UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

IN RE NII HOLDINGS INC. SECURITIES LITIGATION	Civ. No. 1:14-cv-00227-LMB-JFA

JOINT DECLARATION OF GREGORY M. CASTALDO, JOEL H. BERNSTEIN, AND SUSAN R. PODOLSKY IN SUPPORT OF PROPOSED CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

August 12, 2016

We, GREGORY M. CASTALDO, JOEL H. BERNSTEIN, and SUSAN R. PODOLSKY, declare as follows:

1. We, Gregory M. Castaldo, Joel H. Bernstein, and Susan R. Podolsky, are partners or principals of the law firms of Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), Labaton Sucharow LLP ("Labaton Sucharow"), and the Law Offices of Susan R. Podolsky, respectively.[1] Kessler Topaz and Labaton Sucharow (together, "Lead Counsel" or "Class Counsel") represent the Court-appointed Lead Plaintiffs Danica Pension, Livsforsikringsaktieselskab ("Danica"), Industriens Pensionsforsikring A/S ("Industriens"), Pension Trust Fund for Operating Engineers Pension Plan ("Operating Engineers Pension Trust Fund"), IBEW Local No. 58 / SMC NECA Funds ("IBEW Local No. 58 / SMC NECA Funds"), and Jacksonville Police & Fire Pension Fund ("Jacksonville P&F") (collectively, "Lead Plaintiffs" or "Class Representatives") in this securities class action lawsuit (the "Action"). The Law Offices of Susan R. Podolsky serves as Court-appointed Liaison Counsel. We have personal knowledge of the matters stated in this declaration based on our active supervision of and participation in the prosecution and settlement of the claims asserted on behalf of the Court-certified Class (defined below) in the Action.

2. In addition to Class Counsel and Liaison Counsel, the Class is also represented by additional counsel Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz").[2]

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[1] All capitalized terms that are not defined in this declaration have the same meanings as defined in the Stipulation and Agreement of Settlement dated as of April 18, 2016 (the "Stipulation"). ECF No. 247-1.

[2] In connection with proceedings before the Bankruptcy Court, the Class also had the able assistance of Lowenstein Sandler LLP. Individually, Motley Rice LLP ("Motley Rice") serves as counsel for additional plaintiff TOBAM, SAS ("TOBAM") and Klausner, Kaufman, Jensen & Levinson ("Klausner") serves as fund counsel for Jacksonville P&F. The firm of Cohen Milstein Sellers & Toll PLLC acted as local counsel before Ms. Podolsky was retained. Collectively, all plaintiffs' counsel are referred to in this declaration as "Plaintiffs' counsel."

3. We respectfully submit this Joint Declaration in support of Class Representatives' motion under Rule 23(e) of the Federal Rules of Civil Procedure for final approval of the proposed settlement (the "Settlement") with Defendants Steven P. Dussek, Steven M. Shindler, and Gokul V. Hemmady (collectively, "Defendants" or "Individual Defendants"). The Settlement will resolve all claims asserted in this Action against each of the Defendants, on behalf of the Court-certified Class, which consists of all persons and entities that, during the period from February 25, 2010 through February 27, 2014, inclusive, purchased or otherwise acquired the publicly traded securities of NII Holdings, Inc. ("NII" or the "Company") and/or NII Capital Corp. ("NII Capital") and who were damaged thereby (the "Class").[3] ECF No. 228. The Court preliminarily approved the Settlement by Order entered May 16, 2016 (the "Preliminary Approval Order"). ECF No. 251.

4. We also respectfully submit this Joint Declaration in support of the proposed plan for allocating the net proceeds of the Settlement to eligible Class Members (the "Plan of Allocation") and Class Counsel's motion for an award of attorneys' fees and payment of litigation expenses (the "Fee and Expense Application"), including Class Representatives' requests, in accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA"), for reimbursement of costs and expenses in connection with their representation of the Class.

5. For the reasons discussed below and in the accompanying memoranda,[4] we respectfully submit that (i) the terms of the Settlement are fair, reasonable, and adequate in all

[3] Certain persons and entities are excluded from the Class as provided in ¶1(e) of the Stipulation.

[4] In addition to this Joint Declaration, Class Representatives and Class Counsel are submitting (i) the Memorandum of Law in Support of Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Memorandum") and (ii) the Memorandum of Law in Support of Class Counsel's Motion for an Award of

respects and should be approved by the Court; (ii) the proposed Plan of Allocation is fair and reasonable and should be approved by the Court; and (iii) the Fee and Expense Application is reasonable and supported by the facts and the law and should be granted in all respects.

I. PRELIMINARY STATEMENT

6. This Action began more than two years ago and was actively and vigorously litigated by Plaintiffs' Counsel until the Parties reached their agreement-in-principle to settle the Action one week before Defendants' expert reports were due to be served. During the course of this Action, Class Counsel worked diligently, dedicating certain attorneys solely to the advancement of this case, and allocating work among Plaintiffs' Counsel so as to optimize the efficiency of the work performed on the case while avoiding duplication of effort. Only after significant effort, as detailed below, did Class Counsel and Class Representatives succeed in obtaining a very favorable recovery for the Class totaling $41.5 million in cash (the "Settlement Amount"), which has been deposited into an interest-bearing escrow account.

7. As provided in the Stipulation, in exchange for this payment, the proposed Settlement resolves all claims asserted in the Action, or that could have been asserted, by Class Representatives and the Class against Defendants or any of the other Released Defendant Parties.

8. The proposed Settlement was reached only after hard-fought settlement negotiations, including two formal mediations. In October 2015, after extensive preparation and preliminary discussions, the Parties participated in a one-day mediation session conducted by a retired federal district judge. That mediation was unsuccessful, as the Parties' views of the claims were too divergent. In January 2016—after the completion of fact discovery, service of Class Representatives' expert reports, certification of the Class, and denial of Defendants' petition for

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Attorneys' Fees and Payment of Litigation Expenses and Class Representatives' Requests for Reimbursement of Expenses (the "Fee Memorandum").

interlocutory appeal of the Court's class-certification decision—the Parties agreed to participate in a second mediation. The Parties' second attempt at mediation was ultimately successful, following a full day of intense settlement negotiations conducted by Jed D. Melnick, Esq., a managing partner of Weinstein Melnick LLC with an extensive background in mediating securities class actions. In connection with these settlement efforts, the Parties exchanged several mediation submissions that included expert damages analyses and copies of Class Representatives' opening expert reports. In addition, the Parties participated in informal discussions amongst themselves before each mediation session, detailing analyses of liability and the Parties' respective damages methodology, assumptions, and calculations.

9. Before reaching their agreement to settle the Action with Defendants, Plaintiffs' Counsel and Class Representatives conducted an exhaustive investigation into the events and transactions underlying the claims alleged in the SAC (as defined below) and engaged in substantial motion practice, wide-ranging discovery, and trial preparation. These efforts included, among other things:

a. conducting a significant legal and factual investigation into NII, including developing numerous sources of nonpublic information that were critical in enabling Class Representatives to overcome the Individual Defendants' motion to dismiss;

b. drafting a detailed consolidated and amended complaint and a second amended complaint;

c. researching the law pertinent to the claims asserted against Defendants and the potential defenses to those claims;

d. prevailing on the Individual Defendants' motion to dismiss;

e. successfully moving for class certification;

f. defeating Defendants' Rule 23(f) petition to the Fourth Circuit Court of Appeals;

g. conducting thorough discovery, including reviewing and analyzing approximately 1.8 million pages of documents produced by Defendants and third parties,

deposing 13 fact witnesses over 29 deposition days (i.e., excluding weekends and holidays) in Virginia and in London, England (where Defendant Hemmady lives), and defending five fact witness depositions of the Class Representatives;

h. engaging in extensive expert analysis and discovery, including working with consultants and experts to analyze damages, loss causation, the telecommunications industry, market efficiency, and materiality issues; taking one deposition of Defendants' market-efficiency expert and defending one deposition of Class Representatives' market-efficiency expert; and preparing two expert reports concerning subjects fundamental to the trier of fact's ability to resolve the case; and

i. thoroughly vetting both sides' damages assumptions, methodologies, and calculations during expert discovery and additionally through the settlement negotiations discussed in this declaration.

10. Thus, at the time the Settlement was reached, Class Counsel and Class Representatives had a thorough and realistic understanding of the strengths and weaknesses of the Parties' positions concerning liability and damages and their respective ability to prove or defend the Class's claims at trial.

11. We believe that the Settlement, when viewed in the context of the risks and uncertainties of continued litigation, as discussed below, is an excellent result for the Class. Class Representatives, which are large and sophisticated institutional investors, also fully support the Settlement. *See* Declarations submitted on behalf of Class Representatives attached as Exhibits 1 through 4 and 18 to this declaration.[5] Moreover, the Settlement Amount of $41.5 million represents a recovery of between approximately 5.4% and 7.5% of the Class's maximum damages in connection with the alleged misrepresentations and omissions at issue in this Action, as estimated by Class Representatives' damages expert. Additionally, this recovery exceeds both the median ($6.1 million) and the average ($37.9 million) settlement recoveries in securities

[5] Citations to "Exhibit" or "Exh.___" herein refer to the exhibits attached to this Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Exh. ___-___." The first numerical reference is to the designation of the entire exhibit attached hereto, and the second reference is to the exhibit designation within the exhibit itself.

class actions nationwide in 2015, as well as the median reported settlement amounts nationwide between the passage of the PSLRA (1996) and 2014, which was approximately $8.2 million (adjusted for inflation).[6] In light of the foregoing, we believe that the $41.5 million recovered here is an excellent result.

II. FACTUAL SUMMARY OF CLASS REPRESENTATIVES' CLAIMS AGAINST DEFENDANTS

12. Class Representatives' claims in the Action are alleged in the Second Amended Class Action Complaint for Violations of Federal Securities Laws (the "SAC") dated July 18, 2014. ECF No. 134. The SAC asserts claims against NII and the Individual Defendants for violations of the federal securities laws, specifically, Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5. ¶¶357-382.[7]

13. In 2009, NII, a telecommunications company that, through its subsidiaries, operated wireless voice and data networks in Latin America under the Nextel™ brand, embarked on a major transformation to build new third generation ("3G") networks to support NII's telecommunications services and provide faster data transmissions to its markets in Latin America. *See generally* ¶¶1-16. Class Representatives' claims arise from, among other things, the issuance of alleged materially false and misleading statements and the omission of material information concerning (i) NII's efforts to attract and retain "high-quality" subscribers, (ii) NII's development, testing, and launch of a new push-to-talk ("PTT") technology on the Company's newly developed 3G wireless network ("3G-PTT"), and (iii) the effect of the shutdown in the U.S. of Sprint-Nextel's second generation ("2G") integrated digital enhanced network ("iDEN") on NII's Mexican network and subscribers. *Id.*

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[6] *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2015 Review and Analysis* (Cornerstone Research 2016), at 1, 6 (Exh. 5).

[7] All references in this declaration solely to "¶ __" refer to paragraphs of the SAC.

14. *First*, the SAC alleges that NII and the Individual Defendants made materially false or misleading statements or omitted material information concerning the Company's efforts to attract and retain so-called "high-quality" subscribers through the use of marketing and sales promotional efforts. ¶¶97-110. While NII and the Individual Defendants consistently represented to investors that the Company was seeking to attract and retain "high-quality" subscribers during the Class Period, in reality, the SAC alleges, the Company and the Individual Defendants had, unbeknownst to investors, implemented sales and marketing promotions that had the effect of attracting and retaining low-quality subscribers, many of whom were subject to involuntary churn (i.e., deactivation) due to failure to pay their bills. ¶¶91-110.

15. *Second*, the SAC alleges that NII and the Individual Defendants made materially false and misleading statements or omitted material information concerning the Company's new 3G-PTT product. ¶¶37-96. While touting the results of both testing and the ultimate launch of the product and telling investors that 3G-PTT met or exceeded the Company's and subscribers' expectations, in reality, and unbeknownst to investors, NII and the Individual Defendants knew that the 3G-PTT was failing to meet expectations with respect to key metrics, including latency (or the amount of time it takes to place a call on a PTT-enabled device). *Id.*

16. *Third*, the SAC alleges that NII and the Individual Defendants made materially false and misleading statements or omitted material information concerning the effect of the shutdown of Sprint's US iDEN network on the Company's operations in Mexico. ¶¶84-90. Specifically, while publicly reassuring investors that the shutdown would have no effect on NII, the SAC alleges that the Company and the Individual Defendants were aware that the shutdown would make it impossible for certain NII subscribers to communicate with friends and family

located across the border in the United States and would negatively affect NII's service in Mexico. *Id.*

17. Class Representatives allege that, as a result of Defendants' misrepresentations and omissions, Class Members paid artificially inflated prices for NII's common stock and bonds between February 25, 2010 and February 27, 2014, inclusive. ¶¶338-341.

III. RELEVANT PROCEDURAL HISTORY

18. In March 2014, a putative securities fraud class action was filed against NII, NII Capital, the Individual Defendants, and others, in the United States District Court for the Eastern District of Virginia asserting violations of the federal securities laws related to the alleged matters described above.

A. Appointment of Lead Plaintiffs

19. In May 2014, Danica, Industriens, Operating Engineers Pension Trust Fund, IBEW Local No. 58 / SMC NECA Funds, and Jacksonville P&F moved, as the "Institutional Investor Group," for appointment as lead plaintiff, and requested that their counsel, Kessler Topaz and Labaton Sucharow, be appointed Lead Counsel and Cohen Milstein Sellers & Toll PLLC be appointed as Local Counsel. ECF Nos. 3, 5, 12. One additional group of shareholders also moved for appointment as lead plaintiff. ECF Nos. 2, 4, 6.

20. Later in May 2014, the Institutional Investor Group filed a memorandum in further support of its motion for appointment as lead plaintiff. ECF No. 36. On the same date, the other group of shareholders withdrew that group's related motion, ECF No. 34, and the Court issued an order requesting counsel for the Institutional Investor Group to inform the Court whether a hearing on its motion for appointment as lead plaintiff was still required. ECF No. 37.

21. The Institutional Investor Group then filed its response to the Court's Order, stating that a hearing on the appointment of lead plaintiff was unnecessary in light of the

withdrawal of the only other competing motion and attaching a proposed order appointing the Institutional Investor Group as lead plaintiff and approving its selection of Kessler Topaz and Labaton Sucharow as lead counsel and Susan R. Podolsky, Esq. as Local Counsel. ECF No. 48. In June 2014, the Court appointed the Institutional Investor Group as Lead Plaintiffs, Kessler Topaz and Labaton Sucharow as Lead Counsel, and Susan R. Podolsky, Esq. as Local Counsel. ECF No. 101.

B. The Consolidated Complaint and Motions to Dismiss

22. Later in June 2014, Lead Plaintiffs filed the Amended Class Action Complaint for Violations of Federal Securities Laws (the "FAC"). ECF No. 125. Thereafter, in July 2014, Lead Plaintiffs filed the SAC in accordance with Fed. R. Civ. P. 15(a)(1) in order to incorporate certain nonpublic information Lead Counsel had received regarding the claims alleged in the FAC. ECF Nos. 133, 134.

23. The SAC was filed against NII, Dussek (NII's former Chief Executive Officer ("CEO")), Shindler (NII's Executive Chairman of the Board of Directors and CEO), and Hemmady (NII's Chief Operating Officer ("COO"), who also served as its Chief Financial Officer ("CFO") during the Class Period). As discussed above, the securities-fraud claims alleged in the SAC arose from NII and the Individual Defendants' issuance of allegedly false and misleading statements and omissions of material information concerning NII's transition from its 2G iDEN cellular telecommunications network to a 3G network in Peru, Brazil, and Mexico, the effect of the shutdown of Sprint-Nextel's US iDEN network on the Company's Mexican subscriber base, and NII's efforts to attract and retain "high-quality" subscribers. The SAC alleges that when the relevant truth regarding the alleged fraud was revealed, investors who

purchased NII common stock ("NII Stock") and NII Bonds[8] during the Class Period were harmed.

24. The 122-page SAC was the result of Lead Counsel's significant efforts. Before filing the SAC, and indeed before the appointment of Lead Plaintiffs, Lead Counsel developed a plan to coordinate a thorough investigation of Lead Plaintiffs' claims and access all relevant information from public and nonpublic sources.

25. Investigators employed by Lead Counsel initially gathered relevant public information concerning Lead Plaintiffs' claims. Marshalling these sources of information, Lead Counsel developed leads for potential witnesses and ultimately contacted 118 former NII employees, interviewing 33 of these former NII employees as well as other individuals in the United States, Brazil, Peru, Argentina, Chile, and Mexico, who were identified as possible sources of information. Some of these witnesses also provided Lead Counsel with documentation supporting their assertions.

26. From these interviews, five confidential witnesses were utilized in the SAC, including a Manager of Customer Insights who provided Lead Counsel with several nonpublic documents, including a September 2012 Churn Management Report, which Lead Counsel believed specifically called into question the veracity of public statements Defendants made during the Class Period. Lead Counsel included statements from these confidential witnesses, as well as relevant information from certain nonpublic documents, in the SAC only after extensive vetting.

[8] "NII Bonds" include the following debt securities: (i) 7.625% NII Bonds, due April 1, 2021 (ISIN: US67021BAE92); (ii) 8.875% NII Bonds, due December 15, 2019 (ISIN: US67021BAC37); and (iii) 10% NII Bonds, due August 15, 2016 (ISIN: US67021BAD10).

27. In addition to interviewing witnesses with relevant information and reviewing nonpublic documents, Lead Counsel's investigation included, among other things, reviewing and analyzing (a) documents NII filed with the US Securities and Exchange Commission ("SEC"); (b) press releases, news articles, and other public statements issued by Defendants concerning NII's 3G transition, its effort to attract and retain high-quality subscribers, and the US iDEN network shutdown; (c) research reports issued by financial analysts concerning NII's securities and business; and (d) news articles, media reports, and other publications concerning NII's transition and efforts to attract and retain high-quality subscribers. In addition, in preparing the SAC, Lead Counsel consulted with several experts in the areas of accounting, internal controls, loss causation, and damages.

28. NII and the Individual Defendants filed their motion to dismiss the SAC and supporting 45-page memorandum of law in August 2014. ECF No. 137. They argued, *inter alia*, that (a) Lead Plaintiffs failed to adequately allege that any defendant acted with scienter; (b) Lead Plaintiffs did not sufficiently allege that defendants made false statements or omissions of material fact regarding any of the alleged frauds; (c) many of the challenged statements were forward-looking statements protected under the PSLRA's safe-harbor provision; (d) many of the alleged misstatements constituted inactionable "puffery"; and (e) Lead Plaintiffs failed to allege that defendants' misrepresentations or omissions of material fact caused Lead Plaintiffs' losses. Three weeks later, in September 2014, Lead Plaintiffs filed their 47-page opposition to defendants' motion to dismiss. ECF No. 144.

29. Later in September 2014, after Lead Plaintiffs filed their opposition brief but before the due-date for defendants' reply in further support of their motion to dismiss, NII filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York,

Dkt. No. 14-12611-scc (the "Bankruptcy Action" and, with respect to the court, the "Bankruptcy Court") and informed the Court of this development. ECF No. 145. The Court promptly stayed all proceedings against NII until further order of the Court. ECF No. 146. The following day, the Individual Defendants filed their reply in further support of their motion to dismiss the SAC. ECF No. 147. The Court heard oral argument on the motion to dismiss in October 2014. At the conclusion of the Parties' argument, the Court denied the motion to dismiss from the bench and entered an Order sustaining the entire SAC two days later. ECF Nos. 148, 149, 150.

C. The Bankruptcy Action

30. To represent the putative Class's interests during the NII bankruptcy proceedings, Lead Counsel hired Lowenstein Sandler LLP, well-respected bankruptcy counsel with substantial experience representing and advising clients navigating bankruptcy issues in private securities class actions ("Bankruptcy Counsel"). Lead Counsel and Bankruptcy Counsel worked closely together to defend the Class's interest in the Bankruptcy Action.

31. Immediately following the Court's October 2014 Order sustaining the SAC, Lead Plaintiffs took the initial steps necessary to obtain discovery from the Individual Defendants regarding the claims in the SAC. Specifically, Lead Plaintiffs drafted discovery requests and set a time to engage in a Rule 26(f) conference with counsel for the Individual Defendants in late October 2014. The day before the scheduled Rule 26(f) conference, NII filed a motion in the Bankruptcy Action requesting that the Bankruptcy Court exercise its discretion under Section 105(a) of the Bankruptcy Code[9] to extend the automatic stay granted under Section 362(a) of the Bankruptcy Code[10] to the prosecution of the claims in this Action against the Individual Defendants (the "Stay Extension Motion"). ECF No. 157-1. NII argued that the Stay Extension

[9] 11 U.S.C. § 105(a).

[10] 11 U.S.C. § 362(a).

Motion was necessary to avoid the distraction of the Individual Defendants Shindler and Hemmady caused by defending the claims alleged in the SAC, and sustained by the Court's October 2014 Order denying their motion to dismiss, and the expense to NII of engaging in discovery. *Id.*

32. In response to the Stay Extension Motion and in anticipation of their opposition brief, Lead Plaintiffs sought discovery from NII in the Bankruptcy Action to determine whether an extension of the stay was warranted in these particular circumstances. As a result of these requests and before the due date for Lead Plaintiffs' opposition brief, Lead Plaintiffs and NII entered into discussions concerning a stipulated resolution of the Stay Extension Motion. In essence, Lead Plaintiffs sought an agreement from NII that, in exchange for their consenting to extend the automatic bankruptcy stay to the Individual Defendants for at least three months, NII would agree to produce documents responsive to Lead Plaintiffs' targeted discovery requests seeking documents relevant to Lead Plaintiffs' claims in this Action on a rolling basis.

33. Before their opposition to NII's Stay Extension Motion was due to be filed in the Bankruptcy Action, Lead Counsel requested a status conference with this Court to discuss the pending Stay Extension Motion in the Bankruptcy Action and the potential impact of that motion on this Action, including, specifically, the status of NII and Lead Plaintiffs' negotiations to resolve the Stay Extension Motion. The Court held a status conference in early November 2014. ECF No. 161.

34. At the status conference, the Parties updated the Court on the status of the Bankruptcy Action and the Stay Extension Motion, including NII and Lead Plaintiffs' negotiations to resolve the Stay Extension Motion. In particular, Lead Plaintiffs explained that consenting to extending the automatic stay to the Individual Defendants for a finite period of

time, in addition to receiving targeted document discovery from NII, was in Lead Plaintiffs' best interests because it would allow the Action to move forward in three to six months (as opposed to waiting for the Bankruptcy Action to conclude). ECF No. 163. Following the November 2014 conference, the Court entered an order staying this Action and directing the Parties to file a joint status report in early December 2014. ECF No. 162.

35. Over the next several weeks, Lead Plaintiffs' Bankruptcy Counsel actively negotiated with NII's bankruptcy counsel to reach an agreement to resolve the Stay Extension Motion without the Bankruptcy Court having to rule on the motion. Consistent with the Court's November 2014 Order, the Parties filed a joint status report in early December 2014. ECF No. 164. The status report stated, among other things, that NII and Lead Plaintiffs continued to negotiate a resolution of the Stay Extension Motion and requested that the stay of this Action granted by the Court in November 2014 remain in place.

36. Ultimately, later in December 2014, Lead Plaintiffs and NII reached an agreement by which Lead Plaintiffs consented to an extension of the automatic stay of this Action against the Individual Defendants for a finite period of time in exchange for a rolling production of targeted categories of documents from NII (the "Stay Production"). ECF No. 165. In connection with the Stay Production, the Parties also negotiated an electronically stored information ("ESI") protocol and a protective order to govern the targeted discovery. The Stay Production is discussed in more detail below in Section IV(A)(1). Accordingly, NII withdrew the Stay Extension Motion in the Bankruptcy Action. ECF No. 165.

37. The Parties presented their agreement to resolve the Stay Extension Motion to the Court by way of a January 2015 joint status report. ECF No. 165. In the joint status report, the Parties asked the Court to stay the Action until the earlier of (a) May 22, 2015 or (b) the effective

date of the reorganization plan proposed by NII in the Bankruptcy Action. The Parties' joint status report confirmed that in exchange for agreeing to an extension of the automatic stay to the Individual Defendants for a limited period of time, Lead Plaintiffs would receive from NII on a rolling basis documents responsive to targeted document requests after NII and Lead Plaintiffs had negotiated a confidentiality agreement and an electronic discovery protocol. After receiving the joint status report, the Court issued an Order staying the Action until further order of the Court. ECF No. 166.

38. Lead Plaintiffs filed claims against NII's estate in the Bankruptcy Action on behalf of themselves and the Class in December 2014. In March 2015, NII filed its first amended proposed joint reorganization plan in the Bankruptcy Action. Bk. ECF No. 605. Lead Plaintiffs' Bankruptcy Counsel then promptly advised NII of Lead Plaintiffs' objections to the proposed reorganization plan. These objections concerned the retention of documents by NII and any portions of the Company ultimately sold as a result of the proposed reorganization plan and Lead Plaintiffs' ability to continue to pursue their claims under the Exchange Act on behalf of themselves and the Class against NII up to the amount of insurance available to the Company.

39. In response to Lead Plaintiffs' concerns regarding the retention of documents relevant to their claims in this Action, NII agreed to include provisions to preserve documents in both the proposed reorganization plan and the relevant agreements concerning the sale of NII's Mexican assets. However, NII and Lead Plaintiffs were unable to agree that Lead Plaintiffs would be able to pursue their claims against NII under the Exchange Act on behalf of themselves and the Class after the resolution of the Bankruptcy Action. Accordingly, in May 2015, Lead Plaintiffs filed their objection to the proposed reorganization plan on the basis that they should

be allowed to continue to litigate their claims in this Action against NII up to the amount of insurance available to the Company after the conclusion of the Bankruptcy Action.

40. Lead Plaintiffs' objection to the proposed reorganization plan was heavily litigated by Bankruptcy Counsel. The Bankruptcy Court heard oral argument on Lead Plaintiffs' objection in June 2015. The Bankruptcy Court then entered an order confirming NII's amended proposed joint reorganization plan in which Lead Plaintiffs' claims against NII for violations of the federal securities laws were extinguished. The bankruptcy plan became effective in late June 2015, and under the plan, Lead Plaintiffs' claims on behalf of themselves and the putative Class against NII were extinguished as a result of NII's discharge under the Bankruptcy Code.

41. In July 2015, the Court dismissed NII as a defendant in this Action and lifted the stay entered in November 2014 with respect to the Individual Defendants. ECF No. 170.

D. Defendants Answer the SAC

42. Later in July 2015, the Individual Defendants answered the SAC and asserted affirmative defenses to Lead Plaintiffs' allegations. ECF No. 173. In their answer, Defendants denied all of Lead Plaintiffs' allegations of wrongdoing, including, among other things, that they or NII made any false or misleading statements concerning (i) customer quality, (ii) the impact of the shutdown of Sprint's US iDEN network on NII, and (iii) NII's progress in developing and testing NII's 3G-PTT services. *Id.* Defendants also denied that any of their alleged false statements caused the prices of NII Stock and NII Bonds to be artificially inflated or that any Class Member incurred damages relating to any of these statements or Defendants' conduct. *Id.*

IV. LEAD PLAINTIFFS' EXTENSIVE FACT DISCOVERY, INVESTIGATION, AND ANALYSIS

43. As explained above, discovery was stayed in the Action pending the outcome of the Bankruptcy Action. Nonetheless, Plaintiffs' Counsel continued to investigate and develop

their allegations and claims in order to be able to advance the case immediately after the stay was lifted.

44. As an initial matter, Lead Plaintiffs received on a rolling basis the documents NII agreed to produce in order to resolve the Stay Extension Motion. Plaintiffs' Counsel reviewed these documents and utilized their contents to craft detailed discovery requests, which were served once the agreed stay was lifted, and to support positions taken at the first mediation in October 2015, among other things. Further, as noted above, the Court lifted the stay of the Action in early July 2015. ECF No. 170. At that time, the Court ordered the Parties to confer regarding a schedule for motions and discovery deadlines before a July 29, 2015 status conference three weeks later. *Id.* Following the status conference in late July, the Court issued a scheduling order providing for, among other things, a merits discovery period of August 1, 2015 to December 1, 2015 (the "Scheduling Order"). ECF No. 180.

45. Thereafter, full merits discovery moved forward without delay. Plaintiffs' Counsel promptly propounded detailed discovery requests and ultimately analyzed approximately 1.8 million pages of documents produced by Defendants and non-parties. Plaintiffs' Counsel took a total of 13 merits depositions, including 8 depositions of non-party fact witnesses, depositions of each Defendant, and the Rule 30(b)(6) deposition of former defendant NII through two separate designees. Plaintiffs' Counsel also defended five depositions of Class Representatives, negotiated and resolved various significant discovery disputes with Defendants and NII (largely without having to involve the Court), and served two voluminous expert reports. Further, during the fact-discovery phase of this case, in connection with their motion for class certification, Lead Plaintiffs took one expert deposition, and defended one expert deposition. These discovery efforts are discussed in detail below.

A. Document Discovery from Defendants and NII

1. Limited Document Discovery from NII during the Bankruptcy Proceedings

46. As discussed above, this Action was temporarily stayed as to the Individual Defendants pending the outcome of the Bankruptcy Action. In exchange for Lead Plaintiffs' consent to the stay, NII and the Individual Defendants agreed to the Stay Production, that is, limited discovery from NII during the pendency of the agreed-to stay of this Action while the Bankruptcy Action proceeded.

47. As noted above, the Stay Production was the result of a series of meet and confers to resolve NII's Stay Extension Motion. Lead Plaintiffs ultimately negotiated eight targeted categories of documents to be produced by NII during the stay of this Action pending the resolution of the Bankruptcy Action. Over the course of several months, Lead Plaintiffs received approximately 2,000 documents from NII under this agreement. The Stay Production included, *inter alia*, (i) organizational charts; (ii) reports reflecting the Company's subscriber metrics, including Churn Management and Dashboard reports; (iii) minutes, agendas, and other materials relating to Operation Review Meetings and Board of Director and Executive Team Leadership meetings; (iv) policies and procedures concerning subscriber credit, acquisition, retention, termination, and deactivation; (v) draft scripts and questions and answers for NII's quarterly analyst conference calls; and (vi) other materials concerning NII and the Individual Defendants' alleged false and material misstatements and omissions.

48. Lead Plaintiffs also held numerous meet and confer sessions with NII regarding NII's production after it was made, which ultimately concluded in a deficiency letter from Lead Plaintiffs in June 2015. The Parties were able to resolve the issues and deficiencies identified in the deficiency letter without Court intervention.

49. The documents obtained through the Stay Production were extremely useful for at least two reasons. First, this discovery allowed Lead Counsel to begin to evaluate the strengths and weaknesses of their case. Second, it provided a baseline level of knowledge that allowed Lead Counsel to efficiently structure subsequent discovery requests (including, in particular, document requests) and to identify potential deponents. Lead Counsel therefore used their time productively during the stay pending the Bankruptcy Action to maximize efficiencies once the stay was lifted.

2. Document Discovery from NII and the Individual Defendants

50. Document discovery in this Action was a challenge. In late July 2015, the Court entered its Scheduling Order providing four months to conduct fact discovery with discovery from August 1, 2015 to December 1, 2015. Given the limited window in which to conduct all fact discovery regarding complicated securities-fraud claims spanning a four-year Class Period, Lead Plaintiffs immediately on August 3, 2015 propounded written discovery requests on the Individual Defendants, including requests for the production of documents (the "Document Requests"). The following day, Lead Plaintiffs served a subpoena *duces tecum* on NII demanding that NII provide documents relevant to the Action (the "NII Document Subpoena").

51. The Individual Defendants objected to the Document Requests in August 2015, asserting a variety of objections, most notably, that none of the Individual Defendants had custody or control over the majority of the documents sought from them. Instead, the Individual Defendants argued that those documents were solely under the control of NII and that any production must come from NII. Lead Plaintiffs immediately began conferring with the Individual Defendants regarding their responses, asserting, among other things, that each of the Individual Defendants had control over his NII emails and files and, at least with respect to Defendants Shindler and Hemmady, as CEO and COO of NII, respectively, had control over the

Company's documents and could produce them to Lead Plaintiffs in response to the Document Requests. The Individual Defendants maintained their objections and refused to produce any documents that were in NII's possession, custody, or control given their position that the documents were exclusively under NII's control and were inaccessible to the Individual Defendants. While Lead Plaintiffs came close to seeking Court intervention on the issue of the Individual Defendants' control over NII's documents, drafting a motion to compel production on at least two separate occasions, discovery ultimately was obtained from NII in satisfaction of both the Document Requests and the NII Document Subpoena, as discussed below.

52. The NII Document Subpoena sought substantially the same documents from NII that were also requested from the Individual Defendants. NII served its objections to the NII Document Subpoena in August 2015. In addition to refusing to produce certain categories of otherwise responsive documents, NII objected to producing any documents to Lead Plaintiffs unless and until Lead Plaintiffs agreed to pay all costs of complying with the NII Document Subpoena.

53. Immediately after NII served its objections, Lead Plaintiffs and NII engaged in extensive meet and confer sessions over the next several weeks in an attempt to resolve their disagreements. By early September, Lead Plaintiffs had reached an agreement with NII on the parameters of the search for documents responsive to the NII Document Subpoena, such as search terms, custodians, and the sources of ESI to be searched.

54. NII, however, continued to refuse to collect, search for, or produce the documents to Lead Plaintiffs unless and until Lead Plaintiffs agreed to compensate NII for its costs of production. Understanding that time was of the essence, Lead Plaintiffs attempted to secure the immediate production of documents from NII in exchange for an agreement to negotiate in good

faith a cost-sharing agreement. NII, however, refused to produce anything in response to the NII Document Subpoena for fear of waiving its asserted right to recover its costs. This stalemate with NII caused Lead Plaintiffs to prepare a motion to compel NII to produce documents in response to the NII Document Subpoena.

55. On the eve of Lead Plaintiffs' filing the motion to compel, Lead Plaintiffs and NII negotiated an agreement to pursue a stipulation to preserve NII's rights to recover its costs in exchange for the immediate production of documents. As part of the negotiation of this stipulation, Lead Plaintiffs insisted that they were only willing to pay up to one-third of any costs to be calculated at rates equivalent to those Lead Plaintiffs had successfully negotiated on behalf of the Class from their electronic discovery vendor, Evolve Discovery.

56. By mid-September 2015, however, it became clear that there would be no agreement between NII and the Lead Plaintiffs on the terms of a stipulation. Further complicating matters, in addition to continuing to refuse to produce any documents in response to the Document Requests, the Individual Defendants appeared to be unwilling or unable to shoulder any of NII's costs of compliance with the NII Document Subpoena, despite the fact that the Individual Defendants stated that they intended to rely on those documents to defend against Lead Plaintiffs' claims.

57. As a result, in the last week of September 2015, Lead Plaintiffs again prepared motions to compel both NII and the Individual Defendants to produce responsive documents. With Lead Plaintiffs' contemplated motions looming, in late September 2015, Lead Plaintiffs, NII, and the Individual Defendants reached an agreement that (i) NII would utilize Lead Plaintiffs' electronic discovery vendor and the rates negotiated on behalf of the Class, (ii) the Parties would split NII's costs utilizing this vendor to collect, search for, and produce electronic

documents three ways, and (iii) NII would immediately begin producing documents in response to the NII Document Subpoena.

58. With a suitable agreement in place, NII's document production started in early October 2015. By mid-October, nearly 225,000 documents were produced by NII, but there appeared to be nearly twice that many documents that remained to be produced. With only six weeks remaining to complete fact discovery—including taking more than a dozen fact depositions—Lead Plaintiffs moved the Court for a three-week extension to complete fact discovery given the expectation that NII's document production would be completed by the end of October. ECF Nos. 213, 214. The Individual Defendants opposed the motion.

59. In late October 2015, the Parties appeared before the Court to argue Lead Plaintiffs' motion for an extension of time to complete fact discovery. The Court granted Lead Plaintiffs' motion in part, extending fact discovery for two weeks until December 15, 2015. ECF No. 223. NII ultimately produced approximately 1.8 million pages of documents, substantially completing its document production in late November 2015.

3. Lead Counsel's Program for Efficiently Conducting Discovery

60. To accomplish the task of reviewing hundreds of thousands of responsive documents in time to complete discovery, including preparing for and taking more than ten merits depositions, by the mid-December 2015 deadline, Lead Counsel leveraged technology and effective organization of resources to review and analyze the voluminous document production in this case, which totaled approximately 1.8 million pages. To put the volume of electronic document production into perspective, if one person had read each page of the production at a rate of two minutes per page continuously without sleep or breaks, excluding the voluminous spreadsheets of data that likewise had to be analyzed, it would have taken that person nearly seven years to review the massive document production. To compound matters, NII's production

was not substantially complete until late November 2015, just three weeks before the discovery cut-off date. This virtual mountain of evidence required a rigorous, disciplined, and coordinated process of review, which Lead Counsel implemented as described below.

61. *First*, a team of attorneys from Kessler Topaz, Labaton Sucharow, Bernstein Litowitz, and Motley Rice was assembled to review the document productions. These attorneys focused on reviewing the document production to prepare for depositions and ultimately trial, and many of them assisted in deposition preparation. These attorneys utilized review guidelines and protocols that were put in place and monitored to ensure efficient and accurate review of the documents without duplication of effort. Each firm's attorneys were assigned a discrete subset of the documents to review and analyze.

62. The document review was structured to limit overall cost, with the bulk of the initial review being conducted by attorneys experienced in electronic document discovery and deposition preparation. These attorneys were assembled and employed by Plaintiffs' Counsel. Many of them had at least 5 years of legal experience, and some more than 15 years. These lawyers reported directly to the core team taking the depositions; participated in weekly telephone conference calls to discuss their findings; and then transitioned, as depositions were scheduled, to preparing memoranda and deposition kits for each deposition.

63. All aspects of the attorney review were carefully planned and supervised to eliminate inefficiencies and to ensure high-quality work product. In implementing the attorney review, Lead Counsel developed a review protocol that included a review manual, coding sheets, and orientation to educate review lawyers about the claims at issue in the case. In analyzing the production, documents were flagged by several major categories: (1) relevance (i.e., hot, significant, relevant, irrelevant); (2) subject matter/issue (e.g., 3G development, subscriber

metrics, or public statements); (3) document type (e.g., board materials, metric reports, or organizational charts); (4) product (e.g., 3G PTT or postpaid contracts); and (5) level/country (i.e., consolidated, Brazil, Mexico, or Peru). Within these categories, the lawyers conducting the review also had a menu of sub-categories, which further refined the review and helped identify relevant documents quickly when needed for more specific projects or for deposition preparation.

64. There were also frequent conferences to discuss important documents, deposition preparation efforts, and case strategy. In requiring lawyers involved in document review and analysis to meet at least weekly with the core litigating team as a group, Lead Counsel sought to ensure that attorneys across the firms were keyed into the issues being identified in the document review—in particular, why certain documents were high value, and how the documents were informing Lead Plaintiffs' theories of liability. The weekly calls also summarized and discussed the "hottest" documents identified for each week. Moreover, any documents identified as "hot" were further analyzed and assessed by senior attorneys (with the assistance of Lead Counsel's experts and consultants) on an ongoing basis.

65. *Second*, in order to further facilitate the cost- and time-efficient nature of this process, all of the documents were placed in an electronic database that was created by and maintained at Evolve Discovery, Lead Plaintiffs' technology and litigation-support vendor. The database, called Relativity, allowed Lead Counsel to search for documents through Boolean-type searches, as well as by multiple categories, such as by author or recipients, type of document (e.g., emails, memoranda, or PowerPoint presentations), date, Bates number, etc.

66. This technology was used to review and analyze the approximately 1.8 million pages of documents produced in this Action on an exceedingly targeted and expedited basis.

Rather than simply review each document in the linear order in which it was produced, Lead Counsel leveraged the technology by searching the document production for information concerning key witnesses and factual themes. This approach was forensic in nature, utilizing document metadata (i.e., the embedded bibliographic information in the documents) and key characteristics to identify witnesses, document custodians, and highly relevant evidence in short order. Likewise, emails were "threaded" to allow attorneys to review only the most inclusive email in a chain, thus eliminating the need to review numerous less inclusive emails.

67. Simultaneously, Lead Plaintiffs' consultants and experts ran their own searches of the database and assisted counsel in their review in order to identify and analyze the most valuable documents within their fields of expertise. These consultants conducted searches of the entire document database and conferred with counsel as to their findings. For instance, Lead Counsel's telecommunications-industry consulting expert conducted targeted searches of the documents produced by NII and assisted in developing key lines of deposition questioning from the searches.

68. Through the use of online discovery tools, experts, and consultants, Lead Counsel were able to effectively coordinate their discovery efforts. Also, through the process described above, Lead Counsel were able not only to analyze the information produced in discovery but also to identify areas requiring follow up.

69. For example, Lead Counsel analyzed the number of documents produced by month and year for each custodian during the agreed date range for NII's production. This analysis demonstrated that NII's collection and production was incomplete for certain key time periods and for certain custodians. This information was then used by Lead Counsel to negotiate

with NII to obtain supplemental document productions to fill the gaps identified by Lead Counsel.

70. Furthermore, these technological tools enabled Lead Counsel to assemble witness-specific exhibits for each deposition in a focused manner. For instance, if a document pertained to one witness, the document database could be programmed to link it to the exhibits being identified for any of the other related witnesses by applying a "witness tag" to the document. Thus, key evidence was marshaled for each of the depositions. By implementing and utilizing these technological tools, as will be discussed in more detail below in Section IV(B), Lead Counsel were able to prepare for and conduct 13 fact depositions starting in early November 2015 despite having received a large portion of the documents from NII only weeks beforehand.

4. Other Party Discovery

71. In addition to serving document requests, Lead Plaintiffs also served interrogatories and requests for admissions. Lead Plaintiffs served their first set of interrogatories on Defendants in early August 2015. In late August, Defendants objected to these interrogatories, which sought, among other things, information concerning the statements alleged in the SAC that Defendants intended to assert were forward-looking, immaterial, or statements of opinion or belief, and in early September, Defendants responded to the interrogatories. In late October 2015, Lead Plaintiffs served their second set of interrogatories, which contained additional contention interrogatories based on Defendants' affirmative defenses. Defendants objected to Lead Plaintiffs' second set of interrogatories in mid-November 2015 and responded to them in early December. Lead Plaintiffs also served Defendants with requests for admissions in late October 2015. Defendants served their objections to Lead Plaintiffs' requests for admissions in mid-November 2015.

5. Non-Party Discovery

72. In addition to the extensive discovery obtained from Defendants and NII, Lead Plaintiffs also sought and received useful discovery from over 20 other non-parties. For instance, through their review of the document production, Lead Counsel identified three external consultants who had worked on relevant projects for NII during the Class Period, including the 3G buildout in Peru and the Company's efforts to track the quality of its subscriber base. These consultants were each served with document subpoenas. Lead Counsel also served document subpoenas on 19 securities analysts who covered NII during the Class Period. In addition, Lead Counsel served a subpoena *duces tecum* on the Financial Industry Regulatory Authority, Inc. ("FINRA") seeking trading data related to the NII Bonds at issue in the Action. All third party documents were reviewed, analyzed, and presented to senior attorneys for use in, among other things, deposition preparation. Likewise, the trade information obtained from FINRA was critical to Lead Counsel's damages expert for purposes of determining the investors in, and damages suffered with respect to, the NII Bonds.

73. Together, Lead Counsel's efforts in this respect yielded more than 66,000 pages of third-party documents, which were obtained after numerous meet and confer sessions with the subpoenaed third parties in order to reach agreement as to the appropriate scope and subject matter of each subpoena. In connection with the third-party document productions, Lead Counsel also negotiated declarations of authenticity, which were executed by many of the non-parties' custodians of records. These declarations of authenticity were designed to allow Lead Counsel to use the documents obtained from the non-parties at trial without the need to call witnesses to testify as to the documents' authenticity and admissibility.

B. Depositions of Fact Witnesses

74. Depositions served as a critical component of discovery in this case both for gathering evidence and for developing the Class Representatives' legal arguments.

75. Building upon the information obtained through their extensive document discovery detailed above, Plaintiffs' Counsel conducted 13 fact-witness depositions, including 8 depositions of current and former NII employees other than Defendants, depositions of each of the Individual Defendants, and a deposition of NII under Rule 30(b)(6), for which the Company provided two separate designees. Additionally, Plaintiffs' Counsel prepared for and defended the depositions of each of the five Lead Plaintiffs. Depositions were held primarily in Reston, VA, but also took place in New York, NY and London, England.

76. This case was unique inasmuch as nearly all of the deponents (with the exception of the Individual Defendants and Lead Plaintiffs) were non-parties to the Action and represented by counsel other than Defendants' Counsel due to NII's bankruptcy discharge. This required Lead Counsel to spend substantial effort to serve deposition subpoenas on these former NII employees in order to secure their appearances. These efforts included using investigators to locate the former NII employees and process servers to serve the subpoenas.

77. Given the scope of the alleged fraud, the geographic location of the witnesses with relevant information, and the compressed discovery period, the Parties met and conferred to design a schedule that would allow both sides to take or defend the depositions in a cost- and time-effective manner. For instance, the Parties were able to agree on scheduling certain depositions within a short time period in the same city, including 7 depositions taken in Reston, VA over a 12-day period. These negotiations included the Individual Defendants and counsel for the former NII employees who had been served with deposition subpoenas.

78. This schedule was not achieved without significant efforts by Lead Counsel. Indeed, as discussed above, because of the dispute among Lead Plaintiffs, the Defendants, and NII regarding control over documents held by NII and who should share in the costs of NII's production, it took considerable time to negotiate and implement an agreed-to plan. This meant that the first deposition was not taken until early November 2015, just six weeks before the fact discovery cut off.

79. Lead Counsel also negotiated highly favorable pricing for deposition services and effectively used technology to limit the costs for depositions. Lead Counsel were therefore diligent in reducing deposition costs, while ensuring that critical information regarding, for example, NII's transition to 3G and its efforts to target lower-quality subscribers was obtained.

80. With respect to preparing for these depositions, as described above, first-tier document review was conducted by attorneys with experience in electronic discovery review and deposition preparation. Attorneys from the law firm handling each deposition then conducted a second-tier review of those documents most likely to contain useful information for that deposition.

81. From these reviews, these attorneys, with the assistance of the attorneys performing the first-tier document review, prepared memoranda and deposition kits identifying documents to serve as preparation material and exhibits for the depositions. The memoranda discussed the deponent's role within NII and identified potential areas of interest to be explored at deposition. Using these methods, the attorneys litigating the Action gained the benefit of multiple perspectives and expertise when preparing for depositions without duplicating efforts.

C. Responding to Defendants' Discovery

82. In late August 2015, Defendants served discovery requests on Lead Plaintiffs. Consistent with the local rules, Lead Plaintiffs served their objections to Defendants' discovery

requests in early September 2015. However, Lead Plaintiffs' responses to and, ultimately, the production of documents requested by Defendants' document requests were not due until late September 2015—just one week before Defendants' opposition to Lead Plaintiffs' motion for class certification was due to be filed. Because Defendants wanted to depose Lead Plaintiffs before filing their opposition and to use documents responsive to their discovery requests in the opposition, the Parties engaged in extensive meet and confers regarding the acceleration of Lead Plaintiffs' production of documents responsive to Defendants' requests in exchange for limitations on the requests' scope, and concessions on the dates and locations of Lead Plaintiffs' depositions.

83. Ultimately, Lead Plaintiffs IBEW Local No. 58 / SMC NECA Funds and Operating Engineers Pension Trust Fund agreed to substantially complete their production of documents responsive to Defendants' requests seven days and five days early, respectively. A representative of IBEW Local No. 58 / SMC NECA Funds was deposed three days after its document production in Detroit, Michigan, and a representative of Operating Engineers Pension Trust Fund was deposed three days after its document production in San Francisco, California. Lead Plaintiffs Danica, Industriens, and Jacksonville P&F substantially completed their document productions when due, and their respective representatives were deposed less than a week later in late September 2015 in New York, New York. Lead Plaintiffs' document productions in response to Defendants' discovery requests totaled thousands of pages. Moreover, each of the representatives for Lead Plaintiffs was deposed for at least 3 hours in response to a Rule 30(b)(6) deposition notice containing six topics.

84. In addition to responding to document requests, Lead Plaintiffs responded to two sets of interrogatories served by Defendants in August and September 2015. Lead Plaintiffs

served objections, responses, and amended responses to these interrogatories. In particular, Lead Plaintiffs amended their response to these interrogatories in mid-December 2015 to incorporate evidence obtained during discovery. Defendants also served requests for admissions on Lead Plaintiffs in mid-November 2015. Lead Plaintiffs objected to these requests in late November 2015.

D. Expert Discovery

85. Lead Plaintiffs proffered two testifying experts concerning materiality, market efficiency, loss causation, damages, accounting, and internal controls, as follows:

(1) Chad Coffman, CFA (loss causation, damages, and materiality); and

(2) Susan Simmons, Ph.D. (background on Latin American mobile telecommunications markets, analysis of NII subscriber metrics, NII 3G-PTT product performance, impact of Sprint's iDEN network shutdown, and falsity of NII statements).

86. Lead Plaintiffs served both experts' initial expert reports in early January 2016.[11] These reports are discussed below.

1. Expert Report of Chad Coffman

87. Mr. Coffman of Global Economics Group was retained by Lead Counsel to provide his expert opinion as to (a) the materiality of Defendants' alleged misrepresentations and omissions; (b) whether and to what degree investors' losses were proximately caused by Defendants' alleged violations of the federal securities laws; and (c) the damages suffered by Class Members on a per share and per NII Bond basis under Section 10(b) of the Exchange Act and Rule 10b-5.

[11] Because the Parties reached their agreement-in-principle to settle the Action shortly after Lead Plaintiffs served the expert reports of Mr. Coffman and Ms. Simmons, Defendants did not submit countering expert reports.

88. Mr. Coffman prepared a 143-page report, along with 30 exhibits totaling another 58 pages of supporting graphs, in which he opined *inter alia* that (a) the alleged misstatements and omissions in this case were material; and (b) declines in the price of NII Stock and NII Bonds were attributable to and substantially caused by identifiable news events relating to the disclosure of the alleged fraud. He also calculated the total abnormal price movements net of market and industry effects associated with the corrective disclosure events for NII Stock and NII Bonds.

2. Expert Report of Susan Simmons

89. Ms. Simmons of Cartesian, Inc., a consulting firm specializing in the global communications, technology, and digital media industries, prepared an 81-page report addressing, *inter alia* (a) the relevant background of the Latin American mobile telecommunications market; (b) the relevant metrics used by the telecommunications industry to measure business performance; (c) NII's business model; (d) NII's subscriber value and quality; (e) NII's 3G-PTT product testing and market launch; and (f) the impact on NII from the shutdown of Sprint's US iDEN network. Ms. Simmons also analyzed Defendants' public statements regarding NII's subscriber metrics, 3G-PTT testing and launch, and the impact of the Sprint iDEN network shutdown and concluded that Defendants' statements were inconsistent with the facts known to Defendants.

90. Ms. Simmons' expert report extensively documented her analysis and opinions regarding internal NII documents and Defendants' public statements. For example, regarding Defendants' repeated public statements that NII was focused on attracting and retaining high-quality, valuable subscribers during the Class Period, Ms. Simmons found that a significant percentage of NII's new subscribers were of a lower quality and less valuable than subscribers added in prior periods. Specifically, Ms. Simmons found that key subscriber metrics confirmed

that the subscribers added between the fourth quarter of 2010 and the first quarter of 2012 had higher credit-risk ratings, shorter tenure, increased costs associated with collections and bad debt, and lower average revenue per user per month ("ARPU"), leading to a lower customer lifetime value. Further, Ms. Simmons found that Defendants implemented programs, including the loosening of customer credit requirements and launching of aggressive promotion and retention offers, that were meant to target higher volumes of lower-quality, less-valuable subscribers. Ms. Simmons explained her opinions that Defendants' actions were at odds with their public statements that included, *inter alia*, statements about NII's "focus on attracting and retaining the most valuable customers in the industry." Ms. Simmons further explained that in her experience, the changes in the quality and value of NII's subscriber base and NII's efforts to attract higher volumes of lower-quality and less-valuable subscribers would have been important information for investors.

91. In her expert report, Ms. Simmons also opined that Defendants' statements regarding NII's 3G-PTT product were inconsistent with the product's performance in both lab and field testing and the product's actual performance after it was launched in Peru. Specifically, Ms. Simmons found that NII's subscribers valued the ability to have unlimited, high-quality, instantaneous communications with their co-workers, family, and friends that NII's existing iDEN-based PTT service provided. NII's subscribers, in turn, expected that the 3G-PTT product would provide the same level of unlimited, high-quality, instantaneous communications on NII's new 3G network that was being rolled out to replace the aging iDEN network. In the course of developing the 3G-PTT product, NII executives, including Defendants, knew that the new product was not meeting the expectations of NII's subscribers. Ms. Simmons explained that, in her opinion, Defendants' public statements regarding the performance of the 3G-PTT product

were inconsistent with the information known internally at NII. Further, Ms. Simmons also found that differences between NII's subscribers' expectation for the performance of the 3G-PTT product and the internal performance specifications of the product would have been material information for investors.

92. Ms. Simmons also explained in detail in her report that Defendants' public statements touting the shutdown of Sprint's US iDEN network as a "growth opportunity" that would not adversely affect NII's services in Mexico were inconsistent with what was internally being predicted and witnessed within NII. For example, Ms. Simmons analyzed NII's internal projections regarding the impact of the shutdown of the U.S. iDEN network and found that the Company expected to lose massive amounts of revenue and that NII's efforts to mitigate those losses were largely unsuccessful. Further, Ms. Simmons found that there were large gaps in the mobile services expected to replace those services lost when the US iDEN network was decommissioned and that those gaps resulted in the severe degradation of NII subscriber services in Mexico after the iDEN network was shut down. As a result, NII's Mexican subscriber base suffered increased churn and declining customer satisfaction. Ms. Simmons also found that the significant expected adverse impacts to NII's financial results and cellular service levels would have been important information to investors.

93. As noted above, the Defendants did not submit their expert reports, but Lead Counsel anticipate that Defendants' experts would attempt to rebut the opinions of Lead Plaintiffs' two experts.

V. CLASS CERTIFICATION

A. Lead Plaintiffs' Motion for Certification of the Class

94. In September 2015, Lead Plaintiffs filed their motion for class certification ("Class Certification Motion"), seeking certification of the Class, appointment of Danica,

Industriens, Operating Engineers Pension Trust Fund, IBEW Local No. 58 / SMC NECA Funds, and Jacksonville P&F as Class Representatives, and appointment of Labaton Sucharow and Kessler Topaz as Class Counsel for the Class under Fed. R. Civ. P. 23(g) and Susan R. Podolsky, Esq. as Liaison Counsel for the Class. ECF No. 199. Lead Plaintiffs' Class Certification Motion was accompanied by a 30-page memorandum of law and an expert report from Chad Coffman, supporting Lead Plaintiffs' argument that class treatment was appropriate for this case. ECF No. 200.

95. In particular, Mr. Coffman submitted that, in his expert opinion, the markets for NII Stock and NII Bonds were efficient during the Class Period. The existence of efficient markets for the NII securities at issue in the Action supported Lead Plaintiffs' argument that class treatment was appropriate for this case. Mr. Coffman also submitted that, in his expert opinion, damages could be calculated on a class-wide basis using a common methodology, further supporting the Class Certification Motion.

96. Defendants vigorously opposed Lead Plaintiffs' Class Certification Motion and filed a brief in opposition, arguing that Lead Plaintiffs could not satisfy the legal requirements for class treatment at least because individualized issues of reliance predominated over common questions. Defendants also argued that Lead Plaintiffs had not sufficiently shown that damages could be measured on a class-wide basis as required by *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013).

97. In connection with their opposition, Defendants submitted the expert report of Dr. Paul Gompers, the Eugene Holman Professor of Business Administration at the Harvard Business School. In his expert report, Dr. Gompers stated that it was his expert opinion that Mr. Coffman's analysis of the NII securities at issue in the case was inadequate to establish

market efficiency. Dr. Gompers heavily criticized Mr. Coffman's assumptions and analyses in Mr. Coffman's event study that was done to support Lead Plaintiffs' argument that the markets for NII securities were efficient. Dr. Gompers also stated that he believed Mr. Coffman's damages analysis appeared to be based on the "materialization of risk" theory, and that under this theory, Class Members' damages could not be calculated on a class-wide basis.

98. In response to Defendants' opposition, Lead Plaintiffs filed a 20-page reply brief arguing, *inter alia*, that Defendants did not challenge the fact that Lead Plaintiffs had satisfied all four elements of Rule 23(a)—numerosity, typicality, commonality, and adequacy. Lead Plaintiffs also argued that Defendants did not meaningfully challenge Lead Plaintiffs' motion to be appointed class representatives and to appoint Lead Counsel as class counsel. Defendants' opposition rested on the sufficiency of Lead Plaintiffs' showing that common issues predominated over individualized issues, and in their reply, Lead Plaintiffs argued that Defendants' challenge to class certification should fail because Lead Plaintiffs satisfied their burden of proof with respect to predominance.

99. Specifically, Lead Plaintiffs argued that the markets for NII Stock and NII Bonds were efficient and that Defendants failed to provide any evidence establishing that these markets were inefficient. Indeed, Defendants' expert, Dr. Gompers, admitted that he did not formulate an affirmative opinion that markets for NII securities were inefficient.

100. In early November 2015, the Court heard oral argument on Lead Plaintiffs' Class Certification Motion. During the hearing, the Court stated that it was inclined to grant the motion but took the matter under advisement. In mid-November 2015, the Court issued its Order granting Lead Plaintiffs' Class Certification Motion. ECF No. 228. In its Order, the Court certified the Class and appointed Danica, Industriens, Operating Engineers Pension Trust Fund,

IBEW Local No. 58 / SMC NECA Funds and Jacksonville P&F as Class Representatives. The Court also appointed Labaton Sucharow and Kessler Topaz as Class Counsel for the Class under Rule 23(g) and Ms. Podolsky as Liaison Counsel for the Class. *Id.*

B. Defendants' Rule 23(f) Petition to the Fourth Circuit Court of Appeals for Review of the Court's Class-Certification Order

101. At the start of December 2015—two weeks before the close of fact discovery—Defendants petitioned the Fourth Circuit Court of Appeals under Rule 23(f) for permission to appeal the Court's class-certification order and further requested that the petition be considered on an expedited basis. In their Rule 23(f) petition, Defendants argued that this case presented a rare opportunity for the Fourth Circuit to conform its analysis of whether the markets for securities are efficient to that of other courts. Specifically, Defendants argued that the fifth "*Cammer* factor," that is, whether there is evidence of a cause-and-effect relationship between unexpected news and stock-price changes, should be found to be the "most important" *Cammer* factor in the analysis. Further, Defendants argued that this case presented an opportunity for the Fourth Circuit to establish the proofs a putative class plaintiff would need to show to prove class-wide damages in view of the Supreme Court's *Comcast* decision.

102. In mid-December 2015, Class Representatives submitted their oppositions to Defendants' Rule 23(f) petition and motion to expedite. Shortly thereafter, the Fourth Circuit denied Defendants' Rule 23(f) petition and dismissed as moot Defendants' motion to expedite.

VI. RISKS FACED BY CLASS REPRESENTATIVES IN THE ACTION

103. Based on publicly available documents, information, and internal NII documents obtained through Class Counsel's investigation, discussions with consultants, and the extensive fact and expert discovery conducted in the Action, Class Counsel believe that they have adduced substantial evidence to support Class Representatives' and the Class's claims and were prepared

to proceed through expert discovery and dispositive motions and on to trial. Class Counsel also realize, however, that Class Representatives faced considerable challenges and defenses on every element of their claims if the Action were to continue through trial, as well as the inevitable appeals that would follow even if Class Representatives were able to obtain a favorable verdict against Defendants. This was also not a case with a parallel governmental investigation or criminal indictment of NII or any of the Individual Defendants, which would have aided Class Representatives in proving certain elements of the case, like materiality, falsity, and scienter.

104. In agreeing to settle, Class Representatives and Class Counsel considered, among other things, the substantial cash benefit to the Class in the Settlement weighed against the outstanding risks facing the Class, including (a) the uncertainty of prevailing on some or all of the claims at trial and the difficulties and challenges involved in proving (i) materiality, (ii) scienter with respect to the Individual Defendants, (iii) loss causation, and (iv) damages; (b) the uncertainties inherent in the Individual Defendants' expected dispositive summary judgment motion, *Daubert* motions, and *in limine* motions, which could result in the termination of the Action or further limit the presentation of documents and witnesses at trial, including expert witnesses critical to Class Representatives' case; (c) the fact that, even if Class Representatives prevailed at trial, any monetary recovery could potentially have been less than the Settlement Amount; and (d) the delays inherent in further litigation, including appeals.

105. Some of the most serious risks Class Representatives faced are discussed in the following paragraphs. Class Representatives and Class Counsel carefully considered each of these hurdles during the months and weeks leading up to trial and before and during the settlement discussions with Defendants and the mediator, Mr. Melnick. Ultimately, consideration of the risks and unique complexities of the claims, thoroughly vetted during the mediated

settlement discussions, informed Class Counsel's and Class Representatives' decision as to an appropriate settlement amount.

A. Jury-Trial Risks

106. At the time the Settlement was reached, the Parties were progressing towards an expected jury trial in May or June 2016. Following more than two years of vigorous, hard-fought litigation, Class Representatives and Class Counsel had a thorough understanding of the strengths and weaknesses of their claims. While Class Representatives and Class Counsel believe that the claims asserted against Defendants have substantial merit, we also recognize that there are considerable risks involved in pursuing the Action to verdict.

107. Notably, NII's bankruptcy would impose an additional level of complexity on any trial of this Action−just as it did during the course of the litigation. Class Counsel would be forced to present Class Representatives' case through experts and deposition testimony, or as mentioned below, witnesses adverse to Class Representatives, which would be very risky. Moreover, as also discussed below, given NII's absence as a defendant in this Action, any judgment obtained for the Class would need to be satisfied by a wasting officers' and directors' insurance policy or Defendants' limited personal resources.

108. In addition, many of the technical matters at issue here would have been addressed solely through the use of experts opining on highly technical and complex subjects regarding the telecommunications industry and the metrics used to track the performance and value of NII's subscriber base, as well as the complicated subjects of loss causation and the calculation of damages for the Class. These subjects carry the concomitant risk that (a) Lead Plaintiffs' experts could be subject to a successful *Daubert* motion before trial, permitting little or no expert testimony on these subjects; or (b) if the experts were allowed to testify, the jury

would be faced with a "battle of the experts" and might decide to credit Defendants' experts over Class Representatives' experts.

109. Still further adding to the risk of a jury trial, because there were no favorable former NII employees willing to voluntarily testify for Class Representatives, Class Counsel, as touched on previously, would be forced to present their case in chief through witnesses either appearing by subpoena or through the testimony of Defendants and their witnesses, who were all expected to be adverse to Class Representatives. Still further, the alleged materiality and falsity of Defendants' statements at issue in the case inherently involved complex issues ranging from how cellular telecommunications work to the subscriber metrics and financial projections used in the telecommunications industry. These complex and unfamiliar subjects would have presented factual intricacies and challenges for a jury.

110. Even if Class Representatives prevailed at trial, there is no assurance that they would have recovered an amount equal to, much less greater than, the proposed Settlement Amount given Defendants' challenges to loss causation and damages. Moreover, even a positive outcome at trial does not guarantee an ultimate positive result for the Class, given the threats of reversal by the trial court or an appellate court.

B. Risks Concerning the Liability of Defendants

111. The claims against Defendants presented significant risks given, among other things, the highly complex nature of the alleged fraud at issue and the vigorous opposition Defendants were advancing. To succeed in establishing Defendants' liability, Class Representatives would have needed to prove that NII (i) implemented marketing and sales promotions that were either intended to or had the obvious effect of attracting and retaining lower-quality subscribers and (ii) launched a 3G-PTT product that did not meet NII's or its subscribers' expectations for a high-performance PTT experience. Class Representatives would

then have needed to prove that statements by NII and Defendants regarding the Company's efforts to attract and retain "high-quality" subscribers and the fact that 3G-PTT met or exceeded NII's and its customers' expectations during testing and at the time of launch were materially false and misleading when made. Finally, Class Representatives would have been required to show that Defendants knew or consciously disregarded the reality of the quality of NII's subscriber base and the failure of 3G-PTT to meet or exceed expectations, while making false statements and omissions to the market, resulting in economic loss. All elements of liability were vigorously disputed by Defendants.

112. For instance, Defendants likely would have argued at summary judgment and at trial that Class Representatives could not establish that NII or Defendants made any material false statements or omissions regarding either the Company's efforts to attract or retain "high-quality" subscribers or that testing and the subsequent launch of 3G-PTT demonstrated that the product met NII's or customer expectations. Specifically, Defendants likely would have argued that they and NII disclosed the true state of affairs on these issues. Defendants also likely would argue that the alleged misstatements were immaterial aspirational or forward-looking statements or statements of opinion or belief that require higher levels of proof—including, in some cases, evidence that Defendants had actual knowledge of the material falsity of their statements when made.

113. If the Action had continued, Defendants also likely would have argued at summary judgment and trial that Class Representatives could not present sufficient evidence of scienter—that is, that Defendants knew or recklessly disregarded that (i) NII implemented marketing and sales promotions that attracted and retained lower-quality subscribers and (ii) the Company developed and launched a 3G-PTT product that did not meet the expectations of NII or

its subscribers. Instead, Defendants would likely have tried to marshal evidence that NII's subscriber base was substantially higher in quality than its competitors in Brazil and that any alleged concealed information regarding the purported decline in customer quality was belied by NII's public disclosure of ARPU and subscriber churn rates in Brazil. Further, Defendants would have been expected to try to show that they and NII adequately warned investors regarding the technical and business risks of the launch of its 3G-PTT service and that when performance issues arose, they promptly reported to investors that NII was halting the launch so that the issues could be addressed. Lastly, regarding the decommissioning of Sprint's US iDEN network, Defendants would have been expected to argue that they and NII timely warned investors of potential service disruptions and that the expected financial impact of the shutdown was disclosed to investors in NII's guidance. Defendants also likely would have focused the jury on the absence of insider-trading allegations in this Action to prove that Defendants had no motive to profit from the alleged fraud.

114. In response, Class Representatives would have presented evidence of internal reports and communications received by each of the Individual Defendants that demonstrated that, at the time these statements were made, NII's sales and marketing promotions targeted subscribers that could not pay their bills and were subject to high levels of involuntary churn. Likewise, Class Representatives would have presented evidence of internal test results and nonpublic consumer analyses that clearly stated that the 3G-PTT product developed and launched during the Class Period did not meet the expectations of NII and its subscribers.

115. How the issues of material falsity and scienter ultimately would have been determined by the Court at summary judgment or by the jury if the Action proceeded to trial was far from certain.

C. Risks Concerning Loss Causation and Damages

116. Class Representatives also faced significant barriers to establishing loss causation and resulting damages with respect to each of the claims asserted against Defendants. While Class Representatives were prepared to present substantial evidence to the contrary, if a jury were to find that any of the alleged corrective disclosures identified in the SAC were not in fact corrective disclosures, the potential recovery for the Class would have been significantly diminished.

117. *First*, Class Representatives faced a substantial risk that they could not disaggregate the portion of losses attributable to NII and Defendants' misstatements and omissions concerning the quality of the Company's subscriber base, the development and launch of 3G-PTT, and the effect of the shutdown of Sprint's US iDEN network from losses attributable to other "confounding information," e.g., other issues the Company was experiencing as it transitioned all five of its Latin American markets to new 3G networks. Indeed, for certain of the corrective events identified by their damages expert, Mr. Coffman, Class Representatives faced the very real risk at summary judgment and trial that a significant portion of the alleged losses would be attributable to other negative events unrelated to the fraud alleged in the SAC.

118. *Second*, even if Class Representatives could establish at summary judgment and trial that NII and Defendants' misstatements and omissions were a substantial factor in causing the alleged price declines in NII securities, Class Representatives still faced a significant risk that the Court or a jury would find that only a small fraction of the total damages was attributable to these misrepresentations and omissions, thus significantly reducing any recovery for the Class.

119. Therefore, the risk that the jury, or the Court during summary judgment or pre-trial motion practice, would credit Defendants' damages position over that of Class Representatives had considerable consequences in terms of the amount of likely recovery for the

Class, even assuming liability was proven. Instead of risking a lower recovery (or no recovery) after trial, Class Representatives settled for $41.5 million, an amount that equates to approximately 5.4% to 7.5% of Mr. Coffman's estimate of the Class's *maximum* recoverable damages.[12]

D. Defendants' Ability to Pay

120. Even if Lead Plaintiffs were able to overcome the barriers with respect to loss causation and damages, NII's bankruptcy and the subsequent extinguishment of Class Representatives' claims against it eliminated NII−the corporate defendant−as a source of payment. As for the Individual Defendants, their personal assets are understood to be only a small fraction of the Class's damages, and this created significant doubt whether the Individual Defendants would be able to pay any judgment beyond the amount of the insurance proceeds available to them. Thus, any recovery would likely be funded out of NII's limited officers' and directors' insurance, which had already been partly used for defense costs and would have continued to be depleted if the Action had continued towards trial.

121. Given the challenges of continuing to pursue the claims against Defendants and the guaranteed recovery the Settlement provides for the Class at this time, Class Counsel respectfully submit that the Settlement is fair, reasonable, and adequate and should be approved.

VII. SETTLEMENT DISCUSSIONS, MEDIATION AND NEGOTIATION OF SETTLEMENT DOCUMENTS

122. At the same time that the Parties were pursuing active fact discovery, in September 2015, the Parties engaged an experienced and well respected former federal judge to explore a possible resolution of the Action. In anticipation of a formal mediation session in late

[12] Mr. Coffman has estimated maximum aggregate damages to be in the range of $550 million to $775 million, assuming that liability and loss causation for each of the six alleged corrective disclosures was proven and based on various assumptions and modeling.

October 2015, the Parties submitted mediation statements and exhibits supporting their positions in the case to the mediator and had several *ex parte* discussions with him in preparation for the mediation session. The Parties were not able to reach a resolution at the October 2015 mediation, however, extensive discussions continued thereafter, both with and without the assistance of the mediator. Ultimately, the Parties views of the claims were too far apart and a settlement could not be reached at this time. Accordingly, the Parties continued their extensive discovery efforts discussed in Section IV above.

123. In December 2016, the Parties agreed to undertake another attempt to settle this case. In early January 2016, the Parties engaged Jed D. Melnick, Esq, a well-respected neutral, to assist them in additional settlement discussions. In advance of the formal mediation session in mid-January 2016, the Parties discussed their views of the case *ex parte* with the mediator and submitted mediation statements and exhibits supporting their positions to Mr. Melnick and exchanged those statements with each other. The subsequent formal mediation session involved presentations by both sides regarding the merits of the Parties' respective positions and frank vetting of the many areas in dispute.

124. Following all-day arm's-length negotiations mediated by Mr. Melnick, the Parties reached an agreement-in-principle to settle the Action for $41.5 million, based on a mediator's proposal. A memorandum of understanding stating all material points of the Parties' agreement was executed in mid-February 2016.

125. Thereafter, Class Counsel began working on the Stipulation and all of the other documents to be submitted with Class Representatives' motion for preliminary approval of the Settlement. Over the next two months, counsel for the Parties negotiated the specific terms of the Stipulation, exchanged multiple drafts of the Stipulation, as well as the related settlement

documents, and participated in several conference calls to discuss their respective positions on the settlement documents.

126. While finalizing the terms of the Settlement, Class Counsel reviewed bids from several firms specializing in class action notice and administration−ultimately selecting A.B. Data, Ltd. ("A.B. Data"), subject to Court approval, as the proposed Claims Administrator for the Settlement. Class Counsel also worked closely with Class Representatives' financial expert, Mr. Coffman, and his firm Global Economics Group to develop a proposed plan for allocating the net settlement proceeds to eligible Class Members. *See* Section VIII below.

127. In April 2016, the Parties executed the Stipulation, and Class Representatives filed the Stipulation (and related exhibits) along with their Unopposed Motion for Preliminary Approval of Settlement and Approval of Notice to the Class (the "Preliminary Approval Motion") with the Court. ECF Nos. 246-247.[13] In May 2016, the Court held a hearing on Class Representatives' Preliminary Approval Motion and, on the same day, entered the Preliminary Approval Order, scheduling the Settlement Hearing for September 16, 2016 at 10:00 a.m. ECF No. 251.

VIII. THE PLAN OF ALLOCATION IS FAIR AND ADEQUATE

128. In accordance with the Preliminary Approval Order, and as explained in the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys' Fees and Expenses (the "Notice"), Class Members seeking to participate in the distribution of the Net Settlement Fund (i.e., the Settlement Fund less (i) Court-awarded attorneys' fees and expenses, (ii) Notice and Administration Expenses, (iii) Taxes, and (iv) any other fees or expenses approved by the Court) must submit a valid Proof of Claim and all required supporting

[13] A corrected version of the Preliminary Approval Motion was filed with the Court in May 2016 to address several formatting issues. ECF No. 249.

documentation to the Court-approved Claims Administrator, A.B. Data, postmarked no later than September 28, 2016. As provided in the Notice, the Net Settlement Fund will be distributed to Authorized Claimants[14] in accordance with the plan for allocating the Net Settlement Fund among Authorized Claimants approved by the Court.

129. The plan of allocation proposed by Class Representatives (the "Plan of Allocation" or the "Plan") is set forth on pages 9-14 of the Notice disseminated to the Class. The Plan is designed to equitably distribute the Net Settlement Fund to those Class Members who allegedly suffered economic losses as a result of the alleged violations of the federal securities laws asserted in the Action, as opposed to losses caused by market or industry factors or Company-specific factors unrelated to the alleged violations of law, and is consistent with the damages that Class Counsel and Class Representatives believe were recoverable in the Action.

130. Class Counsel developed the Plan in consultation with Class Representatives' damages expert, Mr. Coffman. In developing the Plan, Mr. Coffman calculated the daily per share artificial inflation in the price of each Eligible NII Security[15] throughout the Class Period that allegedly was caused by Defendants' alleged misrepresentations and omissions. Mr. Coffman's analysis entailed, among other things, an assessment of the price declines in each Eligible NII Security in reaction to certain public announcements regarding NII in which the

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[14] As defined in ¶1(c) of the Stipulation, an "Authorized Claimant" is a Class Member who submits a valid Proof of Claim and Release form to the Claims Administrator that is accepted for payment from the Net Settlement Fund by the Court. Once the claims-administration process is complete, Class Counsel will file a motion seeking the Court's approval of the claim determinations and authorization to conduct a distribution.

[15] The securities eligible to participate in the Settlement and to recover from the Net Settlement Fund are NII publicly traded common stock (ISIN: US62913F2011), as well as the following publicly traded debt securities: (i) 7.625% NII Bonds, due April 1, 2021 (ISIN: US67021BAE92); (ii) 8.875% NII Bonds, due December 15, 2019 (ISIN: US67021BAC37); and (iii) 10% NII Bonds, due August 15, 2016 (ISIN: US67021BAD10) (collectively, the "Eligible NII Securities").

alleged misrepresentations and omissions were alleged to have been revealed to the market (i.e., "corrective disclosures"), adjusting for price changes that were attributable to market or industry forces. Table 1 of the Plan sets forth the estimated alleged artificial inflation for each Eligible NII Security for each period during the Class Period and will be utilized in calculating each Authorized Claimant's Recognized Loss Amount, and ultimately the Claimant's overall Recognized Claim.[16]

131. A Claimant's Recognized Loss Amount will depend upon several factors, including the type of Eligible NII Security the Claimant purchased or acquired, the date(s) when the Claimant purchase or acquired his, her or its Eligible NII Securities during the Class Period, and whether the securities were sold and if so, when.[17] In order to have a Recognized Loss under the Plan, the market prices of the NII Stock or NII Bonds must have declined due to disclosure of the alleged false and misleading statements and omissions. Specifically, the NII Stock or NII Bonds purchased or acquired during the Class Period must have been held through one or more of the alleged corrective disclosures and sold in a subsequent inflation period or retained through the end of the Class Period. *See* Schachter Decl., Exh. A at p. 9. A.B. Data, as the Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund by dividing the Authorized Claimant's Recognized Claim (i.e., the sum of the Claimant's Recognized Loss Amounts as calculated under the Plan) by the total Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

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[16] *See* Declaration of Eric Schachter Regarding (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; (C) Establishment of the Telephone Hotline; (D) Establishment of the Settlement Website; and (E) Report on Requests for Exclusion Received to Date, dated August 10, 2016 ("Schachter Declaration" or "Schachter Decl."), Exh. A at p. 12. The Schachter Declaration is attached as Exhibit 6.

[17] Recognized Loss Amounts are subject to reduction based upon the closing prices of the Eligible NII Securities during the 90-day look-back period under Section 21D(e)(1) of the PSLRA. *See* Schachter Decl. Exh. A at p. 10, n.4.

132. In sum, the Plan, developed in consultation with Class Representatives' damages expert, was designed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on the amount of alleged artificial inflation present in the Eligible NII Securities that was purportedly caused by Defendants' misstatements and omissions regarding, among other things, NII's customer quality, the impact of the shutdown of Sprint's US iDEN network on NII, and NII's progress in developing and testing NII's 3G-PTT services, throughout the Class Period. As discussed in the Settlement Memorandum, the structure of the Plan is similar to the structure of plans of allocation that have been used to apportion settlement proceeds in numerous other securities class actions. Accordingly, Class Counsel believe that the Plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants and respectfully submit that the Plan should be approved by the Court.

IX. CLASS REPRESENTATIVES' COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER

133. The Court's Preliminary Approval Order, among other things (i) directed that notice of the Court's certification of the Class and the proposed Settlement of the Action be disseminated to the Class; (ii) set August 26, 2016 as the deadline for Class Members to request exclusion from the Class or to submit an objection to the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses; and (iii) set a final approval hearing for September 16, 2016 at 10:00 a.m. ECF No. 251.

134. The Preliminary Approval Order authorized Class Counsel to retain A.B. Data as the Claims Administrator to supervise and administer the notice procedure for the Settlement, as well as the processing of Claims. ECF No. 251 at ¶5. In accordance with the Preliminary Approval Order, Class Counsel instructed A.B. Data to (i) mail, on or before ten business days

after entry of the Preliminary Approval Order, copies of the Court-approved Notice and Claim Form (together, the "Notice Packet") by first-class mail to the potential Class Members set forth in the Company's transfer records, or who otherwise may be identified through further reasonable efforts, such as through mailing copies of the Notice Packet to nominees and (ii) publish, within fourteen calendar days after the mailing of the Notice Packets, the Court-approved Summary Notice in the *Wall Street Journal* and over the PR Newswire. ECF No. 251 at ¶5, 8; *see also* Schachter Decl., at ¶¶2-11. Before mailing the Notice Packet, Class Counsel worked closely with NII's counsel and counsel for the Defendants to obtain the names and addresses of potential Class Members and nominee holders of the Eligible NII Securities in the possession of NII's transfer agent or ascertained through the Bankruptcy Action.

135. The Notice Packet contains important information concerning the Action and the Settlement, including the definition of the Class, a description of the proposed Settlement, information regarding the claims asserted in the Action, and the proposed Plan of Allocation. The Notice Packet also provides information for Class Members to determine whether to (i) participate in the Settlement by completing and submitting a Claim Form; (ii) object to any aspect of the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses; or (iii) request exclusion from the Class, as well as instructions for effectuating any of the foregoing. The Notice Packet also informs recipients of Class Counsel's intent to apply for an award of attorneys' fees on behalf of all Plaintiffs' counsel in an amount not to exceed 25% of the Settlement Fund (which amount includes interest) and payment of litigation expenses incurred in prosecuting the Action in an amount not to exceed $1.75 million, which amount may include requests for reimbursement to Class Representatives of their reasonable costs and

expenses directly related to their representation of the Class in a combined amount not to exceed $50,000.

136. In accordance with the Preliminary Approval Order, A.B. Data has disseminated 172,482 copies of the Notice Packet to potential Class Members and nominees by first-class mail as of August 9, 2016. *See* Schachter Decl., at ¶10.[18] Also in accordance with the Preliminary Approval Order, A.B. Data caused the Summary Notice to be published in the *Wall Street Journal* and transmitted over PR Newswire on June 13, 2016. *Id*. at ¶11.

137. Class Counsel also worked with A.B. Data to establish a website dedicated to the Settlement (www.niisecuritieslitigation.com). The website provides Class Members and other interested parties with information concerning the Settlement and the important dates and deadlines in connection with the Settlement, as well as access to downloadable copies of the Notice and Claim Form, the Stipulation, the Preliminary Approval Order, and the operative complaint. *Id*. at ¶13. Additionally, A.B. Data established and maintains a toll-free telephone number and interactive voice-response system to respond to inquiries regarding the Settlement and how to complete and submit a Claim Form. *Id*. at ¶12. Class Members can also contact A.B. Data by sending an e-mail to the Settlement-specific e-mail address, info@niisecuritieslitigation.com.

138. As noted above, the Court-ordered deadline for Class Members to file objections to the Settlement, the Plan of Allocation, or the application for attorneys' fees and expenses or to request exclusion from the Class is August 26, 2016. To date, there have been no objections of any kind, and A.B. Data has received only one request for exclusion from the Class. *See*

[18] A.B. Data also mailed Notice Packets to the largest and most common banks, brokers, and other nominees ("Nominees") contained in A.B. Data's proprietary database, as well as to additional potential Class Members whose names and addresses were provided to A.B. Data by Nominees. *Id*. at ¶¶8-9.

Schachter Decl. at ¶14. Class Counsel will address any objections or requests for exclusion received after the date of this submission in their reply papers to be filed with the Court on or before September 9, 2016.

X. CLASS COUNSEL'S FEE AND EXPENSE APPLICATION

139. In addition to seeking final approval of the Settlement and Plan of Allocation, Class Counsel, on behalf of Plaintiffs' counsel,[19] are making a collective application to the Court for an award of attorneys' fees and payment of expenses incurred during the course of the Action. Specifically, Class Counsel are applying for attorneys' fees in the amount of 25% of the Settlement Fund (which amount includes accrued interest) or $10,375,000. It is worth noting that Plaintiffs' counsel have devoted more than 39,000 hours to this Action, resulting in a total lodestar of $19,191,280.25. Accordingly, the fee requested here equates to a significant *negative* multiplier on Plaintiffs' counsel's lodestar. Class Counsel are also seeking (i) payment from the Settlement Fund of Plaintiffs' counsel's expenses incurred in connection with the investigation, prosecution, and resolution of the Action in the amount of $1,476,286.22, and (ii) reimbursement of $37,361.00 in costs and expenses incurred by Class Representatives in connection with their representation of the Class in accordance with the PSLRA, 15 U.S.C. §78u-4(a)(4).

140. As discussed above, the Notice disseminated to the Class advised that Class Counsel, on behalf of Plaintiffs' counsel, would be applying to the Court for an award of attorneys' fees, plus payment of litigation expenses incurred, and reimbursement to Class Representatives. Class Counsel's Fee and Expense Application is within the fee and expense

[19] Plaintiffs' counsel are: (i) Class Counsel, Kessler Topaz and Labaton Sucharow; (ii) Liaison Counsel, the Law Offices of Susan R. Podolsky; (iii) additional counsel, Bernstein Litowitz and Klausner; (iv) counsel for additional plaintiff TOBAM, Motley Rice; and (v) former local counsel, Cohen Milstein.

amounts contained in the Notice, and to date, there have been no objections to the maximum amount of attorneys' fees and expenses set forth in the Notice.

141. The Fee and Expense Application is fully supported by Class Representatives—five sophisticated institutional investors. *See* Industriens Pensionsforsikring A/S Decl. at ¶¶7-9; Operating Engineers Pension Trust Fund Decl. at ¶¶7-9; IBEW Local No. 58 / SMC NECA Funds Decl. at ¶¶7-9; Jacksonville P&F Decl. at ¶¶7-9; and Danica Pension Decl. at ¶¶7-9, annexed hereto as Exhs. 1-4 & 18. The Class Representatives have long-standing relationships with either Kessler Topaz, Labaton Sucharow, or Bernstein Litowitz, ranging from three to seventeen years.

142. A full analysis of the factors considered by courts in this Circuit when evaluating requests for attorneys' fees and expenses from a common fund, as well as the supporting legal authority, is presented in detail in the accompanying Fee Memorandum. Summarized below are some of the additional factual bases for Class Counsel's Fee and Expense Application that are not otherwise discussed above.

A. The Risks and Unique Complexities of the Action and the Need to Ensure the Availability of Competent Counsel in High-Risk, Contingent Securities Cases

143. The risks and complexities faced by Plaintiffs' Counsel in prosecuting the Action are highly relevant to consideration of an award of attorneys' fees, as well as approval of a proposed settlement. Here, the facts underlying the Class's claims were complex and involved highly technical issues regarding the telecommunications industry. In addition, Plaintiffs' Counsel confronted numerous legal hurdles throughout the course of this Action. Plaintiffs' Counsel and Class Representatives faced not only risks to proving Defendants' liability, loss causation, and damages, along with challenges and risks in proceeding to trial, as detailed in Section VI above, but also additional complexities resulting from NII's bankruptcy filing during

the course of the Action, which significantly complicated, among other things, Class Representatives' discovery efforts. Indeed, the outcome against Defendants, as well as the ability to obtain a substantial recovery for the Class, was always uncertain. Moreover, even if Class Representatives were successful in proving liability and damages at trial, NII, due to its bankruptcy, was no longer a source of payment. Any judgment obtained for the Class would have to come from the Individual Defendants' limited personal assets and insurance proceeds (which were also being used to pay defense costs in this Action), creating significant doubt that the Class would be able to obtain a recovery greater than the Settlement Amount if the Action continued.

144. These case-specific risks are in addition to the omnipresent risks accompanying securities litigation, such as the fact that this prosecution was undertaken on a contingent-fee basis. From the outset, Plaintiffs' Counsel were challenged by the significant risks inherent in all securities litigation, such as overcoming motions to dismiss and the burdens of the PSLRA pleading standards, generating a compelling factual record through discovery, obtaining class certification, surviving summary judgment, and prevailing at trial and on any post-trial appeals. Plaintiffs' Counsel also understood that this would be a complex, expensive, and lengthy litigation with no guarantee of being compensated for the substantial investment of time and money the case would require. Throughout this Action's more than two-year pendency, Plaintiffs' Counsel ensured that sufficient attorney resources were dedicated to prosecuting the claims, in particular to conducting the fast-paced and complicated document and deposition discovery that was required. Class Counsel also retained highly competent experts and consultants in the areas of telecommunications, materiality, market efficiency, accounting, internal controls, loss causation, and damages, as well as necessary outside vendors, and ensured

that sufficient funds were available to advance the expenses required to pursue and complete this complex litigation. In total, Plaintiffs' counsel incurred more than $1,476,286.22 in expenses in prosecuting and resolving this Action for the benefit of the Class. The financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis.

145. Class Counsel of course bore the risk that no recovery would be achieved. There are numerous examples of plaintiffs' counsel in contingency-fee cases having worked thousands of hours and advanced substantial expenses, only to receive no compensation. From personal experience, Plaintiffs' Counsel are fully aware that despite the most vigorous and competent efforts, a law firm's success in contingent litigation such as this is never guaranteed. *See* Fee Memorandum at 14-16. Moreover, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to persuade sophisticated defendants to engage in serious settlement negotiations at meaningful levels.

146. Courts have repeatedly recognized that it is in the public interest to have experienced and able counsel enforce the securities laws and regulations pertaining to the duties of officers and directors of public companies. As recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private investors, particularly institutional investors with significant stakes in the actions, take an active role in protecting the interests of investors. If this important public policy is to be carried out, courts should award fees that adequately compensate Plaintiffs' counsel, taking into account the risks undertaken in prosecuting a securities class action. Indeed, Congress recognized in the PSLRA that attorneys' fees representing "a reasonable percentage" of the recovery for the class are appropriated in securities class actions. 15 U.S.C. §78u-4(a)(6).

147. Here, Plaintiffs' Counsel's persistent efforts in the face of substantial risks and uncertainties have resulted in what we believe to be a significant and guaranteed recovery for the benefit of the Class. In these circumstances, and in consideration of Plaintiffs' Counsel's hard work and the very favorable result achieved, we submit that the requested fee of 25% of the Settlement Fund and payment of $1,476,286.22 in litigation expenses is reasonable and should be approved.

B. The Significant Time and Labor Devoted to the Action by Plaintiffs' Counsel

148. The work undertaken by Plaintiffs' Counsel in investigating and prosecuting this Action and arriving at the present Settlement in the face of substantial hurdles has been time-consuming and difficult. As more fully described above, the Action was settled only after Class Counsel overcame multiple legal and factual challenges and just months before trial. Among other efforts, Plaintiffs' Counsel (i) conducted an exhaustive investigation into the Class's claims; (ii) researched and prepared two detailed complaints; (iii) prevailed on Defendants' motion to dismiss; (iv) navigated the Bankruptcy Action with the assistance of Bankruptcy Counsel; (v) engaged in significant discovery efforts; (vi) obtained, organized, and analyzed approximately 1.8 million pages of documents produced by NII, Defendants and third parties; (vii) prepared for, took, or defended the depositions of 18 fact witnesses, including depositions of the three Defendants and the five Class Representatives; (viii) engaged in efforts to resolve numerous discovery disputes with Defendants; (ix) consulted extensively with consultants and experts; (x) conducted extensive expert analysis and discovery; and (xi) successfully moved for class certification and opposed Defendants' efforts to appeal the Court's class-certification order.

149. The process through which the Settlement was ultimately obtained was also hard-fought. The Parties' settlement discussions spanned the course of several months, including two formal mediations facilitated by experienced and well-respected neutrals, followed by the

preparation of the Stipulation and related settlement documents and additional negotiations over the specific terms of the Settlement. *Id.* ¶¶122-127.[20]

150. At all times throughout the pendency of the Action, Plaintiffs' Counsel's efforts were driven and focused on advancing the litigation to achieve the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible. While Class Counsel took the lead during the pendency of this Action, they allocated work among Plaintiffs' Counsel to avoid duplication of effort and to ensure the efficient prosecution of the Action. To this end, we, along with other partners at our firms, maintained daily control and monitoring of the work performed on the case. Experienced attorneys at our respective firms undertook particular tasks appropriate for their levels of expertise, skill, and experience, and more junior attorneys and paralegals worked on matters appropriate for their experience level.

151. The time devoted to this Action by Plaintiffs' counsel is set forth in the individual firm declarations attached to this declaration as Exhibits 7 through 14.[21] In total, from the inception of this Action through July 8, 2016, Plaintiffs' counsel expended more than 39,000 hours on the investigation, prosecution, and resolution of the claims against Defendants for an aggregate lodestar of $19,191,280.25. Class Counsel's hourly billing rates here ranged from

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[20] Moreover, Class Counsel will continue to perform legal work on behalf of the Class should the Court approve the Settlement. Additional resources will be expended assisting Class Members with their Claim Forms and related inquires and working with the Claims Administrator, A.B. Data, to ensure the smooth progression of claims processing. No additional legal fees will be sought for this work.

[21] Included with these declarations are schedules that summarize the lodestar of each respective firm, as well as the expenses incurred by category (the "Fee and Expense Schedules"). The attached individual firm declarations and the Fee and Expense Schedules indicate the amount of time spent by each attorney and professional support staff on the case, and the lodestar calculations based on their current billing rates. As stated in each of these declarations, they were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court. *See also*, Exh. 15 (Summary Tables of Lodestars, Litigation Expenses, and Class Representatives' Reimbursement Requests).

$500 to $995 for Partners, $600 to $900 for Counsel, and $275 to $725 for other attorneys. *See* Exhs. 7 through 14. Defense firms' billing rates, including rates of the firm representing Defendants in this Action, analyzed and gathered by Class Counsel from bankruptcy court filings in 2015, in many cases exceeded these rates. *See* Exh. 16.

152. Overall, Class Counsel's fee request results in a *negative* multiplier of approximately 0.54 on Plaintiffs' counsel's total lodestar. In other words, the attorneys' fees requested here represent a discount to (rather than a multiple of) what counsel would have earned had counsel been compensated by a paying client using counsel's hourly billing rates. The negative multiplier here falls well below the range of positive multipliers awarded in other complex cases, including other securities class actions, by courts in this Circuit and elsewhere. *See* Fee Memorandum at 22-23.

C. The Quality of Counsel's Representation

153. As Class Counsel's firm resumes (attached as Exhs. 7-C and 8-D hereto) demonstrate, Kessler Topaz and Labaton Sucharow are among the most experienced and skilled firms in the securities litigation field and have a successful track record in some of the largest securities class actions throughout the country. The other Plaintiffs' counsel are also highly experienced in complex litigation. *See* Exhs. 9 - 14 hereto.

154. The quality of the work performed by Class Counsel and the other Plaintiffs' Counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendants in this case were represented by skilled counsel from one of the nation's premier defense firms, Sidley Austin LLP, which vigorously defended its clients. Class Counsel were nonetheless able to develop a case that was sufficiently strong to achieve a settlement of $41.5 million on terms that are favorable to the Class.

XI. REQUESTS FOR PAYMENT OF EXPENSES

A. Class Counsel Seek Payment of Plaintiffs' Counsel's Reasonable and Necessary Litigation Expenses

155. In addition to their fee request, Class Counsel also seek payment from the Settlement Fund in the amount of $1,476,286.22 for expenses that were reasonably and necessarily incurred by Plaintiffs' counsel in commencing, prosecuting, and resolving the claims asserted in the Action. Class Counsel respectfully submit that the request for payment of Plaintiffs' counsel's expenses is appropriate, fair, and reasonable and should be approved in the amount requested. *See* Exhs. 7 through 14 to this declaration.

156. From the inception of this Action, Class Counsel were aware that they might not recover any of the expenses they incurred in prosecuting the claims against Defendants, and, at a minimum, would not recover any expenses until the Action was successfully resolved. Class Counsel also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants. Class Counsel were motivated to, and did, take significant steps to minimize expenses wherever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

157. Class Counsel maintained strict control over the expenses in this Action. Indeed, many of the expenses incurred were paid out of a litigation fund created by Class Counsel and maintained by Labaton Sucharow (the "Litigation Expense Fund"). Kessler Topaz, Labaton Sucharow, and Bernstein Litowitz collectively contributed $663,675.00 to the Litigation Fund. A description of the payments from the Litigation Expense Fund by category is included in the individual firm declaration submitted on behalf of Labaton Sucharow. *See* Labaton Sucharow Decl. at ¶¶8-10, Exh. 8-C.

158. Plaintiffs' counsel's expenses include charges for, among other things (i) experts and consultants in connection with various stages of the litigation; (ii) establishing and maintaining a database to house the approximately 1.8 million pages of documents produced by NII, Defendants, and third parties; (iii) online factual and legal research; (iv) depositions of 18 fact witnesses, including the five Class Representatives and three Defendants, and of the Parties' damages experts; (v) mediation; (vi) travel; and (vii) document reproduction. [22] Courts have typically found that these kinds of expenses are payable from a fund recovered by counsel for the benefit of a class.

159. The cost of Class Representatives' experts and consultants (totaling $987,512.03) represents the largest component of Plaintiffs' Counsel's expenses, encompassing approximately 67% of their total expenses. As detailed above, Class Counsel worked with several experts and consultants at different stages of the Action. Experts were utilized to (i) assess the Class's damages; (ii) assist Class Counsel in navigating the complexities of NII's bankruptcy proceedings; (iii) aid in Class Counsel's review and analysis of documents produced by NII, Defendants, and third parties; (iv) draft expert reports and prepare for class certification and expert depositions; (v) prepare for mediation; and (vi) develop a fair and reasonable plan for allocating the settlement funds to eligible Class Members. These experts and consultants were essential to the prosecution of this Action.

[22] As attested to in the individual firm declarations attached to this declaration as Exhibits 7 through 14, these expenses are reflected on the books and records maintained by Plaintiffs' counsel. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred. Plaintiffs' counsel's expenses are listed in detail in their firm's respective declarations, each of which identifies the specific category of expense for which Plaintiffs' counsel seek reimbursement. These expense items are billed separately and are not duplicated in the respective firms' billing rates.

160. Another large component of Plaintiffs' counsel's expenses relates to discovery (totaling approximately $211,900 or 14% of total expenses). To effectively and efficiently review and analyze the approximately 1.8 million pages of documents produced by NII, Defendants, and third parties in this litigation, Class Counsel retained an outside vendor, Evolve Discovery, to host a document database through its litigation support platform, Relativity. The amount paid or payable to Evolve Discovery ($118,306) represents approximately 10% of Plaintiffs' counsel's total expense request. Court reporting costs total approximately $84,000.

161. Plaintiffs' counsel's expenses also include the costs of online research in the amount of approximately $34,000. This amount represents charges for computerized research services such as LexisNexis, Westlaw, Courtlink, Thomson Financial, Bloomberg and PACER. It is now standard practice for attorneys to use online services to assist them in researching legal and factual issues, and indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class.

162. Plaintiffs' counsel were also required to travel to prosecute the claims against Defendants and to work after hours, and thus incurred the related costs of rail and airline tickets, late-night transportation, meals, and lodging. Included in Plaintiffs' counsel total expense request is approximately $142,000 for these expenses. Further, Class Counsel paid $20,048 for charges related to mediation.

163. The other expenses for which Plaintiffs' counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, court fees, process servers, document-reproduction costs, long-distance telephone and facsimile charges, and postage and delivery expenses.

B. Reimbursement of Class Representatives' Costs and Expenses Is Fair and Reasonable

164. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), Class Representatives Danica, Industriens, IBEW Local No. 58 / SMC NECA Funds, and Jacksonville P&F seek reimbursement of their reasonable costs and expenses incurred directly for their work representing the Class in the aggregate amount of $37,361.00. The amount of time and effort devoted to this Action by Class Representatives is detailed in the accompanying declarations of their respective representatives, attached as Exhibits 1 through 4 and 18.[23] Class Counsel respectfully submit that the amounts requested by Class Representatives are fully consistent with Congress's intent, as expressed in the PSLRA, of encouraging institutional investors to take an active role in commencing and supervising private securities litigation.

165. As discussed in the Fee Memorandum and in Class Representatives' supporting declarations, each of the Class Representatives has been fully committed to pursuing the Class's claims since they became involved in the litigation. As large institutional investors, Class Representatives have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of this Action, and providing valuable assistance to Plaintiffs' Counsel. For instance, each Class Representative engaged in time-consuming discovery efforts and searches to locate and produce documents responsive to Defendants' discovery requests. *See supra* ¶¶82-84. In addition, a representative of each Class Representative prepared for, and testified at, a deposition in connection with the Class Certification Motion. *Id*. at ¶83. These efforts required employees

[23] *See* Industriens Pensionsforsikring A/S Decl. at ¶12 (requesting reimbursement of $6,795.00); IBEW Local No. 58 / SMC NECA Funds Decl. at ¶10 (requesting reimbursement of $8,720.00); Jacksonville P&F Decl. at ¶10 (requesting reimbursement of $6,696.00); Danica Pension Decl. at ¶10 (requesting reimbursement of $15,150.00).

of Class Representatives to dedicate considerable time and resources to this Action that would have otherwise been devoted to their regular duties.

166. Moreover, the efforts expended by employees of Class Representatives during the course of this Action are precisely the types of activities courts have found to support reimbursement to class representatives, and fully support Class Representatives' requests for reimbursement of costs and expenses.

XII. ADDITIONAL EXHIBITS

167. Annexed hereto as Exhibit 17 is a compendium of unreported slip opinions referenced in the accompanying Fee Memorandum.

XIII. CONCLUSION

168. In view of the significant recovery to the Class and the substantial risks of this litigation, as described in this declaration and in the accompanying Settlement Memorandum, we respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should be approved as fair and reasonable. In addition, based on the significant recovery in the face of substantial risks, the efforts of Plaintiffs' Counsel, the quality of the work performed, the contingent nature of the fee, the complexity of the case, and the standing and experience of Plaintiffs' Counsel, as described above and in the accompanying Fee Memorandum, we respectfully request that (i) a fee in the amount of 25% of the Settlement Fund be awarded to Class Counsel; (ii) Plaintiffs' Counsel's expenses in the amount of $1,476,286.22 be approved in full; and (iii) reimbursement of Class Representatives' costs and expenses in the amount of $37,361.00 be approved in full.

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on August 12, 2016

GREGORY M. CASTALDO

Executed on August __, 2016

JOEL H. BERNSTEIN

Executed on August __, 2016

SUSAN R. PODOLSKY

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on August __, 2016

GREGORY M. CASTALDO

Executed on August 12, 2016

JOEL H. BERNSTEIN

Executed on August __, 2016

SUSAN R. PODOLSKY

We each declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on August __, 2016

GREGORY M. CASTALDO

Executed on August __, 2016

JOEL H. BERNSTEIN

Executed on August 11, 2016

SUSAN R. PODOLSKY

EXHIBIT	EXH. #
Declaration of Jan Østergaard on behalf of Industriens Pensionsforsikring A/S	**1**
Declaration of H. Thomas Reed on behalf of Operating Engineers Pension Trust Fund	**2**
Declaration of E. Craig Young on behalf of IBEW Local No. 58 / SMC NECA Funds	**3**
Declaration of Beth McCague on behalf of Jacksonville Police and Fire Pension Fund	**4**
Cornerstone Research – *Securities Class Action Settlements - 2015 Review & Analysis*	**5**
Declaration of Eric Schachter on behalf of A.B. Data, Ltd.	**6**
Declaration of Gregory M. Castaldo on behalf of Kessler Topaz Meltzer & Check LLP	**7**
Declaration of Joel H. Bernstein on behalf of Labaton Sucharow LLP	**8**
Declaration of Gerald H. Silk on behalf of Bernstein Litowitz Berger & Grossmann LLP	**9**
Declaration of Susan R. Podolsky on behalf of the Law Offices of Susan R. Podolsky	**10**
Declaration of Michael S. Etkin on behalf of Lowenstein Sandler LLP	**11**
Declaration of Robert D. Klausner on behalf of Klausner, Kaufman, Jension & Levinson	**12**
Declaration of James M. Hughes on behalf of Motley Rice LLC	**13**
Declaration of Steven J. Toll on behalf of Cohen Milstein Sellers & Toll PLLC	**14**
Summary Tables of Lodestars, Litigation Expenses, and Class Representatives' Requests for Reimbursement	**15**
Table of 2015 Bankruptcy Billing Rates	**16**
Compendium of Cases	**17**
Declaration of Ole Krogh Petersen on behalf of Danica Pension	**18**

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on August 12, 2016.

/s/ Susan R. Podolsky
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