IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JET CAPITAL MASTER FUND, L.P.	)	
	)	
v.	)	No. 21-cv-552-jdp
	)	
HRG GROUP, INC. ET AL.	)	

MEMORANDUM OF LAW IN SUPPORT OF SPECTRUM CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES

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Spectrum Class Counsel,[1] counsel for the Public School Teachers' Pension and Retirement Fund of Chicago ("Chicago Teachers") and the Cambridge Retirement System ("Cambridge"), the Court-appointed Lead Plaintiffs (the "Spectrum Lead Plaintiffs" or the "Original Lead Plaintiffs") in *In re Spectrum Brands Securities Litigation*, No. 19-cv-347-jdp ("*Spectrum*"), previously negotiated a $39 million settlement (the "Initial Settlement") of the claims of both HRG shareholders (the "HRG Claims") and Spectrum shareholders. The Court then ordered separate lead counsel for the HRG Class ("HRG Counsel"), and the Initial Settlement was modestly renegotiated. But for Spectrum Class Counsel's efforts, the statute of limitations would have expired and there would be no claim or settlement available to the HRG Class. In accordance with Rule 23(h) of the Federal Rules of Civil Procedure, Spectrum Class Counsel respectfully submit this memorandum in support of their motion for an award of attorneys' fees in the amount of 15% of the $4.785 million portion of the $7.25 million HRG Settlement (currently before this Court) attributed to their efforts in preserving the HRG Claims and achieving the HRG Settlement.[2]

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[1] "Spectrum Class Counsel" consist of Spectrum Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Spectrum Liaison Counsel Stafford Rosenbaum LLP ("Stafford Rosenbaum"). No firms or attorneys other than BLB&G and Stafford Rosenbaum will receive any portion of any attorneys' fees sought by this motion.

[2] Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Declaration of Katherine M. Sinderson in Support of (I) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Sinderson Declaration" or "Sinderson Decl."), filed in the *Spectrum* action. Citations to "CAC ¶ __" are to the Amended Class Action Complaint for Violations of the Federal Securities Laws, filed in *Spectrum* on July 12, 2019 (dkt. 14). Citations to "*Spectrum* Final Approval Br. __" are to the Memorandum of Law in Support of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation filed in the *Spectrum* action and citations to "*Spectrum* Fee Br. __" are to the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses filed in the *Spectrum* action. Citations to "¶ __" in this memorandum refer to paragraphs in the Sinderson Declaration. Unless otherwise indicated, internal quotations and citations are omitted.

PRELIMINARY STATEMENT

Spectrum Class Counsel seeks a fee of 15% of the $4.785 million fund that HRG Counsel concedes Spectrum Class Counsel created for the benefit of the HRG Class. To determine whether class counsel is entitled to fees out of the common fund, the Court must review whether "(1) [counsel] performed work on behalf of the class, (2) they did so with some reasonable expectation of being compensated out of the class's common-fund recovery, and (3) their work led to identifiable benefits to the class that would not have been obtained by the work of lead counsel." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 200 (3d Cir. 2005).

The answer to each of these questions here is a clear "yes." Spectrum Class Counsel are the ***only*** counsel to have identified, investigated, initiated, and prosecuted the HRG Claims for the benefit of HRG shareholders through the expiration of the two-year statute of limitations period. As a result of these efforts, Spectrum Class Counsel negotiated and achieved a resolution of the claims of HRG and Spectrum shareholders for $39 million—setting the baseline for the $39.25 million in current combined settlements of the HRG and Spectrum actions. Moreover, when the Court determined that the HRG claimants required representation separate from the Spectrum Lead Plaintiffs and gave Spectrum Class Counsel the option to simply dismiss those claims (dkt. 74), Spectrum Class Counsel reported that those class claims would likely be time-barred under the two-year statute of limitations applicable to Section 10(b) suits. Accordingly, Spectrum Class Counsel negotiated with Defendants a resolution that would allow HRG shareholders to proceed as a separate subclass—thereby preserving the entirety of those class claims and enabling the full $7.25 million HRG settlement before the Court today.

These facts are not in dispute. Indeed, newly appointed HRG Counsel has confirmed that Spectrum Class Counsel is responsible for:

(1) Achieving a $4.785 million recovery for the benefit of HRG Shareholders (*see* dkt. 99, at 2 (stating that the Initial Settlement achieved approximately 66% of the $7.25 million amount of the HRG Settlement); *see also id.* at 12 (indicating that the Initial Settlement represented 3.3% of a maximum $145 million in damages, or $4.785 million);

(2) Identifying, investigating, and pleading the HRG Claims (*see id*. at 8 (Jet Capital could endorse the HRG Settlement because "the [Original] Lead Plaintiffs undertook substantial due diligence into the claims of the HRG Subclass, as reflected in the Complaint"); and

(3) Preserving the HRG class claims from being time-barred by negotiating to sever the HRG Claims, rather than dismissing them (*see* dkt. 90, at 2 ("Jet Capital respectfully requests that any severance order reflect the parties' agreement that Defendants shall not assert a statute of limitation or statute of repose defense against the claims asserted by Jet Capital in the newly severed action. . . .")).

Accordingly, the "identifiable benefits" to the HRG Class here from Spectrum Class Counsel's efforts are both remarkably easy to measure and impossible to deny.

Notably, Spectrum Class Counsel is seeking a fee ***only*** from the portion of the HRG Settlement that HRG Counsel itself has attributed to Spectrum Class Counsel's efforts—not the entirety of the $7.25 million HRG Settlement. This is despite the fact that there would be no HRG Settlement at all without Spectrum Class Counsel's efforts in identifying, prosecuting, and preserving the HRG Claims.

Further, the 15% fee that Spectrum Class Counsel requests is well below the amount of fee requests commonly approved in the Seventh Circuit. It is also low given the particularly risky nature of the HRG Claims and the amount and kind of work Spectrum Class Counsel performed. Beyond Defendants' significant arguments concerning scienter and falsity, which applied equally to the claims of both Spectrum and HRG shareholders, Defendants had extremely compelling arguments that HRG investors lacked standing to bring securities-fraud claims against Spectrum at all. The Court itself has noted, "neither the parties nor Jet [later appointed as Lead Plaintiff for the HRG Class] have identified any controlling law on the question." Dkt. 74, at 5. Accordingly, as HRG Counsel has observed, "there was a ***serious and acute risk*** that this Court would have

ruled in Defendants' favor and dismissed the claims of the HRG Subclass in their entirety, which would have dramatically reduced—if not eliminated altogether—HRG Subclass Members' potential recovery." Dkt. 99, at 10 (emphasis added).

In addition, the HRG Class's reaction to date supports Spectrum Class Counsel's fee request. The Notice advised potential HRG Class Members that Spectrum Class Counsel would apply for an award of attorney's fees in an amount not to exceed 15% of $4.785 million. *See* Dkt. 101-1, at 3. While the deadline set by the Court for Class Members to object to the requested attorneys' fees has not yet passed, to date, no objections to Spectrum Class Counsel's request for fees have been received.[3]

In light of the recovery preserved and obtained in substantial part because of Spectrum Class Counsel's efforts, the time and effort devoted by Spectrum Class Counsel to the Action, the skill and expertise required, the quality of the work performed, the wholly contingent nature of the representation, and the considerable risks that counsel undertook, Spectrum Class Counsel respectfully submit that the requested fee award is fair and should be approved by the Court.

SPECTRUM CLASS COUNSEL'S PROSECUTION OF THE HRG CLAIMS

A. Background

This Action asserts claims arising under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of investors who purchased HRG common stock during the period from January 26, 2017 to November 19, 2018 (the "Class Period"). The class action involves alleged misrepresentations and omissions by Spectrum and certain of its senior executives concerning Spectrum's critical consolidation efforts, which were supposed to

[3] The deadline for the submission of objections is February 22, 2022. Should any objections be received, Spectrum Class Counsel will address them in its reply papers, which Spectrum Class Counsel will file with the Court on or before March 4, 2022.

reduce Spectrum's expenses and working capital, simplify its supply and distribution chains, and enhance its profitability. Class members are investors in HRG, a holding company whose primary operating subsidiary was Spectrum ("Old Spectrum"). In the middle of the Class Period, in July 2018, Spectrum merged into HRG, and the surviving entity was renamed "Spectrum Brands."

On June 12, 2019, the Court issued an order in *In re Spectrum Brands Securities Litigation*, No. 3:19-cv-00178-jdp, appointing Chicago Teachers and Cambridge as the Original Lead Plaintiffs and approving their selection of BLB&G as Lead Counsel and Rathje Woodward LLC ("Rathje Woodward") as Liaison Counsel.[4]

B. Spectrum Class Counsel's Investigation and Filing of the Class Action Complaint

After the Court appointed the Original Lead Plaintiffs and Lead Counsel (referred to in this memorandum as "Spectrum Class Counsel"), Spectrum Class Counsel accelerated their already ongoing investigation into the Class's claims and drafted an amended class action complaint ("CAC").

In that investigation, Spectrum Class Counsel reviewed countless materials authored, issued, or presented by Spectrum, including its financial reports, SEC filings, conference call transcripts, registration statements, prospectuses, press releases, investor presentations, and other communications issued publicly during the Class Period and beyond. Spectrum Class Counsel also reviewed every available news article, securities analyst report, and item of market commentary concerning Spectrum issued before, during, and beyond the Class Period in order to gauge the impact of Spectrum's statements on the marketplace. Given that Spectrum was followed by multiple analysts and that Spectrum's consolidation projects garnered significant analyst and

[4] Stafford Rosenbaum acted as successor counsel to Rathje Woodward when acting liaison counsel, Douglas Poland, changed firms to Stafford Rosenbaum.

media attention during the Class Period, these materials were voluminous. Further, Spectrum Class Counsel obtained and reviewed Spectrum's permit filings with local authorities concerning the construction of its two new distribution centers. Spectrum Class Counsel also thoroughly researched the role of the distribution centers in the consumer goods industry in which Spectrum operated.

Spectrum Class Counsel also interviewed dozens of potential witnesses with knowledge of the alleged wrongdoing, who were primarily former Spectrum employees, to form the allegations in the CAC. The CAC ultimately relied on the reports of 18 such individuals to support its allegations.

Spectrum Class Counsel also thoroughly investigated the impact of Defendants' false statements on HRG shareholders. In particular, Spectrum Class Counsel retained Global Economics Group, a preeminent economic consulting firm, to provide analyses relating to loss causation and damages that aided Spectrum Class Counsel in drafting the CAC, including with respect to how closely HRG and Spectrum stocks were correlated to support the assertion of claims on HRG shareholders' behalf against Spectrum. CAC ¶ 26.

As a result of Spectrum Class Counsel's extensive factual and legal investigation while preparing the CAC, Spectrum Class Counsel identified potentially valuable claims on behalf of investors who acquired HRG stock during the initial portion of the Class Period before Spectrum merged into HRG, based on the same alleged fraud relating to Spectrum's distribution center consolidations as the claims by Spectrum shareholders.

On July 12, 2019, the Original Lead Plaintiffs filed the 135-page CAC. Dkt. 14. The CAC asserted claims on behalf of purchasers of Spectrum, Old Spectrum, and HRG during the Class Period for violations of (i) Section 10(b) of the Exchange Act by Spectrum, Old Spectrum, and the

Executive Defendants[5] and (ii) Section 20(a) of the Exchange Act by HRG and the Executive Defendants. Among other things, the CAC alleged that Defendants misled investors about the progress of two critical manufacturing and distribution consolidation projects, one for Spectrum's HHI division and the other for its GAC division. During the Class Period, Defendants repeatedly assured the market that these consolidation projects were "on track" and "progressing smoothly." However, unbeknownst to the market, the progress of the consolidations was well behind schedule. These delays materially affected not only Spectrum's finances but its ability to satisfactorily serve its largest customers, such as Wal-Mart and Home Depot. The CAC alleged that Defendants' materially false and misleading statements artificially inflated the prices of Spectrum, Old Spectrum, and HRG common stock, which resulted in significant losses to investors when the truth was revealed to the public in a series of corrective disclosures from April 26, 2018 to November 19, 2018.

Spectrum Class Counsel and the Original Lead Plaintiffs included the HRG Claims, which no other plaintiff or plaintiff's counsel had asserted in a filed pleading, in the CAC. These allegations included discussion of the prominent role of Spectrum in HRG's financial results, overlapping management between the two companies, and HRG's repeated reliance on Spectrum's disclosures to inform its own investors. CAC ¶¶ 25-26. They also included an analysis of the extent to which HRG and Spectrum stock were correlated throughout the Class Period (CAC ¶ 26) and the impact of Spectrum's disclosures on HRG's stock price (*id.*).

C. Defendants' Motion to Dismiss the Class Action Complaint

On August 26, 2019, Defendants filed their detailed and voluminous motion to dismiss the CAC and supporting papers, consisting of more than 250 pages of briefing, exhibits, and appendix

[5] The "Executive Defendants" are Andreas R. Rouvé, David M. Maura, and Douglas L. Martin.

in support of the motion. Dkts. 21, 22. Defendants argued that the CAC should be dismissed on numerous grounds, including, among others, the following:

First, as discussed more fully in Spectrum Class Counsel's brief and declaration in support of final approval of the pending proposed settlement in the *Spectrum* action (the "Spectrum Settlement") (*Spectrum* Fee Br. at 13-14; ¶¶ 38-41), Defendants made numerous arguments applicable to both the Spectrum claims and the HRG Claims: that the CAC failed to plead scienter; that many of the challenged statements were protected as forward-looking under the PSLRA's "safe harbor" provision; that many of the alleged false statements were statements of opinion, which require the plaintiff to show both that the opinion statement was false and that the speaker did not honestly believe the statement when they made it; and that many of the statements were immaterial as a matter of law.

Second, Defendants argued that HRG shareholders lacked standing to pursue claims in this matter, as they did not purchase or sell Spectrum shares, and that the Original Lead Plaintiffs did not have standing to pursue HRG shareholders' claims because they never moved to represent those shareholders in accordance with the PSLRA. Defendants argued forcefully that, under the leading case *Ontario Public Service Employees Union Pension Trust Fund v. Nortel Networks Corp.*, 369 F.3d 27 (2d Cir. 2004), courts have held that shareholders of one company do not have standing to sue a different company for false and misleading statements about the latter company that affected the stock price of the first company. *See* dkt. 21 at 44-48.

On October 10, 2019, Spectrum Class Counsel filed a 70-page opposition brief responding to Defendants' motion to dismiss on behalf of the Original Lead Plaintiffs. Dkt. 26. In their opposition brief, Spectrum Class Counsel thoroughly responded to Defendants' arguments applicable to both the Spectrum claims and the HRG Claims, as discussed more fully in the

pending motion for final approval of the Spectrum Settlement (¶¶ 43-45). In response to Defendants' argument that HRG shareholders lacked standing to sue for false and misleading statements issued by Spectrum, Spectrum Class Counsel argued that the Supreme Court has not limited liability under Section 10(b) to only the issuer of a stock, but recognizes liability for anyone who makes false statements in connection with a purchase or sale of securities. Spectrum Class Counsel asserted that purchasers of pre-Merger HRG stock could properly bring securities-fraud claims against Spectrum and the Executive Defendants (secondary actors with respect to HRG shareholders), based on the false and misleading statements Defendants made in connection with those purchases. The Original Lead Plaintiffs relied on cases allowing investors in a company to bring claims against proposed merger partners, underwriters, brokers, bankers, and non-issuer sellers for false statements about the company. *See* dkt. 26 at 63-67; ¶ 46. Spectrum Class Counsel also argued that the issued PSLRA notices included HRG shareholders.

On November 6, 2019, Defendants filed their 34-page reply brief in further support of their motion to dismiss. Dkt. 30. In their reply, Defendants reinforced the arguments presented in their opening brief. In particular, on the standing issue, Defendants made a strong argument that the cases the Original Lead Plaintiffs cited concerning the standing of merger partners, underwriters, brokers, bankers, and non-issuer sellers did not apply to companies outside those particular categories. Dkt. 30 at 30.

Defendants' motion to dismiss was denied without prejudice when the Original Lead Plaintiffs and Defendants agreed to mediate the Action in early 2020 (dkt. 34), and the motion remained in abeyance while the Original Lead Plaintiffs and Defendants reached the Initial Settlement on behalf of both the Spectrum Class and the HRG Class in June 2020; the approval of the Initial Settlement was considered; the claims of the Spectrum Class and the HRG Class were

ultimately severed; and separate settlements were reached for the respective classes in August and September 2021. Thus, there was no further litigation concerning Defendants' motion to dismiss the Spectrum or HRG Claims, and the motion to dismiss was never adjudicated on its merits.

D. Due Diligence Discovery

In connection with the Initial Settlement, the Original Lead Plaintiffs negotiated for and received a selection of highly relevant document discovery from Spectrum, notwithstanding the mandatory PSLRA stay of discovery pending the resolution of the motion to dismiss. The Original Lead Plaintiffs sought this due diligence discovery so that they could better analyze the strengths and weaknesses of the claims in the action (and confirm the fairness, reasonableness, and adequacy of the proposed Initial Settlement) in light of the fact that the Original Lead Plaintiffs had not received any formal discovery from Defendants at time the agreement in principle was reached—although, as discussed above, the Original Lead Plaintiffs reviewed and analyzed extensive publicly available materials.

As part of this due diligence discovery, Spectrum produced over a thousand pages of its internal documentation, including board and financial materials, which Spectrum Class Counsel reviewed and analyzed, as discussed in more detail in the pending motion for approval of the Spectrum Settlement (*Spectrum* Final Approval Br. at 17; ¶¶ 49-50). Spectrum Class Counsel concluded that these documents would have offered some support to Defendants' claims that management's views and projections concerning the consolidation projects were honestly held.

E. The Parties Reach the Initial Settlement

While Defendants' motion to dismiss the CAC was pending, on June 3, 2020, the Parties participated in a full-day mediation session conducted by Jed D. Melnick, Esq. of JAMS ADR as mediator. Before the mediation, the Parties submitted detailed mediation statements, including an opening mediation statement from the Original Lead Plaintiffs with detailed information about

class damages, including analysis provided by the Original Lead Plaintiffs' damages expert; a responsive mediation statement from Defendants, with Defendants' own expert analysis of class damages and critique of the Original Lead Plaintiffs' expert's analysis; and a reply mediation statement from the Original Lead Plaintiffs that responded to Defendants' arguments.

The participants in the videoconference mediation included Spectrum Class Counsel; representatives from both Original Lead Plaintiffs; both the General Counsel and an additional in-house attorney for Spectrum; the outside counsel for Spectrum and the Executive Defendants, Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss"); and representatives from Spectrum's directors' and officers' liability insurance carriers. During the mediation session, the Parties discussed liability and damages with the Mediator and with each other, including regarding HRG shareholders' standing to assert claims against Defendants.

Mr. Melnick made a Mediator's recommendation that the Parties settle the claims of both Spectrum and HRG shareholders for $39 million, and the Parties agreed. After Spectrum Class Counsel had completed the due diligence discovery discussed above, the Original Lead Plaintiffs ultimately filed their motion for final approval of the Initial Settlement on December 24, 2020. Dkts. 49, 50, 53.

The proposed Plan of Allocation submitted by the Original Lead Plaintiffs in connection with the Initial Settlement provided for payment of portions of the settlement fund to purchasers of each of Spectrum, Old Spectrum, and HRG common stock, but included a 75% discount on the claims related to purchases of HRG common stock, which the Original Lead Plaintiffs believed was appropriate to account for the higher risk of the HRG claims, including the risk that HRG purchasers might be found to lack standing.

On January 8, 2021, Jet Capital Master Fund LP ("Jet Capital"), an investor that had purchased HRG common stock during the Class Period, and certain related entities, filed an objection to the proposed Plan of Allocation (though not to the $39 million Initial Settlement). Dkts. 54, 55, 57. Jet Capital objected specifically to the 75% discount for HRG claims, arguing that the discount was arbitrary and unfair to HRG claimants. The Original Lead Plaintiffs responded to Jet Capital's objection (dkts. 63, 64), and both the Original Lead Plaintiffs and Jet Capital submitted further papers in connection with Jet Capital's objection and motion to intervene (dkts. 66-70, 72, 73).

On February 6, 2021, the Court entered an Order denying without prejudice the Original Lead Plaintiffs' motion for final approval of the Initial Settlement. Dkt. 74. The Court found that purchasers of HRG common stock had not received adequate notice of the *Spectrum* action, that the notice published in accordance with the PSLRA at the outset of the case did not include the claims of HRG stock purchasers, and that the Original Lead Plaintiffs were thus not adequate representatives of HRG stock purchasers. *Id*. at 4-6. The Court provided the Original Lead Plaintiffs with two options to cure these issues: either (a) publish a new PSLRA notice for the claims of the HRG class members, in which case the Court would then choose an additional lead plaintiff to represent the HRG purchasers under the PSLRA; or (b) exclude the HRG stock purchasers' claims from the class and allow them to file a separate lawsuit if they wished. *Id*. at 7.

F. Spectrum Class Counsel Act to Preserve HRG Shareholders' Claims

Spectrum Class Counsel recognized that if they decided to dismiss the claims on behalf of HRG shareholders, as the Court offered as an option, HRG shareholders would be unable to assert class claims in a separate action due to the applicable two-year statute of limitations. *See infra* at 19-20. Under those circumstances, the vast majority of HRG shareholders (or all of them) would

be unable to recover any compensation for their Spectrum-related losses. If the Original Lead Plaintiffs instead maintained the HRG Claims as a separate class and sought the appointment of separate lead plaintiffs, those class claims could be preserved for the benefit of HRG shareholders. Accordingly, on February 19, 2021, the Original Lead Plaintiffs submitted a proposed plan to the Court to divide the putative class into separate subclasses of Spectrum investors and HRG investors, and to provide a notice soliciting an additional lead plaintiff to represent the HRG Class. Dkt. 75.

On April 2, 2021, following approval by the Court (dkt. 76), the Original Lead Plaintiffs issued the new PSLRA notice via the PR Newswire, informing purchasers of HRG common stock during the Class Period of the opportunity to seek appointment as lead plaintiff for the HRG Class.

On May 26, 2021, Jet Capital filed an unopposed motion to serve as lead plaintiff for the HRG Class. Dkts. 77-80. On June 10, 2021, the Court granted Jet Capital's motion. Dkt. 85.

G. The Original Lead Plaintiffs and Defendants Reach a Settlement of the Spectrum Class's Claims, and the HRG Lead Plaintiff and Defendants Reach a Settlement of the HRG Class's Claims

Promptly after the Court appointed Jet Capital as HRG Lead Plaintiff, the Original Lead Plaintiffs, Defendants, and Jet Capital engaged in mediation before Mr. Melnick in an effort to reach a settlement on behalf of both the Spectrum Class and the HRG Class, beginning with a formal mediation session on July 22, 2021. As stated in the *Spectrum* Stipulation of Settlement, the subject of that mediation was "negotiating a mutually acceptable allocation of the existing $39 million in settlement consideration that had previously been agreed for both sub-classes." *Spectrum* dkt. 96-1, at 5. Participants in the mediation, which was held by videoconference, included Spectrum Class Counsel, representatives of both Original Lead Plaintiffs, Jet Capital's counsel, and Defendants' Counsel.

Following additional settlement discussions, the Original Lead Plaintiffs and Defendants reached an agreement in principle to the Spectrum Settlement resolving the *Spectrum* action for $32 million with respect to the Spectrum Class only, and this agreement was memorialized in a term sheet executed on August 3, 2021. On August 4, 2021, the Original Lead Plaintiffs and Defendants filed a Joint Status Report advising the Court of the proposed Spectrum Settlement. Dkt. 88.

On August 6, 2021, the Court entered an Order asking the Parties to show cause why the Spectrum and HRG subclasses' claims should not be severed so that each subclass's claims could be resolved separately. Dkt. 89. On August 20, 2021, Lead Plaintiffs, Jet Capital, and Defendants filed a response to the Court's August 6, 2021 Order agreeing that severance of the Spectrum Class's and HRG Class's claims was appropriate. Dkt. 90. In that response, Jet Capital acknowledged the serious risk that the HRG Claims would have been time-barred but for Spectrum Class Counsel's actions to preserve those claims:

> Jet Capital respectfully requests that any severance order reflect the parties' agreement that Defendants shall not assert a statute of limitation or statute of repose defense against the claims asserted by Jet Capital in the newly severed action that would not have been available to Defendants in this action had severance not occurred.

Dkt. 90, at 2. On August 23, 2021, the Court entered an Order directing the Parties to file a proposed severance order identifying the claims and parties to be included in each case (dkt. 93), and the parties submitted the proposed order on August 25, 2021 (dkt. 94).

On August 27, 2021, the Court entered an Order severing the Spectrum Class's claims from the HRG Class's claims and allowing the two sets of claims to proceed independently. Dkt. 95. The severance Order provided that the claims on behalf of all persons and entities that (i) purchased common stock of Old Spectrum from January 26, 2017, through July 13, 2018; and/or (ii) purchased common stock of Spectrum from July 13, 2018, through November 19, 2018, which

are led by the Original Lead Plaintiffs, would proceed in the existing *Spectrum* action, No. 19-cv-347-jdp. The claims of the persons or entities that purchased HRG common stock from January 26, 2017, through July 13, 2018, which are led by Jet Capital, were transferred to this separate action.

On September 20, 2021, Jet Capital and Defendants reached an agreement to settle this action on behalf of the HRG Class for $7.25 million. Notably, the new Lead Counsel for the HRG Class conducted no litigation other than objecting to the Initial Settlement and moving for Jet Capital's appointment as Lead Plaintiff for the HRG Class. They relied on the CAC drafted by Spectrum Class Counsel and never briefed any motion to dismiss.

Jet Capital's motion for preliminary approval of the HRG settlement acknowledges many of the facts supporting Spectrum Class Counsel's request for a fee from the portion of the HRG settlement that was achieved by Spectrum Class Counsel's efforts:

- Jet Capital admits that it is piggybacking off Spectrum Class Counsel's investigation of the HRG Claims and the detailed allegations concerning those claims in Spectrum Class Counsel's CAC: "Although Jet Capital was not able to conduct formal discovery in the Action because of the mandatory PSLRA discovery stay, ***the Spectrum Subclass Lead Plaintiffs undertook substantial due diligence into the claims of the HRG Subclass, as reflected in the Complaint***, and Jet Capital possessed sufficient information to confirm that the $7.25 million settlement was fair, reasonable and adequate for the HRG Subclass." Dkt. 99, at 8 (emphasis added).

- Jet Capital admits that Spectrum Class Counsel achieved approximately two-thirds of the benefit for the HRG Subclass: "The Prior Settlement would have provided HRG Subclass Members an estimated recovery of 33 cents per HRG share. The proposed Settlement will provide HRG Subclass Members an estimated recovery of 50 cents per HRG share." *Id.* at 2.

- Jet Capital, which objected only to the prior proposed Plan of Allocation and not to the Initial Settlement—which were presented separately for the Court's approval—tacitly admits that the Initial Settlement was fair, reasonable, and adequate: "no HRG Subclass Members opted-out of the Prior Settlement and only Jet Capital (and two other institutions represented by [HRG] Lead Counsel) objected on the basis of the 75% discount for HRG claims." *Id.* at 10.

- Jet Capital admits that the claims procedure in the HRG settlement is relying on Spectrum Class Counsel's work: "Notably, HRG Subclass Members who previously submitted Claim Forms in the Prior Settlement will not be required to submit another Claim Form. Rather, their claims in this Settlement will be calculated based on the information in their prior submission." *Id.* at 5 (emphasis in original).

- Jet Capital admits that the HRG Class is also achieving efficiencies by using the same Claims Administrator that Spectrum Class Counsel chose for the Initial Settlement and the currently proposed Spectrum Settlement. *See id.* at 20.

On November 17, 2021, the Court preliminarily approved the HRG Settlement and scheduled a hearing on approval of the HRG Settlement for March 18, 2022, the same date as the hearing on approval of the Spectrum Settlement.

ARGUMENT

A. Spectrum Class Counsel Are Entitled to Fees for Their Work That Benefited the HRG Class

Non-lead counsel are entitled to claim fees from a common fund where "(1) they performed work on behalf of the class, (2) they did so with some reasonable expectation of being compensated out of the class's common-fund recovery, and (3) their work led to identifiable benefits to the class that would not have been obtained by the work of lead counsel." *Cendant*, 404 F.3d at 200; *see also Victor v. Argent Classic Convertible Arbitrage Fund, L.P.*, 623 F.3d 82, 87 (2d Cir. 2010) ("when a substantial benefit has been conferred on the class, non-lead counsel are entitled to reasonable compensation"); *Gottlieb v. Barry*, 43 F.3d 474, 489 (10th Cir. 1994) (reversing denial of fees to non-lead counsel who "did indeed actively prosecute the case prior to court designation of class counsel" and "have indeed conferred a benefit on the class"); *Alvarado v. FedEx Corp.*, 2009 WL 5113998, at *1 (N.D. Cal. Dec. 18, 2009) (awarding fees to prior class counsel), *aff'd in relevant part sub nom. Alvarado v. Young*, 436 F. App'x 746 (9th Cir. 2011) ("*Young*").

The Seventh Circuit recognizes the propriety of awarding prior counsel who confer a significant benefit in a contingency case their fees in *quantum meruit* measured as a percentage of

the recovery. For example, in *ACF 2006 Corp. v. Ladendorf*, 826 F.3d 976 (7th Cir. 2016), a lawyer began representing the plaintiff in a contingent products-liability action while at one firm before moving to another firm and settling the action. *See id.* at 978, 980. The district court awarded the first firm 60% of the contingency fee and awarded the successor firm 40%. *See id.* at 980. While reversing on other grounds, the Seventh Circuit approved this allocation, noting that the "allocation seems generous to the [successor] Firm, because the judge found that the [first] Firm did essentially all of the work and that the case settled promptly after [the lawyer] moved to the [successor] Firm"—just like the situation here. *Id. See also Johnson v. Cherry*, 256 F. App'x 1, 3, 5 (7th Cir. 2007) (awarding one-sixth of recovery to plaintiff's prior counsel).[6]

In a similar context, courts award attorney's fees even to objectors who provide a significant benefit to the class. *See In re Sw. Airlines Voucher Litig.*, 898 F.3d 740, 744 (7th Cir. 2018) ("Objectors who add value to a class settlement may be compensated for their efforts."); *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002) ("[Objectors'] participation is encouraged by permitting lawyers who contribute materially to the proceeding to obtain a fee."); *see also Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963 (9th Cir. 2009) (clearly erroneous to not award objectors fees where objectors achieved benefit for class; "we remand for the district court to reconsider the extent to which Objectors added value that increased the fund or substantially benefitted the class members, and to award attorney's fees accordingly"), *on appeal*

[6] *See also In re Stec Inc. Sec. Litig.*, 2013 WL 12129391, at *5-6 (C.D. Cal. May 23, 2013) (awarding fees to former co-lead counsel who had been replaced by successor counsel for former counsel's work that benefited the class); *Doe v. Cin-Lan Inc.*, 2011 WL 13266312, at *2 (E.D. Mich. July 15, 2011) (awarding fees to counsel for plaintiffs in separate action whose claims were included in settlement and increased settlement's value); *Yumul v. Smart Balance, Inc.*, 2010 WL 4352723, at *1 n.6 (C.D. Cal. Oct. 8, 2010) ("Allowing plaintiff to terminate [a firm] as counsel does not prevent the firm from recovering the reasonable value of the services it has performed to date."); *In re Auction Houses Antitrust Litig.*, 2001 WL 210697, at *1-3 (S.D.N.Y. 2001) (awarding attorney's fees to interim class counsel who were replaced by successor counsel).

after remand, *Rodriguez v. Disner*, 688 F.3d 645 (9th Cir. 2012) (clear error to not award fees to objector who achieved benefit for class).

Spectrum Class Counsel is proper under this well-established law because they seek compensation only for the "identifiable benefit" that they conferred on the HRG Class.

First, Spectrum Class Counsel were the ***only*** counsel to identify these claims and to conduct an extensive factual and legal investigation and to file a comprehensive pleading on behalf of HRG shareholders. Notably, HRG Counsel admits that they were unable to independently verify the merits of their claims and that they relied on Spectrum Class Counsel's "substantial due diligence into the claims of the HRG Subclass, as reflected in the [CAC]." Dkt. 99, at 8. Spectrum Class Counsel's efforts included:

(i) conducting a comprehensive investigation of the alleged fraud, which included a thorough review of the voluminous public record and interviews with dozens of witnesses with knowledge of the alleged wrongdoing;

(ii) researching, drafting, and filing the CAC;

(iii) conducting extensive research and briefing in opposition to Defendants' motion to dismiss the CAC (including their specific arguments for dismissal of the HRG Claims); and

(iv) consulting with an expert regarding loss causation and damages.

In other words, Spectrum Class Counsel did essentially "all . . . the work" in litigating the case (*ACF 2006 Corp.*, 826 F.3d at 980) to the point of—and even beyond—settlement.

Second, Spectrum Class Counsel vigorously negotiated with Defendants to achieve an agreement to pay $39 million to settle both Spectrum and HRG shareholders' claims in the Initial Settlement, which set the baseline for the $39.25 million total settlement amount currently before the Court in the two cases. Of the $39 million Initial Settlement, as HRG Counsel admits, Spectrum Class Counsel achieved at least $4.785 million for HRG shareholders.

Spectrum Class Counsel's settlement efforts included an extensive, arm's-length settlement negotiation, which included a formal, all-day mediation session overseen by Mr. Melnick, followed by additional negotiations under Mr. Melnick's supervision and guidance; the drafting and negotiation of the final terms of the Initial Settlement; and due diligence discovery to assess the reasonableness of that settlement, which included the review of over a thousand pages of confidential internal Spectrum documents that were relevant to assessing the strengths and weaknesses of all of the class's claims, including the HRG Claims.

Third, when the Court denied approval of the Initial Settlement of both the Spectrum and HRG Claims without prejudice, the Court offered the Original Lead Plaintiffs and Spectrum Class Counsel the choice of whether to drop the HRG Claims or to issue a new PSLRA notice for HRG investors to seek appointment as lead plaintiff for those claims. Recognizing that if they chose to simply drop those claims, HRG shareholders would be unable to recover on a class basis due to the operation of the statute of limitations (which by then had expired), Spectrum Class Counsel ***again*** protected the HRG Claims from becoming time-barred by choosing to issue the PSLRA notice for those claims.

Specifically, the first securities class-action complaint against Spectrum was filed on March 7, 2019, and it alleged that Defendants made false statements with scienter, based in part on Spectrum's admissions on November 19, 2018, about problems with the consolidations of its HHI and GAC divisions over the course of 2018. *See Wagner v. Spectrum Brands Legacy, Inc.*, No. 3:19-cv-00178, dkt. 1, at 6-15 (W.D. Wis.). However, arguably the earlier termination of Defendant Andreas R. Rouvé, Spectrum's former CEO, in April 2018 could be held to support a strong inference of scienter—and to start the clock for the statute of limitations. *See* CAC ¶¶ 273-74; *In re Akorn, Inc. Sec. Litig.*, 240 F. Supp. 3d 802, 820 (N.D. Ill. 2017).

Thus, if the Original Lead Plaintiffs had dropped the HRG Claims, leaving them to be filed separately in a new action, Defendants would undoubtedly have argued that the two-year statute of limitations for HRG investors' claims based on Defendants' alleged false statements about the HHI and GAC consolidations began to run no later than November 2018, and possibly as early as April 2018—in either case more than two years before February 2021.

Under *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), the filing of the CAC tolled the statute of limitations for the HRG Claims. *See id.* at 553. Critically, however, in *China Agritech, Inc. v. Resh*, 138 S. Ct. 1800 (2018), the Supreme Court held that "*American Pipe* does not permit the maintenance of a follow-on class action past expiration of the statute of limitations." *Id.* at 1804. Thus, simply dismissing HRG purchasers' claims from the *Spectrum* action would have exposed them to an extremely high risk of dismissal in any subsequent class actions (although individual actions could proceed). HRG Counsel recognized this in the stipulation the Parties submitted to the Court concerning severance of the HRG Action by including a provision that "Defendants shall not assert a statute of limitation or statute of repose defense against the claims asserted by Jet Capital in the newly severed action that would not have been available to Defendants in this action had severance not occurred."' Dkt. 90, at 2.

Thus, Spectrum Class Counsel respectfully submit that they zealously and adequately represented the HRG shareholders' claims and conferred a substantial, identifiable, precisely quantifiable benefit for the HRG Class, with a reasonable expectation of being compensated from a common fund resolution of those claims.

B. The Appropriate Fee Amount Is Measured as a Percentage of the Portion of the Fund Attributed to Counsel's Work

Spectrum Class Counsel respectfully submit that the Court should award a fee based on a percentage of the portion of the HRG common fund that all counsel agree was obtained through

their efforts. *See, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 563 (7th Cir. 1994) ("*Florin I*"). The Seventh Circuit favors the percentage method over the lodestar method of determining fees in common fund cases. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998); *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014); *see also Spectrum* Fee Br. at 19.

The 15% fee requested here is plainly consistent with—if not well below—fee awards that courts in the Seventh Circuit have made in similar cases with comparable recoveries. *See, e.g.*, *Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *13 (N.D. Ill. Sept. 18, 2020) (awarding 30% of $50 million settlement fund); *In re Groupon, Inc. Sec. Litig.*, 2016 WL 3896839, at *4 (N.D. Ill. July 13, 2016) (awarding 30% of $45 million settlement fund); *see also Spectrum* Fee Br. at 8-9.

1. The Other Factors Commonly Considered in the Seventh Circuit Also Support Spectrum Class Counsel's Requested Fee Award

The other factors that the Seventh Circuit reviews in analyzing attorneys' fee applications also support Spectrum Class Counsel's fee application. Courts in this Circuit review (1) "the risk of nonpayment a firm agrees to bear," (2) "the quality of its performance," (3) "the amount of work necessary to resolve the litigation," and (4) "the stakes of the case." *In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844 (N.D. Ill. 2015) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) ("*Synthroid I*")); *see also Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005). The class's reaction to the requested fees is also relevant. *See Beesley*, 2014 WL 375432, at *1.

As detailed below, each of these factors supports Spectrum Class Counsel's fee request.

a) The Market Rewards Risk, and the HRG Claims Were Highly Risky to Litigate

The fact that Spectrum Class Counsel brought and litigated the HRG Claims on a fully contingent basis, assuming the significant risk that the litigation would yield no recovery and leave them uncompensated, supports the requested fee from the HRG common fund. *See Synthroid I*, 264 F.3d at 721 ("[t]he market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear"); *see also Spectrum* Fee Br. at 10-15)

In addition to the risks common to the Spectrum and HRG Claims that are discussed in the fee application in the *Spectrum* action (*Spectrum* Fee Br. at 11-14), the HRG Claims involved unique litigation risks that made any recovery for the HRG Class far more uncertain. At the time the Parties reached their original agreement in principle to settle both the Spectrum claims and the HRG Claims in the related action, the Court had not yet ruled on Defendants' motion to dismiss the CAC. Defendants had raised numerous credible arguments regarding the HRG investors' standing. *See* dkt. 21, at 44-48; dkt. 30, at 29-31. As the Court has noted, "neither the parties nor Jet [later appointed as Lead Plaintiff for the HRG Class] have identified any controlling law on the question." Dkt. 74, at 5. Accordingly, as HRG Counsel has observed, "there was a ***serious and acute risk*** that this Court would have ruled in Defendants' favor [on their motion to dismiss] and dismissed the claims of the HRG Subclass in their entirety, which would have dramatically reduced—if not eliminated altogether—HRG Subclass Members' potential recovery." Dkt. 99, at 10 (emphasis added). The heightened risks attendant to further litigation of the HRG Claims support Spectrum Class Counsel's application for a 15% fee from the portion of the HRG common fund that was created by their work.

b) Spectrum Class Counsel Provided High-Quality Legal Services that Produced Most of the Benefit for the HRG Class

In evaluating a fee request, the Seventh Circuit has held that the trial court may consider the "quality of legal services rendered" by plaintiffs' counsel. *Taubenfeld*, 415 F.3d at 600; *Synthroid I*, 264 F.3d at 721. Throughout its representation of HRG shareholders, Spectrum Class Counsel engaged in skillful, creative, and zealous efforts to prosecute the HRG Claims and to preserve them from dismissal.

In addition, the quality of opposing counsel is also an important factor in evaluating the work performed by Spectrum Class Counsel. *See Arenson v. Bd. of Trade of Chi.*, 372 F. Supp. 1349, 1354 (N.D. Ill. 1974). Spectrum Class Counsel faced off against Paul Weiss, one of the best and most widely recognized law firms in the country, and achieved a $39 million settlement for the HRG and Spectrum shareholders (including, at minimum, $4.785 million for HRG shareholders) in the face of immense liability risks. The quality of Spectrum Class Counsel's work and the caliber of Defendants' counsel support Spectrum Class Counsel's application for a fee from the portion of the HRG common fund that was created by Spectrum Class Counsel's work.

c) Spectrum Class Counsel Worked Extensively to Obtain a Recovery on Behalf of the HRG Class

Spectrum Class Counsel spent a substantial amount of time and effort successfully representing the HRG Class. As discussed above in detail, Spectrum Class Counsel investigated, researched, and drafted the CAC, including by interviewing dozens of witnesses and consulting with an expert; opposed Defendants' comprehensive motion to dismiss; conducted extensive and thorough mediation proceedings that led to the Initial Settlement; and preserved the HRG Claims from dismissal by operation of the statute of limitations. Spectrum Class Counsel's thoroughness and efficiency in litigating the HRG Claims further supports the fee percentage requested by Spectrum Class Counsel. *See In re Synthroid Mktg. Litig.*, 325 F.3d 974, 979-80 (7th Cir. 2003)

("The client cares about the outcome alone," and class counsel's efficiency should not be used "to reduce class counsel's percentage of the fund that their work produced.").

d) The Litigation Stakes Were High

The HRG Claims were high-stakes, complex litigation alleging significant monetary damages. Defendants, however, had credible and substantial arguments concerning the HRG investors' standing, as well as liability, loss causation, and damages arguments applicable to both the Spectrum and HRG Claims. *See supra* at 8-9. Spectrum Class Counsel believed that these arguments presented significant risks and could have reduced maximum recoverable damages to nothing or to little more than the recovery achieved for the HRG Class.

Moreover, this Action involves thousands of Class Members who were allegedly defrauded by Defendants. For most Class Members, the costs to successfully prosecute an individual action are so high that a class action is realistically the only way that they would receive any relief. The large number of Class Members who will receive compensation in this case confirms the high stakes of this litigation.

e) The HRG Class's Reaction to Date Supports the Requested Fee

The HRG Class's reaction to date supports the requested fee. In accordance with the Preliminary Approval Order, the Claims Administrator disseminated copies of the Notice to potential Class Members and nominees, informing them, among other things, that Spectrum Class Counsel intended to apply to the Court for an award of attorneys' fees:

> Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") represents the Spectrum Subclass Lead Plaintiffs in the *Spectrum* Action. Before the Court severed this Action from the *Spectrum* Action, BLB&G filed the complaint that is the operative complaint in both actions.
>
> BLB&G has not received any payment for its claimed services to the HRG Subclass. At the Settlement Hearing, or at such other time as the Court may order, BLB&G will ask the Court for an award of attorney's fees not to exceed 15% of

> $4.785 million, plus any interest on that amount at the same rate and for the same periods as earned by the Settlement Fund.

Dkt. 101-1, at 3. While the time to object to the fee application does not expire until February 22, 2022, to date, no objections from members of the HRG Class have been received. ¶ 107.[7] Should any objections be received, Spectrum Class Counsel will address them in their reply papers.

2. The Requested Fee Is Also Reasonable Using the Lodestar Method

As discussed in detail in Spectrum Lead Counsel's fee application in the *Spectrum* action (*Spectrum* Fee Br. at 19), unlike certain other circuits, the Seventh Circuit does not use a lodestar calculation as a secondary measure of reasonableness to the percentage-of-the-recovery approach. *See Beesley*, 2014 WL 375432, at *2 ("When determining a reasonable fee, the Seventh Circuit Court of Appeals uses the percentage basis rather than a lodestar or other basis.") (citation omitted); *McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) ("'percentage of the fee' method is preferable [to the lodestar method] because it more closely replicates the contingency fee market rate for counsel's legal services."). Nevertheless, Spectrum Class Counsel's requested attorneys' fees from the portion of the HRG common fund created by their work are reasonable under the lodestar method. Spectrum Class Counsel are seeking only a reasonable percentage fee in each action and are providing lodestar information only to demonstrate the reasonableness of the requested fees. The lodestar is calculated by multiplying a reasonable hourly rate by the number of hours counsel reasonably expended, and then applying a multiplier. *See Florin I*, 34 F.3d at 565 ("a risk multiplier is not merely available in a common

[7] Current HRG Lead Counsel has indicated its intent to oppose this fee request. *See* dkt. 101-1, at 3 ("Lead Counsel intends to oppose any fee request from BLB&G."). Spectrum Class Counsel will reply to any such opposition on March 4, 2022.

fund case but mandated, if the court finds that counsel had no sure source of compensation for their services").

Spectrum Class Counsel's lodestar can be considered in relation to the total attorneys' fees they seek here and in the Spectrum Action, where they seek 15% of the $32 million proposed Spectrum Settlement. If that request and the request in this action were approved, Spectrum Class Counsel would be awarded a total of $5,406,415 in both actions. The total lodestar devoted by Spectrum Class Counsel to pursuing both HRG and Spectrum claims was $3,123,961.25, so the overall multiplier that Spectrum Class Counsel would be receiving for their efforts would be 1.7.

The requested 1.7 multiplier is well within the range of multipliers commonly awarded in securities class actions and other comparable litigation. *See, e.g., Wong v. Accretive Health, Inc.*, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (awarding multiplier of approximately 4.7); *Williams v. Rohm & Haas Pension Plan*, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010) (awarding multiplier of 5.85), *aff'd*, 658 F.3d 629 (7th Cir. 2011); *In re Household Int'l, Inc. ERISA Litig.*, 2004 WL 7329846, at *1 (N.D. Ill. Nov. 22, 2004) (awarding multiplier of approximately 4.65).

In sum, whether calculated as a percentage of the common fund or under the lodestar method, the requested fee award is reasonable and within the range of fees awarded by courts in other securities class actions.

C. The Attorneys' Fee Requested by Spectrum Class Counsel Should Be Paid from the Total Fee Awarded in the HRG Case

For the avoidance of doubt, Spectrum Class Counsel requests that any attorneys' fees for Spectrum Class Counsel approved by the Court be paid out of the total attorneys' fees awarded by the Court to all counsel in the HRG case. For example, HRG Counsel have indicated that they will seek attorneys' fees of up to 22% of the $7.25 million settlement. While Spectrum Class Counsel take no position on the propriety of a 22% fee request at this time, if the Court approves

that percentage (equal to $1,595,000 plus interest), Spectrum Class Counsel request that they be awarded attorneys' fees of $717,750 plus interest out of that award of $1,595,000 plus interest.

CONCLUSION

With no assurance of success, Spectrum Class Counsel zealously and skillfully initiated, litigated, and preserved the HRG Claims that are being settled in this action. No other counsel did so. Spectrum Class Counsel's work on behalf of the HRG Class achieved at least $4.785 million of the recovery here, and the HRG Class would have received no recovery if Spectrum Class Counsel had not preserved the HRG Claims from becoming time-barred. Accordingly, Spectrum Class Counsel respectfully submit that their request for attorney's fees for their work in initiating, prosecuting, and preserving the HRG Claims is reasonable and should be approved.

Dated: February 7, 2022

Respectfully submitted,

/s/ Katherine M. Sinderson

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CERTIFICATE OF SERVICE

I, Katherine M. Sinderson, an attorney, hereby certify that a copy of the foregoing "**Memorandum of Law in Support of Spectrum Class Counsel's Motion for an Award of Attorneys' Fees**" was served on counsel for all parties electronically via the CM/ECF system on February 7, 2022.

Dated: February 7, 2022 By: */s/ Katherine M. Sinderson*
Katherine M. Sinderson