UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CITY OF SUNRISE GENERAL EMPLOYEES' RETIREMENT PLAN, on behalf of itself and all others similarly situated, Plaintiff, v. FLEETCOR TECHNOLOGIES, INC., RONALD F. CLARKE, and ERIC R. DEY, Defendants.	Civ. A. No. 1:17-cv-02207-LMM CLASS ACTION

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

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Lead Counsel Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") respectfully submits this memorandum of law in support of its motion, on behalf of Plaintiffs' Counsel, for an award of attorneys' fees in the amount of 25% of the Settlement Fund, or $12,500,000 plus interest earned at the same rate as earned by the Settlement Fund. Lead Counsel also seeks $299,281.79 for Litigation Expenses paid or incurred by Plaintiffs' Counsel and payment of $8,613.80 for costs incurred by Lead Plaintiff City of Sunrise General Employees' Retirement Plan ("Sunrise") directly related to its representation of the Class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[1]

I. PRELIMINARY STATEMENT

The proposed Settlement, which provides for a cash payment of $50,000,000 in exchange for the resolution of all claims in the Action, represents an excellent result for the Class. The significant recovery was achieved only after more than two years of intense litigation against highly skilled defense counsel and extensive

[1] Unless otherwise defined in this memorandum, all capitalized terms have the meanings defined in the Stipulation and Agreement of Settlement, dated November 6, 2019 (the "Stipulation") or in the Declaration of Katherine M. Sinderson in Support of (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses (the "Sinderson Declaration" or "Sinderson Decl."). Citations to "¶ __" in this memorandum refer to paragraphs in the Sinderson Declaration and citations to "Ex. __" refer to exhibits in the Sinderson Declaration.

negotiations by experienced and skillful attorneys that specialize in securities litigation. In undertaking this litigation on a fully contingent basis, counsel faced numerous challenges to proving both liability and damages that raised serious risks of no recovery, or a significantly lesser recovery than the Settlement, for the Class.

The prosecution and settlement of this litigation required extensive efforts on the part of counsel. As detailed in the accompanying Sinderson Declaration, Lead Counsel and the other Plaintiffs' Counsel vigorously pursued this litigation from its outset by, among other things: (i) conducting a comprehensive investigation into the claims asserted in the Action (¶¶ 5, 19-20, 99); (ii) researching, drafting, and filing two complaints, including the initial complaint and the operative Amended Class Action Complaint (the "Complaint") (¶¶ 5, 15, 22, 99); (iii) defeating, in part, Defendants' motion to dismiss the Complaint (¶¶ 5, 29, 99); (iv) engaging in significant fact and expert discovery, which included obtaining and reviewing over 315,000 pages of documents from Defendants and third parties (¶¶ 5, 32-41, 99); (v) successfully moving for class certification (¶¶ 42-47); and (vii) engaging in extensive settlement negotiations, which included participation in a full-day mediation session, under the auspices of an experienced and highly respected mediator, Jed D. Melnick (¶¶ 51-52).

The Settlement achieved through counsel's efforts is a particularly favorable

result considering the significant hurdles that Lead Plaintiff would have had to overcome to prevail in this complex securities fraud litigation. As further detailed below and in the Sinderson Declaration, counsel faced numerous substantial challenges in establishing liability, loss causation, and damages in the Action. Despite these risks, Plaintiffs' Counsel collectively worked over 18,000 hours over the course of more than two years to achieve the Settlement, all on a contingent-fee basis with no assurance of ever being paid.

As compensation for Plaintiffs' Counsel's considerable efforts on behalf of the Class and the risks of nonpayment they faced in prosecuting the Action on a contingent basis, Lead Counsel seeks attorneys' fees in the amount of 25% of the Settlement Fund. The requested 25% fee is equal to the "benchmark" fee established for percentage fee awards in the Eleventh Circuit and well within the range of fees that courts in this Circuit have awarded in securities and other complex class actions with comparable recoveries on a percentage basis. The requested fee also represents a multiplier of just 1.5 on Plaintiffs' Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with significant contingency risks such as this one. In addition, the expenses for which Plaintiffs' Counsel seek payment were reasonable and necessary for the successful prosecution of the Action.

The application for fees and expenses has the full support of Lead Plaintiff. *See* Declaration of Emilie Smith on behalf of Sunrise (Ex. 2) (the "Smith Decl."), at ¶¶ 8-9. Lead Plaintiff is a sophisticated institutional investor that actively supervised the Action and has endorsed the requested fee as fair and 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 to the request for fees and expenses have been received. Sinderson Decl. ¶¶ 84, 111.

For all the reasons discussed in this memorandum and in the Sinderson Declaration, Lead Counsel respectfully submits that the requested attorneys' fees and expenses are fair and reasonable.

II. ARGUMENT

A. The Eleventh Circuit Holds that A Reasonable Percentage of the Recovery is the Appropriate Method For Awarding Attorneys' Fees

Courts have long recognized that attorneys who represent a class and achieve a benefit for class members are entitled to be compensated for their services, and that attorneys who obtain a recovery for a class in the form of a common fund are entitled to an award of fees and expenses from that fund. *See Boeing Co. v. Van*

Gemert, 444 U.S. 472, 478 (1980); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991). "The purpose of awarding fees is to compensate successful attorneys for the benefits they have achieved for the class as a result of the attorneys' efforts, for the risks the attorneys have taken in prosecuting a long and complex case, and for the hours and expenses the attorney has invested in the case." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 353 (N.D. Ga. 1993).

In the Eleventh Circuit, "attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774; *accord Faught v. Am. Home Shield Corp.*, 668 F.3d 1233, 1242 (11th Cir. 2012); *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999).

B. The Requested Fee of 25% is Fair and Reasonable

The Eleventh Circuit has established 25% of the settlement fund as a "benchmark" (and presumptively reasonable) fee award in common-fund cases. *See Faught*, 668 F.3d at 1243 ("25% is generally recognized as a reasonable fee award in common fund cases"); *Camden I*, 946 F.2d at 774-75 ("[t]he majority of common fund fee awards fall between 20% to 30% of the fund," and district courts consider the middle of that range—25%—as a "benchmark" that "may be adjusted in accordance with the individual circumstances of each case"); *Flournoy v. Honeywell*

Int'l, Inc., 2007 WL 1087279, at *1 (S.D. Ga. Apr. 6, 2007) ("the appropriate standard for fee awards in common fund cases is a percentage of the fund . . . with the benchmark award being twenty-five percent").

A review of percentage fee awards approved by Courts within this District and Circuit in complex common fund cases involving comparable recoveries confirms that the 25% fee sought by Lead Counsel is fair and reasonable. *See, e.g., Waters*, 190 F.3d at 1293-98 (affirming award of 33.3% of $40 million settlement); *In re Rayonier Inc. Sec. Litig.*, 2017 WL 4542852, at *3 (M.D. Fla. Oct. 5, 2017) (awarding 30% of $73 million settlement); *Local 703, I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp.*, 2015 WL 5626414, at *1 (N.D. Ala. Sept. 14, 2015) (awarding 30% of $90 million settlement); *In re Carter's, Inc. Sec. Litig.*, 2012 WL 12877943, at *1 (N.D. Ga. May 31, 2012) (awarding 28% of $20 million settlement); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *8 (N.D. Ga. Oct. 26, 2016) (awarding one-third of $75 million settlement); *In re BellSouth Corp. Sec. Litig.*, 2007 WL 9676400, at *2 (N.D. Ga. Apr. 9, 2007) (awarding 30% of $35 million settlement). In addition, the 25% fee request is also consistent with fees awarded by courts in other Circuits in similarly

sized securities class action settlements.[2]

In sum, when judged against the Eleventh Circuit benchmark, and compared to fees awarded in class action settlements of similar magnitude, the requested 25% fee is fair and reasonable.

C. Lead Plaintiff's Endorsement of the Requested Fee Supports Its Approval

Lead Plaintiff is a sophisticated institutional investor that took an active role in the litigation and closely supervised the work of Lead Counsel. *See* Smith Decl. ¶ 2-6, 8. Lead Plaintiff has approved the requested fee as fair and reasonable in light of the work performed, the recovery obtained for the Class, and the risks associated with continuing to litigate the Action. *Id* ¶ 8. In addition, the fee requested is consistent with the retainer agreement entered into between Lead Counsel and Lead Plaintiff at the outset of the litigation. *Id.* Lead Plaintiff's endorsement of the fee supports its approval. *See Carter's*, 2012 WL 12877943, at *2 (approving fee request that was "reviewed and approved as fair and reasonable by Lead Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and

[2] *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 2077847, at *4 (N.D. Cal. May 10, 2019) (awarding 25% of $48 million settlement); *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at *9 (E.D. Pa. Sep. 20, 2017) (awarding 25% of $30 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).

resolution of the claims and who has a substantial interest in ensuring that any fees paid to Lead Plaintiff's Counsel are duly earned and not excessive").

D. The Relevant Factors Confirm That the Requested Fee is Fair and Reasonable

In *Camden I*, the Eleventh Circuit recommended that district courts consider several factors in determining whether a requested percentage fee award is reasonable, including:

> (1) the time and labor required; (2) the novelty and the difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to the 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.

946 F.2d at 772 n.3 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974)). A court may also properly consider "the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel . . . and the economics involved in prosecuting a class action." *Id*. at 775.

Although the Eleventh Circuit has since stated that a full analysis of the *Johnson* and other factors is only necessary if the fee request exceeds 25%, *see*

Faught, 668 F.3d at 1242, Lead Counsel nonetheless urges the Court to consider these factors, as they provide strong support for approval of the 25% fee request.

1. The Time and Labor Required

The time and diligent effort expended by Plaintiffs' Counsel to achieve the Settlement supports the requested fee. Lead Counsel committed extensive resources to developing the challenging aspects of Lead Plaintiff's claims and overcoming the obstacles introduced by Defendants over more than two years of hard fought litigation. As discussed in greater detail in the Sinderson Declaration, Lead Counsel, among other things: (i) conducted a comprehensive factual investigation of the claims at issue in the Action (¶¶ 5, 19-20, 99); (ii) prepared and filed two complaints (¶¶ 5, 15, 22, 99); (iii) defeated, in part, Defendants' motion to dismiss (¶¶ 5, 29, 99); (iv) engaged in significant fact discovery, which included reviewing and analyzing over 315,000 pages of documents from Defendants and third parties (¶¶ 5, 32-41, 99); (v) successfully moved for class certification, which included the preparation of an expert report and defending two depositions (¶¶ 42-47); and (vii) participated in extensive settlement negotiations overseen by an experienced mediator, including a full-day mediation session (¶¶ 51-52).

In total, Plaintiffs' Counsel expended over 18,000 hours in this litigation with a resulting lodestar of $8,151,857.75. ¶ 102. The time and labor expended by

Plaintiffs' Counsel amply support the requested fee.

While not required in the Eleventh Circuit, an analysis of the requested fee under the "lodestar/multiplier" approach further supports the reasonableness of a 25% award. *See, e.g.*, *Waters*, 190 F.3d at 1298 ("[W]hile we have decided in this circuit that a lodestar calculation is not proper in common fund cases, we may refer to that figure for comparison."). Here, based on the $50 million Settlement Fund, the requested 25% fee award (or $12,500,000 before interest), represents a multiplier of approximately 1.5 on Plaintiffs' Counsel's total lodestar.[3] Given that multipliers between 2 and 5 are commonly awarded in complex class actions with substantial contingency risks, the multiplier requested here confirms the reasonableness of the requested fee. *See, e.g.*, *In re Equifax Inc. Customer Data Breach Litig.*, 2020 WL 256132, at *39 (N.D. Ga. Jan. 13, 2020) (awarding fee representing 2.62 multiplier and describing it as "consistent with multipliers approved in other cases"); *Columbus Drywall*, 2012 WL 12540344, at *5 and n.4 (noting multiplier of 4 times lodestar is "well within" the accepted range); *Pinto v. Princess Cruise Lines, Ltd.,* 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) (finding that lodestar multipliers "in large and complicated class actions" tend to range from 2.26 to 4.5) (citations omitted);

[3] The multiplier is calculated by dividing the $12,500,000 fee request by the $8,151,857.75 in lodestar that Plaintiffs' Counsel incurred.

Ingram v. Coca-Cola Co., 200 F.R.D. 685, 694-96 (N.D. Ga. 2001) (awarding fee representing a multiplier between 2.5 and 4).

2. The Novelty and Difficulty of the Issues

As courts have recognized, "multi-faceted and complex" issues are "endemic" to cases based on alleged violations of federal securities law, *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992), and "securities class action litigation is 'notably difficult and notoriously uncertain.'" *In re NetBank, Inc. Sec. Litig.*, 2011 WL 13353222, at * 3 (N.D. Ga. Nov. 9, 2011). This Action was no exception.

As further detailed in the Sinderson Declaration, Lead Plaintiff and Lead Counsel faced a number of substantial challenges to establishing liability and proving damages in this Action from the outset. Defendants contested their liability on falsity, materiality, and scienter grounds as well as issues regarding loss causation and damages.

First, Lead Plaintiff and its counsel would have faced substantial challenges in proving that Defendants' statements were false when made. ¶¶ 58-62. Defendants would have continued to argue that their (historical and accurate) statements about FleetCor's revenue were not false and do not give rise to any duty to disclose allegedly fraudulent fee practices that contributed to that revenue. ¶¶ 60-61. Defendants would have also continued to argue that their statements concerning

FleetCor's revenue did not even mention the manner in which FleetCor generated revenue from fees, and the statements contained no projections of future performance that would arguably impose a duty on Defendants to disclose that its business model or fee practices were unsustainable. ¶ 61. Significantly, Defendants would have also continued to argue that Lead Plaintiff's allegations are based entirely on a report issued by a notorious short-seller and sound more in consumer fraud than securities fraud. ¶ 59.

Defendants would also continue to argue that FleetCor's investors were told that the Company obtained revenue from various fees, including "transaction fees, card fees, network fees and charges," and that they had no obligation to elaborate further into a detailed account of each and every fee involved. ¶ 62. Moreover, Defendants would argue that their statements that FleetCor's fuel cards were "fee free" were not actionable because they were never included in any statement addressed to investors. *Id*. Even if Lead Plaintiff could establish that FleetCor perpetrated a fraud on its ***customers***, Defendants would argue that Lead Plaintiff could not prove that FleetCor defrauded ***investors***. ¶ 59.

Second, Lead Plaintiff faced risks in proving that FleetCor's allegedly fraudulent fee practices materially impacted the Company's total revenue. For example, Defendants would contend that Lead Plaintiff could not show that the 10%

growth of FleetCor's revenue in 2016 was derived from improper fee practices and thus the alleged misstatements were not material. ¶ 63.

Third, even if Lead Plaintiff succeeded in proving that Defendants' statements were materially false, Lead Plaintiff faced challenges in proving that Defendants made the alleged false statements with the intent to mislead investors or were severely reckless in making the statements. Defendants argue that they did not know that the fee initiatives instituted by the Company were improper or fraudulent at the moment that the revenue statements were made. ¶ 67. Indeed, they claim that the fee practices were proper and within the scope of the Terms and Conditions that govern the agreements regarding its fuel cards. *Id*. Defendants would again argue that, even if Plaintiffs overcame the hurdle of proving that Defendants knew that the Company's fee practices were wrongful at the time the statements were made, that could show, at most, Defendants' intent to defraud *consumers* by fraudulently marketing their fuel cards as "no fee"—not an intent to deceive *investors*. ¶ 68.

Defendants will further argue that Lead Plaintiff could not prove scienter by pointing to their sales of FleetCor stock during the Class Period. Defendants will argue that their sales were not unusual in amount when considering their holdings of FleetCor stock options, and that their selling pattern of remained consistent during the Class Period as it did before. ¶ 69. Moreover, Defendants will proffer evidence

that these Defendants actually *increased* their overall holdings of FleetCor shares during the Class Period to support their argument that there was no motive and no intent to defraud investors. *Id*.

While many of these arguments were made unsuccessfully by Defendants on their motion to dismiss, when the Court was required to accept all allegations in the Complaint as true, there was a significant possibility that Defendants could have succeeded in these arguments at subsequent stages of the litigation when allegations in the Complaint would need to be supported by admissible evidence. On all these issues, Lead Plaintiff would have to prevail at several stages – on a motion for summary judgment and at trial, and if it prevailed on those, on the appeals that would likely to follow – which would likely have taken years. At each stage, there would be very significant risks attendant to the continued prosecution of the Action, as well as considerable delay.

Finally, even assuming that Lead Plaintiff overcame each of the above risks, Lead Plaintiff would have confronted considerable additional challenges in establishing loss causation and damages. Defendants have argued and would continue to claim that most of the alleged corrective disclosures did not reveal any new information and, instead were based on information available to the public long before they were issued. ¶ 73. Defendants also contend that Lead Plaintiff bears the

burden of proof in "disaggregating" the impact of any actionable disclosures from non-fraud information released on the alleged disclosure dates and that Lead Plaintiff would not be able to do so. ¶ 74. These arguments presented significant risks to the Class that they would not be able to recover at all or might be able to establish only substantially reduced damages.

Thus, Lead Counsel faced multiple difficult and significant obstacles in prosecuting this Action. However, notwithstanding these obstacles, Lead Counsel achieved an excellent result for the Class. Success in the face of these obstacles strongly supports the requested fee award.

3. The Skill, Experience, Reputation and Ability of the Attorneys

Under these factors, the court should consider "the skill and acumen required to successfully investigate, file, litigate, and settle a complicated class action lawsuit such as this one," *David v. Am. Suzuki Motor Corp.*, 2010 WL 1628362, at *8 n.15 (S.D. Fla. Apr. 15, 2010), and "the experience, reputation and ability of the attorneys" involved. *Camden I*, 946 F.2d at 772 n.3; *see also Columbus Drywall*, 2012 WL 12540344, at *4 ("The appropriate fee should also reflect the degree of experience, competence, and effort required by the litigation.").

From the inception of the Action, Lead Counsel engaged in a skillful and concerted effort to obtain the maximum recovery for the Class. As noted above, this

case required an in-depth investigation, a thorough understanding of complicated issues, and the skill to respond to a host of legal and factual issues raised by Defendants during the litigation. Lead Counsel practices extensively in the highly challenging field of complex class action litigation and is one of the nation's leading securities class action litigation firms. *See* Sinderson Decl. ¶ 104 and Ex. 3A-3. Without question, Lead Counsel's skills and experience were an important factor in obtaining the excellent result achieved in this Settlement.

This Court should also consider "the quality of the opposition" the plaintiff's attorneys faced in awarding Lead Counsel a fee. *See Columbus Drywall*, 2012 WL 12540344, at *4. Here, Defendants were represented by King & Spalding LLP, a nationally prominent defense firm that vigorously contested the Action through a motion to dismiss, motion for class certification, and in the extensive discovery process. Lead Counsel's ability to obtain a favorable Settlement for the Class despite this formidable legal opposition confirms the quality of the representation that Lead Counsel provided here. Accordingly, this factor also supports the fee requested.

4. The Preclusion of Other Employment

The considerable amount of time spent prosecuting this case – over 18,000 hours (¶ 102) – was time that Plaintiffs' Counsel could not devote to other matters. Moreover, Plaintiffs' Counsel expended this time and effort without any assurance

that they would be successful or that they would ever be compensated for their hard work. Accordingly, this factor also supports the requested fee.

5. The Customary and Contingent Nature of the Fee

The "customary fee" in a class action lawsuit of this nature is a contingency fee because virtually no class member possesses a sufficiently large stake in the litigation to justify paying attorneys on an hourly basis. *See Norman v. Hous. Auth. of City of Montgomery*, 836 F.2d 1292, 1299 (11th Cir. 1988).

The contingent nature of Plaintiffs' Counsel's fees should be given substantial weight in assessing the requested fee award. *See In Friedman's, Inc. Sec. Litig.*, 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2009); *see also In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1364 (S.D. Fla. 2011) ("[T]he contingent fee risk is an important factor in determining the fee award."). Courts have consistently recognized that the risk that class counsel could receive no recovery is a major factor in determining the award of attorneys' fees. *See Ressler*, 149 F.R.D. at 654-55 ("The substantial risks of this litigation abundantly justify the fee requested . . . ."). "A contingency fee arrangement often justifies an increase in the award of attorneys' fees," *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990), "because if the case is lost a lawyer realizes no return for investing time and money in the case." *Equifax*, 2020 WL 256132, at *33.

Success in contingent litigation such as this is never assured. In other cases, plaintiffs' counsel in shareholder litigation have suffered major defeats after years of litigation in which they expended millions of dollars of time and received no compensation at all. Even a victory at trial is not a guarantee of success.[4] As noted above, Lead Plaintiff's claims in this Action faced multiple hurdles that could have precluded or substantially limited any recovery. Indeed, because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result, and that such a result would be realized, if at all, only after considerable and difficult effort. Thus, the substantial risks of the Action also justify the requested fee.

6. The Amount Involved and Results Achieved

"It is [also] well-settled that one of the primary determinants of the quality of the work performed is the result obtained." *Friedman's*, 2009 WL 1456698, at *3 (alteration in original); *see also Domestic Air*, 148 F.R.D. at 351 ("The most important element in determining the appropriate fee to be awarded class counsel

[4] *See*, *e.g.*, *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997), *reh'g en banc denied*, 129 F.3d 617 (11th Cir. 1997) (finding no loss causation and overturning $81 million jury verdict); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (overturning jury verdict in favor of plaintiff class estimated at $42 million, and granting judgment as a matter of law in favor of defendants).

out of a common fund is the result obtained for the class through the efforts of such counsel.").

As noted above, the excellent result obtained here was accomplished despite the substantial difficulties of proving liability for securities fraud and the risks of establishing loss causation and damages in this case. The $50 million cash Settlement that Lead Counsel obtained represents from 9% to 44% of the Class's estimated ***maximum*** recoverable damages of approximately $566 million to $114.8 million, depending on the outcome of certain of Defendants' loss causation and damage arguments. *See* ¶¶ 75-76.[5] Moreover, the $50 million Settlement far exceeds the inflation-adjusted median of $6.3 million in securities class action settlements in the Eleventh Circuit from 2010 through 2019, representing an average recovery of 5.2% of estimated damages. *See* Cornerstone Research, *Securities Class Action Settlements, 2019 Review and Analysis* (2020) at 20. In sum, the significant recovery obtained in this Action also supports approval of the requested fee.

7. The Undesirability of the Case

In certain instances, the "undesirability" of a case can be a factor in justifying

[5] *See In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (finding that settlement with recovery of "approximately 9% of the possible damages," which was substantially higher than the average recovery in securities class action settlements, weighed in favor of a higher fee).

the award of a requested fee. There are risks inherent in financing and prosecuting complex litigation of this type. When Lead Counsel undertook representation of Lead Plaintiff in this Action, it was with the knowledge that Lead Counsel would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. Apart from the risk of no recovery, deferring fees in an undertaking like this while at the same time advancing hundreds of thousands of dollars in expenses would deter many firms. Indeed, it is noteworthy that Lead Counsel filed the sole complaint in this matter and that, and in contrast to most PSLRA Actions, the motion for appointment of Lead Plaintiff and Lead Counsel was not contested. This demonstrates that many experienced firms deemed the case sufficiently risky that they did not believe that this action was worth pursuing on a contingent fee basis, and supports approval of the requested fee. *See Thorpe v. Walter Inv. Mgmt. Corp.,* 2016 WL 10518902, at *11 (S.D. Fla. Oct. 17, 2016); *Ressler*, 149 F.R.D. at 655. Thus, the "undesirability" of the case also weighs in favor of awarding the requested fee.

8. Awards in Similar Cases

As discussed above in Section II.B, Lead Counsel's requested fee of 25% is the same as the presumptively fair and reasonable benchmark fee awarded in class action cases in this Circuit. *See Faught*, 668 F.3d at 1242; *Camden I*, 946 F.2d at

774-75. Moreover, as also shown above, courts in this District and Circuit have frequently awarded higher percentage fees in comparable class action settlements. *See* Section II.B, *supra*. Thus, this factor strongly supports the reasonableness of the requested fee.

9. The Time Required to Reach Settlement

A substantial amount of time was required to resolve the Action and the Settlement was achieved only after more than two years of litigation. This was not a case, for example, where the parties reached an early settlement—to the contrary, before the Parties reached any agreement to settle, Lead Counsel vigorously opposed Defendants' motion to dismiss, conducted significant discovery, successfully moved for class certification, and engaged in substantial settlement and mediation efforts. ¶¶ 23-31, 43-53. The significant amount of time expended on the prosecution of the claims and the negotiation of the Settlement, including the over 18,000 hours Plaintiffs' Counsel dedicated to the Action, further supports the requested fee award.

10. The Reaction of the Class

Through February 21, 2020, more than nearly 60,000 copies of the Notice had been mailed to potential Class Members and their nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. *See* Declaration of Alexander Villanova submitted by the Court-

approved Claims Administrator, Epiq (Ex. 1) (the "Villanova Decl."), at ¶¶ 8-9. The Notice advised Class Members that Lead Counsel would apply for fees not to exceed 25% of the Settlement Fund. While the deadline for filing objections to the fee application is not until March 24, 2020, to date, no objections to the requested fee have been filed. ¶¶ 84, 111.[6]

E. Lead Counsel's Request for Payment of Litigation Expenses is Fair and Reasonable

Lead Counsel also requests payment of $299,281.79 for the Litigation Expenses incurred by Plaintiffs' Counsel in prosecuting the Action. It is well-established that "class counsel's reasonable and necessary out-of-pocket expenses should be reimbursed." *Carpenters Health & Welfare Fund v. Coca-Cola Co.*, 587 F. Supp. 2d 1266, 1272 (N.D. Ga. 2008); *see also NetBank*, 2011 WL 1335322, at *4 ("It has long been held that '"plaintiff's counsel is entitled to be reimbursed from the class fund for the reasonable expenses incurred in this action."').

The expenses for which Lead Counsel seeks 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, costs for experts, a document database, on-line research, court fees, telephone, photocopying, postage,

[6] Should any objections be filed, they will be addressed in Lead Counsel's reply papers to be filed on or before April 7, 2020.

and out-of-town travel. ¶ 115, 118. A complete breakdown of the expenses incurred by Plaintiffs' Counsel in each category is included in Exhibit 4 to the Sinderson Declaration. These expense items were charged separately by Plaintiffs' Counsel, and such charges were not duplicated in the firms' hourly rates.

The Notice informed potential Class Members that Lead Counsel would apply for payment of Litigation Expenses in an amount not to exceed $450,000, which might include the costs and expenses of Lead Plaintiff directly related to its representation of the Class. *See* Notice ¶¶ 5, 75. The total amount of expenses requested by Lead Counsel is $307,895.59, which includes $299,281.79 for Litigation Expenses incurred by Plaintiffs' Counsel and $8,613.80 for costs and expenses incurred by Lead Plaintiff in its representation of the Class, an amount substantially below the figure listed in the Notice. To date, there has been no objection to the request for expenses.

Because the Litigation Expenses incurred by Plaintiffs' Counsel are of the type for which payment is routinely ordered in common fund cases and were essential to the successful prosecution and resolution of the Action, the requested expenses should be approved. *See Equifax*, 2020 WL 256132, at *40 (awarding expenses "for such items as court reporter fees; document and database reproduction and analysis; e-discovery costs; expert witness fees; travel for meetings and

hearings; paying the mediator; and other customary expenditures" and finding that such expenses "are reasonable and were necessarily incurred on behalf of the class").

F. Lead Plaintiff's Request for Payment of Costs Directly Related to Its Representation of the Class Is Fair and Reasonable

In connection with its request for reimbursement of Litigation Expenses, Lead Counsel also seeks payment for the costs and expenses incurred directly by Sunrise in its representation of the Class. 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, Sunrise seeks an award of $8,613.80 for the time dedicated by Emilie Smith, the Chairperson of its Board of Trustees, in supervising and participating in the Action. *See* Smith Decl. ¶¶ 10-12. Sunrise, through Ms. Smith, took an active role in the litigation, including, among other things, reviewing significant pleadings and briefs filed in the Action; communicating regularly with Lead Counsel regarding developments in the Action; searching for and gathering internal documents for production in response to Defendants' document requests; preparing and sitting for deposition in connection with Lead Plaintiff's class-certification motion; and evaluating and approving the Settlement. *Id*. ¶¶ 5-6.

Courts in this Circuit have routinely approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. *See, e.g.*, *In re Flowers Foods, Inc. Sec. Litig.*, 2019 WL 6771749, at *2 (M.D. Ga. Dec. 11, 2019) (awarding plaintiffs $10,000 each "as reimbursement for [their] reasonable costs and expenses directly related to [their] representation of the Settlement Class"); *In re Synovus Fin. Corp.*, 2014 WL 12756149, at *1 (N.D. Ga. Nov. 18, 2014) (awarding a total of $15,200 to two institutional lead plaintiffs).

The requested award sought by Lead Plaintiff is reasonable and justified under the PSLRA based on its involvement in the Action from inception to settlement, and should be granted.

CONCLUSION

For the reasons discussed above and in the Sinderson Declaration, Lead Counsel respectfully request that the Court: (i) award attorneys' fees to all Plaintiffs' Counsel in the amount of 25% of the Settlement Fund, or $12,500,000, plus interest earned at the same rate as earned by the Settlement Fund; (ii) award $299,281.79 in payment of the reasonable Litigation Expenses that Plaintiffs' Counsel incurred in prosecuting the Action; and (iii) award $8,613.80 as payment for the costs incurred by Lead Plaintiff directly relating to its representation of the Class.

Dated: March 10, 2020

Respectfully submitted,

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RULE 7.1(D) CERTIFICATION

The undersigned counsel certifies that this document has been prepared with 14 point Times New Roman, one of the font and point selections approved by the Court in Local Rule 5.1(C).

/s/ Katherine M. Sinderson
Katherine M. Sinderson

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2020, I caused a true and correct copy of the foregoing to be filed with the Clerk of Court using the CM/ECF system, which will automatically send notification of such filing and make available the same to all attorneys of record.

/s/ Katherine M. Sinderson
Katherine M. Sinderson