KESSLER TOPAZ MELTZER
& CHECK, LLP
ELI R. GREENSTEIN (*Pro Hac Vice*)
JENNIFER L. JOOST (*Pro Hac Vice*)
PAUL A. BREUCOP (*Pro Hac Vice*)
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)
– and –
GREGORY M. CASTALDO (*Pro Hac Vice*)
280 King of Prussia Rd.
Radnor, PA 19087
Telephone: 610/667-7706
610/667-7056 (fax)

ROBBINS GELLER RUDMAN
& DOWD LLP
ARTHUR C. LEAHY (*Pro Hac Vice*)
ELLEN GUSIKOFF STEWART (*Pro Hac Vice*)
BRIAN O. O'MARA (Nevada Bar #8214)
RYAN A. LLORENS (*Pro Hac Vice*)
MATTHEW I. ALPERT (*Pro Hac Vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

NIX PATTERSON & ROACH, LLP
BRADLEY E. BECKWORTH (*Pro Hac Vice*)
JEFFREY J. ANGELOVICH (*Pro Hac Vice*)
SUSAN WHATLEY (*Pro Hac Vice*)
LISA P. BALDWIN (*Pro Hac Vice*)
205 Linda Drive
Daingerfield, TX 75638
Telephone: 903/645-7333
903/645-4415 (fax)

Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re MGM MIRAGE SECURITIES LITIGATION	No. 2:09-cv-01558-GMN-VCF
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	**JOINT DECLARATION OF BRIAN O. O'MARA, JEFFREY J. ANGELOVICH AND ELI R. GREENSTEIN IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS; AND AWARD OF ATTORNEYS' FEES AND EXPENSES AND LEAD PLAINTIFFS' EXPENSES** DATE: December 15, 2015 TIME: 9:00 a.m. CTRM: The Honorable Gloria M. Navarro

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We, Brian O. O'Mara, Jeffrey J. Angelovich and Eli R. Greenstein, declare as follows:

1. We are partners in the law firms of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Nix, Patterson & Roach, LLP ("NPR"), and Kessler Topaz Meltzer & Check, LLP ("Kessler Topaz"), respectively.[1] Robbins Geller, NPR and Kessler Topaz (together, "Lead Counsel") represent the Court-appointed Lead Plaintiffs and proposed Class Representatives—Arkansas Teacher Retirement System ("ATRS"), Philadelphia Board of Pensions and Retirement ("Philadelphia"), Luzerne County Retirement System ("Luzerne"), and Stichting Pensioenfonds Metaal en Techniek ("PMT") (together, "Lead Plaintiffs")—and the Class in the above-captioned securities class action (the "Action"). We respectfully submit this joint declaration in support of: (i) Lead Plaintiffs' request for final approval of the proposed Settlement of the Action on the terms and conditions set forth in the Stipulation; (ii) Lead Plaintiffs' request for approval of the proposed plan for allocating the net settlement proceeds to the Class; (iii) Lead Counsel's application for an award of attorneys' fees and expenses; and (iv) Lead Plaintiffs' application for reimbursement of costs and expenses incurred in connection with their representation of the Class. We have actively supervised and participated in the investigation, prosecution and resolution of the Action, are familiar with its proceedings and have personal knowledge of all material matters related to the Action. The statements in this joint declaration are made based upon our personal knowledge unless otherwise indicated.

2. The Settlement provides for $75,000,000 in cash (the "Settlement Amount") to be paid by or on behalf of Defendants. Pursuant to the Stipulation, the Settlement Amount was deposited into an escrow account for the benefit of the Class on or around October 9, 2015. The

[1] Unless otherwise noted, capitalized terms not defined herein shall have the meanings set forth in the Stipulation and Agreement of Settlement dated August 28, 2015 (the "Stipulation"). *See* Dkt. No. 351.

Stipulation sets forth the terms of the Settlement, which, if approved, will resolve this Action entirely on behalf of Lead Plaintiffs and the Class.

3. This joint declaration sets forth the nature of the claims asserted in the Action, the proceedings to date, Lead Counsel's comprehensive factual investigation, the efforts undertaken by Lead Plaintiffs and Lead Counsel in prosecuting and resolving the Action, the substantial risks of continued litigation and the negotiations resulting in the Settlement. Lastly, this joint declaration provides background facts supporting Lead Counsel's request for attorneys' fees and expenses, as well as the request for reimbursement pursuant to the Private Securities Litigation Reform Act of 1995 (the "PSLRA") for costs and expenses of Lead Plaintiffs.

4. The Court preliminarily approved this Settlement by its Order Preliminarily Approving Settlement and Providing for Notice on September 11, 2015 (Dkt. No. 352) (the "Notice Order").

I. PRELIMINARY STATEMENT

5. This Settlement is the result of intense and hard-fought litigation and negotiations. The Action has been zealously litigated for almost six years, from its commencement in August 2009 through settlement, which only occurred after a series of formal settlement discussions, including two mediation sessions before an experienced and well-respected mediator, and the parties' acceptance of the mediator's proposal to settle this matter for $75,000,000. At every stage of the Action, Defendants[2] aggressively litigated the matter and asserted numerous defenses to virtually every element of Lead Plaintiffs' claims. As set forth herein, the Settlement was achieved only after Lead Counsel, *inter alia*: (i) thoroughly reviewed and analyzed

[2] Defendants are MGM Resorts International (formerly known as MGM Mirage ("MGM" or the "Company")), James J. Murren, Daniel J. D'Arrigo, Robert C. Baldwin, and Deborah H. Lanni, as Co-Executor of the Estate of J. Terrence Lanni (collectively, "Defendants").

voluminous publicly available information regarding MGM including, but not limited to, its filings with the United States Securities and Exchange Commission ("SEC"), statements by former MGM employees and other third parties, government regulatory filings and reports, securities analysts' reports, MGM press releases and other public statements, and public media reports and legal documents about MGM; (ii) conducted or oversaw detailed investigative interviews of numerous witnesses, including former employees of MGM and knowledgeable third parties, including Perini Building Company ("Perini"), the general contractor for the CityCenter project;[3] (iii) successfully opposed Defendants' comprehensive motions to dismiss; (iv) propounded and pursued discovery served on Defendants and numerous third parties; (v) reviewed and analyzed a significant portion of the 9.4 million pages of documents produced by Defendants and third parties; (vi) fully briefed and argued Lead Plaintiffs' motion for class certification; (vii) defended depositions of all four Lead Plaintiffs and proposed Class Representatives; (viii) took and defended depositions of numerous experts and representatives of MGM regarding market efficiency and other class certification issues; (ix) responded to discovery propounded by Defendants, including document requests and interrogatories; (x) briefed multiple complex discovery motions; and (xi) prepared comprehensive mediation briefs.

6. The negotiations leading to the Settlement were also hard fought and required the parties' careful analysis of complex factual and legal issues as well as their consideration of the significant risks specific to the case. The Settlement was accomplished through extensive arm's-length negotiations facilitated by the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"), a former federal district judge in the United States District Court for the Western District of

[3] CityCenter is a multi-building development featuring a casino, hotel, residential units, retail, restaurants, and entertainment venues.

Oklahoma and an experienced and nationally recognized mediator. The parties' negotiations included two full days of formal in-person mediation sessions with Judge Phillips in May and June 2015, and follow up discussions, culminating in the acceptance of a formal mediator's proposal to resolve the Action for $75 million. Following their agreement-in-principle to settle the Action, the parties spent additional weeks negotiating the specific terms of the Settlement.

7. As evidenced by the efforts summarized above and described in greater detail herein, at the time they agreed to this Settlement, Lead Plaintiffs and Lead Counsel had a firm and full understanding of both the strengths and weaknesses of the claims asserted in the Action. Lead Plaintiffs and Lead Counsel believe that the proposed Settlement represents an excellent result for the Class, is fair and reasonable and warrants the Court's approval. Indeed, the Settlement is believed to be the largest securities class action recovery in the history of this District. And, it is not only the largest—it is larger than the next three largest securities class action recoveries ***combined***.[4] The recovery obtained for the Class is even more extraordinary in light of the fact that there was no financial restatement by the Company or other admission that MGM's financial statements were false, and no prior or contemporaneous governmental investigation. Also, the issue of whether Defendants' conduct was the cause of any loss to Class Members was hotly contested throughout this litigation, particularly in light of the fact that the decline in MGM's securities coincided with the largest financial crisis since the Great Depression and the related collapse of the real estate market and gaming sector.

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[4] The next three largest securities class action recoveries in this District are: (i) *Brown v. Kinross Gold U.S.A., Inc.*, CV-02-0605-PMP-(RJJ) (D. Nev. 2009) ($29,250,000), (ii) *In re PurchasePro.com, Inc. Sec. Litig.*, Master File No. CV-S-01-0483-JLQ (D. Nev. 2007) ($24,200,000), and (iii) *In re Alliance Gaming Corp. Sec. Litig.*, Master File No. CV-S-04-0821-BES-PAL (D. Nev. 2007) ($15,500,000), which collectively total $68,950,000—over $6 million ***less than*** the Settlement obtained here.

8. The substantial investigation, discovery, motion practice, and legal research outlined herein informed Lead Plaintiffs and Lead Counsel that, while they believed their case was meritorious, it also had weaknesses and risks, which had to be, and were, conscientiously evaluated in determining what course of action was in the best interest of the Class. As set forth in further detail below, despite the fact that Lead Plaintiffs' allegations and claims were supported by legal authority, expert opinion, and evidence resulting from extensive pre-trial investigation and discovery, the specific circumstances involved here presented many uncertainties with respect to Lead Plaintiffs' ability to successfully proceed through summary judgment, trial and appeal.

9. The gravamen of the First Amended Complaint for Violations of Federal Securities Laws (the "FAC") (Dkt. No. 152), filed on April 17, 2012, is that, in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated by the SEC, Defendants issued allegedly materially false and/or misleading statements or omissions of material fact regarding: (i) MGM's financial condition; (ii) MGM's access to credit financing; and (iii) the budget and schedule for CityCenter. *See* Dkt. No. 152. Lead Plaintiffs alleged that from August 2, 2007 through March 5, 2009, inclusive (the "Class Period"), Defendants falsely misled the market regarding MGM's ability to survive and thrive during the U.S. financial crisis and obtain adequate capital to finance CityCenter by repeatedly representing, *inter alia*, that MGM was "uniquely positioned" to withstand the credit crisis and had a "lot of financial flexibility." *See, e.g.*, *id.* at ¶¶7, 87. Lead Plaintiffs also alleged that Defendants made knowingly false and misleading statements or otherwise failed to disclose material information concerning CityCenter's progress, budgeting and cost, as Defendants knew the construction cost estimate for CityCenter was grossly understated and CityCenter was not on

budget or schedule. *See, e.g.*, *id.* at ¶¶5, 46-49, 132-139. The FAC further alleged that in the fall of 2007, MGM misled investors by announcing that a joint venture with Dubai World to fund the completion of CityCenter "evaporate[d]" any concerns or risk regarding MGM's ability to fund and complete CityCenter. *See id.* at ¶¶4, 73.

10. Lead Plaintiffs claimed Defendants' allegedly false and misleading statements and omissions caused the Company's common stock price to be artificially inflated, reaching a high of $99.75 per share during the Class Period. *Id.* at ¶173. The artificial inflation also caused MGM's debt securities to trade at artificially inflated levels during the Class Period. *Id.* When the relevant truth about the facts obscured or concealed by Defendants' prior misrepresentations and omissions became apparent, MGM's securities prices began to fall, causing significant economic losses to MGM's investors. *Id.* at ¶¶175, 189-90. On March 5, 2009, the Company's common stock declined to $1.89 per share, and the Company's debt securities traded at a fraction of their face value. *Id.*

11. In deciding to settle the litigation, Lead Plaintiffs and their counsel carefully considered the significant risks associated with proving the claims alleged in the FAC. For example, although confident they could establish falsity and scienter, proving those elements would have entailed significant risks for Lead Plaintiffs. This case involved a massive $9 billion construction project involving dozens of third parties, contractors, engineers and architects, and thus, it would have been difficult to establish that Defendants knew or were reckless in not knowing the construction budget and schedule for CityCenter were not on track. Moreover, loss causation and damages would have been difficult to prove, as the fraud alleged in this case occurred during an unprecedented economic crisis and credit crunch. Indeed, Defendants argued that approximately 80% of MGM's securities price declines during the Class Period occurred

before any alleged corrective disclosure alleged in the FAC. Lead Plaintiffs and Lead Counsel have taken into account the complexity of this Action and the attendant uncertainty and risks related to the completion of fact and expert discovery, the pending motion for class certification, Defendants' anticipated summary judgment motion(s), and a jury trial. Risks posed by and the difficulties and delays relating to post-trial motions, and potential appeals related to said motions were also considered.

12. On balance, considering all the circumstances and risks each side faced if the case continued to trial, both Lead Plaintiffs (for themselves and the Class) and Defendants concluded that settlement on the terms agreed upon was in their respective best interests.

13. At this time, Lead Plaintiffs also seek approval of the proposed plan for allocating the net settlement proceeds to eligible members of the Class (the "Plan of Allocation" or "Plan") as fair and reasonable. In developing the Plan, Lead Counsel consulted with Lead Plaintiffs' damages expert in an effort to appropriately allocate the proceeds among eligible members of the Class.

14. In connection with its requests for final approval of the Settlement and Plan of Allocation, Lead Counsel are also applying to the Court for an award of attorneys' fees, costs and expenses. Lead Counsel's fee application for 25% of the Settlement Fund is fair both to the Class and Lead Counsel, and warrants the Court's approval. Moreover, the 25% fee request is made in accordance with the percentage negotiated *ex ante* under Lead Counsel's retainer agreements with Lead Plaintiffs. This "benchmark" fee request is within the range of fee percentages frequently awarded in this and other Circuits in this type of action and, under the particular facts of this case, is fully justified in light of the substantial benefits conferred on the

Class, the risks undertaken, the quality of representation, the nature and extent of legal services performed and the fact that the $75,000,000 recovery was not likely at the outset of the case.

15. Lead Counsel also seek payment of $1,937,528.73 in expenses, charges and costs reasonably and necessarily incurred to prosecute the Action over the last five-plus years. These expenses include: (i) the fees and expenses of consultants and experts whose services Lead Plaintiffs and Lead Counsel required in the successful prosecution and resolution of this case; (ii) the fees and expenses of outside investigators who located and interviewed dozens of former MGM employees and third parties and thus developed information that was essential in the prosecution and resolution of the case; (iii) the costs associated with conducting or defending fact and expert witness depositions, which included court reporter and videographer fees; (iv) the costs associated with photocopying, imaging, shipping and managing a comprehensive database of more than 9.4 million pages of documents; (v) mediation fees; (vi) Court filing fees; (vii) the cost of online legal, factual and economic research; and (viii) travel expenses. These expenses were reasonable and necessary to obtain the successful result for the Class.

16. Also, as permitted under the PSLRA, Lead Plaintiffs ATRS, Philadelphia, Luzerne, and PMT are seeking reimbursement in the aggregate amount of $32,628.00, for their costs and expenses incurred in connection with representing the Class. The time, effort and expense Lead Plaintiffs invested greatly contributed to the successful resolution of the Action.

17. The Settlement is precisely the kind of result envisioned by Congress in enacting the PSLRA. Lead Plaintiffs are four sophisticated institutional investors who believe the Settlement obtained is an exceptional result for the Class.[5] Furthermore, the Settlement, Plan of

[5] *See* Declaration of Laura Gilson on Behalf of Lead Plaintiff, Arkansas Teacher Retirement System; Declaration of Jo Rosenberger Altman (Philadelphia Board of Pensions and

Allocation and request for attorneys' fees and expenses have been independently approved by each Lead Plaintiff. *See id.* In addition, the Settlement, Plan of Allocation and Lead Counsel's request for attorneys' fees and expenses also have the support of Judge Phillips, who presided over the mediation in this matter. As described in his declaration, Judge Phillips believes the Settlement is fair, reasonable, the product of arm's-length negotiations and in the best interests of all involved. *See* Declaration of Layn R. Phillips in Support of Settlement (Dkt. No. 356) (the "Phillips Declaration"), at ¶¶12-14. These are additional factors that should be taken into consideration in the Court's evaluation of all aspects of the Settlement, Plan of Allocation and the requests for attorneys' fees and expenses.

18. The Class' reaction thus far to the Settlement also has been positive. As of the date of this joint declaration, no objections to any aspect of the Settlement have been received and not a single Class Member has requested exclusion from the Class.[6]

19. On behalf of Lead Counsel, for the reasons discussed herein and in the accompanying memoranda, we respectfully submit that the Settlement and the Plan of Allocation are each "fair, reasonable, and adequate" in all respects, and that the Court should therefore approve them pursuant to Rule 23(e) of the Federal Rules of Civil Procedure. Likewise, we respectfully submit that the request for attorneys' fees, costs and expenses is fair and reasonable and should be approved.

Retirement); Declaration of Rickey Hummer (Luzerne County Retirement System); and Declaration of Inge Van Den Doel (Stichting Pensioenfonds Metaal en Techniek), submitted herewith.

[6] *See* Declaration of Carole K. Sylvester Regarding (A) Mailing of the Notice of Pendency of Class Action and Proposed Settlement, Motion for Attorneys' Fees and Settlement Fairness Hearing and the Proof of Claim and Release Form, (B) Publication of the Summary Notice, (C) Posting on Settlement Website, and (D) Requests for Exclusion Received to Date (Dkt. No. 355) (the "Gilardi Declaration"), ¶15 (reporting on exclusion requests received as of October 22, 2015).

II. THE LITIGATION

20. The following is a summary of the principal events that occurred during the course of the Action and the legal services provided by Lead Counsel. For a summary of Lead Plaintiffs' allegations, *see* the FAC and this Court's September 26, 2013 Order (Dkt. Nos. 152, 207).

A. The Commencement of the Action

21. Beginning on or about August 19, 2009, two purported class action complaints were filed against MGM and the individual defendants in this Court, alleging violations of the federal securities laws:

CASE NAME	CASE NUMBER	DATE FILED
Lowinger v. MGM Mirage, et al.	09-CV-1558-RCJ-LRL	August 19, 2009
Hovhannisyan v. MGM Mirage, et al.	09-CV-2011-LRH-RJJ	October 15, 2009

On November 3, 2009, the Court issued an order consolidating the above actions under the caption *In re MGM Securities Litigation*, Case No. 09-cv-1558-RCJ-LRL. Dkt. No. 46.

22. On October 19, 2009, a total of five motions for the appointment of lead plaintiff and approval of lead counsel ("Lead Plaintiff Motions") were filed in this Court: (i) ATRS, Philadelphia and Luzerne collectively moved, as the "Public Pension Funds," to be appointed lead plaintiffs and for approval of their selection of NPR and Kessler Topaz[7] as lead counsel (Dkt. No. 32); (ii) PMT moved to be appointed lead plaintiff and for approval of its selection of Robbins Geller[8] as lead counsel (Dkt. No. 14);[9] (iii) DeKalb County Pension Fund moved to be

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[7] Kessler Topaz was formerly known as Barroway Topaz Kessler Meltzer & Check, LLP. *See* Dkt. No. 136.

[8] Until March 2010, Robbins Geller was known as Coughlin Stoia Geller Rudman & Robbins LLP.

appointed lead plaintiff and for approval of its selection of Chitwood Harley Harnes LLP as lead counsel (Dkt. Nos. 35-36); (iv) Robert W. Kegley moved to be appointed lead plaintiff and for approval of his selection of Brower Piven as lead counsel (Dkt. No. 37);[10] and (v) James Vidrine moved to be appointed lead plaintiff and for approval of his selection of the Brualdi Law Firm and Weiss & Lurie as co-lead counsel (Dkt. Nos. 26-27).

23. After extensive briefing in connection with the Lead Plaintiff Motions, and by Order dated October 25, 2010, the Court: (i) appointed the Public Pension Funds (*i.e.*, ATRS, Philadelphia, and Luzerne) and PMT as Lead Plaintiffs; and (ii) appointed the law firms of NPR, Kessler Topaz and Robins Geller as Lead Counsel. Dkt. No. 85

24. After their appointment, Lead Plaintiffs and Lead Counsel continued their extensive investigation into the alleged fraud at issue in this case. Lead Counsel used their own resources, as well as those of outside investigators, to gather and analyze a tremendous amount of information from numerous sources to formulate and bolster the allegations in the original complaint and develop the facts and allegations for the comprehensive consolidated complaint. The investigation included interviewing dozens of former MGM employees and third parties. This effort not only required Lead Counsel and the investigators to review and analyze information obtained from each witness, but also to cross-reference that information with statements from other witnesses, governmental and regulatory filings and reports, securities analyst reports and advisories, press releases, expert analysis and other available data to verify the accuracy of that information and fully understand its significance to the claims at issue.

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[9] Four of the Lead Plaintiff Motions were filed in Case No. 2:09-cv-01558-RCJ-LRL, *Lowinger v. MGM Mirage, et al.* PMT's Lead Plaintiff Motion was filed in Case No. 2:09-cv-02011-LRH-RJJ, *Hovhannisyan v. MGM Mirage, et al.*

[10] Mr. Kegley withdrew his motion on November 19, 2009. Dkt. No. 57.

25. On January 14, 2011, after extensive investigation, consultations with experts, legal and factual research, and meticulous drafting and editing, Lead Plaintiffs filed their Consolidated Class Action Complaint for Violations of Federal Securities Laws (the "Consolidated Complaint"), containing 100 pages of detailed allegations. The Consolidated Complaint detailed Defendants' alleged violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Dkt. No. 94.

B. Defendants' Motions to Dismiss the Consolidated Complaint

26. MGM filed a Motion to Dismiss and Memorandum in Support on March 15, 2011. Dkt. Nos. 95-96 ("Motion to Dismiss"). MGM's complex motion consisted of 30 pages of briefing, citing 42 cases and raising numerous legal issues and sub-issues. In sum, MGM argued that the Consolidated Complaint: (i) failed to comply with the heightened pleading standards of the PSLRA; (ii) was pleaded in an incomprehensible and impermissible puzzle-style; (iii) failed to adequately allege any misleading statements or omissions; (iv) failed to adequately allege any "strong inference" of scienter; and (v) failed to adequately plead loss causation. MGM also claimed that the alleged false and misleading statements were nothing more than "forward-looking statements" that were accompanied by meaningful cautionary language and were therefore not actionable.

27. On March 15, 2011, the Individual Defendants joined in MGM's Motion to Dismiss. Dkt. Nos. 98, 106 (the "Joinder"). In their Joinder, the Individual Defendants argued that in addition to the reasons set forth in MGM's Motion to Dismiss, Lead Plaintiffs failed to state a control person claim under §20(a) of the Exchange Act.

28. On April 29, 2011, Lead Plaintiffs filed an omnibus opposition to MGM and the Individual Defendants' Motions to Dismiss. Dkt. No. 123. In their 50-page opposition, Lead

Plaintiffs argued that each of Defendants' reasons to dismiss the Consolidated Complaint was meritless. *See generally id.* Lead Plaintiffs argued, *inter alia*: (i) the Consolidated Complaint alleged numerous particularized omissions and false and misleading statements; (ii) the statements at issue were not protected forward-looking statements and were not accompanied by adequate cautionary language; (iii) Lead Plaintiffs alleged detailed facts that demonstrated a "strong inference" of scienter; (iv) Lead Plaintiffs adequately pled loss causation; and (v) Lead Plaintiffs properly alleged a §20(a) control person claim. *See generally id.* Lead Plaintiffs cited nearly 100 cases and made forceful arguments in opposition to Defendants' Motions to Dismiss, with Lead Counsel spending significant time and resources performing the legal research necessary to draft an effective opposition.

29. On May 31, 2011, Defendants filed a joint reply brief in support of their Motions to Dismiss. Dkt. No. 133. Thereafter, on March 27, 2012, the Court granted Defendants' Motions to Dismiss based solely on its belief that the Consolidated Complaint was a "puzzle-style pleading," and as such, failed to set forth a "short and plain" statement in violation of Rule 8(a). Dkt. No. 151 at 4-5. The Court identified no other deficiencies in the Consolidated Complaint and granted Lead Plaintiffs leave to amend. *Id.* at 5-6.

30. On April 17, 2012, Lead Plaintiffs filed an amended complaint (the FAC) against MGM and the Individual Defendants and addressed the Court's concern regarding "puzzle-style pleading." Dkt. No. 152.

C. Defendants' Motion to Dismiss the FAC

31. On May 30, 2012, Defendants moved to dismiss the FAC, reasserting each of the arguments made in their prior motions to dismiss the Consolidated Complaint except for the "puzzle pleading" argument, which they abandoned. Dkt. Nos. 170-71 ("Motion to Dismiss the

FAC"). In sum, Defendants argued that the FAC: (i) failed to satisfy the heightened pleading standards of Rule 9(b) and the PSLRA; (ii) inadequately alleged any materially misleading statements or omissions; (iii) only identified statements that were "forward-looking" and accompanied by adequate cautionary language and were therefore not actionable; (iv) failed to adequately plead scienter; (v) failed to allege loss causation; and (vi) failed to properly plead "control person" liability. Dkt. No. 171. In support of their Motion to Dismiss the FAC, Defendants also filed a request that the Court take judicial notice of several exhibits. Dkt. No. 172.

32. On July 6, 2012, Lead Plaintiffs filed their opposition to Defendants' Motion to Dismiss the FAC, arguing that each reason cited by Defendants to dismiss the FAC failed. Dkt. No. 184. Specifically, Lead Plaintiffs argued, *inter alia*: (i) the FAC adequately alleged that Defendants made false and misleading statements and omissions regarding CityCenter's construction budget, completion date, construction defects at the Harmon, and MGM's ability to secure additional financing for CityCenter; (ii) these statements were material misrepresentations and/or omissions of contemporaneous and/or historical facts regarding MGM's then-existing financial conditions and were therefore actionable; (iii) the FAC alleged a litany of facts giving rise to a cogent and compelling inference of scienter; (iv) Lead Plaintiffs had adequately pled loss causation; and (v) Lead Plaintiffs had properly alleged "control person" liability. *See generally id.* Lead Counsel again spent significant time and resources performing the legal research and analysis necessary to draft an effective opposition and to demonstrate that the FAC satisfied the strict pleading burden imposed by the PSLRA.

33. In conjunction with their opposition, Lead Plaintiffs filed an opposition to Defendants' request that the Court take judicial notice of certain exhibits and a motion to strike

those exhibits. Dkt. Nos. 185-86. Lead Plaintiffs argued that the request impermissibly introduced into the record disputed facts not referenced in the FAC. *Id.* On July 27, 2012, Defendants filed replies in support of their Motion to Dismiss the FAC and their request for judicial notice. Dkt. Nos. 194-95.

34. Around the same time the parties were briefing Defendants' Motion to Dismiss the FAC, Lead Plaintiffs discovered that a significant number of documents containing relevant evidence to the Action may have been destroyed by a third party. Upon this discovery, Lead Plaintiffs moved the Court to partially lift the discovery stay so that they could investigate the document destruction and prevent further destruction. Dkt. No. 158. The issue was fully briefed and Magistrate Judge Cam Ferenbach held a hearing to address the motion on June 20, 2012. Dkt. No. 177. Although Lead Counsel prepared and argued vigorously that the Class had a right to take discovery surrounding the document preservation issue, Judge Ferenbach denied Lead Plaintiffs' motion to lift the discovery stay. Dkt. No. 178.

35. On September 26, 2013, the Court denied Defendants' Motion to Dismiss the FAC. Dkt. No. 207. In addition, the Court denied Lead Plaintiffs' motion to strike on procedural grounds, holding that the presentation of Defendants' evidence was not proper at the motion to dismiss stage. *Id.* at 7. Although formal discovery was stayed pending the Court's ruling on Defendants' Motion to Dismiss the FAC pursuant to the PSLRA, Lead Plaintiffs continued their factual investigation of the allegations in preparation for discovery. Immediately following the Court's September 26, 2013 Order, the parties began to meet and confer regarding a pre-trial schedule and fact discovery. The parties participated in the meeting required by FED. R. CIV. P. 26(f), on December 6, 2013 by telephone, and continued to confer telephonically on December 9, 2013, December 13, 2013, December 20, 2013, January 6, 2014, and January 8,

2014. The parties submitted a joint proposed discovery plan and scheduling order on January 8, 2014, which the Court granted on January 9, 2014. Dkt. No. 228.

D. Investigators

36. Since the passage of the PSLRA in 1995, the use of investigators to gather detailed, fact-specific information from knowledgeable witnesses is often necessary in drafting the type of highly particularized complaints mandated by the statutory pleading standards. Here, beginning shortly after the filing of the original complaint, Lead Counsel used in-house and external investigators to perform investigative services relating to the claims asserted in the Action. In December 2009, Lead Counsel retained an experienced private investigation firm, L.R. Hodges & Associates, Ltd. ("Investigators"), who assisted Lead Counsel with their investigation throughout the duration of the Action.

37. Both prior and subsequent to the filing of the Consolidated Complaint, these Investigators worked with Lead Counsel to identify and gather contact information for over 85 MGM employees and third parties with potentially relevant information regarding the allegations. These individuals were identified after extensive internet and database searches, as well as through meetings and discussions with other former MGM employees. In total, the Investigators contacted more than 85 former MGM employees and other third parties; 39 of whom agreed to give in-person or telephonic interviews (sometimes on more than one occasion). The Investigators conducted thorough interviews with these individuals, with the interviews ranging in duration from 15-minute phone calls to multiple full-day meetings. Following the interviews, the Investigators drafted detailed memoranda for Lead Counsel's review.

38. The Investigators also provided substantial support for Lead Plaintiffs' reply in support of class certification. Defendants' opposition to class certification made a number of

allegations concerning certain factual assertions in the FAC. In response to these allegations, the Investigators worked many hours re-affirming the factual assertions in the FAC, participating in meetings and conference calls with Lead Counsel, and re-contacting witnesses to confirm information previously obtained.

39. The Investigators billed a total of $169,833.05 for the 762.7 hours of work conducted over a nearly five-year period by eight different investigators.

40. In sum, the efforts of these Investigators were integral in developing the allegations in this Action, and ultimately, in achieving the Settlement on behalf of the Class.

E. Fact Discovery

41. The parties began to meet and confer regarding a pre-trial schedule and fact discovery immediately following the Court's entry of the September 26, 2013 Order denying Defendants' Motion to Dismiss the FAC. Throughout the class certification briefing, and until the parties' acceptance of the mediator's proposal to settle the litigation on July 10, 2015, Lead Plaintiffs engaged in rigorous fact discovery, including the preparation and exchange of countless discovery letters and meet and confer sessions.

42. As discussed above, the parties participated in several meet and confers by telephone pursuant to FED. R. CIV. P. 26(f). Following these conferences, the parties submitted a joint proposed discovery plan and scheduling order on January 8, 2014, which Judge Ferenbach granted on January 9, 2014. Dkt. Nos. 226, 228.

43. Following entry of the discovery plan and scheduling order, the parties promptly began negotiating a protective order regarding the production and use of confidential discovery (the "Protective Order"). The terms of the Protective Order were heavily contested by the parties, requiring them to engage in numerous conferences over the course of several months.

After several conferences, the parties were unable to reach an agreement, and at the direction of the Court each party was to file a brief in support of its version of the Protective Order. Lead Counsel immediately began preparing a brief for the Court, while at the same time continuing to negotiate a resolution with Defendants. On March 31, 2014, after a six hour face-to-face meet and confer, the parties were able to reach a partial agreement on the terms of the Protective Order. Ultimately, the parties were able to reach agreement on all of their respective areas of concern and, on April 9, 2014, filed a Joint Stipulation and proposed Protective Order. Dkt. No. 247. On April 15, 2014, Judge Ferenbach issued the Protective Order. Dkt No. 251.

1. Document Discovery to Defendants

44. On January 24, 2014, Lead Plaintiffs propounded their First Request for Production of Documents to Defendants, consisting of 60 discrete requests. In addition, Lead Plaintiffs directed interrogatories to Defendants on April 15, 2014, and December 27, 2014. All told, Lead Plaintiffs served 22 discrete interrogatories on Defendants. On January 28, 2014, Lead Plaintiffs served Defendants with their First Set of Requests for Admission, consisting of 83 requests.

45. Lead Counsel engaged in numerous meet and confer sessions with Defendants' counsel to discuss Defendants' objections to Lead Plaintiffs' document requests, requests for admission and interrogatories, to negotiate the scope of the discovery and ESI protocols, and to arrange for the production of documents. *See also* Section F below. Lead Counsel and Defendants' counsel exchanged dozens of emails and letters memorializing their negotiations, including disputes regarding "search terms" and custodians to be utilized in collecting documents and ESI. Given the scope of discovery sought and the many disputes about, *inter alia*, relevancy, burden and privilege, these efforts were extensive and required the expenditure of substantial

time by Lead Counsel. Lead Counsel and Defendants' counsel also engaged in multiple meet and confer sessions regarding the clawback of 1.5 million documents that Defendants contended were produced inadvertently. As a courtesy to Defendants and to ensure compliance with the Protective Order, Lead Counsel exchanged numerous letters and emails with Defendants' counsel regarding the purportedly privileged documents that had been produced. This also necessitated Lead Counsel's review of Defendants' massive privilege log, which included hundreds of pages and information on 22,550 separate document entries.

46. Lead Plaintiffs' discovery requests and the numerous subsequent written and telephonic correspondence regarding the sufficiency of Defendants' discovery responses culminated in the production of over 7.4 million pages of documents from Defendants. In order to address issues unique to this litigation, interface with the discovery vendor in the collateral CityCenter construction litigation in Nevada state court (the "Construction Litigation"), and efficiently and effectively review the documents produced by Defendants as well as the documents produced by third parties, as discussed below, Lead Counsel engaged a team of professional document management and ESI experts. Together, Lead Counsel and these experts implemented a system and protocol to load the documents into an electronic storage database and then developed a comprehensive system for reviewing and electronically coding the documents in an effective and efficient manner. Thereafter, Lead Counsel deployed a team of attorneys who reviewed, analyzed and organized the documents, identified relevant witnesses and established procedures to identify additional documents and information that had not been produced. The document review process was difficult, cumbersome and time consuming. All told, Lead Counsel and their consultants spent thousands of hours reviewing and analyzing documents in this Action. It must be stressed here that many of the documents produced by Defendants and

the third parties were highly specialized financial and credit risk analyses and complex technical documents regarding construction regulations, and planning and budgeting related to the CityCenter project. The review also included documents produced by Defendants and third parties in the Construction Litigation. Lead Counsel's team of document review attorneys spent a significant amount of time analyzing the voluminous Construction Litigation documents, including thousands of pages of deposition transcripts, preparing summaries and identifying relevant information.

47. The process of identifying and analyzing key documents was difficult and time consuming. However, this process played an integral part in the successful resolution of this case. Indeed, it was through this process that key evidence was revealed, understood and utilized to demonstrate to Defendants that Lead Plaintiffs would be able to present a strong liability and damages case to a jury. Specifically, the evidence Lead Plaintiffs uncovered was crucial to supporting their allegations in the FAC that Defendants knew, or were reckless in not knowing, that the CityCenter budget was materially understated and that throughout the Class Period, CityCenter was not on budget or on schedule.

2. Depositions

48. In preparation for trial, Lead Plaintiffs also took the depositions of three current and former MGM employees, including three Rule 30(b)(6) witnesses:

DEPONENT	DATE	LOCATION
Rule 30(b)(6) -- Discovery Issues	10/16/14	San Francisco, CA
Rule 30(b)(6) -- Corporate Organization/Negotiating, Amending and Monitoring Compliance with the CityCenter Project Contracts	01/29/15	Las Vegas, NV
Rule 30(b)(6) -- Corporate Organization/Reporting lines, structure and/or function of MGM's subsidiaries, divisions, segments, affiliates, agents or	10/22/14	Las Vegas, NV

groups		

49. In addition, at the time the Settlement was reached, Lead Counsel were in the process of reviewing documents and working with consultants to narrow their list of additional deponents, including former and current employees of MGM and third parties. To determine the most relevant deponents and to prepare for depositions, Lead Counsel analyzed tens of thousands of pages of documents and witness files from Defendants' and third-party productions. In addition, Lead Counsel reviewed the testimony from each of the depositions that had already been taken in the Construction Litigation to help prepare for future depositions and additional document requests. Lead Counsel also prepared a list of over thirty additional individuals to be deposed.

3. Third-Party Discovery

50. Much of the relevant documentary information in this litigation was in the possession, custody or control of third parties, and Lead Plaintiffs aggressively sought production of these documents. Specifically, starting in March of 2014, Lead Plaintiffs began issuing document subpoenas to dozens of relevant third parties, including Perini (the general contractor for the CityCenter project), Tishman (MGM's general contractor consultant), several other contractors involved with the CityCenter project, analysts and credit ratings agencies who covered MGM during the Class Period, and numerous other non-parties. The document productions from third parties exceeded 2 million pages.[11]

[11] The number of actual pages produced by third parties is likely significantly higher. Many of the over two million pages of documents that were produced were produced in an electronic format that does not allow Lead Plaintiffs to tabulate the number of pages in a particular file. Accordingly, Lead Plaintiffs have conservatively estimated the number of pages produced by third parties.

51. The third parties to whom Lead Counsel directed document subpoenas are set forth below:

Person/Entity	Date	Relationship
Adamson Associates, Inc.	3/13/14	Architect Perini Litigation, CityCenter Project
Alsup, Christina	2/13/15	Former Perini Employee
Banc of America Merrill Lynch	5/8/14	Financing CityCenter Project
Bank of America, N.A.	5/8/15	Financing CityCenter Project
Barclays Bank, PLC	5/8/15	Financing CityCenter Project
Barber, Aaron	2/23/15	Former Perini Employee
Bulleri, Ernie	2/13/15	Former MGM Employee
Citigroup, Inc.	5/2/14	Analyst
(The) Converse Professional Group	3/13/14	Engineer CityCenter Project
Credit Suisse Securities (USA), LLC	5/8/14	Financing CityCenter Project
Deloitte & Touche, LLP	5/8/14	Auditor, financial advisor CityCenter Project
Deutsche Bank Securities, Inc.	5/2/14	Analyst
Donaldson, Molly	2/13/15	Former Tisman Employee
DoubleLine Group, LP		Investment Management Firm
Ernst & Young, LLP	5/8/14	Auditor, financial advisor CityCenter Project
Financial Industry Regulatory Authority, Inc. (FINRA)	3/13/14	MGM notes
Gouveia, Kevin	2/13/15	Former MGM Employee
Halcrow, Inc. (f/k/a Halcrow Yolles, Ltd.)	3/14/15; 4/8/14	Engineering, Design, Construction CityCenter Project
Hamilton, Art	2/23/15	Former MGM Employee

Infinity World Development Corp.	5/15/14	Owner and Operator of CityCenter Dubai World Litigation CityCenter Project
Janney Montgomery Scott, LLC	5/2/14	Analyst
Jefferies, LLC	5/2/14	Analyst
JP Morgan Securities, LLC	5/2/14	Analyst
KeyBanc Capital Markets, Inc.	5/2/14	Analyst
M. Arthur Gensler, Jr. & Associates, Inc.	3/13/14	Design and Architect Perini Litigation, CityCenter Project
Macquarie Capital (USA), Inc.	5/2/14	Analyst
Mundt, Michael	2/13/15	Former MGM Employee
Morgan Stanley Bank, N.A.	5/8/15	Financing CityCenter Project
Morgan Stanley Senior Funding, Inc.	5/8/15	Financing CityCenter Project
Niemiec, James	2/13/15	Former MGM Employee
Oppenheimer & Co., Inc.	5/2/15	Analyst
PricewaterhouseCoopers, LLP	5/7/15	CityCenter construction schedule
Seemungal, Fabian	2/23/15	Former MGM Employee
Shorter, Kathleen	2/23/15	Former MGM Employee
Sterne, Agee & Leach, Inc.	5/2/14	Analyst
Tishman Construction Corp.	3/13/14	Construction Perini Litigation, CityCenter Project
Tutor Perini Building Corporation	3/5/14	Construction Perini Litigation, CityCenter Project

52. As with Lead Counsel's efforts to obtain discovery from Defendants, Lead Counsel expended substantial effort to obtain discovery from the numerous third parties set forth above. Lead Plaintiffs exchanged numerous letters and engaged in ongoing meet and confer sessions with many of these third parties to discuss objections to subpoenas, negotiate the scope of their responses and actually obtain the requested documents.

F. Discovery Disputes

53. As would be expected in a complex action such as this one, a number of discovery disputes arose during the course of the Action. In their efforts to resolve these disputes without Court intervention, Lead Counsel spent many hours engaging in meet-and-confer conferences with counsel for Defendants and third parties and preparing correspondences memorializing those conversations which also entailed extensive legal research, citations to legal authority and analysis distinguishing Defendants' authorities.

54. Despite the parties' best efforts to resolve discovery disputes on their own, agreement on every dispute was not possible, and the parties were forced to file multiple discovery motions (which were fully briefed and heard by the Court) and prepare additional motions that were resolved prior to filing. The discovery disputes that were resolved without Court intervention included: (i) production of the identities of the confidential witnesses listed in the FAC; (ii) coordination of the clawback of privileged documents that were inadvertently produced by Defendants; and (iii) negotiation of a custodian list and search terms for Defendants' document production.

1. Discovery Disputes with Defendants

55. On April 9, 2014, Defendants served Lead Plaintiffs with Defendants' First Set of Interrogatories and First Set of Requests for Production. Defendants served Lead Plaintiffs with Defendants' Second Set of Interrogatories on May 20, 2014. Lead Plaintiffs objected to each of these discovery requests on the basis that they were, *inter alia*, overly broad, unduly burdensome and sought irrelevant information. Notwithstanding these objections, Lead Plaintiffs provided information in response to Defendants' interrogatories and requests for production. Defendants maintained that the information Lead Plaintiffs produced was insufficient. Over the following

five months, Lead Plaintiffs and Defendants met and conferred at least thirteen times regarding the scope of Defendants' requests and Lead Plaintiffs' responses. Despite these efforts, the parties were unable to reach an agreement.

56. As a result, on September 19, 2014, Defendants moved to compel Lead Plaintiffs to provide responses to several interrogatories, requests for admission and requests for the production of documents. Dkt. No. 267. In their opposition, Lead Plaintiffs argued that the vast majority of Defendants' interrogatories were premature "contention interrogatories," that several of the discovery requests were impermissibly overbroad and sought privileged information, and that Lead Plaintiffs already had provided all non-privileged information that was responsive to Defendants' discovery requests. Dkt. No. 270. On November 25, 2014, Magistrate Ferenbach granted Defendants' motion to compel. Dkt. No. 289. Subsequent to Judge Ferenbach's Order, Lead Plaintiffs served several rounds of supplemental interrogatory responses on Defendants.

2. Discovery Disputes with Third Parties

57. In addition to disputes with Defendants, Lead Counsel devoted substantial time negotiating responses to subpoenas served on many of the third parties. With respect to the majority of the third parties, Lead Plaintiffs were able to successfully resolve issues concerning the scope of the document requests, if any, without Court intervention. However, as discussed below, Court intervention was necessary with respect to several key third-party subpoenas.

i. Discovery Disputes Regarding Production of Documents From the Construction Litigation

58. In March 2014, Lead Counsel served subpoenas on six third-party entities requesting, *inter alia*, all of the materials produced by those parties in the separate CityCenter Construction Litigation in Nevada state court. The Construction Litigation had been ongoing since 2010 and involved a dispute between MGM affiliates and Perini over the scope, payment

and non-conforming work of the CityCenter project. Massive amounts of documents had been collected, searched, reviewed and produced for this collateral litigation. Accordingly, with an eye towards efficiency, Lead Plaintiffs sought production of certain documents that had already been produced in the collateral Construction Litigation. To this end, Lead Plaintiffs served subpoenas on Perini, Adamson Associates, The Converse Professional Group, Halcrow, Inc., M. Arthur Gensler, Jr. & Associates, Inc., and Tishman. Each of the non-parties objected to Lead Plaintiffs' subpoenas. Defendants also requested that Lead Plaintiffs withdraw their subpoenas and notified Lead Plaintiffs that if they did not, Defendants would move for a protective order.

59. Over the next several months, Lead Plaintiffs spent substantial time and effort negotiating with Defendants and these third parties in an attempt to reach an agreement regarding the scope of the requested discovery. In particular, Lead Counsel spent hundreds of hours, *inter alia*: (i) making repeated requests to meet and confer with Defendants and the third parties; (ii) scheduling and participating in multiple meet and confer sessions with Defendants and the third parties; (iii) obtaining permission from four third parties to obtain their previously produced documents in the Construction Litigation; and (iv) combing the publicly available documents in the Construction Litigation to determine the types and categories of documents previously produced by those third parties.

ii. Discovery Dispute with Perini

60. Despite the diligent efforts of Lead Counsel to meet and confer with the third parties regarding their objections, one third party, Perini, wholly failed to respond to any of the document requests contained in Lead Plaintiffs' subpoena. Accordingly, after numerous but unsuccessful efforts to address Perini's objections, on September 26, 2014, Lead Plaintiffs were forced to move to compel Perini to provide complete responses to Lead Plaintiffs' subpoena.

Dkt. No. 268. Lead Plaintiffs argued in their motion that Perini's relationship to the Action was immediate and relevant, and that Lead Plaintiffs' subpoena sought documents reasonably calculated to lead to the discovery of admissible evidence. *Id.* at 10-12. Lead Plaintiffs also reasoned that the subpoena primarily sought documents Perini already had produced in the Construction Litigation, an approach that would promote efficiency and minimize the effort required by Perini. *Id.* at 12-13. In its opposition, Perini alleged that Lead Plaintiffs' subpoena was overbroad and the relevant documents were already in the possession of MGM and could be produced by Defendants. Dkt. No. 276.

61. At the same time Lead Plaintiffs were preparing their reply brief in support of their motion to compel Perini, they were also engaged in motion practice with Defendants. Indeed, on October 9, 2014, Defendants filed a motion for protective order requesting the Court shield the six aforementioned subpoenaed non-parties from disclosing or producing documents and information to Lead Plaintiffs. Dkt. No. 272. Like Perini, Defendants argued that Lead Plaintiffs' subpoenas to the six non-parties were overbroad. *Id.* Defendants also claimed that the subpoenas imposed an undue burden on both the subpoena recipients and Defendants. *Id.*

62. Lead Plaintiffs opposed Defendants' motion for protective order on October 27, 2014 (Dkt. No. 277), and filed a reply in support of their motion to compel on October 30, 2014 (Dkt. No. 278). In both of these pleadings, Lead Plaintiffs maintained that the documents requested in Lead Plaintiffs' subpoena to Perini were relevant given the significant overlap between the instant litigation and the Construction Litigation. *See* Dkt. No. 277 at 21-22; Dkt. No. 278 at 6-7. Moreover, Lead Plaintiffs argued that neither Perini nor Defendants had established a specific burden that either would suffer as a result of complying with Lead Plaintiffs' subpoena. *See* Dkt. 277 at 19; Dkt. 278 at 4. On November 11, 2014, Judge

Ferenbach denied both Lead Plaintiffs' motion to compel Perini and Defendants' motion for protective order without prejudice. Dkt. No. 289. Judge Ferenbach denied the motions in part because, in his view, the parties had not completed their meet-and-confer requirement and held that until the issues in controversy were narrowed, fully developed and agreed upon, the dispute was not ripe for review. *Id.* at 15-16. Subsequent to the Court's Order, Lead Counsel continued their efforts to meet and confer with Defendants and Perini regarding the scope of the subpoenas and production of relevant documents. These efforts were ongoing at the time the Settlement was reached.

G. Lead Plaintiffs' Motion for Class Certification

63. On November 12, 2014, Lead Plaintiffs sought the Court's certification of a class comprised of all persons and entities who, between August 2, 2007 and March 5, 2009, inclusive, purchased or otherwise acquired MGM securities, and were damaged thereby. Dkt. Nos. 283-85 ("Class Certification Motion"). Further, Lead Plaintiffs requested that the Court appoint them as class representatives based on their significant combined purchases of MGM securities during the Class Period. *See* Dkt. No. 283.

64. In support of their motion, Lead Plaintiffs retained well-respected economics and statistics experts, Chad Coffman, CFA, and Dr. Tavy Ronen to conduct an event study and opine on the efficiency of the market for MGM's common stock and bonds, respectively. *See* Dkt. No. 285. Based on their analyses, both Mr. Coffman and Dr. Ronen concluded that MGM securities traded in an efficient market during the Class Period. Lead Counsel spent substantial time consulting with Mr. Coffman and Dr. Ronen on their declarations and the class certification briefing. In addition, Lead Counsel spent substantial time preparing Mr. Coffman and Dr. Ronen for their depositions and defended those depositions on January 6, 2015, and January 13, 2015,

respectively. Lead Counsel also expended numerous hours addressing and objecting to Defendants' subpoenas and document requests seeking information from Lead Plaintiffs' experts.

65. In connection with class certification discovery, Lead Counsel also defended depositions of the Rule 30(b)(6) designees of ATRS, Philadelphia, Luzerne and PMT on the following dates and locations:

DEPONENT	DATE	LOCATION
Anatoli van der Krans, on behalf of PMT	11/19/14	New York, NY
Richard Hummer, on behalf of Luzerne	12/10/14	Las Vegas, NV
Christopher DiFusco, on behalf of Philadelphia	12/11/14	Las Vegas, NV
Laura Gilson, on behalf of ATRS	01/08/15	Little Rock, AR

66. Prior to each deposition, Lead Counsel met with and thoroughly prepared the designated Rule 30(b)(6) witness for the respective proposed class representative, reviewing documents produced by each of the proposed class representatives and their respective investment advisors. Lead Counsel also attended the depositions of and questioned Lead Plaintiffs' investment advisors: Robert Sharps, ATRS's portfolio manager on January 22, 2015, in Baltimore, Maryland; Eric Green, the portfolio manager for both Philadelphia and Luzerne on February 19, 2015, in Philadelphia, Pennsylvania; and Michael Casino, a former credit analyst for PMT's investment manager Nomura Asset Management and current analyst at Doubleline, on February 13, 2015, in Los Angeles, California.

67. On February 2, 2015, Defendants opposed Lead Plaintiffs' Class Certification Motion. Dkt. Nos. 303-04 ("Opposition to Class Certification"). Defendants' opposition included an expert report and attached exhibits (totaling more than 70 pages) by Dr. David F.

Marcus evaluating the expert opinions of Mr. Coffman and Dr. Ronen, and opining on the issue of market efficiency. Dkt. Nos. 304-19. Defendants vigorously argued that the Action should not be certified as a class action. For example, Defendants argued that under Rule 23(a), the Court should deny certification because the proposed class representatives were subject to unique defenses rendering their claims atypical of other putative class members. Dkt. No. 303 at 21-30. Relying on the opinion of Dr. Marcus, Defendants also argued that the Court should deny certification under Rule 23(b)(3) because Lead Plaintiffs purportedly failed to establish that common issues of reliance and damages predominated over individual ones. Specifically, Defendants argued that Lead Plaintiffs failed to prove MGM stocks or bonds traded in an efficient market throughout the entire Class Period. *Id.* at 9-15, 17-19. Defendants also argued that Lead Plaintiffs failed to propose a model by which damages were measurable on a class-wide basis. *Id.* at 15-26, 19-20.

68. Lead Counsel deposed Dr. Marcus on March 13, 2015 in Los Angeles, California. Lead Counsel spent substantial time preparing to depose Dr. Marcus. In particular, Lead Counsel reviewed and analyzed Dr. Marcus' expert report, the corresponding statistical analyses therein, the attached exhibits and other relevant documents, and consulted with Lead Plaintiffs' experts in preparing rebuttals to the opposing expert reports.

69. On April 2, 2015, Lead Plaintiffs filed their reply memorandum in support of their Class Certification Motion, arguing that they had met their burden under Rule 23 by satisfying the typicality and adequacy requirements of Rule 23(a) and the predominance requirement of Rule 23(b)(3). Dkt. Nos. 319-20. Lead Plaintiffs specifically argued that they had adequately established the predicates of the fraud on the market presumption, thereby satisfying the predominance requirement of Rule 23(b)(3), and that their damages model was sufficient to meet

the predominance requirements for damages in a securities case at the class certification stage. *Id.* at 5-12. Lead Plaintiffs also countered Defendants' allegations that Lead Plaintiffs and Lead Counsel were subject to unique defenses. Dkt. No. 319 at 16-25; *see also* Dkt. No 320. On April 21, 2015, the Court heard oral argument on Lead Plaintiffs' Class Certification Motion and took the motion under submission. Dkt. No. 335. The Class Certification Motion was under submission at the time this Settlement was reached.

III. SETTLEMENT NEGOTIATIONS AND TERMS

70. As detailed throughout this joint declaration, the proposed Settlement is the result of arm's-length negotiations following substantial motion practice, extensive investigation and discovery, consultation with experts and class certification briefing. The parties' settlement efforts included several in-person and telephonic discussions, including two full days of formal mediation.

71. The parties began formal settlement discussions in May 2015 while Lead Plaintiffs' Class Certification Motion was *sub judice*. The parties retained Judge Layn R. Phillips (Ret.), a former federal judge who also sat by designation on the Tenth Circuit Court of Appeals. Judge Phillips is a nationally recognized mediator with extensive experience mediating complex securities cases. At Judge Phillips' direction, the parties submitted and exchanged detailed mediation briefs on April 15, 2015. Lead Plaintiffs' mediation brief presented arguments supporting the strength of Lead Plaintiffs' allegations that Defendants had issued materially false and misleading statements and omissions regarding MGM's financial health, and its access to financing and the budget and schedule for CityCenter, as well as the likelihood that Lead Plaintiffs would be able to establish loss causation and damages. Conversely, Defendants argued that the evidence refuted Lead Plaintiffs' allegations, and that Lead Plaintiffs would be

unable to prove loss causation and damages at trial. The parties submitted and exchanged mediation reply briefs on April 29, 2015.

72. Counsel for all parties attended the first formal mediation session on May 13, 2015, in Los Angeles, California. In attendance were representatives from the three Lead Counsel firms; general counsel for Lead Plaintiff ATRS; counsel for MGM and the Individual Defendants; and a number of Defendants' insurance carriers and their counsel. Other Lead Plaintiff representatives were available by phone. During that session, the parties gave detailed and thoughtful presentations on the perceived strengths and weaknesses of their respective cases. The parties mediated in good faith and at arm's length for the entire day, but remained too far apart in their respective positions to reach a resolution of the Action.

73. Although the first attempt at mediation was unsuccessful, the parties agreed to continue to communicate with one another, either directly or through Judge Phillips, regarding a potential resolution. At the recommendation of Judge Phillips, the parties submitted joint stipulations requesting the Court grant a 40-day stay of all discovery pending mediation and hold its decision on Lead Plaintiffs' Class Certification Motion at least until the expiration of the 40-day stay. Dkt. Nos. 339-40. The Court granted the parties' joint stipulations on May 20 and 21, 2015. Dkt. No. 341-42. During this time, Judge Phillips continued to work with the parties informally in an effort to narrow the gap and ultimately brought the parties together for a second formal mediation session.

74. On June 10, 2015, counsel for all parties attended a second formal mediation session with Judge Phillips, in Los Angeles, California. In attendance at the June 2015 mediation were representatives from the three Lead Counsel firms; counsel for MGM and the Individual Defendants; and Defendants' insurance carriers and their counsel. All Lead Plaintiffs

were available by phone. Again, during that session, the parties explained their differing views on the merits of the case and worked hard to narrow the gap. Although the parties were still too far apart in their respective positions to reach a resolution at the June 2015 mediation, the parties made significant progress and continued informal settlement negotiations independently and with Judge Phillips. The parties also agreed to submit another joint request that the Court hold its decision on Lead Plaintiffs' Class Certification Motion in abeyance and extend all deadlines in the Scheduling Order for at least another 30 days. Dkt. Nos. 343-44. The Court granted the parties' joint stipulations on July 1 and July 7, 2015. Dkt. Nos. 345-46. During the remainder of June and early-July, Judge Phillips continued to work with the parties informally to reach an agreement. Ultimately, Judge Phillips presented each side with a mediator's proposal to resolve the case. After lengthy deliberation among Lead Plaintiffs and Lead Counsel, the mediator's proposal was accepted, and on July 10, 2015, all parties agreed to accept the mediator's proposal and resolve the case.

75. The parties' agreement resolves the claims of the Class against all Defendants and settles this Action for $75,000,000 in cash, subject to this Court's approval. In Lead Counsel's judgment, this compromise represents an extremely successful resolution of a very complex class action. Likewise, Judge Phillips believes the Settlement "represents a well-reasoned and sound resolution of highly uncertain litigation and that the result is fair, adequate, reasonable and in the best interests of the Class." *See* Phillips Decl. at ¶14.

76. On July 14, 2015, the parties advised the Court of their tentative settlement. The Court ordered the parties to file settlement papers by August 28, 2015. Dkt. No. 347.

IV. THE RISKS OF CONTINUED LITIGATION AND REASONS FOR SETTLEMENT

77. Although Lead Plaintiffs and Lead Counsel believe their case is meritorious and the Class would ultimately prevail in establishing both liability and damages, they also recognize and acknowledge the expense and risk inherent in the continued proceedings that would be necessary to prosecute the Action against Defendants through trial. Lead Plaintiffs and Lead Counsel have taken into account the complexity of this Action and the attendant uncertainty and risks related to the resolution of Lead Plaintiffs' Class Certification Motion, the completion of fact and expert discovery, Defendants' anticipated summary judgment motion(s) and a jury trial, as well as the risks posed by and the difficulties and delays relating to post-trial motions, potential appeals related to said motions, or an uncertain jury verdict. Lead Plaintiffs and Lead Counsel also are aware of the risks presented by the defenses to the securities law violations asserted in this litigation. Defendants have adamantly denied any culpability throughout the Action and would continue to mount aggressive defenses that could potentially bar a Class recovery. If the jury sided with Defendants on even one of their defenses, the Class could recover nothing.

A. Risk that the Class Would Not Be Certified

78. Class certification also posed a number of substantial risks. As discussed previously, Defendants raised numerous issues that, if accepted by the Court, could have resulted in the denial of class certification. For example, Defendants vigorously argued that Lead Plaintiffs failed to demonstrate MGM securities traded in an efficient market throughout the entire Class Period. As a result, Defendants contended that Lead Plaintiffs could not benefit from the presumption of class-wide reliance based on the fraud-on-the-market theory. Defendants also argued that Lead Plaintiffs failed to satisfy the predominance requirement because Lead Plaintiffs had not proposed a model to calculate class-wide damages sufficient to

meet the standard announced by the Supreme Court in *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013).

79. In addition to their arguments regarding predominance, Defendants also argued that Lead Plaintiffs failed to meet the adequacy and typicality requirements under Rule 23(a). Specifically, Defendants alleged, *inter alia*, that Lead Plaintiffs were subject to unique defenses rendering their claims atypical of other putative Class Members. Lead Plaintiffs countered each of these arguments in their briefing and during the class certification hearing. Indeed, the Court stated during the hearing on class certification that it was "leaning towards certification." Transcript of Motion Hearing at 10:16, No. 2:09-cv-01558-GMN-VCF (April 21, 2015). However, if the Court found Defendants' arguments persuasive, class certification could have been in jeopardy.

80. Of course, even if Lead Plaintiffs prevailed at class certification, Defendants would likely seek reconsideration of such a ruling or seek permission pursuant to Federal Rule of Civil Procedure 23(f) to appeal the class certification decision to the Ninth Circuit. These risks were all taken into account in determining whether to resolve the Action.

B. Risks of Continued Litigation

81. Assuming the Court granted class certification, Lead Plaintiffs would still face risks to obtaining a favorable result for the Class. For example, given the high number of documents that remained to be produced and/or reviewed at the time of Settlement, there was a risk that these later-produced and/or reviewed documents would significantly undermine the FAC's allegations of falsity and scienter. In addition, the testimony of current and former MGM employees could have seriously undercut Lead Plaintiffs' allegations. Furthermore, Lead Plaintiffs would face risks regarding loss causation, as Defendants undoubtedly would have

argued that the financial crisis was to blame for MGM's stock decline, not the corrective disclosures pled in the FAC.

82. Moreover, in order for the Class to ultimately prevail on its claims, it would first have to survive Defendants' motion or motions for summary judgment. Summary judgment would pose a number of risks for the Class. Lead Plaintiffs would have to demonstrate that a genuine issue of material fact existed with regard to each element of their securities claims. As summary judgment allows both Lead Plaintiffs and Defendants to present their strongest evidence before the Court, Defendants would undoubtedly bolster their motion for summary judgment with any exculpatory evidence that arose during merits discovery.

83. If Lead Plaintiffs were to proceed to trial, notwithstanding their belief in the merits of the claims asserted, there would be a risk that documentary and expert evidence in support of the FAC's allegations would fail to convince a jury to find in favor of the Class.

1. Risk of Establishing Scienter and Falsity

84. First, Lead Plaintiffs and the Class faced a risk that Lead Plaintiffs would not be able to prove scienter; *i.e.*, that Defendants acted with knowledge of or with recklessness as to the alleged falsity of their statements and omissions. A defendant's state of mind in a securities case is often the most difficult element of proof and one that is rarely supported by direct evidence such as an admission. Here, the large scale, unprecedented $9 billion CityCenter project was one of the biggest construction projects in the western hemisphere at the time. The sheer magnitude of this project–which involved numerous moving parts, various third parties and a complex budget with many facets–would make it more difficult for Lead Plaintiffs to prove that Defendants had recklessly or knowingly underestimated construction costs or scheduling estimates. Defendants would likely continue to argue, as they did at the motion to

dismiss stage, that they had simply overestimated MGM's ability to withstand the financial crisis and that the fact that certain Defendants held onto MGM stock and the Company continued to fund construction negated any inference of scienter. Although Lead Plaintiffs believe they had strong evidence to support their allegations of scienter, there was a risk that this evidence would be insufficient to convince a jury that they had sustained their burden of proof at trial.

85. Second, Lead Plaintiffs also faced the risk that a jury would ultimately find that Defendants' alleged false statements were non-actionable projections, immaterial expressions of corporate optimism, or both. Defendants argued in connection with their Motions to Dismiss that the allegedly misleading statements reflected an honest, optimistic expectation that MGM would weather the financial crisis, and were not evidence of fraud. It is likely that Defendants would continue to assert this argument at trial. In response, Lead Plaintiffs would have vigorously argued that based on documentary evidence, deposition testimony and expert analysis, Defendants' misstatements concerned present and/or historical facts and would have been important information for a reasonable investor to consider in making an investment decision about MGM. However, there was a possibility the jury could disagree.

2. Risk of Establishing Loss Causation and Damages

86. Finally, even if Lead Plaintiffs succeeded in proving liability, a major risk going forward related to Lead Plaintiffs' ability to prove loss causation and damages. A private plaintiff alleging securities fraud must prove that the defendants' fraud caused an economic loss. Lead Plaintiffs believe that at trial, and through the testimony of Mr. Coffman and Dr. Ronen, they would be able to demonstrate loss causation as to Defendants' challenged statements and corrective disclosures throughout the Class Period. However, Lead Plaintiffs recognize that Defendants would continue to argue, and would present expert testimony purportedly

demonstrating, the absence of a causal link between the various securities declines and the corrective disclosures. Even if Lead Plaintiffs could demonstrate loss causation, Defendants would still offer evidence that MGM's stock declines were primarily caused by factors other than the alleged fraud—namely the ongoing international recession and collapse of the gaming industry—undercutting Lead Plaintiffs' damages estimate.

87. While Lead Plaintiffs had the burden of identifying the fraud-related damages suffered by the Class, Defendants would undoubtedly have filed aggressive *Daubert* motions attacking the methodology of Lead Plaintiffs' experts. Assuming Lead Plaintiffs' experts would survive a *Daubert* motion, Defendants could still attempt to discredit the experts at trial. Indeed, the loss causation and damages assessments of the parties' experts at trial could vary substantially, reducing this crucial element to a "battle of the experts" before the jury.

88. Even if Lead Plaintiffs prevailed on liability on any or all of their claims and were awarded some or all of their damages, Defendants would undoubtedly appeal the verdict and award. The appeals process would likely span several years, during which time the Class would receive no distribution on any damages award. In addition, an appeal of any verdict would carry with it the risk of reversal, in which case the Class would receive no distribution despite having prevailed on the claims at trial.

89. In summary, there are multiple procedural hurdles as well as significant risks involved in proceeding with the Action. The parties disagreed on the merits of the case, including whether or not damages were suffered and recoverable. Defendants continue to deny they are liable in any respect or that Lead Plaintiffs or the Class suffered any injury. Accordingly, recovery of any amount at trial was far from certain. One cannot predict which expert's testimony or methodology a jury would find reliable. If the jury agreed with Defendants

and rejected Lead Plaintiffs' experts' calculations to apportion MGM's stock price decline, Lead Plaintiffs would have had their damages significantly reduced or their claims fail as a matter of law.

90. Having considered the foregoing, and evaluating Defendants' defenses, it is the informed judgment of Lead Counsel, based upon all proceedings to date and their extensive experience in litigating class actions under the federal securities laws, that the proposed Settlement of this matter before this Court is fair, reasonable and adequate, and in the best interest of the Class.

V. DOCUMENTATION OF THE SETTLEMENT AND CLASS NOTICE

91. After reaching their tentative settlement on July 14, 2015, the parties worked diligently to document the Settlement, prepare preliminary approval papers, and negotiate the details of the complex Stipulation. Over the next several weeks, the parties engaged in further negotiations regarding the specific terms of their agreement and memorialized their final agreement in the Stipulation (and related exhibits) executed on August 28, 2015. On August 28, 2015, the parties filed the Stipulation and Lead Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Class Action Settlement and Certification of Class, requesting that the Court, among other things, grant preliminary approval of the Settlement, allow the parties to send out notice of the Settlement to the Class and schedule a final fairness hearing and related deadlines. Dkt. Nos. 349-51. On September 11, 2015, the Court granted Lead Plaintiffs' motion and approved the form and manner of notice of the Settlement to the Class. Dkt. No. 352. By the same order, the Court set November 24, 2015, as the deadline for Class Members to submit objections to the Settlement, Plan of Allocation and the request for attorneys' fees and expenses

(the "Fee and Expense Application"), or to request exclusion from the Class; and scheduled the Settlement Fairness Hearing for December 15, 2015 at 9:00 a.m. *Id.*

92. Following the Court's entry of the Notice Order, Lead Counsel instructed Gilardi & Co. LLC ("Gilardi"), the Court-approved Claims Administrator for the Settlement, to begin preparing for disseminating copies of the Notice by mail, publishing the Summary Notice in accordance with the Notice Order, and establishing the settlement website and the telephone response system. The Notice contains a thorough description of the Settlement, the Plan of Allocation and Class Members' rights to: (i) participate in the Settlement; (ii) object to the Settlement, Plan of Allocation and/or Fee and Expense Application; or (iii) exclude themselves from the Class. The Notice also informs Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount not to exceed 25% of the Gross Settlement Fund plus interest, payment of Lead Counsel's litigation expenses in an amount not to exceed $2,500,000, and reimbursement of Lead Plaintiffs' reasonable costs and expenses incurred in connection with their representation of the Class in an amount not to exceed $60,000 in the aggregate.

93. To disseminate the notice, Gilardi obtained the names and addresses of potential Class Members from lists provided by MGM's transfer agent. *See* Gilardi Decl. at ¶4. Gilardi entered the data into a segregated database to be used for mailing the Notice and Proof of Claim and Release (together, the "Claim Package") to potential members of the Class. *Id.* The data was electronically scrubbed to ensure adequate address formatting and the elimination of duplicate names and addresses and resulted in 4,268 unique records for mailing. *Id.*

94. Additionally, Gilardi maintains a database of 252 brokerage firms, custodial banks and other institutions who have requested notification of every securities case. *Id.* at ¶5.

95. On October 8, 2015, Gilardi mailed 4,520 Claim Packages from the records referred to above in ¶¶93-94 via the United States Postal Service, pursuant to ¶¶8(a) and 9 of the Notice Order. *Id.* at ¶¶4-5. Gilardi also mailed Claim Packages to 4,194 institutions included on the U.S. Securities and Exchange Commission's list of active brokers and dealers, and delivered electronic copies of the Claim Package to 456 electronic filers who are qualified to submit electronic claims. *Id.* at ¶6. Gilardi subsequently received requests from brokers and nominees (institutions filing on behalf of their customers) to either send the Claim Package to them for distribution to their customers with eligible purchases and/or acquisitions of MGM securities, or to send the Claim Package to such customers whose identifying information they provided to Gilardi. *Id.* at ¶10. Thus, as a result of requests from brokers and other nominees, Gilardi mailed an additional 32,813 Claim Packages to potential Class Members. *Id.* Through October 22, 2015, Gilardi has mailed a total of 41,984 Claim Packages to potential Class Members and nominees. *Id.* at ¶11.

96. On October 15, 2015, in accord ance with ¶8(c) of the Notice Order, Gilardi caused the Summary Notice to be published in the national edition of *Investor's Business Daily* and transmitted over a national newswire service. *Id.* at ¶14.

97. Lead Counsel also worked with Gilardi to establish a website dedicated to the Settlement, www.mgmmiragesecuritieslitigation.com, in order to provide Class Members and other interested parties with detailed information concerning the Settlement. *Id.* at ¶13. The website allows Class Members to view and download copies of the Notice, Proof of Claim and Release, Stipulation and Notice Order. *Id.* The website also allows Class Members to submit their Proof of Claim and Release on-line. The website went live concurrently with the initial mailing of the Notice Packets on October 8, 2015. *Id.*

98. Gilardi also established and maintains a 24-hour, toll-free hotline (844-899-6217) allowing Class Members to obtain information regarding the Settlement, request a Claim Package and/or seek assistance from a live operator. *Id.* at ¶12. This toll-free number was provided to all potential Class Members in the Claim Package and Summary Notice.

99. As set forth above, the deadline for Class Members to file objections to the Settlement, Plan of Allocation and/or the Fee and Expense Application is November 24, 2015. Despite the robust notice campaign detailed above and in the Gilardi Declaration, as of November 3, 2015, we are pleased to report that not a single objection to any aspect of the Settlement has been received thus far. Additionally, not one request for exclusion from the Class has been received. *See* Gilardi Decl. at ¶15 (reporting on exclusion requests received as of October 22, 2015). In the event additional requests for exclusion or any objections are received following this submission, Lead Counsel will address them in their reply submission to be filed with the Court on or before December 8, 2015.

VI. THE PLAN OF ALLOCATION

100. Pursuant to the Notice Order, and as set forth in the Notice, the Net Settlement Fund will be distributed to Class Members, who in accordance with the terms of the Stipulation, are entitled to a distribution and who submit a timely Proof of Claim and Release ("Authorized Claimants"). If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be allocated among Authorized Claimants.

101. Lead Counsel developed the Plan in consultation with Lead Plaintiffs' damages expert, Chad Coffman, CFA, and believe the Plan provides a fair and reasonable method to equitably allocate the Net Settlement Fund among eligible Class Members.

102. The objective of the Plan is to equitably allocate the Net Settlement Fund to those Class Members who suffered economic losses as a result of the alleged violations of the federal securities laws as opposed to losses caused by market or industry factors or Company-specific factors unrelated to the alleged violations of law. The Plan generally measures the amount of loss that a Class Member can claim for purposes of making a *pro rata* allocation of the Net Settlement to Authorized Claimants. Under the Plan, if a claimant's *pro rata* allocation calculates to less than $10.00, no distribution will be made to that claimant. *See* Gilardi Decl., Ex. A at 11.

103. Under the Plan, a "Recognized Loss Amount" will be calculated for each eligible MGM security[12] purchased or otherwise acquired during the Class Period (*i.e.*, August 2, 2007 through and including March 5, 2009) that is listed in a claimant's Proof of Claim and Release and for which adequate documentation is provided. A claimant's Recognized Loss Amount will depend upon several factors such as: (i) the type of MGM securities purchased and/or acquired; (ii) the amount of MGM securities purchased and/or acquired during the Class Period; (iii) the timing of such purchases and/or acquisitions; and (iv) the timing of sales, if any, of such MGM securities.

104. In order to have a Recognized Loss Amount under the Plan, the MGM securities purchased and/or acquired during the Class Period must have been held through at least the alleged partial corrective disclosure on February 3, 2009. In addition, Recognized Loss Amounts

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[12] The MGM securities eligible to participate in the Settlement are: MGM common stock and the following MGM debt securities ("MGM Bonds"): (i) 5.875% MGM Bonds, due 2/27/14; (ii) 6.0% MGM Bonds, due 10/1/09; (iii) 6.625% MGM Bonds, due 7/15/15; (iv) 6.75% MGM Bonds, due 9/1/12; (v) 6.75% MGM Bonds, due 4/1/13; (vi) 6.875% MGM Bonds, due 4/1/16; (vii) 7.5% MGM Bonds, due 6/1/16; (viii) 7.625% MGM Bonds, due 1/15/17; (ix) 8.375% MGM Bonds, due 2/1/11; (x) 8.5% MGM Bonds, due 9/15/10; and (xi) 13% MGM Bonds, due 11/15/13.

take into account the PSLRA's statutory limitation on recoverable damages, whereby losses on eligible MGM securities cannot exceed the difference between the purchase price paid for the security and the average price of the security during the 90-day period subsequent to the Class Period if the security was held through June 2, 2009 (*i.e.*, the end of the 90-day period), and losses on eligible MGM securities purchased or acquired *during* the Class Period and sold during the 90-day period subsequent to the Class Period cannot exceed the difference between the purchase price paid for the security and the average price of the security during the portion of the 90-day period elapsed as of the date of sale. *See* Gilardi Decl., Ex. A at 8 n.3.

105. In sum, the Plan of Allocation, developed in consultation with Lead Plaintiffs' damages expert, was designed to achieve an equitable and rational distribution of the Net Settlement Fund among Class Members based on the strength of various claims and the resulting damages. Accordingly, Lead Counsel respectfully submit that the Plan of Allocation is fair and reasonable and should be approved. To date, there have been no objections to the Plan.

VII. LEAD COUNSEL'S FEE AND EXPENSE APPLICATION

106. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Counsel, on behalf of Plaintiffs' Counsel, are making an application to the Court for an award of attorneys' fees and expenses incurred during the course of the Action.[13] Specifically, Lead Counsel is applying for (i) attorneys' fees in the amount of 25% of the Settlement Amount and (ii) payment of Lead Counsel's expenses, charges and costs in the total amount of $1,937,528.73, plus interest earned on these amounts at the same rate as the Settlement Fund. In

[13] Plaintiffs' Counsel consists of the three Lead Counsel firms–Robbins Geller, NPR and Kessler Topaz–together with liaison counsel for the Class, Aldrich Law Firm, Ltd. and Law Offices of Curtis B. Coulter, P.C.

addition, Lead Plaintiffs' are seeking an aggregate amount of $32,628.00 in costs and expenses incurred in connection with their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4).

107. Lead Counsel are submitting their Fee and Expense Application with the prior approval of Lead Plaintiffs and this application is consistent with retainer agreements entered into by Lead Plaintiffs and Lead Counsel at the outset of the Action. Lead Counsel agreed to prosecute the litigation on an entirely contingent basis, meaning that Lead Counsel would not be compensated for their fees or expenses unless they obtained a recovery for the Class.

108. Consistent with Lead Plaintiffs' endorsement, the Notice informed Class Members of Lead Counsel's intent to apply for an award of attorneys' fees in an amount of 25% of the Settlement Fund and Litigation Expenses in an amount not to exceed $2,500,000. *See* Gilardi Decl., Ex. A at 7.

A. The Attorneys' Fees Requested Are Fair and Reasonable

109. In the Ninth Circuit, there exists a clear preference for awarding attorneys' fees based on the percentage-of-recovery method. Moreover, as detailed in the accompanying Memorandum of Points and Authorities in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Fee Memorandum"), the percentage method is the appropriate method of fee recovery because, among other things, Congress contemplated that the percentage-of-recovery method would be the primary measure of attorneys' fees in securities class actions, as it decreases the burden imposed on courts of performing a detailed and time-consuming lodestar analysis. Additionally, it aligns the lawyers' interest in being paid a fair fee with the interest of the Class in achieving the maximum recovery in the shortest amount of time required under the circumstances. Indeed, this methodology is supported by public policy, has been recognized as

appropriate by the United States Supreme Court for cases of this nature, and represents the overwhelming current trend in most circuits, including the Ninth Circuit. *See generally* Fee Memorandum at §§A-B.

110. Based on the outstanding result achieved for the Class, the extensive efforts expended by Lead Counsel on behalf of the Class, the quality of work performed, the risks of the litigation, and the contingent nature of the representation, Lead Counsel submit that a 25% fee award is fair and reasonable. As discussed in the Fee Memorandum, in the Ninth Circuit, a 25% fee is considered the benchmark for fair and reasonable attorneys' fees. Accordingly, Lead Counsel's request for a percentage fee of 25% is justified and should be approved.

111. Lead Counsel undertook time-consuming, challenging, and risky work to prosecute the claims against Defendants and to achieve this Settlement. At all times during the pendency of the Action, Lead Counsel's efforts were driven by and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial. As discussed above, Lead Plaintiffs were able to settle this Action only after conducting a thorough investigation of the Class' claims, engaging in substantial motion practice and extensive and contested fact discovery–including review and analysis of millions of pages of documents produced by Defendants and various third parties, participation in and/or preparation for various depositions, multiple discovery disputes, and analysis and preparation of multiple discovery motions–fully briefing class certification, and developing complex mediation statements and presentations. In addition, as described throughout this joint declaration, the work performed by Lead Counsel involved complex legal and factual issues and, in some instances, novel issues of law in an ever-changing legal landscape.

112. As further described in Lead Counsel's Fee Memorandum, not only is the requested fee fair and reasonable under the percentage approach, a lodestar cross-check, although not required, also confirms the reasonableness of the fee. As set forth in the accompanying declarations on behalf of Plaintiffs' Counsel, Plaintiffs' Counsel have devoted a total of 48,993.96 hours to the investigation, prosecution and resolution of the claims against Defendants for an aggregate lodestar value of $21,768,203.25.[14] Thus, the total requested fee, if awarded, would yield a negative multiplier of approximately 0.86 on the total lodestar. In other words, the attorneys' fees requested here represents a discount to (rather than a multiplier of) what counsel would have earned had they been compensated using counsel's hourly billable rates.

113. We, along with other partners at our firms, maintained daily control and monitoring of the work that each attorney at our respective firms performed on this case. Experienced attorneys at our firms undertook particular tasks appropriate for their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate for their experience levels. Throughout the prosecution of the claims against Defendants, work assignments were allocated among the attorneys at our firms in order to avoid unnecessary duplication of effort.

114. As set forth herein and in the accompanying Fee Memorandum, Lead Counsel submit that the requested fee is fair and reasonable and should be approved based on the result achieved for the Class, the extent and quality of work performed by Lead Counsel over the

[14] The lodestar and expense submissions of Brian O. O'Mara, Jeffrey J. Angelovich, Gregory M. Castaldo, John P. Aldrich and Curtis B. Coulter on behalf of Robbins Geller, NPR, Kessler Topaz, Aldrich Law Firm, Ltd., and the Law Offices of Curtis B. Coulter, P.C., have been submitted herewith. These declarations set forth the names of the attorneys and professional support staff employees who worked on the Action, the hourly rates chargeable by each such attorney and professional support staff employee, the lodestar value of the time expended by such attorneys and professional support staff employee, the expenses of the firms, and the background and experience of the firms.

course of almost six years, the risks of the litigation, and the contingent nature of the representation.

115. The expertise and experience of counsel are other important factors in setting a fair fee. As Lead Counsel's firm resumes[15] demonstrate, the attorneys at Robbins Geller, NPR and Kessler Topaz are experienced and skilled class action securities litigators and have a successful track record in some of the largest securities cases throughout the country—including within this Circuit—and represent some of the largest institutional investors in the world. In this Action, the tenacity of Lead Counsel clearly led to a better result for the Class, as Defendants were well-aware of Lead Counsel's demonstrated ability to counter Defendants' positions and arguments, both in Court (*see supra* §§II.B-C, G (motions to dismiss and class certification hearings)) and in numerous meet and confer sessions necessitated by discovery disputes. *See id.* §II.E-F.

116. The quality of the work performed by Lead Counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Defendants in this case were represented by skilled, top-tier counsel. MGM was represented by Munger, Tolles & Olson LLP and the Individual Defendants were represented by Irell & Manella LLP. These firms spared no effort or expense in the defense of their clients. Faced with this formidable defense, Lead Counsel were nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle the Action for a record $75 million on terms favorable to the Class.

117. This Action was initiated, and continued against Defendants, on an entirely contingent basis. This case was unquestionably complex and the outcome against Defendants

[15] Lead Counsels' firm resumes are attached as exhibits to the declarations of Brian O. O'Mara, Jeffrey J. Angelovich and Gregory M. Castaldo, submitted herewith.

was uncertain. From the outset, Lead Counsel and Lead Plaintiffs appreciated the significant risks inherent in securities litigation, including overcoming motions to dismiss, generating a compelling factual record through discovery, obtaining class certification, surviving summary judgment, and prevailing at trial and on any post-trial appeals. As discussed in Section IV above, Lead Plaintiffs faced tremendous risks to establishing their case against Defendants, particularly in proving scienter, loss causation, and damages. Lead Counsel and Lead Plaintiffs agreed to settle this Action on the terms of the Stipulation based on their careful investigation and evaluation of the facts and law relating to the allegations in the FAC and the extensive discovery conducted over the course of the litigation, as well as their evaluation of the significant risks if the Action continued.

118. Lead Counsel ensured that sufficient attorney resources were dedicated to prosecuting the claims against Defendants, in particular, to the document and deposition discovery. Lead Counsel also retained highly competent experts in market efficiency, loss causation and damages, and ensured that sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. In total, Lead Counsel incurred over $1.9 million in expenses in prosecuting and resolving this Action for the benefit of the Class.

119. On many occasions, plaintiffs' counsel in contingency-fee cases have worked thousands of hours and advanced substantial expenses, only to receive zero compensation. Lead Counsel are fully aware—from personal experience—that despite the most vigorous and competent of efforts, a law firm's success in contingent litigation, particularly securities litigation, is never guaranteed. Moreover, Lead Counsel know that many capable plaintiffs' firms have suffered major defeats after years of litigation, and after expending tens of millions of dollars of time, without receiving any compensation for their efforts.

120. Scores of significant cases have been lost after the investment of tens of thousands of hours of attorney time and millions of dollars of litigation costs at summary judgment or after trial. Accordingly, any argument that a large fee is somehow guaranteed by virtue of the commencement of a class action—particularly under the PSLRA—is without merit. Indeed, diligent and intensive work by skilled counsel is required to develop facts and theories that will persuade defendants to enter into serious settlement negotiations and succeed at trial. The only certainty from the outset of this Action was that Lead Counsel would earn no fee without a successful result, and that such a result would be realized only after a vigilant, strategic, and protracted effort against formidable opponents seasoned in defending complex securities fraud actions.

121. Class actions such as this are exceedingly expensive to litigate successfully and the fees awarded are often misunderstood. While critics and outsiders tend to focus on the gross fees awarded, they ignore the realities that those fees are used to discharge overhead expenses incurred during the course of many years of litigation. Such a view also ignores the fact that while defense firms are being paid hourly throughout the litigation for their efforts in the same case, the plaintiff contingency firms only get paid upon success many years later.

122. The Supreme Court has long recognized that the public has a strong interest in having capable and experienced attorneys enforce the federal securities laws and regulations intended to safeguard shareholders from the harmful impact of false and misleading statements made in connection with the purchase or sale of publicly traded securities. Moreover, as evidenced by the PSLRA and repeatedly confirmed by the Supreme Court, private securities litigation provides investors with an invaluable means to recover their losses without having to rely on government action. *Amgen Inc. v. Conn. Ret. Plans & Trust Funds* __ U.S.__, 133 S. Ct.

1184, 1201-02 (2013) ("Congress, the Executive Branch, and this Court, moreover, have 'recognized that meritorious private actions to enforce the federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought respectively, by the Department of Justice and the Securities and Exchange Commission.") (quoting *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007)); *see also Gulf Oil v. Bernard*, 452 U.S. 89, 99 (1981) ("Class actions serve an important function in our system of civil justice," and have been recognized repeatedly as an important means of enforcing the federal securities laws). These private actions promote public confidence in our capital markets, deter future wrongdoing, and help to guarantee that corporate officers, auditors, directors and others comply with the law while performing their duties.

123. As set forth above and in the Gilardi Declaration, nearly 42,000 Claim Packages have been mailed to potential members of the Class and nominees. *See* Gilardi Decl. ¶11. In addition, the Summary Notice was published in the national edition of *Investor's Business Daily* and transmitted over *PR Newswire*. *Id.* ¶14. Important documents related to the Action and the Settlement, including the Stipulation, have been posted on the website for this Settlement, www.mgmmiragesecuritieslitigation.com, for review. *Id.* ¶13. The Notice explains, among other things, the Settlement and Lead Counsel's fee request. The deadline to object to Lead Counsel's fee request is November 24, 2015. To date, Lead Counsel are not aware of any objection to the amount of attorneys' fees set forth in the Notice. However, Lead Counsel will address any objections received in their reply papers to be filed with the Court on or before December 8, 2015.

124. In sum, given the complexity and uncertainty of the claims against Defendants; the efforts undertaken by Lead Counsel on behalf of the Class; the risks Lead Plaintiffs faced in

connection with proving falsity, scienter, loss causation and damages; the experience of Lead Counsel and Defendants' Counsel; and the contingent nature of Lead Counsel's agreement to prosecute the claims against Defendants, Lead Counsel respectfully submit that the requested attorneys' fees are reasonable and should be approved.

B. The Requested Litigation Expenses Are Fair and Reasonable

125. Lead Counsel also request payment from the Settlement Fund in the amount of $1,937,528.73 for expenses, charges and costs that were reasonably and necessarily incurred by Plaintiffs' Counsel in connection with commencing, prosecuting, and resolving the claims asserted in the Action against Defendants, with interest thereon.

126. Lead Counsel respectfully submit that the requested expenses are appropriate, fair, and reasonable and should be approved in the amounts submitted herein. From the inception of this litigation, Lead Counsel were aware that they might not recover any of their expenses incurred in prosecuting the claims against Defendants, and, at a minimum, would not recover them until the claims were successfully resolved. Lead Counsel also understood that, even assuming the case was ultimately successful, an award of expenses would not compensate Lead Counsel for the lost use or opportunity costs of funds advanced to prosecute the claims against Defendants. Thus, Lead Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the claims against Defendants.

127. The expenses incurred by Lead Counsel were necessary and appropriate for the prosecution of the claims against Defendants. These expenses include charges for experts and consultants, outside investigators, computer research devoted to the case, document management and litigation support, mediation fees, out-of-town travel, document reproduction, telephone,

postal and express mail, and similar case-related costs.[16] Courts have typically found that such expenses are payable from a fund recovered by counsel for the benefit of the class.

128. Included in the amount of expenses is $846,052.68 paid or payable to Lead Plaintiffs' experts and consultants. This is by far the largest component of Plaintiffs' Counsel's expenses and encompasses approximately 44% of their total expenses. As detailed above, Lead Counsel worked extensively with experts and consultants at different stages of the litigation, including Dr. Ronen and Mr. Coffman. Experts were utilized to draft expert reports and prepare for class certification and expert depositions, prepare for settlement negotiations, and prepare the Plan of Allocation. These experts were retained in the complex and specialized areas of market efficiency, loss causation, and damages.

129. In addition, as detailed above, in prosecuting the claims against the Defendants, Lead Counsel obtained, reviewed, and analyzed millions of pages of documents from Defendants and various third parties. In order to effectively and efficiently review and analyze the voluminous documents from multiple sources, address issues unique to this litigation and the related Construction Litigation, and interface with QUIVX eDiscovery and Document Solutions, the third-party discovery vendor in the Construction Litigation, Lead Counsel utilized a third-party hosted document management system and retained a professional e-discovery firm, Evolve Discovery, to host the database. Hosting, copying and organizing such a massive database of information and documents obtained in discovery was also necessary for the effective prosecution of the claims against Defendants. In total, $406,734.93 of Plaintiffs' Counsel's

[16] As set forth and detailed in the lodestar and expense submission of Gregory M. Castaldo on behalf of Kessler Topaz, many of the common expenses incurred by Lead Counsel in connection with the prosecution and resolution of this Action were paid out of a litigation fund maintained by Kessler Topaz. Lead Counsel collectively contributed $1,478,496.14 to the litigation fund.

expenses were paid to Evolve Discovery and other litigation support firms, representing approximately 21% of their total expenses.

130. Plaintiffs' Counsel's expenses also include the costs of online legal, factual and economic research related to the claims against Defendants in the amount of $80,974.73. These are the charges for computerized research services such as LexisNexis, Westlaw, Courtlink, Thomson Financial, Pacer, and Caliber Advisors, Inc. It is now standard practice for attorneys to use LexisNexis and Westlaw to assist them in researching legal and factual issues, and, indeed, courts recognize that these tools create efficiencies in litigation and ultimately save money for clients and the class.

131. In addition, Lead Counsel were also required to travel in connection with prosecuting the claims against Defendants, and thus incurred the related costs of airline tickets, meals and lodging. Included in the expense request above is $185,833.59 for such travel expenses necessarily incurred by Lead Counsel for the prosecution of the claims against Defendants. Further, Lead Counsel paid $53,668.84 for mediation fees (the other half paid by Defendants) assessed by the neutral in this matter, the Hon. Layn R. Phillips (Ret.).

C. Reimbursement of Lead Plaintiffs' Costs and Expenses Is Fair and Reasonable

132. Finally, pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiffs seek reimbursement of their reasonable costs and expenses incurred directly in connection with their representation of the Class in the aggregate amount of $32,628.00.

133. Lead Counsel respectfully submit that these requested amounts are fully consistent with Congress' intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising private securities litigation.

134. As set forth in the Fee Memorandum and in the declarations submitted on behalf of each of the Lead Plaintiffs, Lead Plaintiffs have been fully committed to pursuing the Class' claims since they became involved in the litigation. As large institutional investors, Lead Plaintiffs have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of this Action, and providing valuable assistance to Lead Counsel. For instance, Lead Plaintiffs engaged in time-consuming and laborious e-discovery efforts and searches to obtain and produce documents responsive to discovery requests. Lead Plaintiffs also expended substantial time and effort preparing for and testifying during depositions conducted by aggressive defense counsel. Lead Plaintiffs' efforts required their employees to dedicate considerable time and resources to this Action that would have otherwise been devoted to benefitting Lead Plaintiffs and their beneficiaries. The efforts expended by Lead Plaintiffs' representatives and employees during the course of this Action are precisely the types of activities courts have found to support reimbursement to class representatives, and fully support Lead Plaintiffs' request for reimbursement of costs and expenses. *See* Fee Memorandum at §IV.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of November, 2015.

/s/ Jeffrey J. Angelovich

JEFFREY J. ANGELOVICH (*Pro Hac Vice*)
Nix, Patterson & Roach, LLP
205 Linda Drive
Daingerfield, TX 75638
Telephone: 903/645-7333
903/645-4415 (fax)

/s/ Eli R. Greenstein

ELI R. GREENSTEIN (*Pro Hac Vice*)
Kessler Topaz Meltzer & Check, LLP
One Sansome Street, Suite 1850
San Francisco, CA 94104
Telephone: 415/400-3000
415/400-3001 (fax)

/s/ Brian O. O'Mara

BRIAN O. O'MARA (Nevada Bar #8214)
Robbins Geller Rudman & Dowd LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2015, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 3, 2015.

s/ Brian O. O'Mara

BRIAN O. O'MARA

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
E-mail:BrianO@rgrdlaw.com

Mailing Information for a Case 2:09-cv-01558-GMN-VCF

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Ramzi Abadou**
  Ramzi.Abadou@ksfcounsel.com,yjayasuriya@ktmc.com,knguyen@ktmc.com,dcheck@ktmc.com,kweiland@ktmc.com,arobles@ktmc.com
- **Jeffrey Simon Abraham**
  jabraham@aftlaw.com
- **John P. Aldrich**
  jaldrich@johnaldrichlawfirm.com,traci@johnaldrichlawfirm.com,eleanor@johnaldrichlawfirm.com,sorme@johnaldrichlawfirm.com
- **Matthew I Alpert**
  malpert@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Jeffrey J Angelovich**
  jangelovich@npraustin.com
- **Leland E. Backus**
  gbackus@backuslaw.com,efile@backuslaw.com
- **Lisa Baldwin**
  lbaldwin@npraustin.com
- **Ze'eva K Banks**
  zkbanks@chitwoodlaw.com,KGore@chitwoodlaw.com,LSmith@chitwoodlaw.com
- **Nathan W. Bear**
  nbear@rgrdlaw.com
- **Bradley E Beckworth**
  shelley@nixlawfirm.com,andreab@nixlawfirm.com
- **Todd L. Bice**
  lit@pisanellibice.com,Larry.Polon@mto.com,Laurie.Thoms@mto.com,smt@pisanellibice.com
- **Samuel Boyd**
  samuel.boyd@mto.com,monica.walker@mto.com
- **Paul A Breucop**
  pbreucop@ktmc.com,jhouston@ktmc.com,yjayasuriya@ktmc.com
- **Brad Brian**
  brad.brian@mto.com
- **William K Briggs**
  wbriggs@irell.com
- **Darren J. Check**
  dcheck@ktmc.com,namjed@ktmc.com
- **Curtis B. Coulter**
  ccoulter@coulterlaw.net,julie@coulterlaw.net,irene@coulterlaw.net
- **Charles C. Diaz**
  diazlaw@sbcglobal.net
- **Lloyd Nolan Duck , III**
  treyduck@nixlawfirm.com
- **Charles Elder**
  celder@irell.com
- **Jack G Fruchter**
  jfruchter@aftlaw.com
- **George M Garvey**
  george.garvey@mto.com,samantha.booth@mto.com,glenda.hunt@mto.com
- **Ross C Goodman**
  ross@goodmanlawgroup.com,ron@ronaldrichards.com,tiffanie@goodmanlawgroup.com

- **John Goodson**
  jcgoodson@kglawfirm.com,cheflin@kglawfirm.com
- **Eli R Greenstein**
  egreenstein@ktmc.com,jhouston@ktmc.com,rnathcook@ktmc.com,yjayasuriya@ktmc.com
- **Ellen Gusikoff Stewart**
  elleng@rgrdlaw.com
- **Keith R.D. Hamilton , II**
  keith.hamilton@mto.com
- **Sean M. Handler**
  shandler@ktmc.com
- **Griffith H Hayes**
  mtuer@cookseylaw.com,hrainey@cookseylaw.com
- **John C. Hull**
  johnhull@nixlawfirm.com
- **Jennifer Joost**
  jjoost@ktmc.com,amarshall@ktmc.com,jhouston@ktmc.com,jenck@ktmc.com,yjayasuriya@ktmc.com
- **Stacey M. Kaplan**
  skaplan@ktmc.cm,amarshall@ktmc.com,jhouston@ktmc.com,yjayasuriya@ktmc.com,kweiland@ktmc.com,cbucciarelli@ktmc.com
- **Matt Keil**
  mkeil@kglawfirm.com
- **Robert W. Killorin**
  rkillorin@chitwoodlaw.com
- **Arthur C. Leahy**
  artl@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Akke Levin**
  al@morrislawgroup.com,vln@morrislawgroup.com
- **Ryan A. Llorens**
  ryanl@rgrdlaw.com
- **William A. S. Magrath , II**
  wmagrath@mcdonaldcarano.com,kmorris@mcdonaldcarano.com
- **Benjamin J Maro**
  benjamin.maro@mto.com,laurie.thoms@mto.com,larry.polon@mto.com
- **Steve L. Morris**
  sm@morrislawgroup.com,paf@morrislawgroup.com
- **Andrew R. Muehlbauer**
  andrew@mlolegal.com,witty@mlolegal.com,hrainey@cookseylaw.com
- **Christopher Nelson**
  cnelson@btkmc.com
- **Ivy T. Ngo**
  ingo@rgrdlaw.com
- **Brian O. O'Mara**
  bomara@rgrdlaw.com,jillk@rgrdlaw.com,risac@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Margaret Claire O'Sullivan**
  cosullivan@irell.com
- **George F. Ogilvie , III**
  gogilvie@mcdonaldcarano.com,kbarrett@mcdonaldcarano.com
- **Margaret Onasch**
  monasch@ktmc.com
- **Erik Peterson**
  epeterson@ktmc.com

- **Gregory D. Phillips**
  Jennifer.Lawlor@mto.com
- **Jarrod L. Rickard**
  jlr@pisanellibice.com,lit@pisanellibice.com,smt@pisanellibice.com
- **Darren J. Robbins**
  e_file_sd@rgrdlaw.com
- **David Rosenfeld**
  drosenfeld@rgrdlaw.com
- **Matthew David Rowen**
  matthew.rowen@mto.com
- **Meghan Alexandra Royal**
  aroyal@rgrdlaw.com
- **Samuel H. Rudman**
  srudman@rgrdlaw.com,e_file_ny@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **Joseph Russello**
  jrussello@csgrr.com
- **M Nelson Segel**
  nelson@nelsonsegel.com,diana@nelsonsegellaw.com
- **David Siegel**
  dsiegel@irell.com,rgrazziani@irell.com,jmanzano@irell.com
- **Rosa Solis-Rainey**
  rsr@morrislawgroup.com,fmi@morrislawgroup.com
- **Glenn K Vanzura**
  gvanzura@irell.com
- **Susan Whatley**
  susanwhatley@nixlawfirm.com,lbaldwin@npraustin.com
- **James M Wilson**
  jwilson@chitwoodlaw.com
- **Amanda C Yen**
  ayen@mcdonaldcarano.com,dsampson@mcdonaldcarano.com,mwade@mcwlaw.com

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