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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 **In re HOMESTORE.COM, INC.,**
12 **SECURITIES LITIGATION**

Master File No. 01-CV-11115 RSWL
(CWx)

13 **LEAD PLAINTIFF'S NOTICE OF**
14 **MOTION, MOTION AND**
15 **MEMORANDUM OF POINTS AND**
16 **AUTHORITIES IN SUPPORT OF:**

17 This Document Relates to:
18 ALL ACTIONS.

19 **(1) FINAL APPROVAL OF CLASS**
20 **SETTLEMENT WITH CENDANT**
21 **AND RICHARD A. SMITH;**
22 **(2) APPROVAL OF PLAN OF**
23 **ALLOCATION;**
24 **(3) APPROVAL OF AWARD OF**
25 **ATTORNEYS' FEES AND**
26 **REIMBURSEMENT OF EXPENSES;**
27 **(4) APPROVAL TO DISTRIBUTE**
28 **CLAIMS ADMINISTRATION FUNDS;**
AND
(5) APPROVAL OF TIMING OF
DISTRIBUTION

Date: March 16, 2009
Time: 10:00 a.m.
Judge: Hon. Ronald S.W. Lew
Courtroom: 21, 312 North Spring Street
Los Angeles, CA 90012

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PLEASE TAKE NOTICE that on March 16, 2009 at 10:00 a.m., or as soon thereafter as the matter may be heard before the Hon. Ronald S.W. Lew, United States District Judge for the Central District of California, United States Courthouse, 312 N. Spring Street, Los Angeles, California 90012, Lead Plaintiff, California State Teachers' Retirement System ("CalSTRS") and the Class will and hereby do move the Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order:

2. Granting approval of the Plan of Allocation, as detailed in the Court approved Notice sent to Class Members;

4. Allow Lead Plaintiff's Counsel to defer distributing the Settlement Fund until there can be simultaneous distribution of the other settlements, which monies are held in trust on behalf of the Class or distribute the Cendant/Smith settlement monies separately, whatever makes the most sense from a time and cost perspective.

1 This motion is made on the grounds that: (i) the Settlement is in the best
2 interests of the Class Members and the terms of the Settlement is fair, reasonable
3 and adequate pursuant to Federal Rule of Civil Procedure 23(e); (ii) the proposed
4 manner and form of giving notice of the Settlement to Class Members fairly
5 apprised Class Members of the terms of the Settlement; (iii) the plan of allocation
6 is equitable to the Class Members; and (iv) the requested award of attorneys' fees
7 and expenses is fair and reasonable as set forth in Federal Rule of Civil Procedure
8 23(h).

9 CalSTRS' motion is based on this Notice of Motion and Motion, the
10 accompanying Memorandum of Points and Authorities, the Declaration of Nancy
11 L. Fineman with attached Declaration of Eric Hudgens of Rust Consulting, Inc.
12 filed on January 29, 2009, the new Declaration of Eric Hudgens, the Stipulations
13 and Agreements of Settlement filed previously, the complete file and records in
14 this action, and such additional evidence or argument as may be presented at the
15 hearing.

16 Due to the fact that there is no opposing party and this hearing is pursuant to
17 Court order, after notice to the Class, there has been no Rule 7-3 Conference. The
18 date for the hearing has been posted on the Homestore website since December 26,
19 2008.

20
21 Dated: February 23, 2009

COTCHETT, PITRE & McCARTHY

22
23 By: /s/ Nancy L. Fineman
NANCY L. FINEMAN

24 *Counsel for Lead Plaintiff CalSTRS and the Class*
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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. NATURE OF THE CASE AND CLAIMS	3
III. THE SETTLEMENT	3
A. Settlement Negotiations	3
B. Settlement Terms	4
C. Preliminary Approval and Class Notice	4
IV. THE STANDARD FOR APPROVAL OF CLASS ACTION SETTLEMENTS	5
A. Settlements That Are Fair, Adequate, and Reasonable Warrant Approval by the Court	5
B. The Law Favors Prompt Resolution of Class Action Claims	7
V. THE SETTLEMENT SATISFIES THE STANDARDS FOR JUDICIAL APPROVAL	8
A. The Settlement Resulted From Arm's-Length Negotiations and Is Not the Product of Collusion	8
B. Settlement is Appropriate in Light of the Risks Involved and the Results Achieved	9
C. This Is a Complex Case Which Would Involve Great Expense and Duration	11
D. The Extent of Discovery Completed and the Well Developed Record Favor Final Approval of the Settlement	12
E. The Absence of Significant Opposition to the Settlement Supports Final Approval of the Settlement	13
VI. THE PLAN OF ALLOCATION SHOULD BE FINALLY APPROVED	13
VII. AN AWARD OF FEES TO LEAD PLAINTIFF'S COUNSEL SHOULD BE APPROVED	16
A. The Value of the Settlement	16
B. The Fee Requested Is Reasonable And Merits Final Approval	17
1. The Percentage And Lodestar Approaches	17
2. The Requested Fee Award Represents A Reasonable Percentage Of The Settlement's Value	18

1
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15
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17
18
19
20
21
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23
24
25
26
27
28

- a. The Settlement Provides An Exceptional Recovery Given The Risks And Uncertainties Of The Action Against The Settling Defendants 18
- b. Settlement Was Achieved As A Result Of Vigorous Litigation By Lead Plaintiff's Counsel 19
- c. The Requested Fee Of 10.5% Of The Common Fund Is Well Within – If Not Substantially Below – The Range Typically Associated With Cases Of This Kind 19
- d. The Fee Is Reasonable Based On A Lodestar Cross-Check 20

VIII. THE EXPENSES INCURRED BY CLASS COUNSEL ARE REASONABLE AND SHOULD BE REIMBURSED 20

IX. THE COURT SHOULD AUTHORIZE A DISTRIBUTION FOR TAX-RELATED EXPENSES TO BE INCURRED BY LEAD PLAINTIFF'S COUNSEL 21

X. TIMING OF DISTRIBUTION 21

XI. CONCLUSION 22

TABLE OF AUTHORITIES

		<u>Page</u>
	<u>Cases</u>	
	<i>Behrens v. Wometco Enters., Inc.</i> , 118 F.R.D. 534 (S.D. Fla. 1988)	7
	<i>Bell Atlantic Corp. v. Bolger</i> , 2 F.3d 1304 (3d Cir. 1993)	13
	<i>Blank v. Talley Indus., Inc.</i> , 64 F.R.D. 125 (S.D.N.Y. 1974)	9
	<i>Blum v. Stenson</i> , 465 U.S. 886 (1984)	16, 17, 19
	<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)	6
	<i>Bullock v. Admin. of Est. of Kircher</i> , 84 F.R.D. 1 (D. N.J. 1979)	11
	<i>Central Bank, N.A. v. First Interstate Bank, N.A.</i> , 511 U.S. 164 (1994)	11
	<i>Central RR & Banking Co. v. Pettus</i> , 113 U.S. 116 (1885)	17
	<i>City of Detroit v. Grinnell Corp.</i> , 495 F.2d 448 (2d Cir. 1974)	8
	<i>Class Plaintiffs v. Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	6
	<i>Dura Pharmaceuticals, Inc., et al. v. Broudo, et al.</i> , 544 U.S. 336 (2005)	11
	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15 (N.D. Cal. 1980)	9
	<i>Flinn v. FMS Corp.</i> , 528 F.2d 1169 (4th Cir. 1975)	9
	<i>Franklin v. Kaypro Corp.</i> , 884 F.2d 1222 (9th Cir. 1999)	7
	<i>Girsh v. Jepson</i> , 521 F.3d 153 (3d Cir. 1975)	8
	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	5, 6
	<i>In re Cendant Corp. Litig.</i> , 264 F.3d 201 (3d Cir. 2001)	7

1	<i>In re M.D.C. Holdings Sec. Litig.</i> , Fed. Sec. L. Rep. (CCH) ¶95,474 (S.D. Cal. 1990)	19
2		
3	<i>In re Mego Fin. Corp. Sec. Litig.</i> , 213 F.3d 454, 458 (9th Cir. 2000)	5
4	<i>In re Mid-Atlantic Toyota Antitrust Litig.</i> , 564 F.2d 1379 (D.Md. 1983)	8
5		
6	<i>In re Minolta Camera Antitrust Litig.</i> , 668 F.Supp. 456 (D.Md. 1987)	9
7	<i>In re Motorsports Merchandise Antitrust Litig.</i> , 122 F. Supp.2d 1329 (N.D. Ga. 2000)	13
8		
9	<i>In re Washington Public Power Supply System Sec. Litig.</i> , 19 F.3d 1291 (9th Cir. 1994)	16
10	<i>Kirkorian v. Borelli</i> , 695 F. Supp. 446 (N.D. Cal. 1988)	7, 11
11		
12	<i>Marshall v. Holiday Magic, Inc.</i> , 550 F.2d 1173 (9th Cir. 1977)	5
13	<i>Martens v. Smith, Barney, Inc.</i> , 181 F.R.D. 243 (S.D.N.Y. 1998)	12
14		
15	<i>Mills v. Electric Auto-Lite Co.</i> , 396 U.S. 375 (1970)	21
16	<i>Milstein v. Huck</i> , 600 F. Supp. 254 (E.D.N.Y. 1989)	11
17		
18	<i>Officers for Justice v. Civil Svc. Comm'n.</i> , 688 F.2d 615, 625 (9th Cir. 1982)	5-7
19	<i>Petrovic v. Amoco Oil Co.</i> , 200 F.3d 1140 (8th Cir. 1999)	17
20		
21	<i>Polar Int'l Brokerage Corp. v. Reeve</i> , 187 F.R.D. 108 (S.D.N.Y. 1999)	8, 12
22	<i>Republic Nat'l Life Ins. Co. v. Beasley</i> , 73 F.R.D. 658 (S.D.N.Y. 1977)	6
23		
24	<i>San Francisco NAACP v. San Francisco Unified Sch. Dist.</i> , 59 F. Supp. 2d 1021 (N.D. Cal. 1999)	6
25	<i>Six (6) Mexican Workers v. Arizona Citrus Growers</i> , 904 F.2d 1301 (9th Cir. 1990)	17
26		
27	<i>Stoneridge Inv. Partners LLC v. Scientific-Atlanta, Inc.</i> , 128 S.Ct. 761 (2008)	11
28	<i>Torrisi v. Tucson Elec. Power Co.</i> , 8 F.3d 1370 (9th Cir. 1993)	18

1	<i>Trustees v. Greenough</i> ,	
2	105 U.S. 527 (1882)	17
3	<i>Van Bronkhorst v. Safeco. Corp.</i> ,	
4	529 F.2d 943 (9th Cir. 1976)	7
5	<i>Vincent v. Brand</i> ,	
6	557 F.2d 759 (9th Cir. 1977)	20
7	<i>Vizcaino v. Microsoft Corp.</i> ,	
8	290 F.3d 1043 (9th Cir. 2002)	17-19
9	<i>Walsh v. Great Atl. And Pac. Tea Co.</i> ,	
10	96 F.R.D. 632 (D.N.J. 1983)	10
11	<i>Weinberger v. Kendrick</i> ,	
12	698 F.2d 61 (2d Cir. 1983)	9
13	<i>Wellman v. Dickinson</i> ,	
14	497 F.Supp.824 (S.D.N.Y. 1980)	7

Rules

Federal Rule of Civil Procedure 23(e)	1, 2, 5
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Other Authorities

<i>Newberg on Class Actions</i> (4th ed. 2002)	
§ 11.42	8
§ 14.6	21

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Lead Plaintiff California State Teachers' Retirement System ("Plaintiff" or
4 "CalSTRS"), and the Class respectfully seek final approval of the Settlement
5 reached with Defendants Cendant Corporation (now known as Avis Budget, Inc.),
6 including its predecessors, successors, parent, assigns, subsidiaries and affiliates,
7 current and former employees, officers, directors, agents and representatives
8 ("Cendant") and Richard A. Smith ("Smith"). CalSTRS has entered into a
9 Stipulation and Agreement of Settlement (the "Settlement") with Cendant and
10 Smith, which, if finally approved, will resolve the above-captioned case against
11 them.

12 As set forth in the Declaration of Nancy L. Fineman ("Fineman Decl."),
13 filed herewith, the Settlement was achieved through extensive arm's-length
14 negotiations between CalSTRS and Cendant/Smith, including a mediation with the
15 Hon. Daniel Weinstein (Ret.). Fineman Decl., ¶¶ 9-11.^{1/} The Settlement confers
16 substantial benefits on the Class:

17 • Cendant will relinquish its claim to \$4,000,000 in cash from the
18 settlement proceeds with other defendants in this case, monies to which it would
19 be entitled as a class member if it is dismissed from this case. This is \$4,000,000
20 more that will be going to class members than would be without the settlement,
21 assuming that this Court denied CalSTRS' motion to file a Third Amended
22 Consolidated Complaint.

23 • Cendant has relinquished any claim it has to a *pro rata* share of any
24 proceeds the Plaintiff Class receives from Defendant Stuart H. Wolff ("Wolff"),
25 the Chief Executive Officer of Homestore.com in this action; and
26

27 ¹ A copy of the Stipulation of Settlement with Cendant and Smith was
28 previously filed with the Court as an exhibit to the Declaration of Nancy L.
 Fineman, filed in support of the Motion for Preliminary Approval of the
 Settlement.

1 • Elimination of the risk of continued litigation, considering that a
2 favorable outcome or greater recovery cannot be assured. In light of the current
3 posture of this case, this is a critical risk factor to consider. It is quite probable
4 that without this settlement, the Plaintiff Class would receive nothing from
5 Cendant.

6 On December 11, 2008, this Court tentatively approved the Settlement, and
7 set a hearing for March 16, 2009. Notice was provided to Class Members. No
8 objections have been received, but the deadline is not until March 3, 2009.

9 Fineman Decl., ¶ 13. As of Friday, February 20, 2009, the Claims Administrator
10 has received 242 manually completed Proofs of Claim. Declaration of Eric
11 Hudgens of Rust Consulting, Inc. ("Hudgens Decl."), ¶ 14, attached as Exh. C to
12 Fineman Decl. Since the time of the Hudgens Declaration, the Claims
13 Administrator has received a total of 402 completed Proof of Claims, as of
14 February 13, 2009. Fineman Decl., ¶ 16. A total of seven previously submitted
15 Exclusion Requests from the previous partial class settlements will be considered
16 with regard to the Settlement. *Id.* ¶ 19, Exh. 7. Pursuant to the Notice, Proofs of
17 Claim must be postmarked by April 2, 2009. *Id.*, Exh. 2.

18 Accordingly, CalSTRS requests that the Court: (i) grant final approval of
19 the Settlement as fair, adequate and reasonable; (ii) approve the Plan of Allocation
20 of the Settlement Fund as fair, adequate and reasonable; (iii) grant the application
21 of Lead Plaintiff's Counsel for attorneys' fees of no more than 10.5% of the
22 Settlement Fund and full reimbursement of out-of-pocket expenses and allow
23 Class Counsel to pay future tax obligations and accounting fees to prepare the tax
24 returns; and (iv) allow Plaintiffs to simultaneously distribute this Settlement fund
25 with other Settlement Funds, or to distribute it separately depending on the
26 economics of distribution and the need to get funds to Class Members.

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28 ///

1 **II. NATURE OF THE CASE AND CLAIMS**

2 The nature of the claims, and the procedural history of this case, are well
3 known to the Court, and are described in detail in the Motion for Preliminary
4 Approval of Class Settlement filed on October 17, 2008. Therefore, CalSTRS will
5 not repeat them in detail here.

6 **III. THE SETTLEMENT**

7 **A. Settlement Negotiations**

8 During the course of this litigation, counsel for CalSTRS and
9 Cendant/Smith informally discussed settlement several times, to no avail. In about
10 April of 2008, Counsel for CalSTRS, Nancy Fineman, received a telephone call
11 from an in-house counsel of Realogy Corporation, successor of Cendant,
12 suggesting that the parties have a formal mediation. CalSTRS agreed and the
13 parties scheduled a mediation with the Hon. Daniel Weinstein (Ret.), one of the
14 preeminent private mediators in the country and the mediator who had
15 successfully mediated settlements with other defendants in this case.

16 On July 7, 2008, counsel representing Plaintiff CalSTRS and Defendants
17 Cendant and Smith appeared for mediation in front of Judge Weinstein and
18 Michelle Yoshida at JAMS. Antonia Agerbek, in-house counsel at CalSTRS, and
19 Ms. Fineman represented Plaintiff, while Defendants Cendant and Smith were
20 represented by Samuel Kadet (who has been involved in the litigation since
21 Cendant and Smith were first named in the action) and Robert Fumerton of
22 Skadden, Arps, Slate, Meagher & Flom, LLP and in-house counsel for Realogy
23 Corporation. Judge Weinstein held a group session where the parties set forth
24 their position and then broke out into individual sessions. The discussions were
25 focused and intense, and the participation of Judge Weinstein and Ms. Yoshida
26 was invaluable in crafting a settlement that could be agreed upon by the parties.
27 Judge Weinstein submitted a declaration in support of the preliminary approval of
28 this settlement. After the mediation, other issues arose which were successfully

1 resolved. The negotiations were hard fought and definitely conducted at arms'
2 length.

3 **B. Settlement Terms**

4 Cendant has agreed to relinquish its right: (i) to a total of \$4,000,000 in cash
5 of the other settlements in this case for the benefit of the other Class Members
6 (unless it is held in as a defendant, Cendant is a class member because it owned
7 Homestore stock), and (ii) to its *pro rata* share of any proceeds the Plaintiff Class
8 derives from Wolff in this Action, whether by settlement or judgment, in exchange
9 for CalSTRS and the members of the Class' relinquishment of any claims against
10 Cendant and Smith based, in whole or in part, on matters alleged or that might
11 have been alleged in this litigation.

12 **C. Preliminary Approval and Class Notice**

13 The Court's Order dated December 11, 2008 granted preliminary approval
14 of the Settlement. Fineman Decl., ¶ 12. This Court ordered that the hearing on
15 final approval of the Settlement be held on March 16, 2009, and approved, as to
16 form and content, the Notice of Pendency and Proposed Partial Settlement of Class
17 Action (the "Notice"), the Proof of Claim and Release form (the "Proof of
18 Claim"), and the Summary Notice for Publication as proposed by CalSTRS (the
19 "Summary Notice"). The hearing date was posted on the Homestore settlement
20 website. Fineman Decl., ¶ 12.

21 The Court authorized Lead Plaintiff's Counsel to retain Rust Consulting,
22 Inc. ("Rust") as the Claims Administrator and has already approved payment of
23 fees to Rust and Kinsella Novak for publishing the Notice. Pursuant to the Court's
24 order, on December 26, 2008, Rust mailed the Notice and Proof of Claim form to
25 12,993 mailing addresses of Class members identified with reasonable effort,
26 including brokerage houses and banks who may have purchased and/or otherwise
27 acquired Homestore common stock during the class period. Hudgens Decl., ¶ 5.
28 On December 26, 2008 the website www.homestoresettlement.com was updated to

1 include the Notice and Proof of Claim, and the message on the toll-free phone
2 number 1-866-216-0264 was changed to allow potential Class members to request
3 a copy of the Notice and Proof of Claim. *Id.* ¶¶ 11-12. On January 2, 2009, the
4 Summary Notice was published in the national edition of the Wall Street Journal.
5 *Id.* ¶ 10, Exh. 6.

6 As of January 26, 2009, per the filed and served Hudgens Decl., in addition
7 to the initial mailing of 12,993 Notices, Rust has mailed an additional 12,248
8 Notices and Proofs of Claim to potential Class Members in response to requests.
9 *Id.* ¶ 8, Exh. 4. Rust has mailed a total of 25,241 Notices and Proofs of Claim as
10 of January 26, 2009. *Id.* As of February 13, 2009, Rust has mailed a total of
11 12,723 Notices and Proofs of Claim in response to requests, and five bulk requests
12 totaling 16,426 Notice packets. Fineman Decl., ¶ 16.

13 Pursuant to the Notice, the last day to object to the Settlement is March 3,
14 2009. Hudgens Decl., ¶ 15, Exh. 2, at p. 6. To date, there have been no
15 objections. Fineman Decl., ¶ 13; Hudgens Decl., ¶ 15.

16 **IV. THE STANDARD FOR APPROVAL OF CLASS ACTION** 17 **SETTLEMENTS**

18 **A. Settlements That Are Fair, Adequate, and Reasonable Warrant** 19 **Approval by the Court**

20 Federal Rule of Civil Procedure 23(e) provides: “A class action shall not be
21 dismissed or compromised without the approval of the court, and notice of the
22 proposed dismissal or compromise shall be given to all members of the class in
23 such manner as the court directs.” *Id.* Under Rule 23, a Court should approve a
24 settlement if the settlement is fair, reasonable, and adequate. *Officers for Justice*
25 *v. Civil Svc. Comm’n.*, 688 F.2d 615, 625 (9th Cir. 1982); *see also In re Mego Fin.*
26 *Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000); *Marshall v. Holiday Magic,*
27 *Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977).

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1 In determining the fairness of a proposed settlement, the Court is guided by
2 factors which were summarized by the Ninth Circuit in *Hanlon v. Chrysler Corp.*,
3 150 F.3d 1011, 1026 (9th Cir. 1998):

4 Assessing a settlement proposal requires the district court to balance a
5 number of factors: the strength of the plaintiffs' case; the risk of
6 maintaining class action status throughout the trial; the amount offered in
7 settlement; the extent of discovery completed and the stage of the
8 proceedings; the experience and views of counsel; the presence of a
9 governmental participant; and the reaction of the class members to the
10 proposed settlement. *Torrise v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375
(9th Cir. 1993); quoting *Officers for Justice*, 688 F.2d 615, 625 (9th Cir.
11 1982). To survive appellate review, the district court must show it has
12 explored comprehensively all factors. *See Protective Comm. for Indep.*
13 *Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 20
14 L.Ed. 1, 88 S. Ct. 1157 (1968).

15 “[T]he relative degree of importance to be attached to any particular factor
16 will depend upon and be dictated by the nature of the claim(s) of relief sought, and
17 the unique facts and circumstances presented by each individual case.” *San*
18 *Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp. 2d 1021, 1028
19 (N.D. Cal. 1999) (quoting *Officers for Justice*, 688 F.2d at 625).

20 While district courts have broad discretion in evaluating proposed
21 compromises, *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992);
22 *Officers for Justice*, 688 F.2d at 625, a Court should approve a settlement unless
23 the settlement, “taken as a whole is so unfair on its face as to preclude judicial
24 approval.” *Republic Nat’l Life Ins. Co. v. Beasley*, 73 F.R.D. 658, 667 (S.D.N.Y.
25 1977) (citations omitted). The issue is not whether the settlement could have been
26 better, but whether it is fair, reasonable, and adequate and free from collusion.
27 *Hanlon*, 150 F.3d at 1027.

28 Moreover, in considering the adequacy of a proposed settlement, the object
of settlement is to avoid the determination of contested issues; thus “the settlement
or fairness hearing is not to be turned into a trial or rehearsal for trial on the
merits.” *Officers for Justice*, 688 F.2d at 625; accord *Boyd v. Bechtel Corp.*, 485

1 F. Supp. 610, 617 (N.D. Cal. 1979). As explained by the Ninth Circuit in *Officers*
2 *for Justice*, 688 F.2d at 625:

3 [T]he court's intrusion upon what is otherwise a private consensual
4 agreement negotiated between the parties to a lawsuit must be limited to the
5 extent necessary to reach a reasoned judgment that the agreement is not the
6 product of fraud or overreaching by, or collusion between, the negotiating
7 parties and that the settlement, taken as a whole, is fair, reasonable, and
adequate to all concerned. . . . The proposed settlement is not to be judged
against a hypothetical or speculative measure of what might have been
achieved by the negotiators (citations omitted).

8 The trial court is also entitled to rely upon the judgment of experienced
9 counsel for the parties. *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 538-39
10 (S.D. Fla. 1988), *aff'd*, 889 F.2d 21 (11th Cir. 1990). Indeed, where as here, the
11 counsel recommending approval of the settlement are known to the Court as
12 competent and experienced, significant weight may be given to their opinion.
13 *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988), disapproved on
14 other grounds by *Franklin v. Kaypro Corp.*, 884 F.2d 1222 (9th Cir. 1999). Judge
15 Weinstein, an experienced mediator, also believes that the settlement should be
16 approved.

17 **B. The Law Favors Prompt Resolution of Class Action Claims**

18 In assessing the merits of a class action settlement, Courts have recognized
19 that "[v]oluntary out of court settlement of disputes is 'highly favored in the law,'
20 and approval of class action settlements will be generally left to the sound
21 discretion of the trial judge." *Wellman v. Dickinson*, 497 F.Supp.824, 830
22 (S.D.N.Y. 1980) (citation omitted, emphasis added). As set forth in *Van*
23 *Bronkhorst v. Safeco. Corp.*, 529 F.2d 943, 950 (9th Cir. 1976):

24 It hardly seems necessary to point out that there is an overriding public
25 interest in settling and quieting litigations. This is particularly true in class
26 action suits which are now an ever increasing burden to so many federal
courts and which frequently present serious problems of management and
expense (footnotes omitted).

27 Multiple cases have held that the complexity, expense, and duration of litigation is
28 a factor in approval of a settlement. *See In re Cendant Corp. Litig.*, 264 F.3d 201,

231, 233 (3rd Cir. 2001); *Girsh v. Jepsen*, 521 F.3d 153, 157 (3rd Cir. 1975) (complexity, expense, and duration as one of nine factors in determining the fairness of settlement); *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2nd Cir. 1974) (same nine factors).

Similarly, settlement of this case would resolve the conflicts underlying this class action without the time and expense of a protracted trial. “Like most securities class actions, this case has the potential to be complex, lengthy, and expensive.” *Polar Int’l Brokerage Corp. v. Reeve*, 187 F.R.D. 108, 112 (S.D.N.Y. 1999). The potential complexity and length of the case against Cendant and Smith supports the public interest in judicial efficiency, thus favoring approval of the Settlement. The case was filed over six years ago and there is still no operative complaint filed against Cendant and Smith because of the changing law, including law established by this case, concerning the facts which must be alleged to state a claim against a secondary actor for securities law violations. Even if a complaint is allowed, there remain numerous complex legal issues to be resolved before CalSTRS could establish liability against Cendant.

V. THE SETTLEMENT SATISFIES THE STANDARDS FOR JUDICIAL APPROVAL

A. The Settlement Resulted From Arm’s-Length Negotiations and Is Not the Product of Collusion

The requirement that a settlement be fair is designed to protect against collusion among the parties. *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.2d 1379, 1383 (D.Md. 1983). There is usually a presumption that a proposed settlement is fair and reasonable when it was the result of arm’s-length negotiations. *See 2 Newberg On Class Actions*, § 11.42 (4th ed. 2002); *see also Polar Int’l*, 187 F.R.D. at 112 (the court must look at the negotiating process leading to settlement in order to ensure that “the compromise be the result of arm’s-length negotiations and that plaintiff’s counsel have possessed the . . . ability . . . , necessary to effectively represent the class’s interests.”); *citing*

1 *Weinberger v. Kendrick*, 698 F.2d 61, 74 (2nd Cir. 1983). Indeed, the
2 non-collusive nature of the negotiations and the stature of counsel have often been
3 recognized as important factors in the final approval of class action settlements.
4 *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*,
5 661 F.2d 939 (9th Cir. 1981) (“the fact that the experienced counsel involved in the
6 case approved the settlement after hard-fought negotiations is entitled to
7 considerable weight.”); *see also Flinn v. FMS Corp.*, 528 F.2d 1169, 1173 n.14
8 (4th Cir. 1975); *Blank v. Talley Indus., Inc.*, 64 F.R.D. 125, 132 (S.D.N.Y. 1974)
9 (a factor “entitled to substantial weight is that it bears the imprimatur of seasoned
10 and experienced counsel”).

11 Here, Lead Plaintiff’s Counsel, Nancy L. Fineman, and in-house counsel for
12 CalSTRS, Antonia Agerbek, negotiated the Settlement in vigorous and intense
13 negotiations, including participating in a mediation with Judge Daniel Weinstein
14 (Ret.).^{2/} There were many prior opportunities to settle, but the case did not settle
15 until after the United States Supreme Court had issued a ruling on secondary
16 liability, but before this Court ruled on CalSTRS’ motion for leave to amend to file
17 a new complaint. The certainty of the law, but the uncertainty of the Court’s
18 ruling on the motion to amend helped frame the negotiations and settle the case.

19 **B. Settlement is Appropriate in Light of the Risks Involved and the**
20 **Results Achieved**

21 In assessing the fairness, reasonableness and adequacy of the proposed
22 Settlement, the Court must balance the benefits afforded to members of the Class
23 and the immediacy and certainty of a substantial recovery against the continuing
24 risks of litigation. Generally, the principal risks to be assessed are the difficulties

25
26 ² The stature of counsel and the arm’s-length nature of the negotiations
27 have often been recognized as important factors in final approval of class action
28 settlements. *See Flinn v. FMS Corp.*, 528 F.2d 1169, 1173 n. 14 (4th Cir. 1975); *In*
re Minolta Camera Antitrust Litig., 668 F.Supp. 456, 459 (D.Md. 1987); *Blank v.*
Talley Indus., Inc., 64 F.R.D. 125, 132 (S.D.N.Y. 1974) (a factor “entitled to
substantial weight is that the settlement bears the imprimatur of seasoned and
experienced counsel”)

1 and complexities of proving liability and damages. *Walsh v. Great Atl. And Pac.*
2 *Tea Co.*, 96 F.R.D. 632, 642 (D.N.J. 1983), *aff'd* 726 F.2d 956 (3rd Cir. 1983)

3 Here, the benefits to the Class are clear. The Settlement provides that
4 Cendant shall relinquish its right: (1) to a total of \$4,000,00 in cash of the
5 settlement proceeds from other settlements in this case for the benefit of the other
6 Class Members; and (2) to receive its *pro rata* share of any proceeds the Plaintiff
7 Class receives from Defendant Stuart H. Wolff ("Wolff") in this action. The
8 biggest risk in this case is that CalSTRS may never be able to state a claim against
9 Cendant and Smith, which would result in CalSTRS and the Class receiving
10 nothing. CalSTRS has aggressively litigated this issue, including up to the United
11 States Supreme Court, and lost. CalSTRS settled just before this Court was to rule
12 on the motion to amend for leave to file a Third Amended complaint. The risk of
13 not settling was too great. Even if CalSTRS prevailed, there would be a long and
14 aggressive fight by Cendant and Smith. It was time to settle.

15 There were numerous legal issues on which the settling parties disagree,
16 which include: (1) the appropriate economic model for determining the amount by
17 which Homestore common stock was allegedly artificially inflated (if at all) during
18 the Class Period; (2) the amount by which Homestore common stock was
19 allegedly artificially inflated (if at all) during the Class Period; (3) the effect of
20 various market forces influencing the trading practices of Homestore common
21 stock at various times during the Class Period; (4) the extent to which external
22 factors, such as general market and industry conditions, influenced the trading
23 price of Homestore common stock at various times during the Class Period; (5) the
24 extent to which the various matters that Lead Plaintiff alleged were materially
25 false or misleading influenced (if at all) the trading price of Homestore common
26 stock at various times during the Class Period; (6) the extent to which the various
27 allegedly adverse material facts that Lead Plaintiff alleged were omitted
28 influenced (if at all) the trading price of Homestore common stock at various times

1 during the Class Period; (7) whether the statements made or facts allegedly
2 omitted were material, false, misleading or otherwise actionable under the
3 securities laws (e.g., *Central Bank, N.A. v. First Interstate Bank, N.A.*, 514 U.S.
4 164 (1994) and *Stoneridge Inv. Partners LLC v. Scientific-Atlanta, Inc.*, 128 S.Ct.
5 761 (2008)); and (8) whether the SACC adequately alleged loss causation and
6 damages for CalSTRS and the Class under applicable securities laws (e.g., *Dura*
7 *Pharmaceuticals, Inc., et al. v. Broudo, et al.*, 544 U.S. 336 (2005)). In light of all
8 the risks, the settlement is fair and reasonable.

9 **C. This Is a Complex Case Which Would Involve Great Expense and**
10 **Duration**

11 Courts have consistently held that “[t]he expense and possible duration of
12 the litigation should be considered in evaluating the reasonableness of [a]
13 settlement.” *Milstein v. Huck*, 600 F. Supp. 254, 267 (E.D.N.Y. 1989); *see also*,
14 *Bullock v. Admin. of Est. of Kircher*, 84 F.R.D. 1, 10 (D. N.J. 1979). Trying this
15 case against Cendant and Smith would entail enormous time and expense in light
16 of the risks to the Class.^{3/} Indeed, proceeding to trial against the Cendant and
17 Smith would not guarantee that Class Members will obtain any recovery from
18 them, let alone that the recovery obtained at trial (especially after deduction of
19 costs) would exceed the amount of the proposed Settlement.

20 Lead Plaintiff’s Counsel has conducted a thorough and detailed
21 investigation of the facts and legal principles applicable to the liability and
22 damages issues in this case and retained an economics expert to analyze such
23 issues. Sufficient information has been made available to the parties, their
24 counsel, and the Court to make a thorough appraisal of the adequacy of the
25 settlement. These factors favor approving the proposed Settlement. *See*
26 *Kirkorian*, 695 F. Supp. at 449-51.

27
28 ³ The Class does not even have an operative complaint against Cendant
or Smith.

1 **D. The Extent of Discovery Completed and the Well Developed**
2 **Record Favor Final Approval of the Settlement**

3 The parties must have engaged “in sufficient investigation of the facts to
4 enable the court to intelligibly make an appraisal.” *Polar Int’l*, 187 F.R.D. at 114
5 (internal quotations omitted). Further, pretrial negotiations and discovery must be
6 sufficiently adversarial to show that they are not designed to justify a settlement,
7 but an aggressive effort to move towards trial. *Id.*, citing *Martens v. Smith,*
8 *Barney, Inc.*, 181 F.R.D. 243, 263 (S.D.N.Y. 1998).

9 Prior to its appointment as Lead Counsel, Lead Counsel began conducting
10 an exhaustive independent investigation by interviewing numerous confidential
11 sources, and analyzing large volumes of documents and information from various
12 sources. Fineman Decl., ¶ 4. On November 15, 2002, Lead Counsel for Plaintiff
13 filed the First Amended Consolidated Complaint (“FACC”), naming, among
14 others, Cendant and Smith. The FACC was replete with specific details about the
15 alleged conduct, including extensive factual allegations about the precise value of
16 the financial improprieties that led to the \$192 million restatement that is the
17 subject of the Class Claims. *Id.* ¶ 3.

18 CalSTRS counsel conducted years of formal discovery, including
19 production and analysis of over a million pages of documents and 52 depositions,
20 and engaged in intense motion practice. *Id.* ¶ 4. Between the filing of the First
21 Amended Consolidated Complaint in November 2002 and the filing of the Second
22 Amended Consolidated Complaint in September 2006, Lead Plaintiff’s Counsel
23 became aware of many new facts, including from discovery, numerous plea
24 agreements, and testimony at Stuart Wolff’s criminal trial. These new facts were
25 incorporated into the new, 230-page Second Amended Consolidated Complaint.
26 *Id.* ¶ 5. Further facts were developed and included in the Third Amended
27 Consolidated Complaint. *Id.* ¶ 8. As a result of these efforts, at the time the
28

1 parties finalized their Settlement, Lead Plaintiff's Counsel was knowledgeable
2 concerning the factual and legal issues in the Litigation and the underlying facts.

3 **E. The Absence of Significant Opposition to the Settlement Supports**
4 **Final Approval of the Settlement**

5 The absence of significant objections to the Settlement further supports final
6 approval. Although Rust has mailed Notices and Proofs of Claim to thousands of
7 Class Members and/or nominees as of the time of filing this motion, Lead
8 Plaintiff's Counsel has received no objections to the Proposed Settlement.
9 Fineman Decl., ¶ 13. The overwhelmingly favorable response by the Class
10 strongly supports final approval of the Settlement. *Bell Atlantic Corp. v. Bolger*, 2
11 F.3d 1304, 1313 n. 15 (3rd Cir. 1993); *In re Motorsports Merchandise Antitrust*
12 *Litig.*, 122 F. Supp.2d 1329, 1338 (N.D. Ga. 2000) (concluding that the lack of
13 objections is a further factor weighing in favor of approval of settlement).

14 **VI. THE PLAN OF ALLOCATION SHOULD BE FINALLY APPROVED**

15 The Net Settlement Fund^{4/} will be distributed to Class Members who submit
16 valid, timely Proof of Claims and/or Releases ("Authorized Claimants") under the
17 Plan of Allocation described below. The Plan of Allocation provides that Class
18 Members will be eligible to participate in the distribution of the Net Settlement
19 Fund only if they have a net loss on all transactions in Homestore common stock
20 during the Class Period. The identical Plan of Allocation was previously approved
21 by the Court when it approved the settlements with Homestore, certain individual
22 defendants, PWC, Time Warner, L90 and Peter Tafeen. Fineman Decl., ¶ 14.

23 To the extent there are sufficient funds in the Net Settlement Fund, each
24 Authorized Claimant will receive an amount equal to the Authorized Claimant's
25

26 ⁴ As explained in the Notice, the "Net Settlement Fund" is the amount
27 of the Settlement Fund that remains after that portion of the Settlement Fund that
28 is awarded by the Court to Counsel for Lead Plaintiff as attorneys' fees and
reimbursement of out-of-pocket expenses, as well as for those costs associated
with providing Notice to Class Members, and for claims administration and related
expenses.

1 claim, as defined below. If, however, the amount in the Net Settlement Fund is
2 not sufficient to permit payment of the total claim of each Authorized Claimant,
3 then each Authorized Claimant shall be paid the percentage of the Net Settlement
4 Fund that each Authorized Claimant's claim bears to the total of the claims of all
5 Authorized Claimants. Payment in this manner shall be deemed conclusive
6 against all Authorized Claimants.

7 A claim will be calculated as follows:

- 8 1. For shares of Homestore common stock that were purchased or
9 acquired from January 1, 2000 through December 21, 2001;
 - 10 a. Price inflation per share of common stock during the Class
11 Period would be based on market and industry-adjusted
12 percentage declines in the price of Homestore common stock
13 on November 2, 2001 and January 2, 2002. The inflation per
14 share would be further adjusted on a pro-rated basis according
15 to the amounts Homestore's financial statement were restated.
16 Changes in price inflation occurred on the following dates:
17 October 20, 2000, January 26, 2001, April 26, 2001, July 26,
18 2001 and October 3, 2001. (These dates correspond to the days
19 Homestore's earnings reports or changes in guidance were
20 originally released, or in the case of aftermarket
21 announcements, the next trading day.)
 - 22 b. Inflation as a percentage of share price during the Class Period
23 is calculated as follows:
 - 24 • From January 2, 2000 through
25 October 19, 2000: 3.6%
 - 26 • From October 20, 2000 through
27 January 25, 2001: 7.1%
 - 28 • From January 26, 2001 through
April 25, 2001: 17.8%

- From April 26, 2001 through July 25, 2001: 35.7%
- From July 26, 2001 through October 2, 2001: 57.1%
- From October 3, 2001 through November 1, 2001: 71.3%
- From November 2, 2001 through December 21, 2001: 36.7%

- c. Net dollar proceeds per share would be allocated as follows:
- (i) Multiply the above percentage inflation applicable to the share purchase date by the share purchase price paid;
 - (ii) If the share was retained (not sold) after December 21, 2001, the net dollar proceeds are the amount calculated per (i) above;
 - (iii) If the share was sold on or before December 21, 2001, multiply the above percentage inflation applicable to the share sale date by the sale price, and subtract that amount from the dollar value calculated per (i) above. The resulting amount is the net dollar proceeds;
 - (iv) If the total amount calculated for all of one Class Member's transactions is negative, the net dollar proceeds equal zero.

The Court will reserve jurisdiction to allow, disallow or adjust the claim of any Class Member on equitable grounds. Adjustments to the amount recovered by a claimant could occur based on the amount of claims made.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Authorized Claimant shall have any claim against Lead Plaintiff's Counsel or any claims administrator or any Released Persons or other agent designated by Lead Plaintiff's Counsel or any Released Person or their respective counsel based on distributions made

1 substantially in accordance with the Stipulation and the Settlement contained
2 therein, the Plan of Allocation, or further orders of the Court. All Class Members
3 who fail to complete and file a valid and timely Proof of Claim and/or Release
4 shall be barred from participating in distributions from the Settlement Fund
5 (unless otherwise ordered by the Court), but otherwise shall be bound by all of the
6 terms of the Stipulations, including the terms of any judgment entered and the
7 releases given.

8 Class Members who have not previously submitted a valid and timely Proof
9 of Claim with regard to the previous settlements must submit a completed Proof of
10 Claim and Release. Class Members who have previously submitted a valid and
11 timely Proof of Claim with regard to the previous settlements are not required to
12 complete another claim form but must read Sections V and VI of the Proof of
13 Claim, and sign and return the Release.

14 The Proof of Claim and/or Release must be postmarked on or before April
15 2, 2009, and delivered to the Claims Administrator at the address listed on the
16 Notice. Unless the Court orders otherwise, if Class Members do not timely submit
17 a valid Proof of Claim and/or Release, they will be barred from receiving any
18 payments from the Settlement Fund, but will in all other respects be bound by the
19 provisions of the Stipulations and the Judgment.

20 For these reasons, CalSTRS respectfully requests that the Court approve the
21 Plan of Allocation.

22 **VII. AN AWARD OF FEES TO LEAD PLAINTIFF'S COUNSEL SHOULD**
23 **BE APPROVED**

24 **A. The Value of the Settlement**

25 In *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984), the Supreme Court
26 recognized that under the "common fund doctrine" a reasonable fee may be based
27 "on a percentage of the fund bestowed on the class." The purpose of this doctrine
28 is that "those who benefit from the creation of the fund should share the wealth
with the lawyers whose skill and effort helped create it." *In re Washington Public*

1 *Power Supply System Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). This rule is
2 firmly rooted in American case law. *See, e.g., Trustees v. Greenough*, 105 U.S.
3 527 (1882); *Central RR & Banking Co. v. Pettus*, 113 U.S. 116 (1885). Here,
4 Lead Plaintiff's Counsel respectfully seeks approval of an award of attorneys' fees
5 and reimbursement of expenses from the common fund created from the
6 Settlement.

7 The current cash value of the Settlement to Class members is \$4,000,000
8 and an unknown future benefit from any settlement with Wolff or judgment
9 against him. Pursuant to its fee agreement with CalSTRS, Lead Plaintiff's
10 Counsel seeks an award of \$420,000, payable from the Settlement Fund, which is
11 10.5% of the Settlement Fund obtained from the Settling Defendants, an amount
12 that is reasonable when compared to the lodestar. Fineman Decl., ¶¶ 17-21;
13 Exh. A.

14 **B. The Fee Requested Is Reasonable And Merits Final Approval**

15 **1. The Percentage And Lodestar Approaches**

16 An award of attorneys' fees and expenses is within the discretion of the
17 district court. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1156 (8th Cir. 1999). In
18 the Ninth Circuit, the district court has discretion in a common fund case to choose
19 either the "percentage-of-the-fund or the lodestar method" in calculating fees, or to
20 use one as a cross-check of the other. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
21 1047 (9th Cir. 2002).

22 Under the percentage-of-the-fund approach, the court awards a percentage
23 of the fund created by the attorneys' efforts as their reasonable attorneys' fee.
24 *Blum, supra*, 465 U.S. at 900 n.16 (1984). The Ninth Circuit in *Vizcaino* surveyed
25 fees awarded in common fund cases settled between the years 1996 and 2001 and
26 found that 25% of the settlement value is the starting point or benchmark for the
27 analysis of fees. *Vizcaino*, 290 F.3d at 1048. The benchmark percentage "should
28 be adjusted, or replaced by a lodestar calculation, when special circumstances

1 indicate that the percentage recovery would be either too small or too large in light
2 of the hours devoted to the case or other relevant factors.” *Six (6) Mexican*
3 *Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

4 **2. The Requested Fee Award Represents A Reasonable**
5 **Percentage Of The Settlement’s Value**

6 In *Vizcaino*, the Ninth Circuit noted that the 25% “benchmark” should be
7 considered, and adjusted accordingly, based on the circumstances of the particular
8 case. *Vizcaino*, 290 F.3d at 1048. For example, in that case, the Ninth Circuit
9 found that fees equaling 28% of the common fund were appropriate after
10 considering several factors, including: (1) exceptional results for the plaintiffs; (2)
11 the risk for Class Counsel; (3) whether any individual non-monetary benefits are
12 obtained; (4) whether the fee is within the range typically associated with cases of
13 this kind; and (5) the burden on Class Counsel of prosecuting the case. *Id.* at
14 1048-1050.

15 The fee award requested here is consistent with the factors identified in
16 *Vizcaino*. In addition, the contingent fee is low in relation to the entire benefit to
17 the Class of approximately \$120 million that Class Counsel has achieved from all
18 settlements.

19 **a. The Settlement Provides An Exceptional Recovery**
20 **Given The Risks And Uncertainties Of The Action**
21 **Against The Settling Defendants**

22 “Exceptional results are a relevant circumstance” in deciding a fee award in
23 common fund cases. *Vizcaino, supra*, 290 F.3d at 1048 (citing *Torrisi v. Tucson*
24 *Elec. Power Co.*, 8 F.3d 1370, 1377 (9th Cir. 1993) (it is proper to consider
25 plaintiffs’ counsel’s “expert handling of the case”)). As described above, the
26 result achieved was extraordinary for the Class, particularly given the risks of
27 recovery and the fact there has never been an operative complaint against Cendant
28 or Smith.

1 **b. Settlement Was Achieved As A Result Of Vigorous**
2 **Litigation By Lead Plaintiff's Counsel**

3 As detailed above, and in the Fineman Declaration, CalSTRS and Lead
4 Plaintiff's Counsel have vigorously litigated this case against defendants,
5 extensively investigating and pursuing the Class claims. Fineman Decl., ¶¶ 3-8.
6 CalSTRS and Lead Plaintiff's Counsel were firmly aware of the strength of the
7 case, the facts at issue, and the risks in going forward against Cendant or Smith.

8 During this process, Lead Plaintiff's Counsel agreed to advance all costs,
9 and this case was undertaken on a contingency basis against worthy and
10 well-financed opponents who challenged plaintiff's case at every opportunity.
11 Lead Plaintiff's Counsel expended considerable time and resources with no
12 assurance that they would receive any compensation.

13 **c. The Requested Fee Of 10.5% Of The Common Fund**
14 **Is Well Within – If Not Substantially Below – The**
 Range Typically Associated With Cases Of This Kind

15 A relevant factor when awarding fees is whether the fee is within the range
16 typically associated with cases of its kind. *Vizcaino*, 290 F.3d at 1048-50. As
17 explained above, in common fund cases, an award representing 20-30% of the
18 common fund is the usual range. *Id.* at 1047-48. Based on this benchmark, the
19 10.5% requested by Lead Counsel is exceedingly reasonable and fair.

20 The fee is also reasonable when compared to customary private contingent
21 fee agreements, which usually range between 30% to 40% of the recovery. *See*
22 *Blum, supra*, 465 U.S. at 904 (“In tort suits, an attorney might receive one-third of
23 whatever amount the plaintiff recovers. In those cases, therefore, the fee is
24 directly proportional to the recovery.”); *In re M.D.C. Holdings Sec. Litig.*, [1990
25 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶95,474, at 97,490 (S.D. Cal. 1990) (“In
26 private contingent litigation, fee contracts have traditionally ranged between 30%
27 and 40% of the total recovery.”). Thus, customary contingent fee agreements
28

1 obtained in the private marketplace, which range between 30% to 40% of the
2 money recovered, also validate the percentage fee requested in this case.

3 Moreover, in a Private Securities Litigation Reform Act case such as this,
4 the selection of Lead Plaintiff presumes that Lead Plaintiff has aggressively
5 pursued qualified counsel and negotiated the best terms possible under the fee
6 agreement with their counsel. That is exactly what happened in this case.
7 Fineman Decl., ¶ 2. Indeed, the fees requested herein are governed by and
8 completely consistent with the CalSTRS fee agreement, which is testimony to how
9 well the competitive selection process worked. *Id.*

10 d. **The Fee Is Reasonable Based On A Lodestar**
11 **Cross-Check**

12 The fee request is further supported by the total lodestar calculation by Lead
13 Plaintiff's Counsel. For the period November 1, 2007 through February 18, 2009,
14 Lead Counsel have combined lodestars (*i.e.* actual hours expended multiplied by
15 customary hourly billing rates) of \$286,137.50.^{5/} Fineman Decl., ¶¶ 19-21,
16 Exh. A. Although the amount is less than the fee request, it is in line with the
17 requested amount based upon the risk of the case and the facts of the case.

18 **VIII. THE EXPENSES INCURRED BY CLASS COUNSEL ARE**
19 **REASONABLE AND SHOULD BE REIMBURSED**

20 Class Counsel also respectfully request that they be reimbursed for the
21 litigation costs and expenses in the amount of \$20,994.67, which is the amount of
22 actual costs incurred since November 1, 2007 that have not yet been reimbursed to
23 Class Counsel. Fineman Decl., ¶ 22, Exh. B. Under the common fund doctrine,
24 Class Counsel are entitled to reimbursement of all reasonable out-of-pocket
25 expenses and costs in prosecution of the claims and in obtaining a settlement.
26 *Vincent v. Brand*, 557 F.2d 759, 769 (9th Cir. 1977). The declarations submitted
27 by Class Counsel establish that all of the costs and expenses for which

28 ⁵ The award of attorneys' fees and costs in the Time Warner, L90 and
Peter Tafeen settlement covered the period ending November 5, 2007.

1 reimbursement is sought were reasonable and necessary in order to obtain the
2 result achieved. Throughout the course of this case, Class Counsel have
3 maintained contemporaneously documented time and expense records in order to
4 efficiently supervise the prosecution of this case. Fineman Decl., ¶ 19.

5 It is common and appropriate for Class Counsel to be reimbursed out of the
6 common fund for all reasonable litigation expenses, including expenses for
7 document production, expenses for experts and consultants, expenses for delivery
8 of documents and expenses for Class administration including the mailing of Class
9 Notices. *See Newberg on Class Actions* § 14.6 (4th ed. 2002); *Mills v. Electric*
10 *Auto-Lite Co.*, 396 U.S. 375, 391-392 (1970). The Court has already approved
11 payment of the costs of Claims Administration and publication when granting
12 preliminary approval. Order, ¶ 15. Class Counsel has requested authority to pay
13 up to \$350,000, and the expenses to date are substantially less. See new
14 Declaration of Eric Hudgens, ¶ 3.

15 **IX. THE COURT SHOULD AUTHORIZE A DISTRIBUTION FOR TAX-**
16 **RELATED EXPENSES TO BE INCURRED BY LEAD PLAINTIFF'S**
17 **COUNSEL**

18 Lead Plaintiff's Counsel further requests that the Court authorize it to use
19 settlement funds to pay the estimated costs of future federal taxes, state taxes, and
20 tax preparation services associated with the taxes payable on interest accruing on
21 the settlement monies. Fineman Decl., ¶ 23.

22 **X. TIMING OF DISTRIBUTION**

23 Lead Plaintiff's Counsel respectfully requests that, in the interest of
24 minimizing expenses, the Court allow Lead Plaintiff's Counsel the option to
25 simultaneously distribute from this Settlement with the other Settlement Funds.

26 ///

27 ///

1 **XI. CONCLUSION**

2 For the foregoing reasons, Lead Plaintiff respectfully requests that this
3 Court: (1) grant final approval the Proposed Settlement as fair, reasonable, and
4 adequate to the Class; (2) grant approval of the Plan of Allocation; (3) grant
5 approval of an award of attorneys' fees and expenses to Lead Plaintiffs' Counsel
6 of \$420,000 in attorneys' fees, \$20,994.67 in incurred expenses, and to pay future
7 expenses to be incurred for tax-related costs; and (4) allow Plaintiffs the option to
8 wait to distribute funds in the Settlement Fund until they can be distributed
9 simultaneously with the other Settlement Funds.

10
11 DATE: February 23, 2009

COTCHETT, PITRE & McCARTHY

12
13 By: /s/ Nancy L. Fineman
14 NANCY L. FINEMAN

15 *Counsel for Lead Plaintiff CalSTRS and the Class*
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