IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE GFI GROUP INC.	)	CONSOLIDATED
STOCKHOLDER LITIGATION	)	C.A. No. 10136-VCL

PLAINTIFFS' SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF CLASS CERTIFICATION, PROPOSED SETTLEMENT, AND PROPOSED FEE AWARD

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Co-Lead Plaintiffs respectfully submit this Supplemental Memorandum in Support of Final Approval of the Proposed Settlement, Certification of the Class, and an Award of Attorneys' Fees.[1]

I. INTRODUCTION

At the November 24, 2015 hearing to consider final approval of the Settlement of this Action, the Court requested additional briefing about: (i) the value of the claims relating to the Gooch and Heffron employment and non-competition agreements (the "Employment Claims"); and (ii) the Class definition, which extended the Class period until after the final approval hearing, thus potentially covering conduct that had not yet taken place. 11/24/15 hearing transcript at 81:3-11; 82:7-20.

To address the Court's questions about the Employment Claims, we provide specific detail, analysis, and valuation of those claims. In addition, the parties have executed an Amendment to Stipulation and Agreement of Settlement (the "Amendment"), which addresses each of the Court's concerns about the Class definition and Release.

[1] Unless otherwise indicated, all capitalized terms have the meaning assigned them in Co-Lead Plaintiffs' prior submissions.

II. THE $10.75 NET SETTLEMENT FUND PROVIDES A LARGE RECOVERY RELATIVE TO THE VALUE OF THE EMPLOYMENT CLAIMS

Plaintiffs alleged that the Insiders (*i.e.*, Gooch and Heffron) conditioned their support for a deal with BGC on BGC's and the Board's agreement to lucrative employment and non-competition agreements that improperly siphoned value from GFI's public stockholders. Am. Compl. ¶¶ 18-20, 116-117, 127.[2] Plaintiffs believed the claim had substantive merit and were prepared to seek all available relief at trial. But Plaintiffs also recognized that the probability of recovering on the Employment Claims was significantly lower than the probability of recovering for the claim based on the difference between the $6.10 Tender Offer Price and the prior $6.20 proposal.

A. TERMS OF THE EMPLOYMENT AGREEMENTS

In connection with the BGC deal, both Gooch and Heffron received three year employment agreements and executed non-competition agreements of different durations. While there is nothing inherently unlawful about such agreements, Plaintiffs asserted that BGC took on these financial obligations to effectively pay the Insiders to end their opposition to the BGC bid (*i.e.*, to stop breaching their fiduciary duties). Plaintiffs further asserted that the amount BGC

[2] Discovery revealed a disagreement among GFI directors as to whether or not Gooch stated he would withdraw support from the Tender Offer unless the Special Committee also recommended the agreements at a February 19, 2015 Board meeting. As a result, there were no final Board minutes for this meeting.

would be willing to pay to GFI's public stockholders was reduced by the value (or some portion of the value) of these financial obligations.

Gooch's three-year employment agreement provided for a $36,000 base salary, $1,000,000 in annual equity compensation, and the acceleration of deferred stock and cash awards worth approximately $700,000.[3] The agreement also entitled Gooch to receive discretionary bonuses and benefits, including access to a corporate apartment and office in New York and a full-time personal secretary.[4] Heffron's three-year employment agreement provided for a $1,000,000 base salary, $1,500,000 annual bonus, similar fringe benefits to Gooch, and a severance payment of $4,800,000 payable upon termination in certain circumstances.[5]

Notably, in 2013, before any deal was on the table, Gooch and Heffron received approximately $1.3 million and $2.3 million, respectively, in total compensation. As a result, Plaintiffs assigned nominal value to any argument that the basic annual compensation available to Gooch and Heffron pursuant to their BGC employment agreements transferred value from the GFI public stockholders.

[3] Exhibit A (Gooch Employment Agreement) at 2-3.

[4] *Id.*

[5] Ex. B (Heffron Employment Agreement) at 3-4. Heffron was also eligible to receive discretionary bonuses.

B. THE DISTRIBUTABLE EARNINGS BONUS CLAIM OFFERED LIMITED ECONOMIC VALUE

1. The Terms of the Distributable Earnings Bonus Pool

Gooch's and Heffron's employment agreements also included restrictive covenants precluding them from, among other things, soliciting, inducing or influencing any BGC employee, consultant, or affiliate to terminate their employment or business arrangement with BGC, hiring any BGC employee, engaging in any Competing Business, soliciting any of BGC's customers, or making any comments to the media disparaging BGC and its affiliates and employees. Gooch and Heffron also committed to restrictive covenants in Non-Competition and DE Bonus Award Agreements. BGC compensated them for complying with those covenants by entitling them to participate in certain "distributable earnings" based bonus pools.[6] In order to participate in the "distributable earnings" bonus pools, Gooch had to comply with the restrictive covenants for fifteen years, while Heffron had to comply with his restrictive covenants for at least ten years.[7]

Pursuant to their Non-Competition and DE Bonus Award Agreements,[8] Gooch and Heffron are each entitled to 35% of a future "distributable earnings"

[6] Gooch Employment Agreement at 5-6. Heffron Employment Agreement at 6-7.

[7] In Gooch's case, the restrictive covenants will likely last for the remainder of his career.

[8] *See* Exhibits C and D.

pool (the "DE Bonus Pool"), while the remaining 30% of the DE Bonus Pool is to be distributed to other GFI employees selected by Gooch, Heffron, and BGC. Gooch's and Heffron's bonuses are forfeited if JPI fails to proceed with the Back-End Merger or comply with any actions requested by BGC to complete the Back-End Merger. Heffron received a $5 million advance on his portion of the distributable earnings in exchange for a forgivable promissory note.[9] GFI's Schedule 14-D9 recommending that GFI stockholders tender to BGC stated that any bonus to other eligible GFI employees would also require execution of a non-compete agreement on substantively similar terms to those agreed to by Gooch and Heffron.

The DE Bonus Pool will equal one times the average annual distributable earnings of the "GFI Brand" for three consecutive twelve-month periods beginning July 1, 2015. The GFI Brand includes only the IDB Business – not Trayport or Fenics. The calculation of Distributable Earnings is "based on the methodology described and reflected in BGCP's quarterly or annual earnings releases . . . used to determine what are designated 'pre-tax distributable earnings' in such releases. . . ." BGC's 2014 annual report states:

[9] Heffron received $3.75 million in cash on the $5 million advance. The remainder of the advance was for withholding of future income and payroll tax.

> Pre-tax distributable earnings are defined as GAAP income (loss) from operations before income taxes excluding items that are primarily non-cash, non-dilutive, and non-economic, such as:
>
> - Non-cash stock-based equity compensation charges for REUs granted or issued prior to the merger of BGC Partners, Inc. with and into eSpeed, as well as post-merger non-cash, non-dilutive equity-based compensation related to partnership unit exchange or conversion.
>
> - Allocations of net income to founding/working partner and other limited partnership units, including REUs, RPUs, PSUs, LPUs, and PSIs.
>
> - Non-cash asset impairment charges, if any.

The Non-Competition and DE Bonus Agreements further adjust distributable earnings based on a series of ten factors, some of which are not known and cannot be fairly estimated any time soon:

> (i) any cash charges or other expenses or receipts that are not otherwise included in the calculation of Distributable Earnings that affect the cash flow of the GFI Brand (as described above) for a particular calculation period (e.g., litigation settlements), (ii) the fully-allocated cost or benefit of any employees, consultants, or independent contractors which are assigned to or moved from the GFI Brand, (iii) 50% of the amortization cost attributed to the awards pursuant to the Retention Bonus Pool established by GFI pursuant to Section 5.5(a) of the Tender Offer Agreement, (iv) cash capital charges for capital employed but only to the extent of capital in excess of that used by the GFI Brand immediately subsequent to the Offer Closing, (v) any adjustments of accruals to reflect any forfeiture, as a result of the failure to satisfy the conditions set forth in this Agreement, of a DE Bonus Award, (vi) any compensation (including deferred cash awards issued pursuant to Section 5.17 of the Tender Offer Agreement) of GFI Brand employees, consultants or independent contractors for which a charge has been taken in respect of the DE Measurement Period that is reversed in respect of the DE

> Measurement Period, solely to the extent that such charge was previously taken into account in respect of the DE Measurement Period for purposes of adjusting Distributable Earnings and (vii) with respect to each Earnings Period, a reduction of $5,000,000. Distributable Earnings (A) shall include the fully allocated expenses associated with the GFI Brand taken as a whole and not solely based on segment reporting, (B) shall not include any amounts generated by the Trayport and FENICS businesses of the Company, other than the payment, if any, of net market data fees by such FENICS business to the IDB business of the GFI Brand with respect to market data as shall be produced by the IDB business of the GFI Brand and (C) shall not include any interest expense in respect of the Indenture dated as of July 19, 2011, between GFI and The Bank of New York Mellon Trust Company, N. A., as Trustee, relating to the Senior Notes due 2018, together with any supplemental indentures thereunder and including the terms and provisions of the Senior Notes due 2018.

2. The Speculative and Limited Value of the Bonus Claim

The bonus pool does not provide for immediate cash bonuses to Gooch and others, but only for a portion of a possible ***future*** bonus pool whose size would depend on the future performance of GFI over several years, payable at least in part in BGC securities.[10] The bonuses are thus distant in time, contingent, unknown, and payable in securities of uncertain value and liquidity. Defendants insisted that any claim that BGC would have paid a definite amount of hard cash to GFI's public stockholders in 2015, if Gooch and Heffron had not sought a portion of a future bonus pool whose creation and size depends on numerous subsequent events, was too speculative.

[10] Although Heffron received a cash advance, most of his potential bonus was also payable in future restricted equity.

Plaintiffs and their expert concluded that, because there were so many unknown future variables, any estimate of the bonus pool would be little more than a guess. Plaintiffs nevertheless attempted to estimate the possible size of the DE Bonus Pool using GFI management's EBITDA projections for the IDB business that were used by Greenhill for its fairness opinion on the BGC Tender Offer (the "IDB Projections"). These projections, however, were prepared assuming the IDB Business operated as a standalone entity, not a subsidiary of BGC. The three-year average projected EBITDA was $49 million in the IDB Standalone Scenario and $64.3 in the IDB Credit Scenario.[11] This might result in Gooch and Heffron receiving between $17.2 million and $22.5 million each in bonuses pursuant to the agreement. Thus, Plaintiffs' best guess was that, as long as the inherently forward-looking variables did not lower or eliminate the amounts payable, Gooch and Heffron might receive a combined $34.4 to $45 million in bonuses.

Several factors caused Plaintiffs to discount this number for purposes of analyzing the value of the Employment Claims.

[11] The projections are annual so the average was calculated by adding 50% of the 2015 and 2018 projected EBITDA to 2016 and 2017 projected EBITDA. Heffron's employment arrangement provided that his annual bonus would be paid in cash if distributable earnings were less than $45 million and in cash and stock if distributable earnings were more than $45 million. Plaintiffs did not believe this amount was arbitrarily chosen and considered it in their analysis of the valuation of the DE Bonus Pool.

- *First*, the bonus pool will not be distributed until the fall of 2018, creating a time-value discount.

- *Second*, any bonus would be paid at least in part in restricted BGC partnership units, not cash.

- *Third*, the bonus units would then become convertible into unrestricted BGC stock in five annual installments beginning July 1, 2018, further delaying monetization and confusing valuation.

- *Fourth*, the bonus is subject to forfeiture for various reasons including if Gooch or Heffron cease to be employed for any reason (unless the Chairman of BGC (Howard Lutnick) and Gooch mutually agreed that the termination should not result in forfeiture of the bonus).[12]

- *Fifth*, Gooch and Heffron would forfeit their bonuses if JPI did not elect to proceed with the back-end merger contemplated by the Tender Offer Agreement when the lock-up of its shares expired or if JPI failed to comply with all of the actions requested by BGC to complete the back-end merger pursuant to Section 5.16 of the Tender Offer Agreement.

- *Sixth*, 30% of the DE Bonus Pool was going to employees of GFI other than Gooch and Heffron, which would make it harder to recover the full bonus pool at trial.[13]

Moreover, recoverable damages arguably were limited to the portion of GFI owned by the Class of public stockholders, which prior to the closing of the BGC tender offer owned about 48% of GFI's stock. Assuming BGC might have paid more for

[12] The bonus was also not forfeited if the participant died, but if that happened the bonus would be reduced for the number of days not worked during the measurement period.

[13] *See In re Cheniere Energy, Inc.*, Consol. C.A. No. 9710-VCL (Del. Ch. Mar. 16, 2015) (TRANSCRIPT) at 92-94 (indicating that awards to employees were likely to be allowed even if claims as to awards to directors and officers might succeed).

GFI if it was not required to pay the distributable earnings bonuses, only 48% of any additional per-share amount would go to the public stockholders.

Even if Plaintiffs established that the undiscounted DE Bonus Pool (including the 30% for other GFI employees) was worth $64.3 million (using the higher set of projections) and that the entire bonus pool was an improper value diversion from GFI's stockholders, the present value of the claim of the Class to 55%of the pool would be approximately $22 to $25 million.[14] Plaintiffs believed that there was little chance of achieving this best case valuation scenario because it was extremely unlikely that the Court would rule that the entire bonus pool was improper and that neither Gooch and Heffron nor the other GFI employees had any right to any bonuses, given their agreement to lengthy restrictive covenants.[15]

C. THE EMPLOYMENT CLAIMS WOULD HAVE BEEN DIFFICULT TO PROVE

While Plaintiffs believed that Gooch and Heffron breached their duties by refusing to approve the BGC deal unless they received employment and non-

[14] The Class held approximately 48% of all outstanding GFI shares, including shares owned by BGC. But, if BGC was going to pay more for GFI, it would only be buying the remaining shares it did not own. Excluding the shares held by BGC, the Class owned approximately 55% of the remaining GFI shares.

[15] It was particularly unlikely the Court would punish the other GFI employees by depriving them of their 30% of the bonus pool. Excluding that 30%, the potential upside was approximately $15.5 to $17.5 million. Of course that amount has to be substantially discounted further because of the several serious obstacles to proving liability.

compete agreements, it would have been challenging to obtain a significant monetary damages judgment for this claim following trial. Indeed, Plaintiffs might have recovered nothing.

First, Defendants would have argued that the agreements were negotiated with BGC and subject to business judgment review. In *Parnes v. Bally Entertainment Corp.*, 2001 WL 224774, at *12 (Del. Ch. Feb. 23, 2001), the Court ruled that the buyer's desire to retain the successful CEO of the seller with a consulting agreement to assist in the transition phase of the merger was within the purview of rational business judgment and the decision was made by the ***buyer's*** board, not the seller's. While Gooch and Heffron's misconduct in this case was qualitatively different than that of the CEO in *Parnes*, it was not certain that the Court would apply entire fairness scrutiny. The Court could have found at trial that ***BGC*** was the prime mover behind the DE Bonus Pool, because it wanted the lengthy restrictive covenants. Arguably, BGC could conclude that keeping Gooch and Heffron with GFI after the deal closed could result in other GFI employees remaining at GFI as well, which would be valuable to BGC.

Second, Plaintiffs would need to prove that the agreements were unreasonable through financial and employment compensation expert testimony. Gooch and Heffron were not required to work for free. They were not required to agree to lengthy and restrictive non-compete provisions for free. They had been

highly compensated at GFI. Moreover, to the extent their willingness to continue their employment at GFI and not to compete gave Gooch and Heffron a bargaining chip, they had some argument that they were not required to use their chips for the benefit of GFI's public stockholders. While Plaintiffs would have vigorously pursued any and all value they could allocate to GFI's stockholders, Defendants' counterarguments were not insubstantial.

Third, even if Plaintiffs proved the agreements were unreasonable, they still would have needed to prove that Gooch's and Heffron's conduct actually diverted money that BGC would have paid to GFI's public stockholders. Thus, Plaintiffs would have had to prove that BGC would have offered more than $6.10 per share (to be sure, they needed to get above $6.20 once the recovery of the ten cents was expected) if Gooch and Heffron had not negotiated agreements for themselves. As Howard Lutnick's affidavit in opposition to Plaintiffs' mootness fee request made clear, BGC was not looking to help Plaintiffs here.

As a result of all of these factors, Plaintiffs did not assign a high degree of probability of success to the Employment Claims. Combined with the limited potential damages (and the possibility that damages could not be proven), the risk-adjusted value of this claim was, in Plaintiffs' view, probably less than $4.65 million, and surely less than $4.65 million plus whatever portion of any fee award

the Court would compel Defendants to pay on account of the recovery for investors.

In short, a Settlement that provides the full $0.10 on the claim based on BGC's $6.20 bid ($6.1 million), plus an additional $4.65 million, for a total of $10.75 million, plus Defendants' obligation to separately pay whatever fee the Court may award, is an excellent result for GFI's public stockholders.

III. THE AMENDMENT TO THE CLASS DEFINITION ADDRESSES THE COURT'S CONCERNS WHILE PRESERVING THE SPIRIT OF THE PARTIES' INTENDED AGREEMENT

At the Settlement Hearing, the Court directed Co-Lead Counsel to: (i) provide legal and/or factual support for the proposed Class definition, which, pursuant to the agreement of the Parties, included all holders of GFI common stock from June 30, 2014 through and including the closing of the Back-End Mergers; and (ii) provide a better justification for, or modify, the scope of the Release. 11/24/15 hearing transcript at 81:3-11; 82:7-20.

In the Settlement, Plaintiffs were successful in accelerating the closing of the Back-End Mergers by obtaining BGC's binding commitment to consummate the Back-End Mergers by no later January 29, 2016. The Settlement guaranteed to current holders who are cashed out in the Back-End Mergers the right to receive, on a date certain, the same $6.10 per share received by stockholders who tendered to BGC in the tender offer. Additionally, the Settlement permitted those who

would get squeezed out in the Back-End Mergers to share in the $10.75 million Net Settlement Fund (providing them, like all other Class members, approximately $0.17 per share additional compensation).

Following the Settlement Hearing, Co-Lead Counsel conferred with Defendants' counsel and proposed a change to the proposed Class definition that would address the Court's concerns. Although all Parties believed the Class definition and Releases as originally crafted were proper, the Parties have agreed to amend the Stipulation to reflect a revised Class Period that ends on August 24, 2015, the date that the Parties executed the Memorandum of Understanding to settle the Action (the "MOU").[16] Until the execution of the MOU, Plaintiffs were actively conducting discovery, and based on their analysis of the evidence produced through that point in time, made an informed decision to resolve their claims against Defendants on the terms set forth in the MOU. Furthermore, at the moment of execution of the MOU, Plaintiffs had locked in the valuable consideration that they achieved in exchange for settlement of the Action, which included the waiver of the Dead Hand Tail, the acceleration of the Back-End

[16] The Amendment setting forth the revised Class Period is being filed with the Court today. As stated in paragraph 1 of the Amendment, the revised Class will be defined to include "all record holders and beneficial holders of common stock of GFI at any time during the period June 30, 2014 through and including August 24, 2015, and their transferees or successors, and who were alleged to have been damaged due to Defendants' conduct alleged in the Amended Complaint."

Mergers to a date certain, and the funding of the $10.75 million Net Settlement Fund.

Pursuant to the terms of the Settlement, the cash payment will be distributed on a *pro rata* basis to stockholders who: (i) tendered their GFI shares to BGC in the tender offer; or (ii) did not tender their GFI shares but will be cashed out in the Back-End Mergers. Under the amended agreement, Class Members who did not tender and continued to hold as of the new end date for the Class Period (August 24, 2015) will be eligible to share in the cash payment to the extent that they retain their shares through the closing of the Back-End Mergers. If, however, a non-tendering Class Member sells their shares prior to closing of the Back-End Mergers, their right to recover from the Settlement (and, also, to receive the merger consideration) will be transferred to the purchaser as the successor-in-interest to their claims, and the current holder who is ultimately cashed out in the Back-End Mergers will be entitled to payment. *See In re Prodigy Commc'ns Corp. S'holder Litig.*, 2002 WL 1767543, at *4 (Del. Ch. July 26, 2002) ("when [the former stockholder] sold his shares in the marketplace, the claim relating to the fairness of the then-proposed transaction passed to his purchaser, who enjoyed the benefits of the settlement"); *see also In re Activision Blizzard, Inc. S'holder Litig.*, 2015 WL 2438067, at **14-24 (Del. Ch. May 20, 2015).

In exchange for the Settlement consideration, Plaintiffs have agreed to provide the Defendants and their related persons with a customary Class release of claims that: (i) are based on the Class Member's ownership of GFI common stock during the Class Period; (ii) relate to the matters that were alleged or could have been alleged in the Pleadings filed in the Action; and (iii) relate to the GFI/CME merger or the BGC Tender Offer.[17] Also, because Plaintiffs were successful in

[17] The specific language of the Class release is stated in the definition of "Settled Plaintiff Claims," which, as amended by the Amendment, includes: "any and all claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, duties, suits, costs, expenses, matters and issues, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including any Unknown Claims, that have been or could have been, or in the future can or might be, asserted in any court, tribunal or proceeding (including but not limited to any claims arising under federal, state, foreign or common law, including the federal securities laws and any state disclosure law), by or on behalf of the Releasing Plaintiff Persons, whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity, against the Released Defendant Persons which have arisen, could have arisen, or hereinafter may arise, ***that are based on the Class Member's ownership of GFI common stock during the Class Period, and that relate in any manner to the acts, events, facts, matters, transactions, occurrences, statements, representations, misrepresentations or omissions or any other matters that were alleged or could have been alleged in the Pleadings and that relate, directly or indirectly, to any of the following: the GFI Merger Agreement entered into among GFI, CME, Commodore Corp. and Commodore LLC on July 30, 2014 and any amendment thereto; the JPI Merger Agreement entered into among CME, JPI, New JPI, Cheetah Corp., Cheetah LLC and other individual signatories on July 30, 2014 and any amendment thereto; the IDB Purchase agreement entered into among CME, JPI, New JPI, Commodore LLC, and GFIB on July 30, 2014 and any amendment thereto; the Support Agreement entered into between JPI, New JPI, each stockholder of GFIB and CME on July 30, 2014 and any amendment thereto; the BGCP Tender Offer Agreement***

obtaining BGC's commitment to consummate the Back-End Mergers and to provide compensation for stockholders who are cashed out in those transactions, the Release also covers any potential claims relating to the act of the closing of the Back-End Mergers. In order to avoid any potential ambiguity in the language of the Release, including the possibility that the Release could be read to bar claims based on conduct that has not yet occurred, the Parties have agreed to amend the definition of "Settled Plaintiff Claims" to emphasize that the Class claims released under the Settlement "do not include any claims based on actions, events, or conduct occurring after August 24, 2015, except solely to the extent that such

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entered into between BGCP, BGC Partners, L.P. and GFI on February 19, 2015 and any amendment thereto; the tender offer that was commenced by BGCP on October 22, 2014; the Employment and Bonus Arrangements approved by the GFI board in April and May 2015 and any amendments thereto; the transactions contemplated by any of the foregoing agreements; the Back-End Mergers; the adequacy and completeness of any disclosure related to any of the foregoing agreements or related transactions; and the actions, inactions, conduct, deliberations, discussion, decisions, votes, or any other conduct related to the foregoing agreements and related transactions; *provided, however*, that the Settled Plaintiff Claims shall not include (a) any of the federal securities law claims asserted in *Gross v. GFI Group, Inc.*, et al., Case No. 14-CV-9438, pending in the United States District Court for the Southern District of New York (the "*Gross* Action"), for alleged misstatements or omissions made by defendants; (b) any claims solely for statutory appraisal with respect to the Back-End Mergers pursuant to 8 *Del. C.* § 262 by GFI stockholders who properly perfect such claims for appraisal and have not otherwise waived their appraisal rights; or (c) any claims relating to the enforcement of the Settlement. ***For the avoidance of doubt, the Settled Plaintiff Claims do not include any claims based on actions, events, or conduct occurring after August 24, 2015, except solely to the extent that such claims relate to the act of the closing of the Back-End Mergers.***" Stipulation, ¶ 1(ggg) (emphasis added).

claims relate to the consummation of the Back-End Mergers."[18] In addition, the Parties have also agreed to amend the Stipulation such that the "Effective Date" of the Settlement will not occur until the closing of the Back-End Mergers.[19] Based on this change, if the Settlement is approved by the Court, the "give" of the Class release will not be delivered before the "get" of the Settlement consideration, thereby providing additional protection against the release of forward-looking conduct.

IV. CONCLUSION

Plaintiffs believed, after heated negotiations, that $10.75 million was the most Defendants would offer to settle the case. They were satisfied Defendants' offer accounted fully for the value of Plaintiffs' claims. In Plaintiffs' judgment, the net Settlement Fund of $10.75 million was more than a fair and reasonable exchange for the release of the Class' claims.

The further refinement of the class definition and release should address the Court's concerns concerning those issues. The Class period now ends at a date in the past (the date of the MOU) and the release is limited to a period of time investigated by Plaintiffs and to a single future event (consummation of the Back-End Mergers) for which Plaintiffs negotiated.

[18] *See* Amendment to Stipulation, ¶ 2.

[19] *See* Amendment to Stipulation, ¶ 3.

For the reasons set forth herein, in the previously-filed papers in support of the proposed Settlement, and during the November 24, 2015 hearing, the Court should approve the proposed Settlement, certify the Class, and award attorneys' fees concerning the Settlement Fund in the amount of $3.6 million.

DATED: December 7, 2015

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