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12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 CITY OF WESTLAND POLICE AND FIRE)
15 RETIREMENT SYSTEM and PLYMOUTH)
16 COUNTY RETIREMENT SYSTEM, On)
Behalf of Themselves and All Others Similarly)
Situating,

17 Plaintiffs,

18 vs.

19 SONIC SOLUTIONS, et al.,

20 Defendants.

No. C 07-05111-CW

CLASS ACTION

JOINT DECLARATION OF SHAWN A.
WILLIAMS AND JONATHAN GARDNER
IN SUPPORT OF FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, PLAN OF
ALLOCATION OF SETTLEMENT
PROCEEDS, AND AWARD OF
ATTORNEYS' FEES AND EXPENSES

DATE: April 8, 2010

TIME: 2:00 p.m.

COURTROOM: The Honorable
Claudia Wilken

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1 SHAWN A. WILLIAMS and JONATHAN GARDNER each declare as follows pursuant to
2 28 U.S.C. §1746:

3 1. I, Shawn A. Williams, am a member of Coughlin Stoia Geller Rudman & Robbins
4 LLP (“Coughlin Stoia”), Court-appointed Lead Counsel for lead plaintiffs the City of Westland
5 Police and Fire Retirement System (“City of Westland) and Plymouth County Retirement System
6 (“Plymouth”) (collectively, “Lead Plaintiffs”) and the proposed Settlement Class in the above-
7 captioned action (the “Litigation”). I am admitted to practice before this Court.

8 2. I, Jonathan Gardner, am a member of the law firm of Labaton Sucharow LLP
9 (“Labaton Sucharow”), Court-appointed Lead Counsel for Lead Plaintiffs and the proposed
10 Settlement Class in the Litigation. I am admitted *pro hac vice* to practice before this Court.

11 3. We have maintained daily control and monitoring of the work provided by lawyers at
12 our firms on this case. While we have personally devoted substantial time to this case since its
13 inception, we have also utilized other experienced attorneys at our firms to undertake or work with
14 us on particular tasks appropriate to their levels of expertise, skill and experience (for example,
15 researching and drafting briefs; working with experts; and settlement mediations), and more junior
16 attorneys and paralegals to work on matters more appropriate to their experience levels. Unless
17 otherwise indicated, the statements in this joint declaration are made based on our personal
18 knowledge, and if called to do so, we could testify to them.

19 4. We respectfully submit this joint declaration in support of Lead Plaintiffs’ motion,
20 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for final approval of the settlement of
21 this class action and the Plan of Allocation for the distribution of the settlement proceeds (the “Plan
22 of Allocation”).¹ We also submit this joint declaration in support of Lead Counsel’s motion for an
23 award of attorneys’ fees and expenses incurred during the prosecution of the Litigation.

24

25

26

27 ¹ All capitalized terms used herein are defined in the Stipulation of Settlement dated as of
28 October 12, 2009 (“Stipulation”), and have the same meaning as that set forth in the Stipulation.

1 **I. INTRODUCTION**

2 5. This action is brought on behalf of all persons who purchased or otherwise acquired
3 the publicly traded securities of Sonic Solutions (“Sonic” or the “Company”) between October 23,
4 2002 and May 17, 2007 (the “Settlement Class Period”), against certain of Sonic’s top officers and
5 directors for violations of the federal securities laws, specifically violations of §§10(b), 14(a), 20(a)
6 and 20A of the Securities Exchange Act of 1934 (the “Exchange Act”).

7 6. The action, initiated on October 4, 2007 alleged that Defendants knowingly
8 manipulated stock option grants to the Company’s officers, directors and employees in order to
9 provide the recipients with a more profitable exercise price while intentionally under-reporting the
10 Company’s expenses and thereby overstating the Company’s reported earnings or understating the
11 Company’s reported loss. Lead Plaintiffs maintain that Defendants caused Sonic to materially
12 overstate reported income and materially understate compensation expenses. As a result, Sonic was
13 forced to issue a \$29 million restatement to account for stock option grants which were granted in-
14 the-money and never expensed.

15 7. Lead Plaintiffs have diligently prosecuted this class action. Faced with the stringent
16 pleading requirements of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), Lead
17 Plaintiffs conducted a rigorous investigation, review of Sonic’s SEC filings, interviewing numerous
18 former Sonic employees regarding Sonic’s stock option granting and accounting practices, and the
19 retention of the nation’s preeminent expert on stock option backdating statistics to conduct a
20 sophisticated analysis of the timing of Sonic’s historical stock option grants. Lead Plaintiffs crafted
21 a detailed and comprehensive complaint that was partially upheld by this Court’s Order Granting in
22 Part and Denying in Part Defendants’ Motion to Dismiss (“April 6, 2009 Order”). Specifically, the
23 Court upheld Lead Plaintiffs’ §14(a) claims, finding that Lead Plaintiffs had adequately alleged the
24 falsity of Sonic’s 2005 Proxy Statement that contained alleged misrepresentations concerning the
25 manner in which stock options were granted. The Court also upheld Lead Plaintiffs’ 20A Exchange
26 Act claims alleging insider trading allegations against certain of the Individual Defendants. Indeed,
27 at the time that the parties reached an agreement to settle this action, Lead Plaintiffs had recently
28 filed their First Amended Class Action Complaint for Violations of the Federal Securities Laws that

1 provided even further allegations in support of Lead Plaintiffs' §§ 10(b) and 20(a) claims, which the
2 Court previously dismissed without prejudice.

3 8. Notwithstanding all of Lead Plaintiffs' efforts and what they believe to be strong
4 allegations of wrongdoing, the passage of time between the facts and circumstances at issue and the
5 commencement of this action would have hampered Lead Plaintiffs' ability to prove all claims at
6 trial. When combined with the substantial legal hurdles of the PSLRA, legal precedent in this
7 Circuit, in particular proof of scienter for claims involving stock option backdating cases, as well as
8 the Court's rulings in this case, the risk that the Settlement Class would receive no recovery was
9 very real.

10 9. Given these risks, we believe that the cash settlement of \$5,000,000 represents a
11 favorable result for the Settlement Class.

12 **II. THE LITIGATION AND RELEVANT PROCEDURAL HISTORY**

13 10. On October 4, 2007, City of Westland Police and Fire Retirement System filed the
14 initial complaint in this action against Sonic, its President and Chief Executive Officer, David C.
15 Habiger, Chairman, Robert J. Doris, Chief Financial Officer and Executive Vice President, A. Clay
16 Leighton, director and Secretary, Mary C. Sauer, and Executive Vice President, Mark Ely.

17 11. On January 10, 2008, Judge Martin J. Jenkins appointed City of Westland Police and
18 Fire Retirement System and Plymouth County Retirement System as Lead Plaintiffs and Coughlin
19 Stoa and Labaton Sucharow as Lead Counsel in this matter.

20 12. On January 23, 2008, Judge Jenkins entered an order, pursuant to the parties'
21 stipulation, which provided that Lead Plaintiffs would file a consolidated amended complaint no
22 later than February 28, 2008, and set a schedule for Defendants to answer or otherwise respond to
23 the consolidated amended complaint. However, on February 15, 2008, as a result of Judge Jenkins'
24 appointment to the California Court of Appeals, an order was entered reassigning this case to Judge
25 Jeffrey S. White for all further proceedings.

26 13. On February 26, 2008, the Company filed its Form 10-K with the SEC for the fiscal
27 year ending March 31, 2007, detailing, in part, numerous errors in the administration of the
28 Company's stock option plans. The Form 10-K discussed many categories of stock option grants

1 during the relevant period that were granted and/or accounted for improperly. The Company
2 announced that it had re-priced grants described as founder director grants, nonfounder Section 16
3 officer grants, other employee grants, hiring grants, salary reduction grants, and acquisition related
4 grants. The Form 10-K further discussed that the members of the Board (comprised of defendants
5 Doris, Sauer, Greber, Marguglio and Langley) were involved in the erroneous administration of
6 specific terms of shareholder approved stock option plans. These grants were also restated/repriced
7 to reflect the proper measurement dates and compensation expense.

8 14. On February 27, 2008, Judge White issued an order setting forth a schedule for filing
9 Lead Plaintiffs' consolidated amended complaint and Defendants' responses thereto.

10 15. Pursuant to the Court's February 27, 2008 Order, on March 21, 2008, Lead Plaintiffs
11 filed their Consolidated Class Action Complaint for Violations of the Federal Securities Law
12 ("Consolidated Complaint"). The Consolidated Complaint detailed Defendants' issuance of false
13 and misleading financial statements as a result of the intentional backdating of stock options and
14 asserted that Defendants had artificially inflated Sonic's reported earnings and falsified the
15 Company's financial statements since 1996 by failing to properly account for backdated stock
16 options.

17 16. The Consolidated Complaint specifically outlined 24 separate stock option grant dates
18 between 1996 and 2004. The Consolidated Complaint further alleged that of those 24 grants, at least
19 ten were non-discretionary grants awarded under Sonic's non-employee director plan. Of the 14
20 discretionary grant dates reported in filings with the SEC, eight grants were alleged to have been
21 made on dates when Sonic's stock price was trading at among its lowest price of the relevant month,
22 and sometimes the lowest price of the fiscal quarter and/or fiscal year. The Consolidated Complaint
23 further detailed how according to Lead Plaintiffs' statistical analysis, the odds that Sonic would have
24 granted options with such a favorable date by mere luck are approximately 1 out of 11 million.
25 Accordingly, the Consolidated Complaint alleged that the only plausible explanation for how 57% of
26 Sonic's discretionary stock option grants could have been "granted" on the monthly low of Sonic's
27 stock price was through the improper backdating of stock options.

28

1 17. On May 23, 2008, Defendants filed their motion to dismiss the Consolidated
2 Complaint. Defendants' motion to dismiss asserted that Lead Plaintiffs had failed to adequately
3 allege any claim against any defendant. Defendants argued that Sonic's Audit Committee had
4 conducted a comprehensive investigation of the Company's stock option granting process and
5 concluded that no one at the Company had engaged in any intentional wrongdoing. With respect to
6 scienter, Defendants' asserted that Lead Plaintiffs had failed to plead a strong inference of scienter
7 with respect to any Individual Defendant, and had failed to adequately allege that Defendants were
8 involved in a scheme to defraud Sonic's shareholders. In addition, the motion to dismiss asserted
9 that Lead Plaintiffs' §§20(a) and 20A insider trading claims were not adequately pled.

10 18. On May 27, 2008, Lead Plaintiffs' filed a [Corrected] Consolidated Class Action
11 Complaint for Violations of the Federal Securities Laws ("May 27, 2008 Complaint"). The May 27,
12 2008 Complaint, added a cause of action for violation of §14(a), which had been inadvertently
13 omitted from the Consolidated Complaint. On June 3, 2008, Judge White approved the filing of the
14 May 27, 2008 Complaint. On June 27, 2008, Defendants filed their Superseding Motion to Dismiss
15 the [Corrected] Consolidated Class Action Complaint (the "Superseding Motion to Dismiss"). The
16 Superseding Motion to Dismiss made substantially the same arguments as Defendants' previous
17 motion to dismiss, but also urged that the Court dismiss Lead Plaintiffs' §14(a) claims. Defendants
18 asserted that the §14(a) claims were time-barred with respect to all but Sonic's 2005 Proxy
19 Statement. With respect to the 2005 Proxy Statement, Sonic argued that Lead Plaintiffs had not pled
20 a strong inference of negligence as to any §14(a) defendant, and that there was no casual link
21 between the 2005 Proxy Statement and the injury alleged by Lead Plaintiffs.

22 19. On July 18, 2008, Lead Plaintiffs filed their Opposition to Defendants' Superseding
23 Motion to Dismiss the [Corrected] Consolidated Class Action Complaint (the "Opposition"). The
24 Opposition detailed the allegations set forth in the May 27, 2008 Complaint regarding the alleged
25 backdating at Sonic, as well as the Company's stock option plans and policies that were allegedly
26 violated by Defendants' backdating. The Opposition discussed the numerous recent court decisions
27 that addressed claims of stock option backdating in the context of violations of the federal securities
28 laws and detailed how Defendants' roles and responsibilities with respect to Sonic's stock option

1 granting processes required them to have knowledge that stock options were being issued and were
2 backdated. Lead Plaintiffs' Opposition also described how the May 27, 2008 Complaint adequately
3 pled a claim for control person liability under §20(a) and for issuing false and misleading proxy
4 statements under §14(a). Lastly, the Opposition discussed the numerous instances of insider trading
5 alleged in the May 27, 2008 Complaint, and how the class was harmed by trading
6 contemporaneously with Defendants.

7 20. On August 8, 2008, Defendants filed their Reply Memorandum of Points and
8 Authorities in Support of Superseding Motion to Dismiss the [Corrected] Consolidated Class Action
9 Complaint (the "Reply Brief"). The Reply Brief reasserted that Lead Plaintiffs had not sufficiently
10 pled any of the claims set forth in the May 27, 2008 Complaint.

11 21. While Defendants' motion to dismiss the May 27, 2008 Complaint was being briefed,
12 on July 24, 2008, the parties attended a mediation with Justice Howard B. Wiener (Ret.).
13 Notwithstanding their efforts, the parties were unable to resolve the matters at the July 24, 2008
14 mediation.

15 22. On August 28, 2008, Judge White issued a *Sua Sponte* Judicial Referral for Purposes
16 of Determining Relationship of Cases, and vacated the hearing on Defendants' motion to dismiss
17 which had been set for September 5, 2008.

18 23. On September 4, 2008, this Court issued an order finding the action related to *Wilder*
19 *v. Doris et al.*, 07-1500. *Wilder* was a derivative action also involving the backdating of stock
20 options at Sonic and included allegations of violations of state law and breach of fiduciary duties.
21 The same order, without an opinion on the merits, denied Defendants' motion to dismiss without
22 prejudice, and set a Case Management Conference for February 12, 2009. The Court also ordered
23 the parties to attend an additional mediation session with Judge Wiener (Ret.) on October 7, 2008,
24 which was already scheduled for settlement discussions in the derivative case. Prior to October 7,
25 2008, Defendants informed Lead Plaintiffs that the date for that mediation had been changed and
26 that they saw little utility in class action Lead Plaintiffs' attendance at that time.

27 24. On November 25, 2008, defendants refiled their motion to dismiss and filed a motion
28 requesting that the Court schedule a hearing and decide their motion to dismiss based on the

1 previous briefs filed in response to Defendants' previously filed to motion to dismiss. Lead
2 Plaintiffs opposed this motion and on December 4, 2008 the Court denied Defendants' motion.

3 25. Lead Plaintiffs filed their opposition to Defendants' refiled motion to dismiss on
4 January 15, 2009. Defendants filed a reply brief on January 29, 2009 and the parties submitted a
5 case management conference statement on February 17, 2009.

6 26. On February 26, 2009, the Court held oral argument on Defendants' motion to
7 dismiss the May 27, 2008 Complaint. At the hearing, the Court stated that it was inclined to grant
8 Defendants' motion to dismiss while giving Lead Plaintiffs leave to amend their complaint. At the
9 hearing, counsel for Lead Plaintiffs argued that the allegations of the May 27, 2008 Complaint were
10 particularly pled in accordance with the requirements of Federal Rule of Civil Procedure 9(b) and the
11 PSLRA and that the May 27, 2008 Complaint should be upheld in its entirety.

12 27. The Court issued the April 6, 2009 Order granting in part and denying in part
13 Defendants' motion to dismiss. The Court found that Lead Plaintiffs had adequately pled a §14(a)
14 claim based on false statements contained in Sonic's 2005 Proxy Statement. The Court also found
15 Lead Plaintiffs' §20A insider trading claims against defendants Doris, Leighton, Langley and Greber
16 were adequately pled. In all, the May 27, 2008 Complaint alleged that these defendants sold at least
17 1,445,000 shares of stock during the Settlement Class Period for proceeds of at least \$24,615,186.
18 With respect to Lead Plaintiffs' §10(b) claims, the Court found that notwithstanding Lead Plaintiffs'
19 statistical analysis and Defendants' roles at the Company, Lead Plaintiffs had failed to meet the
20 PSLRA's pleading requirements on the element of scienter. The Court expressed concern primarily
21 regarding the presentation of the statistical analysis supporting Lead Plaintiffs' allegations that Sonic
22 intentionally backdated stock options during and before the Settlement Class Period. Finally, the
23 Court found that Lead Plaintiffs had failed to adequately allege specific facts supporting a
24 conclusion that Defendants were in fact controlling persons under §20(a) of the Exchange Act of
25 Sonic. The Court, however, granted Lead Plaintiffs leave to amend with respect to their §§10(b) and
26 20(a) claims, control person claims and insider trading claims against Mary C. Sauer, Mark Ely and
27 Peter Marguglio.

1 28. On April 13, 2009, Lead Plaintiffs filed a Motion for Leave to File Motion for
2 Reconsideration Pursuant to Civil L.R. 7-9(b)(3). Lead Plaintiffs’ motion asserted that the Court had
3 erred with respect to its analysis of Lead Plaintiffs’ §20(a) Exchange Act control person allegations.
4 Lead Plaintiffs explained that the May 27, 2008 Complaint had in fact provided detailed allegations
5 regarding Defendants’ control at Sonic, and specifically control over the stock option granting
6 process at Sonic. Lead Plaintiffs also explained that they were not required to plead a violation of
7 §10(b) against any §20(a) defendant in order to state a claim. On May 4, 2009, the Court issued an
8 Order Denying Plaintiffs’ Motion for Leave to File a Motion for Reconsideration. The Court
9 explained that because Lead Plaintiffs intended to file an amended complaint, they would have the
10 opportunity to address the issues raised in their motion for reconsideration in response to any
11 renewed motion to dismiss.

12 29. On May 8, 2009, Lead Plaintiffs’ filed their First Amended Class Action Complaint
13 for Violations of the Federal Securities Law (“First Amended Complaint”). The First Amended
14 Complaint addressed the concerns raised in the Court’s April 6, 2009 Order and provided a more
15 robust statistical analysis of the backdating at Sonic. To conduct this statistical analysis, Lead
16 Plaintiffs retained Professor Erik Lie who is widely considered the leading statistical expert on
17 options backdating. His paper, “On the Timing of CEO Stock Option Awards,” first exposed the
18 practice of backdating options. In the wake of this seminal paper, Professor Lie consulted on *The*
19 *Wall Street Journal’s* Pulitzer Prize winning article “The Perfect Payday,” which used his statistical
20 method to uncover backdating at dozens of public companies. Further, the First Amended
21 Complaint again contained allegations from confidential witnesses (“CW”) interviewed during the
22 course of Lead Plaintiffs’ investigation.

23 30. On June 24, 2009, the parties attended a full-day mediation with United States
24 District Court Judge Layn R. Phillips (Ret.). These settlement negotiations were well-informed by
25 the litigation of the action and discussion of comprehensive mediation statements. At the mediation,
26 the parties engaged in frank discussions of the strengths and vulnerabilities of the case. While this
27 session ended at an impasse, the parties made substantial progress towards reaching an agreement
28 and subsequently agreed on the terms of a settlement in the weeks after this mediation took place.

1 31. On July 23, 2009, the parties filed a stipulation and proposed order requesting that the
2 Court vacate the previously set briefing schedule for responses to Lead Plaintiffs' First Amended
3 Complaint in light of the parties' agreement in principle to settle the action. The Court granted the
4 parties' stipulation on August 4, 2009 and vacated the briefing schedule.

5 32. Between August and October 2009, the parties worked to memorialize their
6 settlement and reach agreement on all remaining terms. All negotiations were at arm's length and
7 well informed by: (i) months of extensive informal investigation by counsel, including interviews
8 with numerous former Sonic employees; (ii) expert analyses of the publicly available information
9 about Sonic and the Individual Defendants; (iii) an analysis of the Company's financial wherewithal
10 to sustain a judgment or pay a settlement; (iv) contentious motion practice seeking dismissal of the
11 claims; and (v) the exchange of well-developed mediation submissions on a variety of important
12 issues. When the formal agreement was finalized on October 15, 2009, the parties filed the
13 Stipulation and submitted it to the Court for preliminary approval, which was granted by order filed
14 December 2, 2009.

15 **III. CLASS REPRESENTATIVES' INVESTIGATION**

16 33. Lead Plaintiffs engaged in a comprehensive and thorough investigation of the
17 ultimate claims alleged. Their investigation included, *inter alia*: (i) review and analysis of publicly
18 available information concerning Defendants, including newspaper articles, online publications,
19 stock price movement, statements at analyst conferences, and Bloomberg reports; (ii) review and
20 analysis of regulatory filings made by Defendants with the SEC; (iii) review and analysis of
21 securities analyst reports; (iv) review and analysis of press releases and media reports issued and
22 disseminated by Defendants; (v) researching the applicable law with respect to the claims and
23 potential defenses; and (vi) interviews with numerous individuals involved with Sonic and its stock
24 option granting practices, some of whom became confidential witnesses.

25 34. Lead Plaintiffs also consulted with and retained a damages consultant, Bjorn J.
26 Steinholt of Financial Markets Analysis, LLC, to analyze loss causation and recoverable damages.

27 35. The May 27, 2008 Complaint and First Amended Complaint contained, among other
28 things, information derived from two confidential witnesses located through Lead Counsel's

1 investigation. The search for potential witnesses took place over many months and investigators
2 sought information from former Sonic employees familiar with Sonic's stock option granting
3 practices. In that regard, investigators spoke with former human resources department employees
4 who had knowledge about the option granting procedures and practices and other employees who
5 received Sonic's stock options. This investigation yielded several witnesses who supplied
6 information used in the First Amended Complaint, including: (a) a human resources administrator
7 who was involved in the stock option granting process, and (b) a senior manager who received stock
8 options and provided information about Sonic's stock option program.

9 36. As discussed above, Lead Plaintiffs' investigation of the alleged backdating at Sonic
10 also included robust statistical analyses of patterns in Sonic's stock option grants throughout and
11 prior to the Settlement Class Period. To analyze these grants, Lead Plaintiffs retained the services of
12 Erik Lie, the Henry B. Tippie Research Professor of Finance at the University of Iowa's Tippie
13 College of Business. Professor Lie has continued to publish scholarly articles on the statistical
14 evidence of backdating and was recognized by *Time*, *SmartMoney*, *Forbes*, *Business Finance*, and
15 others as one of the most influential people in the world in 2006 and 2007 for his work exposing
16 backdating practices.

17 37. Professor Lie analyzed Defendants' stock option grants using a number of different
18 methods. Each of Professor Lie's statistical studies was based on all publicly available information
19 regarding Sonic's stock option grants. Specifically, §16(a) of the Exchange Act requires every
20 officer and director of a public company to report the receipt of all stock options to the SEC on
21 Forms 4 and 5. Additionally, Regulation S-K, Item 402 requires every public company to report
22 annually all compensation, including stock options, to its CEO, CFO, the three highest paid
23 executive officers other than the CEO and CFO, and up to two additional individuals who would
24 have qualified as one of the three highest paid executive officers but were not executive officers on
25 the last day of the relevant fiscal year. 17 C.F.R. §229.402. Professor Lie reviewed documents
26 concerning hundreds of thousands of options granted by Sonic to its employees on 23 different dates
27 between 1996 and 2004.

28

1 38. Using the information discussed above, Lead Counsel filed detailed complaints that
2 were drafted to withstand the strict pleading requirements of the PSLRA. The complaints detailed
3 Sonic’s stock option plans and the policies in place at the Company during the Settlement Class
4 Period. The complaints explained that Sonic’s stock option plans required the Company to grant
5 stock options at not less than the fair market value of Sonic’s stock on the grant date, and that Sonic
6 represented to its shareholders that it complied with these policies. The complaints discussed how
7 stock options were critical to Sonic’s ongoing success and its ability to retain employees, and how
8 Sonic’s most senior executives and directors were required to administer its stock option programs in
9 compliance with Sonic’s shareholder approved stock option plans. The complaints set forth in detail
10 the numerous alleged false and misleading statements made by Defendants during the Settlement
11 Class Period, including each of Sonic’s financial statements which overstated Sonic’s income as a
12 result of their failure to properly account for the expenses associated with backdated stock options.
13 The complaints also detailed the numerous policy statements and proxy statements which falsely
14 described Sonic’s compliance with their stock option plans and APB No. 25. The complaints also
15 extensively detailed how Sonic violated Generally Accepted Accounting Principles (“GAAP”) by
16 failing to account for backdated stock options, and how their material GAAP violations required
17 Sonic to restate years worth of its financial statements to account for previously undisclosed
18 expenses.

19 39. With respect to loss causation and damages issues, analyses concerning the parties’
20 respective arguments enabled Lead Plaintiffs to carefully assess the value of the claims, including
21 the risks of proving loss causation and damages. Because Lead Plaintiffs’ internal damage analysis
22 was based on historical data and information, the facts and circumstances underlying loss causation
23 and damages were well understood and vetted when the parties agreed to settle.

24 40. With the benefit of a thorough informal investigation and full legal analyses of the
25 claims and defenses of the parties, Lead Plaintiffs, as advised by Lead Counsel, have concluded that
26 the settlement is in all respects fair, adequate, reasonable and in the best interests of the Settlement
27 Class. Lead Plaintiffs considered the favorable cash benefits to Settlement Class Members, the
28 desirability of providing certain and immediate relief to the Settlement Class, the attendant risks of

1 litigation (especially in complex actions like this, as well as the difficulties and delays inherent in
2 such litigation, including any appeals) and the uncertainty inherent in establishing Defendants'
3 liability.

4 **IV. REASONS FOR THE SETTLEMENT AND RISKS OF CONTINUED**
5 **LITIGATION**

6 41. The investigation and informal discovery, described above, on both liability and
7 damages issues enabled Lead Plaintiffs and Lead Counsel to thoroughly evaluate the strengths and
8 weaknesses of the claims and the risks of continued litigation, and accordingly to enter into the
9 settlement on a fully informed basis.

10 42. Lead Plaintiffs believe that their claims against the Defendants and each of them are
11 strong. The First Amended Complaint alleged that Defendants routinely issued false and misleading
12 statements which overstated Sonic's income, or understated Sonic's loss, as a result of Defendants'
13 failure to account for backdated stock option grants. Further, the First Amended Complaint alleged
14 that at the same time that such false financial statements were being issued, Defendants were selling
15 millions of dollars of their own stock at prices which were inflated by Defendants' fraud. The First
16 Amended Complaint also alleged that Defendants were engaged in intentional misconduct with
17 respect to the issuance of backdated stock options, because the same individuals who were charged
18 with approving Sonic's stock option programs were also granting themselves backdated stock
19 options. Because these defendants were both granting and receiving backdated stock options, these
20 defendants must have known that that they were not complying with Sonic's stock options plans
21 which required stock options to be priced at not less than the fair market value of Sonic's stock on
22 the date of the grant.

23 43. While the Court's April 6, 2009 Order upheld Lead Plaintiffs' §14(a) claim based on
24 alleged false statements contained in Sonic's 2005 Proxy Statement, prevailing on this claim was far
25 from certain. Lead Plaintiffs would have had to prove that the 2005 Proxy Statement contained a
26 material misrepresentation and that Defendants were negligent in issuing the 2005 Proxy Statement.
27 Further, Lead Plaintiffs would have had to overcome a conflict in the courts about whether the
28 election of directors satisfies the requirements of a "transaction" for the purposes of a §14(a) claim.

1 Lastly and most importantly, even if Lead Plaintiffs had been successful in proving these elements of
2 their §14(a) claim, they would have to establish that the Settlement Class was entitled to damages.
3 Here, it was far from certain that Lead Plaintiffs would have been able to establish any damages as a
4 result of the issuance of Sonic's 2005 Proxy Statement.

5 44. There was also substantial doubt whether Lead Plaintiffs would have prevailed on
6 their §20(a) claims. To establish §20(a) liability, Lead Plaintiffs would have had to prove a primary
7 violation of §10(b) (something the Court had already dismissed), and that Defendants exercised
8 control over those primary violators. In the Court's April 6, 2009 Order, not only did the Court find
9 that Lead Plaintiffs had not alleged a §10(b) claim against any defendant, but the Court also held that
10 Lead Plaintiffs had not pled a §20(a) claim against any defendant either. Lead Plaintiffs had moved
11 for reconsideration on this issue, but the Court denied Lead Plaintiffs' motion for reconsideration,
12 and it was far from certain that the Court would have subsequently found that Lead Plaintiffs had
13 allegedly pled a §20(a) violation in connection with any amended complaint.

14 45. While Lead Plaintiffs believe that they could have successfully established both
15 §§14(a) and 20(a) violations by Defendants, including resulting damages, there were very real risks
16 associated with proving such claims, especially in light of the Court's detailed rulings in its April 6,
17 2009 Order regarding §20(a) violations, and the uncertain state of the law with respect to §14(a)
18 violations.

19 46. Similarly, Lead Plaintiffs believe that the claims asserted in the Litigation were
20 meritorious, liability was by no means a foregone conclusion. Had Lead Plaintiffs continued to
21 litigate, there was a risk the Court would again dismiss Lead Plaintiffs' §10(b) claims, which were at
22 the heart of the case, or that Defendants would be successful in other pre-trial motions designed to
23 eliminate or curtail Lead Plaintiffs' claims.

24 47. Defendants maintained that Lead Plaintiffs failed to adequately allege that any
25 defendant had the requisite state of mind to support Lead Plaintiffs' §10(b) claims and the restatement
26 of financials and statistical analysis did not provide the Court with enough facts to uphold Lead
27 Plaintiffs' fraud claims.

28

1 48. For example, Defendants had taken the position that APB No. 25 is a complex
2 accounting rule which has not until recently been made clear by the SEC. Consistent with the
3 district courts in the Ninth Circuit, this Court agreed that Lead Plaintiffs' allegations regarding the
4 magnitude of the restatement and failure to properly apply APB No. 25 could not alone demonstrate
5 scienter. April 6, 2009 Order at 12. Indeed, the severity of the risk has recently become even more
6 clear as more courts, in particular in the criminal context, have found that the accounting rules
7 (including APB No. 25), as opposed to being simple and straight forward, may indeed be too
8 complex to alone be evidence of scienter. As the judge overseeing the dismissed Broadcom trial
9 recently stated, "the accounting standards and guidelines were not clear, and there was considerable
10 debate in the high-tech industry as to the proper accounting treatment for stock option grants."
11 These developments created additional uncertainty surrounding proof and the outcome of litigation
12 on the basis of allegations of accounting fraud.

13 49. Finally, notwithstanding the application of a detailed statistical analysis of stock
14 options, which appeared to be selected with the intent to capture the lowest or near lowest price in a
15 given period, the Court found that Lead Plaintiffs' sample used to do the statistical analysis was too
16 small to be a representative sample, and thus, did not credit Lead Plaintiffs' statistical analysis.
17 April 6, 2009 Order at 15. Together, the risk and uncertainty surrounding proof of scienter weighed
18 heavily toward pursuing and ultimately reaching a settlement of the alleged claims.

19 50. Further, even if Lead Plaintiffs were successful and survived a renewed motion to
20 dismiss the First Amended Complaint, continued litigation would be extremely complex, costly and
21 of substantial duration. Document discovery would need to be completed, depositions would need to
22 be taken, experts would need to be designated and expert discovery conducted. Sonic's and the
23 Individual Defendants' expected motions for summary judgment would have to be briefed and
24 argued and a trial would have to be held. Indeed, significant risks remained in getting past Sonic's
25 and the Individual Defendants' anticipated motions for summary judgment and obtaining a favorable
26 judgment after trial.

27 51. Even if liability was established, the amount of recoverable damages would still have
28 posed significant issues and would have been subject to further litigation. Defendants likely would

1 have presented evidence that loss causation could not be established arguing that: (a) none of the
2 corrective disclosures were statistically significant under challenging Ninth Circuit case law and
3 *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 341 (2005); and (b) that the stock price drops on
4 February 16 and May 18, 2007 were not caused by news regarding backdating, but by other
5 Company-specific information. Although Lead Plaintiffs believed they could counter these
6 arguments with expert testimony to survive motions for summary judgment and prevail at trial, even
7 the loss of one stock drop could significantly limit the Settlement Class’s potential recovery and such
8 battles between experts are notoriously difficult to assess. This defense weighed heavily in Lead
9 Plaintiffs’ decision to settle.

10 52. This very risk recently materialized in *In re Apollo Group, Inc. Sec. Litig.*, No. CV
11 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS 61995 (D. Ariz. Aug. 4, 2008). The court on a motion
12 for judgment as matter of law, overturned a jury verdict of \$277 million in favor of shareholders
13 based on insufficient evidence presented at trial to establish loss causation. Add to these post-trial
14 and appellate risks, the difficulty and unpredictability of a lengthy and complex trial – where
15 witnesses could suddenly become unavailable or the fact finder could react to the evidence in
16 unforeseen ways – and the benefits of the settlement become all the more apparent. The settlement
17 eliminates these and other risks of continued litigation, including the very real risk of no recovery
18 after several more years of litigation, while providing the Settlement Class substantial and immediate
19 benefits.

20 53. Lead Counsel were eminently equipped to consider these strengths and weaknesses of
21 the claims in the Litigation given their extensive experience litigating backdating cases. Coughlin
22 Stoia has been at the forefront of investigating alleged stock option abuses, has been appointed lead
23 counsel by numerous courts nationwide, and is currently involved in the prosecution of numerous
24 representative actions on behalf of shareholders alleging stock option abuses. For example,
25 Coughlin Stoia represented lead plaintiffs in *In re UnitedHealth Group Inc. PSLRA Litigation*, which
26 were pending before the United States District Court of Minnesota. In *UnitedHealth*, Coughlin Stoia
27 recovered \$925.5 million on behalf of the company’s shareholders for losses caused by options
28 backdating – the largest settlement of a stock option backdating-related case to date. Coughlin Stoia

1 also represented lead plaintiffs in the successfully completed *In re Activision, Inc. S'holder*
2 *Derivative Litig.*, which was pending before the Honorable Mariana R. Pfaelzer of the United States
3 District Court for the Central District of California, where plaintiffs recovered \$24.3 million in
4 financial benefits and corporate governance reforms for the company. Coughlin Stoia also
5 represented the lead plaintiffs in the successfully completed *In re Juniper Derivative Actions*, which
6 were pending before the Honorable James Ware of the Northern District of California, where the
7 plaintiffs recovered \$22.7 million in financial benefits and corporate governance reforms for the
8 company.

9 54. Labaton Sucharow has litigated more than half a dozen class actions alleging
10 violations of the federal securities laws based on improper stock option granting practices and has
11 achieved noteworthy results. In 2008, the firm settled *In re Mercury Interactive Securities*
12 *Litigation*, No. 5:05-cv-3395-JF (N.D. Cal.), for \$117.5 million, a figure representing one of the then
13 largest known settlements or judgments in an options backdating suit. The firm also resolved *In re*
14 *Monster Worldwide, Inc. Securities Litigation*, No. 1:07-cv-02237-JSR (S.D.N.Y.), for \$47.5
15 million, which represented almost 30% of the class's alleged damages. Just recently, a \$160.5
16 million settlement in *In re Broadcom Corporation Class Action Litigation*, No. 2:06-cv-5036 R-CW
17 (C.D. Cal.) was announced.

18 55. In sum, the settlement was negotiated on an informed basis and with a thorough
19 understanding of the merits and value of the parties' claims and defenses. Lead Counsel conducted
20 an extensive investigation of the claims in the Litigation both before and after filing the consolidated
21 complaints and the First Amended Complaint.

22 **V. PLAN OF ALLOCATION**

23 56. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice
24 ("Preliminary Approval Order), and as explained in the Notice, all Settlement Class Members
25 wishing to participate in the settlement are required to submit a valid Proof of Claim form on or
26 before March 22, 2010.

27 57. As set forth in the Notice, all Settlement Class Members who submit valid Proof of
28 Claim forms will receive a distribution of the net settlement proceeds, after deduction of the fees and

1 expenses approved by the Court and taxes incurred on interest income earned by the Settlement
2 Fund. The distribution will be made in accordance with the Plan of Allocation set forth and
3 described in detail in the Notice. The Plan of Allocation was developed with the assistance of Lead
4 Plaintiffs' damages consultant.

5 58. As explained in the Notice, the Plan of Allocation apportions the recovery among
6 Settlement Class Members who purchased or acquired Sonic's common stock, call options and put
7 options. The Plan of Allocation reflects an assessment, relying on the Lead Plaintiffs' damage
8 consultant's analysis, of the damages that may have been recovered from each alleged stock drop
9 (those on February 2, February 16 and May 18, 2007), had liability been successfully established.
10 The proposed plan will distribute the recovery according to when Settlement Class Members
11 purchased or acquired and/or sold their Sonic securities – taking into account the statistical
12 significance of each of the stock drops.

13 59. Lead Plaintiffs and Lead Counsel respectfully submit that the Plan of Allocation is
14 fair and reasonable and should be approved by the Court.

15 **VI. THE COURT'S PRELIMINARY APPROVAL ORDER AND LEAD**
16 **PLAINTIFFS' DISSEMINATION OF PRE-HEARING NOTICES**

17 60. Lead Plaintiffs moved for preliminary approval of the settlement on October 15,
18 2009. On December 2, 2009, this Court issued the Preliminary Approval Order. Pursuant to
19 stipulation, on December 4, 2009 the Court rescheduled the Final Approval Hearing to April 8, 2010
20 at 2:00 p.m.

21 61. Filed herewith is the Declaration of Carole K. Sylvester Re A) Mailing of the Notice
22 of Proposed Settlement of Class Action and the Proof of Claim and Release Form, and B)
23 Publication of the Summary Notice ("Sylvester Decl."). The Sylvester Declaration attests to, among
24 other things, the efforts made to disseminate the Notice and Proof of Claim form, the web-posting of
25 the Notice and Proof of Claim form and publication of the Summary Notice.

26 62. In compliance with the Preliminary Approval Order and under the supervision of
27 Lead Counsel, the Claims Administrator mailed copies of the Notice to all potential Members of the
28 Settlement Class who could be identified with reasonable effort and brokers/nominees who may

1 have purchased Sonic common stock for the beneficial interest of individual investors. Sylvester
2 Decl., ¶¶3-7. To date, the Claims Administrator has mailed the Notice to more than 50,000 potential
3 Settlement Class Members and brokers/nominees. *Id.*, ¶8.

4 63. In addition, the Summary Notice was published in *Investors Business Daily*. *Id.*, ¶11.

5 **VII. BASES OF COUNSEL’S APPLICATION FOR ATTORNEYS’ FEES AND**
6 **REIMBURSEMENT OF EXPENSES**

7 64. The Notice informed Settlement Class Members that Lead Counsel would apply for
8 an award of attorneys’ fees of 25% of the Settlement Fund and expenses not to exceed \$210,000.
9 Lead Counsel are now requesting fees of 25% of the Settlement Fund, or \$1,250,000, and expenses
10 of \$186,767.89.

11 65. Lead Counsel have not been paid any fees or expenses for their efforts in achieving
12 the settlement and undertook the representation of Lead Plaintiffs on a wholly contingent basis.
13 There was considerable risk of non-payment involved in this matter, as discussed above. Indeed
14 Lead Plaintiffs were the only movants that sought to be appointed lead plaintiff in the Litigation,
15 which is indicative of the case’s difficulty and undesirability.

16 66. Lead Counsel expended 2,273.95 hours in the prosecution of the claims, from the
17 inception of the case through January 2010. This includes time spent investigating the claims; the
18 time spent preparing and filing the two consolidated complaints and the First Amended Complaint;
19 the time spent in motion practice, including opposing the motion to dismiss; and the time spent
20 negotiating and finalizing the settlement. It does not include any time related to the application for
21 attorneys’ fees and expenses. Additional time will be expended during the administration of the
22 settlement, however counsel will not seek a fee for that work.

23 67. The aggregate lodestar of Lead Counsel is \$1,014,591.50. Dividing the requested fee
24 by Lead Counsel’s lodestar results in a “lodestar multiplier” of 1.23.

25 68. Lead Counsel also request payment of the expenses incurred in connection with the
26 Litigation. Each firm requesting reimbursement of expenses has submitted a declaration, which
27 states that the expenses are (i) reflected in the books and records maintained by the firm, and (ii)
28 accurately recorded in their declaration. These expenses are reasonable and were necessary for the

1 successful prosecution of the case. In total, Lead Counsel incurred reimbursable expenses in the
2 amount of \$186,767.89.

3 69. The expenses reflect routine and typical expenditures incurred in the course of
4 Litigation, such as the costs of experts, legal research (*i.e.*, Lexis and Westlaw fees), travel,
5 document duplication, telephone, FedEx, etc.

6 **VIII. CONCLUSION**

7 70. For all of the foregoing reasons, Lead Counsel respectfully request the Court to
8 approve the settlement, Plan of Allocation of settlement proceeds, and the fee and expense
9 application.

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct. Executed this 21st day of January, 2010 at San Francisco, California.

12 _____
13 SHAWN A. WILLIAMS

14 I declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed this 21st day of January, 2010 at New York, New York.

16 _____
17 JONATHAN GARDNER

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