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November 5, 2018

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Alaska Electrical Pension Fund, et al. v. Bank of America Corp., et al.*,
Case No. 1:14-cv-07126-JMF

Dear Judge Furman:

Pursuant to Your Honor's Individual Rules and Practices in Civil Cases (§1.A.), Lead Counsel and counsel for Dr. Fred Moorman and his LLC Dublin Properties ("Objector") respectfully submit this joint letter motion concerning the resolution of the sole objection (ECF No. 716) to Lead Counsel's Motion for Attorneys' Fees, Litigation Expenses and Incentive Awards ("Fee Request"). ECF No. 728. The parties to this joint letter motion respectfully request that this motion be heard on an expedited basis at the Fairness Hearing set for November 8, 2018, at 3:30 p.m. An Amended [Proposed] Order Granting Lead Counsel's Motion for Attorneys' Fees, Payment of Litigation Expenses, and Incentive Awards is submitted herewith.

As noted in earlier filings, the response to the proposed Settlements, the Plan of Distribution and Fee and Expense Awards has been overwhelmingly positive. There were no objections to the Settlements or the Plan of Distribution and only a minimal number of opt outs. And even though Lead Counsel's request for a 30% fee award was initially unopposed in connection with their April and May 2018 filings, the renewed fee request has drawn only one objection, which is limited solely to the Fee Request. ECF No. 716.

For the many reasons set forth in Lead Counsel's reply brief in support of the 30% request, Lead Counsel continues to believe that a 30% fee is fair and reasonable. ECF No. 728. Lead Counsel views the Objection as failing to understand the relationship between this case and the CFTC's regulatory actions. *Id.* at 2-5. It also, in our view, fails to come to grips with the very real risk that the initial settlement class would not be certified unless the litigation class was certified. *Id.* at 5-6. In sum, Lead Counsel view the Objection as lacking merit, while the Objector disagrees.

**Robbins Geller
Rudman & Dowd LLP**

The Honorable Jesse M. Furman
November 5, 2018
Page 2

Despite these beliefs, over several weeks Lead Counsel engaged counsel for the Objector, under the supervision of and at the direction of a lead named Plaintiff in this action, the Alaska Electrical Pension Fund, to discuss the issues raised in the objection and respond to same. Over these several weeks counsel discussed in detail the objection, the legitimacy of the Fee Request and the quality, substance and necessity of the work lead counsel undertook over several years to secure and defend the \$504 million recovery. In addition, Counsel for the Plaintiffs filed a full response with this Court on October 23, 2018 (ECF No. 728). Discussion between the parties continued through November 4, 2018 when a resolution of the objection was reached between the Objector, his counsel and Lead Counsel for the Plaintiffs under the supervision of the Alaska Electrical Pension Fund.

In sum, after counsel's detailed discussion and consideration of the points raised in Class Counsel's October 23, 2018 filing with the Court, a compromise was reached. Counsel for the Plaintiffs has agreed to reduce its fee request to no more than 28.5%, down from 30%, of the Settlement Fund. The Objector withdraws his objection and believes this fee request compromise is fair and reasonable. Counsel for the Objector will be paid \$150,000 from any fees awarded to Lead Counsel for the time incurred pursuing and defending the objection. Lead Counsel and the Alaska Electrical Pension Fund agrees the above is a fair and reasonable resolution of the objection as it provides a benefit to the Class, helps avoid any delay or costs associated with a potential subsequent partial distribution and the attorney fees requested for counsel for the Objector is reasonable in amount and benefit conferred. All parties involved understand this Court will ultimately grant what it determines to be a fair and reasonable fee in this case.

Respectfully submitted,

/s/ Patrick J. Coughlin
Patrick J. Coughlin
David Mitchell
Robbins Geller Rudman & Dowd LLP

Daniel L. Brockett
Quinn Emanuel Urquhart & Sullivan, LLP

Christopher M. Burke
Scott+Scott, Attorneys at Law, LLP

Co-Lead Class Counsel for Plaintiffs

cc: All Counsel of Record via ECF

/s/ Adam Hebbard
Adam Hebbard
The Law Offices of Adam L. Hebbard LLC

Sonia Farber
Kluk Farber Law PLLC

Counsel for Dublin Properties LLC and Fred
Moorman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
ALASKA ELECTRICAL PENSION FUND,	:	Lead Case No. 1:14-cv-07126-JMF
et. al.,	:	
	:	<u>CLASS ACTION</u>
Plaintiffs,	:	
	:	AMENDED [PROPOSED] ORDER
vs.	:	GRANTING LEAD COUNSEL’S MOTION
	:	FOR ATTORNEYS’ FEES, PAYMENT OF
BANK OF AMERICA N.A., et al.,	:	LITIGATION EXPENSES, AND
	:	INCENTIVE AWARDS
Defendants.	:	
	X	

Lead Counsel's Motion for Attorneys' Fees, Litigation Expenses, and Incentive Awards (ECF No. 696, the "Fee and Expense Application") came before the Court for hearing on November 8, 2018. The Court has considered all papers filed and proceedings held in connection with the above-captioned Action, including all written objections received regarding the Fee and Expense Application, and all matters presented at the May 30, 2018 and November 8, 2018 Fairness Hearings, and is fully informed of these matters. Adequate notice having been given to the Settlement Class as required by the Court's October 24, 2017 Order Providing for Notice to the Settlement Class and Preliminarily Approving the Plan of Distribution and June 26, 2018 Order Preliminarily Approving an Additional Settlement and the Related Plan of Distribution, and Approving the Manner and Forms for Notice (ECF Nos. 521, 669), and having considered all papers and proceedings in this matter, the Court finds, concludes, and orders as follows:

1. This Order incorporates by reference the definitions in the Stipulations and Agreements of Settlement (*see* ECF Nos. 222-1, 222-2, 222-3, 222-4, 222-5, 222-6, 222-7, 331-1, 490-1, 490-2, 667-1; collectively, the "Settlement Agreements") and all capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreements.
2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class.
3. Notice of the Fee and Expense Application was provided to potential Settlement Class members in a reasonable manner, and such Notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.
4. Settlement Class Members were given the opportunity to object to the Fee and Expense Application in compliance with Rule 23(h)(2) of the Federal Rules of Civil Procedure.
5. The Fee and Expense Application is granted as described below.

6. Lead Counsel are hereby awarded attorneys' fees in the amount of 28.5% of the Settlement Fund and \$18,429,687.63 in payment of litigation expenses.

7. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and finds that:

(a) The Settlement Agreements have created a total Settlement Fund of \$504,500,000 that has been transferred to an Escrow Account administered by Escrow Agent Lead Counsel for the benefit of the Settlement Class pursuant to the terms of the Settlement Agreements;

(b) Settlement Class Members who submit acceptable proof of claim forms will benefit from the Settlement Agreements because of the efforts of Lead Counsel;

(c) The fees sought by Lead Counsel are fair and reasonable;

(d) The expenses sought by Lead Counsel are reasonable and were necessarily incurred;

(e) The Notice mailed to potential Settlement Class Members stated that Lead Counsel would seek attorneys' fees of up to 30% of the Settlement Fund, the payment of litigation expenses, and interests on such fees and expenses earned at the same rate as the earnings on the Settlement Fund, accruing from inception of the Settlement Fund, and further directed any potential Settlement Class Members to a website on which the Fee and Expense Application was accessible as of October 3, 2018;

(f) Lead Counsel have prosecuted the Action with skill, perseverance, and diligence, as reflected by the substantial Settlement Fund achieved and the positive reception of the Settlement Agreements by the Settlement Class;

(g) The Action involves complex factual and legal issues that have been extensively researched and developed by Lead Counsel, and vigorously disputed in motion practice and discovery for over four years;

(h) A significant risk exists that without the Settlement Agreements, Plaintiffs and Settlement Class Members may have recovered significantly less or nothing from Defendants¹;

(i) Public policy considerations support the requested fees, as the successful prosecution of this Action required lawyers with considerable expertise; and

(j) The amount of attorneys' fees awarded and expenses paid is appropriate to the specific circumstances of the Action and consistent with awards in similar cases.

8. The single objection to Lead Counsel's September 28, 2018 fee request (*see* ECF No. 716), filed by Dr. Fred Moorman and his LLC Dublin Properties ("Objectors"), has been withdrawn, and no other objections to the Fee and Expense Application have been lodged. Counsel for the Objector is awarded \$150,000 to be paid from the attorneys' fees awarded to Lead Counsel.

9. Lead Counsel shall allocate the awarded attorneys' fees and expenses among Lead Counsel and other counsel in a manner in which, in Lead Counsel's judgment, reflects the contributions of such counsel to the prosecution of and settlements achieved in the Action.

10. Settlement Class representative Alaska Electrical Pension Fund is hereby awarded \$50,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

¹ The Settling Defendants are Bank of America N.A.; Barclays Bank PLC and Barclays Capital Inc.; Citigroup Inc.; Credit Suisse AG, New York Branch; Deutsche Bank AG; The Goldman Sachs Group, Inc.; HSBC Bank USA, N.A.; JPMorgan Chase & Co.; Royal Bank of Scotland, PLC; UBS AG; B.N.P. Paribas SA; ICAP Capital Markets LLC; Morgan Stanley & Co. LLC; Nomura Securities International, Inc.; and Wells Fargo Bank, N.A.

11. Settlement Class representative Genesee County Employees' Retirement System is hereby awarded \$50,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

12. Settlement Class representative County of Montgomery, Pennsylvania is hereby awarded \$50,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

13. Settlement Class representative County of Washington, Pennsylvania is hereby awarded \$50,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

14. Settlement Class representative City of New Britain, Connecticut is hereby awarded \$50,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

15. Settlement Class representative Pennsylvania Turnpike Commission is hereby awarded \$50,438.87 from the Settlement Fund (\$50,000 incentive award plus \$438.87 in out-of-pocket expenses) in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

16. Settlement Class representative Erste Abwicklungsanstalt (EAA) is hereby awarded \$210,399.02 (\$100,000 incentive award plus \$110,399.02 in out-of-pocket expenses) from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

17. Settlement Class representative Portigon AG is hereby awarded \$116,260 (\$100,000 incentive award plus \$16,260 in out-of-pocket expenses) from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

18. For avoidance of doubt, nothing in this Order disturbs the Court's prior approval of ¶3.9 of the Settlement Agreements, which govern payments of Class Notice and Administration Expenses, both prior to and following the Effective Date, without separate application to or order by the Court.

19. This Fee and Expense Award is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlements and is also independent of the Court's consideration the Plan of Distribution. The fees, expenses, and interest awarded herein shall be payable from the Settlement Fund upon entry of this Order.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE JESSE M. FURMAN
UNITED STATES DISTRICT JUDGE