

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE THE ALLSTATE CORPORATION
SECURITIES LITIGATION

Case No. 16-cv-10510

Hon. Robert W. Gettleman

CLASS ACTION

**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
PAYMENT OF LITIGATION EXPENSES**

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Class Counsel Labaton Sucharow LLP (“Labaton Sucharow” or “Class Counsel”) respectfully submits this memorandum of law in support of its motion seeking, pursuant to Rules 23(h) and 54 of the Federal Rules of Civil Procedure: (i) an award of attorneys’ fees on behalf of all Plaintiffs’ Counsel;¹ (ii) the payment of Litigation Expenses in the amount of \$4,225,162.33; and (iii) the costs and expenses incurred by Class Representatives in connection with their representation of the Class, pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), in the total amount of \$30,300.00.²

PRELIMINARY STATEMENT

As detailed in the Stipulation, the proposed Settlement, if approved by the Court, will resolve the Action in its entirety in exchange for a payment of \$90,000,000. This recovery represents an excellent result for the Class as it provides substantial, near-term compensation to Class Members, while avoiding the risks associated with pursuing the Action through trial and the inevitable appeals that would follow.

In order to achieve this significant recovery, Class Counsel vigorously pursued the claims for six years, overcoming Defendants’ motion to dismiss, obtaining class certification after two Rule 23(f) petitions to the Seventh Circuit, building the case through fact and expert discovery, defeating Defendants’ motion for summary judgment in significant part, defeating Defendants’ *Daubert* challenges in their entirety, preparing a Proposed Pretrial Order and exhibits, pre-trial motions, and negotiating aggressively against a widely recognized and respected defense firm on a fully contingent basis.

Class Counsel has not received any compensation for its successful prosecution of the

¹ Plaintiffs’ Counsel are Labaton Sucharow, Pomerantz LLP, and Thornton Law Firm.

² All capitalized terms not otherwise defined herein have the same meaning as those in the Stipulation and Agreement of Settlement, dated as of August 11, 2023 (the “Stipulation”) (ECF No. 541-1).

case and respectfully requests that Class Counsel be awarded an attorneys' fee equal to 25% of the Settlement Fund, which will include any accrued interest; that Class Counsel be paid out of the Settlement Fund for Litigation Expenses in the amount of \$4,225,162.33; and that Class Representatives' request for reimbursement in the total amount of \$30,300.00, pursuant to the PSLRA, be approved. This 25% fee request is consistent with fees awarded in comparable class action settlements in district courts within the Seventh Circuit. The requested fee has been approved by Class Representatives. *See* Ex. 1 at ¶¶7, 12; Ex. 2 at ¶¶7, 12.³

As discussed herein, as well as in the Hoffman Declaration, it is respectfully submitted that the requested fee is fair and reasonable when considered under the applicable standards in the Seventh Circuit, particularly in view of the substantial risks of continuing the Action, the considerable litigation efforts undertaken here, and the wholly contingent nature of the representation. Furthermore, the expenses requested are reasonable in amount and were necessarily incurred for the successful prosecution of the Action. The requested fees and expenses should therefore be awarded in full.

³ All exhibits referenced herein are annexed to the Declaration of Thomas G. Hoffman, Jr. in Support of (A) Class Representatives' Motion for Final Approval of Class Action Settlement and Plan of Allocation and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Hoffman Declaration" or "Hoffman Decl."), filed herewith. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. __ - __." The first numerical reference is to the designation of the entire exhibit to the Hoffman Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

The Hoffman Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Hoffman Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Action, the risks faced by the Class in pursuing litigation, the efforts that led to a settlement, and a description of the services provided by Class Counsel. Citations to "¶" in this motion refer to paragraphs in the Hoffman Declaration.

ARGUMENT

I. CLASS COUNSEL’S REQUEST FOR ATTORNEYS’ FEES OF 25% OF THE COMMON FUND SHOULD BE APPROVED

A. Counsel Is Entitled to an Award of Attorneys’ Fees from the Common Fund

It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has recognized that “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.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).⁴ Similarly, the Seventh Circuit has held that “[w]hen a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs’ attorneys to petition the court to recover its fees out of the fund.” *Florin v. Nationsbank of Ga., N.A.* (“*Florin P*”), 34 F.3d 560, 563 (7th Cir. 1994).

The Supreme Court has also emphasized that private securities actions, like this Action, are “an essential supplement to criminal prosecutions and civil enforcement actions” brought by the U.S. Securities and Exchange Commission (“SEC”). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); accord *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide “a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [SEC] action’”).

B. A Fee Applying the Percentage of the Fund Method Would Be Reasonable

Although courts within this Circuit have discretion to choose either the lodestar or percentage method of calculating fees,⁵ the Seventh Circuit has strongly endorsed the percentage

⁴ All internal quotations and citations are omitted unless otherwise noted.

⁵ See *Americana Art China Co., Inc. v. Foxfire Printing and Packaging, Inc.*, 743 F.3d 243, 247 (7th Cir. 2014) (“in our circuit, it is legally correct for a district court to choose either” the percentage method or the lodestar method in determining fee awards).

method, in which fees are awarded as a percentage of the common fund, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (“it is commonplace to award the lawyers for the class a percentage of the fund . . . in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis”); *Taubenfeld v. AON Corp.*, 415 F.3d 597 (7th Cir. 2005) (affirming fee award under the percentage of the fund method); *see also Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (noting that while courts have discretion, “the percentage method is employed by ‘the vast majority of courts in the Seventh Circuit’”).

The Seventh Circuit has recognized “that there are advantages to utilizing the percentage method in common fund cases because of its relative ease of administration.” *Florin I*, 34 F.3d at 566. *See also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage “than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so forth”); *Great Neck Cap. Appreciation Inv. P’Ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 411 (E.D. Wis. 2002) (noting that the Seventh Circuit recognizes the advantages of the percentage of the fund, including “its relative objectivity and the fact that it is easily administered”).

C. The Requested Fee Would Be Reasonable Under the Applicable Seventh Circuit Factors

When considering the reasonableness of a requested fee award, courts in the Seventh Circuit “must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001); *see also Hale*, 2018 WL 6606079, at *7. In applying this standard, the Seventh Circuit considers the following factors: (1) “awards

made by courts in other class actions”; (2) “the quality of legal services rendered”; and (3) “the contingent nature of the case.” *Taubenfeld v. AON Corp.*, 415 F.3d 597, 600 (7th Cir. 2005); *see also Synthroid*, 264 F.3d at 721 (a reasonableness determination “depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case”). These factors strongly support the fee requested here.

1. A Fee Award of 25% Is Well Within the Range of Fees Awarded in Similar Cases Within the Seventh Circuit

“[A]ttorneys’ fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court.” *Taubenfeld*, 415 F.3d at 600. In complex class action cases like this one, courts within the Seventh Circuit have held that percentages in the range of 33 1/3% to 40% of the recovery are appropriate. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (stating that “an award of 33.3% of the settlement fund is within the reasonable range”); *Retsky Family Ltd. P’ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) (“A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.”); *Goldsmith v. Tech. Sols. Co.*, 1995 WL 17009594, at *8 (N.D. Ill. Oct. 11, 1995) (“courts in this District commonly award attorneys’ fees equal to approximately one-third or more of the recovery”).

A review of attorneys’ fees awarded in class actions with comparably sized settlements within the Seventh Circuit supports the reasonableness of the 25% fee request. *See e.g., Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming a fee award of 27.5% of a \$200 million settlement); *Washtenaw Cnty. Emps.’ Ret. Sys. v. Walgreen Co.*, No. 15-

cv-3187, slip op. at 2 (N.D. Ill. Oct. 11, 2022) (Ex. 10)⁶ (awarding 27.5% of \$105 million settlement); *In re TikTok, Inc. Consumer Privacy Litig.*, 617 F. Supp. 3d 904, 940 (N.D. Ill. 2022) (awarding 33.3% of \$92 million settlement, minus litigation expenses); *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *13 (S.D. Ill. Dec. 16, 2018) (33.3% of a \$250 million settlement); *In re Groupon, Inc. Sec. Litig.*, 2016 WL 3896839, at *4 (N.D. Ill. July 13, 2016) (awarding 30% of \$45 million settlement); *In re Dairy Farmers of Am.*, 80 F. Supp. 3d 838, 842 (N.D. Ill. Feb. 20, 2015) (awarding 33% of \$46 million settlement); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (awarding 33% of \$62 million settlement); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira*, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (awarding 30% on \$60 million settlement); *In re Potash Antitrust Litig.*, 2013 WL 12470850, at *1 (N.D. Ill. June 12, 2013) (awarding one-third of \$90 million); *Heekin v. Anthem, Inc.*, 2012 WL 5878032, at *2 (S.D. Ind. Nov. 20, 2012) (awarding 33.3% of \$90 million settlement).

Moreover, a recent analysis by NERA Economic Consulting of securities class action settlements found that from 2013-2022, the median attorneys' fee award for settlements between \$25 million and \$99 million was 25%. See Janeen McIntosh, Svetlana Starykh & Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023) ("Jan. 2023 NERA Report"), Ex. 9 at 21.

In sum, the percentage fee requested here is reasonable and comparable to percentage fee awards made within the Seventh Circuit.

⁶ A compendium of unreported "slip" opinions, in alphabetical order, is attached as Exhibit 10 to the Hoffman Declaration.

2. The Quality of Legal Services Rendered

In evaluating fee requests, the Seventh Circuit considers the “quality of legal services rendered.” *Taubenfeld*, 415 F.3d at 600; *see also Silverman v. Motorola*, 2012 WL 1597388, at *3 (N.D. Ill. May 7, 2012) *aff’d*, 739 F.3d 956, (7th Cir. 2013) (approving class counsel’s fee request and noting that “[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity”). Courts have acknowledged that securities actions have become even more difficult from a plaintiff’s perspective in the wake of the PSLRA, the effect of which is to make it harder for investors to bring and successfully conclude securities class actions. *See, e.g., Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA’s “heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process”). As former Supreme Court Justice Sandra Day O’Connor explained, writing in an opinion of the Fifth Circuit, “To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action.” *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

From the inception of the Action, Class Counsel—a firm that practices extensively in the highly challenging field of complex class action litigation and has skillfully litigated these types of actions in courts across the country through trial (*see* Ex. 5-C) —engaged in a rigorous and concerted effort to obtain the maximum recovery for the Class. This case required an in-depth investigation, a thorough understanding of complicated factual and legal issues, extensive fact and expert discovery, class certification efforts involving two Rule 23(f) petitions, trial preparation, and the skill to respond to the host of challenges that Defendants raised during the litigation. *See generally* Hoffman Declaration; Memorandum of Law in Support of Class Representatives’ Motion for Final Approval of Class Action Settlement and Plan of Allocation

(“Settlement Memorandum”). Class Counsel’s efforts have resulted in an excellent result for the Class, particularly in light of the risks of a looming trial. Notably, the Settlement represents a substantial portion— approximately 16 or 17%—of the Class’s estimated maximum aggregate damages (i.e., approximately \$556 million or \$531 million) based on the analysis of the Class’s damages expert, and depending on the length of the Class Period. ¶¶10, 103, 121, 138.⁷ Defendants, however, strenuously maintained, and would continue to contend, that no liability or damages could be proven at trial, and aggregate damages would vary depending on the findings returned by a jury. ¶¶117-121. The significance of the recovery is further underscored by the fact that Defendants stated their intention to move for a directed verdict at the close of evidence, in which Class Representatives and the Class faced appellate risk from a favorable ruling on such a motion, the motions *in limine*, or any number of other evidentiary rulings the Court would have to make during trial. Accordingly, the quality of the legal services provided by Class Counsel over the course of the past six years, together with its substantial experience in complex class actions and commitment to the litigation, enabled Class Counsel to obtain the very favorable Settlement.

The quality of opposing counsel is also important in evaluating the quality of the work done by Class Counsel. *See, e.g., Beesley v. Int’l Paper Co.*, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (“Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination.”). Here, Class Counsel was opposed in this Action by very skilled and highly respected lawyers at DLA Piper, Skadden, Arps, Slate, Meagher & Flom LLP, McDermott Will & Emery, and Salvatore

⁷ *See, e.g., Shah v. Zimmer Biomet Holdings, Inc.*, 2020 WL 5627171, at *5 (N.D. Ind. Sept. 18, 2020) (preliminarily approving \$50 million settlement representing 8% of plaintiffs’ maximum possible damages); *Schulte*, 805 F. Supp. 2d at 583 (approving settlement representing 10% of estimated damages and noting approval of settlements around or below this percentage).

Prescott Porter & Porter, PLLC, firms with well-deserved reputations for vigorous advocacy in the defense of complex civil cases such as this. In the face of this formidable opposition, Class Counsel was able to develop the Class's case to the point where it was able to settle on terms very favorable to the Class.

3. Contingent Nature of the Case

As noted by the Seventh Circuit in *Synthroid*, “the market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear.” 264 F.3d at 721; *see also Silverman*, 739 F.3d at 958 (“The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.”). “Thus, [w]hen determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit.” *Hale*, 2018 WL 6606079, at *8. Indeed, as the Seventh Circuit has emphasized, “court[s] must also be careful to sustain the incentive for attorneys to continue to represent such clients on an inescapably contingent basis.” *Florin v. Nationsbank of Ga., N.A. (Florin II)*, 60 F.3d 1245, 1247 (7th Cir. 1995).

There are numerous examples where plaintiffs' counsel in securities cases such as this, after the expenditure of significant time and expenses, have received no compensation. Securities cases are regularly dismissed at the pleading stage, on summary judgment, lost at trial, and even reversed after plaintiffs prevailed at trial, as the law is complex and continually evolving. *See, e.g., Hubbard v. BankAtlantic Bancorp., Inc.*, 688 F.3d 713 (11th Cir. 2012) (in case tried by Labaton, affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversal of jury verdict of \$81 million); *see also* ¶¶142-44.

As set forth in the Hoffman Declaration and the Settlement Memorandum, had the Action not settled when it did, Class Counsel faced significant challenges to establishing liability and

damages at trial and beyond. Defendants vigorously contested the elements of scienter, falsity, materiality, reliance, loss causation and damages and would have continued to do so through trial, and any appeals. In the face of these very real uncertainties regarding the outcome of the case, Class Counsel prosecuted this Action on a wholly contingent basis, knowing that the litigation could last for years and would require devotion of a substantial amount of attorney time and a significant advance of litigation expenses with no guarantee of compensation or reimbursement. Plainly, Class Counsel here was not “assured of a paycheck.” *Florin II*, 60 F.3d at 1247. Class Counsel’s assumption of this contingency fee risk, and the extensive litigation of the Action in the face of these risks, strongly supports the reasonableness of the requested fee. *See Taubenfeld*, 415 F.3d at 600 (approving requested fee and noting that “lead counsel was taking on a significant degree of risk of nonpayment with the case”).

**D. The Requested Attorneys’ Fees Are Reasonable
Applying the Lodestar Method**

While a lodestar analysis is not required, a lodestar cross check confirms the reasonableness of the fee request. *See Silverman*, 2012 WL 1597388, at * 4 (“It is unnecessary to resort to a lodestar calculation to reinforce the same conclusion.”). Under the lodestar method, the court computes fees by “multiplying the number of hours each attorney or other professional expended on the case by his or her hourly rate.” *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). The court then typically adjusts the lodestar, by applying a multiplier, to reflect factors such as the contingent nature of the case, and the consequent risk of non-payment (or underpayment), and the quality of work performed. *See Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1998) (discussing rationale for risk multiplier and method of assessing it).

Plaintiffs’ Counsel spent more than 34,800 hours of attorney and other professional support time prosecuting the Action through November 10, 2023. ¶¶141, 151; Exs. 5-A, 6-A, and

7. Based on Plaintiffs' Counsel's hourly rates, the total lodestar is \$20,908,024.00.⁸ *See id.* This lodestar is a function of the vigorous prosecution of the case, as described in the Hoffman Declaration at Sections III-V. The hourly rates of Plaintiffs' Counsel here range from \$900 to \$1,375 for partners, \$650 to \$875 for of counsels, and \$335 to \$625 for staff attorneys and associates. *See* Exs. 5-A and 6-A.

Class Counsel submits that Plaintiffs' Counsel's rates are less than, or comparable to, those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2022, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. ¶150; Ex. 8. Additionally, Labaton Sucharow's rates were recently approved in *Ronge v. Camping World Holdings, Inc.* No. 18-cv-7030 (N.D. Ill. Aug. 5, 2020) (Ex. 10) (awarding 30% fee award in connection with \$12.5 million settlement).

The requested 25% fee, which would amount to \$22,500,000 (before interest), would represent a modest multiplier of approximately 1.08 of Plaintiffs' Counsel's total lodestar. This multiplier is well within the range of multipliers regularly awarded in securities class actions and other comparable litigation in the Seventh Circuit. *See, e.g., Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) ("Multipliers anywhere between 1.0 and 4.0 have been approved."); *Hale*, 2018 WL 6606079, at *14 (finding a multiplier of 2.83 reasonable).

E. Class Representatives Have Approved the Requested Fee

Northern California Carpenters and Providence are sophisticated institutional investors that were involved throughout the litigation of the Action and have a sound basis for assessing the reasonableness of the fee request. *See* Exs. 1 and 2. Class Representatives fully support and

⁸ The Supreme Court and courts in this Circuit have approved the use of current hourly rates, rather than historical rates, to calculate base lodestar figures in order to compensate counsel for the delay in receiving payment. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Smith v. Vill. of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) ("A court may elect to use ... current rates ... as acceptable compensation for the delay in payment of fees"); *Skelton*, 860 F.2d at 255 n.5 ("The courts in this circuit generally use current rates").

approve the fee request. *Id.*; ¶154. Further, the PSLRA was intended to encourage institutional investors like Class Representatives 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 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 731 (1995). 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. Accordingly, Class Representatives’ endorsement of the fee request in this PSLRA action supports its approval.

F. The Reaction of the Class to Date

The reaction of the Class to date also supports the requested fee. As of November 13, 2023, the Claims Administrator has disseminated 166,620 Claim Packets to potential Class Members and nominees informing them of, among other things, Class Counsel’s intention to apply to the Court for an award of attorneys’ fees not to exceed 25% of the Settlement Fund and payment of up to \$4.6 million in expenses. *See* Ex. 4 at ¶12 and Ex. 4-B at ¶¶4, 38. To date, no objections have been received. Class Counsel will address any future objections in its reply papers to be filed with the Court on December 12, 2023.

II. THE REQUESTED EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Class Counsel’s fee application includes a request for payment of Plaintiffs’ Counsel’s Litigation Expenses, which were reasonably incurred and necessary to the prosecution of this Action. These expenses are properly recovered by counsel. *See Beesley*, 2014 WL 375432, at *3 (“It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness

costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.”) (citing *Boeing*, 444 U.S. at 478).

As set forth in the Hoffman Declaration, Plaintiffs’ Counsel incurred \$4,225,162.33 in Litigation Expenses on behalf of the Class in the prosecution of the Action. ¶¶155-164; Exs. 5-B and 6-B; and 7. The largest component of expenses related to experts. Specifically, \$3,409,017.91, or approximately 81% of total expenses, was expended on such services. ¶158. The experts’ work in the Action is set forth in detail in the Hoffman Declaration. *See* ¶¶71, 81-82. In general, Class Counsel retained experts in the fields of damages and loss causation, the insurance industry, and executive compensation. Class Counsel also retained a trial consulting firm to assist with jury research, an accounting expert, as well as counsel to represent confidential witnesses. These experts and consultants were key for the analysis and development of the claims. Class Counsel’s loss causation and damages expert also assisted Class Counsel with the development of the proposed Plan of Allocation. ¶81.

Another component of the Litigation Expenses was for litigation support services, which were needed to host the electronic documents produced in the Action. These costs amounted to \$158,113.80. ¶160; Ex. 5-B. As noted in the Hoffman Declaration, among other things, Class Counsel utilized a third-party vendor to host Defendants’ productions on its sophisticated electronic database and litigation support platform. *Id.* Class Counsel also incurred expenses in connection with the services of the mediator, Honorable Layn R. Phillips (Ret.), and the three mediations held, totaling \$92,005.50. ¶161; Ex. 5-B.

Class Counsel were required to travel in connection with court appearances, depositions, witness meetings, and the mediations. Work-related transportation, lodging, and meal costs

totaled approximately \$201,886.78. ¶159; Exs. 5-B and 6-B. Any first-class airfare has been reduced to economy rates.

The expenses here also include the costs of electronic factual and legal research in the amount of \$109,466.52. ¶163; Exs. 5-B and 6-B. It is standard for attorneys to use databases such as PACER, LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues.

The other expenses for which Class Counsel seeks payment are the types that are necessarily incurred in litigation and routinely paid by clients in the non-contingent marketplace. These expenses include, among others, duplicating costs, long distance telephone and conference call costs, service fees, and filing fees.

The Settlement Notice informed potential Class Members that Class Counsel would apply for payment of expenses in an amount not to exceed \$4,600,000. The amount of Litigation Expenses requested, \$4,225,162.33, is below the amount listed in the Settlement Notice and, to date, there has been no objection to the request for expenses.

III. CLASS REPRESENTATIVES' REQUEST FOR COSTS AND EXPENSES PURSUANT TO THE PSLRA

Lastly, in connection with its request for payment of Litigation Expenses, Class Counsel also seeks reimbursement of \$30,300.00 in the aggregate for the costs and expenses (including lost wages) of Class Representatives in connection with their representation of the Class. *See* Ex. 1 at ¶¶8-12; Ex. 2 at ¶¶8-12.

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. 15 U.S.C. §78u-4(a)(4). Class Representatives took an active role in the litigation and have been fully committed to pursuing the Class’s claims since they became involved in the litigation. For

instance, Class Representatives reviewed documents filed in the Action and assisted counsel with responding to Defendants' discovery requests. Representatives of both Class Representatives sat for a deposition in connection with class certification. And, a representative from Northern California Carpenters prepared for, traveled to, and participated in all three mediations in the case, two of which took place in New York. *See* Ex. 1 at ¶10. These efforts required Class Representatives to dedicate time and resources to the Action that they would have otherwise devoted to their regular duties. The requested reimbursement amounts are based on the hours that Class Representatives committed to these activities. Ex. 1 at ¶11; Ex. 2 at ¶11.

Numerous courts have approved reasonable awards to compensate plaintiffs for the time and effort they spent on behalf of a class. *See, e.g., In re Groupon, Inc. Sec. Litig.*, 2016 WL 3896839, at *4 (awarding class plaintiffs \$5,000 each for their time and expenses incurred in prosecuting the action); *In re ITT Educ. Servs., Inc. Sec. Litig. (Indiana)*, No. 14 cv 01599, 2016 WL 1162534 at *5 (S.D. Ind. Mar. 24, 2016) (awarding institutional lead plaintiff \$10,000 for reasonable costs and expenses directly related to its representation of the settlement class).

Accordingly, it is respectfully submitted that the amount sought by Class Representatives is reasonable and should be granted.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court award (i) attorneys' fees in the amount of 25% of the Settlement Fund; (ii) payment of Litigation Expenses totaling \$4,225,162.33, plus interest incurred at the same rate as the Settlement Fund; and (iii) reimbursement of \$30,300.00 to Class Representatives.⁹

DATED: November 14, 2023

Respectfully submitted,

⁹ A proposed order will be submitted with Class Counsel's reply papers, after the deadline for objecting has passed.

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Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2023, I caused the foregoing document to be electronically filed, using the Court's CM/ECF system, which will cause the document to be sent electronically to the registered participants as identified on the attached Electronic Mail Notice List.

/s/ Michael P. Canty _____

Michael P. Canty