the discovery that was produced by them, and we conducted legal research into the attorney-client privilege and the so-called "fiduciary exception" to that privilege.

(u) With our co-counsel, we engaged in settlement negotiations with Defendants' counsel.

(v) We drafted, reviewed, and revised Plaintiffs' supplemental mediation brief and, in May 2015, we engaged in a successful mediation conducted by Magistrate Judge David J. Novak of the Eastern District of Virginia in Richmond. After an agreement in principle had been reached and in conjunction with our co-counsel, we worked on the structure of the Proposed Settlement and Plan of Allocation; drafted, reviewed, and revised the Proposed Preliminary Approval Order, Plan of Allocation, and Final Approval Order; and engaged and worked with the retained Settlement administrator, Garden City Group ("GCG"), to devise the notice plan and draft, review, and revise notice-related documents. *See* Dkt. Nos. 107, 108, 109, 110, 111, 112, 113, and 114. Following the hearing held on July 30, 2015, this Court granted preliminary approval of the proposed Settlement on July 31, 2015. Since that date, we have worked closely with GCG to ensure that notices were timely disseminated to Apple REIT unit holders via first-class mail on August 6, 2015. During the past two weeks, we have received dozens of telephone calls and e-mail messages directly from unit holders who have questions about the proposed Settlement and we have spoken with each of them and answered their questions. In addition,

GCG has referred other unit holders' queries to us and we have made follow-up telephone calls to answer their questions.

4. The Settlement of this shareholder derivative action is the culmination of more than 18 months of hard-fought litigation, as well as vigorous and protracted arm's-length settlement negotiations. Our Firm and our co-counsel prosecuted this shareholder derivative action on a purely contingent fee basis, and we achieved this result in the face of significant hurdles and risks to recovery. Although we believe the case for liability and damages is strong, there was a real and growing risk that continued litigation would diminish, rather than enhance, the prospects for recovery. Based upon my 27 years of experience in litigating shareholder derivative actions and class actions in federal and state courts, I believe the Settlement provides a superior recovery for A-9 and its unit holders, given the substantial risks, costs, and delays entailed in attempting to prove liability and damages, and the substantial risk that further litigation would reduce or even exhaust the funds available for distribution to A-9 unit holders who voted against the Merger.

5. As of this date, the total number of hours spent on this litigation by my Firm is 1,360.70 hours. The total lodestar amount for attorney time, based on my Firm's current hourly rates, is \$ 863,850.50. *See* Table One, *infra*.

6. As set forth below, Table One provides a summary of time expended by the attorneys in my Firm in prosecuting this case, and the lodestar calculation based on my Firm's current hourly billing rates. Table One was prepared from contemporaneous, daily time records regularly prepared and maintained by my Firm. Time spent in preparing this Declaration in support of my Firm's application for fees and reimbursement of expenses, and any other time related to billing or periodic time reporting, has not been included in the table.

TABLE ONE
Lodestar Calculations – Wilentz, Goldman & Spitzer, P.A.

Partners	Hours	Hourly Rate	Lodestar
Kevin P. Roddy	822.2	\$ 730.00	\$ 600,206.00
Daniel R. Lapinski	160.2	\$ 525.00	\$ 83,952.00
Associate			
Michael Fried	378.3	\$ 475.00	\$ 179,692.50
Totals	1,360.7		\$ 863,850.50

7. Through our local counsel, Jeffrey Hamilton Geiger of Sands Anderson PC, we are submitting *in camera* the computer-generated time and billing records that document the figures set forth in Table One. We note that our Firm's time and billing records specify the amount of time spent on each particular task, as required by precedents issued in this District. *Cf. Jones v. Southpeak Interactive Corp. of Del.*, 2014 U.S. Dist. LEXIS 91177, *23 (E.D. Va. July 2, 2014) (Payne, S.J.). My Firm's hourly rates, as set forth in Table One, are consistent with the hourly rates that we charge in private representation of clients, and are consistent with the hourly rates we charge that have been approved by courts in other cases in which we serve as lead (or co-lead) counsel. *See, e.g., Miller v. Basic Research, LLC*, Case No. 2:07-CV-00871, Final Judgment and Order of Dismissal With Prejudice, Dkt. No. 324 (D. Utah July 28, 2015) (Stewart, J.) (approving nationwide settlement of consumer protection class action and granting our petition, as co-lead counsel, for payment of fees and expenses). My hourly rate, as set forth in Table One, is consistent with the hourly rate that I am currently charging private clients in a case in which I am serving as an expert witness: *Innovation Ventures, LLC v. Rubinstein*, Orange County (California) Superior Court Case No. 30-2011-00501943-CU-NP-CJC (Gastelum, J.).

8. Set forth below is a brief description of the services rendered by each attorney for whom fees are claimed in Table One, together with a summary of their relevant qualifications:

(a) Kevin P. Roddy (Partner): Beginning in April 2014, I assumed day-to-day and overall responsibility for this case. Between April 2014 and August 2015, I was actively involved in each of the activities described in Paragraph 3(d) through (v), *supra*, and I was in constant communication with our co-counsel as to the strategy and tactics to be employed in bringing this case to a successful conclusion. A summary of my litigation experience and qualifications is contained in the resume attached as Exhibit A.

(b) Daniel R. Lapinski (Partner): From September 2013 to April 2014, Mr. Lapinski had principal responsibility for this case. During that time period, he was actively involved in the activities described in Paragraph 3(a) through (d), *supra*. Thereafter, Mr. Lapinski consulted with me on the day-to-day activities necessary to prosecute this case. A summary of his experience and qualifications is contained in the resume attached as Exhibit B.

(c) Michael Fried (Associate): From July 2014 to July 2015, Mr. Fried was actively involved in each of the activities described in Paragraph 3(e), (f), (h), (i), (j), (l), (n), (o), (p), (q), (r), (s), and (v), *supra*. A summary of his experience and qualifications is contained in the resume attached as Exhibit C.

9. As set forth in Table Two, my Firm incurred a total of \$ 51,039.50 in reimbursed expenses in connection with the prosecution of this shareholder derivative action. These expenses are categorized as follows:

TABLE TWO
Litigation Expenses – Wilentz, Goldman & Spitzer, P.A.

Category of Expense	Amount
Settlement Administrator (Garden City Group)	\$ 14,110.00
Expert Witness Fees	\$ 11,691.17
Travel Expenses	\$ 11,329.66
Computer Assisted Legal Research	\$ 9,122.45
Filing Fees	\$ 795.62
Photocopy Charges	\$ 3,134.83
Court Reporter Fees	\$ 687.50
Overnight Delivery Services	\$ 161.79
Postage Charges	\$ 6.48
Total	\$ 51,039.50

10. These expenses incurred in the prosecution of this shareholder derivative action are reflected on the books and records of my Firm. These books and records are prepared from expense vouchers, check records, and other sources, and are an accurate record of the expenses incurred. The expenses for which we seek reimbursement are the type of expenses routinely charged to hourly paying clients. For instance, I was required to travel from my office in Woodbridge, New Jersey, to Richmond, Virginia, and Washington, D.C., in connection with prosecuting and settling this shareholder derivative action and, thus, incurred the related costs of travel tickets (airfare or train fare) and/or automobile expenses, as well as meals and lodging. Other expenses include the fees charged by expert witnesses and consultants, filing fees, long distance telephone and facsimile charges, postage and delivery expenses, computer assisted legal research fees, and other related fees. Based upon my experience in prosecuting shareholder derivative cases and class actions, I believe that the expenses in these categories are reasonable in amount and are properly charged against the Settlement fund that we have created.

11. Further, I make this Declaration in Support of Plaintiffs' Application for a Service Award in the amount of \$27,902, payable to the lead Plaintiff, Mr. Battaglia. Attached hereto as Exhibit D is Mr. Battaglia's Declaration, which details the time he has devoted to this case since

August 2013 (105 hours), as well as \$1,652 in out-of-pocket expenses that he has incurred while assisting in this effort. As set forth in Paragraph 2 of his Declaration, Mr. Battaglia (a) conducted initial research regarding the proposed merger of A-7, A-8, and A-9; (b) prepared drafts of demand letters that were sent to A-9's management; (c) researched and eventually retained attorneys to represent him; (d) during the litigation, reviewed drafts of documents and provided comments to his attorneys; (e) responded to written discovery requests served by Defendants and provided deposition testimony under oath in July 2014; (f) participated in mediation sessions with Justice Elizabeth Lacy (Ret.) and Magistrate Judge David Novak; and (g) traveled from his home in Staten Island, New York, to Richmond, Virginia, and Washington, D.C., to assist in the prosecution of this case. Based upon my experience in other shareholder derivative actions and class actions, I believe that the amount of the service award requested by Mr. Battaglia is fair and reasonable and is entirely supportable by existing law, as well as the facts and circumstances of this case.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on August 18, 2015, at Woodbridge, New Jersey.

/s/ Kevin P. Roddy
KEVIN P. RODDY
Co-Lead Counsel for Plaintiffs

Exhibit A



Kevin P. Roddy

Phone: 732.855.6402 Fax: 732.726.6686

Email: krodody@wilentz.com**Bar Admission:**California
New York
New JerseyU.S. Supreme Court; U.S. Courts of Appeals
(District of Columbia, Second, Third, Fourth, Fifth,
Sixth, Ninth and Eleventh Circuits)U.S. District Courts (District of New Jersey;
Southern District of New York; Central, Eastern,
Northern and Southern Districts of California;
Eastern and Western Districts of Virginia)**Education:**J.D., University of North Carolina, School of Law,
1980B.A., with honors, University of North Carolina
College of Arts & Sciences, 1977Diploma, *cum laude*, The Cranbrook School, 1973**Biographical Information:**

Kevin P. Roddy is a shareholder in the law firm of Wilentz, Goldman & Spitzer, P.A. He is co-chair of the firm's Class Actions Team. He concentrates his practice on complex litigation, including class actions alleging violations of federal and state antitrust, consumer protection, unfair trade practices, anti-racketeering, and securities fraud statutes.

During 2005-2007, he served as President of the National Association of Shareholder and Consumer Attorneys (NASCAT). During 2003-2005, he was NASCAT's President-Elect. From 2000 to 2011, he served on NASCAT's Executive Committee and, from 1991 to 2011, he served as Chair of the NASCAT Amicus Committee. From February 2000 through December 2004, he was managing partner of the Los Angeles Office of Hagens Berman LLP, a Seattle-based firm specializing in class action litigation. From December 1991 to February 2000, he was Managing Partner of the Los Angeles Office of Milberg Weiss Bershad Hynes & Lerach LLP, a New York- and San Diego-based law firm specializing in class action litigation.

Kevin and his wife, Joann, have three children. They live in Brielle, New Jersey. Kevin is a member of the Executive Board of the Manasquan-Brielle Little League.

Participation in Significant Class Action Litigation:

For more than 25 years, he has represented plaintiffs in many significant class actions, representative actions, and derivative actions litigated in federal and state courts throughout the United States. He has represented individual and institutional clients, including the American Federation of State, County and Municipal Employees, the California Public Interest Group, USAction, and the Congress of California Seniors. Mr. Roddy has played the lead role in representing plaintiffs in many significant cases, and has helped secure recoveries exceeding \$2 billion.

Mr. Roddy's efforts in these complex cases have been praised by federal and state courts. In approving a worldwide settlement of a civil RICO and consumer protection class action brought on behalf of approximately 18 million people who used Western Union's money transfer services to transfer money from one country to another, in which Mr. Roddy served as Lead Counsel for Plaintiffs, Senior U.S. District Judge Charles Sifton of the Eastern District of New York lauded Mr. Roddy's "extensive experience handling civil RICO cases and class actions." The Court noted that the team of plaintiffs' counsel, led by Mr. Roddy, had "secured a significant recovery, including injunctive relief that requires [Western Union] to materially change the consumer disclosure forms and receipts that it uses throughout the world, in a complex, risky class action, and confronted defense counsel from highly respected law firms." In re Western Union Money Transfer Litigation, Master File No. CV-01-0335 (CPS) (E.D.N.Y. Feb. 8, 2005) (Memorandum and Order, at 13, 16).

Mr. Roddy has assumed leadership roles in a number of complex cases and class actions. For example, in the above-referenced Western Union Money Transfer Litigation, he was selected Lead Counsel for the Worldwide Class by Senior Judge Sifton. That case was settled in 2005 on a worldwide basis for consideration exceeding \$65 million and the imposition of worldwide injunctive relief. In coordinated cases brought in the Superior Court of Sacramento County, California, In re Ford Explorer Cases, JCCP Nos. 4266 & 4270, Mr. Roddy was chosen Co-Lead Counsel for the California Plaintiff Class, which consisted of over 450,000 vehicle owners. In February 2005, Coordination Trial Judge David DeAlba certified a statewide

Practice Area(s):

- » [Class Actions](#)
- » [Consumer Fraud](#)
- » [Healthcare](#)
- » [Mass Tort](#)

Lawyer Publications:

- » [Ford Motor Co. v. Edgewood Properties, Inc., 2012 U.S. Dist. LEXIS 125197 \(D.N.J. Aug. 31, 2012\)](#)
- » [In re Ford Motor Co. E-350 Can Products Liability Litigation \(No. II\), 2012 U.S. Dist. LEXIS 13887 \(D.N.J. Feb. 6, 2012\)](#)
- » [Nine Years of Practice and Procedure Under the Private Securities Litigation Reform Act of 1995](#)
- » [Restitution Disgorgement and Injunctions The Availability Of Equitable And Injunctive Relief Under The California Unfair Competition Law and The Unique Challenges Presented By Multiple Enforcers and Follow-On Lawsuits](#)
- » [Ries v. Ariz. Bevs. USA LLC, 2012 U.S. Dist. LEXIS 169853 \(N.D. Cal. Nov. 27, 2012\)](#)
- » [The Class Action Fairness Act of 2005 and Its Anticipated Impact Upon Certification of Nationwide and/or Multi-State Classes of State Law Claims in Federal Court](#)
- » [The Class Action Fairness Act of 2005 The First Nine Months What Do We Know So Far](#)

(California) class. During June-September 2007, Mr. Roddy, along with other Plaintiffs' counsel, tried the class action for 50 days in the Sacramento County Superior Court. In November 2007, the parties announced a proposed four-state class action settlement on behalf of nearly one million vehicle owners residing in California, Illinois, Texas and Connecticut. That settlement was approved by Judge DeAlba in July 2008. In another class action that was prosecuted simultaneously in state courts in California and Florida, *In re Rexall Cellasene Cases*, Mr. Roddy was chosen Co-Lead Counsel for the nationwide consumer class and, working together with attorneys from the Federal Trade Commission, in 2003 he successfully negotiated a \$20 million settlement that provided consumers with a full-dollar recovery and imposed precedent-setting injunctive relief that governs the entire dietary supplement industry.

In the Aetna UCR Litigation, MDL No. 2020, Mr. Roddy was chosen by Judge Hayden to serve as one of the Subscriber Class Counsel in a class action brought on behalf of beneficiaries of health insurance plans. In 2012, this class action settled for \$120 million and, in August 2013, Judge Hayden granted preliminary approval to the proposed settlement. *In re Aetna UCR Litigation*, 2013 U.S. Dist. LEXIS 127691 (D.N.J. Aug. 30, 2013).

Mr. Roddy has extensive experience trying cases. Since 1982, he has tried more than a dozen cases in federal and state courts in New Jersey, California, Virginia, Arizona, Tennessee and North Carolina. In *In re American Continental Corp./Lincoln Savings & Loan Securities Litigation*, he was one of the lead trial counsel for a class of 23,000 defrauded shareholders and bondholders; that case (including a five-month jury trial in the District of Arizona) resulted in settlements of approximately \$250 million and a jury verdict against the non-settling defendants exceeding \$3 billion. In *The Industry Network System, Inc. v. Armstrong World Industries*, he was co-lead trial counsel in a 68-day antitrust conspiracy jury trial in the District of New Jersey. In *Stilwell Developments v. Wing Wah Chong*, he was lead trial counsel for the plaintiff smoke alarm manufacturer in a two-month intellectual property trial involving the enforcement of patents and copyrights; that case resulted in a \$7 million jury verdict for plaintiff, which was successfully enforced in ancillary proceedings in the Hong Kong courts.

Mr. Roddy has extensive experience in the appellate courts. For example, in March 2006, Mr. Roddy argued a civil RICO case in the United States Supreme Court. The resulting decision, *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006), established the standard for evaluating proximate causation in such cases.

Some of his significant federal circuit court cases include the following:

- *Miller v. Basic Research, LLC*, 750 F.3d 1173 (10th Cir. 2014) (consumer protection class action alleging false advertising of weight-loss dietary supplement)
- *Fisher v. Kadant, Inc.*, 589 F.3d 505 (1st Cir. 2009) (breach of warranty class action alleging defective residential deck materials)
- *Karim v. AWB, Ltd.*, 347 Fed. Appx. 714 (2nd Cir. 2009) (class action on behalf of Iraqi Kurds alleging money laundering and diversion of proceeds from United Nations oil-for-food program)
- *Deutsch v. Turner Corp.*, 317 F.3d 1005 & 324 F.3d 692 (9th Cir. 2003) (class actions brought on behalf of U.S. and British POWs and Chinese, Dutch, Filipino and Korean civilian internees who were World War II forced labor victims)
- *Wayne v. DHL Worldwide Express*, 294 F.3d 1179 (9th Cir. 2002) (consumer protection class action involving purchase of "excess value" insurance for package shippers; 9th Circuit reversed district court's dismissal of action and refusal to remand case to state court)
- *United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181 (9th Cir. 2001) (False Claims Act qui tam action against defense contractor arising out of construction of B-2 bomber; affirming district court's dismissal of whistleblower's action against defense contractor)
- *Lanza v. Merrill Lynch & Co.*, 154 F.3d 56 (2nd Cir. 1998) (securities fraud/civil RICO class action brought against securities seller; 2nd Circuit affirmed dismissal of action on statute of limitations grounds)
- *Batchelder v. Kawamoto*, 147 F.3d 915 (9th Cir. 1998) (shareholder derivative action arising out of Honda Motor Co. automobile dealership bribery scandal; 9th Circuit affirmed dismissal of action because U.S. ADR holder lacked standing to sue as shareholder under Japanese law)
- *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602 (5th Cir. 1998) (RICO action brought by trading card purchasers against manufacturer alleging illegal lottery scheme)
- *The Industry Network System, Inc. v. Armstrong World Industries*, 54 F.3d 150 (3rd Cir. 1995) (antitrust action brought by video distributor against floor covering manufacturer; 3rd Circuit affirmed jury's failure to award damages to plaintiff following trial)
- *Hamid v. Price Waterhouse*, 51 F.3d 1411 (9th Cir. 1995) (BCCI depositors class action litigation; 9th Circuit affirmed dismissal of action on abstention and comity

grounds)

- *United States v. BCCI Holdings, S.A.*, 46 F.3d 1185 (D.C. Cir. 1995) (RICO forfeiture proceeding; D.C. Circuit affirmed dismissal of depositors' third-party forfeiture petition arising out of RICO prosecution and resulting forfeiture of assets)
- *Terry's Floor Fashions, Inc. v. Burlington Industries, Inc.*, 763 F.2d 604 (4th Cir. 1985) (antitrust dealer termination case brought against carpet manufacturer and competing dealer; affirming district court's entry of summary judgment for defendants)
- *Lindner v. Durham Hosiery Mills, Inc.*, 761 F.2d 162 (4th Cir. 1985) (securities case brought against textile manufacturer; affirming district court's entry of judgment for defendants following two-week federal court jury trial)

Some of his significant federal district court cases include the following:

- *Cohen v. Cohen*, 2014 U.S. Dist. LEXIS 9735 (S.D.N.Y. Jan. 27, 2014) (breach of fiduciary duty and civil RICO claims arising out of divorce proceeding)
- *Mervyn v. Atlas Van Lines, Inc.*, 2013 U.S. Dist. LEXIS 146840 (N.D. Ill. Oct. 2, 2013) (class action brought on behalf of long-haul truck drivers)
- *Stutzman v. Armstrong*, 2013 U.S. Dist. LEXIS 109151 (E.D. Cal. Aug. 2, 2013) & 2013 U.S. Dist. LEXIS 129204 (E.D. Cal. Sept. 10, 2013) (consumer class action brought against disgraced cyclist and book publishers)
- *Ries v. Ariz. Bevs. United States LLC*, 2012 U.S. Dist. LEXIS 169853 (N.D. Cal. Nov. 27, 2012) (granting plaintiff-consumers' motion for class certification)
- *Franco v. Conn. Gen'l Life Ins. Co.*, 818 F. Supp. 2d 792 (D.N.J. 2011) (denying motion to dismiss RICO and ERISA claims in class action brought by health care insureds against insurer)
- *Shakib v. Back Bay Rest. Group, Inc.*, 2011 U.S. Dist. LEXIS 124143 (D.N.J. Oct. 26, 2011) & 2011 U.S. Dist. LEXIS 112614 (D.N.J. Sept. 30, 2011) (denying motion to dismiss and conditionally certifying class of restaurant workers seeking to recover overtime pay from employer)
- *In re Imprelis Herbicide Mktg., Sales Pracs. & Prods. Liab. Litig.*, 824 F. Supp. 2d 1357 (J.P.M.L. 2011) (product liability case arising out of defective herbicide; successfully argued that cases should be centralized in Eastern District of Pennsylvania); 2013 U.S. Dist. LEXIS 149323 (E.D. Pa. Oct. 17, 2013) (approving class action settlement of claims brought by property owners, golf courses, and landscaping professionals against manufacturer of defective herbicide)
- *Ford Motor Co. v. Edgewood Properties, Inc.*, 2012 U.S. Dist. LEXIS 125197 (D.N.J. Aug. 31, 2012) (denying third-party defendant environmental consultant's motion for summary judgment); 2011 U.S. Dist. LEXIS 67227 (D.N.J. June 23, 2011); 2011 U.S. Dist. LEXIS 45368 (D.N.J. Apr. 27, 2011); 2011 U.S. Dist. LEXIS 36215 (D.N.J. Apr. 4, 2011); 2011 U.S. Dist. LEXIS 15776 (D.N.J. Feb. 15, 2011); 2010 U.S. Dist. LEXIS 130866 (D.N.J. Dec. 10, 2010); 2010 U.S. Dist. LEXIS 119373 (D.N.J. Nov. 10, 2010); 2010 U.S. Dist. LEXIS 75914 (D.N.J. July 28, 2010); 2010 U.S. Dist. LEXIS 58425 (D.N.J. June 14, 2010); 2009 U.S. Dist. LEXIS 70953 (D.N.J. Aug. 11, 2009); 257 F.R.D. 418 (D.N.J. 2009) (decisions relating to representation of real estate developer in environmental contamination litigation arising out of disposal of contaminated crushed concrete from former vehicle assembly plant); in 2012 the developer's federal and state law claims against the property owner, contractor, and environmental consultants were settled)
- *Van Koenig v. Snapple Bev. Corp.*, 713 F. Supp. 2d 1066 (E.D. Cal. 2010) (denying defendant's motion to dismiss consumer protection class action alleging false labeling of iced tea product)
- *Miller v. Basic Research, Inc.*, 2008 WL 4755787 (D. Utah Oct. 27, 2008) (refusing to dismiss civil RICO and consumer fraud claims brought against dietary supplement manufacturer and its principal officers and directors); 2011 U.S. Dist. LEXIS 21521 (D. Utah Mar. 2, 2011) (affirming certification of nationwide class and approving proposed class notice program); 2013 U.S. Dist. LEXIS 40553 (D. Utah Mar. 22, 2013) & 2013 U.S. Dist. LEXIS 56748 (D. Utah Apr. 16, 2013) (granting motion to enforce class action settlement)
- *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448 (D.N.J. 2008) (granting final approval to \$255 million settlement of health care insureds' class action claims against insurance company)
- *In re Ford Motor Co. E-350 Van Prods. Liab. Litig.*, 2008 WL 4126264 (D.N.J. Sept. 2, 2008) (refusing to dismiss breach of warranty, consumer protection and unjust enrichment claims brought by purchasers of 15-passenger vans against vehicle manufacturer); 2011 U.S. Dist. LEXIS 16504 (D.N.J. Feb. 16, 2011) (denying Ford's motions for summary judgment); 2009 U.S. Dist. LEXIS 108085 (D.N.J. Nov. 18, 2009) (same); 2009 U.S. Dist. LEXIS 68241 (D.N.J. July 9, 2010) (same); 2012 U.S. Dist. LEXIS 13887 (D.N.J. Feb. 6, 2012) (denying plaintiffs' motion for class certification)
- *American Medical Ass'n v. United Healthcare, Inc.*, 2008 WL 3914868 (S.D.N.Y. Aug. 22, 2008) (refusing to dismiss civil RICO claims brought by health care insureds against insurance company)
- *Franco v. CIGNA*, 2008 WL 3399644 (D.N.J. Aug. 6, 2008) (refusing to dismiss ERISA claims brought by health care insureds against insurance company)

- In re Able Labs. Secs. Litig., 2008 WL 1967509 (D.N.J. Mar. 24, 2008) (refusing to dismiss investors' securities fraud claim against bankrupt company's officers and directors)
- In re Inphonic, Inc. Wireless Phone Rebate Litigation, 460 F. Supp. 2d 1380 (J.P.M.L. 2006) (consumer protection class action alleging rebate denials)
- In re Ford Motor Co. E-350 Van Products Liability Litigation, 374 F. Supp. 2d 1353 (J.P.M.L. 2005) (15-passenger van products liability class action)
- In re Medtronic, Inc. Implantable Defibrillators Products Liability Litigation, 408 F. Supp. 2d 1351 (J.P.M.L. 2005) (defective defibrillator class action)
- In re Dynamic Random Access Memory Antitrust Litigation, 2005 WL 2988715 (N.D. Cal. Nov. 7, 2005) (antitrust price-fixing conspiracy)
- Buckwalter v. Napoli, Kaiser & Bern LLP, 2005 WL 736216 (S.D.N.Y. Mar. 29, 2005) (civil RICO class action arising out of class action settlement)
- In re Western Union Money Transfer Litigation, Master File No. 01-CV-0335 (CPS) (E.D.N.Y. Oct. 18, 2004 & Feb. 8, 2005) (approving worldwide settlement of civil RICO and unfair trade practices class action brought against money transfer services)
- In re Pharmaceutical Indus. Avg. Wholesale Price Litig., 263 F. Supp. 2d 172 (D. Mass. 2003) (RICO and unfair trade practice class action alleging overstatements of average wholesale price of prescription drugs)
- In re Enron Corp. Secs., Deriv. & ERISA Litig., 284 F. Supp. 2d 511 (S.D. Tex. 2003) (RICO class action arising from collapse of energy company)
- In re Calif. Wholesale Elec. Antitrust Litig., 244 F. Supp. 2d 1072 (S.D. Cal. 2003) (antitrust class action arising out of California energy "crisis")
- Sarei v. Rio Tinto PLC, 221 F. Supp. 2d 1116 (C.D. Cal. 2002) (Alien Tort Claims Act class action brought by islanders against Australian mining company)
- Smith v. Mail Boxes Etc., Inc., 191 F. Supp. 2d 1155 (E.D. Cal. 2002) (consumer protection class action alleging overcharges in excess of \$80 million for "excess value" insurance; district court refused to remand case to state court under "last-served defendant" rule; case was transferred to MDL proceeding in S.D.N.Y.)
- In re AOL, Inc. Version 5.0 Software Litigation, 168 F. Supp. 2d 1359 (S.D. Fla. 2001) (consumer protection class action brought against internet company; district court refused to grant motions to dismiss)
- In re World War II Era Japanese Forced Labor Litigation, 164 F. Supp. 2d 1160 (N.D. Cal. 2001), 164 F. Supp. 2d 1153 (N.D. Cal. 2001), 114 F. Supp. 2d 939 (N.D. Cal. 2000) (forced labor class actions brought by former POWs and civilian internees against numerous Japanese companies; district court dismissed plaintiffs' claims on a variety of grounds)
- Cardenas v. Ria Telecommunications, Inc., 2001 U.S. Dist. LEXIS 6609 (N.D. Ill. May 18, 2001) (civil RICO case; dismissing claims against money transfer service)
- In re SmarTalk Teleservices, Inc. Securities Litigation, 124 F. Supp. 2d 487 (S.D. Ohio 2000), 124 F. Supp. 2d 505 (S.D. Ohio 2000), 124 F. Supp. 2d 527 (S.D. Ohio 2000) (securities fraud class action against telephone service provider; district court refused to grant motions to dismiss)
- Blue Cross v. SmithKline Beecham Clinical Laboratories, Inc., 108 F. Supp. 2d 84 (D. Conn. 1999), 108 F. Supp. 2d 116 (D. Conn. 2000), 108 F. Supp. 2d 125 (D. Conn. 2000), 108 F. Supp. 2d 130 (D. Conn. 2000) (consumer protection and civil RICO class action alleging fraudulent overcharges for laboratory services in excess of \$100 million; district court upheld certain claims and dismissed other claims)
- Dumas v. Major League Baseball Properties, Inc., 104 F. Supp. 2d 1220 (S.D. Cal. 2000) & 52 F. Supp. 2d 1183 (S.D. Cal. 1999) (consumer protection/civil RICO class action alleging that trading cards constitute illegal gambling under state and federal law; trading card purchasers lacked standing to sue manufacturers, distributors and professional sports leagues) and Rodriguez v. Topps Co., 104 F. Supp. 2d 1224 (S.D. Cal. 2000) (same)
- Yousefi v. Lockheed Martin Corp., 70 F. Supp. 2d 1061 (C.D. Cal. 1999) (securities fraud class action brought against aerospace company; district court appointed lead plaintiffs and lead counsel under PSLRA)
- Schlagal v. Learning Tree Corp., 1998 U.S. Dist. LEXIS 20306 (C.D. Cal. 1998), 1999 U.S. Dist. LEXIS 2157 (C.D. Cal. 1999) (securities fraud class action brought against computer software manufacturer; district court refused to grant motions to dismiss and certified class)
- Squyres v. Union Texas Petroleum Holdings, Inc., 1998 U.S. Dist. LEXIS 22945 (C.D. Cal. Nov. 2, 1998) (securities fraud class action brought against petroleum exploration company; appointing lead counsel under PSLRA)
- In re Stratosphere Corp. Securities Litigation, 1997 U.S. Dist. LEXIS 14621 (D. Nev. 1997), 1997 U.S. Dist. LEXIS 14616 (D. Nev. 1997), 1998 Bankr. LEXIS 1935 (Bankr. D. Nev. 1998), 182 F.R.D. 614 (D. Nev. 1998), 1 F. Supp. 2d 1096 (D. Nev. 1999), 66 F. Supp. 2d 1182 (D. Nev. 1999) (securities fraud class action brought against casino company; various decisions by district court and bankruptcy court on motions to dismiss and summary judgment and discovery motions)
- Pharmacare v. Caremark, 965 F. Supp. 1411 (D. Haw. 1996) (civil RICO class action arising out of bribery scandal involving health care manufacturer and physicians; district court refused to grant motions to dismiss)
- In re Prudential Securities Limited Partnerships Litigation, 911 F. Supp. 135

(S.D.N.Y. 1996), 912 F. Supp. 97 (S.D.N.Y. 1996), 930 F. Supp. 68 (S.D.N.Y. 1996), 985 F. Supp. 410 (S.D.N.Y. 1997) (securities fraud/RICO class action brought against general partner of limited partnerships formed to purchase and lease jet aircraft; district court refused to grant motions to dismiss, certified classes, and approved \$120 million settlement)

- In re Herbalife Securities Litigation, 1996 U.S. Dist. LEXIS 11484 (C.D. Cal. Jan. 25, 1996) (securities fraud case brought against dietary supplement manufacturer; dismissing claims against defendants)
- Krishan v. McDonnell Douglas Corp., 873 F. Supp. 345 (C.D. Cal. 1994) (ERISA class action brought on behalf of retirees against aerospace manufacturer; district court granted summary judgment for employer; case settled for over \$400 million while appeal to 9th Circuit was pending)
- Rintel v. Wathen, 806 F. Supp. 1467 (C.D. Cal. 1992) (securities fraud case brought against security company; dismissing claims against defendants)
- In re American Continental Corp./Lincoln Savings & Loan Securities Litigation, 794 F. Supp. 1424 (D. Ariz. 1992), 884 F. Supp. 1388 (D. Ariz. 1995), 845 F. Supp. 1377 (D. Ariz. 1993), 140 F.R.D. 425 (D. Ariz. 1992), 782 F. Supp. 1382 (D. Ariz. 1991) (securities fraud/RICO class action arising out of collapse of savings and loan and parent company; district court refused to grant defendants' summary judgment motions)

Some of his significant state court cases include the following:

- Thiedemann v. Mercedes-Benz USA, LLC, 872 A.2d 783 (N.J. 2005) (construction and application of "ascertainable loss" requirement of New Jersey Consumer Fraud Act)
- Wayne v. DHL Express (USA), Inc., 2005 WL 1140686 (Cal. App. May 16, 2005) (violations of California consumer protection statutes through overcharges for "shipment insurance")
- Stanley v. California State Lottery Commission, 112 Cal. App. 4th 168 (2003), review granted, No. S120121 (Dec. 10, 2003) & 2003 Cal. App. Unpub. LEXIS 8296 (Aug. 29, 2003) (consumer actions alleging violations of Lottery Act in sales of "Scratcher" tickets)
- Shields v. Singleton, 15 Cal. App. 4th 1611, 19 Cal. Rptr. 2d 459 (1993) (shareholder derivative action involving aerospace contractor; affirming trial court's dismissal of claims against defendants)
- Drilling v. Berman, 589 N.W.2d 503 (Minn. App. 1999) (shareholder derivative action involving casino company; affirming trial court's dismissal of claims against defendants)

Class Actions; Derivative Actions; Antitrust; Consumer Protection; RICO; Securities Fraud.

Articles

The Class Action Fairness Act of 2005 and Its Anticipated Impact Upon Certification of Nationwide and/or Multi-State Classes of State Law Claims in Federal Court

The Class Action Fairness Act of 2005: The First Nine Months: What Do We Know So Far?

Publications:

Mr. Roddy has authored many publications in the legal field, including the following significant works:

- Kevin P. Roddy, RICO IN BUSINESS AND COMMERCIAL LITIGATION (Shepard's/McGraw-Hill, Inc. 1991) (two-volume treatise with annual supplements through 1997)
- G. Robert Blakey & Kevin P. Roddy, Reflections on *Reves v. Young*: Its Meaning and Impact on Substantive, Accessory, Aiding and Abetting and Conspiracy Liability Under RICO, 33 Amer. Crim. L. Rev. 1345 (1996). This article was published as the Special 25th Anniversary issue of AMERICAN CRIMINAL LAW REVIEW, and it has been favorably cited by numerous federal circuit and district courts, including the Third Circuit Court of Appeals. *Smith v. Berg*, 247 F.3d 532, 536 nn. 7&8 (3rd Cir. 2001).
- American Bar Association, Section of Antitrust Law, SAMPLE CIVIL RICO JURY INSTRUCTIONS (1994) (principal author)
- Kevin P. Roddy & Daniel S. Floyd, LITIGATING THE CLASS ACTION LAWSUIT IN CALIFORNIA (National Business Institute 2001 & 2002)
- Kevin P. Roddy and Seth Aronson, LITIGATING THE CLASS ACTION LAWSUIT IN CALIFORNIA (National Business Institute 2000)

- Kevin P. Roddy, Eight Years of Practice and Procedure Under the Private Securities Reform Act of 1995, Postgraduate Course in Federal Securities Law (July 2004) (papers prepared for 1998, 1999, 2000, 2001, 2002, and 2003 programs are available on Lexis)
- Civil Law Editor, RICO LAW REPORTER (1991 to present)
- Member, Editorial Advisory Board, CIVIL RICO REPORT (1991 to present)

Other Significant Professional Activities:

During 1991-2011, as Chair of NASCAT's Amicus Committee, Mr. Roddy filed more than three dozen amicus curiae briefs filed in the U.S. Supreme Court, federal circuit courts and state supreme courts, including *Merck & Co. v. Reynolds*, No. 08-905 (securities litigation); *Jones v. Harris Assocs., L.P.*, No. 08-586 (shareholder litigation); *Morrison v. Nat'l Australia Bank, Ltd.*, No. 08-1191 (securities litigation); *Boyle v. United States*, No. 07-1309 (RICO); *Bridges v. Phoenix Bond & Indem. Co.*, No. 07-210 (RICO); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, No. 06-484 (securities litigation); *Mohawk Indus. v. Williams*, No. 05-465 (RICO); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, No. 04-1371 (SLUSA preemption of "holder" actions); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 125 S. Ct. 2764 (2005); *Dura Pharmaceuticals, Inc. v. Broudo*, No. 03-932, 125 S. Ct. 1627 (2005) (securities fraud "loss causation"); *Robinson Helicopter Co. v. Dana Corp.*, 102 P.3d 268 (Cal. 2004) ("economic loss rule" in consumer fraud cases); *Borowiec v. Gateway 2000, Inc.*, 808 N.E.2d 957 (Ill. 2004) (consumer protection action; validity of arbitration clauses); *SEC v. Zandford*, 535 U.S. 813 (2002) (broker-dealer's liability for securities fraud); *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158 (2001) (RICO; liability of corporate officers); *Hanlon v. Berger*, 526 U.S. 808 (1999) (media and privacy rights under First Amendment); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999) (asbestos class action settlements); *Klehr v. A.O. Smith Corp.*, 521 U.S. 179 (1997) (RICO); *Amchem Products v. Windsor*, 521 U.S. 591 (1997) (asbestos class action settlements); *BMW of North America v. Gore*, 517 U.S. 559 (1996) (punitive damages in consumer protection cases); *Varity Corp. v. Howe*, 516 U.S. 489 (1996) (ERISA rights of employees); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73 (1995) (ERISA rights of employees); *Boca Grande Club v. Florida Power & Light Co.*, 511 U.S. 222 (1994) (contribution rights of defendants); *Central Bank, N.A. v. First Interstate Bank, N.A.*, 511 U.S. 164 (1994) (securities fraud; liability of aiders and abettors); *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443 (1993) (punitive damages under state law); *Musick, Peeler & Garrett v. Employers Insurance*, 508 U.S. 286 (1993) (contribution rights of defendants in securities fraud cases); *Reves v. Ernst & Young*, 507 U.S. 170 (1992) (RICO; liability of professional advisers); and *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) (RICO; proximate causation and recovery of damages).

Since November 1999, he has appeared as a principal speaker at the following continuing legal education programs:

- Georgia Bar Association, Seminar on RICO, Atlanta, Georgia, November 7, 2013
- American Law Institute-American Bar Association, Postgraduate Course in Federal Securities Law, Boston, MA, July 7-9, 2005
- American Bar Association, Tort Trial & Insurance Practice Section, E-Document Preservation & E-Discovery After Zubulake – What Every Litigator and In-House Counsel Needs to Know, April 21, 2005 (teleconference)
- NASCAT, Class Action Notice and Claims Administration – Best Practices of the Experts, Lake Las Vegas, Nevada, April 7, 2005
- CLE International, Class Actions: A How-To on Initiating, Defending and Litigating Them, Los Angeles, California, February 24-25, 2005
- Federal Trade Commission, Class Actions Workshop, Washington, DC, September 13-14, 2004
- American Law Institute-American Bar Association, Postgraduate Course in Federal Securities Laws, Chicago, Illinois, August 26, 2004
- Business & Professions Code Section 17200: Is The Unfair Competition Law "Unfair"? Association of Business Trial Lawyers, San Francisco, California, December 9, 2003
- The Cambridge International Symposium on Economic Crime, Jesus College, Cambridge, United Kingdom, September 12, 2003
- When the Going Gets Tough: Advising a Company in Crisis (Parts I & II), American Bar Association Annual Meeting, San Francisco, California, August 9-10, 2003
- Business and Professions Code Section 17200 in California, Oakland, California, July 30, 2003
- American Law Institute-American Bar Association, Postgraduate Course in Federal Securities Laws, San Francisco, California, July 24, 2003
- Institute for Law and Economic Policy, Agencies, Economic Justice and Private Initiatives, San Diego, California, April 5, 2003
- National Business Institute, Litigating the Class Action Lawsuit in California, Los Angeles, California, December 16, 2002

- American Law Institute-American Bar Association, Postgraduate Course in Federal Securities Law, Boston, Massachusetts, July 18, 2002
- Association of Business Trial Lawyers, Business Litigation in the "Post-Enron" World, Los Angeles, California, April 9, 2002
- University of Kentucky School of Law, 11th Biennial Midwest/Midsouth Securities Law Conference, Louisville, Kentucky, February 15, 2002
- Northwestern University School of Law-Securities Regulation Institute, 29th Annual Securities Regulation Conference, San Diego, California, January 23, 2002.
- Practising Law Institute, 33rd Annual Institute on Securities Regulation, New York, New York, November 7, 2001
- National Business Institute, Litigating the Class Action Lawsuit in California, Los Angeles, California, October 24, 2001
- American Law Institute-American Bar Association, Postgraduate Course in Federal Securities Law, San Francisco, California, July 19, 2001
- Institute for International Research, Securities Regulation & Enforcement Conference, New York, New York, June 19, 2001
- National Business Institute, Litigating the Class Action Lawsuit in California, Los Angeles, California, October 25, 2000
- Orange County Bar Association, Second Annual Capital Markets Seminar, Costa Mesa, California, September 27, 2000
- Practising Law Institute, Advanced Securities Law Workshop, San Diego, California, August 10, 2000
- Practising Law Institute, 31st Annual Institute on Securities Regulation, New York, New York, November 3, 1999

Exhibit B



Daniel R. Lapinski

Phone: 732.855.6066 Fax: 732.726.4735

Email: dlapinski@wilentz.com**Bar Admission:**

New Jersey
 New York, First Department
 Pennsylvania
 Supreme Court of the United States
 United States Court of Appeals (First Circuit; Third Circuit; Fourth Circuit; and Tenth Circuit)
 United States District Courts (District of New Jersey; Eastern District of New York; Southern District of New York; Eastern District of Pennsylvania; and Middle District of Pennsylvania)

Education:

J.D., Seton Hall University School of Law, 1999
 B.A., Rutgers University, 1990

Biographical Information:

Daniel R. Lapinski is a shareholder with Wilentz, Goldman & Spitzer, P.A. in Woodbridge, New Jersey, and is a member of the firm's Mass Tort Class Action Group. He concentrates his practice on mass tort litigation, representing victims who have been harmed by dangerous pharmaceutical products and defective medical devices. He also focuses on complicated class action litigation representing consumer fraud victims.

Mr. Lapinski has had significant involvement in complex cases. As a class action attorney, he has successfully argued federal preemption issues before the United States Court of Appeals for the Third Circuit and has been actively involved in the resolution of noteworthy cases, including:

- » In re Ford Explorer Cases, JCCP Nos. 4266 & 4270, a California class action that was settled on behalf of nearly one million vehicle owners residing in California, Connecticut, Illinois and Texas following 50 days of trial in Sacramento, California;
- » Alexander v. Solvay Pharmaceuticals, Inc., Case No. BC300364, a \$30 million settlement on behalf of a class of California purchasers of a pharmaceutical product that was alleged to have been falsely and deceptively advertised;
- » Slaughter v. Unilever United States, Inc., Civil Action No. 09-cv-2027 (D.N.J.), a nationwide settlement on behalf of a class of consumers who purchased Super Shots, a fruit blend product deceptively alleged to help control blood pressure;
- » In re: Ortho Evra Birth Control Patch Litigation, a mass tort litigation involving injuries and damages resulting from the use of a transdermal birth control patch;
- » In re: Propulsid Litigation, a mass tort litigation involving injuries and damages resulting from the use of a drug prescribed for the treatment of acid reflux;
- » In re: Rezulin Litigation, a mass tort litigation involving injuries and damages resulting from the use of a drug prescribed for the treatment of diabetes.

At present, Mr. Lapinski serves as Co-Lead Counsel in In re DePuy ASR Hip Implants Litigation, Superior Court of New Jersey Case No.: 293, and as a member of the Plaintiffs' Steering Committee in *In re: Stryker Rejuvenate & ABG II Modular Hip Implant Litigation*, Superior Court of New Jersey Case No. 296, In re: Heparin Products Liab. Litig., MDL Docket No. 1953 and In re: Zimmer NexGen Knee Implant Prods. Liab. Litig., MDL Docket No. 2272. He regularly serves as a panelist and speaks on topics related to mass tort and class action litigation.

Mr. Lapinski is a member of the American Association for Justice (AAJ), the National Association of Shareholder and Consumer Attorneys (NASCAT), the New Jersey Association for Justice (NJAJ), the New Jersey State Bar Association and the New York State Bar Association, and has been selected for inclusion in New Jersey Super Lawyers® - Rising Stars for 2011 and New Jersey Super Lawyer for 2013 and 2014.

Area of Emphasis:

Product Liability
 Consumer Protection
 Mass Tort
 Drug/Medical Device Litigation

Practice Area(s):

- » Actos Litigation
- » Biomet Magnum M2a Hip Implant
- » Class Actions
- » Consumer Fraud
- » DePuy Hip Implant Litigation
- » Drug / Medical Device Litigation
- » GranuFlo and NaturaLyte Dialysis Solutions
- » Mass Tort
- » Mirena IUD
- » Stryker Rejuvenate - ABG II Hip Implants
- » Zimmer Durom Cup Hip Implants
- » Zimmer NexGen Flex Knee Implant

Lawyer Publications:

- » Personal Injury Report (June 2014)

Lawyer Videos:

- » DePuy Hip Implant Recall - Informational Video
- » Actos Informational Video - Dan Lapinski, Esq.

Exhibit C



Michael F. Fried

Phone: 732.855.6072 Fax:

Email: mfried@wilentz.com

Bar Admission:

New York, 1995
New Jersey, 1999
U.S. District Court, District of New Jersey, 1999
U.S. District Court, Southern District of New York,
2002

Education:

J.D., The George Washington University Law
School, 1994
B.A., State University of New York at Albany, 1991

Biographical Information:

Michael F. Fried is an attorney in the Firm's Class Action Litigation Team. Mr. Fried concentrates his practice on litigating nationwide class actions against health insurance companies based upon their reimbursement practices. One defendant agreed to a settlement valued at over \$200 million dollars.

Prior to joining the Firm, Mr. Fried was an associate at Sills Cummis, Epstein & Gross, P.C., and served as General Counsel for a New Jersey-based company. He has litigated insurance, commercial, partnership, and employment law cases in both State (New York and New Jersey) and Federal courts. He has also handled securities, corporate, and real estate law matters.

Mr. Fried attended the George Washington University Law School. He is a member of the Middlesex County Bar Association and the New Jersey Association For Justice.

Area of Emphasis:

Class Action Litigation

Practice Area(s):

- » Class Actions
- » Mass Tort

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No: 3:14-cv-00067

**DECLARATION OF JACK BATTAGLIA IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR AN AWARD OF
ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD**

I, JACK BATTAGLIA, hereby declare that:

1. I am a resident of Staten Island, New York. I am the lead Plaintiff in this shareholder derivative action. I make this Declaration in Support of Plaintiffs' Application for an Award of Attorneys' Fees and Expenses and Service Award. If called as a witness in this case, I could and would testify as follows.

2. Since September 2013, I have personally devoted 105 hours to the prosecution of this case, and I have incurred out-of-pocket expenses in the amount of \$1,652.00. As an accountant, I keep track of my time and expenses on a daily basis, and I have recorded the

following activities, time, and expenses in connection with this case, including (a) my initial research regarding the potential merger of Apple REIT Seven ("A-7), Apple REIT Eight, Inc. ("A-8"), and Apple REIT Nine ("A-9"); (b) preparing demand letters that I sent to the management of A-9; (c) researching and eventually retaining attorneys to represent me; (d) reviewing drafts of documents and providing suggestions to my attorneys; (e) responding to discovery requests served by Defendants and providing deposition testimony; and (f) participating in three separate mediations conducted with Justice Lacy and Magistrate Judge Novak:

Date(s)	Description of My Activity	Hours Spent	Expenses
Aug. 10-12, 2013	Read prospectus re proposed merger	6.0	
Aug. 13 – Sept. 14, 2013	Analyze financial statements of A-7, A-8, and A-9, and review Citigroup analysis of proposed merger	4.0	
Sept. 15, 2013	Draft letter to Mr. Glade Knight requesting list of A-9 shareholders	1.0	\$6.00
Sept. 25-28, 2013	Internet search for prospective attorneys, telephone calls to attorneys, and discussion of basis for potential lawsuit	2.0	
Sept. 25-28, 2013	Draft e-mail messages and make telephone calls to A-9, Citigroup, and David Lerner Associates seeking to avoid bringing suit	4.0	
Oct. 1-4, 2013	Researching my options under SEC rules and regulations and FINRA regulations	4.0	
Oct. 15-16, 2013	Review, sign, scan and e-mail demand letters	2.0	
Dec. 11-12, 2013	Review draft demand letter and suggest revisions	2.0	
Jan. 28 – Feb. 2, 2014	Review draft shareholder complaint, sign, scan and e-mail final version	3.0	
Mar. 22-24, 2014	Review draft of amended shareholder complaint, sign, scan and e-mail final version	3.0	
June 17-18, 2014	Review draft of motion for class certification and communicate suggestions to attorneys	2.0	
June 19-21, 2014	Gather all written communications and account statements requested by attorneys for production in discovery	4.0	
July 1-3, 2014	Review interrogatories served by defendants and provide information requested by attorneys	4.0	

July 11, 2014	Review plaintiffs' mediation brief and prepare for mediation with Justice Lacy	2.0	
July 15-18, 2014	Travel to and from Richmond, VA; conferences with attorneys and attend mediation with Justice Lacy (expenses for food, lodging, and transportation)	16.0	\$795
July 28, 2014	Travel to and from Washington, DC; conferences with attorneys and provide deposition testimony (expenses for food, lodging, and transportation)	15.0	\$340
Dec. 18, 2014	Review Court's Memorandum Opinion regarding defendants' motion to dismiss amended complaint; conferences with attorneys about strategy going forward	2.0	
April 16-18, 2015	Review and evaluate expert opinions regarding estimated damages resulting from merger	2.0	
May 5, 2015	Review plaintiffs' revised settlement brief and conferences with attorneys re mediation strategy	2.0	
May 5-6, 2015	Travel to Richmond, VA, and return; conferences with attorneys and participate in mediation with Magistrate Judge Lacy (expenses for food, lodging, and transportation)	13.0	\$206
May – June – July – Aug. 2015	Review various drafts of Stipulation of Settlement, Plan of Allocation and Notice documents; conferences with attorneys re proposed distribution of settlement funds	6.0	
Sept. 13-14, 2015	Anticipated travel to Richmond, VA, and return to attend Settlement Approval Hearing (estimated expenses for food and lodging)	6.0	\$305
Totals		105	\$1,652

3. These litigation activities have required me to devote time that otherwise I would have devoted to my tax return preparation business, for which I charge \$250 per hour.

Therefore, given the time that I have devoted to this case, and the out-of-pocket expenses I have incurred, as part of the Settlement I respectfully request a service award in the amount of \$27,902.

4. At all times between September 2013 and the present time, I have engaged in regular communication with my attorneys, either via telephone or e-mail messages, to stay apprised of the status of this case. As indicated in my time records set forth above, I have regularly met with my attorneys on a face-to-face basis to discuss the status of this case and to craft strategy to move the case forward to a successful conclusion.

5. As an accountant and a sophisticated investor, I have carefully monitored the activities of my attorneys throughout this litigation. I am fully aware of the strengths and weaknesses of this case and, because I personally participated in the three mediation sessions, I directly observed my attorneys' efforts to obtain the best possible recovery under difficult circumstances. I understand that my attorneys are seeking fees equal to one-third (1/3) of the \$12,000,000 Settlement Fund, and I fully support their application.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this the 19th day of August, 2015, at Staten Island, New York.

/s/ Jack Battaglia
Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No. 14-00067

**DECLARATION OF LEE SQUITIERI IN SUPPORT OF PLAINTIFFS'
APPLICATION AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

Lee Squitieri, hereby declares that:

1. I, Lee Squitieri, am an attorney at law licensed to practice in the States of New York and New Jersey. I am a partner of the law firm of Squitieri & Fearon, LLP of New York and New Jersey. I was admitted *pro hac vice* in February 2014. I am Co-Lead Counsel for Plaintiffs in this shareholder derivative action and I make this declaration in support of Plaintiffs Application for Award of Attorneys' Fees and Expenses. I have personal knowledge of the matters set forth herein and if called as a witness could testify as follows:

2. The legal services provided by this Firm began in September 2013, when I started to investigate the proposed merger of Apple REIT Nine, Inc. ("A-9"), Apple REIT Eight, Inc. ("A-8"), and Apple REIT Seven, Inc. ("A-7") (the "Merger") at the request of Jack Battaglia ("Battaglia"), an A-9 shareholder and a resident of Staten Island, New York. My investigation included a review of the draft proxy to solicit votes in favor of the Merger (the "Proxy"); three years of filings with the U.S. Securities and Exchange Commission ("SEC") by each of A-9, A-8, and A-7; and research of financial information of comparable companies. The research described herein was carried out jointly with the law firm of Wilentz, Goldman & Spitzer, P.A. ("Wilentz"), based in Woodbridge, New Jersey, with whom we agreed to serve as co-counsel.

3. We also reviewed A-9 certificate of incorporation and by-laws to determine what rights, if any, A-9 shareholders possessed relative to their right to vote on the Merger.

4. We reviewed Virginia corporate law statutes and provisions regarding a shareholder's rights to review books and records; director responsibility statutes; related party transaction statutes; voting statutes; shareholder derivative suit statutes; and statutes addressing mergers.

5. On numerous occasions, we conducted conferences with Mr. Battaglia, who had retained our law firms, to understand the analysis he performed to evaluate the fairness of the Merger ratio.

6. We prepared a request for books and records directed to A-9, in accordance with Virginia law. We pursued that request with A-9's counsel. We reviewed correspondence from A-9 and responded thereto. We reviewed the documents provided by A-9 pursuant to our above-referenced request.

7. We researched and prepared a written shareholder demand upon A-9's Board of Directors, in accordance with Virginia law, demanding certain actions be taken in connection with the proposed Merger.

8. When the Proxy was approved by the SEC and filed and mailed to shareholders, we reviewed it immediately and conferred with Wilentz and Mr. Battaglia about our options for legal and equitable action. It was agreed that Mr. Battaglia and his wife would serve as Plaintiffs in the shareholder class action and derivative action. We thereupon prepared a complaint that involved additional factual research and legal research to ascertain the elements of the claims we planned to assert. The complaint went through various drafts before it was put in final form.

9. It was decided that Plaintiffs would seek a Temporary Restraining Order ("TRO") to prevent closing of the Merger pending the outcome of a proposed preliminary injunction proceeding. We drafted the application for the TRO, the memorandum of law, an application for expedited discovery and discovery requests, and a proposed order.

10. Senior Judge Payne ordered an immediate conference upon the filing of the TRO. In advance thereof, we prepared a detailed settlement demand directed to Defendants' counsel. It was rejected by Defendants.

11. We participated in a lengthy telephone conference hearing with Senior Judge Payne and Defendants' counsel wherein the Court set forth an expedited schedule for briefing and hearing of the TRO in the second week of February 2014.

12. At about that time, the SEC issued its Cease-and-Desist Order regarding the valuation of A-7, A-8, and A-9 shares in connection with each REIT's dividend reinvestment plan. The obvious relevancy of that proceeding to our Merger litigation compelled us to

undertake an analysis of the order and review additional SEC filings. We performed that analysis with Mr. Battaglia, who is an accountant and a sophisticated investor.

13. Eventually, we agreed to withdraw the TRO in favor of the filing of an Amended Complaint in light of the fact that a large number of A-9 shareholders had voted in favor of the Merger.

14. We researched and filed Plaintiffs' amended complaint asserting shareholder class action and derivative claims, which was filed in March 2014.

15. When Defendants filed their various motions to dismiss, we researched and drafted legal points in opposition to Defendants' motions to dismiss. The research and drafting was carried out collaboratively with the Wilentz firm.

16. While the motions were *sub judice*, Senior Judge Payne issued a scheduling order that directed the continued prosecution of the claims notwithstanding the pendency of the motions to dismiss.

17. Thereafter, we prepared party and non-party discovery requests, as well as mandatory Rule 26 disclosures.

18. We participated in various meet-and-confer meetings with Defendants' counsel to discuss discovery disputes between the parties.

19. Throughout the Summer of 2014, we reviewed the partial productions of documents made by Defendants.

20. We prepared a motion to compel Defendants' production of documents and compliance with subpoenas, as well as a memorandum of law in support of that motion.

21. In connection with Plaintiffs' class certification motion, we worked with the, Plaintiff, Mr. Battaglia, to prepare him for his deposition. I attended and defended Mr.

Battaglia's class representative deposition, which was taken at the Washington, DC, offices of Defendants' counsel in July 2014.

22. We reviewed Defendants' opposition to Plaintiffs' motion for class certification and we participated in the drafting of the reply brief.

23. In the Summer of 2014, as directed by Senior Judge Payne, the parties engaged in mediation with a private mediator, Justice Elizabeth Lacy (Ret.) of the Supreme Court of Virginia. In anticipation thereof, we employed a well-known and experienced forensic economist to analyze and prepare an estimate of the A-9 shareholders' damages under several scenarios, including a "dilution" scenario, consistent with the facts alleged in the Amended Complaint. We worked with that expert and with the Plaintiff, Mr. Battaglia, to develop damage models consistent with the available legal remedies. We prepared mediation memoranda. We attended the mediation in July 2014 and we engaged in negotiations but the parties failed to achieve a settlement.

24. When this Court asked for supplemental briefing on Defendants' motions to dismiss the Amended Complaint, we prepared a supplemental memorandum of law addressing the issues highlighted by this Court.

25. We prepared for and attended the December 2014 conference before this Court, at which the pending motions and plan for litigation of this case were discussed at length.

26. We argued the motion to compel discovery in February 2015 in a telephonic hearing scheduled by this Court. At the conclusion of that telephonic hearing, this Court granted Plaintiffs' motion to compel discovery.

27. Thereafter, Defendants sought to reargue and obtain certification of review of this Court's discovery order and recruited outside entities to file an amicus brief. We prepared briefs

in opposition and urged this Court to maintain its ruling granting the motion to compel discovery.

28. After this Court refused to substantially alter its discovery ruling(s), Defendants produced approximately 100 boxes of relevant documents. We reviewed the documents produced by Defendants.

29. We negotiated with third parties to receive discovery in response to subpoenas and we reviewed the documents and information that were produced by such third parties.

30. We appeared before this Court to argue several motions brought by Defendants seeking protective orders and motions brought by Plaintiffs to compel production of documents.

31. This Court's December 2014 Memorandum Opinion, which granted in part and denied in part Defendants' motion to dismiss the Amended Complaint, also provided the impetus for renewed mediation efforts. This Court ordered the parties to report to Magistrate Judge David Novak to pursue mediation. However, prior to the session with Magistrate Judge Novak, the parties again attempted to return to private mediation with Justice Lacy. That effort was unsuccessful. After we reported our lack of success, a mediation session was scheduled by Magistrate Judge Novak for May 6, 2015. We prepared for these mediation sessions by drafting a revised mediation brief and meeting with Plaintiffs' damages and corporate governance experts.

32. I prepared for, and conducted the depositions of various Apple REIT officers and directors, including Justin Knight, Glade Knight, Citigroup (Apple REIT Nine's investment broker), and James Barden.

33. In the midst of this litigation activity, on May 6, 2015, we conducted a full-day mediation session with Magistrate Judge Novak. Our client, Mr. Battaglia, assisted in the

preparation for that mediation session and met face-to-face with Magistrate Judge Battaglia to help explain Plaintiffs' positions. By the end of that day, the parties had reached an agreement to settle the case and Plaintiffs' and Defendants' counsel prepared a memorandum of understanding.

34. Over the past three months, we have worked closely with Defendants' counsel and the settlement administrator, Garden City Group, to prepare the necessary Settlement documents and Notice documents. We have prepared and submitted preliminary approval papers to this Court, which granted preliminary approval on July 31, 2015.

34. The efforts described in this declaration resulted in expenditure of 1413.04 hour of legal services.

35. The legal services at this firm were provided by:

<u>Name</u>	<u>Attorney</u>	<u>Total Time</u>	<u>Rate</u>	<u>Lodestar</u>
Lee Squitieri	Partner	1073.82	\$845.00	\$ 907,375.08
		58.75	\$100.00	\$ 5,875.00
		(Travel)		
Stephen J. Fearon, Jr.	Partner	12.15	\$750.00	\$ 9,112.50
Raymond Barto	Associate	121.40	\$400.00	\$ 48,560.00
Thomas O'Brien	Associate	7.58	\$400.00	\$ 3,033.33
Paul Sweeny	Associate	<u>139.34</u>	\$400.00	<u>\$ 55,733.34</u>
TOTAL		1413.04		\$1,029,689.20

36. In addition, this firm incurred expenses of \$92,881.92 in unreimbursed expenses in connection with prosecution of this action. The expenses are categorized as follows:

<u>EXPENSE:</u>		<u>AMOUNT</u>
TRAVEL EXPENSES, LODGING, MEALS, CABS, CARS		\$ 17,573.50
COURT FEES		\$ 75.00
FEDERAL EXPRESS		\$ 121.80
PROCESS SERVER		\$ 1,029.60
MEDIATOR		\$ 2,208.49
EXPERTS		
COLLIN J. HITE – HIRSCHLER FLEICHER		\$ 3,000.00
CRADDOCK LAW PLC		\$ 10,297.30
COURT REPORTERS		\$ 6,710.43
DTI		\$ 240.00
TELEPHONE CONFERENCING		\$ 25.80
FMA PRINCETON		\$37,500.00
GARDEN CITY GROUP		\$14,100.00
TOTAL		\$92,881.92

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: August 19, 2015


LEE SQUITIERI

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No. 14-00067

**DECLARATION OF JEFFREY H. GEIGER IN
SUPPORT OF PLAINTIFFS' APPLICATION
FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION**

I, Jeffrey H. Geiger, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a shareholder in the law firm Sands Anderson PC (the "Firm"), which is counsel to the plaintiffs and serves as co-lead/local counsel for Plaintiffs in this action. I am admitted to practice before the courts of the Commonwealth of Virginia. The testimony provided herein is based on my own personal knowledge, information, and belief and, if called upon, I could and would competently testify thereto.

2. The Firm has served as co-lead/local counsel in this action, and I submit this Declaration in support of the settlement and plan of allocation. My firm seeks attorneys' fees

and reimbursement of expenses for the work performed as co-lead/local counsel, as well as for the services provided to our clients. Aside from expenses, my firm's compensation for services rendered in this case was undertaken on a wholly contingent fee basis.

3. The information in this declaration regarding the Firm's time and expenses is taken from time and expense printouts and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business, including contemporaneous daily time records regularly prepared and maintained by my Firm, which are being provided to the Court for *in camera* inspection. I am the shareholder who oversaw and conducted the activities in the action with respect to my Firm's involvement, and I reviewed the printouts (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries on the printouts as well as the necessity for, and reasonableness of, the time and expenses committed to the action. Throughout the course of the litigation, significant reductions were made in the exercise of billing judgment, in recognition of the risks associated with contingency fee cases and so as not to create an unnecessary budgetary item for my Firm for recording purposes. As a result, I submit that the time reflected in the Firm's lodestar calculation as set forth in this declaration are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the action.¹ In addition, I submit that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

4. The number of hours spent on the action (after reductions) by my Firm is 98.7 as of August 14, 2015. The total lodestar amount for attorney time based on the Firm's current

¹ My Firm requires that any contingency fee case be approved by the Firm's Board of Directors with acceptance premised on the risk undertaken in connection with the individual attorney's acceptance thereof and the potential reward for success arising therefrom.

rates is \$34,545. The hourly rates represent usual and customary rates set by the Firm for such actions and are consistent with rates I have charged in the past, understanding that some rates are higher and some rates are lower based upon particular intake issues, e.g., contingent fee cases present a greater risk as to recovery. The lodestar contribution of my efforts is set forth in the following chart:

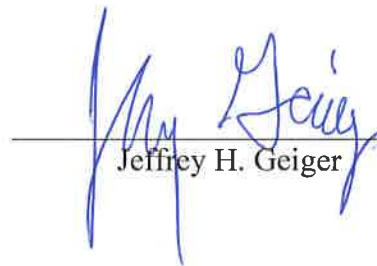
NAME	POSITION	HOURS	RATE	TOTAL
Jeff Geiger	Attorney	98.7	\$350.00	\$34,545
TOTAL HOURS		98.7	TOTAL LODESTAR	\$34,545

5. The expenses incurred pertaining to the action are reflected in the books and records of this firm and amount to \$431.

6. I serve as Group Leader for the Business and Professional Litigation Group of the Firm. A copy of my curriculum vitae, which details some of my background and experience, is attached hereto as **Exhibit 1**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 19th day of August 2015 in the City of Richmond, Virginia.


 Jeffrey H. Geiger

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

DCG&T f/b/o JACK BATTAGLIA/IRA;
JACK BATTAGLIA and DCG&T f/b/o LORI
BATTAGLIA/IRA,

Plaintiffs,

v.

GLADE M. KNIGHT, MICHAEL S.
WATERS, ROBERT M. WILY, BRUCE H.
MATSON, JAMES C. BARDEN and DOES
1-10,

Defendants,

and

APPLE REIT NINE, INC.,

Nominal Defendant.

Civil Action No. 14-00067

**DECLARATION OF COLLIN J. HITE IN SUPPORT OF THE
APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

I, Collin J. Hite, declare under penalty of perjury pursuant to the laws of the Commonwealth of Virginia, as follows:

1. This Declaration is submitted in support of the Application for an Award of Attorneys' Fees and Costs that has been filed in this class action.

2. I am a partner with the law firm of Hirschler Fleischer, P.C., with an office at 2100 East Cary Street, Richmond, Virginia 23223. I have generally limited my practice to civil litigation since graduating from law school and have handled a variety of litigation matters, in jury and bench trials. I have been a member of the Virginia State Bar since May, 1996. I am

also a member of the Florida Bar, and have been a member in good standing of this bar since September, 1993.

3. I graduated from Boston College with a Bachelor of Arts in 1990. I attended the Southern Methodist University Dedman School of Law and graduated in 1993. I have practiced law as an Assistant Attorney General for the State of Florida and Commonwealth of Virginia. I then entered private practice with the law firm of Sands Anderson Marks & Miller, P.C. I next practiced at McGuireWoods LLP for approximately twelve years. I now practice with Hirschler Fleischer, P.C. I am the practice leader the firm's Insurance Recovery Group. I have been involved in a variety of national, statewide and local bar associations, including serving as the President of the Federal Bar Association's Richmond Chapter for three separate terms. I have also served on the Board of Directors of the Virginia Association of Defense Attorneys, and remain an active member. I am also a member of the City of Richmond Bar Association and Lewis F. Powell, Jr. American Inn of Court.

4. Since beginning my practice with Sands Anderson Marks & Miller in 1998, I have focused my practice on representing clients in commercial litigation. My practice consists of representing clients mainly in federal district and appellate courts. I have represented clients in a variety of matters in The United States District Court for the Eastern District of Virginia. I am a member of the bar of that court as well as the following courts: 1) The United States District Court for the Western District of Virginia; 2) The United States District Court for the Eastern District of Wisconsin; 3) The United States District Court for the Middle District of Florida; 4) The United States District Court for the Southern District of Florida; 5) The United States Court of Appeals for the Fourth Circuit; and 6) The United States Supreme Court. I have also appeared *pro hac vice* in a number of other courts around the country.

5. The attorneys at Wilentz, Goldman & Spitzer, P.A. (“Wilentz”) and Squitieri & Fearon LLP (“Squitieri”) have extensive and highly specialized experience in the preparation and trial of derivative shareholder lawsuits and class actions around the country. These two law firms have substantial experience acting as lead counsel for plaintiff classes in such cases. The attorneys at Sands Anderson, P.C. (“Sands”) also have experience in handling complex litigation and derivative shareholder cases, especially in The United States District Court for the Eastern District of Virginia. I have known and worked with local counsel, Jeffrey H. Geiger, for approximately fifteen (15) years. All three law firms are extremely well-qualified to handle complex shareholder litigation, such as this case.

6. I reviewed the Memorandum of Law in Support of Plaintiffs’ Application for and Award of Attorneys’ Fees and Expenses, and the supporting Declarations of Kevin P. Roddy, Lee Squitieri and Jeffrey H. Geiger. I also reviewed, in detail, the billing records for attorneys’ fees and costs by the three law firms, which billing records detail the time expended by the attorneys, paralegals and staff of the three law firms in this case.

7. The hourly rates Plaintiffs’ counsel charged for this derivative shareholder / class action case are the customary hourly rates of the law firms (*i.e.*, they are the same rates they charge for their clients for like work). I am also generally familiar with the customary rates in the Metropolitan Richmond region for lawyers in law firms of comparable skill, experience and reputation of these law firms. Based upon my experience, Plaintiffs’ counsels’ rates, the time expended, and the requested attorneys’ fees and expenses, are reasonable and within the scope of the amount of time that would be expected for the billed tasks related to this complex litigation. Additionally, the rates charged are, in my opinion, reasonable and customarily charged by law firms in the Metropolitan Richmond region for such complex civil litigation of this nature.

8. I further agree that a contingency fee arrangement of 33.3% is appropriate for this type of litigation and that such fee for such work in this type of complex class action litigation also is reasonable. This was a very complex case that involved many different phases of litigation activity and had a variety of risks to it. The settlement of \$12,000,000 that Plaintiffs' counsel secured constitutes a very favorable outcome and is the culmination of 18 months work and extended, arm's length negotiations between highly competent attorneys on both sides. The 33.3% contingency is fair and reasonable for such cases considering the risks in taking this matter to summary judgment or trial and is fair when compared to the lodestar calculation.

I declare under the penalty of perjury under the laws of the Commonwealth of Virginia and 28 U.S.C § 1746 that the foregoing is true and correct to the best of my knowledge, and that this declaration was executed in Richmond, Virginia on this 19th day of August, 2015.


Collin J. Hite

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