UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

IN RE REV GROUP, INC. SECURITIES LITIGATION	**Lead Case No. 2:18-CV-1268-LA**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES, AND AWARDS TO PLAINTIFFS PURSUANT TO THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

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I. INTRODUCTION

Lead Counsel, Bernstein Liebhard LLP ("Bernstein Liebhard"), and State Class Counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), have obtained a Settlement[1] consisting of $14.25 million, plus interest earned thereon. For the reasons set forth herein, in the accompanying Memorandum of Points and Authorities in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), and the Declaration of Michael S. Bigin in Support of Motion for Final Approval of Settlement ("Bigin Decl."), the Settlement is a very favorable result and was achieved through the skill and effective advocacy of Plaintiffs' Counsel. As compensation for their efforts, Lead Counsel seeks, on behalf of all Plaintiffs' Counsel, an award of attorneys' fees of 20% of the $14.25 million fund, plus Litigation Expenses incurred in the prosecution of the Actions in the amount of $137,663.35, plus interest at the same rate and for the same period as that earned by the Settlement Fund.[2] The requested fee is well below the range of percentages normally awarded in securities class actions in this Circuit and elsewhere, and is the appropriate method of compensating counsel.

The 20% fee requested is warranted in light of the contingent nature of counsel's representation, the efforts of counsel in obtaining this favorable result – a recovery of over 9% of maximum estimated damages, almost twice as large as the median for similar settlements last year (*see* Settlement Memorandum at 11-12) – and the risks faced in the prosecution and settlement of

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[1] All capitalized terms not otherwise defined herein have the meanings ascribed in the Stipulation and Agreement of Settlement dated May 19, 2021, ECF No. 120-1 (the "Stipulation"). Citations are omitted and emphasis is added unless otherwise noted.

[2] Plaintiffs' Counsel that will be sharing in the awarded fees are Bernstein Liebhard, Robbins Geller, Ademi LLP, Johnson Fistel LLP and Mallery Zimmerman S.C. A copy of this memorandum and supporting materials will be available on the settlement website for members of the Classes.

the Actions against the Defendants. *See generally* Bigin Decl. Absent the Settlement, and assuming Lead Plaintiff prevailed on Defendants' pending motions to dismiss in the Consolidated Federal Action, the claims against the Defendants could have continued for many years through fact discovery, expert discovery, summary judgment, trial, and likely appeals. The Settlement provides members of the Classes with a substantial cash benefit now, rather than a potential recovery after several years of continued litigation, and eliminates the possibility of no recovery at all or of the costs of litigation diminishing the recovery. It is rare to obtain such a significant settlement prior to a ruling on a motion to dismiss and is reflective of counsel's experience, reputation, and skill in prosecuting securities class actions.

Plaintiffs' Counsel undertook representation of the Classes on a contingent fee basis and no payment has been made to date for their services or the Litigation Expenses they have incurred on behalf of the Classes. Faced with complex issues, and opposed by experienced defense counsel, Plaintiffs' Counsel nevertheless succeeded in securing a favorable result for the Classes. Plaintiffs' Counsel believe their reputations as leaders in this field, their diligent efforts, and their dedication to the interests of the Classes substantially contributed to obtaining the Settlement. Moreover, Lead Plaintiff and additional named plaintiffs were actively involved in the litigation and have approved the requested fee. *See* accompanying Declaration of Erin Perales on behalf of Houston Municipal Employees Pension System, ¶¶8, 11-12 ("HMEPS Decl."); Declaration of Amy Fitzpatrick on behalf of Bucks County Employees Retirement System, ¶¶4-7 ("Bucks County Decl."); and Declaration of Gabriel Yandoli, ¶¶3-9 ("Yandoli Decl.").

For all the reasons set forth herein and in the accompanying declarations, Lead Counsel respectfully submits that the requested attorneys' fees and expenses are fair and reasonable and should be awarded by the Court. Separately, the three named plaintiffs seek awards of $15,913 in the aggregate pursuant to the applicable provisions of the PSLRA in connection with their

representation of the Classes. These Plaintiffs support their applications with declarations and respectfully request that the Court approve their modest requested awards.

II. AWARD OF ATTORNEYS' FEES

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Approach to Awarding Attorneys' Fees in Common Fund Cases

For their efforts in creating a common fund for the benefit of the Classes, Lead Counsel seeks as attorneys' fees a reasonable percentage of the fund recovered for the Classes. Both the Supreme Court and the Seventh Circuit have long recognized that attorneys who represent a class and aid in the creation of a settlement fund are entitled to compensation for legal services from the settlement fund. Under this "equitable" or "common fund" doctrine established more than a century ago in *Trustees v. Greenough*, 105 U.S. 527, 528 (1881), attorneys who create a common fund for a class are entitled to an award of fees and expenses from that fund as compensation for their work. *See Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007); *Woodrow v. Sagent Auto LLC*, No. 18-cv-1054-JPS, 2019 U.S. Dist. LEXIS 118901, at *2 (E.D. Wisc. July 17, 2019).

While the Seventh Circuit has recognized the availability of the "lodestar" method (multiplying reasonable hours by reasonable rates) to assess attorneys' fees, it and other courts have also recognized the limitations inherent in the lodestar method, as it can serve to reward and encourage inefficient staffing of cases, cause unnecessary delay in resolving disputes, and increase the burden on the judicial system. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) (stating the lodestar approach creates the "incentive to run up the billable hours"); *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) (noting in civil rights fee-shifting case the challenge of judicial review of attorney time because the "judge cannot readily see what legal work

was reasonably necessary at the time" and that rewarding lawyers for hours billed can create a "conflict of interests").[3]

Thus, "[i]n a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis." *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 1:15-cv-02062-TWP-MPB, 2019 WL 4193376, at *3, *5 (S.D. Ind. Sept. 4, 2019) ("[T]he use of a lodestar cross-check is no longer recommended in the Seventh Circuit."); *see also Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming district court award of percentage of the recovery to class counsel without lodestar cross-check); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 637 (7th Cir. 2011) (rejecting objector's appeal and declining to "disturb the district court's assessment of fees" on a percentage-of-the-fund basis); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 598-600 (7th Cir. 2005) (affirming percentage-of-the-fund fee award); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (stating that "[w]hen a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund" and affirming award).

Consistent with the Seventh Circuit, courts routinely approve percentage-of-the-fund fees without any regard to lodestar. *See, e.g.*, *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (stating it was unnecessary to consider lodestar and citing cases), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *see also In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844, 849 (N.D. Ill. Feb. 20, 2015) (finding that the percentage

[3] *See also, e.g.*, *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) ("'Where success is a condition precedent to compensation, 'hours of time expended' is a nebulous, highly variable standard, of limited significance. One thousand plodding hours may be far less productive than one imaginative, brilliant hour.'").

method has "emerged as the favored method for calculating fees in common-fund cases in this district" and stating "the Court sees no utility in considering" counsel's submitted lodestar).

Accordingly, Lead Counsel requests attorneys' fees of 20% of the Settlement Fund.[4]

B. The Requested Fee Is Reasonable and Appropriate

The Supreme Court has emphasized that private securities actions provide a "'most effective weapon in the enforcement' of securities laws and are 'a necessary supplement to [SEC] action.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318-19 (2007). It is well documented that large defense firms representing corporations attract talented lawyers who are very well compensated, and fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs. *See Silverman*, 739 F.3d at 958; *Wolff*, 2012 WL 5290155, at *5 ("Mindful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively."). In addition to providing just compensation, awards of attorneys' fees from a common fund serve to encourage skilled counsel to take on the risk of representing plaintiffs in class action cases on a contingent fee basis. *See, e.g.*, *Silverman*, 739 F.3d at 958 (approving fee award and noting that "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel"); *Woodrow*, 2019 U.S. Dist. LEXIS 118901, at *3 (same).

[4] Although a lodestar cross-check is not necessary, if performed here it only further demonstrates that Lead Counsel's application is reasonable. Plaintiffs' Counsel's total lodestar is $2,981,370, or a negative multiplier (.95) of the requested fee. Such a multiplier is low in securities class action fee awards.

The percentage-of-the-fund method is intended to mirror the private marketplace for negotiated contingent fee arrangements. *See Kirchoff*, 786 F.2d at 324 ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'"); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (stating "[t]he 'percentage of the fee' method is preferable" to the lodestar method "because it more closely replicates the contingency fee market rate for counsel's legal services").

Here, the requested 20% fee appropriately compensates Plaintiffs' Counsel based on the prevailing market rate in similar actions, the quality of services provided, and the risks of obtaining no compensation at all. To date, no member of the Classes has objected to the fee, and it is supported by Plaintiffs. Lead Counsel respectfully requests that the 20% fee be approved.

1. The 20% Attorneys' Fee Request Is Consistent with Seventh Circuit Authority

The Seventh Circuit has held that, in deciding common fund cases, district courts should "'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Taubenfeld*, 415 F.3d at 599; *Silverman*, 739 F.3d at 957, 958 (attorneys' fees should "approximate the market rate" and that "[c]ontingent fees compensate lawyers for the risk of nonpayment"). Had this case been litigated on an individual rather than class basis, the customary fee arrangement would be in the range of 33-1/3% to 40% of the recovery. *See Kirchoff*, 786 F.2d at 323 (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled before trial). Moreover, courts in this Circuit have recognized that in common fund cases, fees "up to one-third of the common fund are presumed to be

reasonable." *Woodrow*, 2019 U.S. Dist. LEXIS 118901, at *2 (awarding one-third fee plus expenses in common fund TCPA litigation).

In *Great Neck Capital*, upon awarding a fee of 30% of a $10 million common fund, this Court echoed the Seventh Circuit and considered the following relevant criteria when determining the appropriate percentage to award Class Counsel: "the contingent nature of the case, the quality of services rendered, the benefits derived by the class, and the public service aspects of the case." *Great Neck Capital Appreciation Inv. P'ship L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 411 (E.D. Wis. 2002). Here, upon consideration of the successful result achieved, the contingent nature and risk of litigating the Actions, and the quality and extent of the work that has been provided by Plaintiffs' Counsel to the Classes in efficiently and timely generating a $14.25 million settlement, a request that the Court award a legal fee of 20% of the Settlement Fund is fair and reasonable.

Indeed, the 20% percentage sought here is well below the range of percentages regularly awarded by courts in this Circuit. *See, e.g.*, *Ronge v. Camping World Holdings, Inc.*, No. 1:18-cv-07030, slip op. at ¶4 (N.D. Ill. Aug. 5, 2020) (awarding 30% on $12.5 million);[5] *Woodrow*, 2019 U.S. Dist. LEXIS 118901, at *4 (awarding one-third fee plus expenses); *Van Noppen v. InnerWorkings, Inc.*, No. 1:14-cv-01416, slip op. at ¶4 (N.D. Ill. Nov. 2, 2016) (awarding 30% on $6.025 million settlement); *Bristol Cty. Ret. Sys. v. Allscripts Healthcare Sols., Inc.*, No. 1:12-cv-03297, slip op. at ¶4 (N.D. Ill. July 22, 2015) (awarding 33% on $9.75 million settlement); *Johnson v. Meriter Health Servs. Emple. Ret. Plan*, No. 10-cv-426-WMC, 2015 U.S. Dist. LEXIS 158859, at *18 (W.D. Wisc. Jan. 5, 2015) (awarding 27.5% fee in $82 million settlement, plus expenses); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira, Inc.*, No. 1:11-cv-08332-AJS, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (awarding 30% on $60 million settlement); *Wong v.*

[5] Attached hereto as Exhibit A is an appendix of unreported authorities cited herein.

Accretive Health, Inc., No. 1:12-cv-03102, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (awarding 30% on $14 million settlement); *In re Spiegel, Inc. Sec. Litig.*, No. 1:02-08946, slip op. at ¶3 (N.D. Ill. Mar. 2, 2007) (awarding 30% on $17.5 million settlement); *Rubinstein v. Gonzalez*, No. 1:14-cv-09465, slip op. at ¶1 (N.D. Ill. Oct. 22, 2019) (awarding 30% of $16.75 million securities settlement); *Dairy Farmers of Am.*, 80 F. Supp. 3d at 862 (awarding 33% of $46 million antitrust settlement); *Gupta v. Power Sols. Int'l, Inc.*, No. 16-cv-08253, 2019 WL 2135914, at *1 (N.D. Ill. May 13, 2019) (awarding 33-1/3% on $8.5 million securities settlement). Thus, Lead Counsel's request for fees of 20% of the total recovery is reasonable and consistent with Seventh Circuit authority.

2. Plaintiffs' Counsel Provided Quality Legal Services that Produced Excellent Benefits for the Classes

In evaluating counsel's fee request, courts may consider the "quality of legal services rendered." *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at *3 (noting that "[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity"). From the outset, Plaintiffs' Counsel sought to obtain the maximum recovery for the Classes. This case required a determined investigation and the skill to respond to a host of legal and factual defenses raised by the Defendants. During the course of the Actions, Plaintiffs' Counsel spent over 4,119 hours of attorney and paraprofessional time investigating the claims, drafting detailed complaints, opposing Defendants' motions to stay, an appeal to the Wisconsin Court of Appeals on the Wisconsin State Court's order denying the motion to stay, opposing a motion to dismiss in this Court, successfully opposing Defendants' motion to disqualify Lead Plaintiff and Lead Counsel, successfully opposing Defendants' opposition to Plaintiffs' motion to amend, analyzing loss causation issues, and participating in arm's-length settlement negotiations. During these negotiations, Plaintiffs' Counsel demonstrated their willingness to

continue to litigate the claims rather than accept a settlement that was not in the best interest of the Classes.

Plaintiffs' Counsel were opposed in the Actions by counsel from Ropes & Gray LLP, Godfrey & Kahn S.C., Winston & Strawn LLP and Quarles & Brady LLP, firms with excellent reputations for the defense of complex civil cases. *See Beesley v. Int'l Paper Co.*, No. 3:06-cv-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (observing that "[l]itigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination"). In the face of this formidable opposition, Plaintiffs' Counsel developed their case so as to persuade Defendants to settle the litigation on terms favorable to the Classes prior to the Court deciding Defendants' pending motions to dismiss. Counsel's skill, expertise, and excellent advocacy in representing the Classes are reflected in this favorable result.

3. The Requested Attorneys' Fees Are Fair and Reasonable in Light of the Contingent Nature of the Representation

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958; *see also Taubenfeld*, 415 F.3d at 600 (stating courts should consider "the contingent nature of the case" and the fact "that lead counsel was taking on a significant degree of risk of nonpayment"). "All contingent fee class action cases involve some degree of risk for plaintiffs' counsel." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011). Plaintiffs' Counsel undertook this litigation on a contingent fee basis, assuming a significant risk of no recovery which would leave them uncompensated. As in *Schulte*, "there was no certainty that Plaintiffs would win, or that the case would settle; and if Plaintiffs had lost, Class Counsel 'would receive no fees at all.'" 805 F. Supp. 2d at 597-98. Unlike counsel for Defendants,

who are paid an hourly rate and paid for their expenses on a regular (*e.g.*, monthly) basis, Plaintiffs' Counsel had no such guarantee of payment, had to wait for any payment while the cases were prosecuted, and had to incur unpaid expenses while the cases were ongoing. While the outcome here was favorable, there was no guarantee it would be at the time the cases were filed.

Not only was there a risk of dismissal, but even if Lead Plaintiff successfully opposed Defendants' motions to dismiss, Lead Plaintiff still faced significant obstacles. Assuming Lead Plaintiff overcame the Defendants' inevitable motion(s) for summary judgment after costly discovery efforts, it still would have faced risks in proving falsity and materiality on all claims, and scienter and loss causation with respect to the Exchange Act claims, before a jury. *See* Settlement Memorandum at 12. Moreover, even apart from proving liability, proving damages in securities cases is complex and requires expert testimony to establish the amount – and indeed the existence – of actual damages. *See id*. at 13. Here, the damages assessments of the parties' respective experts who would testify at trial would likely be polar opposites and the determination of the amount, if any, of damages suffered by the Classes at trial would have turned into a "battle of the experts."

There are numerous examples where plaintiffs' counsel in contingent cases such as this, after the expenditure of significant time and expenses, have received no compensation. Securities cases have been dismissed at the pleading stage, dismissed on summary judgment, lost at trial, and even reversed after plaintiffs prevailed at trial, as the law is complex and continually evolving. *See, e.g.*, *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW(EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants after lengthy trial); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (claims based on purchases on foreign exchanges eliminated by the "new 'transactional' rule" enunciated by the Supreme Court). In fact, "[p]recedent is replete with situations in which attorneys representing a class have devoted

substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005).[6] Quite simply, "Defendants prevail outright in many securities suits." *Silverman*, 739 F.3d at 958.

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result and that such a result would be realized only after considerable effort and after working without compensation. Plaintiffs' Counsel committed time and money to vigorous and successful prosecution for the benefit of the Classes. The contingent nature of counsel's representation strongly favors approval of the requested fee. *See, e.g.*, *Sutton*, 504 F.3d at 694 (reversing district court's reduced fee award and stating "[b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated").

4. The Stakes of the Actions Favor a 20% Fee Award

The Court should also consider the "stakes of the case" in assessing a reasonable attorneys' fee. *Synthroid*, 264 F.3d at 721. As in other commercial class actions, the stakes here were high "given the size of the Class[es], the scale of the challenged activity, the complexity and costs of the legal proceedings, and the amount of money involved." *Schulte*, 805 F. Supp. 2d at 598.

Plaintiffs' Counsel successfully obtained a favorable recovery at an early stage of the litigation, which is more beneficial to the Classes than waiting several more years to obtain their recovery, not only because of the time value of money but also because the increased expenses of

[6] *See also, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversal of jury verdict of $81 million).

continued litigation could have reduced the recovery to the Classes. As the litigation advances, the risks can also increase. Absent a successful outcome, Plaintiffs' Counsel would not have been compensated for thousands of hours of attorney and support staff time, and would have had to write off expert and consulting fees and other expenses. And, even if Plaintiffs prevailed at trial, Defendants would have the opportunity to appeal any judgment obtained, possibly delaying a favorable resolution for years. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (15-year securities action prosecuted by Robbins Geller that was filed in 2002, resulted in jury verdict for plaintiffs in 2009, remanded after appeal in 2015, and settlement approved in 2016). Plaintiffs' Counsel undertook these cases fully prepared to litigate against these obstacles.

5. The Reaction of the Classes Supports the Requested Award

Pursuant to this Court's August 24, 2021 Preliminary Approval Order (ECF No. 124), more than 29,000 copies of the Notice have been mailed to potential members of the Classes and nominees. Members of the Classes were informed in the Notice that Lead Counsel would apply for attorneys' fees not to exceed 20% of the Settlement Fund, plus expenses not to exceed $275,000, plus interest earned on both amounts. Members of the Classes were also advised of their right to object to counsel's fee and expense request and the procedure for doing so. While the deadline to file objections – November 18, 2021 – has not yet passed, to date, no objection to any aspect of the Settlement, including the fee and expense request, has been received. Bigin Decl. ¶38. Plaintiffs' Counsel will address any objections received in the reply brief to be filed on December 2, 2021.

6. Plaintiffs Approved the 20% Fee Request

Plaintiffs, who worked with counsel throughout the litigation, have approved the 20% fee request sought here. *See* HMEPS Decl. ¶15; Bucks County Decl. ¶8; Yandoli Decl. ¶10. Unlike consumer and other class action cases, securities fraud cases have unique procedures for

appointing as the lead plaintiff the class member with the largest financial interest. *See Silverman*, 739 F.3d at 959 (stating that it is "a premise of several rules in the Private Securities Litigation Reform Act" that investors with a large stake in the settlement fund, in "looking out for themselves, help to protect the interests of class members with smaller stakes"); 15 U.S.C. §77z-1(a)(3)(B); 15 U.S.C. §78u-4(a)(3)(B). The Seventh Circuit has also considered the makeup of the class in reviewing fee awards and considering the lack of objection. *See, e.g.*, *Synthroid*, 264 F.3d at 717 (noting that that "[u]nlike members of the consumer class, TPPs [third party payers] are sophisticated purchasers of pharmaceuticals" and "[t]heir consent to this deal shows that a larger judgment was unlikely"); *Silverman*, 739 F.3d at 959 (noting lack of objection by "institutional investors [that] have in-house counsel with fiduciary duties to protect the beneficiaries" and high fee awards could be "worth a complaint to the district judge if the lawyers' cut seems too high"). That Plaintiffs, two of which are sophisticated institutional investors, approve counsel's fee request also weighs in favor of its reasonableness.

Accordingly, all of the factors discussed above support the fee award requested by Plaintiffs' Counsel, and the Court should grant counsel's application.

III. COUNSEL'S EXPENSES ARE REASONABLE

In addition to an award of attorneys' fees, attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses and costs from the fund. *Synthroid*, 264 F.3d at 722; *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992).

Plaintiffs' Counsel are requesting payment of expenses in the amount of $137,663.35. As set forth in the accompanying declarations of Bernstein Liebhard, Robbins Geller, Ademi LLP, Johnson Fistel LLP and Mallery Zimmerman S.C., these expenses were reasonably incurred in the

prosecution of the Actions.[7] *See Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) ("It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation."); *Johnson*, 2015 U.S. Dist. LEXIS 158859, at *18 (awarding expenses which were "adequately documented, reasonably incurred in connection with the prosecution of this action, and reasonable for a case of this complexity, scope and duration"). Plaintiffs' Counsel's request for payment of $137,663.35 in expenses is less than the $275,000 cap stated in the notice to the Classes.

Thus, counsel respectfully requests payment of these reasonable litigation expenses and costs from the Settlement Fund.

IV. AWARDS TO PLAINTIFFS PURSUANT TO THE PSLRA

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but it also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class." 15 U.S.C. §77z-1(a)(4); 15 U.S.C. §78u-4(a)(4).

Pursuant to these provisions, courts have granted awards, for example, reflecting time spent on the litigation based on customary rates. *See, e.g.*, *City of Sterling Heights Gen. Emps.' Ret. Sys.*

[7] *See* Declaration of Stanley D. Bernstein on Behalf of Bernstein Liebhard; Declaration of Brian E. Cochran on Behalf of Robbins Geller Rudman & Dowd LLP; Declaration of Shpetim Ademi on Behalf of Ademi LLP; Declaration of Michael I. Fistel, Jr. on Behalf of Johnson Fistel, LLP; and Declaration of K. Scott Wagner on Behalf of Mallery Zimmerman, S.C.

v. Hospira, Inc., No. 1:11-cv-08332, Declaration, ECF No. 192 (N.D. Ill. July 8, 2014) (requesting award for estimated employee time and customary rate); *Hospira*, 2014 WL 12767763, at *1 (awarding more than $25,000 to four institutional representatives); *Rubinstein v. Gonzalez*, No. 1:14-cv-09465, ECF No. 292 at ¶15 (N.D. Ill. Sept. 17, 2019) (individual requesting award for time "devoted to the representation of the Class" based on hourly rate from annual salary); *Rubinstein*, slip op. at ¶3 (awarding $9,900). Also pursuant to these provisions, named plaintiffs have sought awards reflecting time spent on the litigation that could have been spent on other matters without consideration of an hourly rate or the exact time spent. *See, e.g.*, *In re Groupon, Inc. Sec. Litig.*, No. 1:12-cv-02450, ECF No. 365 at ¶20 (N.D. Ill. June 22, 2016) (two individuals requesting award for "considerable time and effort [expended] representing the interests of the Class"); *In re Groupon, Inc. Sec. Litig.*, No. 1:12-cv-02450, 2016 WL 3896839, at *5 (N.D. Ill. July 13, 2016) (awarding $5,000 to each individual class representative); *In re Akorn, Inc. Sec. Litig.*, No. 1:15-cv-01944, ECF No. 174-5 at ¶7 (N.D. Ill. Feb. 19, 2018) (requesting award under 15 U.S.C. §78u-4(a)(4) for time devoted to the "representation of the Settlement Class" that could have otherwise been dedicated to tennis instructor business); *In re Akorn, Inc. Sec. Litig.*, No. 1:15-cv-01944, 2018 WL 2688877, at *4-*5 (N.D. Ill. June 5, 2018) (awarding $10,000 each to three individual class representatives, $30,000 total).

Here, HMEPS, Bucks County and Yandoli have submitted declarations seeking awards of $6,475, $1,438, and $8,000, respectively, for the time they dedicated to pursuing the claims. *See* HMEPS Decl. ¶¶18-20, Bucks County Decl. ¶¶9-10, Yandoli Decl. ¶12. There have been no objections to Plaintiffs' proposed reimbursement awards to date.

V. CONCLUSION

For all the reasons stated herein, in the Settlement Memorandum, and in the accompanying declarations, Plaintiffs' Counsel submit that the Court should approve the fee and expense application and enter an order awarding Lead Counsel 20% of the Settlement Amount, plus payment of $153,576.35 in expenses, plus the interest earned on both amounts at the same rate and for the same period as that earned on that portion of the Settlement Fund until paid. Plaintiffs HMEPS, Bucks County and Yandoli respectfully request awards of $15,913 in the aggregate related to their efforts on behalf of the Classes. The $153,576.35 figure includes the proposed $15,913 in reimbursements to Plaintiffs.

DATED: November 4, 2021

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