UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

OKLAHOMA LAW ENFORCEMENT RETIREMENT SYSTEM, Individually And On Behalf Of All Others Similarly Situated, Plaintiff, vs. ADEPTUS HEALTH INC., *et al.*, Defendants.	Case No. 4:17-CV-0449-ALM Judge Amos L. Mazzant, III

LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES AND MEMORANDUM OF LAW IN SUPPORT THEREOF

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Pursuant to Federal Rule of Civil Procedure 23(h), Court-appointed Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Kessler Topaz Meltzer & Check, LLP ("KTMC"),[1] on behalf of Plaintiffs' Counsel,[2] hereby respectfully move for: (i) an award of attorneys' fees in the amount of 25% of the Settlement Fund; (ii) payment of Plaintiffs' Counsel's litigation expenses in the amount of $1,382,701.72; and (iii) an aggregate award of $20,960.86 to Lead Plaintiffs Arkansas Teacher Retirement System ("ATRS") and Alameda County Employees' Retirement Association ("ACERA") and additional named plaintiff Miami Firefighters' Relief and Pension Fund ("Miami" and, together with Lead Plaintiffs, "Plaintiffs") for their costs incurred directly as a result of representing the Settlement Class in the Action, as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA").

I. PRELIMINARY STATEMENT

After nearly three years of dedicated litigation efforts, Lead Counsel have successfully negotiated a settlement of this securities class action. The proposed Settlement, if approved by the Court, will resolve the Action in its entirety in exchange for $44,000,000 in cash. Based on Lead Counsel's thorough understanding of the significant litigation risks Plaintiffs faced had the Action continued, the Settlement is an excellent result. Notably, the recovery obtained for the Settlement

[1] Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated November 26, 2019 (ECF No. 275-2) ("Stipulation") or in the Joint Declaration of Jeremy P. Robinson and Richard A. Russo, Jr. in Support of: (A) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Joint Declaration") filed herewith. Citations to "¶ __" herein refer to paragraphs in the Joint Declaration and exhibit references herein refer to exhibits to the Joint Declaration. Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

[2] "Plaintiffs' Counsel" refers collectively to (i) Lead Counsel, BLB&G and KTMC; (ii) liaison counsel, Siebman, Forrest, Burg & Smith, LLP and the Law Offices of George L. McWilliams, P.C.; (iii) additional counsel for Plaintiffs, Keil & Goodson P.A.; (iv) additional counsel for Miami, Sugarman & Susskind, P.A.; and (v) bankruptcy counsel, Lowenstein Sandler LLP.

Class exceeds by more than ***three times*** the median recovery in securities class actions.[3] This result is particularly remarkable in light of Adeptus's April 2017 bankruptcy—less than six months after the Action commenced—which eliminated Adeptus as a potential source of recovery, completely altered the landscape of the litigation, and compounded the substantial litigation risks already present in this case. Despite the fact that Adeptus's bankruptcy significantly imperiled the chances of obtaining a recovery, Lead Counsel devoted substantial time and resources to protecting Settlement Class Members' interests, and successfully obtained an excellent result for the benefit of Settlement Class Members.

The merits of the Settlement are clear when weighed against the risk that the Settlement Class might recover less than the Settlement Amount—or nothing at all—after further litigation. When the Settlement was reached, two key motions—Plaintiffs' motion for class certification ("Motion to Certify") and Defendants' motions to dismiss the operative complaint ("SAC MTDs")—were pending before the Court. An adverse decision on either of these motions could have drastically altered the litigation landscape or the amount of recoverable damages. Moreover, even if Plaintiffs prevailed on these motions, they still would have faced significant risks to overcoming Defendants' formidable challenges to liability and damages at summary judgment and trial. *See also* § II.C.2 below. Then, even if all of these significant obstacles to proving liability and damages had been surmounted, Plaintiffs would have faced inevitable appellate proceedings, which would have tied up any recovery for years and could have eliminated it entirely.

[3] As set forth in § II.C.3 below, Plaintiffs' damages expert estimated maximum theoretical aggregate damages in the Action to be $850 million. *See* Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, Jan. 29, 2019 ("NERA Report"), at 35 (finding median settlement between 1996 and 2018 in securities cases with investor losses between $600 million and $999 million recovered 1.6% of investor losses and between $400 million and $599 million recovered 1.8% of investor losses). A copy of the NERA Report is attached to the Joint Declaration as Exhibit 6.

In the face of these substantial risks, Plaintiffs' Counsel prosecuted the Action on a fully contingent basis and devoted substantial resources against highly-skilled and heavily-funded opposing counsel in order to achieve the Settlement. As detailed in the Joint Declaration, Plaintiffs' Counsel vigorously prosecuted this heavily-litigation Action through two amended complaints, two rounds of multiple motions to dismiss, a hard-fought motion for class certification, and through virtually the end of fact discovery. ¶¶ 22-115. Indeed, the case went very deep into discovery, with Lead Counsel taking, defending, or actively participating in 37 depositions, including leading the two-day depositions of Adeptus's former CEO, CFO, and COO. ¶¶ 4, 107-110. Lead Counsel also obtained, reviewed, and analyzed over 2.7 million pages of documents produced by Defendants, the bankrupt Adeptus estate, and multiple third parties. ¶¶ 4, 93-102. The Settlement was only reached when the deadline for the close of fact discovery had passed, Lead Counsel had conducted significant work with multiple merits experts and were on the eve of exchanging merits expert reports with Defendants. ¶¶ 111-115. The Settlement is also the product of extensive settlement negotiations facilitated by former United States District Judge Layn R. Phillips ("Judge Phillips") that involved preparing detailed mediation briefs, attending a full-day, in-person mediation, and participating in six months of follow-up negotiations (¶¶ 116-123). *See also* § II.C.1 below. [4]

As compensation for these efforts and their commitment to bringing the Action to a successful conclusion with a cash payment to Settlement Class Members, Lead Counsel, on behalf of Plaintiffs' Counsel, request a fee of 25% of the Settlement Fund, or $11,000,000 plus the same

[4] The Joint Declaration is an integral part of this submission and, for the sake of brevity herein, the Court is respectfully referred to it for a detailed description of, among other things: the nature of the claims asserted (¶¶ 7-8, 42-46); the procedural history of the Action (¶¶ 22-115); the Settlement negotiations (¶¶ 116-125); the risks of continued litigation (¶¶ 126-156); and the services Plaintiffs' Counsel provided for the benefit of the Settlement Class (¶¶ 4, 34-115).

percentage of interest earned by the Settlement Fund. *See Schwartz v. TXU Corp.*, 2005 WL 3148350, at *27 (N.D. Tex. Nov. 8, 2005), *remanded on other grounds*, 162 F. App'x 376 (5th Cir. 2006) ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery"). Unlike most cases in which plaintiffs' counsel seek a fee which exceeds their lodestar by a significant multiplier, *see, e.g., DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 333 (W.D. Tex. 2007) (noting multipliers range from at least 2.26 to 4.5 in large and complicated class actions), Lead Counsel's fee request here is *substantially less than* the lodestar value of the time that Plaintiffs' Counsel devoted to the investigation, prosecution, and resolution of the Action through March 15, 2020—*i.e.*, $20,382,698.75. ¶ 181. In fact, the $11 million fee sought here would result in a negative or fractional multiplier of 0.54 of the total lodestar contributed by all Plaintiffs' Counsel – meaning that the fee requested is just over ***one-half*** the full monetary value of the time and effort devoted to the prosecution of this Action by Plaintiffs' Counsel. Plaintiffs' Counsel also request payment from the Settlement Fund of $1,382,701.72 in Litigation Expenses. Both the requested 25% fee and the repayment of expenses are authorized by and made pursuant to agreements between Lead Counsel and Plaintiffs that were reached at the outset of their involvement in the litigation.

All three Plaintiffs—sophisticated, institutional investors that have been actively involved in the Action—have approved of and support the requested fees and expenses. ¶ 200.[5] The reaction of the Settlement Class to date also supports the requests. Pursuant to the Court's Preliminary Approval Order, a total of 60,664 copies of the Notice have been mailed to potential Settlement Class Members and nominees through April 14, 2020, and the Summary Notice was published in

[5] *See* declarations of Rod Graves on behalf of ATRS ("Graves Declaration"), Susan L. Weiss on behalf of ACERA ("Weiss Declaration"), and Andrew McGarrell on behalf of Miami ("McGarrell Declaration") attached as Exhibits 1, 2 and 3.

The Wall Street Journal and transmitted over the *PR Newswire*.[6] The Notice advises potential Settlement Class Members that Lead Counsel would seek fees in an amount not to exceed 25% of the Settlement Fund and Litigation Expenses in an amount not to exceed $1,975,000. *See* Notice at ¶¶ 5, 52. Although the deadline for Settlement Class Members to object to the requested fees and expenses has not yet passed, to date, there have been no objections to the fee or expense amounts set forth in the Notice. ¶ 201.

For all of the reasons set forth below, Lead Counsel respectfully request that the Court approve their motion for attorneys' fees and expenses in full.

II. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES IS REASONABLE AND SHOULD BE APPROVED

A. Counsel Is Entitled to a Reasonable Fee Award from the Common Fund

The propriety of awarding attorneys' fees from a common fund is well established. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("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 a whole"); *see also Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). Further, courts have recognized that awards of fair attorneys' fees from a common fund serve the "twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts." *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 306 (S.D. Miss. 2014).

Courts have also recognized that, in addition to providing just compensation, awards of fair fees from a common fund ensure that "competent counsel continue[s] to be willing to undertake

[6] *See* Declaration of Eric Miller Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date ("Miller Decl."), attached as Exhibit 5.

risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000). The Supreme Court has emphasized that private securities actions, such as this Action, provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action." *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

B. The Requested Fee Is Reasonable Under Either the Percentage-of-the-Fund Method or the Lodestar Method

In this Circuit, fees awarded to counsel from a common fund may be evaluated under either the percentage-of-the-fund method or the lodestar method. *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012) ("*Dell*") (district courts have "the flexibility to choose between the percentage and lodestar methods in common fund cases"). Under either method, Lead Counsel's 25% fee request—which, if approved, would yield a *negative* "multiplier" on Plaintiffs' Counsel's lodestar—is fair and reasonable and warrants approval by the Court.

1. The Fee Request Is Reasonable Under the Percentage Method

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained. As noted above, the Fifth Circuit has approved the percentage method for awarding fees, noting that it "brings certain advantages . . . . because it allows for easy computation" and "aligns the interests of class counsel with those of the class members." *Id.* at 643 ("district courts in this Circuit regularly use the percentage method"); *see also Schwartz*, 2005 WL 3148350, at *26 ("there is a strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery").[7] The percentage method is particularly appropriate

[7] Numerous other circuits have endorsed the percentage method. *See, e.g., In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Vizcaino*

in securities cases like this one, as the PSLRA states "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff shall not exceed a ***reasonable percentage*** of the amount of any damages and prejudgment interest actually paid to the class. . . ." 15 U.S.C. § 78u-4(a)(6).

Lead Counsel's 25% fee request is well within the range of percentage fees awarded in the Fifth Circuit and this District. *See Schwartz*, 2005 WL 3148350, at *27 ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method"); *see also Marcus v. J.C. Penney Co., Inc.*, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017), *adopted by* 2018 WL 307024 (E.D. Tex. Jan. 4, 2018) ("[i]t is not unusual for attorneys' fees awarded under the percentage method to range between 25% to 30% of the fund or more"); *Shaw Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("based on the opinions of other courts and the available studies of class action attorneys' fees awards . . . this Court concludes that attorneys' fees in the range from twenty-five percent (25%) to [33%] have been routinely awarded in class actions").

Moreover, ample recent precedent exists in this Circuit for granting fees in class actions that are equal to or greater than the fee requested here, including this Court's prior opinions. *See, e.g.*, *Hall v. Rent-A-Center, Inc.*, 2019 WL 3546741, at *1 (E.D. Tex. May 3, 2019) (Mazzant, J.) (awarding 25% of $11 million fund); *see also, In re Cobalt Int'l Energy, Inc. Sec. Litig.*, 2019 WL 6043440, at *1 (S.D. Tex. Feb. 13, 2019) (awarding 25% of 173.8 million fund); *The Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *17 (N.D. Tex. Apr. 25, 2018) (awarding 33.3% of $100 million fund); Order, *Marcus v. J.C. Penney Co., Inc., et al.*, No. 6:13-cv-00736-

v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002); *Brown v. Phillips Petrol. Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988). The Eleventh and District of Columbia Circuits require the use of the percentage method in common fund cases. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269-71 (D.C. Cir. 1993). In *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984), the Supreme Court recognized that under the "common fund doctrine" a reasonable fee may be "based on a percentage of the fund bestowed to the class."

RWS-KNM (E.D. Tex. Jan. 5, 2018), ECF No. 180 at 2 (awarding 30% of $97.5 million fund); *Billiteri v. Sec. Am., Inc.*, 2011 WL 3585983, at *3-9 (N.D. Tex. Aug. 2, 2011) (awarding 25% of $73.2 million fund); *Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at *8-13 (S.D. Tex. Dec. 19, 2001) (awarding 30% of combined $29.5 million funds); *City of Pontiac Gen. Emps.' Ret. Sys. v. Dell Inc.*, 2020 WL 218518, at *1 (W.D. Tex. Jan. 10, 2020) (awarding 30% of $21 million fund); Order, *In re United Dev. Funding IV Sec. Litig.*, Master File Case No.: 3:15-cv-4030-M (N.D. Tex. Feb. 21, 2019), ECF No. 86 at 2 (awarding 30% of $10,435,725 fund); *Singh v. 21Vianet Grp., Inc.*, 2018 WL 6427721, at *1 (E.D. Tex. Dec. 7, 2018) (awarding 33.3% of $9 million fund). In sum, the 25% fee request is reasonable and well-supported by precedent within this Circuit and this District.

2. The Fee Request Is Reasonable Under the Lodestar Method

Lead Counsel's fee request is also eminently reasonable when considering counsel's lodestar, which courts in this Circuit typically utilize as a cross-check to confirm the reasonableness of the requested percentage fee. *See The Erica P. John Fund*, 2018 WL 1942227, at *13 ("A court is to apply a lodestar calculation as a crosscheck of the percentage method."). In this case, the lodestar method—whether used directly or as a "cross-check" on the percentage method—strongly demonstrates the reasonableness of Lead Counsel's fee request.

When utilizing the lodestar method "the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Dell*, 669 F.3d at 642-43. In securities class actions and other complex cases with substantial contingency risks, fees representing multiples above the lodestar are typically awarded to reflect contingency risks and other relevant factors. *See, e.g.*, *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 680 (N.D. Tex. 2010) (awarding fee representing a 2.5 multiplier and noting that "[m]ultipliers in this range are not uncommon in class action

settlements" and that the 2.5 multiplier was "warranted due to the risks entailed in this lawsuit and the zealous efforts of the attorneys that resulted in a significant recovery for the class").

Through March 15, 2020, Plaintiffs' Counsel have spent over 40,286 hours of attorney and other professional support time prosecuting the Action on behalf of the Settlement Class. ¶ 181. Based on these hours, Plaintiffs' Counsel's lodestar is $20,382,698.75. *Id*.; *see also* Exs. 7A-7G. This lodestar is a function of the vigorous prosecution of the case as described in the Joint Declaration, which included a detailed investigation, two amended complaints, full briefing on two rounds of motions to dismiss and a motion to certify the class, navigation through Adeptus's bankruptcy proceedings, and extensive discovery, including 37 depositions, the review and analysis of 2.7 million pages of productions and work with multiple experts. Accordingly, the 25% fee request represents a *negative* "multiplier" of approximately 0.54 on the lodestar value of Plaintiffs' Counsel's time. ¶¶ 181, 202.

In other words, the requested fee is equal to just slightly over half—54%—of the value of the time by expended by Plaintiffs' Counsel at their regular hourly rates. This fact strongly supports the reasonableness of the requested fee. *See, e.g., In re Bear Stearns Cos. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (approving fee with negative multiplier and noting that the negative multiplier was a "strong indication of the reasonableness of the [requested] fee"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request.").[8]

[8] Further, should the Court approve the Settlement, Lead Counsel will continue to perform legal work on behalf of the Settlement Class. Lead Counsel will expend additional resources assisting Settlement Class Members with their Claim Forms and related inquires and working with the Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), to ensure the smooth progression of claims processing and distribution of

Moreover, in conducting a lodestar analysis, the appropriate hourly rates to use are those rates that are the current prevailing market rates.[9] *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087-88 (S.D. Tex. 2012) (an attorney's hourly rates should be judged in relation to "prevailing market rates for lawyers with comparable experience and expertise in complex class action litigation" and "[a]n attorney's requested hourly rate is prima facie reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not contested") (alteration in original). In this respect, Lead Counsel's current hourly rates, or similar hourly rates, have been approved in numerous cases throughout the country, including cases in this Circuit. *See, e.g.*, *Cobalt*, 2019 WL 6043440, at *1; Decl. of Sharan Nirmul, *SEB Inv. Mgmt. AB v. Endo Int'l PLC*, Civ. A. No. 2:17-CV-3711-TJS (E.D. Pa. Nov. 1, 2019), ECF No. 93-3.

In sum, whether calculated utilizing the percentage or lodestar method, the requested fee is reasonable and well within the range of fees awarded by courts in these actions. As discussed below, each *Johnson* factor also weighs in favor of finding the requested fee fair and reasonable.

C. The *Johnson* Factors Confirm the Requested Fee Is Fair and Reasonable

An analysis of the factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974) ("*Johnson*") confirms that a 25% fee award is fair and reasonable in this case. The *Johnson* factors are:

> (1) The time and labor required…[;] (2) The novelty and difficulty of the questions…[;] (3) The skill requisite to perform the legal service properly…[;]

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the Net Settlement Fund. No additional legal fees will be sought for this work. *See Willix v. Healthfirst, Inc.*, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward also supports their fee request.").

[9] The use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment was approved in this Circuit, *see Leroy v. City of Houston*, 831 F.2d 576, 584 (5th Cir. 1987) ("current rates may be used to compensate for inflation and delays in payment"), even before the Supreme Court adopted this approach in *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989).

> (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 length of the professional relationship with the client…[; and] (12) Awards in similar cases.[10]

Id.; *see also Dell*, 669 F.3d at 642 n.25 (reiterating *Johnson* factors); *Billitteri*, 2011 WL 3586217, at *3 (same). In addition, courts may consider other factors, such as (i) public policy considerations, (ii) plaintiffs' approval of the fee, and (iii) the reaction of the class. Consideration of these factors here provides further confirmation that the fee requested is reasonable.

1. The Time and Labor Expended

The substantial time and effort expended by Plaintiffs' Counsel in prosecuting this Action and achieving the Settlement powerfully supports the requested fee. As set forth in greater detail in the Joint Declaration, Lead Counsel and the other Plaintiffs' Counsel firms, among other things:

- conducted a significant legal and factual investigation into the Settlement Class's claims, which included interviews with 126 confidential witnesses who were primarily former Adeptus employees as well as the review of: (i) Adeptus's public filings with the SEC; (ii) the prospectuses for the offerings at issue in the Action; (iii) periodic financial reports, conference call transcripts, press releases, investor presentations, and other public statements made by Adeptus; (iv) securities analysts' reports about Adeptus; and (v) Fifth Circuit law applicable to the claims asserted and Defendants' potential defenses (¶¶ 34-41);

- consulted with experts across a variety of disciplines, including financial economics, healthcare economics, due diligence, accounting, and class-wide damages (¶¶ 85, 113);

- retained and supervised experienced Bankruptcy Counsel to monitor and participate in Adeptus's Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the Northern District of Texas (¶¶ 32-33);

[10] Two of the *Johnson* factors—the "time limitations imposed by the client or the circumstances" and the "nature and length of [counsel's] professional relationship with the client"—are not relevant in this case. *See Klein*, 705 F. Supp. 2d at 676 ("not every factor need be necessarily considered"); *Schwartz*, 2005 WL 3148350, at *28 ("The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court's discretion to apply those factors in view of the circumstances of a particular case.").

- drafted the 160-page Consolidated Class Action Complaint ("CAC") based on Plaintiffs' Counsel's investigation (¶¶ 42-46);

- opposed (in a 95-page omnibus brief) and largely defeated four motions to dismiss the CAC (¶¶ 47-53);

- engaged in hotly-contested document discovery, which included participation in numerous negotiations with Defendants regarding the scope and volume of discovery in the Action as well as coordination of discovery efforts with the parallel state court litigation, and the review and analysis of more than 2.7 million pages of documents produced by Defendants and numerous third parties, including Adeptus and its former joint venture ("JV") partners and payors (¶¶ 83-102);

- lead, defended, or actively participated in 37 depositions, including the depositions of 27 fact witnesses across the country. These included leading the depositions of all of the Executive Defendants (most of whom were deposed over two days), former members of Adeptus's Board of Directors, other senior executives and employees of Adeptus, employees of various Underwriter Defendants, and key third parties, including Adeptus's most significant payor and its revenue cycle management vendor (¶¶ 107-110);

- drafted the operative SAC based on Lead Counsel's discovery efforts, including documents produced by third-parties (¶¶ 62-64);

- opposed four motions to dismiss the SAC in an omnibus brief and sur-reply (¶¶ 65-69);

- filed and fully briefed the Motion to Certify, which included two supporting expert reports on market efficiency prepared by Plaintiffs' financial economist, Dr. Michael Hartzmark (¶¶ 70-82);

- assisted Plaintiffs in responding to Defendants' discovery requests, including lengthy interrogatories and requests for admission, as well as 82 document requests resulting in the production of over 27,000 pages of documents which Lead Counsel reviewed for privilege and relevance (¶¶ 72, 101);

- defended depositions of representatives for the proposed class representatives, ATRS, ACERA, and Miami and four of their investment managers (¶¶ 73, 102);

- deposed the experts cited in Defendants' opposition to the Motion to Certify, Dr. Kenneth Lehn and Mr. Jack Weiner, and defended the deposition of Plaintiffs' expert, Dr. Hartzmark (¶¶ 78, 81, 115);

- spent substantial time preparing, and were close to finalizing and serving, several opening expert reports on the merits and made substantial preparations for anticipated summary judgment motions;

- engaged in hard-fought, arm's-length settlement negotiations facilitated and supervised by Judge Phillips, including extensive pre-mediation briefing and a formal mediation in April 2019 (¶¶ 116-121); and

- negotiated the final terms of the Settlement with Defendants and drafted, finalized, and filed the Stipulation and related Settlement documents (¶¶ 122-123).

As noted above, Plaintiffs' Counsel have expended over 40,286 hours prosecuting this Action with a lodestar value of $20,382,698.75. This time and effort was critical in obtaining the excellent result represented by the Settlement and confirms that the fee request here is reasonable.

2. The Novelty and Difficulty of the Issues

The difficulty of questions presented by the litigation is also considered in determining the reasonableness of the requested fee. *See Johnson*, 488 F.2d at 718. Courts have long recognized that securities class actions are complex and challenging, and that "Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult." *In re OCA, Inc. Sec. & Deriv. Litig.*, 2009 WL 512081, at *21 (E.D. La. Mar. 2, 2009); s*ee also Schwartz*, 2005 WL 3148350, at *29 ("Federal Securities class action is notably difficult and notoriously uncertain."). This case was no exception.

First, in addition to the complexities of securities cases generally, this Action involved a bankrupt corporate defendant that was no longer a party to the case. Adeptus's bankruptcy injected an additional level of risk that no recovery would be obtained (¶¶ 128-131) as well as greater complexity into the Parties' discovery efforts (*see* ¶¶ 94-95) and would have continued to complicate Lead Counsel's efforts had the Action continued. For instance, had Plaintiffs prevailed at trial, they faced the substantial risk that the Defendants found to be liable would be unable to satisfy the judgment entered by the Court. Moreover, each Defendant could potentially establish

that their proportion of any liability was minute—essentially capping their responsibility for damages at a relatively small amount. ¶ 129.

Second, Plaintiffs faced substantial challenges to establishing Defendants' liability. To this end, Plaintiffs would be required to show that the statements at issue in the Action were materially false or misleading when made. From the outset of the Action, Defendants vigorously asserted a "truth on the market" defense to the materiality of these alleged misstatements—*i.e.*, that the truth about Adeptus's allegedly-concealed liquidity issues were actually well known to the marketplace throughout the Class Period. ¶¶ 132-135. In support, Defendants argued that investors were well aware of: (i) Adeptus's funding arrangements with JVs because it had publicly filed one of its JV contracts; (ii) Adeptus' treatment of patients who did not require emergency treatment because several news articles and analyst reports published before and during the Class Period noted that free-standing emergency rooms ("FSERs") generally, and Adeptus specifically, tended to treat a substantial number of "low-acuity" patients; and (iii) revenue collection and internal control problems as Adeptus made statements discussing the "growing pains" that it was experiencing with its third-party revenue cycle management vendor. *Id*. Defendants further contended that certain of the statements at issue were not false. ¶ 136.[11]

At summary judgment and trial, Defendants likely would also challenge Plaintiffs' ability to establish scienter in connection with their Exchange Act claims, arguing that, at best, Plaintiffs would only be able to make out a case of negligence or "mismanagement" against the Company. ¶ 139. Throughout the Action, Defendants argued that they acted in good faith at all times and reasonably believed that the facts Plaintiffs alleged they withheld from investors were either

[11] Even if Plaintiffs succeeded in proving that the statements in the offering documents were false, the Underwriter Defendants could have escaped liability by proving that they exercised "reasonable care" in conducting due diligence of the offerings and Adeptus's operations. ¶ 138.

thoroughly disclosed to the market, or did not have a material impact on Adeptus's liquidity and cash flow until the very end of the Class Period, at which time Defendants made appropriate disclosures. *Id.*

Third, Plaintiffs faced formidable challenges with respect to proving loss causation and damages. ¶¶ 141-145. On these issues, Plaintiffs would ultimately have to prove (through expert testimony) that the revelation of the alleged fraud through the five alleged partial corrective disclosures (*i.e.*, November 17, 2015, July 28, 2016, September 7, 2016, November 1, 2016, and March 2, 2017) proximately caused the declines in the price of Adeptus common stock on each of those days (and/or the following days), and that other information released and absorbed by the market on those days played little or no role in the price declines. ¶¶ 142-143. Defendants, on the other hand, likely would have argued (with the assistance of their experts) that Plaintiffs could not prove that the declines in the price of Adeptus common stock upon the alleged partial corrective disclosures were statistically significant and/or resulted from the disclosure of any previously misrepresented or concealed fact. *Id.* Clearly, loss causation and damages were hotly contested and these issues would ultimately come down to a battle of the experts. *See, e.g.*, *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 665 (S.D.N.Y. 2015) ("On the issue of damages, a trial would likely have turned heavily on a 'battle of the experts' between the parties' respective economists. It is impossible to predict which party's model of damages—if either—the jury would credit.").

Finally, the Settlement came at a moment of substantial uncertainty in the Action, with Plaintiffs' Motion to Certify and Defendants' second round motions to dismiss the SAC pending. Although Plaintiffs and Plaintiffs' Counsel believed they should have succeeded on each of these motions, an adverse decision on either could have drastically altered the scope of the class or the quantum of recoverable damages. ¶¶ 127, 132.

Notwithstanding these difficulties and uncertainties regarding the outcome of the case, Plaintiffs' Counsel zealously prosecuted this Action in order to secure the best result for the Settlement Class. Accordingly, this factor weighs in favor of the requested fee.

3. The Amount Involved and the Results Achieved

Courts have consistently recognized that the result achieved is a significant factor to be considered in awarding attorneys' fees. *See Roussel v. Brinker Int'l, Inc.*, 2010 WL 1881898, at *3 (S.D. Tex. Jan. 13, 2010), *aff'd*, 441 F. App'x 222 (5th Cir. 2011) (considering "overall degree of success achieved" in awarding fees). Here, Plaintiffs' Counsel secured a $44 million cash Settlement that will provide payment to Settlement Class Members in the near term while avoiding the serious risks of continued litigation. This recovery would be a good recovery in any securities litigation case, but is particularly outstanding in light of Adeptus's bankruptcy, which eliminated it as a potential source of recovery in this Action.

To start, the recovery represents a material portion of the Settlement Class's maximum *theoretical* aggregate damages. As estimated by Plaintiffs' damages expert, the theoretical maximum class-wide damages in the Action are approximately $850 million (assuming full liability and damages). Thus, the $44 million Settlement represents a recovery of approximately 5.2% of those maximum conceivable damages. This exceeds by more than ***three times*** the median percentage of maximum damages recovered in securities class actions with comparable maximum damages.[12]

Moreover, this maximum damages estimate assumes, among other things, that Plaintiffs would be able to prove both liability and damages based on ***all*** alleged corrective disclosures. But, Plaintiffs and Lead Counsel faced substantial risks in proving the elements of their securities law

[12] As noted above, studies have shown that securities cases with comparable maximum damages recovered a median of ***1.6%*** of investor losses. *See supra* fn 3; *see also* Joint Declaration at Exhibit 6.

claims. In particular, as noted above, if the Action continued, Plaintiffs faced significant risks to establishing that the Settlement Class was entitled to damages for each of the alleged corrective disclosures. Indeed, throughout the Action, Defendants vigorously argued that *none* of the alleged corrective disclosures caused damages arising from the alleged fraud—and contended that Plaintiffs had absolutely no chance of four of those corrective disclosures because investors knew the truth and/or confounding non-fraud-related information actually caused the stock declines. If Defendants had prevailed in their argument that four out of the five alleged corrective disclosures did not cause Plaintiffs' or other Settlement Class Members' losses, leaving only the November 2016 disclosure, estimated maximum recoverable damages would be approximately $480 million (and this still assumes success by Plaintiffs on all liability issues). In this scenario, the $44 million Settlement represents over 9.1% of the conceivable damages. This exceeds by over ***five times*** the median recovery amounts in other securities class actions with comparable damages. *See supra* fn. 3 (citing study finding median settlement between 1996 and 2018 in securities cases with investor losses between $400 million and $599 million recovered 1.8% of investor losses). Thus, this factor strongly supports the requested fee.

4. The Skill Required to Perform the Legal Services Properly, and the Experience, Reputation and Ability of the Attorneys

The *Johnson* factors also consider the skills required to litigate the Action and "the experience, reputation and ability of the attorneys" involved. *See Johnson*, 488 F.2d at 718-19. Here, Plaintiffs' Counsel prosecuted the Action vigorously, provided high-quality legal services, and obtained a favorable result for the Settlement Class. Plaintiffs' Counsel's experience in the field of securities class actions and other complex litigation, along with their effort and skill in surviving, in large part, Defendants' first round of motions to dismiss, navigating Adeptus's bankruptcy proceedings, digesting the voluminous discovery in the Action, and presenting a strong

case at mediation and during the settlement discussions that followed was essential to achieving a meaningful resolution to the Action.[13]

Courts have also recognized the quality of opposing counsel in assessing plaintiffs' counsel's efforts. *See, e.g.*, *Schwartz*, 2005 WL 3148350, at *30 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation"). In this Action, Defendants were represented by no less than ***six*** top-notch defense firms: King & Spalding LLP, Simpson Thacher & Bartlett LLP, Norton Rose Fulbright US LLP, Baker Botts L.L.P., Shearman & Sterling LLP, and Haynes and Boone, LLP that aggressively litigated this Action at every step of the way. In the face of this formidable opposition, Lead Counsel were able to persuade Defendants to settle the case at both a point in the Action and on terms that were favorable to the Settlement Class. This factor supports the requested fee.

5. The Preclusion of Other Employment

Plaintiffs' Counsel dedicated substantial time and effort to the Action despite the very significant risks of no recovery and while deferring any payment of their fees and expenses until a settlement was reached. This curtailed their ability to assign their attorneys and professionals to simultaneously perform substantial work on other matters. Accordingly, this *Johnson* factor also supports the requested fee. *See, e.g.*, *Johnson*, 488 F.2d at 718; *Burford v. Cargill, Inc.*, 2012 WL 5471985, at *3 (W.D. La. Nov. 8, 2012); *Shaw*, 91 F. Supp. 2d at 970.

[13] *See* Exhibits 7A through 7G for Plaintiffs' Counsel's resumes.

6. The Customary Fee and Awards in Similar Cases

As discussed above, Lead Counsel's fee request is well within the range of fees awarded in similar cases on a percentage or lodestar basis. *See* § II.B.1 above. This factor strongly supports the reasonableness of the requested fee. *See Johnson*, 488 F.2d at 717-19.

7. The Contingent Nature of the Fee

Plaintiffs' Counsel undertook this Action on a contingent fee basis, assuming a substantial risk that the Action would yield no recovery and leave counsel uncompensated. Courts have consistently recognized that "the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees." *Schwartz*, 2005 WL 3148350, at *31-32; *see also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) ("No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.").

Even with the most vigorous and competent of efforts, success in contingent-fee litigation, such as this, is never assured.[14] Thus, any fee award has always been at risk, and completely contingent on the result achieved. Here, the risk of nonpayment was heightened due to Adeptus's bankruptcy filing at the outset of the Action. As also discussed above, there were substantial risks

[14] There have been many hard-fought lawsuits where excellent professional efforts produced no fee for counsel. *See, e.g.*, *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011), *aff'd on other grounds*, 688 F.3d 713 (11th Cir. 2012) (granting defendants' judgment as a matter of law following plaintiff's jury verdict); *Robbins v. Koger Props. Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against accounting firm reversed on appeal); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities class action jury verdict for plaintiffs' in case filed in 1973 and tried in 1988); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd sub nom.*, *Herman v. Legent Co.*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *In re Apple Comput. Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (after jury rendered a verdict for plaintiffs following an extended trial, the court overturned the verdict); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (affirmed directed verdict for defendants after five years of litigation). Indeed, even judgments initially affirmed on appeal by an appellate panel are no assurance of a recovery. *See, e.g.*, *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after eleven years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision and plaintiffs recovered nothing). *See* ¶¶ 149-155.

to proving liability and damages. Accordingly, the contingent risk also supports the requested fee.

8. The Undesirability of the Case

Although Plaintiffs' Counsel did not consider this case to be "undesirable," there were substantial risks in financing and prosecuting the Action, including the fact that the primary corporate issuer in the case was bankrupt, and the fact that Plaintiffs' Counsel would need to devote the substantial resources to the case in order to generate a successful outcome. As a result, Plaintiffs' Counsel knew that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. *See, e.g.*, *Billitteri*, 2011 WL 3585983, at *8 (where a case "raised particularly difficult issues," including the risk of "no recovery whatsoever," this factor supported an increase in the fee); *Braud v. Transp. Serv. Co. of Ill.*, 2010 WL 3283398, at *13 (E.D. La. Aug. 17, 2010) (given the "risk of non-recovery" and the burdens of "undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee," the Court found that "undesirability in this case warrants an increase in the fee award"). This factor supports the requested fee.

9. Other Factors Considered by Courts Further Support the Requested Fee as Fair and Reasonable

In addition to the *Johnson* factors, courts often consider certain other factors in determining an appropriate fee in a class action. The below also confirm the reasonableness of the fee request.

a. Public Policy Considerations Support the Requested Fee

A strong public policy interest favors for rewarding firms that bring successful securities litigation. As noted above, the Supreme Court has emphasized that private securities actions provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action." *Bateman*, 472 U.S. at 310. Here, that public policy was advanced, as Lead Counsel achieved a meaningful recovery for investors, notwithstanding the absence of any

recovery for Adeptus investors from the SEC or any other regulatory agency. *See Jenkins*, 300 F.R.D. at 309 ("Public policy concerns—in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims—support the requested fee.").

b. Plaintiffs Have Approved the Requested Fee

Plaintiffs are large, institutional investors who played an active role in the prosecution and resolution of the Action. As such, each of the Plaintiffs has a sound basis for assessing the reasonableness of the fee request and supporting its approval. *See* ¶¶ 200, 211.[15] Further, the requested fee of 25% of the recovery is made pursuant to pre-litigation fee agreements negotiated arm's-length between sophisticated Plaintiffs and Lead Counsel. ¶¶ 177, 180. Plaintiffs, after considering the extensive time and effort dedicated to the case by Plaintiffs' Counsel and the considerable risks of the litigation, have endorsed the requested fee as fair and reasonable. *See* ¶ 200. *See, e.g.*, *Bear Stearns*, 909 F. Supp. 2d at 272 ("When class counsel in a securities lawsuit have negotiated an arm's-length agreement with a sophisticated lead plaintiff possessing a large stake in the litigation, and when that lead plaintiff endorses the application following close supervision of the litigation, the court should give the terms of that agreement great weight.").

c. The Settlement Class's Reaction to Date

The reaction of the Settlement Class to date also supports the requested fee. As of April 14, 2020, a total of 60,664 Notices have been mailed to potential Settlement Class Members and nominees informing them of, among other things, Lead Counsel's intention to apply to the Court

[15] The PSLRA was intended to encourage institutional investors like Plaintiffs to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at 32 (1995), *as reprinted in* 1995 U.S.C.C.A.N. 730, 731. Congress believed that these institutions would be in the best position to monitor the prosecution and to assess the reasonableness of counsel's fee requests.

for an award of attorneys' fees in an amount not to exceed 25% of the Settlement and payment or reimbursement of Litigation Expenses in an amount not to exceed $1,975,000, plus interest. *See* Notice ¶¶ 5, 52. To date, no objections to these amounts have been received. ¶¶ 201, 212.[16]

III. PLAINTIFFS' COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

Lead Counsel also request payment of $1,382,701.72 from the Settlement Fund for expenses Plaintiffs' Counsel reasonably incurred in prosecuting and resolving the Action. These expenses are properly recovered by counsel. *See The Erica P. John Fund, Inc*., 2018 WL 1942227, at *14 ("Expenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement."); *Billitteri*, 2011 WL 3585983, at *10; *Faircloth v. Certified Fin. Inc.*, 2001 WL 527489, at *12 (E.D. La. May 16, 2001) (awarding costs in addition to the percentage fee). Plaintiffs' Counsel's expenses are set forth by category in Exhibit 8.[17]

The largest component of Plaintiffs' Counsel's expenses was the cost of Plaintiffs' experts and consultants in the total amount of $848,708.25, or approximately 61% of total expenses. ¶ 206. As detailed in the Joint Declaration, Lead Counsel utilized experts/consultants at each stage of the Action, and these experts/consultants were absolutely critical to the prosecution and resolution of the Action. For example, Lead Counsel worked extensively with Plaintiffs' financial economist, Dr. Michael Hartzmark, in connection with class certification. ¶¶ 70-82. In furtherance of the Motion to Certify, Dr. Hartzmark submitted two expert reports on market efficiency and sat for a deposition. *Id*. In addition, after the Parties reached their agreement in principle to resolve the Action, Dr. Hartzmark and his associates helped formulate the proposed Plan of Allocation. ¶ 169.

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[16] Lead Counsel will address any objections that may be received in their reply papers to be filed with the Court on May 13, 2020.

[17] *See also* Exs. 7A through 7G for expenses by category for each Plaintiffs' Counsel firm.

Two other large components of Plaintiffs' Counsel's expenses were the costs of on-line legal and factual research, totaling $119,244.39, or approximately 8.6% of total expenses and the costs for court reporters and transcripts, totaling $111,655.63, or approximately 8.1% of total expenses. ¶ 207. Lead Counsel also incurred expenses associated with the databases utilized to host, organize, and search the voluminous document productions in this Action. These charges amounted to $46,340.39. Notably, the services utilized for the hosting of the documents produced by Defendants and non-parties were in-house and provided at a substantial discount to the costs that would have been incurred in hiring an outside document hosting vendor—and the Settlement Class will reap the benefit of those significant cost savings.

In addition, Lead Counsel incurred the cost of formal mediation with Judge Phillips ($38,342.50) and the cost of out-of-town travel, meals, and lodging required to prosecute the Action ($82,120.13). The other expenses for which Lead Counsel seek payment are the types of expenses necessarily incurred in litigation and routinely charged to clients billed by the hour, including, among others, online research, court fees, court reporters and transcripts, process servers, document-reproduction costs, and postage and delivery expenses. ¶ 209.[18] The foregoing expense items are not duplicated in the firms' hourly rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for Litigation Expenses in an amount not to exceed $1,975,000, plus interest. The total amount of expenses requested $1,403,662.58 (which includes the $20,960.86 aggregate request for Plaintiffs'

[18] Plaintiffs' Counsel have applied various "caps" to their litigation expenses, which will benefit the Settlement Class. For example, regardless of the actual amounts paid, Plaintiffs' Counsel capped their airfare at coach rates, capped lodging charges at different rates depending on whether they were located in "high cost" or "low cost" cities (as defined by the IRS), and capped all working meal expenses. Any amounts in excess of these "caps" constitute out of pocket expenses that Lead Counsel did in fact pay—but for which reimbursement will not be sought.

costs and expenses discussed below) is substantially below the amount listed in the Notice and, as noted above, to date, there has been no objection to the request for expenses.

IV. PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS UNDER THE PSLRA

The PSLRA provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Consistent with that statute, Plaintiffs seek awards based on the time dedicated by their employees and representatives in furthering and supervising the Action. Specifically, Lead Plaintiffs and proposed class representatives ACERA and ATRS seek awards of $13,096.01 and $5,094.60, respectively, and additional proposed class representative Miami seeks an award of $2,770.25. *See* Ex. 1, ¶ 14; Ex. 2, ¶ 13; and Ex. 3, ¶ 12.

These requested awards are purely for the time and effort that Plaintiffs devoted to representing the Settlement Class in this Action. Each Plaintiff took an active role in the Action and has been fully committed to pursuing the claims on behalf of the Settlement Class since becoming involved in the Action. During the course of the litigation, each communicated regularly with counsel regarding strategy and developments, reviewed pleadings and briefs filed in the Action, assisted in responding to voluminous discovery requests, and representatives of each prepared for and testified at depositions in connection with Plaintiffs' Motion to Certify. *See* Ex. 1, ¶¶ 7-8, 14; Ex. 2, ¶¶ 6-7, 13; and Ex. 3, ¶¶ 5-6, 12. In addition, each of the Plaintiffs consulted with Lead Counsel during the course of the Parties' protracted settlement negotiations and a representative from ACERA attended the April 2019 mediation. *See Id*. These efforts required employees of Plaintiffs to dedicate considerable time and resources to the Action—time and resources that they would have otherwise devoted to their regular duties.

Numerous courts, including this Court, have approved reasonable awards to compensate representative plaintiffs for the time and effort they spent on behalf of a class. *See, e.g., Hall*, 2019 WL 3546741, at *2 (awarding aggregate of $5,090 to two plaintiffs); *see also Cobalt*, 2019 WL 6043440, at *3 (awarding aggregate of over $56,000 to four institutional plaintiffs pursuant to 15 U.S.C. § 78u-4(a)(4)); Order, *In re Conn's, Inc. Sec. Litig.*, No. 4:14-cv-00548 (KPE) (S.D. Tex. Oct. 11, 2018), ECF No. 194 at 4 (awarding over $22,000 to a class representative for its efforts); *The Erica P. John Fund*, 2018 WL 1942227, at *14 (awarding $100,000 to plaintiff as "compensation for the time it dedicated in supervising this action"); *Miller v. Global Geophysical Servs. Inc.*, 2016 WL 11645372 (S.D. Tex. Jan. 14, 2016) (awarding $15,000 to Lead Plaintiff pursuant to PSLRA); *In re Arthrocare Corp. Sec. Litig.*, 2012 WL 12951371, at *6 (W.D. Tex. June 4, 2012) (awarding $55,850 to plaintiff for time spent, *inter alia*, in "overseeing and communicating with Lead Counsel on a regular basis, reviewing and commenting on various pleadings, [and] sitting for depositions"). The awards sought by Plaintiffs here are reasonable and justified under the PSLRA.

V. CONCLUSION

For the reasons stated herein and in the Joint Declaration, Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 25% of the Settlement Fund and approve payment of Plaintiffs' Counsel's Litigation Expenses in the amount of $1,382,701.72, plus interest, as well as the proposed awards to Plaintiffs in the aggregate amount of $20,960.86 (*i.e.*, $13,096.01 to ACERA, $5,094.60 to ATRS, and $2,770.25 to Miami).[19]

[19] A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

Dated: April 15, 2020

Respectfully submitted,

By: */s/ Clyde M. Siebman*

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF Filing System.

/s/ Clyde M. Siebman
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