

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION

This Document Relates To:  
The Putnam Subtrack Only

Saunders, *et al.* v. Putnam American  
Government Income Fund, *et al.*

MDL DOCKET 1586

Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz

Civil Action No. 04-cv-00560

**PLAINTIFFS' MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION,  
CLASS CERTIFICATION, AWARD LIAISON COUNSELS' ATTORNEYS'  
FEES AND REIMBURSEMENT OF EXPENSES**

Plaintiffs in the Putnam Subtrack hereby move the Court, pursuant to Federal Rules of Civil Procedure 23, for the entry of an Order approving the settlements entered between Plaintiffs and: (1) Defendants Putnam Investment Management, LLC, Putnam Investments Trust, Putnam, LLC, Putnam Investment Management Trust, Putnam Retail Management Limited Partnership, Irene M. Esteves, Lawrence J. Lasser, Robert F. Lucey, Stephen M. Oristaglio and Gordon H. Silver (collectively referred to as "Putnam Defendants"); (2) Prudential Securities Incorporated, n/k/a Prudential Equity Group, LLC ("Prudential Securities"); (3) Banc of America Securities LLC ("BAS"); and (4) Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and Edward Stern (collectively referred to as "Canary") (Putnam Defendants, Prudential Securities Incorporated, BAS and Canary are referred to collectively as the "Settling Defendants."). Plaintiffs also move the Court for entry of an Order granting approval of the Plan of Allocation; certification of this action as a class action for the purposes of the Settlements; Plaintiffs' Liaison Counsel's attorneys' fees and expenses; and Plaintiffs' Counsels request for reimbursement of expenses.

Plaintiffs' Memorandum in Support of Final Approval of the Putnam Subtrack Proposed Settlements, Plan of Allocation, Plaintiffs' Liaison Counsels' Attorneys' Fees, Reimbursement of Expenses is submitted in support of this motion. Also attached are the following Declarations in support of the request for reimbursement of the litigation expenses incurred in the prosecution of this action.

Exhibit A:      Compilation of Expenses  
Exhibit B:      Waite, Schneider, Bayless, & Chesley  
Exhibit C:      Strauss & Troy  
Exhibit D:      Berger & Montague, P.C.  
Exhibit E:      Milberg LLP  
Exhibit F:      Ohio Tuition Trust Authority  
Exhibit G:      Attorney General of the State of Ohio

Plaintiffs' Administrative Chair and Liaison Counsel will file a separate supplemental brief in support of their application.

Wherefore, Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlement; (ii) approve the Plan of Allocation; (iii) certify this action as a class action for purposes of the Settlements; (iv) approve payments requested by the Ohio Tuition Trust Authority and the Attorney General of the State of Ohio; (v) approve Liaison Counsels' request for attorneys' fees and reimbursement of expenses; and (vi) approve Plaintiffs' Counsels request for reimbursement of expenses.

Dated: September 14, 2010

Respectfully submitted:

Richard Cordray  
ATTORNEY GENERAL FOR THE  
STATE OF OHIO  
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/s/ Richard S. Wayne

Richard S. Wayne  
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Lawrence Deutsch  
Glen L. Abramson  
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1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (800) 424-6690  
Facsimile: (215) 875-4604

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been filed electronically with the U.S. District Court for the District of Maryland this 14<sup>th</sup> day of September, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. If a party is not given notice electronically through the Court's system a copy will be served by ordinary United States mail, first class postage prepaid, this 14<sup>th</sup> day of September, 2010.

/s/ Richard S. Wayne

Richard S. Wayne

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# **EXHIBIT A**

## COMPILATION OF EXPENSES

FIRM	EXPENSES
WAITE, SCHNEIDER, BAYLESS, & CHESLEY	\$915,684.63
STRAUSS & TROY	\$547,901.16
BERGER & MONTAGUE, P.C.	\$13,109.31
MILBERG LLP	\$75,000.00
OHIO TUITION TRUST AUTHORITY	\$24,008.24
ATTORNEY GENERAL OF THE STATE OF OHIO	\$1,656.25
TOTAL	\$1,577,359.59

# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

**IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION**

**This Document Relates To:  
The Putnam Subtrack Only**

**Saunders, *et al.* v. Putnam American  
Government Income Fund, *et al.***

**MDL DOCKET 1586**

**Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz**

**Civil Action No. 04-cv-00560**

**DECLARATION OF JEAN M. GEOPPINGER  
IN SUPPORT OF REIMBURSEMENT OF EXPENSES**

Jean M. Geoppinger declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an attorney associated with the law firm of Waite, Schneider, Bayless, & Chesley Co., L.P.A. (WSBC), and I make this declaration in support of my firm's application for reimbursement of expenses in connection with the services rendered to plaintiffs and the Class in the course of this litigation.

2. WSBC is counsel of record for plaintiff, the Ohio Tuition Trust Authority, and for the Class.

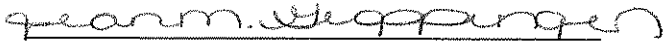
3. I am the attorney at WSBC that is primarily responsible for the above-captioned litigation.

4. WSBC has incurred expenses totaling \$915,684.63 in unreimbursed expenses in connection with the prosecution of this litigation, through August 31, 2010, broken down as follows:

<u>Expense</u>	<u>Amount</u>
Telephone/Conference Call Charges	\$ 2,926.00
Postage/Overnight Mail/Messenger	\$ 3,883.28
Copying – Internal	\$ 10,894.65
Document Production/Document Management Costs	\$289,252.17
Computer Research and Electronic Doc. Retrieval	\$ 1,039.95
Travel Costs/Meals	\$ 73,625.74
Deposition Costs/Transcripts/Service of Process/Witness Fees	\$ 38,027.84
Litigation Fund/Experts	\$493,540.00
Court/Filing Fees	\$ 2,495.00
<b>Total</b>	<b>\$915,684.63</b>

5. The expenses incurred pertaining to this case are reflected on the books and records of this firm. These books and records are prepared from expense vouchers and check records prepared in the normal course of business and are an accurate record of the expenses incurred. Such vouchers and check records are available for the Court's inspection.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, opinion, and belief. Executed this 13th day of September, 2010.

  
Jean M. Geoppinger

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION

This Document Relates To:  
The Putnam Subtrack Only

Saunders, *et al.* v. Putnam American  
Government Income Fund, *et al.*

MDL DOCKET 1586

Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz

Civil Action No. 04-cv-00560

**DECLARATION OF RICHARD S. WAYNE  
IN SUPPORT OF REIMBURSEMENT OF EXPENSES**

I, Richard S. Wayne, under penalty of perjury, declare the following:

1. I am a member at the firm of Strauss & Troy and make this Declaration in support of my firm's application for reimbursement of expenses in connection with the services rendered to plaintiffs and the Class in the course of this litigation.

2. My firm is one of counsel of record for Plaintiffs in this action.

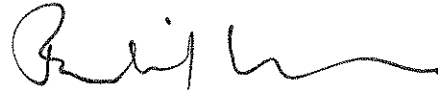
3. Strauss & Troy has incurred expenses totaling \$547,901.16 in unreimbursed expenses in connection with the prosecution of this litigation broken down as follows:

<u>Expense</u>	<u>Total</u>
Telephone/Telecopier	\$504.95
Postage/Overnight Mail/Messenger	\$3,678.84
Copying - Internal	\$32,314.40
Document Production/Document Management Costs	\$92,256.50
Computer Research and Electronic Doc. Retrieval	\$17,606.99
Travel Related	\$64,733.85
Secretarial Overtime	\$137.50
Deposition Costs/Transcripts/Service of Process/Witness Fees	\$11,646.12
Litigation Fund/Experts	\$325,022.01
<b>Total</b>	<b>\$547,901.16</b>

4. The expenses incurred pertaining to this case are reflected on the books and records of this firm. The travel charges include charges for travel and lodging for the fairness hearing.

5. These books and records are prepared from expense vouchers and check records prepared in the normal course of business and are an accurate record of the expenses incurred.

Date: September 14<sup>th</sup>, 2010

  
 \_\_\_\_\_  
 Richard S. Wayne

# **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION

This Document Relates To:  
The Putnam Subtrack Only

Saunders, *et al.* v. Putnam American  
Government Income Fund, *et al.*

MDL DOCKET 1586

Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz

Civil Action No. 04-cv-00560

**DECLARATION OF LAWRENCE DEUTSCH  
IN SUPPORT OF REIMBURSEMENT OF EXPENSES**

I, Lawrence Deutsch, under penalty of perjury, declare the following:

1. I am a member at the firm of Berger & Montague, P.C. and make this Declaration in support of my firm's application for reimbursement of expenses in connection with the services rendered to plaintiffs and the Class in the course of this litigation.

2. My firm is counsel of record for plaintiffs Joseph Shanis and for the Class.

3. The firm has incurred expenses totaling \$13,109.31 in unreimbursed expenses in connection with the prosecution of this litigation broken down as follows:

Expense	Total
Telephone/Telecopier	100.16
Postage/Overnight Mail/Messenger	93.76
Delivery & freight	441.03
Reproduction costs	1,711.70
Reproduction costs Print	4.50
Reproduction costs Scans	.15
Commercial Copying & Printing	21.30
Faxes	3.75
Velobind	14.45
Travel Related	4,571.28
Filing & Misc Fees	3,231.20
Transcripts	1,009.95
Video	305.00
Computer Research	1,601.08
<b>Total</b>	<b>13,109.31</b>

4. The expenses incurred pertaining to this case are reflected on the books and records of this firm. These books and records are prepared from expense vouchers and check records prepared in the normal course of business and are an accurate record of the expenses incurred.

Date: September 13, 2010

  
 LAWRENCE DEUTSCH

2306973/1

# **EXHIBIT E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION

MDL 1586

This Document Relates to:

1:04-MD-15863-JFM

Putnam Sub-track

**DECLARATION OF CLIFFORD S. GOODSTEIN  
IN SUPPORT OF PETITION FOR  
REIMBURSEMENT OF EXPENSES FILED ON BEHALF OF  
MILBERG LLP**

I, Clifford S. Goodstein, hereby declare as follows:

1. I am a partner of the law firm of Milberg LLP. I submit this affidavit in support of my firm's application for reimbursement of certain expenses incurred by my firm in connection with this litigation.

2. My firm was lead counsel in this subtrack until May 2006. As lead counsel during that time, my firm was responsible for a \$75,000 contribution to a general litigation fund for MDL expenses. This contribution is reflected on the books and records of my firm. These books and records are prepared from expense vouchers, check records and other source materials and are an accurate record of the expenses incurred.

/s/

\_\_\_\_\_  
**CLIFFORD S. GOODSTEIN**

# **EXHIBIT F**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

**IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION**

**This Document Relates To:  
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**Saunders, *et al.* v. Putnam American  
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**MDL DOCKET 1586**

**Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz**

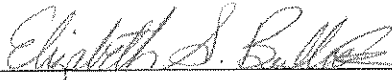
**Civil Action No. 04-cv-00560**

**DECLARATION OF ELIZABETH S. BULLOCK  
IN SUPPORT OF REIMBURSEMENT OF EXPENSES**

Elizabeth S. Bullock declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am the General Counsel for the Ohio Tuition Trust Authority (OTTA), and I make this declaration in support of OTTA's application for reimbursement of expenses in connection with the services rendered to OTTA and the Class in the course of this litigation.
2. OTTA is the Lead Plaintiff in this litigation.
3. I am primarily responsible for supervising the above-captioned litigation for OTTA.
4. OTTA has incurred \$24,008.24 in expenses related to the litigation, including travel expenses and the cost of staff time during depositions.
5. The expenses incurred in the litigation are reflected on the books and records of OTTA. Those books and records are prepared in the normal course of business, are an accurate record of the time expended, and are available for the Court's inspection.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, opinion, and belief. Executed this 14<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
Elizabeth S. Bullock

PRIVILEGED CONFIDENTIAL  
 OTTA Expenses of Putnam Litigation

Putnam Class Action OTTA Time Log										
<b>Mike Hardesty, General Counsel for OTTA</b>										
Date	Hours	Date	Hours	Date	Hours	Total Hours	Hourly Rates	Cost of Benefits/Hr.	Total Cost	
12/19/2006	8	6/12/2007	0.2	11/21/2007	1.5					
1/4/2007	0.2	7/2/2007	0.2	11/26/2007	0.2					
1/4/2007	0.3	7/11/2007	0.5	11/27/2007	8					
1/4/2007	1	7/23/2007	0.3	11/28/2007	13					
1/8/2007	1	10/17-10/18/07	1	12/3/2007	0.3					
1/11/2007	0.5	10/23-10/26/07	15	12/4/2007	0.3					
2/8/2007	0.4	10/30/2007	20	12/6/2007	17					
2/9/2007	0.2	11/1/2007	1	12/10/2007	0.5					
4/6/2007	0.5	11/2/2007	2.2	12/10/2007	0.3					
4/11/2007	0.5	11/5/2007	0.4	12/26/2007	0.3					
4/20/2007	6	11/6/2007	1.5	12/27/2007	0.3					
5/2/2007	0.6	11/7/2007	0.2	12/28/2007	0.2					
5/16/2007	0.5	11/9/2007	1	12/31/2007						
6/8/2007	0.5	11/19/2007	2							
	20		46		42					
Estimated time for 2008 (.75 x 108)										
<b>Elizabeth Bullock, General Counsel</b>										
Estimated time for reviewing case, conference calls with outside counsel, reports to OTTA Board, calls with prior General Counsel, review with Jacqueline Williams, OTTA staff & AG counsel										
Total Estimated Hours						55	\$ 43.27	\$ 12.98	\$ 56.25	\$ 3,093.81
<b>Jacqueline Williams, Executive Director of OTTA</b>										
Estimated Time for talking to media, working with consultants being deposed, preparation for deposition, meeting with Manahan & Halderman of Putnam, reviewing and responding to customer letters, numerous conference calls, preparation of Putnam representatives for OTTA Board meetings, communication of strategy for OTTA and responding to media inquiries										
Total Estimated Hours						120	\$ 69.04	\$ 20.71	\$ 89.75	\$ 10,770.24



# **EXHIBIT G**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

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**MDL DOCKET 1586**

**Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz**

**Civil Action No. 04-cv-00560**

**DECLARATION OF ALBERT G. LIN  
IN SUPPORT OF REIMBURSEMENT OF EXPENSES**

Albert G. Lin declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Assistant Attorney General for the State of Ohio, and I make this declaration in support of the Ohio Attorney General's application for attorney fees incurred in connection with the services it has rendered to Lead Plaintiff, the Ohio Tuition Trust Authority (OTTA), in the course of this litigation.

2. The Ohio Attorney General is counsel for OTTA.

3. I am the Assistant Attorney General that is primarily responsible for supervising the above-captioned litigation.

4. The Ohio Attorney General has incurred \$1,656.25 of attorney time supervising the litigation.

5. The time spent on the litigation is reflected on the books and records of the Ohio Attorney General. Those books and records are prepared in the normal course of business and are an accurate record of the time expended, and are available for the Court's inspection.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, opinion, and belief. Executed this \_\_\_\_\_ day of September, 2010.

---

Albert G. Lin

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

IN RE MUTUAL FUNDS INVESTMENT  
LITIGATION

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MDL DOCKET 1586

Civil Action No. 04-MD-15863  
Honorable J. Frederick Motz

Civil Action No. 04-cv-00560

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE  
PUTNAM SUBTRACK PROPOSED SETTLEMENTS, PLAN OF ALLOCATION,  
CLASS CERTIFICATION, AWARD OF LIAISON COUNSELS' ATTORNEYS'  
FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

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ATTORNEY GENERAL FOR THE  
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Dated: September 14, 2010

## TABLE OF CONTENTS

	<b>PAGE</b>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES .....	iv
I. PRELIMINARY STATEMENT .....	1
II. HISTORY OF THE LITIGATION .....	3
III. SUMMARY OF THE SETTLEMENT .....	6
VI. THE PROPOSED SETTLEMENT SHOULD BE APPROVED BY THE COURT .....	7
The Settlement Is Fair, Reasonable, and Adequate .....	7
A. Factors Considered in Assessing the <i>Fairness</i> of a Proposed Settlement .....	10
1. The Posture of the Case at the Time Settlement Was Proposed .....	10
2. The Circumstances Surrounding the Settlement Negotiations .....	12
3. The Experience of Counsel in Similar Litigation .....	13
B. Factors Considered In Assessing The <i>Adequacy</i> Of A Proposed Settlement ....	14
1. The Relative Strength of Plaintiffs’ Case on the Merits and Existence of Any Difficulties of Proof or Strong Defenses .....	14
2. The Anticipated Duration and Expense of Litigation .....	17
3. The Solvency of Defendants and Likelihood of Recovery of a Litigated Judgment.....	18
4. The Class’s Reaction to the Settlement .....	19
V. THE STANDARDS FOR APPROVAL OF PLANS OF ALLOCATION.....	21
VI. DISTRIBUTION OF CLASS RECOVERY AND ATTORNEYS’ EXPENSES.....	22

VII.	THE STANDARDS FOR CERTIFYING SETTLEMENT CLASSES UNDER RULE 23 .....	24
VIII.	THE FORM AND METHOD OF NOTICE PROVIDED.....	25
IX.	CONCLUSION .....	27
	CERTIFICATE OF SERVICE .....	28

## TABLE OF AUTHORITIES

	<b>PAGE</b>
<i>Bronson v. Board of Educ.</i> 604 F. Supp. 68 at 73 (S.D. Ohio 1984) .....	12
<i>Brotherton v. Cleveland</i> 141 F. Supp.2d 894, 903 (S.D. Ohio 2001) .....	7
<i>Bryan v. Pittsburgh Plate Glass Co.</i> 494 F.2d 799, 803 (3d Cir. 1974).....	20
<i>Buxbaum v. Deutsche Bank AG</i> 216 F.R.D. 72, 80 (S.D.N.Y. 2003) .....	26
<i>City of Detroit v. Grinnell Corp.</i> 495 F.2d 448, 455 (2d Cir. 1974).....	16
<i>D’Amato v. Deutsche Bank</i> 236 F.3d 78, 85 (2d Cir. 2001).....	13,19
<i>Evans v. Jeff D.</i> 475 U.S. 717, 742 (1986).....	9
<i>Fidel v. Farley</i> 534 F.3d 508, 514 (6th Cir. 2008).....	25
<i>Flinn v. F.M.C. Corp.</i> 528 F.2d 1169, 1172-73 (4th Cir. 1974) .....	7-8,14, 16,18,19 20
<i>Henley v. FMC Corp.</i> 207 F. Supp.2d 489, 494 (S.D.W. Va. 2002) .....	19
<i>Horton v. Merrill Lynch, Pierce, Fenner &amp; Smith, Inc.</i> 855 F. Supp. 825, 831 (E.D.N.C. 1994).....	14,16
<i>In re Am. Bank Note Holographics, Inc.</i> 127 F. Supp.2d 418, 429-30 (S.D.N.Y. 2001) .....	21
<i>In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.</i> No. 05-232, 2008 WL 4974782, at *8 (E.D. Pa. Nov. 21, 2008) .....	18

<i>In re AT&amp;T Corp. Sec. Litig.</i> 455 F.3d 160, 166 (3d Cir. 2006) .....	20
<i>In re Cardizem CD Antitrust Litig.</i> 218 F.R.D. 508, 535 (E.D. Mich. 2003) .....	22
<i>In re Cendant Corp. Sec. Litig.</i> 109 F. Supp. 2d 235, 272 (D.N.J. 2000) .....	21
<i>In re Cendant Corp. Litig.</i> 264 F.3d 201, 233 (3d Cir. 2001) .....	17
<i>In re Dell Inc., Securities Litigation</i> Case No. A-060CA-726, (W.D. TX, June 10, 2010).....	17
<i>In re EVCI Career Colls. Holding Corp. Sec. Litig.</i> No. 05 Civ. 10240(CM), 2007 WL 2230177 (S.D.N.Y. July 27, 2007) .....	21
<i>In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.</i> 55 F.3d 768, 806 (3d Cir. 1995).....	8
<i>In re Gilat Satellite Networks, Ltd.</i> No. 02-01510, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) .....	23
<i>In re Global Crossing Sec. &amp; ERISA Litig.</i> 225 F.R.D. 436, 460-61 (S.D.N.Y. 2004) .....	16,21
<i>In re Jiffy Lube Sec. Litig.</i> 927 F.2d 155, 158 (4th Cir. 1991).....	7, 9,10 13
<i>In re Lloyd's Am. Trust Fund Litig.</i> No. 96 Civ.1262 RWS, 2002 WL 31663577, at (S.D.N.Y. Nov. 26, 2002).....	19
<i>In re Marsh &amp; McLennan Cos. Sec. Litig.</i> No. 04 Civ. 8144(CM), 2009 WL 5178546, at *4 (S.D.N.Y. Dec. 23, 2009) .....	8,25 (CHECK SECOND CITE)
<i>In re Merrill Lynch &amp; Co., Inc. Research Reports Sec. Litig.</i> 246 F.R.D. 156, 168-70 (S.D.N.Y. 2007) .....	20
<i>In re Merrill Lynch Tyco Research Sec. Litig.</i> 249 F.R.D. 124, 133 (S.D.N.Y. 2008) .....	25
<i>In re Microsoft Corp. Antitrust Litig.</i> 185 F. Supp.2d 519, 523 (D. Md. 2002).....	24

<i>In re MicroStrategy, Inc. Sec. Litig.</i> 148 F. Supp.2d 654, 663 (E.D. Va. 2001) .....	9,10,11 12,13,15, 16,17,21
<i>In re Montgomery County Real Estate Antitrust Litig.</i> , 83 F.R.D. 305, 317-18 (D. Md. 1979) .....	20
<i>In re OCA, Inc. Sec. &amp; Derivative Litig.</i> No. 05-2165, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009) .....	11,20
<i>In re PaineWebber Ltd. P’ships Litig.</i> 171 F.R.D. 104, 131 (S.D.N.Y.), <i>aff’d</i> , 117 F.3d 721 (2nd Cir. 1997).....	8,21
<i>In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions</i> 148 F.3d 283, 318 (3d Cir. 1998) .....	19
<i>In re Prudential Sec. Inc. Ltd. P’ships Litig.</i> 163 F.R.D. 200, 205 (S.D.N.Y. 1995) .....	24
<i>In re Prudential Sec. Inc. Ltd. P’Ship Litig.</i> 164 F.R.D. 362, 368-370 (S.D.N.Y. 1996).....	26
<i>In re Royal Ahold N.V. Sec. &amp; ERISA Litig.</i> 437 F. Supp.2d 467, 468 (D. Md. 2006) .....	7
<i>In re Serzone Prods. Liab. Litig.</i> 231 F.R.D. 221, 245 (S.D.W.Va. 2005).....	10,18
<i>In re Telectronics Pacing Systems, Inc., Accufix Atrial “J” Leads Products Liability Litigation</i> 137 F. Supp.2d 985 (S.D. Ohio 2001) .....	7,10
<i>In re The Mills Corp. Sec. Litig.</i> 256 F.R.D. 246, 258 (E.D. Va. 2009) .....	8,9,10 12,13,14 15,16,17 21,24
<i>In re Veeco Instr., Inc. Sec. Litig.</i> No. 05-1695, 2007 WL 4115808, at *12 (S.D.N.Y. Nov. 7, 2007) .....	23
<i>In re Warfarin Sodium Antitrust Litig.</i> 391 F.3d 516, 538 (3d Cir. 2004) .....	18
<i>In re WorldCom, Inc. Sec. Litig.</i> 388 F. Supp.2d 319, 344 (S.D.N.Y. 2005).....	21

<i>In re Xcel Energy, Inc. Securities, Derivative and ERISA Litigation</i> 364 F. Supp. 2d 980, at 999-1000 (D. Minn. 2005) .....	22
<i>Int'l Union v. Ford Motor Co.</i> , Nos. 05-74730 2006 WL 1984363, at *27 (E.D. Mich. July 13, 2006) .....	19
<i>Kogan v. Aimco Fox Chase, L.P.</i> 193 F.R.D. 496, 502 (E.D. Mich, 2000) .....	12,14
<i>Lewis v. Select Portfolio Servs., Inc.</i> No. RDB-06-232, 2006 WL 1896176, at *3 (D. Md. July 10, 2006).....	25
<i>Lomascolo v. Parsons Brinckerhoff, Inc.</i> No. 1:08cv1310 (AJT/JFA), 2009 WL 3094955, at *10 (E.D. Va. Sept. 28, 2009).....	7,8
<i>Maley v. Del. Global Techs. Corp.</i> 186 F. Supp.2d 358, 367 (S.D.N.Y. 2002).....	21
<i>Muhammad v. Nat'l City Mortgage, Inc.</i> No. 2:07-0423, 2008 WL 5377783, at *3 (S.D.W. Va. Dec. 19, 2008) .....	10,11 12,13,15 17,20
<i>Mullane v. Central Hanover Bank &amp; Trust Co.</i> 339 U.S. 306, 318 (1950).....	25
<i>Newman v. Stein</i> 464 F.2d 689, 693 (2d Cir. 1972).....	15
<i>S.C. Nat'l Bank v. Stone</i> 749 F. Supp. 1419, 1423 (D.S.C. 1990).....	7,13,14 15,17,18 24
<i>S.C. Nat'l Bank v. Stone</i> 139 F.R.D. 325 (D.S.C. 1991) .....	13,14,18 27
<i>Scardelletti v. Debarr</i> 43 Fed. Appx. 525, 528 (4th Cir. 2002).....	9
<i>Silber v. Mabon</i> 18 F.3d 1449, 1454 (9th Cir. 1994) .....	25
<i>Strang v. JHM Mortgage Sec. Ltd. P'Ship</i> 890 F. Supp. 499, 501 (E.D. Va. 1995) .....	11,13,17

<i>United States v. North Carolina</i> 180 F.3d 574, 581 (4th Cir. 1999).....	9
<i>Williams v. Vukovich</i> 720 F.2d 909, 921 (6th Cir. 1983).....	7

**STATUTES AND OTHER AUTHORITIES**

Federal Rule of Civil Procedure 23(e) .....	7
Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(3)(B).....	25
Section 10(b) of the Securities Exchange Act of 1934 .....	4
Sections 34(b), 36(a) and 36(b) of the Investment Company Act .....	5
S.E.C. Rule 10b-5 .....	4
4 NEWBERG ON CLASS ACTIONS §11.51, at 158 .....	12

## **I. PRELIMINARY STATEMENT**

Plaintiffs submit this memorandum in support of final approval of the proposed settlements that have been reached in the Putnam subtrack, and the proposed plan of allocation of the settlement proceeds. Lead Plaintiff Ohio Tuition Trust Authority and Plaintiff Joseph Shanis (collectively “Plaintiffs” or “Lead Plaintiffs”) request, pursuant to Federal Rule of Civil Procedure 23, that the Court grant final approval of the settlements entered between Plaintiffs and: (1) Defendants Putnam Investment Management, LLC, Putnam Investments Trust, Putnam, LLC, Putnam Investment Management Trust, Putnam Retail Management Limited Partnership, Irene M. Esteves, Lawrence J. Lasser, Robert F. Lucey, Stephen M. Oristaglio and Gordon H. Silver (collectively referred to as “Putnam Defendants”); (2) Prudential Securities Incorporated, n/k/a Prudential Equity Group, LLC (“Prudential Securities”); (3) Banc of America Securities LLC (“BAS”); and (4) Canary Capital Partners, LLC; Canary Capital Partners, Ltd.; Canary Investment Management, LLC; and Edward Stern (hereinafter referred to as “Canary”) (Putnam Defendants, Prudential Securities Incorporated, BAS and Canary are referred to collectively as the “Settling Defendants”). The settlement agreements were attached as Exhibit A to Plaintiffs’ Motion and Memorandum in Support of Motion for Preliminary Approval of Class Settlements, Certification of Settlement Class and Appointment of Class Counsel dated April 26, 2010 (“Prelim. Memo”) (Dkt. No. 306).

Following a hearing on May 7, 2010, and supplemental submissions by Lead Plaintiffs, the Court, on May 19, 2010, entered an Order preliminarily approving the proposed settlements, approving the distribution of notice, conditionally certifying the class for settlement purposes, preliminarily approving the allocation of the settlement funds and for final approval of the

settlements, including scheduling the settlement hearing to be held on October 21 and 22, 2010 (the “Preliminary Order”) (Dkt. No. 310).

In accordance with the Preliminary Order, Class Members have been provided with Notice, and prior to the settlement hearing, Lead Counsel will file a Declaration with the Court setting forth completion of the Notice Program. The Notice provides that any objections to the proposed Settlements must be filed with the Court and served upon counsel by September 21, 2010. To date, Plaintiffs’ counsel have not received any objections to the proposed Settlements.

For purposes of the settlement only, Plaintiffs seek the certification of a class consisting of: All persons who purchased and/or held shares in any of the Putnam Funds during the period January 1, 1997 to December 31, 2003, inclusive. Excluded from the Class are defendants, members of their immediate families and their legal representatives, parents, affiliates, heirs successors or assigns, and any entity in which any defendant has or had a controlling interest. Also excluded are the registrants of the Putnam Mutual Funds, any officers, directors or trustees of entities listed in the previous sentence, and all trustees and portfolio managers of the Putnam Mutual Funds or registrants. Also excluded are any persons or entities who timely and validly request exclusion from the Class by filing a request for exclusion (the “Settlement Class”).

Plaintiffs and Settling Defendants have agreed to settle all claims asserted by the Settlement Class against Settling Defendants for \$3,225,500 (Putnam Defendants shall pay \$2,500,000, Prudential Securities shall pay \$450,000, BAS shall pay \$170,500 and Canary shall pay \$105,000). The settlements also provide that the Putnam Defendants shall pay certain costs of class notice. The settlements with Prudential Securities, BAS and Canary were negotiated before this Court considered dispositive motions. The settlement with the Putnam Defendants was negotiated by counsel for the parties, with the assistance of Thomas F. Ball, III, Senior

Mediator for the Fourth Circuit Court of Appeals. Plaintiffs' counsel believe that, based upon the circumstances of the case, and the benefit created for the Class, the proposed settlements are fair to the Class as a whole.

In addition to the points and authorities in this memorandum, Plaintiffs respectfully refer the Court to Plaintiffs' Omnibus Memorandum of Law in Support of Final Approval of Proposed Settlements and Plans of Allocation ("Omnibus Settlement Memo"), and Plaintiffs' Omnibus Memorandum of Law in Support of Applications for Attorneys' Fees and Reimbursement of Expenses ("Omnibus Fee Memo") which are being filed concurrently with this memorandum.

Having investigated the case, negotiated at arm's-length with Defendants, and received no objections to date from the Class, Plaintiffs believe that the Settlement is in the best interest of the Class and that the Settlements should be approved as fair, reasonable, and adequate.

## **II. HISTORY OF THE LITIGATION**

Class action complaints were filed against the Settling Defendants beginning on October 23, 2003. The complaints, filed throughout the United States in both federal and state courts, alleged violations of federal securities laws and state laws. The complaints alleged that Defendants either engaged in, or allowed, trading in mutual funds using stale prices, a type of trading sometimes referred to as "market timing."<sup>1</sup> The great majority of these actions were transferred to this Court pursuant to the February 20, 2004 Order of the Judicial Panel on Multidistrict Litigation.

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<sup>1</sup> As set forth in the Stipulations of Settlement, the Settling Defendants deny any wrongdoing, fault, liability or damage to Plaintiffs, deny that they engaged in any wrongdoing, deny that they committed any violation of law or breach of duty, deny that they acted improperly in any way, believe that they acted properly at all times. Nothing in this memorandum is, or is intended to be, an admission of any kind by the Settling Defendants. Further, the Settling Defendants have reserved all arguments in opposition to class certification in the event that this settlement is not approved.

On May 25, 2004, the Court appointed the Ohio Tuition Trust Authority as Lead Plaintiff under the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4(a)(3)(B). On August 16, 2006, Stanley M. Chesley of the firm of Waite, Schneider, Bayless & Chesley was appointed Lead Counsel.

On August 22, 2006, Plaintiffs filed a second consolidated amended complaint (the “Complaint”), which alleged that: (1) the Putnam Defendants allowed certain shareholders to take advantage of stale prices by engaging in market timing trading of shares of Putnam mutual funds, despite allegedly being aware that market timing was harmful to long term shareholders; (2) the Putnam Defendants permitted certain Putnam employees, including fund managers, to engage in market timing of the Putnam funds; (3) the Putnam Defendants permitted certain participants in 401(k) and other plans to engage in market timing of the Putnam funds; (4) the prospectuses of the Putnam funds were false and misleading because they indicated that market timing would not be tolerated in the funds and omitted the material fact that Putnam Defendants allowed certain shareholders to engage in market timing; and (5) the other Settling Defendants took advantage of stale prices by engaging in or facilitating market timing trading of shares of Putnam mutual funds.

The Putnam mutual funds most affected by the alleged market timing were those funds identified by Professor Peter Tufano, in his capacity as the Independent Assessment/Distribution Consultant, and identified in his Reports to the United States Securities Exchange Commission and the Massachusetts Securities Division, dated March 2, 2005 (the “Affected Mutual Funds”). The Complaint asserted claims under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), and S.E.C. Rule 10b-5 promulgated thereunder, against all of the Settling Defendants; under Section 20(a) of the Exchange act against certain of the Putnam Defendants

alleged to be control persons; and Section 36(b) of the Investment Company Act against certain of the Putnam Defendants alleged to have received advisory fees in respect of improper market timing. In prior iterations of the Complaint, Plaintiffs alleged additional claims against other defendants.

There were several rulings by this Court which affected Plaintiffs' claim.

First, in the 2005 Janus subtrack opinion, the Court dismissed claims against certain broker dealers for vagueness, dismissed 1933 Securities Act claims for failure to allege sale for less than purchase, dismissed Section 30(b) Investment Company Act claims based on a holding that the statute applies only to compensation, and dismissed Investment Company Sections 34(b) and 36(a) claims for lack of a private right of action.

Second, on May 1, 2006, the Court dismissed claims against mutual funds, holding that the funds were actual victims of market timing.

Third, on May 30, 2006, the Court dismissed claims against ten fund trustees for the same reason it had dismissed claims against the funds. The Court also dismissed the Investment Company Act claims against four entities related to the Putnam Defendants for failure to allege excessive compensation.

Fourth, on July 7, 2006, claims against eight Putnam officers and employees and four traders were dismissed for failure to allege manipulative or deceptive acts, and claims against certain broker dealer defendants that had previously been dismissed were allowed to proceed.

Fifth, on December 30, 2008, the Court granted summary judgment on all remaining claims except those based on 401(k) plans and requested additional briefing on this issue. In the decision the Court indicated that plaintiffs had proposed an additional theory for recovery, that

there was no evidence of agreements to allow market timing by traders, and that the record did not support a finding that Defendants were reckless in failing to prevent market timing.

Sixth, on April 14, 2009, the Court dismissed the 401(k) claim holding that the payments to the SEC and Commonwealth of Massachusetts were sufficient to compensate plaintiffs.

Plaintiffs appealed the December 10, 2008 and April 14 2009 rulings to the Fourth Circuit.

### **III. SUMMARY OF THE SETTLEMENT**

After the appeal was filed, Plaintiffs and the Putnam Defendants, with the assistance of Mr. Ball, Senior Circuit Mediator, entered into extensive and vigorous arm's-length negotiations to settle the Putnam claims. The Settlements with Prudential, BAS and Canary occurred during the discovery period and before the Court issued a decision on the motions for summary judgment.

Plaintiffs and Settling Defendants have agreed to settle all claims asserted by the Settlement Class against Settling Defendants for \$3,225,500 (Putnam Defendants shall pay \$2,500,000, Prudential Securities shall pay \$450,000, BAS shall pay \$170,500 and Canary shall pay \$105,000). The settlement also provides that the Putnam Defendants shall pay certain costs of class notice.

The reasons for the settlement are: (1) the recognition of the impact of the Court's rulings; (2) the risk that the Court's grant of summary judgment would not be reversed by the Fourth Circuit; (3) the risk that even if the grant of summary judgment was reversed that Plaintiffs would not prevail at trial; and (4) the immediate and certain benefit to the Settlement Class from the Settlement. The size and certainty of this benefit must be weighed against the risk that Plaintiffs and the Settlement Class might not prevail on their appeal and, if they do, the

risk that they may not prevail on some or all of their claims at trial. Even if Plaintiffs and the Settlement Class pursued additional years of litigation against the Settling Defendants, Plaintiffs and the proposed class might recover nothing or substantially less than the amount of the proposed settlements.

#### **IV. THE PROPOSED SETTLEMENT SHOULD BE APPROVED BY THE COURT**

##### **The Settlement Is Fair, Reasonable, and Adequate**

Under Rule 23(e) of the Federal Rules of Civil Procedure, any compromise or settlement of a class action must be approved by the Court. *See* Fed.R.Civ.P. 23(e); *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158 (4th Cir. 1991). The primary purpose of Rule 23(e) is the protection of absent class members whose interests were not directly represented during the settlement negotiations. *See Jiffy Lube*, 927 F.2d at 158.

To approve a proposed settlement, the Court must find that it is “fair, reasonable, and adequate.” Fed.R.Civ.P. 23(e)(2); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 437 F. Supp.2d 467, 468 (D. Md. 2006); *S.C. Nat’l Bank v. Stone*, 749 F. Supp. 1419, 1423 (D.S.C. 1990); *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983); *In re Telectronics Pacing Systems, Inc., Accufix Atrial “J” Leads Products Liability Litigation*, 137 F. Supp.2d 985, at 1008 (S.D. Ohio 2001); *Brotherton v. Cleveland*, 141 F. Supp.2d 894, 903 (S.D. Ohio 2001). In determining whether a given settlement meets this standard, the court should avoid transforming the hearing on the settlement into a trial on the merits. As the Fourth Circuit stated in *Flinn v. F.M.C. Corp.*:

The trial court should not ... turn the settlement hearing into a trial or rehearsal of the trial nor need it reach any dispositive conclusions on the admittedly unsettled legal issues in the case. It is not part of its duty in approving a settlement to establish that as a matter of legal certainty ... the subject claim or counterclaim is or is not worthless or valuable.

528 F.2d 1169, 1172-73 (4th Cir. 1974) (citations and internal quotation marks omitted); *see also* *Lomascolo v. Parsons Brinckerhoff, Inc.*, No. 1:08cv1310 (AJT/JFA), 2009 WL 3094955, at \*10 (E.D. Va. Sept. 28, 2009) (“the settlement hearing is not a trial, and a court’s role is more a ‘balancing of likelihoods rather than an actual determination of the facts and law in passing upon whether the proposed settlement is fair, reasonable and adequate.’”) (citation omitted). “In deciding whether to approve a settlement, a court ‘should not attempt to approximate a litigated determination of the merits of the case lest the process of determining whether to approve a settlement simply substitute one complex, time consuming and expensive litigation for another.’” *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144(CM), 2009 WL 5178546, at \*4 (S.D.N.Y. Dec. 23, 2009) (citation omitted).

The applicable standard is “whether the settlement is fair, reasonable and adequate, not whether it is perfect.” *In re PaineWebber Ltd. P’ships Litig.*, 171 F.R.D. 104, 131 (S.D.N.Y.), *aff’d*, 117 F.3d 721 (2nd Cir. 1997). In evaluating the reasonableness of the result reached, the Court must recognize that “after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution,” *In re The Mills Corp. Sec. Litig.*, 256 F.R.D. 246, 258 (E.D. Va. 2009) (quoting *In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995)). Accordingly, the trial court “should not make a proponent of a proposed settlement justify each term of a settlement agreement against a hypothetical or speculative measure of what concessions might have been gained.” *Lomascolo*, 2009 WL 3094955, at \*10; *accord Mills*, 256 F.R.D. at 257.

The Fourth Circuit has identified a number of factors that a district court should consider in determining whether a proposed settlement is “fair, reasonable, and adequate” and has bifurcated this analysis into two principal components: (1) considerations of *fairness*, which

focus on whether the proposed settlement is the result of good-faith, arms'-length negotiations, and (2) considerations of *adequacy*, which focus on substantive terms of the settlement and, in particular, whether the settlement consideration provided to class members is sufficient in light of the risks and costs of continued litigation. See *Jiffy Lube*, 927 F.2d at 158-59; *In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp.2d 654, 663 (E.D. Va. 2001).

The factors to be considered in assessing the *fairness* of a proposed settlement are:

- (1) the posture of the case at the time settlement was proposed,
- (2) the extent of discovery that had been conducted,
- (3) the circumstances surrounding the negotiations, and
- (4) the experience of counsel in the area of securities class action litigation.

*Jiffy Lube*, 927 F.2d at 159; see also *United States v. North Carolina*, 180 F.3d 574, 581 (4th Cir. 1999); *Mills*, 256 F.R.D. at 254. The factors to be assessed in determining the *adequacy* of a settlement are:

- (1) the relative strength of the plaintiffs' case on the merits,
- (2) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial,
- (3) the anticipated duration and expense of additional litigation,
- (4) the solvency of the defendants and the likelihood of recovery on a litigated judgment, and
- (5) the degree of opposition to the settlement.

*Jiffy Lube*, 927 F.2d at 159; see *Mills*, 256 F.R.D. at 254.

Ultimately, the final approval of a proposed class action settlement is "committed to 'the sound discretion of the district courts to appraise the reasonableness of particular class-action settlements on a case-by-case basis, in light of relevant circumstances.'" *MicroStrategy*, 148 F. Supp.2d at 663 (quoting *Evans v. Jeff D.*, 475 U.S. 717, 742 (1986)); see also *Jiffy Lube*, 927 F.2d at 158; *Scardelletti v. Debarr*, 43 Fed. Appx. 525, 528 (4th Cir. 2002).

When examined under the applicable criteria, these Settlements provide a beneficial result. Plaintiffs' counsel believe that there are questions as to whether they would prevail on

their appeal in the Fourth Circuit and, if so, whether a more favorable monetary result against Defendants could or would be attained after trial, the inevitable post-trial motions and appeals. The Settlement achieves a prompt recovery and is superior to the possibility that were this Action to proceed in the Court of Appeals there could be no recovery at all. Analysis of the relevant factors demonstrates that the proposed Settlements merit this Court's approval.

**A. Factors Considered in Assessing the *Fairness* of a Proposed Settlement**

**1. The Posture of the Case at the Time Settlement Was Proposed**

The first *Jiffy Lube* factor directs the Court to consider the stage of the litigation at the time settlement was reached and to evaluate how far the case has come from its inception. *See, e.g., Mills*, 256 F.R.D. at 254; *Muhammad v. Nat'l City Mortgage, Inc.*, No. 2:07-0423, 2008 WL 5377783, at \*3 (S.D.W. Va. Dec. 19, 2008). Where the case has been developed through motion practice, briefing and argument on legal issues, and informal or formal discovery, the court should be more inclined to favor approval of the settlement. *See Mills*, 256 F.R.D. at 254; *MicroStrategy*, 148 F. Supp.2d at 664 (approving settlement reached after vigorously contested motion to dismiss and informal discovery).

A second, closely related factor is the extent of discovery that has been conducted in the case. *See Jiffy Lube*, 927 F.2d at 159. To ensure that Plaintiffs have had access to sufficient information to evaluate their case and to assess the adequacy of the settlement proposal, the discovery taken must be considered. *In re Telectronics*, 137 F. Supp.2d at 1015. There is, however, “no minimum or definitive amount of discovery that must be undertaken” in order to find that this factor supports settlement. *Muhammad*, 2008 WL 5377783, at \*3 (quoting *In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 244 (S.D. W. Va. 2005)). Indeed, *Jiffy Lube* itself affirmed a settlement that was “reached at a very early stage in the litigation and prior to any

formal discovery”. 927 F.2d at 159; *see also MicroStrategy*, 148 F. Supp.2d at 664-65 (approving a proposed settlement despite the fact that it was reached “relatively early” in the litigation because the settlement came after the parties vigorously contested defendant’s motion to dismiss); *Strang v. JHM Mortgage Sec. Ltd. P’Ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995) (“Although the settlement comes at an early stage in the litigation, even prior to the initiation of formal discovery, the Court finds that Plaintiffs have conducted sufficient informal discovery and investigation to fairly evaluate the merits of Defendants’ positions during settlement negotiations.”).

Rather than requiring a specific amount of formal discovery, the central inquiry for the Court under both these factors is whether the parties and their counsel have “sufficiently developed the case such that they can appreciate the merits of the claims.” *Muhammad*, 2008 WL 5377783, at \*3; *accord Strang*, 890 F. Supp. at 501 (“Plaintiffs have conducted sufficient informal discovery and investigation to fairly evaluate the merits of Defendants’ positions during settlement negotiations”); *see also In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at \*12 (E.D. La. Mar. 2, 2009) (“The question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.”).

The proposed Settlements in this case were reached after more than six years of litigation involving extensive factual investigation, formal discovery, motion practice and several adverse rulings by the trial court. Plaintiffs’ Counsel conducted substantial factual research concerning Putnam and the other Settling Defendants. In addition, Plaintiffs’ Counsel researched the

applicable law with respect to the claims asserted in the action and the potential defenses, located and interviewed potential witnesses who had knowledge of the alleged wrongdoings, reviewed hundreds of thousands of documents, and took and defended dozens of depositions. They also researched issues related to their appeal of the District Court's decision granting Defendants' motions for summary judgment. Based on this extensive litigation, discovery and legal research, Plaintiffs' Counsel are in a position to evaluate the strengths and weaknesses of their position and to conclude that the proposed Settlement is fair, adequate, and reasonable. *Kogan v. Aimco Fox Chase, L.P.*, 193 F.R.D. 496, 502 (E.D. Mich, 2000) (citing *Bronson v. Board of Educ.*, 604 F. Supp. 68 at 73 (S.D. Ohio 1984)) "Given this extensive discovery, the Court... 'should defer to the judgment of experienced trial counsel who has evaluated the strength of his case.'"

## **2. The Circumstances Surrounding the Settlement Negotiations**

Courts should also consider the circumstances surrounding the settlement negotiations in considering the fairness of the proposed settlements. This factor focuses on the nature of the parties' settlement negotiations and whether the negotiations were free from fraud or collusion. *See, e.g., Mills*, 265 F.R.D. at 255; *MicroStrategy*, 148 F. Supp.2d at 665. In the absence of any evidence to the contrary, the court "may presume that settlement negotiations were conducted in good faith and that the resulting agreement was reached without collusion." *Muhammad*, 2008 WL 5377783, at \*3; *see* 4 NEWBERG ON CLASS ACTIONS §11.51, at 158 (courts "presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered").

Among the many specific circumstances that courts have identified as supporting a finding that settlement negotiations were conducted at arms'-length and without collusion are the duration, intensity and contested nature of the negotiations. *See, e.g., Mills*, 265 F.R.D. at

255 (where settlement was the “product of a long series of dealings” between class counsel and defendants and the negotiations were “sufficiently thorough [and] contentious,” this factor weighed in favor of settlement); *MicroStrategy*, 148 F. Supp.2d at 665 (the settlement was fair where counsel “participated in numerous meetings and extensive and intensive discussions extending over a period of months”); *Strang*, 890 F. Supp. at 501-02 (fairness requirement was met where “[p]laintiffs’ counsel, with their wealth of experience and knowledge in the securities-class action area, engaged in sufficiently extended and detailed settlement negotiations to secure a favorable settlement for the Class”); *S.C. Nat’l Bank v. Stone*, 139 F.R.D. 325 (D.S.C. 1991) (this factor supported settlement where the “settlement discussions were . . . hard fought and always adversarial”). Likewise, courts have found that the use of a mediator to assist the settlement negotiations provides support for the fairness of the settlement. *See, e.g., D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001); *Mills*, 265 F.R.D. at 255, 258. In fact, in this case the Senior Circuit Mediator of the Fourth Circuit assisted the parties in settling this case.

### **3. The Experience of Counsel in Similar Litigation**

The final *Jiffy Lube* “fairness” factor looks to the experience of class counsel in the particular field of law involved in the case. *See Mills*, 265 F.R.D. at 255. Courts in the Fourth Circuit have repeatedly recognized that when class counsel are “nationally recognized members of the securities litigation bar,” it is appropriate for the Court to give significant weight to their judgment in negotiating, approving and recommending the proposed settlements. *Mills*, 265 F.R.D. at 255; *MicroStrategy*, 148 F. Supp.2d at 665; *see also Muhammad*, 2008 WL 5377783, at \*3 (“The opinion of class action counsel, with substantial experience in litigation of similar size and scope, is an important consideration.”); *S.C. Nat’l Bank*, 749 F. Supp. at 1424 (“The negotiations in this case were conducted by able counsel who have a substantial amount of

litigation experience, particularly in this sort of complex securities action. ... [I]t is appropriate to give great weight to their judgment that the proposed settlement is in the interest of all their clients”).

In evaluating the proposed Settlements and the opinion of counsel, the Court may examine the negotiating process that took place between the parties to confirm that there was no collusion in reaching the Settlement. *Kogan*, 193 F.R.D. at 502-03. As set forth above, the Settlements are the product of intensive, arm's-length negotiations between Plaintiffs' counsel and Defendants' representatives. As a result of the negotiation process, Plaintiffs' counsel – highly experienced in securities class action litigation – have made a determination that they believe that under the circumstances of this case the proposed Settlements are fair, reasonable and adequate to the Class as a whole. This fact supports the Court's approval of the proposed Settlements.

**B. Factors Considered in Assessing the *Adequacy* of a Proposed Settlement**

**1. The Relative Strength of Plaintiffs' Case on the Merits and Existence of Any Difficulties of Proof or Strong Defenses**

“Perhaps the most important factor in evaluating the adequacy of a class action settlement is the relative strength of plaintiffs’ case and the existence of any defenses or difficulties of proof.” *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 831 (E.D.N.C. 1994). Consideration of the strengths and weaknesses of plaintiffs’ case is essential because the adequacy or inadequacy of a settlement can only be measured “in light of the strength of the case presented by the plaintiffs.” *Flinn*, 528 F.2d at 1172; *see Mills*, 265 F.R.D. at 256 (the court should “examine how much the class sacrificed in settling a potentially strong case in light of how much the class gains in avoiding the uncertainty of a potentially difficult case”); *S.C. Nat’l Bank*, 139 F.R.D. at 339 (“Although a court is not to decide the merits of the case or to attempt to

resolve unsettled factual or legal questions ... it is nonetheless necessary ... to assess the relative strengths and weaknesses of the settling parties' positions”).

In conducting this analysis, the court must bear in mind that a “settlement is by nature a compromise between the maximum potential recovery and the inherent risks of litigation. The test is whether the settlement is adequate and reasonable and not whether a better settlement is conceivable.” *Muhammad*, 2008 WL 5377783, at \*5; *see S.C. Nat'l Bank*, 749 F. Supp. at 1424 (“[s]ettlements, by definition, are compromises which need not satisfy every single concern of the plaintiff class, but may fall anywhere within a broad range of upper and lower limits.”) (citations and internal quotation marks omitted). Indeed, in any given litigation, there is range of potential reasonable settlements. *See Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972) (“in any case there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion”).

The outcome of any litigation is never a certainty and there are significant risks in any lawsuit, especially one involving allegations of securities fraud. As the court observed in *MicroStrategy*, “plaintiffs’ risks of establishing liability are significant where fraud is alleged. Elements such as scienter, materiality of misrepresentation and reliance by class members often present significant barriers to recovery in securities fraud litigation.” 148 F. Supp.2d at 666; *see also Mills*, 265 F.R.D. at 256 (same); *S.C. Bank*, 749 F. Supp. at 1426 (“stockholder litigation is notably difficult and notoriously uncertain”). The risks of establishing damages in securities fraud cases are also well accepted. Proof of the existence and extent of damages in this case would have been the subject of conflicting expert testimony and there was no guarantee that a

jury would accept the view of plaintiffs' experts. *See, e.g., Mills*, 265 F.R.D. at 256; *MicroStrategy*, 148 F. Supp.2d at 666-67.

Courts have repeatedly held that settlements can be approved even where the payment under the settlement amounts to only a fraction of the recovery sought or the theoretical maximum damages recoverable at trial. *See Flinn*, 528 F.2d at 1173-74; *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460-61 (S.D.N.Y. 2004) (same). This is particularly true in securities litigation cases, in light of the well-recognized risks of establishing liability and damages, as discussed above. As the court in *Horton* observed, the "adequacy of the settlement depends on the strengths and weaknesses of plaintiffs' case" and "the mere fact that the proposed settlement may amount to only a fraction of plaintiffs' loss ... is not reason to deny approval." *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. at 833 (approving settlement in securities class action that would amount to a recovery of 5% of plaintiffs' losses).

The reasons for the settlements is Plaintiffs' counsels' recognition of the impact of this Court's rulings, the risks that they might not be reversed in the Fourth Circuit, the risk that even if summary judgment was reversed that Plaintiffs would not prevail on all of their claims at trial, and provision of immediate and certain benefit that the Settlements will provide the Settlement Class. The certainty of this benefit must be weighed against these risks. Indeed, this Court has dismissed all of Plaintiffs' claims against the Putnam Defendants either on the pleadings or summary judgment. Even if Plaintiffs and the proposed Settlement Class pursued additional years of litigation against the Settling Defendants, Plaintiffs and the proposed Class might

recover nothing or substantially less than the amount of the proposed settlement. As the Court in *Dell* noted “that although the Settlement Plan is indeed reasonable and fair and is actually probably *more* than fair to the class members, who stood in very real danger of receiving absolutely nothing.” *In re Dell Inc., Securities Litigation*, Case No. A-060CA-726, (W.D. TX, June 10, 2010). In short, the significant challenges of this case weighed against the possible recovery, support the approval the Settlements.

## **2. The Anticipated Duration and Expense of Litigation**

This factor requires the Court to consider the additional time and expense that would be entailed if a settlement was not reached and the litigation proceeded through an appeal and, if successful, a trial. *See Mills*, 265 F.R.D. at 256; *Muhammad*, 2008 WL 5377783, at \*5; *S.C. Nat’l Bank*, 749 F. Supp. at 1426 (“The likely duration and associated expenses of continued litigation likewise favor approval of the settlement.”); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 233 (3d Cir. 2001) (courts should consider “the probable costs, in both time and money, of continued litigation”).

As the courts have repeatedly recognized, in large, complex and hotly contested cases such as this case, the additional time necessary to achieve a litigated judgment at trial would be substantial and the additional costs would likely be enormous. *See MicroStrategy*, 148 F. Supp.2d at 667 (“additional litigation of the plaintiffs’ claims against the ... Defendants would likely have been protracted and costly, requiring extensive expert testimony”); *Strang*, 890 F. Supp. at 502 (“In addition to the difficulties of prevailing at trial, the substantial expense Plaintiffs would face in proceeding with this case favors settlement at this time”). This issue is even more of an issue in this case since the Court granted Defendants’ Motion for Summary Judgment and Plaintiffs appealed the two decisions to the Fourth Circuit. Therefore, before

Plaintiffs can get this case to trial (which would clearly not be the end of the case) they would first have to obtain a reversal of the Court's decision.

Without the current settlements, the inevitable additional expenses and delays of continued litigation would have substantially reduced the value to class members of any judgments ultimately achieved against defendants. Concerns about the effects of any further delays are also particularly heightened here because litigation of the claims to this point has already taken over six years.

### **3. The Solvency of Defendants and Likelihood of Recovery of a Litigated Judgment**

This factor assesses the reasonableness of a proposed settlements in light of the defendants' ability to pay a greater judgment and the likelihood of recovery on a litigated judgment. *See In re Serzone Prods. Liab. Litig.*, 231 F.R.D. 221, 245 (S.D.W.Va. 2005); *S.C. Nat'l Bank v. Stone*, 139 F.R.D. 325 at 341 (D.S.C. 1991). Where a defendant has limited financial resources and, thus, the possibility of recovering a litigated judgment that is substantially larger than the proposed settlement is limited, this factor will strongly support the adequacy of the proposed settlement. *See, e.g., In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05-232, 2008 WL 4974782, at \*8 (E.D. Pa. Nov. 21, 2008); *MicroStrategy*, 148 F. Supp.2d at 667.

However, even where defendants' solvency is not in issue and a settling defendant has the ability to pay greater amounts, this fact alone will not weigh against approval of the settlement where other factors support approval of the settlement. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 538 (3d Cir. 2004) (affirming district court's conclusion that a defendant's "ability to pay a higher amount was irrelevant to determining the fairness of the settlement"); *Serzone.*, 231 F.R.D. at 245 ("Since the remaining factors weigh in favor of

finding the Settlement to be adequate, this factor may be given little weight.”); *Henley v. FMC Corp.*, 207 F. Supp.2d 489, 494 (S.D.W. Va. 2002) (“The Court has no doubt that [defendant] would be able to satisfy any judgment entered against it. That consideration, however, is largely beside the point given the other factors weighing in favor of a negotiated resolution.”).

#### **4. The Class’s Reaction to the Settlement**

The reaction of class members to the proposed settlements “as expressed directly or by failure to object” is also “a proper consideration for the trial court.” *Flinn*, 528 F.2d at 1173. A low number of objections or opt-outs in comparison to the size of the settlement class can be evidence of the fairness of the proposed settlement. *See, e.g., D’Amato* at 86-87 (2d Cir. 2001) (where 18 class members filed written objections and 72 requested exclusion from as class of approximately 27,800 members, the district court “properly concluded that this small number of objections weighed in favor of the settlement”); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 318 (3d Cir. 1998) (300 objections by class members and 19,000 opt-outs were “truly insignificant” in comparison to the 8 million policyholders provided with class notice and thus, “the limited number of objections filed ... weighed in favor of approving the settlement”); *Int’l Union v. Ford Motor Co.*, Nos. 05-74730, 2006 WL 1984363, at \*27 (E.D. Mich. July 13, 2006) (where “800 out of more than 170,000 class members,” less than 0.5% of the class, objected, the court found that this “very small level of opposition [was] another reason to conclude that the Settlement is fair, reasonable, and adequate”); *In re Lloyd’s Am. Trust Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at (S.D.N.Y. Nov. 26, 2002) (approving settlement where 18% of a 1,350-member class submitted objections and finding that the “relatively low number of objections itself supports approval of the settlement”).

The Fourth Circuit has made clear, however, that “a settlement is not unfair or unreasonable simply because a large number of class members oppose it.” *Flinn*, 528 F.2d at 1173 (quoting *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 803 (3d Cir. 1974)); *see also Muhammad*, 2008 WL 5377783, at \*6 (“approval of a proposed class settlement is not a matter to be decided by a plebiscite”) (citation omitted); *Bryan*, 494 F.2d at 803 (approving settlement despite the fact that 20% of the class objected). Rather, the Court should analyze the substance and merit of any objections. *See, e.g., In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, 246 F.R.D. 156, 168-70 (S.D.N.Y. 2007) (considering the merits of objectors’ argument and finding that, because they lacked merit, they “do not weigh against approval of the Settlement as fair and reasonable”); *In re Montgomery County Real Estate Antitrust Litig.*, 83 F.R.D. 305, 317-18 (D. Md. 1979) (affirming a proposed settlement where 6% of the class objected; the court “considered carefully the objections raised by the class members, and concluded that the fears and dissatisfactions expressed” did not “outweigh the practical and legal factors ... which strongly counsel the settlement as proposed”).

The Court should also consider the presence or absence of objections by institutional investors or other class members with the largest financial stakes in the litigation. Courts have often found that the absence of objections by such class members further supports the conclusion that the proposed settlement is fair and reasonable. *See, e.g., In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 166 (3d Cir. 2006) (“No objections were filed by institutional investors, those with the greatest financial stake in the settlement.”); *OCA*, 2009 WL 512081, at \*16 (“Lead Counsel also noted that a number of the claimants were sophisticated financial institutions such as state and municipal pension funds. ... That those institutions filed claims and voiced no objections further attests to the general support for the settlement.”).

The deadline for submission of objections to the settlements and requests for exclusion is September 21, 2010. To date Plaintiffs have not received any objections to the Settlements and only one (1) request for exclusion, by an individual who filed an action that was consolidated with this action.

**V. THE STANDARDS FOR APPROVAL OF PLANS OF ALLOCATION**

Approval of a plan of allocation is governed by the same standards by which a class action settlement is scrutinized – namely, it must be fair, reasonable and adequate. *See Mills*, 265 F.R.D. at 258; *MicroStrategy*, 148 F. Supp.2d at 668; *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp.2d 319, 344 (S.D.N.Y. 2005). Where experienced, qualified counsel have endorsed the allocation plan, “the allocation need only have a reasonable and rational basis.” *Mills*, 265 F.R.D. at 258; *see also Global Crossing*, 225 F.R.D. at 462; *Maley v. Del. Global Techs. Corp.*, 186 F. Supp.2d 358, 367 (S.D.N.Y. 2002); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp.2d 418, 429-30 (S.D.N.Y. 2001).

In evaluating a plan of allocation, the opinion of class counsel is “entitled to significant respect.” *Mills*, 265 F.R.D. at 258; *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240(CM), 2007 WL 2230177 (S.D.N.Y. July 27, 2007) (“In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel.”); *PaineWebber*, 171 F.R.D. at 133 (“[T]he adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information.”). “A Plan of Allocation need not be, and cannot be, perfect.” *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 272 (D.N.J. 2000). In particular, the plan of allocation need not calculate class member’s claims with “scientific precision” *Mills*, 265 F.R.D. at 258; *see PaineWebber*, 171 F.R.D. at 133 (“it is obvious that in the case of a large

class action the apportionment of a settlement can never be tailored to the rights of each plaintiff with mathematical precision”), by an individual who filed an action that was consolidated with this action.

## **VI. DISTRIBUTION OF CLASS RECOVERY AND ATTORNEYS’ EXPENSES**

The total amount of recovery under the four settlements is \$3,225,500. Given the size of the Settlement, Lead Counsel are not requesting an award of attorney fees. Rather, they are only requesting reimbursement of their out-of-pocket expenditures from the settlement proceeds. As of the date of filing this motion, such expenditures total \$1,577,359.59.<sup>2</sup> Attached as Exhibit A to the Motion for Approval of the Settlement is a summary of the expenses sought in this case.<sup>3</sup> The Declarations, which include a breakdown of the expenses of Waite Schneider Bayless & Chesley; Strauss & Troy; Berger & Montague; Milberg LLP; Ohio Tuition Trust Authority and the Ohio Attorney General are attached to the Motion for Approval as Exhibits B-G, respectively. In short, Plaintiffs’ counsel are only seeking what they actually spent during the four years since being appointed Lead Counsel.

When a common fund is created in the settlement of a class action, it is customary for plaintiff’s counsel to be compensated out of the common fund for expenses incurred throughout the litigation. *See, e.g., Xcel Energy*, 364 F. Supp. 2d 980, at 999-1000 (D. Minn. 2005) (awarding reimbursement of expenses); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 535 (E.D. Mich. 2003) (“Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in

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<sup>2</sup> Each investor class plaintiffs’ firm contributed to a Litigation Fund to pay certain common expenses – primarily expert witness expenses. There is a small residual amount in the Litigation Fund that needs to be allocated among the Plaintiffs’ firms, and that allocation effort is ongoing. This allocation will likely reduce the expense request in certain subtracks. Plaintiffs’ counsel will submit any adjusted expense requests with the reply papers that are due on October 6, 2010.

obtaining settlement, including expenses incurred in connection with document production, consulting with experts and consultants, travel and other litigation-related expenses. ‘Expense awards are customary when litigants have created a common settlement fund for the benefit of a class.’” (citation omitted)).

The categories of expenses for which Class Counsel seek reimbursement here are of the type ordinarily billed to fee-paying clients. They are, therefore, payable to Class Counsel out of the common fund. The largest expense was the cost of experts who provided valuable assistance in the areas of loss causation and damages.

In addition, Lead Plaintiff Ohio Tuition Trust Authority requests an award of \$24,008.24 in expenses related to the litigation, including travel expenses and the cost of staff time during depositions. Similarly, the Ohio Attorney General seeks an award of the nominal sum of \$1,656.25 in connection with attorney time spent supervising the litigation. Such awards have been approved by numerous courts. *See In re Veeco Instr., Inc. Sec. Litig.*, No. 05—1695, 2007 WL 4115808, at \*12 (S.D.N.Y. Nov. 7, 2007) (approving reimbursement of Steelworkers for \$16,000 related to monitoring litigation); *In re Gilat Satellite Networks, Ltd.*, No. 02-01510, 2007 WL 2743675, at \*19 (E.D.N.Y. Sept. 18, 2007) (“Since tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation, the motion for \$10,000 in expenses for Lead Plaintiffs is granted.”)

The Court-appointed Plaintiffs’ Administrative Chair and Liaison Counsel (“Liaison Counsel”) will also apply for an award of attorneys’ fees and expenses of 1.25% of the total settlement amount. Liaison Counsel will file a supplemental brief in support of their application. Defendants have agreed not to oppose that application.

Plaintiffs propose that the remaining amount, approximately \$1,600,000, which is the Net Settlement Fund, be distributed pro rata based upon the restitution amounts calculated by Professor Tufano in his IDC Report. As the Court stated in its May 1, 2006 opinion, the mutual funds were the victims of market timing. Moreover, paying the settlement proceeds into the funds best approximates payment to the fund shareholders under the circumstances where it would be impracticable to locate and pay the shareholders.

Legal support for such a distribution is found in the Court's opinion in *In re Microsoft Corp. Antitrust Litig.*, 185 F. Supp.2d 519, 523 (D. Md. 2002) (Motz. J.), in which the Court stated: “*cy pres* ... has also been utilized as a means for distributing the entirety of a class fund where the proceeds cannot be economically distributed to the class members ... “[C]ourts are saying, the game isn’t worth the candle.”” Here there are millions of shareholders located throughout the United States. The amount of recovery that any one shareholder would receive after payment of expenses would be *de minimis*. A *cy pres* distribution should therefore be approved.

## **VII. THE STANDARDS FOR CERTIFYING SETTLEMENT CLASSES UNDER RULE 23**

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In granting final settlement approval, the Court should also certify the proposed Settlement Classes for purposes of settlement under Rule 23 of the Federal Rules of Civil Procedure. Certification of a settlement class “has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants.” *Mills*, 2009 WL 5091931, at \*21 (quoting *In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995)); *S.C. Nat’l Bank*, 749 F. Supp. at 1428 (“settlement classes have proved to be quite useful in resolving major class action disputes”) (citations omitted). The standards of class certification – which apply equally in the context of

preliminary and final approval – are set out in greater detail in the Omnibus Prelim. Memo at 7-14. In this case, the proposed Class satisfies all the prerequisites of Rule 23(a) – numerosity, commonality, typicality, and adequacy – and Rule 23(b)(3).

### **VIII. THE FORM AND METHOD OF NOTICE PROVIDED**

Before finally approving the settlements, the Court should ascertain that the notice provided to class members and current shareholders met the requirements of Rule 23 and of due process. The notice to investor class members must have constituted “the best notice ... practicable under the circumstances,” Fed.R.Civ.P. 23(c)(2)(B), complied with the content requirements of Rule 23(c)(2) and the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), 15 U.S.C. §78u-4(a)(7), and satisfied due process.

In evaluating whether the notice provided satisfied the requirements of Rule 23 and due process, the Court must bear in mind that these standards only require that the notice be “reasonably calculated to reach interested parties,” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 318 (1950), and that actual receipt of notice by all class members is not required.

Notice need not be perfect, but need be only the best notice practicable under the circumstances, and each and every class member need not receive actual notice, so long as class counsel acted reasonably in choosing the means likely to inform potential class members.

*In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008); *see Fidel v. Farley*, 534 F.3d 508, 514 (6th Cir. 2008); *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir. 1994); *In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144(CM), 2009 WL 5178546, at \*23 (S.D.N.Y. Dec. 23, 2009) (“courts focus the due process lens on the notice efforts made by counsel, not whether class members actually received notice”); *Lewis v. Select Portfolio Servs.*,

*Inc.*, No. RDB-06-232, 2006 WL 1896176, at \*3 (D. Md. July 10, 2006); *Buxbaum v. Deutsche Bank AG*, 216 F.R.D. 72, 80 (S.D.N.Y. 2003) (it is “widely recognized that for the due process standard to be met it is not necessary that every class member receive actual notice, so long as class counsel acted reasonably in selecting means likely to inform persons affected.”) (citation omitted); *In re Prudential Sec. Inc. Ltd. P’Ship Litig.*, 164 F.R.D. 362, 368-370 (S.D.N.Y. 1996).

Here, in order to comply with the Preliminary Order the following steps were undertaken to provide notice to the class. First, on June 3, 2010 (i.e., within the required 10 business days after the entry of the Court’s Preliminary Order), Lead Plaintiffs’ counsel posted a copy of the Settlement Notice, along with other documents pertinent to the Settlement (with the exception of the Supplemental Agreements) on a publicly-accessible website created and maintained by Lead Plaintiffs’ Counsel in connection with the Settlements - [www.putnamsubtracksettlementinformation.com](http://www.putnamsubtracksettlementinformation.com). The Putnam Subtrack website has been accessible, 24 hours a day and 7 days a week, since June 3, 2010.

Second, within the required 20 business days after the entry of the Preliminary Order, Lead Plaintiffs’ counsel mailed, by first class U.S. mail, to all named plaintiffs who filed any of the lawsuits listed in the form annexed to the Preliminary Order as Attachment 3, a copy of the Settlement Notice. Several of the mailings, however, were returned as a result of counsel for named plaintiffs having changed firms and addresses, and/or firms having changed addresses. Lead Plaintiffs’ counsel researched the present firms and addresses of counsel for the named plaintiffs and re-sent notice letters to the new addresses.

Third, within the required 30 business days after entry of the Preliminary Order, lead Plaintiffs’ counsel caused the Publication Notice to be published once in the national edition of *The New York Times* and *The Wall Street Journal*. Specifically, the Publication Notice appeared

on page B2 of the July 12, 2010 edition of *The New York Times*, and on page B7 of the July 12, 2010 edition of *The Wall Street Journal*. Such publication was effected by the Garden city Group, Inc. (“GCG”), which was retained by Lead Plaintiffs’ counsel to implement the publication component of the notice program approved by the Court.

Fourth, the Garden city Group has designed, established and maintained a global, informational website, [www.mutualfundsettlements.com](http://www.mutualfundsettlements.com), which has been accessible 24 hours a day and 7 days a week since June 30, 2010. A “landing page” for all of the settlements in MDL 1586, the global website has a link to the Putnam Subtrack website.

This Notice Program, which was disseminated in accordance with the Preliminary Order, was reasonably calculated to inform class members about the settlement and constituted the best notice practicable under the circumstances. The Garden City Group, Inc. was retained to implement the publication component of the Notice program approved by the Court and has submitted the Declaration of Stephen J. Cirami, Senior Vice President of Operations, addressing the publication notice and the global website. In accordance with the Preliminary Order, prior to the Settlement hearing Lead Counsel will file a Declaration setting forth the completion of the Notice Program.

## **IX. CONCLUSION**

Lead Plaintiffs respectfully request that, for the reasons set forth above, the Court (i) approve their motion for final approval of the proposed settlement that they have reached in the Putnam subtrack; (ii) approve the plans of allocation for the settlement proceeds proposed in the Putnam subtrack; (iii) approve the form and manner of notice given to class members and current shareholders in their respective subtrack; (iv) certify, for settlement purposes, the respective proposed class in their respective subtrack; and (v) approve the reimbursement of

attorney expenses and payment to Liaison Counsel and the requested payments to the Attorney General for the State of Ohio and the Ohio Tuition Trust Authority.

Dated: September 14, 2010

Respectfully submitted:

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been filed electronically with the U.S. District Court for the District of Maryland this 14<sup>th</sup> day of September, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. If a party is not given notice electronically through the Court's system a copy will be served by ordinary United States mail, first class postage prepaid, this 14<sup>th</sup> day of September, 2010.

/s/ Richard S. Wayne  
Richard S. Wayne