UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE FORTERRA, INC. SECURITIES LITIGATION	Case No.: 3:18-cv-01957-X CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

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I. INTRODUCTION

Plaintiffs' Counsel have succeeded in obtaining $5,500,000 in cash (the "Settlement") for the benefit of the Settlement Class in the above-captioned action (the "Action").[1] This result is a highly-favorable recovery in the face of substantial risks, and is the product of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. As compensation for these efforts, Lead Counsel respectfully requests: (1) an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund on behalf of Plaintiff's Counsel; (2) reimbursement of litigation expenses incurred by Plaintiff's Counsel in prosecuting this Action in the amount of $60,504.95; and (3) reimbursement of $10,000 to Lead Plaintiff Wladislaw Maciuga ("Lead Plaintiff") and $5,000 to named Plaintiff Supanin Disayawathana (together with Lead Plaintiff, the "Plaintiffs") for their reasonable costs and expenses incurred directly in connection with representing the Settlement Class.

II. FACTUAL AND PROCEDURAL HISTORY

The Sams Declaration is an integral part of this submission. The Court is respectfully referred to it for a detailed description of the factual and procedural history of the litigation, the claims asserted, the extensive work performed by Plaintiffs' Counsel, the settlement negotiations, and the numerous risks and uncertainties presented in this litigation.

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[1] Plaintiffs' Counsel consists of the Court-appointed Lead Counsel, Glancy Prongay & Murray LLP ("GPM"), and Liaison Counsel, The Kendall Law Group, PLLC. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated November 4, 2019 (ECF No. 123-1), or the concurrently-filed Declaration of Ex Kano S. Sams II in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Sams Declaration" or "Sams Decl."). Unless otherwise noted, all citations herein to "¶__" and "Ex. __" refer, respectively, to paragraphs in, and exhibits to, the Sams Declaration.

III. PLAINTIFFS' COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court and the Fifth Circuit have consistently recognized that 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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981) ("[I]t is well settled that the common benefit or common fund equitable doctrine allows for the assessment of attorneys' fees against a common fund created by the attorneys' efforts."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 962 (E.D. Tex. 2000) (same).[2]

In addition to providing just compensation, courts have also recognized that awarding attorneys' fees from a common fund encourages skilled counsel to represent those who seek redress for damages inflicted on classes of persons and discourages future misconduct of a similar nature. *See, e.g.*, *Jenkins v. Trustmark Nat'l. Bank*, 300 F.R.D. 291, 307 (S.D. Miss. 2014) ("The doctrine serves the twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts."). The Supreme Court has emphasized that private securities cases, such as this one, are "an indispensable tool with which defrauded investors can recover their losses—a matter crucial to the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights. Ltd.*, 551 U.S. 308, 320 n.4 (2007). Thus, common-fund fee awards of the type requested here encourage meritorious class actions and promote private enforcement of, and compliance with, the securities laws.

[2] Unless otherwise noted, all internal citations and quotations are omitted, and emphasis is added.

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE METHOD OR THE LODESTAR METHOD

"In common fund cases, courts typically use one of two methods for calculating attorneys' fees: (1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012). The Fifth Circuit affords "district courts the flexibility to choose between the percentage and lodestar methods," with their analyses under either approach informed by the factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989).

A. The Court Should Apply the Percentage Method

The Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Trs. v. Greenough*, 105 U.S. 527, 532 (1882); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 166-67 (1939); *Boeing*, 444 U.S. at 478-79. Indeed, as the Supreme Court declared in *Blum v. Stenson*, 465 U.S. 886 (1984), "under the common fund doctrine . . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Id*. at 900 n.16.

The Fifth Circuit also endorsed the percentage method, noting that "district courts in this Circuit regularly use the percentage method blended with a *Johnson* reasonableness check, and for some it is the preferred method." *Dell*, 669 F.3d at 643-44; *see also Welsh v. Navy Fed. Credit Union*, No. 5:16-CV-1062-DAE, 2018 WL 7283639, at *16 (W.D. Tex. Aug. 20, 2018) ("Based

on the Fifth Circuit's precedent, the Court believes that using the percentage method analyzed under the *Johnson* factors is sufficient for analyzing fees."); *Shaw*, 91 F. Supp. 2d at 964 (percentage method superior to lodestar method). This is because, among other reasons, the percentage method "allows for easy computation" and "aligns the interests of class counsel with those of the class members." *Dell*, 669 F.3d at 643; *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (one of the merits of the percentage method is that it "provides a powerful incentive for the efficient prosecution and early resolution of litigation"); Ex. 2 (Joint Declaration of Professors Brian Fitzpatrick and Charles Silver in Support of Lead Counsel's Motion for an Award of Attorneys' Fees ("Joint Declaration")), ¶2 ("Real clients prefer the straight percentage-based approach because it ties lawyers' interests more firmly to theirs, shifts risks to lawyers who are in a better position to bear them, and rewards efficiency and speed."). Percentage-of-the-fund awards also mimic the "kinds of fee arrangements that class members would have choosen for themselves in the open market, had they bargained with class counsel directly at the start of the case." *Id*. at ¶1. Conversely, "[t]he lodestar method voraciously consumes enormous judicial resources, unnecessarily complicates already complex litigation, and inaccurately reflects the value of services performed." *Shaw*, 91 F. Supp. 2d at 964.[3]

Moreover, "[a]s the Fifth Circuit noted, there is near-universal adoption of the percentage method in securities cases, at least in part because it is explicitly contemplated by the Private Securities Litigation Reform Act [of 1995 ("PSLRA").]" *In re Arthrocare Corp. Sec. Litig.*, No. A-08-CA-574-SS, 2012 WL 12951371, at *4 (W.D. Tex. June 4, 2012); *Dell*, 669 F3d at 643; *see also Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 WL 1942227, at *8

[3] *See also* Report of Third Circuit Task Force: Court Awarded Attorney Fees, 108 F.R.D. 237, 246-49 (1985) (identifying deficiencies with lodestar method); *In re Educ. Testing*, 447 F. Supp. 2d 612, 628-69 (E.D. La. 2006) (discussing pervasive criticism of the lodestar method).

(N.D. Tex. Apr. 25, 2018) ("The PSL[R]A expressly contemplates the percentage method, providing that [t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class") (*citing* 15 U.S.C. § 78u–4(a)(6)). Accordingly, Lead Counsel respectfully submit that the Court should apply the percentage method.

B. An Award of 33⅓% is Appropriate Under the Percentage Method

Pursuant to the percentage method, the court "first determines the actual monetary value conferred to the class by the settlement" and then "applies a benchmark percentage to this value." *Vassallo v. Goodman Networks, Inc.*, No. 15-CV-97-LG-CMC, 2016 WL 6037847, at *3-4 (E.D. Tex. Oct. 14, 2016). After setting the benchmark, the Court applies the *Johnson* factors "to determine whether the percentage should be adjusted upward or downward." *Id*. at *4. Here, the Settlement is an all-cash settlement and, thus, the monetary value conferred to the Settlement Class is easily identified—$5,500,000.

While there is no general rule regarding the definition of a reasonable percentage, "a review of analogous precedent indicates that an award of one-third of the common fund is reasonable and typical" in the Fifth Circuit. *Burford v. Cargill, Inc.*, No. CIV. A. 05-0283, 2012 WL 5471985, at *5 (W.D. La. Nov. 8, 2012); *see also Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. 4:17-CV-3852, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019) ("The fee represents one-third of the $15 million settlement fund, which is an oft-awarded percentage in common fund class action settlements in this Circuit"); *Halliburton*, 2018 WL 1942227, at *12 (considering *Johnson* factors and holding that 33⅓% contingency was "reasonable and fair."); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. CIV. 6:12-1609, 2015 WL 965696, at *4 (W.D. La. Mar. 3, 2015) (33⅓% contingency "is common in this geographic area" and "has been approved in other common fund cases"); *Jenkins*, 300 F.R.D. at 307 ("it is not unusual for district courts in the Fifth Circuit

to award percentage of approximately one third"). Accordingly, an "attorney fee award of 1/3 of the total settlement fund falls within the range of awards granted by courts within the Fifth Circuit and is a reasonable benchmark." *Kemp v. Unum Life Ins. Co. of Am.*, No. CV 14-0944, 2015 WL 8526689, at *9 (E.D. La. Dec. 11, 2015).[4]

In addition to finding awards of one-third or more reasonable, courts in the Fifth Circuit routinely grant such awards. *See, e.g.*, *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 3:16-CV-00783-K, 2019 WL 2352837, at *2 (N.D. Tex. June 3, 2019) (awarding 33⅓% of the $9.5 million settlement fund); *Singh v. 21Vianet Grp., Inc.*, No. 2:14-CV-00894-JRG-RSP, 2018 WL 6427721, at *2 (E.D. Tex. Dec. 7, 2018) (awarding 33.3% of the $9 million settlement fund); *Halliburton*, 2018 WL 1942227, at *12 (awarding 33⅓% of $100 million settlement fund and stating "[c]ompared to other common fund cases in this Circuit, Class Counsel is not asking for an unusually large or high fee."); *Al's Pals*, 2019 WL 387409, at *4 (awarding one-third of a $15 million settlement fund); *Williams v. Go Frac, LLC*, No. 2:15-CV-00199-JRG, 2017 WL 3699350, at *2-3 (E.D. Tex. Apr. 26, 2017) (awarding 35% of the settlement, finding the requested fee to be "fair and reasonable").[5]

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[4] *See also Shaw*, 91 F. Supp. 2d at 972 (holding that the average award is "around one-third of the recovery" regardless of which method was used); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1133 (W.D. La. 1997) ("district courts in the Fifth Circuit have awarded percentages of approximately one-third contingency fee").

[5] *See also Levitin v. A Pea in the Pod, Inc.*, No. 3:94-CV-0247, Final Judgment and Order of Dismissal With Prejudice, ECF No. 213 (N.D. Tex. Mar. 27, 1998) (fee award equal to 40% of recovery); *Wolfe v. Anchor Drilling Fluids USA Inc*, No. 4:15-CV-1344, 2015 WL 12778393, at *3 (S.D. Tex. Dec. 7, 2015) (awarding 40% of maximum settlement amount); *In re EZCORP, Inc. Sec. Litig.*, No. 1:15-CV-00608-SS, 2019 WL 6649017, at *1 (W.D. Tex. Dec. 6, 2019) (awarding 33% of $4.875 million settlement fund); *Combustion*, 968 F. Supp. at 1136, 1142 (awarding 36% on a $127,396,000 settlement fund); *Fairway Med. Ctr., L.L.C. v. McGowan Enterprises, Inc.*, No. CV 16-3782, 2018 WL 1479222, at *2 (E.D. La. Mar. 27, 2018) (awarding one-third of the $3,250,000 settlement fund); *Vassallo*, 2016 WL 6037847, at *4, *6 (awarding approximately 39.78% of common fund); *Miller v. Global Geophysical Services Inc., et al.*, No. 4:14-cv-00708,

Such an award is also consistent with a market-based approach to awarding attorneys' fees in class actions:

> Attorneys who lose class actions do not get paid. Their work is therefore analogous to that of lawyers who practice on contingency. As Seventh Circuit Judge Richard Posner explained, the best measure of the compensation they should receive is therefore "the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client." *Matter of Cont'l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992), *as amended on denial of reh'g* (May 22, 1992). … [And,] [i]the market for legal services, contingent fee lawyers always receive percentages of their clients' recoveries.

Joint Decl. ¶¶21-22; *see also Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986) (Easterbrook, J.) ("When the prevailing method of compensating lawyers for similar services ***is*** the contingent fee, then the contingent fee is the 'market rate.") (emphasis in original).

Notably, "[i]n the open market, clients—including sophisticated corporations—who hire lawyers on straight contingency often pay them 33⅓% or more." Joint Decl., ¶¶3, 45-47; *see also In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 445 (S.D. Tex. 1999) ("Class counsel and experts both reported to the Court that it is customary in large, complex commercial litigation for

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Order, ECF No. 137 (S.D. Tex. Jan. 14, 2016) (awarding one-third of settlement fund); *Kemp*, 2015 WL 8526689, at *9 (awarding one-third of a $3,738,402 settlement fund); *Frost v. Oil States Energy Servs.*, No. 4:15-CV-1100, 2015 WL 12780763, at *2 (S.D. Tex. Nov. 19, 2015) ("The Court approves Class Counsel's request for 33⅓% of the Settlement Fund as reasonable attorneys' fees"); *Campton v. Ignite Rest. Grp., Inc.*, No. CV 4:12-2196, 2015 WL 12766537, at *3 (S.D. Tex. June 5, 2015) (awarding one third of settlement fund); *Jenkins*, 300 F.R.D. at 307 (awarding one third of settlement fund); *In re Vioxx Prod. Liab. Litig.*, No. 11-1546, 2013 WL 5295707, at *4-5 (E.D. La. Sept. 18, 2013) (awarding 33% of settlement fund); *Barrera v. Nat'l Crane Corp.*, No. SA-10-CV-0196 NN, 2012 WL 242828, at *5 (W.D. Tex. Jan. 25, 2012) (awarding one-third); *Faircloth v. Certified Fin. Inc.*, No. CIV. A. 99-3097, 2001 WL 527489, at *9 (E.D. La. May 16, 2001) (awarding 33.34% on a $1,534,321 settlement fund); *Branca v. First USA Paymentech, Inc.*, No. 3:97-CV-2507-L, Order and Final Judgment, ECF No. 59 (N.D. Tex. Jan. 4. 2001) (fee equal to 33⅓% of total recovery); *In re DrKoop.com*, No. 1:00-CV-427-JRN, Order and Final Judgment, ECF No. 48 (W.D. Tex. Nov. 14, 2001) (fee equal to 33 1/3% of total recovery); *Sims v. Shearson Lehman Bros.*, No. CIV.A. 3:90-CV-0252X, 1993 WL 646022, at *3 (N.D. Tex. Nov. 29, 1993) (approving $10 million fee - representing one-third of $30 million settlement); *In re Shell Oil Refinery*, 155 F.R.D. 552, 575 (E.D. La. 1993) (awarding aggregate of one-third).

contingency fees to be set at 33 to 40%."); *Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1212 (S.D. Fla. 2006) ("Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases."); *Garza v. Sporting Goods Properties, Inc.*, No. CIV. A. SA-93-CA-108, 1996 WL 56247, at *31 (W.D. Tex. Feb. 6, 1996) ("33 1/3% to 40% is the customary contingency fee range.").

Consequently, ample authority supports the requested attorneys' fee of 33⅓% of the Settlement Fund.

C. The Requested Fee is Also Appropriate Under the Lodestar Method

The requested fee is also reasonable when considering counsel's lodestar. Courts in this Circuit often perform a lodestar analysis ***solely*** as a cross-check to confirm that the requested percentage fee is reasonable. *Vassallo*, 2016 WL 6037847, at *3. Accordingly, courts recognize that the lodestar cross-check should not displace a district court's primary reliance on the percentage method. *See Halliburton*, 2018 WL 1942227, at *8-*9 ("The lodestar cross-check is usually applied 'to avoid windfall fees' . . . [D]istrict courts need not scrutinize counsel's billing records with the thoroughness required were the lodestar method applied by itself."); *City of Omaha*, 2015 WL 965696, at *9 ("The lodestar analysis is not undertaken to calculate a specific fee, but only to provide a rough cross-check on the reasonableness of the fee arrived at by the percentage method.").

In this case, the lodestar method—whether used directly or as a cross-check on the percentage method—strongly demonstrates the reasonableness of the requested fee. "Under [the lodestar] method, the court takes the recorded hours worked by the attorneys and multiplies them by a reasonable hourly rate," then applies a multiplier upward or downward. *Id.* at *9. Here, Plaintiffs' Counsel have each submitted a declaration that includes a schedule identifying the

lodestar of each firm (by individual, position, billing rate, and hours billed).[6] The cumulative time expended by Plaintiffs' Counsel is 1,225.6 hours. ¶83. Based on current hourly rates,[7] the resulting lodestar for the services is $848,138.75. *Id.*

"An attorney's requested hourly rate is *prima facie* reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not contested." *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087 (S.D. Tex. 2012). Here, Plaintiffs' Counsel's hourly rates range from $650-945 for partners, to $425-550 for associates, and $395 per hour for staff attorneys. These rates are reasonable. Indeed, Plaintiffs' Counsel's rates have been accepted by other courts in this Circuit (*see EZCorp*, 2019 WL 6649017, at *2 (GPM served as Co-Lead Counsel and the Kendall Law Group served as Liaison Counsel); *Santander*, 2019 WL 2352837, at *2 (GPM served as Co-Lead Counsel)), and they are consistent with the rates charged by other firms engaged in plaintiffs-side securities litigation, the defense firms in this Action,[8] as well as

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[6] *See In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306–07 (3d Cir. 2005) ("[t]he district courts [ ] may rely on summaries submitted by the attorneys and need not review actual billing records"); *In Re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, 2016 WL 6215974, at *19 (E.D. La. Oct. 25, 2016) ("the loadstar [sic] cross-check is a streamlined process, avoiding the detailed analysis that goes into a traditional lodestar examination.").

[7] Courts use current rather historic rates to "compensate for delay in receiving fees." *In re Enron Corp.*, 586 F. Supp. 2d 732, 779 (S.D. Tex. 2008) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *see also Halliburton*, 2018 WL 1942227, at *13 (calculating rates using class counsels' firms' current rates); *Slipchenko v. Brunel Energy, Inc.*, No. CIV.A. H-11-1465, 2015 WL 338358, at *19 (S.D. Tex. Jan. 23, 2015) (similar).

[8] *See In re Taco Bueno Restaurants, Inc., et al., Reorganized Debtors*, No. 18-33678, Dkt. No. 308 (Bankr. N.D. Tex. Feb. 14, 2019) (Vinson & Elkins LLP billing rates for Partners ($945 - $1,280), Counsel ($830 - $915) and Associates ($450 - $945)); *In re Borden Dairy Company, et al., Debtors*, No. 20-10010 (CSS), Dkt. No. 264 (Bankr. D. Del. Feb. 14, 2020) (Sidley Austin LLP billing rates for Partners ($1,000 - $1,800), Senior Counsel and Counsel ($775 - $1,750), Associates ($570 - $960) and Paraprofessionals ($250 - $470)); *In re True Religion Apparel Inc., et al., Debtors,* No. 20-10941 (CSS), Dkt. No. 216 (Bankr. D. Del. May 11, 2020) (Akin Gump

defense counsel engaged complex litigation. *See* Ex. 10 (law firm billing rate chart reflecting billable rates of defense firms and plaintiffs-side securities litigation firms).[9]

Based on Plaintiffs' Counsel's lodestar, the requested fee equates to a multiplier of 2.16. A multiplier of 2.16 falls squarely within the range of multipliers approved by other courts in this Circuit in similarly complex cases. *See, e.g.*, *Enron*, 586 F. Supp. 2d at 751 & n.20 (awarding percentage fee equal to a multiple of 5.2 times lodestar, and stating that "[m]ultiples from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 263, 333 (W.D. Tex. 2007) (stating the average range of multipliers in class actions is 1.0 to 4.5 and "multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5."); *Di Giacomo v. Plains All Am. Pipeline*, No. CIV.A.H-99-4137, 2001 WL 34633373, at *11 (S.D. Tex. Dec. 19, 2001) (approving 5.3 multiplier); *Combustion*, 968 F. Supp. at 1133 and 1141 (characterizing multiplier of 2.99 as "conservative" and stating that "[m]ultipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied."); *Garza*, 1996 WL 56247, at *33 (finding a multiplier

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Strauss Hauer & Feld LLP billing rates for Partners ($995 - $1,995), Senior Counsel & Counsel ($735 - $1,510), Associates ($535 - $960)); *In re Gymboree Group, Inc., et al., Debtors*, No. 19-30258 (KLP), Dkt. No. 163 (Bankr. E.D. Va. Jan. 30, 2019) (Milbank LLP U.S. "standard" range for Partners ($1,155 - $1,540) and Non-Partner Attorneys ($450 - $1,315)).

[9] Moreover, courts within this Circuit have consistently approved rates similar to Plaintiff's Counsel's rates, finding that they are comparable to the rates charged by attorneys within the legal community in Texas. *See, e.g.*, *Brunel Energy*, 2015 WL 338358, at *19 (***2015*** "billing rates—ranging from $240–$260 for paralegals, $415–$530 for associates, and $635–$775 for partners—are generally comparable to the rates charged by the Texas-based defense counsel" whose "rates range from $275–$700 for associates and $575–$1,125 for partners."); *In re Arthrocare*, 2012 WL 12951371, at *5 (Sparks, J.) (finding, in ***2012***, that $500 per hour rate is reasonable); *In re Heartland Payment*, 851 F. Supp. 2d at 1087 (finding reasonable ***2012*** rates ranging from $90/hour for paralegal work to $825/hour for co-lead counsel).

of 4 to be appropriate, and recognizing that "[t]he range of multipliers in large and complicated class actions have ranged from 2.26 to 4").[10]

V. FACTORS CONSIDERED BY FIFTH CIRCUIT COURTS CONFIRM THE REASONABLENESS OF THE REQUESTED FEE

In *Johnson*, the Fifth Circuit stated that the district court should consider several factors in determining the propriety of a fee award. These twelve *Johnson* factors are:

> (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (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.

Johnson, 488 F.2d at 717-19; *Dell*, 669 F.3d at 642 n.25. In addition, courts may consider other factors, such as: (1) public policy considerations; (2) plaintiffs' approval of the fee; and (3) the reaction of the class. Consideration of each of the relevant factors weighs in favor of the requested fee.

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[10] *See also In re Waste Mgmt., Inc.*, No. 99-2183, ECF No. 254 at 64 (S.D. Tex. May 10, 2002) (Ex. 11) (multiplier of 5.3 "is supported by case law and within the range of multipliers approved in other class actions. Numerous courts, including this court have awarded multipliers exceeding four in class action cases."); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 869 (E.D. La. 2007) (holding "a lodestar multiplier range of 2.5 to 3.5 would be appropriate and reasonable in this case"); *In re Shell Oil Refinery,* 155 F.R.D. 552, 573 (E.D. La. 1993) (applying risk multiplier of 3 to 3.5); *In re Corrugated Container Antitrust Litigation,* 1983 WL 1872 (S.D. Tex. 1983) *vacated on other grounds by* 1983 WL 1755 (S.D. Tex. Dec. 16, 1983) (awarding multipliers up to 4.0); *Klein v. O'Neal, Inc.*, 705 F.Supp.2d 632, 680 (N.D. Tex. 2010) (finding applying a multiplier of 2.5 appropriate and stating that "multipliers in this range are not uncommon in class action settlements."); *City of Omaha*, 2015 WL 965696, at *10 (holding that "[m]ultipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied" and that "[a] large common fund award may warrant an even larger multiplier"); *Vaughn v. American Honda Motor Co.*, 627 F.Supp.2d 738, 751 (E.D. Tex. 2007) (applying multiplier of 2.26 to the lodestar); *Burford*, 2012 WL 5471985, at *6 n.1 (W.D. La. Nov. 8, 2012) (declaring that multipliers "of 1 to 4" are "typically approved by courts within this circuit").

A. The *Johnson* Factors Confirm the Reasonableness of the Requested Fee

Under either the percentage or lodestar method, the *Johnson* factors confirm that the requested fee award is reasonable.

1. The Time and Labor Expended Support the Requested Fee

The time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement supports the requested fee. As set forth in greater detail in the Sams Declaration, Plaintiffs' Counsel's work on this matter included, among other things:

- conducting an extensive investigation of the claims asserted in the Action, which included a detailed review of SEC filings, press releases, analyst reports, news reports and other public information, hiring and working with a private investigator to locate and conduct interviews with former Forterra employees and other potential witnesses, and consultation with damages and loss causation experts (¶¶12, 29);
- negotiating a stipulation with Defendants requesting a transfer to this Court, which was subsequently granted (¶¶12, 22-25);
- researching and drafting the Consolidated Amended Class Action Complaint ("Complaint") based on their investigation (¶¶7, 12, 30);
- researching, drafting and filing oppositions to the motion to dismiss filed by Defendants (*i.e.*, Forterra, the Officer and Director Defendants and the Underwriter Defendants) and motion to dismiss filed by the Lone Star Defendants (¶¶12, 31-34);
- consulting extensively with experts on damages and loss causation issues in connection with preparing for settlement negotiations (¶12);
- engaging in a mediation process overseen by Robert Meyer, Esq. of JAMS, which involved extensive written submissions concerning liability and damages and a full-day formal mediation session (¶¶13, 36-38);
- negotiating and drafting the Stipulation and related settlement documents (¶40);
- drafting the preliminary approval motion papers (*Id.*);
- working with one of Plaintiffs' damages experts to prepare the proposed Plan of Allocation (¶71); and
- overseeing the notice process that was approved by the Court (¶57).

Moreover, the legal work on this case will not end with the Court's approval of the proposed Settlement. Plaintiffs' Counsel will necessarily expend additional hours and resources assisting Settlement Class Members with their Proof of Claim forms, responding to Settlement Class Members' inquiries, shepherding the claims process to conclusion, and filing a distribution motion. No additional compensation will be sought for this work. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.*, No. MDL 12-2389, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom. In re Facebook, Inc.*, 674 F. App'x 37 (2d Cir. 2016) ("Considering that the work in this matter is not yet concluded for Lead Counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical to obtaining the Settlement and, as a result, this factor supports the fee request.

2. Novelty and Difficulty of the Issues

The second *Johnson* factor also favors granting Lead Counsel's request for attorneys' fees. Courts have repeatedly recognized that securities litigation is "notoriously difficult and unpredictable" (*Maher v. Zapata Corp.,* 714 F.2d 436, 455 (5th Cir. 1983)), and that "a securities case, by its very nature, is a complex animal." *Clark v. Lomas & Nettleton Fin. Corp*., 79 F.R.D. 641, 654 (N.D. Tex. 1978), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980). Moreover, "securities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA." *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). This is especially true in the Fifth Circuit. *See, e.g.*, *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *32 (N.D. Tex. Nov. 8, 2005) (finding approximately 90% of Fifth Circuit PSLRA pleading decisions have upheld dismissal of complaints and recognizing case was risky when lead counsel accepted retention); *In re OCA, Inc. Sec. & Derivative Litig.*, No. CIV.A.05-

2165, 2009 WL 512081, at *21 (E.D. La. Mar. 2, 2009) ("Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult in this circuit.").

This case was no different. Although Plaintiffs believe that their allegations would have ultimately translated into a strong case as detailed more fully in the Sams Declaration and the Final Approval Motion, Defendants raised credible arguments challenging the sufficiency of the allegations with regard to liability, loss causation, and damages. ¶¶44, 48-49. If Defendants had prevailed on their arguments with respect to liability, it would prove fatal to Plaintiffs' claims. And, even if only some of Defendants' arguments were successful and Plaintiffs' claims remained, Defendants' arguments regarding loss causation and damages posed a significant threat that the total recoverable damages would be significantly reduced or eliminated. ¶48.

Even assuming that Plaintiffs defeated Defendants' motions to dismiss, continued litigation would have involved substantial motion practice, extensive and costly expert involvement, and the taking of numerous depositions. ¶50. Thus, the costs and risks associated with litigating this Action to a verdict—notwithstanding the inevitable appeals—would have been high, and the process would have required thousands of hours of time and resources. ¶¶51-52. Accordingly, because there is no question that this Action was difficult and complex, this factor weighs in favor of approving the requested fee.

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

The third and the ninth *Johnson* factors—the skill required and the experience, reputation, and ability of the attorneys—also support the requested fee award. As demonstrated by their respective firm resumes, Plaintiffs' Counsel have many years of experience in complex federal

civil litigation, particularly in litigation of shareholder, securities, and other class actions.[11] Plaintiffs' Counsel's experience allowed them to obtain significant investigative materials (including information from several former Forterra employees) in spite of the PSLRA's barriers to obtaining formal discovery, identify the complex issues involved in this case, and formulate strategies to prosecute it effectively. *See TXU*, 2005 WL 3148350, at *30 (this factor weighs in favor of approval where despite the PSLRA restrictions, due to Lead Counsel's "diligent efforts . . . and their skill and reputations" they "were able to negotiate a very favorable" settlement). Plaintiffs' Counsel respectfully submit that the Settlement is a direct result of Plaintiffs' Counsel's skill and experience. *See, e.g.*, *Santander*, 2019 WL 2352837, at *2 ("Lead Counsel [GPM] has conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy."); *21Vianet*, 2018 WL 6427721, at *2 (same).

Courts have also recognized that the quality of the opposition faced by plaintiff's counsel should be taken into consideration in assessing the quality of counsel's performance. *See TXU*, 2005 WL 3148350, at *30 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation."). Here, Defendants were represented by experienced, aggressive, and highly-skilled counsel from Sidley Austin LLP, Vinson & Elkins LLP, Akin Gump Strauss Hauer & Feld, Milbank LLP, and Haynes & Boone LLP—prestigious and well-respected defense firms—that vigorously and ably defended the Action. ¶92. Accordingly, these factors also support the requested fee.

[11] *See* Ex. 7-C (Glancy Prongay & Murray LLP ("GPM") firm résumé); Ex. 8-B (The Kendall Law Group, PLLC firm résumé).

4. The Preclusion of Other Employment

Plaintiffs' Counsel spent 1,225.6 hours litigating this case on behalf of Plaintiffs and the Settlement Class. ¶83.[12] This is time counsel could have devoted to other potentially more lucrative matters. Accordingly, this factor further supports the requested fee. *See Burford*, 2012 WL 5471985, at *3 ("The affidavits of Class Counsel prove that while this case did not preclude them from accepting other work, they were often times precluded from working on other cases due to the demands of the instant matter. . . . This factor weighs in favor of a substantial fee award.").

5. The Customary Fee for Similar Work in the Community

As discussed in greater detail above, the 33⅓% requested fee is well within the range of customary fees. *See, e.g.*, *Garza*, 1996 WL 56247, at *31 ("33 1/3% to 40% is the customary contingency fee range."); *Burford*, 2012 WL 5471985, at *3 (customary contingency fee "ranges from 33 1/3% to 50%"). This factor, therefore, supports approving the requested fee.

6. Whether the Fee is Fixed or Contingent

The contingent nature of the fee requested by counsel—and the substantial risk posed by the litigation—also weigh in favor of awarding the requested fee. For over two years, Plaintiffs' Counsel undertook this class action on a contingency-fee basis, carrying both the substantial out-of-pocket costs of litigation and the risk of not being paid for their services or reimbursed for their costs. As the Fifth Circuit has stated, "[l]awyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir.

[12] If the Court approves the Settlement, Lead Counsel will spend additional time ensuring that the Settlement is properly distributed to the Settlement Class.

1981), *overruled on other grounds by Int'l Woodworkers of Am., AFL-CIO & its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 1174 (5th Cir. 1986).

Further, the risk of loss in this case was not illusory. As discussed herein, securities actions are extremely complex, and success is never assured—especially in the Fifth Circuit. *See* Sec. V.A.2, *supra* and Sec. V.A.9, *infra*. This case was no different. Plaintiffs' Counsel faced significant challenges in establishing liability and damages. ¶¶44-49. Moreover, had Plaintiffs won at trial, there was no guarantee that a jury would have awarded a judgment greater than the Settlement, and there was still a risk of loss on appeal. ¶52. Consequently, this factor weighs in favor of approving the fee request. *See Jenkins*, 300 F.R.D. at 309 ("[r]ecognizing the contingent risk of nonpayment in [class action] cases, courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment").

7. Time Limitations Imposed by the Client or the Circumstances

This factor does not pertain to this case.

8. The Amount Involved and the Results Obtained

Another *Johnson* factor is the amount involved and the results obtained. *Johnson*, 488 F.2d at 717-19. Here, Plaintiffs' damages expert estimates that if Plaintiffs had ***fully prevailed*** on their claims pursuant to the Securities Act of 1933 ("Securities Act") at both summary judgment and after a jury trial, if the Court certified the same class period as the Settlement Class Period, and if the Court and jury accepted Plaintiffs' damages theory—*i.e.*, Plaintiffs' ***best case scenario***—the total ***maximum*** damages would be approximately $170 million. Thus, the $5,500,000 Settlement Amount represents approximately 3.2% of the total ***maximum*** damages ***potentially*** available in this Action. Conversely, Plaintiffs' damages consultant estimates that if Defendants' colorable negative causation arguments were accepted, the ***maximum*** recoverable damages would be

drastically reduced to $8,200,000. Under such a scenario, the $5,500,000 recovery equates to approximately 67% of damages.

A recovery of 3.2% - 67% of maximum recoverable damages is well-within the range of reasonableness. *See, e.g.*, Ex. 9 (Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at p. 20, Fig. 13 (median recovery in securities class actions in 2019 was approximately 2.1% of estimated damages); *see also Enron*, 586 F. Supp. 2d at 804 ("The typical recovery in most class actions generally is three-to-six cents on the dollar."); *Int'l Bhd. of Elec. Workers Local 697 Pension Fund v. Int'l Game Tech., Inc.*, No. 3:09-CV-00419-MMD, 2012 WL 5199742, at *3 (D. Nev. Oct. 19, 2012) (approving securities class action settlement where recovery was 3.5% of maximum damages and noting "this amount is within the median recovery in securities class actions settled in the last few years"); *In re China Sunergy Sec. Litig.*, No. 07 Civ. 78595 (DAB), 2011 WL 1899715, at *5 (S.D.N.Y. May 13, 2011) (the "average settlement amounts in securities class actions where investors sustained losses over the past decade . . . have ranged from 3% to 7% of the class members' estimated losses"). Accordingly, there can be no doubt that Plaintiffs' Counsel have achieved a highly-favorable result, and that this factor weighs in favor of approving the requested fee.

9. The Undesirability of the Case

The undesirability of a case can be a factor in justifying the award of a requested fee. Securities cases have been recognized as "undesirable" due to factors such as: (1) expensive litigation costs; (2) formidable opposition; (3) the contingent nature of the fee; and (4) a possibility of no recovery. *See Halliburton*, 2018 WL 1942227, at *12 ("[T]he risk of non-recovery and undertaking expensive litigation against . . . well financed corporate defendants on a contingent fee has been held to make a case undesirable, warranting a higher fee.").

This case was never easy, and the risk of no recovery was always high. *See, e.g.*, *Blockbuster*, 504 F. Supp. 2d at 160 (dismissing Securities Act claims); *Alamosa*, 382 F. Supp. 2d at 864-66 (dismissing Section 11 claims). When Plaintiffs' Counsel undertook representation of Plaintiffs and the putative class in this Action, it was with the knowledge that they would have to spend substantial time and resources – and face significant risks – without any assurance of compensation for their efforts. Indeed, this Action was pending in what could be the worst forum in the country for securities litigation. The Northern District of Texas has repeatedly dismissed securities class actions, including Section 11 cases, at the pleading stage.[13] Additionally, the Fifth Circuit has also repeatedly affirmed the dismissal of securities actions.[14] As the Fifth Circuit has

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[13] *See, e.g.*, *Peak v. Zion Oil & Gas, Inc.*, No. 3:18-CV-02067-X, 2020 WL 1047894, at *6 (N.D. Tex. Mar. 3, 2020) (dismissing Section 11 claims); *McCloskey v. Match Grp., Inc.*, No. 3:16-CV-549-S, 2018 WL 4053362, at *7 (N.D. Tex. Aug. 24, 2018) (dismissing Securities Act claims); *Truk Int'l Fund LP v. Wehlmann*, 737 F. Supp. 2d 611, 625 (N.D. Tex. 2009), *aff'd,* 389 F. App'x 354 (5th Cir. 2010) (dismissing Securities Act claims); *Pierce v. Morris*, No. 4:03-CV-026-Y, 2006 WL 2370343, at *4-5 (N.D. Tex. Aug. 16, 2006) (dismissing Section 11 claims); *Congregation of Ezra Sholom v. Blockbuster, Inc.*, 504 F. Supp. 2d 151, 160 (N.D. Tex. 2007) (dismissing Securities Act claims); *In re Alamosa Holdings, Inc.*, 382 F. Supp. 2d 832, 864-66 (N.D. Tex. 2005) (dismissing Securities Act claims); *Milano v. Perot Sys. Corp.*, No. CIV.A.3:02-CV-1269-D, 2004 WL 2360031, at *11 (N.D. Tex. Oct. 19, 2004) (dismissing Section 11 claims); *Special Situations Fund III, L.L.P. v. ViaGrafix Corp.*, No. CIV.A.3:98-CV-1216-M, 2001 WL 182666, at *1-2 (N.D. Tex. Jan. 22, 2001) (dismissing Securities Act claims); *In re Urcarco Sec. Litig.*, 148 F.R.D. 561, 569 (N.D. Tex. 1993), *aff'd sub nom. Melder v. Morris*, 27 F.3d 1097 (5th Cir. 1994) (dismissing Section 11 claims).

[14] *See, e.g.*, *Police & Fire Ret. Sys. of City of Detroit v. Plains All Am. Pipeline, L.P.*, 777 F. App'x 726, 733 (5th Cir. 2019) (affirming dismissal of Section 11 claims); *Lampkin v. UBS Fin. Servs., Inc.*, 925 F.3d 727, 737 (5th Cir.), *cert. denied,* 140 S. Ct. 389, 205 L. Ed. 2d 218 (2019) (affirming dismissal of Section 11 claims); *Hopson v. Chase Home Fin., L.L.C.*, 605 F. App'x 267, 269 (5th Cir. 2015) (affirming dismissal of Securities Act claims); *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 390 (5th Cir. 2010) (affirming dismissal of Section 11 claims); *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 502 (5th Cir. 2005) (affirming dismissal of Securities Act claims); *Kapps v. Torch Offshore, Inc.*, 379 F.3d 207, 221 (5th Cir. 2004) (affirming dismissal of Section 11 claims); *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 874 (5th Cir. 2003) (affirming dismissal of Securities Act claims); *Melder v. Morris*, 27 F.3d 1097, 1104 (5th Cir. 1994) (affirming dismissal of Section 11 claims); *Summer v. Land & Leisure, Inc.*, 664 F.2d 965, 971 (5th Cir. 1981) (affirming dismissal of Securities Act claims).

aptly recognized, "[t]o 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). Thus, this factor weighs in favor of approval.

10. Nature and Length of the Professional Relationship with the Client

GPM has represented Plaintiffs throughout the course of the litigation. Ex. 4 ("Maciuga Decl."), ¶¶3-6; Ex. 5 ("Disayawathana Decl."), ¶¶3-5. Plaintiffs have been actively involved in this litigation, and they approve and support the Settlement. Maciuga Decl., ¶8; Disayawathana Decl., ¶7.

11. Awards in Similar Cases

As discussed above, the requested fee of 33⅓% is consistent with awards granted in class action cases. Accordingly, this factor supports the requested fee award.

In sum, all of the applicable *Johnson* factors support Lead Counsel's request for attorneys' fees of 33⅓% of the Settlement Fund.

B. <u>Other Factors Considered by Courts Further Support the Requested Fee</u>

Consideration of additional factors that courts examine further confirms that the requested fee award is fair and reasonable under both the percentage and lodestar methods.

1. Public Policy Considerations Support the Requested Fee

A strong public policy concern exists for rewarding firms for bringing successful securities litigation. *See City of Pontiac Gen. Employees' Ret. Sys. v. Dell Inc.*, No. 1:15-CV-00374-LY, 2020 WL 218518, at *2 (W.D. Tex. Jan. 10, 2020) ("public policy concerns favor the award of reasonable attorneys' fees and expenses in securities class action litigation"). Indeed, the Supreme Court has emphasized that private securities actions, such as this one, provide "a most effective weapon in the enforcement of the securities laws and are a necessary supplement to [SEC] action."

Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 310 (1985); *see also Tellabs*, 551 U.S. at 313 (" This Court has long recognized that meritorious private actions to enforce federal . . . securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the Securities and Exchange Commission (SEC)."). That public policy was advanced here, as Plaintiffs' Counsel achieved a meaningful recovery for investors.

2. Plaintiffs Have Approved the Requested Fee

Plaintiffs played an active role in the prosecution and resolution of the Action, and have a sound basis for assessing the reasonableness of the fee request. Plaintiffs fully support and approve the fee request. Maciuga Decl., ¶8; Disayawathana Decl., ¶7. Plaintiffs' endorsement of the fee request supports its approval. *See, e.g.*, *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695CM, 2007 WL 4115808, at *8 (S.D.N.Y. Nov. 7, 2007) ("public policy considerations support the award in this case because the Lead Plaintiff . . . conscientiously supervised the work of lead counsel and has approved the fee request"); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("[s]ignificantly, the Lead Plaintiffs, . . . have reviewed and approved Lead Counsel's fees and expenses request").

3. The Reaction of the Settlement Class Supports the Requested Fee

The reaction of the Settlement Class also supports the requested fee. As of June 11, 2020, the Claims Administrator has provided copies of the Postcard Notice to 19,407 potential Settlement Class Members informing them of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees of up one-third of the Settlement Fund and reimbursement of up to $100,000 in expenses. *See* Ex. 6-B ("Mulvihill Decl." (Postcard Notice)). To date, no objections have been received, thus favoring approval of the requested fee. *See, e.g.*, *Go Frac*, 2017 WL 3699350, at *2–3 (awarding 35% of the settlement where class members had

notice of the requested fees and did not object); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 515 (W.D. Pa. 2003) ("the absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsels' request").[15]

VI. PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

"Expenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement." *Halliburton*, 2018 WL 1942227, at *14. Here, Plaintiffs' Counsel expended $60,504.95 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by each individual firm. ¶97. These expenses are well-documented, based upon the books and records maintained by each firm, and reflect the costs of prosecuting this litigation. Moreover, these costs were reasonable and necessary. They include, among other things: fees for experts; online legal research costs; fees for an investigator; mail; and telephone. *Id.* Courts routinely permit the reimbursement of similar expenses. *Halliburton*, 2018 WL 1942227, at *14. Additionally, the Postcard Notice informed potential Class Members that Lead Counsel would seek reimbursement of expenses up to $100,000, and, to date, no objection to the expense application has been filed. Thus, the Court should award the requested expenses. *See Go Frac*, 2017 WL 3699350, at *2–3 (awarding expenses in the absence of objections); *Dell*, 2020 WL 218518, at *1-2 (awarding expenses in the amount of $1,382,548.67 "where no objections to the fees or expenses were filed by Class Members").

[15] The deadline for potential Settlement Class Members to object is June 30, 2020. Plaintiffs' Counsel will address any objections that may be received in their reply papers to be filed with the Court.

VII. THE COURT SHOULD AWARD PLAINTIFFS THEIR COSTS AND EXPENSES PURSUANT TO 15 U.S.C. § 77z-1(a)(4)

The PSLRA permits plaintiffs to recover litigation costs (including lost wages) incurred as a result of serving as lead plaintiff and/or representative plaintiff in the Action. 15 U.S.C. § 77z-1(a)(4). Reimbursement of such costs is allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co.*, No. 97 CIV. 6742 (DLC), 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000); *see also Buettgen v. Harless*, No. 3:09-CV-00791-K, 2013 WL 12303143, at *14 (N.D. Tex. Nov. 13, 2013) ("courts routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.").

Here, Plaintiffs respectfully request reimbursement in the amount of $10,000 to Lead Plaintiff Maciuga and $5,000 to named Plaintiff Disayawathana for the time they expended on behalf of the Settlement Class. *See* Maciuga Decl., ¶12; Disayawathana Decl., ¶11. Such a request is fair and reasonable given Plaintiffs' efforts on behalf of the Settlement Class. Indeed, Plaintiffs fulfilled their duties by, among other things: (a) regularly communicating with Lead Counsel regarding the posture and progress of the case; (b) discussing pleadings, briefs, and Court Orders filed in the Action; (c) discussing the possibility of settlement of the Action and the process for mediation; (d) consulting with Lead Counsel regarding the mediation and settlement negotiations; and (e) making inquiries regarding the Settlement and the claims administration process. Maciuga Decl., ¶5; Disayawathana Decl., ¶4. In light of the substantial work performed by Plaintiffs, the amount requested is eminently reasonable, and is consistent with, or lower than, awards in other cases. *See, e.g.*, *Global Geophysical Services Inc., et al.*, No. 4:14-cv-00708, Order, ECF No. 137 (S.D. Tex. Jan. 14, 2016) (awarding $15,000 to Lead Plaintiff pursuant to PSLRA); *Duncan v.*

JPMorgan Chase Bank, N.A., No. SA-14-CA-00912-FB, 2016 WL 4419472, at *16 (W.D. Tex. May 24, 2016), *report and recommendation adopted*, No. SA-14-CA-912-FB, 2016 WL 4411551 (W.D. Tex. June 17, 2016) ("District courts in the Fifth Circuit routinely award $5,000-$10,000 per named plaintiff."); *Marcus v. J.C. Penney Co., Inc.*, No. 6:13-CV-736, 2017 WL 6590976, at *6 (E.D. Tex. Dec. 18, 2017), *report and recommendation adopted*, No. 6:13-CV-736, 2018 WL 307024 (E.D. Tex. Jan. 4, 2018) (awarding compensation awards of $10,200 and $1,500); *Burford*, 2012 WL 5471985, at *6 (awarding named plaintiffs $5,000 to $15,000); *Thomas Gudmundson, et al. v. Stevens Transport, Inc., et al*., No. 3:13-cv-02010-M-BK, Order, ECF No. 173 at ¶ 9 (N.D. Tex. Jan. 6, 2016) (C.J. Lynn) (granting service awards of $10,000, $7,500, and $1,000 to the three named plaintiffs, respectively, in a Fair Labor Standards Act class action).[16]

Accordingly, Plaintiffs respectfully request that the Court grant their request.

VIII. CONCLUSION

For the foregoing reasons, Lead Counsel respectfully request the Court grant the Motion.

[16] *See also In re BankAmerica Corp. Sec. Litig*., 210 F.R.D. 694, 699 (E.D. Mo. 2002) (approving award to class representative not to exceed $20,000); *Parmelee*, 2019 WL 2352837, at *2 (PSLRA awards to lead plaintiffs of $12,000 and $2,500, respectively, from the Settlement Fund as reimbursement for their reasonable costs directly related to their representation of the Settlement Class); *In re Xcel Energy, Inc., Sec. Litig. Deriv. & "ERISA" Litig*., 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) ($100,000 collectively awarded to lead plaintiff group as reimbursement); *In re Marsh & McLennan Co. Inc. Sec. Litig.,* No. 04 cv 08144, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding a combined $214,657 to two institutional lead plaintiffs).

DATED: June 16, 2020

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CERTIFICATE OF CONFERENCE

On June 15, 2020, Lead Counsel emailed Defense Counsel to fulfill the local rule meet and confer requirement with respect to Lead Counsel's Motion for Attorneys' Fees and Reimbursement of Litigation Expenses. Specifically, Lead Counsel asked if they could represent to the Court that Defendants took no position on the fee and expense application. Defense Counsel did not respond to the email.

/s/ Ex Kano S. Sams II
Ex Kano S. Sams II

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was served on all counsel of record on June 16, 2020 via CM/ECF, in accordance with the Federal Rules of Civil Procedure.

/s/ Joe Kendall
Joe Kendall

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE FORTERRA, INC. SECURITIES LITIGATION	Case No.: 3:18-cv-01957-X Honorable Brantley Starr

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

This matter came on for hearing on July 21, 2020 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and Litigation Expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement dated November 4, 2019 (ECF No. 123-1) (the "Stipulation") and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for an award of attorneys' fees and expenses satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 77z-1), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. Lead Counsel are hereby awarded attorneys' fees in the amount of _____% of the Settlement Fund and $_____ in reimbursement of Lead Counsel's litigation expenses (which fees and expenses shall be paid from the Settlement Fund), which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believes reflects the contributions of such counsel to the institution, prosecution and settlement of the Action.

5. In making this award of attorneys' fees and reimbursement of expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $5,500,000 in cash that has been funded into escrow pursuant to the terms of the Stipulation, and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) Copies of the Postcard Notice were mailed to over 19,400 potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not exceed 33⅓% of the Settlement Fund and reimbursement of Litigation Expenses in an amount not to exceed $100,000. There were no objections to the requested attorneys' fees and expenses;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(d) The Action raised a number of complex issues;

(e) Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the other members of the Settlement Class may have recovered less or nothing from Defendants;

(f) Plaintiff's Counsel devoted 1,225.6 hours, with a lodestar value of approximately $848,138.75 to achieve the Settlement; and

(g) The amount of attorneys' fees awarded and expenses to be reimbursed from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. Lead Plaintiff Wladislaw Maciuga is hereby awarded $_____ from the Settlement Fund as reimbursement for his reasonable costs and expenses directly related to his representation of the Settlement Class.

7. Additional named Plaintiff Supanin Disayawathana is hereby awarded $_____ from the Settlement Fund as reimbursement for his reasonable costs and expenses directly related to his representation of the Settlement Class.

8. Any appeal or any challenge affecting this Court's approval regarding any attorneys' fees and expense application shall in no way disturb or affect the finality of the Judgment.

9. Exclusive jurisdiction is hereby retained over the parties and the Settlement Class Members for all matters relating to this Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

10. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

11. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

Dated: _____, 2020

_____
The Honorable Brantley Starr
United States District Judge