UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

LEAD PLAINTIFFS AND RECEIVER'S JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND EXPENSES[1]

Lead Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe ("Lead Plaintiffs"), individually and on behalf of all Class Members similarly situated, and Roberto Martínez, as court-appointed Receiver of Mutual Benefits Corp. ("MBC") and other related entities ("Receiver"), pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, hereby jointly move for entry of an Order and Final Judgment approving the settlement with Defendants Peter J. Lombardi and P.J.L. Consulting, Inc. (collectively, the "Lombardi Settling Parties"); Anthony M. Livoti, Jr., P.A. and Anthony M. Livoti, Jr. (collectively, the "Livoti Settling Parties"); Mark Pettyjohn and Diversified Financial Products, Inc. (collectively, the "Pettyjohn

[1] Both Lead Plaintiffs and the Receiver jointly move this Court for final approval of the Settlement. While the Receiver supports Class Counsel's Motion for Attorneys' Fees and Expenses, he is neither a party to the motion nor is he currently seeking fees or expenses in connection with the Settlement. The Receiver wishes to reserve his right to seek an enhancement for its work in connection with the Settlement at a later date per the Court's prior Order.

Settling Parties") (with all of the above-listed Defendants sometimes collectively referenced herein as the "Settling Parties"), and their insurers, set forth in the parties' Stipulation of Settlement ("Settlement" or "Settlement Agreement"), certifying the Settlement Class, and awarding Class Counsel attorneys' fees and expenses.

For the reasons set forth below, the Court should approve the Settlement as fair, adequate, and in the best interest of all Class Members, certify the Settlement Class, and grant Class Counsel's request for attorneys' fees and expenses, thereby concluding the claims that the Class and the Receiver have against The Lombardi Settling Parties, the Livoti Settling Parties and the Pettyjohn Settling Parties completely and with finality. For the Court's convenience, a proposed Order and Final Judgment is attached hereto as Exhibit "A."

I. OVERVIEW OF THE LITIGATION

A. The SEC Action

On May 3, 2004, the Securities and Exchange Commission ("SEC") filed a Complaint against Mutual Benefits Corporation ("MBC") and other related entities and individuals, alleging that MBC's sale of viatical settlements was in violation of the federal securities laws. The SEC lawsuit named Peter Lombardi as a Defendant. The SEC did not, however, sue Livoti or Pettyjohn. On May 4, 2004, the Court entered an Order appointing Roberto Martínez as receiver for MBC and related entities.

Although Lead Plaintiffs and Class Counsel were not required to participate in the SEC lawsuit (Lead Plaintiffs are not parties to the SEC lawsuit), we did not simply sit back and let the Government argue the Class's cause alone in connection with one of the most crucial issues in this case – whether MBC viatical settlements were securities. Indeed, Class Counsel filed three amicus

briefs (and participated in oral argument) in support of the Class's position that MBC viatical settlements are in fact securities. Ultimately, the Eleventh Circuit affirmed this Court's ruling that the MBC viaticals are indeed securities.

In addition to the formal participation in the SEC proceeding, Class Counsel actively participated in coordinating with the Receiver and his counsel on other essential aspects of the case, including: (1) providing factual information regarding investor knowledge and communicating investor concerns; (2) providing input regarding important Receivership issues like the disposition of policies and form of notice to investors; (3) assisting in identifying potential additional defendants and assets subject to Receiver claims; (4) participating and coordinating settlement discussions with several defendants; and (5) answering and/or communicating thousands of investor questions regarding the disposition of policies pursuant to this Court's orders.

B. The Class Action

Lead Plaintiffs have now filed a Third Amended Class Action Complaint ("Third Amended Complaint") asserting twelve separate causes of action against fifty-one defendants.[2] In response to the Second Amended Complaint, eight motions to dismiss were filed by twenty of the defendants. In response to the Third Amended Complaint, another five motions to dismiss were filed, supplemental by several motions for re-hearing and/or reconsideration. All of these motions were thoroughly briefed by Class Counsel. As a result of over two yeas of highly contentious litigation, all the Motions to Dismiss were resolved. Substantial settlements have been negotiated against

[2] Class Counsel filed its original complaint on May 17, 2004. Up and through the filing of the Third Amended Complaint, Class Counsel spent hundreds of hours on factual investigation and legal research relating to two waves of motions to dismiss. Based on our investigation and research, we dropped some defendants/claims and identified additional defendants for potential recovery – all in order to streamline the issues in this case.

several of the named Defendants. The only remaining and pending motion is the Post-Closing Escrow Bank Defendants' Motion for Reconsideration (D.E.#744). Once that motion is decided, this case will be at issue and positioned for final resolution.

C. Litigation Against the Settling Parties

On January 28, 2005, Lead Plaintiffs filed an Amended Class Action Complaint ("Amended Complaint"). Each of the Settling Parties is a party to the Amended Complaint, and all subsequent amendments. Lead Plaintiffs asserted several claims against the Lombardi Settling Parties, including violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 for Fraud, violation of Section 20(a) of the Securities Exchange Act of 1934 for Control Persons Liability, violation of the Florida Securities and Investor Protection Act for the Sale of Unregistered Securities, violation of the Florida Statutes Section 517.301 for Fraud and Aiding and Abetting Common Law Fraud. Finally, Lead Plaintiffs asserted claims for a return of earnest sales commissions against the Pettyjohn Settling Parties, as a result of their role in the sale of unregistered securities. Lead Plaintiffs asserted several claims against the Livoti Settling Parties including Aiding and Abetting Common Law Fraud, Intentional Breach of Fiduciary Duty, Negligent Breach of Fiduciary Duty, and Negligence. All of the Settling Parties responded by denying all allegations of wrongdoing, and asserting numerous affirmative defenses, including lack of any cognizable duty, good faith reliance, economic loss rule and statute of limitations. At all times, the Settling Parties have vigorously denied liability and defended Lead Plaintiffs' claims.

After the resolution of the motions to dismiss filed by some of the Settling Parties, negotiations began with counsel for the Settling Parties and their insurers regarding the possibility of settling this matter. During these meetings, Class Counsel and the Receiver's Counsel requested

all information regarding potential insurance, as well as other potential funds available for recovery. These materials were thoroughly reviewed by Class Counsel and the Receiver's Counsel. The only Settling Party with any insurance was Anthony Livoti, who had $100,000 in potential malpractice insurance coverage. The Livoti policy was a "wasting policy," the insurer had asserted significant coverage defenses, and only $90,000 of insurance proceeds were left at the time of Lead Plaintiffs' settlement negotiations. We also learned that the Settling Parties themselves had no executable assets (outside of the insurance policies) other than those disclosed in their financial affidavits – incorporated as exhibits to the respective Settlement Stipulations. All three settlement stipulations call for the forfeiture of any undisclosed assets.

The three Settlements were reached after extensive arms-length negotiations. All of the parties aggressively presented their positions, and the negotiations required continuous efforts over a number of months to bear fruit.

D. Preliminary Approval and Notice

On July 17, 2007, Lead Plaintiffs and the Receiver moved for preliminary approval of the Settlement. A hearing on the motion was held on August 6, 2007. On August 13, 2007, the Court entered an Preliminary Approval Order, which, among other things, directed Class Counsel to send a form Notice to all potential Class Members and publish the notice on the Receiver's website. As set forth in the affidavit of Marcia A. Gomez of the Garden City Group ("Claims Administrator"),[3] Class Counsel and the Claims Administrator timely caused the Notice to be mailed by first class mail, postage prepaid, to each Class Member at their last known addresses. The mailing list for

[3] *See* Affidavit of Marcia A. Gomez (hereinafter, "Gomez Aff."), attached as Exhibit "A" to the Notice of Compliance filed by Lead Plaintiffs on October 4, 2007. (D.E. # 796)

Class Notice purposes was provided to Class Counsel by the Receiver based on the MBC database – which has been used for all prior notices mailed to investors. The court-approved form of class notice was mailed to 36,930 addresses.

The mailing was completed on August 31, 2007. Spanish translations of the Notice were sent to Class Members where it was believed that Spanish was the Class Member's first language. Moreover, many of the Class Members have their investment in a retirement account and are using Fiserv Trust Company ("Fiserv") as the account's administrator. These accounts are set up so that all correspondence from MBC is sent to Fiserv. Class Counsel worked with Fiserv to mail class notice directly to the potential Class Members. In addition, a courtesy copy of the notice was sent to Fiserv to provide additional notice to investors.

The Receiver and Class Counsel also caused the Notice to be put on the Receiver's Website - www.mbcreceiver.com. For people who do not have internet access, Class Counsel provided their contact information in order to directly answer investor questions regarding the settlement. **As of the filing of this Motion, Class Counsel responded to over 2000 calls from investors.**

Class Counsel also corresponded with investors by letter, fax and via email.

II. SUMMARY OF THE SETTLEMENT

The primary terms of the Lombardi settlement are as follows. First, Lombardi will pay the greater of One Million Five Hundred Thousand Dollars ($1,500,000.00) or all proceeds from the liquidation of certain personal and business assets to be forfeited by Lombardi (the "Settlement Fund"), which will consist of (I) Commcare Pharmacy, Inc.; (ii) Ocean Bay Condominium Unit # 63; and (iii) $400,000.00 from the sale of the single family residence located at 3090 N.E. 44th Street, Fort Lauderdale, Florida (collectively, the "Properties"). Second, Lombardi and PJL have

provided the Receiver and Class Counsel with an affidavit or other acceptable representation attesting that they do not have within their possession, custody or control, assets that would be subject to execution other than those specifically disclosed in Exhibit A of the Lombardi Settlement Agreement. Third, Lombardi agreed that he will fully cooperate with any investigation conducted by the Receiver or Class Counsel, subject to any asserted constitutional privilege against self-incrimination.

The primary terms of the Livoti settlement are as follows: First, Livoti's insurers have tendered the full amount of Mr. Livoti's malpractice insurance coverage (which is a wasting policy) in the amount of Ninety Thousand Dollars ($90,000). Second, Mr. Livoti has agreed to contribute Fifty Thousand Dollars ($50,000) of his personal assets (most of which would be otherwise exempt from execution) towards the settlement. Third, Livoti has provided the Receiver and Class Counsel with an affidavit attesting that he does not have within his possession, custody or control, assets that would be subject to execution other than those disclosed in Exhibit A of the Livoti Settlement Agreement. Fourth, Livoti agreed that he will fully cooperate with any investigation conducted by the Receiver and Class Counsel, subject to any asserted constitutional privilege against self-incrimination.

The primary terms of the Pettyjohn settlement are as follows: First, Pettyjohn will pay Forty-Four Thousand Six Hundred and Twenty Four Dollars ($44,624) within thirty (30) days of Preliminary Approval. Second, the Pettyjohn Parties will provide Receiver and Class Counsel with an affidavit or other acceptable representation attesting that they do not have within their possession, custody or control, assets that would be subject to execution other than those specifically disclosed in Exhibit A of the Pettyjohn Settlement Agreement. Third, Pettyjohn agreed that he will fully

cooperate with any investigation conducted by Receiver and Class Counsel, subject to any asserted constitutional privilege against self-incrimination.

If the Settlements are approved, Lead Plaintiffs, Class Counsel and the Receiver will have achieved an outstanding result for the Class Members – one that will provide the Class with additional monetary recovery without further litigation from Defendants who are substantially judgment proof.

III. THE SETTLEMENT SHOULD BE APPROVED

"Compromises of disputed claims are favored by the Courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 585 (1910). This policy applies with particular force to class-action lawsuits, the complexity and expenses of which impose special burdens borne by the judicial system as well as the litigants. *In re U.S. Oil and Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) ("Public policy strongly favors the pretrial settlement of class action lawsuits."); *see also Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."). As Judge King observed in *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 538 (S.D. Fla. 1988), settlement "has special importance in class actions with their notable uncertainty, difficulties of proof, and length. Settlements of complex cases contribute greatly to the efficient utilization of scarce judicial resources, and achieve the speedy resolution of justice. . . ."

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any class-action settlement. The requirement of judicial approval, manifested in both the substantive and procedural aspects of Rule 23, is designed to afford protection to absent class members "whose interests may be compromised in the settlement process." *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1169 (5th Cir. 1978). "In determining whether to approve a proposed settlement, the

cardinal rule is that the District Court must find the settlement is fair, adequate and reasonable and not the product of collusion between the parties." *Cotton*, 559 F.2d at 1330. In reaching this determination, the "inquiry should focus upon the terms of the settlement," together with "an analysis of the facts and the law relevant to the proposed compromise." *Id.*

Specifically, the settlement terms should be compared "with the likely rewards the class would have received following a successful trial of the case," subject to the following qualifications. *Id.* First, courts, including those in this Circuit, have continuously stressed that it should not "be forgotten that compromise is the essence of settlement." *Id.* As a result, in evaluating the terms of the compromise in relation to the likely benefits of a successful trial, "the trial judge ought not try the case in the settlement hearings," nor should the court "make a proponent of a proposed settlement justify each term of the settlement against a hypothetical or speculative measure of what concessions might have been gained . . . ." *Id.* To the contrary, "the court must be mindful that inherent in compromise is a yielding of absolutes and an abandonment of highest hopes." *Ruiz v. McKaskle*, 724 F.2d 1149, 1151 (5th Cir. 1984). As the former Fifth Circuit Court of Appeals succinctly stated in *Young v. Katz*, 447 F.2d 431, 432 (5th Cir. 1971), a procedure requiring a mini-trial on the underlying merits for purposes of approving a settlement "would emasculate the very purpose for which settlements are made."

Second, courts have consistently stressed that in performing the balancing test necessary to determine the proprietary of the settlement against the risk of continued litigation, the district court "is entitled to rely upon the judgment of experienced counsel for the parties." *Cotton*, 559 F.2d at 1330; *see also Behrens*, 118 F.R.D. at 539 ("The Court can rely upon the judgment of experienced counsel and, absent fraud, should be hesitant to substitute its own judgment for that of counsel.").

In fact, a review of pertinent decisions leads to the conclusion that "[c]ourts have consistently refused to substitute their business judgment for that of counsel, absent evidence of fraud or overreaching." *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. 1976).

Third, courts have also stressed that "litigants should be encouraged to determine their respective rights between themselves," and that "there is an overriding public interest in favor of settlement." *Cotton*, 559 F.2d at 1331. This principle is particularly compelling in class-action lawsuits which "have a well deserved reputation as being most complex." *Id.* As the Eleventh Circuit has emphasized:

> Public policy strong favors the pretrial settlement of class action lawsuits. Complex litigation -- like the instant case -- can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.

In re U.S. Oil and Gas, 967 F.2d at 493 (internal citation omitted); *see also Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426 (5th Cir. 1977) ("Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits.").

Finally, in addition to examining the merits of the proposed settlement and ascertaining the views of counsel, the court should take into account practical considerations such as the complexity of the case and the expense and likely duration of the litigation. *Susquehanna Corp. v. Korholz*, 84 F.R.D. 316, 322 (E.D. Ill. 1979). One of those practical considerations is the vagaries of litigation and the benefits of an immediate recovery as compared "to the mere possibility of relief in the future, after protracted and expensive litigation." *In re King Resources*, 420 F. Supp. at 625. In this

respect, "it has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Id.*

Guided by these overriding principles, the Eleventh Circuit has outlined several factors useful in determining whether a proposed class action settlement is fair, adequate and reasonable. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). These factors are: (a) the existence of fraud or collusion behind the settlement; (b) the stage of proceedings at which the settlement is achieved as well as the complexity and expense of continuing the litigation; (c) the likelihood of success at trial; (d) the range of possible recovery; and (e) the opinion of class counsel, class representatives and the substance and amount of opposition to the settlement. *Bennett*, 737 F.2d at 986; *Behrens*, 118 F.R.D. at 538-39; *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 n. 6 (11th Cir. 1994). A review of these standards, guided by the principles described above, fully supports the conclusion that the proposed Settlement should be approved.

A. The Settlement Was Not the Product of Fraud or Collusion

In reviewing a settlement, a court must determine whether there is any indication of any fraud or collusion between the parties or their counsel in negotiating the Settlement's terms. *Bennett*, 737 F.2d at 986; *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Hanzman Aff. at ¶2; Diaz Aff. at ¶2. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F. 2d at 429; *Ressler v. Jacobson*, 822 F. Supp. 1551, 1554-55 (M.D. Fla. 1992). For example, in the case of the Livoti Settling Parties and the Lombardi Settling Parties, Lead Plaintiffs and the Receiver insisted on the payment of significant assets which would otherwise be exempt from execution prior to agreeing to settlement terms. In

addition, it is clear from the financial affidavits obtained by Class Counsel and the Receiver that the Class could not expect much more of a recovery had they litigated this case to trial. Hanzman Aff. at ¶2; Diaz Aff. at ¶2.

B. The Settlement Avoids a Complex, Expensive and Lengthy Litigation

The Settlement provides that the Net Settlement Proceeds are to be held by the Receiver (along with other settlement funds he is holding) for distribution to investors as soon as the Receiver proposes and this Court approves an allocation plan. There is no question that had the parties not reached a settlement, the Settling Parties were prepared to vigoursly defend themselves in this case. The Settlement thus avoids the Livoti insurance coverage from needlessly "wasting away" on attorney fees spent on defending this action. In other words, even if the Lead Plaintiffs and the Receiver would have prevailed at trial, it is likely that any judgment obtained against the Settling Parties would not be collectible. Hanzman Aff. at ¶2; Diaz Aff. at ¶2

Further, if the Settlement is not approved, future proceedings will likely include a lengthy trial followed by appeals. The Settlement, on the other hand, provides for definite, immediate benefits without waiting additional years. This is a further benefit to the Class. *See, e.g., In re Warner Communications Sec. Litig.*, 618 F. Supp. 735, 745 (S.D.N.Y. 1985); *see Diaz v. Hillsborough County Hospital Authority*, 2000 WL 1682918, *4 (M.D. Fla. Aug. 7, 2000) (settlement is a "desirable alternative" where "further proceedings before trial of this case would be intense, expensive, and difficult.").

C. The Likelihood of Success at Trial Supports Approval of the Settlement

While Lead Plaintiffs believe they would have ultimately prevailed on their claims against the Settling Parties, significant obstacles certainly stood in their way. The Settling Parties

consistently have denied all liability and have asserted substantial affirmative defenses, both procedurally and substantively. Thus, while Class Counsel continues to believe in our legal positions, we would be remiss not to acknowledge risks and uncertainty of on-going litigation. Nor has the Court had the opportunity to rule on whether a litigation class can be certified. Finally, the Settling Defendants would likely have sought summary judgment on some or all of our claims, as well as rulings limiting possible damages, in the event that this matter had not been settled. Given these considerable open issues and the inevitable plenary appeal, the aggregate net benefits made directly available to the Class represent an extremely favorable result. If the Settlement is finally approved, Lead Plaintiffs will have achieved an excellent result for the Class Members, one that will provide them with a substantial recovery. Hanzman Aff. at ¶2.

In any event, the Court should not resolve the parties' disagreement on the merits by issuing an advisory opinion about Lead Plaintiffs' likely success, nor is a specific finding regarding the likelihood of success necessary or appropriate in order to evaluate the fairness of the settlement.

> As settlements are construed upon compromise, the merits of the parties' claims and defenses are deliberately left undecided. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement.

Ressler v. Jacobson, 822 F. Supp. 1551, 1552-53 (M.D. Fla. 1992). Such a "limited inquiry" clearly favors approval of the Settlement, given the substantial monetary recovery and other significant benefits obtained for the Class compared to the risks and expense of a trial.

D. The Proposed Settlement is in the Range of Possible Recovery that is Fair, Adequate and Reasonable

The determination of a "reasonable" settlement is not susceptible to a simple mathematical equation yielding a particular sum. Rather, "there is a range of reasonableness with respect to a settlement." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). Or, as one court put it, "a just result is often no more than an arbitrary point between competing notions of reasonableness." *Behrens*, 118 F.R.D. at 538.

Here, the amount of losses remains unliquidated. Assuming investor losses are in the hundreds of million of dollars, the settlement amounts represent a small fraction of overall investor losses. However, this fact does not mean that the recovery is not fair and reasonable. *See id.* at 542 ("The mere fact that the proposed settlement of $.20 per share is a small fraction of the desired recovery of $3.50 per share is not indicative of an inadequate compromise. A settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery.").

The limited assets of the Settling Parties is the primary factor this Court should evaluate in weighing the reasonableness of this settlement. In each case, Lead Plaintiffs and the Receiver insisted on the payment of a significant amount of personal assets from each Settling Party. Finally, the Receiver and Lead Plaintiffs were able to settle with the Lombardi parties prior to Mr. Lombardi being sentenced to a long prison sentence – which would have made any resolution of the case against the Lombardi Parties highly unlikely.

E. The Positive Reaction of the Class to the Settlement Supports Approval

The overwhelmingly favorable reaction to the Settlement by the members of the Class strongly mitigates in favor of approval. A detailed Notice Packet was mailed to over 36,930 potential Class Members. Gomez Aff. at Paragraph 6. Only seventy-three (73) Class Members have

properly excluded themselves – **less than .001976% of the Class.** Furthermore, the fact that this very small percentage of the Class Members opted out of the Class does not necessarily mean they thought the settlement was not favorable. The reality is that many class members opt-out of class actions not because of the terms of the settlement, but rather "because of ignorance, fear of involvement in litigation, failure to understand the notice" or for other similar reasons. Manual for Complex Litigation, Fourth § 16:16. More importantly, just 3 investors filed objections with this Court, and none of these objections addressed the Settlement's terms. The fact that just 3 out of 36,930 investors – **less than .0008% of the Class** – chose to object to the Settlement is powerful evidence of the fairness, reasonableness and adequacy of the Settlement. *See Maher v. Zapata Corp.*, 714 F.2d 436, 456 n.35 (5th Cir. 1983); *In re Beef Industry Antitrust Litig.*, 607 F.2d 167, 180 (5th Cir. 1979); *In re Warner Communications*, 618 F. Supp. at 746; *Ressler v. Jacobson*, 822 F. Supp. 1551, 1556 (M.D. Fla. 1992); *see also Diaz*, 2000 WL 1682918 at *5 ("The striking lack of objections to the settlement is itself a strong indication the settlement is fair.").

F. Class Counsel and the Receiver Support the Settlement

The Settlement calls for an immediate gross recovery of $1,684,624.00. By achieving a class settlement against the Settling Parties relatively early in the litigation, the Class Members will receive a considerable amount of money without the uncertainty, delay and expense of protracted litigation. Lead Plaintiffs, Class Counsel, the Receiver and the Receiver's Counsel all have concluded that it would be in the best interests of both the Class and the Receivership to enter into the Settlement Agreement with the Settling Parties because the settlement would be a fair, reasonable and adequate resolution of this Action. The Court should give "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of

litigation." *Warren* v. *City of Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988); *see also Mashburn v. National Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) ("If plaintiffs' counsel did not believe these factors all pointed substantially in favor of this settlement as presently structured, this Court is certain that they would not have signed their names to the settlement agreement.").

The Settlement falls well within the range of reasonableness under the criteria set forth by the Eleventh Circuit in *Bennett* and therefore should be approved.

IV. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

In its August 13, 2007 Preliminary Approval Order ("PAO"), this Court preliminarily certified a Settlement Class consisting of "All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby." Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees. Before exercising its discretion to finally certify the Settlement Class, the Court should be satisfied that the requirements of Rule 23 are met. *Amchem v. Windsor*, 117 S. Ct. 2231, 2248 (1997). Those requirements are easily met here. First, there is no question that the Settlement Class satisfies the numerosity requirement of Rule 23(a)(1). The Settlement Class includes more than 30,000 investors. As such, it is clear that joinder of all Class Members is impracticable in light of the number of Class Members alone. *Kreuzfeld, A.G. v. Carnehammar*, 138 F.R.D. 594, 599 (S.D. Fla. 1991) (certifying class with 130 members, noting cases certifying class of as few as 25-30 members).

Second, the commonality requirement of Rule 23(a)(2) is satisfied if there are some questions of law or fact common to the class. *Walco Investments, Inc. v. Thenen*, 168 F.R.D. 315, 325 (S.D. Fla. 1996); *In re First Interregional Equity Corp.*, 227 B.R. 358, 368 (D.N.J. 1998). Courts frequently certify class actions involving Ponzi schemes, recognizing that such cases overwhelmingly turn on common issues. This case well fits that paradigm. The claims of the named Lead Plaintiffs, like all Settlement Class Members' potential claims, present overarching common issues with the violations alleged, thereby satisfying the commonality elements of Rule 23(a)(3). *Id.*

Third, the typicality requirement of Rule 23(a)(3) is satisfied where "the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984), *cert. denied*, 470 U.S. 1004 (1985); *Kennedy v. Tallant*, 710 F.2d 711, 717 (11th Cir. 1983). Factual differences between the representative's claims and those of other class members will not defeat typicality so long as the legal and remedial theories underlying the claims are similar, as they are here. *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985), *overruled on other grounds by Green v. Mansour*, 474 U.S. 64 (1985); *Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986); *Buford v. H & R Block, Inc.*, 168 F.R.D. 340, 350 (S.D. Ga. 1996). The legal and remedial theories of the Lead Plaintiffs are typical of the theories of the Settlement Class in that: (1) all Class Member claims arise from the same overall and multi-faceted fraudulent scheme; (2) the legal theories of the Class based on this alleged conduct are shared in common, and (3) the relief sought by and available to all Class Members is similar. The Lead Plaintiffs' claims are, therefore, typical of those of the Class and Rule's 23(a)(3)'s typicality requirement is satisfied.

Fourth, the adequacy of representation requirement of Rule 23(a)(4), which is satisfied when the class representatives "fairly and adequately protect the interests of the class," involves two primary components: (i) the class counsel must be qualified, experienced and generally able to conduct the litigation; and (ii) the class representatives must not have interests antagonistic to those of the rest of the class. *Kirkpatrick v. J.C. Bradford & Co.*, 827 F. 2d 718, 726 (11th Cir. 1987) (*citing Griffin v. Carlin*, 755 F.2d 1516, 1532 (11th Cir. 1985)). Here, Class Counsel have considerable experience in prosecuting large class actions and have successfully represented individuals and classes in numerous actions, some of which they have litigated to judgment and others of which they have settled. Plainly, they are well qualified to conduct the litigation and have, in fact, done so. And, the Lead Plaintiffs' legal and remedial theories are substantially similar to those of other Class Members, and the Settlement does not involve any sacrifice of the interests of some Class Members to the interests of others. Accordingly, the adequacy of representation requirement is satisfied.

In addition, Rule 23(b)(3) requires that common issues predominate. Here, the Class is "sufficiently cohesive" to satisfy the predominance requirement. *See Amchem*, 117 S. Ct. at 2249. The violations alleged present overarching common issues that predominate over individual issues at this stage. Moreover, the facts and terms of the Settlement also provide predominating common issues. *See, e.g., Kirkpatrick*, 827 F.2d at 724; *Davis v. Southern Bell Tel. & Tel. Co.*, 158 F.R.D. 173, 175 (S.D. Fla. 1994); Fed. R. Civ. P. 23(b)(3), Advisory Committee Note (1966); *see also Walco*, 168 F.R.D. at 334-35 (RICO claims alleging fraudulent Ponzi scheme held to involve common issues of law and fact that predominate over individual issues).

Under Rule 23(b)(3), the Court must also find that certification of the Class is "superior to other available methods for the fair and efficient adjudication of the controversy." This requirement is easily satisfied here because claims based on an alleged overall fraudulent scheme are well suited for class certification. It follows, then, that the settlement of such a case, resulting in cash benefits for the Class, is particularly well suited for class certification. *See Walco*, 168 F.R.D. at 337 (class action held to be superior method of adjudicating controversy involving RICO claims alleging fraudulent Ponzi scheme). Here, the Settlement will provide Class Members with substantial benefits without the risks, costs and delays of litigation. Moreover, class treatment presents no manageability problems. The Receiver and the Claims Administrator possess all the information necessary to identify, notify and administer the claims of the Class Members after an allocation plan is approved by the Court. As such, class certification is superior to other available methods of resolving the Class's claims. *See Fifth Moorings Condo., Inc. v. Shere*, 81 F.R.D. 712 (S.D. Fla. 1979) (class treatment for litigation of common claims achieves "economies of time, effort and expense and promote[s] uniformity of decisions as to persons similarly situated").

For the foregoing reasons, we request that the Court certify the Class.

V. CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND EXPENSES

Class Counsel requests that the Court award Class Counsel attorneys' fees and expenses based upon the $1,684,624 Settlement Fund created through its efforts in settling the Class's claims against the Settling Parties. In the Settlement Agreement, Class Counsel agreed not to seek fees in an amount **greater than 30%** of the Settlement Fund. The Class Members were similarly informed in the Notice that Class Counsel's request **would not exceed 30%** of the Settlement Fund.

Notwithstanding the terms of the Settlement and Notice, Class Counsel now requests that the Court award it a fee which represents **only 25%** of the $1,684,624.00 Settlement Fund.[4] While any fee within this range is "reasonable," an analysis of the *Camden I* factors (discussed below) favors an award toward the upper end of the range. Class Counsel also requests that it be reimbursed for $59,757.89 in incurred expenses.

A. The Fee Request Satisfies Applicable Legal Standards and Is Fair and Reasonable under the Circumstances

The Supreme Court, the Eleventh Circuit, and courts in the Southern District have all noted that "[a] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as whole." *See In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001) (*citing Boeing Co. v. Van Gemert*, 100 S. Ct. 745 (1980)); *see also Camden I Condominium Ass'n, Inc. v. Dunkle*, , 946 F.2d 768, 771 (11th Cir. 1991) ("Attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund, but the amount is subject to court approval."). In *Camden I* -- the controlling authority in this circuit dealing with the issue of attorneys' fees in common-fund cases -- the Eleventh Circuit held that "the percentage of the fund approach [as opposed to the lodestar approach] is the better reasoned in a common fund case. Henceforth, in this circuit, attorneys' fees awarded from a common fund shall be based upon a

[4] Class Counsel's motion is made on behalf of Hanzman & Criden, P.A., ("H&C"), and Podhurst, Orseck, P.A. ("PO"), Co-Lead Counsel for the Class. In support of the Motion, Class Counsel has attached hereto as Exhibits B and C, respectively, the Affidavits of Michael Hanzman on behalf of H,C&L ("Hanzman Affidavit") and Victor M. Diaz, Jr. on behalf of the Podhurst firm ("Diaz Affidavit"), attesting to each firm's "lodestar," calculated at their standard hourly rates, as well as expenses incurred in this matter. The two firms have agreed to an appropriate division of any fee award authorized by this Court.

reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F. 2d at 774.

"There is no hard and fast rule mandating a certain percentage of a common fund which may be awarded as a fee because the amount of any fee must be determined upon the facts of each case." *In re Sunbeam*, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 774). As a blanket statement, "[t]he majority of common fund fee awards fall between 20% to 30% of the fund," although "an upper limit of 50% of the fund may be stated as a general rule." *Id.* (quoting *Camden I*, 946 F.2d at 774-75). Significantly, the Eleventh Circuit has found that "district courts are beginning to view the median of this 20% to 30% range, *i.e.*, 25% as a 'bench mark' percentage fee award which may be adjusted in accordance with the individual circumstances of each case . . . ." *Id.* (quoting *Camden I*, 946 F.2d at 775); *see also Waters v. Intern. Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (Eleventh Circuit approved fee award where the district court determined that the benchmark should be 30% and then adjusted the fee award even higher based on the circumstances of the case).

The Eleventh Circuit has clarified the factors which a district court should look to in determining a reasonable percentage to award class counsel. These factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the 'undesirability' of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases.

Id.; *see also Camden I*, 946 F.2d at 772 n.3 (citing factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)).

In addition:

> Other pertinent factors are the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics involved in prosecuting a class action.

In re Sunbeam, 176 F. Supp. 2d at 1333 (quoting *Camden I*, 946 F.2d at 775). As a final note, the Eleventh Circuit has "encouraged the lower courts to consider additional factors unique to the particular case." *Id.* (quoting *Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997).

B. Relevant *Camden I* Factors Support Counsels' Requested Fee

1. Time and Labor Required; The Difficulty of the Questions Involved

Class Counsel combined have already spent **7,397.45 hours** litigating all aspects of this case, which included, among other things, the researching of the facts surrounding the claims against the Settling Parties, drafting and revising the complaint, briefing and defending numerous Motions to Dismiss, extensive factual investigation, constant communication with the investor class in a wide range of case-related issues, and conducting extensive settlement negotiations – all of which directly led to the proposed settlement.

The Settlement Agreement itself took months to draft because of complex legal issues that needed to be resolved. For example, issues regarding the Defendants' executable assets, the releases, and the bar order, all had to be researched and resolved prior to the signing of the Settlement Agreement.

2. ~~The Skill Requisite to Litigate a Class Action Properly;~~ The Experience, Reputation and Ability of the Attorneys

Regarding the degree of skill, experience and competence necessary to achieve the Settlement and create the common fund, another court in this District noted -- in another case in which Class Counsel participated -- that the "experience and competency" of Class Counsel was "evident in both their pleadings and oral presentations to the Court." *Walco v. Thenen*, 168 F.R.D. 315, 327 (S.D. Fla. 1996). Here, the competence and experience of Class Counsel in class actions clearly was a significant factor in obtaining the result achieved for the Class.

In assessing the quality of representation by Class Counsel, the Court also should consider the quality of the opposition. *See, e.g., Camden I*, 946 F.2d at 772 n.3; *Johnson*, 488 F.2d at 718; *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992); *Angoff v. Goldfine*, 270 F.2d 185, 192 (1st Cir. 1959). The excellent quality of that opposition has been no less apparent. The Lombardi Party was represented by Michael Band, Esq. of Adorno & Yoss. The Livoti Parties were represented by William M. Martin, Esq. of Peterson Bernard, P.A. and Gerald B. Wald, Esq. of Murai Wald Biondo Moreno & Brochin, P.A.. The Pettyjohn Parties were represented by Richard H. McDuff, Esq. of Johnson Anselmo Murdoch Burke Piper & McDuff, P.A. Each lawyer has an excellent reputation in the community, as do their respective law firms.

3. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case

Given the relatively small size of the firms representing the Class and the major commitment involved with accepting this representation, this case undoubtedly precluded the two firms from working on other matters. Diaz Aff. at ¶6.

4. The Customary Fee; Awards in Similar Cases

Class Counsel requests that the Court award them a fee which represents 25% of the $1,684,624.00 Settlement Fund. While Class Counsel asserts that any fee within a range up to 30% is "reasonable," we request this Court to award only 25% of the common fund created.

The law is well established that a fee award equal to 25% of a common fund is well within the range of what may be considered customary. *See, e.g., In re Sunbeam*, 176 F. Supp. 2d at 1333-34. In fact, many recent decisions in this Circuit have routinely awarded attorneys' fees up to (and sometimes in excess of) thirty percent of the common fund, which further confirms the fairness and reasonableness of the fee requested herein. *See, e.g., Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999) (awarding 33 1/3% of the common fund); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323 (S.D. Fla. 2001) (awarding 25% of the common fund); *Diaz v. Hillsborough County Hosp. Authority*, 2000 WL 1682918 (M.D. Fla. Aug. 7, 2000) (awarding 30% of the common fund); *Ressler v. Jacobson*, 149 F.R.D. 654 (M.D. Fla. 1992) (awarding 30% of the common fund); *see also Tapken v. Brown*, Case No. 90-0691-CIV-Marcus (S.D. Fla. 1995) (awarding 33%); *In re Int'l Recovery Corp. Sec. Litig.*, Case No. 92-1474-CIV-Atkins (S.D. Fla. 1994) (Fee award represented 30% of class benefit); *In re Sound Advice, Inc. Sec. Litig.*, Case No. 92-6457-CIV-Ungaro-Benages (S.D. Fla. 1994) (awarding 30%); *In re Belmac Corp. Sec. Litig.*, Case No. 92-1814-CIV-T-23-(C) (M.D. Fla. 1994) (awarding 31%); *In re Perfumania, Inc. Sec. Litig.*, Case No. 92-1490-CIV-Marcus (S.D. Fla. 1993); (awarding 30%); *Kaser v. Swann*, Case No. 90-607-CIV-Orl-3A18 (M.D. Fla. 1993) (awarding 30%); *In re Home Shopping Network Sec. Litig.*, Case No. 87-428-T-13(A) (M.D. Fla. 1991) (awarding 33%).

It is also significant that the amount sought comports with the standard contingent fee amount found in the marketplace. *See, e.g., In re Continental Illinois Sec. Litig.*, 962 F.2d 566, 572

(7th Cir. 1992) ("The object in awarding a reasonable attorneys' fee . . . is to simulate the market."); *RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 94,268 (S.D.N.Y. 1992) ("what should govern [fee] awards is . . . what the market pays in similar cases . . . ."); *see also Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'") (emphasis in original). The requested fee is consistent with practice in the private marketplace where contingent fee arrangements ranging from 30% to 40% are customary. In their concurring opinion in *Blum v. Stenson*, 465 U.S. 886 (1984), Justices Brennan and Marshall observed that:

> In tort suits, an attorney might receive one-third of whatever amount the Plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.

Blum, 465 U.S. at 904; *see also Kirchoff*, 786 F.2d at 323, 325 n.5 (observing that "40% is the customary fee in tort litigation"); *In re Public Service Co.*, Fed. Sec. L. Rep. (CCH) ¶ 96,988 at 94, 291-92 (S.D. Cal. 1992) ("If this were a non-representative litigation, the customary fee arrangement would be contingent on a percentage basis, and in the range of 30% to 40% of the recovery."). Here, had the individual investors retained counsel on an individual basis -- in the unlikely event they would have been able to do so -- they would have most likely paid a contingent fee equal to or greater than the amount requested. Hanzman Aff. at ¶8.

5. Whether the Fee is Fixed or Contingent

"A contingency fee arrangement often justifies an increase in the award of attorneys' fees." *In re Sunbeam*, 176 F. Supp. 2d at 1335 (quoting *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990)). This action was prosecuted by Class Counsel on a purely contingent basis, thereby assuming the risk of no payment for a considerable

amount of work over an extended period of time. As discussed above, the claims in this case have been contested vigorously by all the Settling Parties – who have denied all liability in this case and were not sued by the SEC in their enforcement action. Thus, the contingency risk in this case was substantial. Hanzman Aff. at ¶8.

6. The Amount Involved and the Results Obtained

Class Counsel was able to negotiate settlements with the Settling Parties in the amount of $1,684,624.00, providing the Class with additional monetary recovery. And it is clear from the financial affidavits obtained by Class Counsel and the Receiver that the Class could expect to recover nothing or significantly less had they litigated and won this case at trial. Given the novelty, difficulty, and risk of the claims asserted against the Settling Parties, and their lack of any significant assets subject to execution, the dollar amount of the Settlement represents an excellent result.

7. The Undesirability of the Case

"A court's consideration of this factor recognizes that counsel should be rewarded for taking on a case from which other law firms shrunk. Such aversion could be due to any number of things, including social opprobrium surrounding the parties, thorny factual circumstances, or the possible financial outcome of a case. All of this and more is enveloped by the term 'undesirable.'" *In re Sunbeam*, 176 F. Supp. 2d at 1336. Here, not only was the financial outcome uncertain, but the representation involved bringing claims that require extensive factual support in order to successfully plead and assert.

C. The "Other" Factors Identified in *Camden I* Support Counsels' Requested Fee Award

Notices were sent to 36,930 investors, yet only three (3) investors timely objected to the fee request. These three objections represent only **.0008%** of the investor class and direct their objection

to an award of 30% of the recovery to Class Counsel. Given that Class Counsel have voluntarily agreed to request an award of only 25% of the Settlement Fund, the Court need not decide whether 30% would be a fair and reasonable fee. Class Counsel totally sympathizes with the anger and frustration of the defrauded investors, but believe those few objectors misdirect their frustration at Class Counsel who have invested years in vigorously contested litigation trying to hold the named third party defendants liable for compensating Plaintiffs' egregious injury and losses. We therefore request that the Court overrule all objections timely filed with the Court, and grant Class Counsel's motion for fees and expenses.

D. The Requested Fee Is Also Reasonable When Checked Against the "Lodestar" Approach

Some courts use the lodestar method as a cross-check of the percentage of the fund approach. *Id.* at 1336 (citing *Ressler*, 149 F.R.D. at 653 n.4). In a pre-*Camden I* case in this District, Judge King performed both methods of analysis and gathered cases on the range of fee awards under either method and noted that lodestar multiples "in large and complicated class actions" range from 2.26 to 4.5, while "three appears to be the average." *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534 (S.D. Fla. 1988). But in many cases, including cases in this jurisdiction, multiples much higher than three have been approved. *See, e.g., Weiss v. Mercedes-Benz of North America, Inc.*, 1995 U.S. Dist. LEXIS 14708 (D.N.J. 1995) (multiple of 9.3 times lodestar); *In re RJR Nabisco, Inc. Sec. Litig.*, Fed. Sec. L. Rep. (CCH) ¶ 96,984 (S.D.N.Y. 1992) (multiple of 6 times lodestar); *Cosgrove v. Sullivan*, 759 F. Supp. 166 (S.D.N.Y. 1991) (multiple of 8.74); *Grimshawe v. New York Life Insurance Co.*, Case No. 96-0746-Civ-Nesbitt (S.D. Fla. 1996) (percentage-based fee award equivalent to a multiple of 8.5).

In this case, Class Counsel's combined lodestar, calculated at each firm's regular hourly rates, is **$2,788,078.50**. Diaz Affidavit at ¶3 ($1,441,462.50); Hanzman Aff. at ¶ 4 ($1,346,616.00). The firms have been previously paid $2,500,000 in attorneys fees representing a 25% court awarded fee on the prior Brinkley, McInerney $10,000,000 settlement. If the Court awards Class Counsel the requested fee of $421,156.00, then the total fees awarded by this Court to date award would correspond to only a **1.05** multiple of Class Counsel's total lodestar. Thus, the award would fall well within the range of lodestar multiples deemed to be fair and reasonable in this Circuit.

The requested attorneys' fees and expenses are fair and reasonable. Total expenses requested to be reimbursed equal $59,757.89, nearly half of this amount is the cost of postage required for mailing of class notice. Diaz Aff. at ¶8; Hanzman Aff. at ¶9. Class Counsel's fee and cost request easily satisfies the guidelines of *Camden I*, especially in light of the complicated nature of the case, and the time, effort and skill required to create the common fund, and the outstanding results obtained. For these reasons, Class Counsel respectfully requests that the Court grant its motion for fees and expenses.

VI. CONCLUSION

For the reasons set forth above, Lead Plaintiffs, Class Counsel and the Receiver respectfully request that this Court finally approve the Settlement, certify the Settlement Class, and enter the proposed Order and Final Judgment. Class Counsel also requests that the Court grant its request for attorneys' fees and expenses.

Respectfully submitted,

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CLASS COUNSEL FOR LEAD PLAINTIFFS AND THE CLASS

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy was electronically filed with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all *pro se* parties identified on the attached service list by U. S. Mail this 12th day of October, 2007.

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

ORDER AND FINAL JUDGMENT

Lead Plaintiffs Scheck Investments, L.P., Elena Parrales, individually and on behalf of Franova Investment Ltd., The PMT Irrevocable Trust, Juan Manuel Ponce De Leon, and Maria Paulina Ponce De Leon Uribe ("Lead Plaintiffs"), individually and on behalf of all Class Members similarly situated, and Roberto Martinez, as court-appointed Receiver of Mutual Benefits Corp. ("MBC") and other related entities ("Receiver"), and Defendants Peter J. Lombardi and P.J.L. Consulting, Inc. (collectively, the "Lombardi Settling Parties"); Anthony M. Livoti, Jr., P.A. and Anthony M. Livoti, Jr. (collectively, the "Livoti Settling Parties"); Mark Pettyjohn and Diversified Financial Products, Inc. (collectively, the "Pettyjohn Settling Parties") (with all of the above-listed Defendants sometimes collectively referenced herein as the "Settling Parties"), and their insurers, set forth in the parties' Stipulation of Settlement ("Settlement" or "Settlement Agreement"), have submitted for final approval a proposed settlement that is memorialized in the Stipulation of

Settlements executed on August 29, 2006, June 18, 2007 and June 26, 2007 (" Settlement Agreements").[1] Class Counsel has also moved for an award of attorney fees and costs.

For the reasons set out in detail below, the Court has determined that the Settlement is fair, reasonable and adequate, and should therefore be approved. The Court has also determined that Class Counsel's Motion for Fees and Costs should be granted. Accordingly, this Court enters this Order and Final Judgment, approves the Settlement, certifies the settlement class, overrules all of the Class Members' objections, approves an award of attorneys' fees and costs, and dismisses this action against the Settling Parties with prejudice, and therefore;

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. This Court has federal question jurisdiction, pursuant to 28 U.S.C. § 1331. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

2. On October 19, 2007, the Court held a hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement ("Final Approval Hearing").

3. In reaching its decision in this case, the Court considered the Settlement Agreement, the objections to the Settlement filed with this Court by Class Members, the extensive Court file in this case and related MBC cases, and the presentations by Class Counsel, the Receiver, and Counsel for the Settling Defendants in support of the fairness, reasonableness and adequacy of the Settlement.

Class Certification

4. The Class is defined in the Settlement Agreements to include: "All persons who purchased, between October 1, 1994 and May 4, 2004, interests in discounted life insurance policies

[1] All capitalized terms used herein shall have the meanings set forth in the Settlement Agreements.

known as viatical settlements or life settlements from MBC or VBLLC and have been damaged thereby." Excluded from the Class are: Defendants, MBC and any agent or broker who offered to sell viatical settlements or life settlements through MBC or VBLLC, including any of the foregoing companies' respective subsidiaries, affiliates, officers, agents or employees.

5. In its Preliminary Approval Order, the Court conditionally certified the Class for the purpose of settlement under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. In entering this Order and Final Judgment, the Court has once again considered the class certification prerequisites set forth in Rule 23(a) and (b)(3) and again finds that these prerequisites are satisfied in this case.

6. The Court now affirms its prior Class certification, which was conditional pending further review, and finds that: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of both law and fact common to the Class; (c) the Lead Plaintiffs' claims are typical of the claims of all members of the Class; and (d) the Lead Plaintiffs and Class Counsel have fairly and adequately represented and will fairly and adequately protect the interests of the Class, all pursuant to Fed. R. Civ. P. 23(a).

7. The Court additionally finds that questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that this class action is superior to other available methods for the fair and efficient adjudication of this controversy, pursuant to Fed. R. Civ. P. 23(b). In making the latter determination the Court has considered the following: (a) the interest of members of the Class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the Class; (c) the desirability or

undesirability of concentrating the litigation of the claims in the particular forum; and (d) the difficulties likely to be encountered in the management of a class action. The Class, as defined above, is now finally certified.

8. Seventy-three (73) Class Members have timely and properly requested to be excluded from the Settlement; their names are listed on Exhibit 1 attached hereto. The Class Members on Exhibit 1 are not bound by the Settlement, not subject to the release included herein, and cannot participate in the distribution of the Settlement Fund.

Notice to the Class

9. In its Preliminary Approval Order, this Court approved the Notice attached to Class Counsel's motion, and found that the proposed form and content thereof satisfied Rule 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the Local Rules of this Court, as well as the requirements of due process.

10. As set forth in the affidavit of Marcia A. Gomez of the Garden City Group ("Claims Administrator"), Class Counsel and the Claims Administrator timely caused the Notice to be mailed by first class mail, postage prepaid, to each Class Member at their last known addresses. As of the date of the mailing, August 31, 2007, there are 36,930 investors in MBC's database. The MBC database includes not only investors with active polices, but also those investors whose policies have matured, or had their money refunded. In an abundance of caution, the Notice was sent out to all 36,930 addresses.

11. The mailing was completed on August 31, 2007. Spanish translations of the Notice were sent to Class Members where it was believed that Spanish was the Class Member's first language. Moreover, many of the Class Members have their investment in a retirement account and

are using Fiserv Trust Company ("Fiserv") as the account's administrator. These accounts are set up so that all correspondence from MBC is sent to Fiserv. Upon learning of this situation, Class Counsel worked with Fiserv to mail notices directly to all affected Class Members, and served a courtesy notice to Fiserve – providing for additional service on these investors.

12. The Receiver and Class Counsel also caused the Notice to be put on the Receiver's Website - www.mbcreceiver.com.

13. Attorneys from Class Counsel's offices responded to the Class Members who contacted them with questions regarding the proposed settlement. Class Counsel also corresponded with investors by letter, fax and email, and responded to hundreds of direct investor phone calls.

14. As noted elsewhere in this Final Judgment, a handful of investors responded to the Notice by filing exclusions, objections to and comments in support of the Settlement.

15. This Court has again reviewed the Notice and the accompanying documents and finds that the "best practicable" notice was given to the Class and that the Notice was "reasonably calculated" to: (a) describe this case and Class Members' rights in it; and (b) apprise interested parties of the pendency of this case and of their right to have their objections to the Settlement heard. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 810 (1985); *accord* Fed. R. Civ. P. 23(c)(2) ("best notice practicable under the circumstances, including notice to all members who can be identified through reasonable effort," shall be given to class members); Fed. R. Civ. P. 23(e) ("notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs."). The Notice was reasonably calculated to advise each member that: (a) the Court would exclude the member from the Class if the member so requested by a specified date; (b) this Order and Final Judgment, whether favorable or not, would include all Class Members who did

not request exclusion; and (c) any Class Member who did not request exclusion could, if the Class Member desired, enter an appearance. The Court thus reaffirms its findings that the Notice given to the Class Members satisfies the requirements of due process and holds that it has personal jurisdiction over all Class Members.

The Settlement

16. The Settlement includes, among other things, the establishment of a total common fund in the amount of One Million Six Hundred Eighty-Four Thousand Six Hundred Twenty-Four dollars ($1,684,624.00) for the benefit of the Class. This amount, less Class Counsels' fees and expenses as awarded by the Court, and less the expenses of administering the Settlement ("Net Class Settlement Amount"), shall be distributed to Class Members based upon a Court-approved allocation plan to be presented to this Court by Class Counsel and the Receiver at a future date. In return, all claims alleged by Lead Plaintiffs and the Class (and that could have been alleged by the Receiver) against the Settling Defendants shall be dismissed with prejudice (as set forth in the Settlement Agreement and herein).

17. The Court must determine whether the proposed Settlement is "fair, adequate and reasonable and is not the product of collusion" between the parties. *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 207 (5th Cir. 1981). In making this determination, the Court considers six factors: (1) the likelihood that Plaintiffs would prevail at trial; (2) the range of possible recovery if Plaintiffs prevailed at trial; (3) the fairness of the settlement compared to the range of possible recovery, discounted for the risks associated with litigation; (4) the complexity, expense, and duration of litigation; (5) the substance and amount of opposition to the Settlement; and (6) the stage of the proceedings at which the

Settlement was achieved. *Bennett*, 737 F.2d at 986; *Corrugated Container*, 643 F.2d at 212; *Behrens v. Wometco Enters, Inc.*, 118 F.R.D. 534, 538-90 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). In considering this Settlement, the Court need not and does not decide the merits of this Action.

18. This Court, after considering the aforementioned factors, finds that the Settlement provides for a reasonable and adequate recovery that is fair to all Class Members. *See Bennett*, 737 F.2d at 986-87.

19. The Court's review of the file demonstrates that there remains substantial risk and uncertainty in Lead Plaintiffs ultimately prevailing on their claims and upholding such an outcome on appeal. Furthermore, if this case were to proceed without settlement, the subsequent motion practice, resulting trial and the inevitable appeal would be complex, lengthy and expensive. The Settlement eliminates a substantial risk that the Class would walk away empty-handed after the conclusion of such appeals. *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992). Further, the Settling Parties have vehemently denied any wrongdoing and has indicated that they would continue to vigorously defend the lawsuit absent settlement. Without the Settlement, it could be years before Class Members would see any recovery even if they were to prevail on the merits, which might not produce a better recovery than they have achieved in this Settlement. *Behrens*, 118 F.R.D. at 543 (settlement "shortened what would have been a very hard-fought and exhausting period of time, which may have realistically ended with a decision similar to the terms of this settlement").

20. The Court also concludes that the $1,684,624.00 Settlement Fund is fair and reasonable given the fact that, the extent of the Settling Parties have limited assets, most of which

are exempt from execution, and – in the case of the Livoti Parties – the one available insurance policy is a "wasting policy" – which would be quickly extinguished if there were any further litigation. If the Settlement is approved, Lead Plaintiffs and the Receiver will have achieved an excellent result for the Class Members – one that will provide the Class with a substantial monetary recovery and avoid the possibility of further litigation resulting in judgments which were not collectable. *See, e.g., Denney v. Jenkens & Gilchrist*, 2004 WL 1197251 (S.D.N.Y. 2004); *see also Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317 (S.D.N.Y. 2005) (motion for final approval granted).

21. Also weighing in favor of approving the Settlement is the fact that out of 36,930 investors, just 4 investors filed objections with this Court, and only 4 of these objections actually addressed the Settlement. This fact weighs heavily in favor of approving the Settlement. *Id.* at 988 n.10 (holding that the district court properly considered the number of objections in approving a class settlement). Also, as noted below, some investors called and sent letters to Class Counsel expressing support for the Settlement.

22. One investor objects that the total settlement amount is not sufficient to cover all investor losses. While this may be true, the objection nonetheless misses the mark. This is just *one* settlement in the Class Action against *one* Defendant. It is too much to ask that this Settlement make the Class whole. As stated above, the proposed settlements must be analyzed in connection with this Defendant's role in the alleged fraud and, more importantly, against the potential recovery against this Defendant if Lead Plaintiffs were to win at trial. Viewed through this prism, the proposed settlements are excellent results.

23. This Court may also consider the opinions of the parties and their counsel. *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir.), *cert. denied*, 459 U.S. 828 (1982). Here, Class

Counsel, the Receiver, and the Receiver's counsel all have considerable experience in the prosecution of large, complex class actions. Counsel for the Settling Parties are likewise experienced in complex litigation. This Court gives credence to the opinions of these counsel, amply supported by the Court's independent review, that this Settlement is a beneficial resolution of the claims alleged by the Class against the Settling Parties.

24. In addition to finding the terms of the proposed Settlement fair, reasonable and adequate, this Court must determine that there was no fraud or collusion between the parties or their counsel in negotiating the Settlement's terms. *Bennett*, 737 F.2d at 986; *Miller v. Republic Nat'l Life Ins. Co.*, 559 F.2d 426, 428-29 (5th Cir. 1977). In this case, there is no suggestion of fraud or collusion between the parties. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair. *Miller*, 559 F. 2d at 429; *Ressler*, 822 F. Supp. at 1554-55.

25. Based on the above findings, the Court approves the terms of the Settlement Agreement as fair, reasonable, adequate and in the best interests of the Class. The Settlement shall be consummated in accordance with the terms and conditions of the Agreement. The Settlement Agreement is hereby approved and adopted as an Order of this Court. The Court directs all of the Parties and their Counsel to cooperate with the consummation of the terms of the Settlement Agreement.

Request for Attorney Fees and Expenses

26. The Settlement Agreement provides that Class Counsel will make an application to this Court for an award of attorneys' fees up to 30% of the Settlement Fund. Class Counsel requests that the Court award them a fee which represents 25% of the $1,684,624.00 Settlement Fund. While

Class Counsel asserts that any fee up to 30% of the Settlement Fund is "reasonable," they have sought a fee well within the range established by Courts in this Circuit in similar cases.

27. Pursuant to *Camden I Condominium Assoc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991), an attorneys' fee award should be "based on a reasonable percentage of the fund established for the benefit of the class." The Court has applied all of the relevant *Camden I* factors to the circumstances of this case in general, and in particular, this Settlement, and it finds the following facts relevant to its decision: (1) Although this case came after the SEC filed its case, Class Counsel sued the Settling Parties, most of which were not parties to the SEC lawsuit; (2) Although Lead Plaintiffs and Class Counsel were not required to participate in the SEC lawsuit (Lead Plaintiffs are not parties to the SEC lawsuit), they did not simply sit back and let the Government argue the Class's cause alone in connection with one of the most crucial issues in this case – whether MBC viatical settlements were securities. Instead, Class Counsel filed three amicus briefs (and participated in oral argument) in support of the Class's position that MBC viatical settlements are in fact securities; (3) The Settlement with the Livoti Settling Parties was negotiated so that limited insurance monies were not wasted on defending the claims; (4) Class Counsel also negotiated a bar order which shall finally resolve all claims for the Settling Parties – obviating the need for satellite litigation amongst the parties, thereby further streamlining the rest of this litigation; and (5) Class Counsel, as opposed to the Settlement Administrator, chose to directly respond to investor questions regarding the Settlement. Not only did this save the Class money, but it benefitted the Class to have an attorney answer their questions regarding the first settlement in this case. The preceding observations attest to the considerable experience, reputations and abilities of Class Counsel.

28. My decision is also based on the fact that this case has certainly precluded Class Counsel from acceptance of other cases; that Class Counsel is working on a pure contingent basis; and that the customary fee in a case such as this is generally between 20%-30%, with a 25% benchmark being accepted as the norm in this Circuit.

29. Based on the foregoing analysis, the Court finds that an award of 25% of the $1,684,624.00 Settlement Fund (or $421,156.00) in attorneys' fees would be fair and reasonable in this case. The Court finds that Class Counsel's request to be reimbursed for $59,757.89 in expenses is reasonable, and therefore awards Class Counsel, in addition to the fee award, $59,757.89 for costs, plus any future invoices from the Settlement Administrator, Garden City Group. The fee and cost award shall be paid exclusively from the Settlement Fund as provided in the Settlement Agreement.

30. This award is also fair and reasonable when cross-checked against Class Counsel's lodestar. According to Class Counsel, it has already spent 7,397.45 hours litigating this case for a total lodestar of $2,788,078.50. Even taking into account prior fee awards made to Class Counsel, the fee award represents a small multiplier (1.05) well within the range of what is fair and reasonable given the circumstances of this case.

31. The Court has also reviewed all of the objections filed with the Court by Class Members relating to Class Counsel's request for fees. The Court has reviewed all objections (whether properly filed or not) and find that they are not relevant and do not warrant further discussion. All objections filed with the Court related to Class Counsel's fee and expense request are overruled.

Miscellaneous

32. Any and all reasonable expenses that are not included in Class Counsel's fee and expense request related to the dissemination of the Notice or administration of the Settlement Fund shall be paid out from the Settlement Fund upon Court approval. The Settlement Fund, after deducting the monies awarded in this Final Judgment, shall be paid to the Receiver to be held earning interest until the Court approves a plan of allocation and distribution.

33. All claims alleged by Lead Plaintiffs and the Class against the Settling Parties shall be, and the same are, hereby dismissed on the merits with prejudice, without fees and costs to any party, except as provided in the Settlement Agreement and approved by the Court herein.

34. Each Releasee (as that term is defined in the Settlement Agreement) shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, and liabilities of any nature whatsoever, known or unknown, in law or in equity, which a Class Member that is not listed on Exhibit 1 ("Releasor"), whether or not they make a claim on or participate in the Settlement Fund, ever had, now have or hereafter can, shall or may have, against any of the Settling Parties related to their investment in MBC viatical insurance policies. The claims covered by the foregoing release are referred to herein collectively as the "Released Claims." Each Releasor shall not hereafter seek to establish liability against any Releasee based in whole or in part on any Released Claims.

35. The Court further bars and enjoins any non-settling defendant in the Action from commencing, prosecuting or asserting any claim for contribution or indemnity against the Settling Parties, solely, arising out of, or in any way related to, their involvement with MBC; in addition, the Settling Parties, shall be barred from commencing, prosecuting or asserting any claim for contribution or indemnity against any non-settling defendant arising out of, or in any way related

to, their involvement with MBC or affiliated entities; in addition, notwithstanding any provision of Florida law to the contrary, the total damages awarded against the non-settling defendants as a result of a trial of this Action, or any related lawsuit, including but not limited to, any pending or future action filed by the Receiver, shall be reduced dollar-for-dollar up to the full amount of the Settlement Fund paid by each respective Settling Party, or by another amount as ordered by the Court at a later date.

36. Without in any way affecting the finality of this Order and Final Judgment, this Court hereby retains jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and of this Final Order and Judgment, and for any other necessary purpose.

37. Because there are multiple parties and claims presented in this case, the Court makes an express determination that there is no just reason for delaying the entry of this Order and Final Judgment, and therefore directs the immediate entry of this Order and Final Judgment.

DONE AND ORDERED in Chambers in the Southern District of Florida, at Miami, Florida this _____ day of _____, 2007.

_____

THE HONORABLE FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record

EXHIBIT 1

Scheck Investments, et al. v. Kensington Management, et al.

Notice of Pendency of Class Action, Proposed Settlement and Fairness Hearing,
Re: Lombardi, Livoti and Pettyjohn Parties, Mailed 8/31/2007

Requests for Exclusion from Settlement

Revised: October 4, 2007

	Name & Address
1.	Herbert Thomas Harris 4824 Coach Hills Drive Greenville, SC 29615
2.	Larry E. Byers 1275 Gulf Shore Boulevard Naples, FL 34102
3.	Lila E. Albertson 2400 N.E. 60 Street Gladstone, MO 64118
4.	Doris Mateer 615 N. Shumway Street Taylorville, IL 62568
5.	Mary C. Biddick 3141 Weinbrenner Road Fennimore, WI 53809
6.	Gary Biddick 3141 Weinbrenner Road Fennimore, WI 53809
7.	Patricia F. Cook & Alexander H. Cook 7977 S.E. Continental Drive Hobe Sound, FL 33455
8.	Virginia L. Lynch 686 E. Redlands Boulevard Apt. 316 Redlands, CA 92373
9.	Kevin Kliffmiller & Debbie Kliffmiller 811 East Adams Rushville, IL 62681
10.	Margaret A. LaBudde 127 Lake View Way Oldsmar, FL 34677

11.	McKnight Family Trust Julia McKnight, TTEE 6603 Westchester Drive, N.E. Winter Haven, FL 33881
12.	Doris E. Tronc 1388 B Turtle Drive Pontiac, IL 61764
13.	Carl R. Haley & Kara L. Haley 1027 Chinaberry Road Clearwater, FL 33764
14.	Eugene L. Deccio 511 S. 41 Street Yakima, WA 98901
15.	Chris Delcambre 124 Swoon Drive Lafayette, LA 70508
16.	Estal D. Stewart & Bonnie F. Stewart 1441 E. San Martin Street Bolivar, MO 65613
17.	Nicholas Cerrone 415 Sonstrom Road Bristol, CT 06010
18.	Aaron S. Zimmerman 200 E. Black Creek Road East Earl, PA 17519
19.	Rex B. Thompson 817 Westchester Place Charleston, IL 61920
20.	Clifford J. Janes 107 West Park Avenue Bourbon, IN 46504
21.	Jonathan Meyer & Shastina Meyer 1360 Summit Loop Grants Pass, Oregon
22.	Helmut Schilcher 12741 Lake Vista Drive Gibsonton, FL 33534
23.	Patricia Schilcher 12741 Lake Vista Drive Gibsonton, FL 33534

24.	Ursula M. Pries 3341 Highlands Bridge Road Sarasota, FL 34235
25.	Catheryn Eliana Faccini Orozco Calle 101 No. 13-19 Apto 101 Bogota, Colombia
26.	Carlos Fernando Faccini Orozco Calle 15 No. 43-95 Bogota, Colombia
27.	Fernando Faccini Ramirez Calle 15 No. 43-95 Bogota, Colombia
28.	Howard Gibbons P.O. Box 676 Palm City, FL 34991
29.	Dorothy W. Gibbons P.O. Box 676 Palm City, FL 34991
30.	Bob R. Bozart N10169 Lakeview Drive Tomahawk, WI 54487
31.	Andrew John Steer P.O. Box 74925 Dubai, United Arab Emirates
32.	Sandra Patricia Caycedo Quiroga Carrera 54B No. 133A - 22 Apto 205 Bogota, Colombia
33.	Jose Miguel Gaona Rodriguez & Doris Stella Leon Romero Diagonal 41 No. 17 A 21 Tunja Boyaca, Colombia
34.	Iris Gould 404 B Street Washington, KS 66968
35.	Harry Larson P.O. Box 131 Central City, IA 52214
36.	Clarence Haines & Hilda Haines 413 Acaica Circle Port Orange, FL 32127

37.	Roberto Ortuzar Aldunate Santa Brigida 421 Dpto. 203 Las Condes Santiago, Chile
38.	Alejandra Ortuzar Aldunate Puren 1551 Las Condes Santiago, Chile
39.	Ramon Ortuzar Aldunate Napoleon 3565 Of. 1405 Las Condes Santiago, Chile
40.	Pelagia Ortuzar Aldunate Renato Sanchez 3424 Dpto. 31 Las Condes Santiago, Chile
41.	Philip M. Ewaka
42.	Bill Dale 844 Birdsong Bedford, TX 76021
43.	Delphine Garcia 1220 Cypress Point Lane, Apt. 311 Ventura, CA 93003
44.	Jose Rafael Marquez & Eugenia M. Marquez Carrera 5. No. 72-39 Apto. 901 Bogota, Colombia
45.	Billy Blevins P.O. Box 630654 Nacogdoches, TX 75961
46.	Lois J. Barto 593 Marbletown Road Newark, NY 14513
47.	Less Doll Twillie 267 Whispering Wind Marion, AR 72364
48.	George Stone 555 Saint Nick Drive Memphis, TN 38117

49.	Pablo Ortuzar Aldunate Napoleon 3565 Of. 1405 Las Condes Santiago, Chile
50.	Shu-Mei Yu No. 1-2 Pujiang St. Taoyuan City Taoyuan 330 Taiwan
51.	Alba Lucia Campos Sarmiento Calle 112 5a-51 Bogota, Colombia
52.	James K. Vautrot 1036 Hwy 178 Opelousas, LA 70570
53.	Sherry C. Vautrot 1036 Hwy 178 Opelousas, LA 70570
54.	John C. Gifford 1341 Rt. 88 Phelps, NY 14532
55.	John C. Stokes & Lynn Stokes P.O. Box 1809 Freer, TX 78357
56.	Lawrence E. Sanders 422 N. Woodland St. Winter Garden, FL 34787
57.	Marilyn Dameron 8220 Willow Way Raytown, MO 64138
58.	Lee Klopfenstein P.O. Box 595 Dolan Springs, AZ 86441
59.	J. Michael Orenduff 319 Oak Center Place Valdosta, GA 31602
60.	Mary E. Heid & John W. Heid (Deceased) 1420 Lincolnshire Drive Maryville, TN 37803
61.	George Tepsick 139 Crumlin Ave. Girard, OH 44420

62.	Eleanor E. Huff & Marlin R. Huff (Deceased) 3551 Loam Ln. Carson City, NV 89705
63.	Richard Rascoe 13322 Hawthorn Drive Willis, TX 77318
64.	Wilma B. Browning Rt. 2 Box 76 Castlewood, VA 24224
65.	George Kawahara & Toshie Kawahara 1511 S. Maple Street Spokane, WA 99203
66.	Leon Wall & Gloria Smith Wall 196 Wall St. Pisgah Forest, NC 28768
67.	Lester D. Register, Jr. 620 Lone Palm Drive Lakeland, FL 33815
68.	Feng-Rouh Chang 3F, No. 12, Alley 14, Lane 200 Sec. 2 Dun Hua S. Rd. DA AN 106, Taipei, Taiwan
69.	Reinhard Helbich WeiBenkirchen 249 A- 610 WeiBenkirchen Austria
70.	William R. Brown 508 South Allen Road Wake Forest, NC 27587
71.	Douglas O. Stewart 3325 Lansmere Road Shaker Heights, OH 44122
72.	Simon T. Liu & Christina Y. Liu 5206 E. Avenida Palmar Orange, CA 92869
73.	Francis J. Huck P.O. Box 9192 Metairie, LA 70055

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

AFFIDAVIT OF MICHAEL A. HANZMAN IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND COSTS

STATE OF FLORIDA)
)ss.
COUNTY OF MIAMI-DADE COUNTY)

Michael A. Hanzman, being duly sworn on oath, deposes and states:

1. I am a shareholder in the law firm of Hanzman Criden & Love, P.A., Co-Lead Counsel for the plaintiffs in the above-styled action ("Action").

2. With respect to the settlements now before this Court (i.e. the "Lombardi," "Livoti" and "Pettyjohn" settlements) I firmly believe for reasons more fully articulated in Lead Plaintiffs' Motion for Final Approval, that each of them are fair, adequate and reasonable. They are not the product of any fraud or collusion, and they provide the Class with recovery that likely could not be achieved had the case against these parties been fully litigated, especially given the limited assets available from which to collect any resulting judgment, assuming the Class prevailed. These settlements will provide the Class with immediate monetary relief, and eliminate claims from this

case thereby allowing Class counsel to focus their attention on pursuing remaining claims against other defendants. The bottom line is I believe these settlements represent an outstanding result given the complexity of the case, the nature of the claims against these defendants and, most importantly, the inability on the part of these defendants to pay more, either in settlement or in satisfaction of any ultimate judgment.

3. As to Class Counsel's Motion for Attorneys' Fees and Costs, our compensation for the services rendered in this case is wholly contingent. Any fees and reimbursement of expenses will be limited to such amounts as may be awarded by this Court.

4. During the period from the inception of the Action through September 30, 2007, my firm, and others working under my direct supervision, have performed 3,004.45 hours of work in connection with the prosecution of the Action. Based upon current hourly rates ordinarily charged, the lodestar value of that time through September 30, 2007 is $1,346,616. A summary of that lodestar is provided below:

Name	Status	Rate	Hours	Amount
Michael A. Hanzman	Partner	600[1]	895.50	$537,300
Kevin B. Love	Partner	450	831.50	$374,175
Robert Gilbert	Of Counsel	450	58.50	$26,325
Jeffrey Kravetz	Of Counsel	375[2]	811.60	$304,350
Jared Levy	Partner	325	86.25	$28,031
Joshua Migdal	Associate	250	13.00	$3,250

[1] This represents Mr. Hanzman's currently hourly rate.

[2] This represents Mr. Kravetz' current hourly rate.

Richard Brenner	Of Counsel	275	238.40	$65,560
Nicole Trujillo	Paralegal	150	42.50	$6,375
Maria Alonso	Paralegal	150	5.00	$750
Patricia Savage	Paralegal	100	5.00	$500

5. Detailed itemization of the services rendered during the period for which fees are sought are available for the Court's review upon request.

6. All of the services performed by my firm were reasonably necessary in the prosecution of the Action. There has been no unnecessary duplication of services for which my firm now seeks compensation.

7. For reasons articulated in greater length in Class Counsel's Motion for Attorneys' Fees and Costs, I believe the fees and costs being sought are fair and reasonable for a number of reasons.

8. Most importantly, the twenty-five percent (25%) benchmark attorneys' fee requested is well within the range customarily awarded in these types of cases, where counsel pursue the matter on a wholly contingent basis. It is also a percentage less than that typically charged in the market place for contingent representation. Typically, a client with claims of this nature, seeking contingent representation, would be required to pay a percentage fee in the range of thirty three and one-third (33 1/3%) to forty percent (40%) of any recovery, assuming clients with claims against defendants like these (i.e. defendants with very limited assets) could even find such representation. And while I personally believe that the amount of time devoted by counsel to the matter, or the resulting multiple of that time that will result from a fee award, should not be significant factors, should the

Court award the twenty-five percent (25%) benchmark fee requested, counsel will not be receiving any significant multiple on the time actually expended.[3]

9. The Firm also has unreimbursed expenses, as of September 30, 2007 of $12,128.37

10. At or about December, 2005, the Firm received fees in the amount of $1,250,000 awarded by the Court in connection with the settlement realized with Defendant Brinkley, McNerney, Morgan, Solomon & Tatum, LLP. No other attorneys' fees have been awarded to, or received by, the Firm.

FURTHER AFFIANT SAYETH NAUGHT.

MICHAEL A. HANZMAN

[3] I believe that the time devoted by counsel, (and resulting multiple that will result from the fee award) should not be critical considerations because, in my view, counsel who undertake matters on a contingency basis should not be awarded less of a recovery if they obtain excellent results in a quick and efficient manner. That is consistent with well-established and customary contingent fee representation. Specifically, when counsel undertake to prosecute a case on a contingent fee basis, in a typical one on one attorney-client relationship, the standard percentage of recovery (i.e. 33 1/3 to 40%) is not reduced if the lawyer, through skill and diligence, quickly obtains a recovery satisfactory to the client. The percentage, with very few exceptions, is typically fixed. It makes no difference to the client, who is generally more satisfied, if counsel obtains a result for them quickly and efficiently, without having to devote substantial time to the matter. Of course many cases do not take that route and require that counsel litigate the matter, often for years, without compensation. The bottom line, however, is that the clients' obligation to pay the contingent fee is typically not dependent upon, or varied by, how many hours counsel had to work to achieve the desired result. Because class action cases often involve significantly larger recoveries, courts certainly have looked to the amount of time devoted by counsel and the resulting multiple of that time that will result from a court-awarded fee. I do not opine herein, or mean to imply, that reviewing this factor is not appropriate or important. I just believe that with respect to most settlements, like this one, not involving any "mega type" fund, this factor should not be of great significance.

The foregoing instrument was acknowledged before me this 12th day of October, 2007, by MICHAEL A. HANZMAN, who is personally known to me ✓ or who has produced _____ as identification.

Madeline T. Llanez

Print or Stamp Name
Notary Public, State of Florida
Commission No.
My Commission Expires:

MADELINE T. LLANEZ
MY COMMISSION # DD 627576
EXPIRES: February 24, 2011
Bonded Thru Budget Notary Services

L:\2979\Settlement Insiders\MAH affidavit fees and expenses.wpd

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 04-21160-CIV-MORENO/GARBER

SCHECK INVESTMENTS, L.P., et al.

Plaintiffs,

v.

KENSINGTON MANAGEMENT, INC., et al.

Defendants.
_____/

AFFIDAVIT OF VICTOR M. DIAZ, JR. IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND COSTS

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

Victor M. Diaz, Jr., being duly sworn on oath, deposes and states:

1. I am a partner in the law firm of Podhurst Orseck, P.A., Co-Lead Counsel for the plaintiffs in the above-styled action ("Action").

2. With respect to the settlements now before this Court (i.e. the "Lombardi," "Livoti" and "Pettyjohn" settlements) I firmly believe for reasons more fully articulated in Lead Plaintiffs' Motion for Final Approval, that each of them are fair, adequate and reasonable. They are not the product of any fraud or collusion, and they provide the Class with recovery that likely could not be achieved had the case against these parties been fully litigated, especially given the limited assets available from which to collect any resulting judgment, assuming the Class prevailed. These settlements will provide the Class with immediate monetary relief, and eliminate claims from this case thereby allowing Class counsel to focus their attention on pursuing remaining claims against

other defendants. The bottom line is I believe these settlements represent an outstanding result given the complexity of the case, the nature of the claims against these defendants and, most importantly, the inability on the part of these defendants to pay more, either in settlement or in satisfaction of any ultimate judgment.

3. For reasons articulated in greater length in Class Counsel's Motion for Attorneys' Fees and Costs, I believe the fees and costs being sought are fair and reasonable for a number of reasons.

4. Our firm's compensation for the services rendered were wholly contingent. Any fees and reimbursement of expenses will be limited to such amounts as may be awarded by this Court.

5. During the period from the inception of the Action through September 23, 2007, my firm performed 4,393 hours of work in connection with the prosecution of the Action. Based upon historical hourly rates ordinarily charged to my firm's clients, the lodestar value of my firm's time is $1,441,462.50. A summary of my firm's lodestar is provided immediately below:

Name	Status	Rate	Hours	Amount
Victor M. Diaz, Jr.	Partner	600[1]	1,396.25	837,750.00
Aaron S. Podhurst	Partner	600	2.50	1,500.00
Joel D. Eaton	Partner	500[2]	6.25	3,125.00
Stephen F. Rosenthal	Partner	375[3]	137.00	51,375.00
Ramon A. Rasco	Associate	275[4]	980.25	269,568.75
Xavier Martinez	Associate	275	197.00	54,175.00
Maria Kayanan	Associate	225	117.00	26,325.00
Mary R. Andrews	Associate	225	14.75	3,318.75
Ricardo Martinez-Cid	Associate	225	6.00	1,350.00

[1] This represents Mr. Diaz's current hourly rate.

[2] This represents Mr. Eaton's current hourly rate.

[3] This represents Mr. Rosenthal's current hourly rate.

[4] This represents Mr. Rasco's current hourly rate.

John Gravante	Associate	275	6.50	1,787.50
Various	Legal Assistants And Law Clerks	125[5]	1,529.50	191,187.50

6. Detailed itemization of the services rendered during the period for which fees are sought are available for the Court's review upon request.

7. All of the services performed by my firm were reasonably necessary in the prosecution of the Action. There has been no unnecessary duplication of services for which my firm now seeks compensation. Because of the size of my firm and the number of lawyers who devoted time and energy to this case, we were precluded from working on other matters that would have resulted in non-contingent hourly fee billing.

8. During the period from November 19, 2005, through September 27, 2007, my firm incurred unreimbursed expenses in the amount of $47,629.52. These expenses were reasonably and necessarily incurred in connection with the prosecution of the Action. The expenses incurred are reflected on the books and records of my firm. Almost one-half of these expenses relate to the postage charges incurred in mailing the Class Notice, and do not include all notice and administration costs. Class Counsel has requested and is awaiting the final bill from the Settlement Administrator, Garden City Group.

9. All of the services performed by my firm were reasonably necessary in the prosecution of the Action. There has been no unnecessary duplication of services for which my firm now seeks compensation.

FURTHER AFFIANT SAYETH NAUGHT.

VICTOR M. DIAZ, JR.

[5] This represents the current hourly rate charged for Law Clerks and Legal Assistants.

The foregoing instrument was acknowledged before me this 12th day of October, 2007, by Victor M. Diaz, Jr., who is personally known to me.

Print or Stamp Name
Notary Public, State of Florida
Commission No.
My Commission Expires:

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