THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALLEGHENY COUNTY EMPLOYEES' RETIREMENT SYSTEM, EMPLOYEES' RETIREMENT SYSTEM OF THE CITY OF BATON ROUGE AND PARISH OF EAST BATON ROUGE, DENVER EMPLOYEES RETIREMENT PLAN, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS NATIONAL PENSION FUND, and IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. ENERGY TRANSFER LP, KELCY L. WARREN, THOMAS E. LONG, MARSHALL MCCREA, and MATTHEW S. RAMSEY, Defendants.	Case No. 2:20-cv-00200-GAM

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

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Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Barrack, Rodos & Bacine ("Barrack Rodos") respectfully submit this memorandum of law in support of their motion for: (i) an award of attorneys' fees for all Plaintiffs' Counsel in the amount of 25% of the Settlement Fund; (ii) an award of $2,220,877.34 in litigation expenses reasonably and necessarily incurred by Lead Counsel in prosecuting and resolving the Action; and (iii) awards of $113,431.79 in total to Lead Plaintiffs for costs incurred directly related to their representation of the Class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[1]

PRELIMINARY STATEMENT

The proposed Settlement, which provides for a $15,000,000.00 cash payment for the benefit of the Class, is a favorable result for the Class that was achieved only after five-and-a-half years of hard-fought litigation. Lead Counsel's extensive efforts included conducting extensive investigation of the claims, surmounting Defendants' motion to dismiss, successfully moving for certification of the Class, completing extensive fact and expert discovery, fully briefing motions for summary judgment and other pre-trial motions, and engaging in extended arm's-length settlement negotiations over the course of many years. Lead Counsel prosecuted the Action and

[1] "Plaintiffs' Counsel" mean Lead Counsel BLB&G and Barrack Rodos, as well as Zaremba Brown PLLC, additional counsel for Lead Plaintiff International Association of Machinists and Aerospace Workers National Pension Fund. All other capitalized terms that are not defined in this memorandum of law have the same meanings as set forth in the Stipulation and Agreement of Settlement dated June 12, 2025 (ECF No 274-2) ("Stipulation") or in the Joint Declaration of Jeffrey W. Golan and Adam H. Wierzbowski in Support of (1) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (2) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses ("Joint Declaration"), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Joint Declaration and citations to "Ex. __" herein refer to exhibits to the Joint Declaration.

obtained the Settlement in the face of significant challenges to proving both liability and damages that posed the serious risk that there might be no recovery.

As detailed in the accompanying Joint Declaration,[2] Lead Counsel vigorously pursued the claims in this Action for the benefit of the Class for over five-and-a-half years. Among other things, Lead Counsel: (i) conducted a thorough investigation into investors' claims, including, among other things, a detailed review and analysis of publicly-available information regarding Energy Transfer and communications between Energy Transfer and the DEP and PUC, and interviews with potential witnesses, such as former Energy Transfer employees and persons affected by the construction of the ME2 pipeline (¶¶ 11-14); (ii) researched and drafted a detailed 190-page amended complaint based on this investigation (¶ 15); (iii) drafted detailed briefing in opposition to the Defendants' motion to dismiss the Complaint (¶ 17); (iv) successfully moved for certification of the Class through a contested motion and defeated Defendants' petition to appeal the Court's class certification order under Rule 23(f) (¶¶ 23-33); (v) completed extensive fact discovery, which included requests for production of documents, interrogatories, requests for admission, numerous meet and confers, and several discovery disputes (¶¶ 34-47); (vi) obtained and analyzed more than 1.5 million pages of documents produced by Defendants and third parties (¶ 36); (vii) took, defended, or participated in 40 depositions (¶¶ 34-38, 47); (viii) engaged three experts who submitted merits-stage expert reports and deposed five defense expert witnesses (¶¶ 49-52); (ix) opposed Defendants' motion for summary judgment and achieved partial summary

[2] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the work Plaintiffs' Counsel performed for the benefit of the Class; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of the litigation; and the facts and circumstances underlying Lead Counsel's request for an award of attorneys' fees and expenses.

judgment in favor of Lead Plaintiffs (¶¶ 58-62); (x) prepared for trial, including exchanging exhibit and witness lists and deposition designations with Defendants, providing proposed jury instructions and a proposed verdict form to Defendants, filing four motions *in limine* and three *Daubert* motions, filing a motion to bifurcate the trial, and opposing Defendants six motions *in limine*, three *Daubert* motions regarding two of Lead Plaintiffs' experts, and motion to empanel twelve jurors (¶¶ 63-66); and (xi) engaged in extensive settlement negotiations, which included a formal mediation session and months of additional negotiations (¶¶ 67-70).

The Settlement achieved through Plaintiffs' Counsel's efforts is a particularly favorable result when considered in light of the substantial litigation risks in the Action, including the risks associated with proving Defendants' liability and establishing loss causation and damages. These risks are detailed in the Joint Declaration at paragraphs 80 to 91 and are summarized in the memorandum of law supporting the Settlement. These risks posed a real possibility from the outset of the litigation that Lead Plaintiffs and the Class might not be able to recover at all or could have recovered a lesser amount than obtained in the Settlement.

As compensation for their efforts on behalf of the Class and for the risk of nonpayment they faced in prosecuting the Action on a contingent basis, Lead Counsel now seek an attorney-fee award for all Plaintiffs' Counsel in the amount of 25% of the Settlement Fund. As detailed herein, the requested percentage fee is well within the range of fees that courts in this District and this Circuit have awarded in securities class actions with comparable recoveries. Further, the requested fee represents only a small fraction (***less than 10%***) of Lead Counsel's total lodestar incurred through more than five years of vigorous litigation. Accordingly, the fee represents a significant "negative" multiplier of approximately 0.07 on Lead Counsel's total lodestar, which is

far below the range of multipliers typically awarded in class actions with significant contingency risks such as this one.

The fee request also has the support of all Lead Plaintiffs, which are each sophisticated institutional investors that actively supervised and participated in the Action. *See* Ex. 1(a) at ¶¶ 3-6, 8; Ex. 1(b) at ¶¶ 3-6, 8; Ex. 1(c) at ¶¶ 3-6, 8; Ex. 1(d) at ¶¶ 3-6, 8; Ex. 1(e) at ¶¶ 3-6, 8. Each of the Lead Plaintiffs has approved and fully supports the fee request as reasonable in light of the result achieved in the Action, the quality of the work counsel performed, and the risks of the litigation. *Id.*

In addition, while the deadline set by the Court for Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections have been received. The deadline for objections is September 16, 2025. Lead Counsel will address any objections to the motion for attorneys' fees and litigation expenses in their reply papers, which will be filed by September 30, 2025.

Lead Counsel also seek to recover the litigation expenses that they incurred in prosecuting and resolving this litigation, which total $2,220,877.34 during more than five years of litigation. As discussed below, these expenses were reasonable and necessary for the prosecution and resolution of this complex litigation and are of the type that are routinely charged to clients in non-contingent litigation. The largest component of these expenses, roughly 65%, relate to the costs of experts and consultants, including experts in pipeline regulations, planning and construction; environmental issues; and market efficiency, loss causation, and damages. Finally, Lead Counsel also request that Lead Plaintiffs be granted awards as provided for under the PSLRA in the total amount of $113,431.79, in reimbursement for the substantial time that their employees dedicated to the Action.

For all the reasons set forth herein and in the Joint Declaration, Lead Counsel respectfully submit that the requested attorneys' fees and expenses are fair and reasonable under applicable legal standards and, therefore, should be awarded by the Court.

ARGUMENT

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND

It is well settled that an attorney who maintains a lawsuit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *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"); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("attorneys whose efforts create, discover, increase, or preserve a common fund are entitled to compensation"); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009).[3]

In addition to providing just compensation, awards of fair attorneys' fees from a common fund ensure that "competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (citations omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant action, provide "'a most effective weapon in the enforcement' of the securities laws

[3] Unless otherwise noted, all emphasis is added and citations are omitted.

and are 'necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

Courts in this Circuit have consistently adhered to these principles. *See, e.g., Schuler v. Meds. Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (quoting *Diet Drugs*, 582 F.3d at 540) ("Under the common fund doctrine, 'a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees.'"); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Class and utilize a lodestar cross-check to confirm that the fee is reasonable. In the Third Circuit, the percentage-of-recovery method is "generally favored" in cases involving a settlement that creates a common fund. *See Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method "because it allows courts to award fees from the [common] fund 'in a manner that rewards counsel for success and penalizes it for failure'"); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Rite Aid*, 396 F.3d at 300; *In re Ocean Power Techs., Inc., Secs. Litig.*, 2016 WL 6778218, at *24 (D.N.J. Nov. 15, 2016). The Third Circuit also recommends that the

percentage award be "cross-check[ed]" against the lodestar method to ensure its reasonableness. *See Sullivan*, 667 F.3d at 330.

III. THE REQUESTED FEE IS REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Fee Is Reasonable Under the Percentage-of-Recovery Method

The requested 25% fee is reasonable under the percentage-of-recovery method. Fees most commonly range from 25% to one-third of the recovery. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery"); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (same); *see also In re Wilmington Trust Sec. Litig.*, 2018 WL 6046452, at *9 (D. Del. Nov. 19, 2018) (finding 28% to be a "typical fee percentage" in the Third Circuit).

A review of attorneys' fees awarded in securities class actions with comparably sized settlements in this District and Circuit strongly supports the reasonableness of the requested 25% fee. *See, e.g., Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, Case No. 2:19-cv-01227-ER, slip op. at 3 (E.D. Pa. Jan. 12, 2022), ECF No. 85 (Ex. 5A) (awarding 25% of $16.8 million settlement); *Teamsters Local 456 Pension Fund v. Universal Health Servs., Inc.*, Case No. 2:17-cv-02817-JHS, slip op. at 2 (E.D. Pa. July 21, 2021), ECF No. 90 (Ex. 5B) (awarding 33.3% of $17.5 million settlement); *Western Pa. Elec. Emps.' Pension Fund v. Alter*, No. 2:09-cv-04730-CMR, slip op. at 1 (E.D. Pa. Aug. 4, 2014), ECF No. 198 (Ex. 5C) (awarding 30% of $13.25 million settlement); *In re Heckmann Corp. Sec. Litig.*, No. 1:10-cv-00378-LPS-MPT, slip op. at 2 (D. Del. June 26, 2014), ECF No. 308 (Ex. 5D) (awarding 33.3% of $27 million settlement); *Esslinger v. HSBC Bank Nev., N.A.*, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) ("a fee award of 30% of the [$23.5 million] settlement here is reasonable and in keeping with similar precedent"); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2012 WL 13186948, at *6 (D.N.J. Oct. 1, 2012) (awarding 33.3%

of $10.4 million settlement); *In re Schering-Plough Corp. ENHANCE ERISA Litig.*, 2012 WL 1964451, at *6-7 (D.N.J. May 31, 2012) (awarding 33.3% of $12.25 million settlement); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 2 (D. Del. Aug. 5, 2008), ECF No. 143 (Ex. 5E) (awarding 30% of $21.5 million settlement), *aff'd*, 396 F. App'x 815 (3d Cir. 2010).

B. The Reasonableness of the Requested Fee Is Confirmed by a Lodestar Cross-Check

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage approach is reasonable. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.[4] "The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method." *Rite Aid*, 396 F.3d at 306. "Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award under the [percentage] method." *In re Schering-Plough Corp. ENHANCE Sec. Litig.*, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013).

In complex contingent litigation such as this Action, fees representing multiples above the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. Lodestar multipliers "compensate counsel for the risk of assuming the representation on a contingency fee basis." *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020); *see also Rihn v. Acadia Pharm. Inc.*, 2018 WL 513448, at *6 (S.D. Cal. Jan. 22, 2018)

[4] Under the full "lodestar method," a court multiplies the number of hours each timekeeper spent on the case by the hourly rate, then adjusts that lodestar figure by applying a multiplier to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorneys' work. The multiplier is intended to "account for the contingent nature or risk involved in a particular case and the quality" of the work. *Rite Aid*, 396 F.3d at 305-06.

("Courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases" because, in doing so, it provides a "financial incentive to accept contingent-fee cases which may produce nothing."). Courts typically approve fees in class cases that correspond to ***positive*** multiples of one to four times the lodestar, and sometimes more. *See In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *Stevens*, 2020 WL 996418, at *13 (approving multiplier of 6.16); *Rite Aid*, 362 F. Supp. 2d at 589-90 (reaffirming award of 25% of $126.6 million settlement with 6.96 multiplier); *Ikon*, 194 F.R.D. at 195 (approving a 2.7 multiplier and noting it was "well within the range of those awarded in similar cases").

Here, the lodestar cross-check further demonstrates the reasonableness of the requested fee percentage because the fee request is ***substantially below*** Lead Counsel's total lodestar. As detailed in the Joint Declaration, Lead Counsel spent 80,437.75 hours of attorney and other professional time prosecuting the Action. ¶ 120, Exs. 3(a) 3(b). Lead Counsel's lodestar, derived by multiplying the hours spent on the litigation by each attorney, paralegal, or other professional by his or her current hourly rate, is $50,809,748.75. *Id.* [5]

Thus, the requested fee of 25% of the Settlement Fund, or $3,750,000 (plus interest), represents a very substantial negative multiplier of 0.07 on Lead Counsel's lodestar. In other

[5] The Supreme Court and Third Circuit have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Lanni v. New Jersey*, 259 F.3d 146, 149 (3d Cir. 2001); *Schering-Plough ENHANCE*, 2013 WL 5505744, at *33 n.28 ("In utilizing the blended billing rates to calculate the lodestar, the courts allow the use of current billing rates at the time the calculation is made rather than the billing rates actually in effect at the time the hours were recorded.").

words, counsel will recover just 7% of the total value of the time that they dedicated to the Action at normal hourly rates. ¶ 123.

The fact that the requested fee is substantially less than counsel's lodestar strongly supports the reasonableness of the request. *See O'Hern v. Vida Longevity Fund, LP*, 2023 WL 3204044, at *10 (D. Del. May 2, 2023) (a "negative multiplier of 0.83" was "well under the generally accepted range and provides strong additional support for approving the attorneys' fee request"); *Dickerson v. York Int'l Corp.*, 2017 WL 3601948, at *11 (M.D. Pa. Aug. 22, 2017) ("A negative multiplier reflects that counsel is requesting only a fraction of the billed fee; negative multipliers thus 'favor approval.'"); *In re Lithium Ion Batteries Antitrust Litig.*, 2019 WL 3856413, at *8 (N.D. Cal. Aug. 16, 2019) (the requested fee is "particularly appropriate where the lodestar cross-check results in a negative multiplier"); *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (a negative multiplier was a "strong indication of the reasonableness of the proposed fee").

Accordingly, the 25% fee requested here is reasonable under both the percentage-of-the-fund approach and the lodestar approach.

IV. THE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

Under Third Circuit law, district courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common fund cases. *See, e.g., Gunter*, 223 F.3d at 195 ("We give [a] great deal of deference to a district court's decision to set fees."). Nonetheless, in exercising that broad discretion, the Third Circuit has noted that a district court should consider the following factors in determining a fee award:

> (1) the size of the fund created and the number of beneficiaries, (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel, (3) the skill and efficiency of the attorneys involved, (4) the complexity and duration of the litigation, (5) the risk of

> nonpayment, (6) the amount of time devoted to the case by plaintiffs' counsel, (7) the awards in similar cases, (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

Diet Drugs, 582 F.3d at 541 (citing *Gunter*, 223 F.3d. at 195 n.1; *Prudential*, 148 F.3d at 336-40). These fee award factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Diet Drugs*, 582 F.3d at 545; *see Schuler*, 2016 WL 3457218, at *9. Each of these factors supports the award of the 25% fee requested by Lead Counsel here.

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016).

Here, Lead Counsel secured a Settlement that provides for a substantial, certain, and near-term payment of $15,000,000. The Settlement will benefit a large number of investors. To date, the Claims Administrator, JND Legal Administration ("JND"), has mailed or emailed more than 750,000 copies of the Postcard Notice or Settlement Notice to potential Class Members and their nominees. *See* Declaration of Luiggy Segura, submitted on behalf of JND (Ex. 2) ("JND Decl."), at ¶ 5. Accordingly, while the claim-submission deadline is not until November 28, 2025, a large number of Class Members can be expected to benefit from the Settlement. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) (size of benefitted population "is best estimated by the number of entities that were sent the notice describing the [Settlement]"), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004).

B. The Reaction of Class Members to the Settlement and Fee Request to Date Supports Approval of the Fee Request

The Postcard Notice or Settlement Notice has been sent to over 750,000 potential Class Members and their nominees, and the Settlement Notice was posted on a publicly-accessible website. Both the Postcard Notice and Settlement Notice stated that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Fund. *See* Postcard Notice, attached as Exhibit A to the JND Decl.; Settlement Notice, attached as Exhibit B to the JND Decl., at ¶¶ 5, 56. The Postcard Notice and Settlement Notice also advised Class Members that they could object to the Settlement or fee request, and the Settlement Notice explained the procedure for doing so. *See* Postcard Notice; Settlement Notice at p. 3, ¶¶ 60-64. While the September 16, 2025 objection deadline set by the Court has not yet passed, as noted above, no objections have been received to date.

C. The Skill and Efficiency of Lead Counsel Support Approval of the Fee Request

Lead Counsel's efforts have resulted in a favorable outcome for the benefit of the Class. *See In re AremisSoft Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000)) ("[T]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained."). The recovery obtained for Class Members is the direct result of the significant efforts of highly-skilled attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel's success in overcoming Defendants' motion to dismiss in a case with very substantial risks, certifying the Class, conducting substantial fact and expert discovery, and sustaining key claims in the case in the wake of Defendants' motion for summary judgment, created the circumstances in which Lead Plaintiffs were able to obtain the $15 million cash Settlement.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel. *See, e.g.*, *Ikon*, 194 F.R.D. at 194; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."). Here, Defendants were represented ably by Vinson & Elkins LLP, Gibson Dunn LLP, and Morgan Lewis, who vigorously opposed Lead Counsel at every step of the Action. ¶ 129. The ability of Lead Counsel to obtain a favorable outcome for the Class in the face of this formidable legal opposition further confirms the quality of Lead Counsel's representation.

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request

The complexity and duration of the litigation also support approval of the fee requested. Securities litigation is regularly acknowledged to be particularly complex and expensive, usually requiring expert testimony on several issues, including loss causation and damages. *See, e.g.*, *Fogarazzo v. Lehman Bros., Inc.*, 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Genta Sec. Litig.*, 2008 WL 2229843, at *3 (D.N.J. May 28, 2008) ("This [securities fraud] action involves complex legal and factual issues, and pursuing them would be costly and expensive."); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *3 (D.N.J. Nov. 28, 2007) ("[R]esolution of [accounting and damages issues] would likely require extensive and conceptually difficult expert economic analysis. . . . Trial on [scienter and loss causation] issues would [be] lengthy and costly to the parties.").

Here, the $15,000,000 recovery is favorable in light of the significant risks that the Class would continue to face by litigating to trial, and limited maximum damages of $40 to $80 million that might be obtainable at trial. This litigation had already advanced extremely far, including through the resolution of summary judgment motions and briefing of *Daubert* motions, but in the

absence of settlement, Lead Plaintiffs, through Lead Counsel, would have been required to engage in substantial additional work on further pre-trial preparation and motion practice, including work on a pre-trial order, proposed jury instructions, and motions *in limine*. ¶¶ 81, 128, 131. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain, and would require a substantial amount of fact and expert testimony. ¶ 131.

Finally, even if the jury returned a favorable verdict at trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. ¶ 82. Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."). Considering the magnitude, expense, and complexity of this securities case—especially when compared against the significant and certain recovery achieved by the Settlement—Lead Counsel's fee request is reasonable. Accordingly, this factor weighs in Lead Counsel's favor.

E. The Risk of Non-Payment Supports Approval of the Fee Request

Lead Counsel undertook this Action on an entirely contingent basis, taking the risk that the litigation would yield no or very little recovery and leave them uncompensated for their time, as well as for their out-of-pocket expenses. As explained in detail in the Joint Declaration, Lead Counsel faced significant risks in this case from the outset that could have resulted in no recovery or a recovery smaller than the Settlement Amount. A number of these risks were borne out at the motion to dismiss and summary judgment stages where the Court substantially narrowed the scope

of Plaintiffs' claims. ¶ 84. Moreover, Lead Plaintiffs' remaining claims would also have been challenging to prove at trial, with evidence to be presented principally through adverse witnesses. ¶¶ 85, 89-91. Accordingly, there were many significant risks in the Action from the outset and many risks that still existed when the Settlement was reached. ¶¶ 80-91.

Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., Warner Commc'ns*, 618 F. Supp. at 747-49 (citing cases). This is particularly true in securities litigation, such as this Action, because securities litigation has long been regarded as "notably difficult and notoriously uncertain." *See Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993).

Plaintiffs' Counsel have not been compensated for any of their time or expenses since the case began in 2020. Since that time, Lead Counsel have expended over 80,000 hours in the prosecution of this litigation with a resulting lodestar of approximately $50 million and have incurred over $2 million in litigation expenses. ¶¶ 118, 120; Exs. 3(a) and 3(b). "Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval." *Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7.

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 a successful result would be realized only after considerable and difficult effort. This factor strongly favors approval of the requested fee.

F. The Significant Time Devoted to this Case by Lead Counsel Supports Approval of the Fee Request

As set forth above, since the inception of the case, Lead Counsel have expended over 80,000 hours and incurred more than $2 million in expenses prosecuting this Action for the benefit of the Class. ¶¶ 118, 120, 124, 134, 136; Exs. 3(a) and 3(b). As more fully discussed above and in the Joint Declaration, this Action was vigorously litigated and defended. This includes, *inter*

alia, the considerable time spent in the initial investigation of the case; working extensively with experts; seeking out and interviewing former employees and local citizens with information that would be used to support Lead Plaintiffs' allegations; researching complex issues of law; preparing and filing the detailed Complaints; researching and briefing the issues in connection with Defendants' motion to dismiss; obtaining and analyzing over 1.5 million pages of documents produced by Defendants and third parties; taking or defending 40 depositions; successfully moving for certification of the Class; preparing detailed oppositions to Defendants' motion for summary judgment and *Daubert* motions; and engaging in extensive settlement negotiations. ¶¶ 23-33, 47, 58-62, 67-79, 128. At all times, Lead Counsel conducted their work with skill and efficiency, conserving resources and avoiding duplication of efforts. The foregoing represents a very significant commitment of time, personnel, and out-of-pocket expenses by Plaintiffs' Counsel over the past five years while taking on the substantial risk of recovering nothing for their efforts.

G. The Requested Fee of 25% of the Settlement Fund Is Within the Range of Fees Typically Awarded in Actions of this Nature

As discussed above in Part III, the requested fee of 25% of the Settlement Fund is well within the range of fees awarded in comparable cases, when considered as a percentage of the fund or on a lodestar basis. Accordingly, this factor strongly supports approval of the requested fee.

H. The Fact that the Benefits of the Settlement Are Attributable to the Efforts of Plaintiffs' Counsel Support Approval of the Fee Request

In determining the appropriate fee, Third Circuit courts also consider whether class counsel benefited from a governmental investigation or enforcement action concerning the alleged wrongdoing. *See Prudential*, 148 F.3d at 338. Here, there were no parallel enforcement actions or prosecutions by the Securities Exchange Commission or the Department of Justice that benefitted class counsel. In addition, whereas the Action arose in part from the disclosure of an FBI investigation into alleged bribery related to the ME2 pipeline, no indictment or prosecution

resulted from it. Accordingly, Lead Counsel respectfully submit that creation of the Settlement here is the result of Plaintiffs' Counsel's vigorous pursuit of Lead Plaintiffs' claims through years of litigation, not the by-product of any governmental investigation. This factor further supports the reasonableness of the requested fee award. *See AT & T*, 455 F.3d at 173 ("Here, class counsel was not aided by the efforts of any governmental group, and the entire value of the benefits accruing to class members is properly attributable to the efforts of class counsel. This strengthens the . . . conclusion that the fee award was fair and reasonable.").

I. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request

A 25% fee is also consistent with—or below—typical attorneys' fees in non-class cases. *See Ocean Power*, 2016 WL 6778218, at *29. If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery. *See, e.g., id.*; *Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."); *Blum v. Stenson*, 465 U.S. 886, 902 n.19 (1984) (Brennan, J., concurring) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers."). Thus, Lead Counsel's requested fee of 25% of the Settlement Fund is fully consistent with these private standards.

* * *

Accordingly, when considered under the Third Circuit's factors, Lead Counsel's requested fee of 25% of the Settlement Fund is fair and reasonable.[6]

[6] Another factor the Third Circuit asks district courts to consider is whether the settlement contains "any innovative terms." *Diet Drugs*, 582 F.3d at 541; *Prudential*, 148 F.3d at 340. This Settlement does not because Lead Counsel believe that an all-cash recovery is the best remedy for the injury

V. LEAD COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Lead Counsel also respectfully request that this Court approve payment of $2,220,877.34 for litigation expenses that Plaintiffs' Counsel incurred in connection with this Action. All of these expenses, which are set forth in declarations submitted by Plaintiffs' Counsel, were reasonably necessary for the prosecution and settlement of this Action. Counsel in a class action are entitled to recover expenses that were "adequately documented and reasonable and appropriately incurred in the prosecution of the class action." *ViroPharma*, 2016 WL 312108, at *18; *accord In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

The expenses for which Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert/consultant fees, mediation fees, document management costs, on-line legal and factual research, photocopying, and postage expenses. *See Viropharma*, 2016 WL 312108, at *18 (approving costs and expenses for, among other things, experts, travel, copying, postage, telephone, filing fees, and online and financial research); *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *23 (D.N.J. Nov. 10, 2016) (approving costs and expenses for experts, investigation, mediation, publishing notice, and online legal research, and noting that "[c]ourts have held that all of these items are properly charged to the [c]lass"). The largest category of expenses was for the retention of Lead Counsel's experts and consultants, which total $1,439,056.49, or approximately 65% of the total litigation expenses incurred by Lead Counsel.

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allegedly suffered by the Class. As such, the lack of innovative terms "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prods. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

The requested expense amount is in line with or less than other securities fraud litigations of a similar duration and scope. *See, e.g.*, *AT&T*, 455 F.3d at 169 (approving expenses of nearly $5.5 million); *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, 2016 WL 11575090, at *5 (D.N.J. June 28, 2016) (approving award of $9.5 million in expenses). A complete breakdown by category of the expenses incurred by Plaintiffs' Counsel is set forth in Exhibit 4 to the Joint Declaration. These expense items are recorded separately by Plaintiffs' Counsel, and such charges are not duplicated in each firm's hourly rates.

The Settlement Notice informed potential Class Members that Lead Counsel would apply for payment of litigation expenses in an amount not to exceed $2.6 million. *See* JND Decl. (Ex. A), at ¶¶ 5, 56. The total amount of litigation expenses requested is $2,334,309.13, including Lead Counsel's expenses of $2,220,877.34 and Lead Plaintiffs' costs of $113,431.79. To date, there has been no objection to the expense application.

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS UNDER 15 U.S.C. §78u-4(a)(4)

In connection with their request for an award of Litigation Expenses, Lead Counsel also seek awards for Lead Plaintiffs for costs incurred by them directly related to their representation of the Class in the aggregate amount of $113,431.79. The PSLRA specifically 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). Here, Lead Plaintiffs seek awards based on the substantial amount of time dedicated by their employees or outside counsel in furthering and supervising the Action. *See* Ex. 1(a) at ¶¶ 11-12; Ex. 1(b) at ¶¶ 11-12; Ex. 1(c) at ¶ 11; Ex. 1(d) at ¶ 11; Ex. 1(e) at ¶ 11.

Each of the Lead Plaintiffs took an active role in the litigation and has been fully committed to pursuing the claims on behalf of the proposed class since they became involved in the case.

During the course of the litigation, employees of Lead Plaintiffs dedicated a substantial number of hours to the litigation by, among other things: meeting and communicating with Lead Counsel regarding case strategy and developments; reviewing and commenting on pleadings and briefs filed in the Action; searching for and producing documents in response to Defendants' requests; preparing for and sitting for depositions; meeting and consulting with Lead Counsel regarding settlement negotiations; and evaluating and approving the proposed Settlement. *See id.* These efforts required Lead Plaintiffs' employees to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties.

Numerous courts have approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. In *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009), the court awarded $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class." *Id.* at *21. As the court noted, their efforts, which were comparable to the efforts of Lead Plaintiffs in this Action, were "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *Id.*; *see also In re Bank of Am. Corp. Sec., Derivative & ERISA Litig*. 772 F.3d 125, 132-33 (2d Cir. 2014) (affirming award of $453,003 to class representatives for time dedicated to the action by employees institutional lead plaintiffs); *see McDermid v. Inovio Pharms., Inc.*, No. 2:20-cv-01402-GJP, slip op. at 5 (E.D. Pa. Feb. 1, 2023), ECF No. 166 (Ex. 5F) (awarding $153,162.50 to lead plaintiffs in a PSLRA class action "for the time they spent directly related to their representation of the Class"); *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *29 (D.N.J. Dec. 9, 2008) (awarding "$150,000 to Lead Plaintiffs to compensate them for their reasonable costs and expenses directly

relating to their representation of the Class pursuant to 15 U.S.C. § 78u–4(a)(4)"); *Schering-Plough ENHANCE*, 2013 WL 5505744, at *37-*38 (approving awards of $102,447 to lead plaintiffs in PSLRA action).

The awards sought by Lead Plaintiffs are reasonable and justified under the PSLRA based on the significant amount of time their employees devoted to the Action on behalf of the Class and should be granted.

VII. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 25% of the Settlement Fund; $2,220,887.34 in payment of the reasonable litigation expenses that Lead Counsel incurred in connection with the prosecution and resolution of the Action; and PSLRA awards to Lead Plaintiffs of $113,431.79 in the aggregate.

Dated: September 2, 2025

Respectfully submitted,

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Counsel for Lead Plaintiffs and Lead Counsel for the Class

**Admitted Pro Hac Vice*

CERTIFICATION OF SERVICE

I hereby certify that on September 2, 2025, I caused the foregoing Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

Dated: September 2, 2025

/s/ *Adam H. Wierzbowski*
Adam H. Wierzbowski