UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

KIN-YIP CHUN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. FLUOR CORPORATION, et al., Defendants.	§	Civil Action No. 3:18-cv-01338-X CLASS ACTION

LEAD COUNSEL'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES, AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4) AND MEMORANDUM IN SUPPORT THEREOF

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SECONDARY AUTHORITIES

Lead Counsel, Robbins Geller Rudman & Dowd LLP and Pomerantz LLP, respectfully submit this memorandum in support of their unopposed motion for an award of attorneys' fees and expenses and for awards to Lead Plaintiffs pursuant to 15 U.S.C. §78u-4(a)(4).[1]

I. PRELIMINARY STATEMENT

The proposed Settlement is an excellent result for the class of investors who allegedly suffered economic damages in connection with alleged false and misleading statements and omissions contained in Defendants' public statements during the Settlement Class Period. It provides for a substantial cash payment of $33,000,000, which has been fully funded for the benefit of the Settlement Class in exchange for dismissal of all claims brought against the Defendants.

Lead Counsel respectfully apply for an award of attorneys' fees on behalf of all Lead Plaintiffs' counsel in the amount of 30% of the $33 million Settlement Amount and litigation expenses of $115,915.09, plus interest on both amounts. This fee request is well within the range of percentages awarded in class actions in this Circuit, is supported by Lead Plaintiffs (*see* Declaration of Gerard Grysko on Behalf of Wayne County Employees' Retirement System ("Wayne County Decl."), App. 333, ¶6, and Declaration of Brenda L. Kupchick and Carolyn Trabuco on Behalf of the Town of Fairfield Employees' Retirement Plan and the Town of Fairfield Police and Firemen's Retirement Plan ("Fairfield Funds Decl."), App. 340, ¶10) and is justified by Lead Counsel's efforts, results, and lodestar. *See* Joint Decl., App. 006, App. 14 – App. 015, ¶¶12, 40-45; Declaration of Darryl J. Alvarado Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Decl."), App. 064, ¶4, and Declaration of Matthew L. Tuccillo, Esq. Filed on Behalf of Pomerantz LLP in Support of

[1] All capitalized terms not otherwise defined herein shall have the meanings set forth in the Stipulation of Settlement (ECF 159-1) or the Joint Declaration of Darryl J. Alvarado and Matthew L. Tuccillo in Support of: (I) Final Approval of Settlement and Approval of Plan of Allocation, and (II) an Award of Attorneys' Fees and Expenses, and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Joint Declaration" or "Joint Decl."), App. 001 – App. 016.

Application for Award of Attorneys' Fees and Expenses ("Pomerantz Decl."), App. 234, ¶5. Finally, as supported by their declarations, Lead Plaintiffs also apply for awards of $1,919.25 (Wayne County), $25,000.00 (for the Town of Fairfield Employees' Retirement Plan (the "FER Plan")), and $25,000.00 (for the Town of Fairfield Police and Firemen's Retirement Plan (the "FPFR Plan")) pursuant to 15 U.S.C. §78u-4(a)(4), in connection with their representation of the Settlement Class. *See* Wayne County Decl., App. 333 – App. 334, ¶7; and Fairfield Funds Decl., App. 340 – App. 341,¶¶11-14.

II. PROCEDURAL AND FACTUAL BACKGROUND

To avoid repetition, Lead Counsel respectfully refer the Court to the accompanying Joint Declaration for a full discussion of: (i) the factual background and procedural history of the Action; (ii) the efforts of Lead Counsel in prosecuting the claims in this Action; (iii) the negotiations resulting in this Settlement; and (iv) the reasons why the Court should approve the application for an award of attorneys' fees and expenses, and Lead Plaintiffs' awards pursuant to 15 U.S.C. §78u-4(a)(4). Joint Decl., App. 001 – App. 016.

III. THE REQUESTED FEE IS FAIR AND REASONABLE

A. Lead Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

The Supreme Court and the Fifth Circuit have long recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). In addition to providing compensation, attorneys' fee awards from a common fund serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature. *See, e.g.*, *Doglow v. Anderson*, 43 F.R.D. 472,

481-84 (E.D.N.Y. 1968), *rev'd on other grounds*, 438 F.2d 825 (2d Cir. 1970). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

B. The Court Should Award a Percentage of the Common Fund

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.*, *Internal Imp. Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1881); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Sprague*, 307 U.S. at 166-67; *Boeing*, 444 U.S. at 478-79. Indeed, by 1984 this point was so well established that the Supreme Court needed no more than a footnote to make it in *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class.").

The Fifth Circuit also approves the percentage method, finding that it "brings certain advantages . . . because it allows for easy computation" and "aligns the interests of class counsel with those of class members." *Union Asset Mgmt. Hldg. A.G. v. Dell, Inc.*, 669 F.3d 632, 643-44 (5th Cir. 2012) (endorsing "the district courts' continued use of the percentage method cross-checked with the *Johnson* factors"). Moreover, numerous district courts within the Fifth Circuit have applied the percentage-of-recovery method in awarding fees. *See, e.g.*, *Al's Pals Pet Care v. Woodforest Nat'l Bank, N.A.*, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019) (collecting cases awarding 30% in common fund settlements); *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 500 (N.D. Miss. 1996) (listing examples); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 966-67 (E.D. Tex. 2000) (same). Courts widely recognize that "there is a strong consensus in favor of

awarding attorneys' fees in common fund cases as a percentage of the recovery." *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *26 (N.D. Cal. Nov. 8, 2005).

Moreover, the Private Securities Litigation Reform Act of 1995 ("PSLRA") explicitly authorizes the percentage of the fund method in calculating attorneys' fees to be awarded in securities class actions. 15 U.S.C. §78u-4(a)(6) ("Total 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."); *see Dell*, 669 F.3d at 643 ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such calculation.").

As discussed below, the requested 30% fee is reasonable under the circumstance of this case and falls squarely within the range of percentages regularly approved in the Fifth Circuit.

C. The Requested Percentage Is Fair and Reasonable

An appropriate court-awarded fee is intended to approximate what counsel would receive if they were offering their services in the marketplace. *See Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum*, 465 U.S. at 903 ("'In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.'"[2]) (Brennan, J., concurring).

The requested 30% fee award, which is supported by Lead Plaintiffs (*see* Wayne County Decl., App. 333, ¶6 and Fairfield Funds Decl., App. 340, ¶10), is consistent with percentage fees awarded in the Fifth Circuit in securities class actions like this one. "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method." *Schwartz*, 2005 WL 3148350, at *27. A review of attorneys'

[2] All citations are omitted and emphasis is added throughout unless otherwise noted.

fees awarded in similar cases in this Circuit supports the reasonableness of the 30% fee request. *Deka Inv. GMBH v. Santander Consumer USA Holdings Inc.*, 2021 WL 118288, at *1 (N.D. Tex. Jan. 12, 2021) (awarding 30% of $47 million settlement); *Prause v. TechnipFMC plc*, 2021 WL 6053219, at *2 (S.D. Tex. Mar. 2021) (awarding 33% of $19.5 million settlement); *In re EZCORP, Inc. Sec. Litig.*, 2019 WL 6649017, at *1 (W.D. Tex. Dec. 6, 2019) (awarding 33%); *Parmelee v. Santander Consumer USA Holdings Inc.*, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) (awarding 33.33%).[3]

D. The *Johnson* Factors Further Confirm that the Requested Fee Is Fair and Reasonable

Evaluation of the *Johnson* factors confirm the reasonableness of the percentage fee sought. These factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) preclusion of other employment; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). The Fifth Circuit has left it to the lower court's discretion to apply the *Johnson* factors in view of the circumstances of a particular case, and indicated it does not require a rigid application. *Brantley v. Surles*, 804 F.2d 321, 325-26 (5th Cir. 1986).[4]

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[3] *See also Marcus v. J.C. Penney Co., Inc.*, 2018 WL 11275437, at *1 (E.D. Tex. Jan. 5, 2018) (awarding 30%); *Singh v. 21Vianet Grp., Inc.*, 2018 WL 6427721, at *1 (E.D. Tex. Dec. 7, 2018) (awarding 33.30%); *In re Willbros Grp., Inc.*, 407 F. Supp. 3d 689, 690 (S.D. Tex. 2018) (awarding 30%); *Erica P. John Fund, Inc. v. Halliburton*, 2018 WL 1942227, at *7 (N.D. Tex. Apr. 25, 2018) (awarding 33.33%); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, 2015 WL 965696, at *1 (W.D. La. Mar. 3, 2015) (awarding 30%); *Buettgen v. Harless*, 2013 WL 12303194, at *1 (N.D. Tex. Nov. 13, 2013) (awarding 30%); *Rines v. Heelys, Inc.*, No. 3:07-cv-01468-K, ECF 115 at 1 (N.D. Tex. Nov. 17, 2009) (awarding 30%).

[4] The factors that look at time limitations imposed by the client and the "nature and length" of the professional relationship with the client are not relevant here, and will not be addressed.

1. Time and Labor

Lead Counsel committed considerable resources and time researching, investigating, and prosecuting this Action for the last four years. First, Lead Counsel conducted a diligent investigation to ensure they could plead a sound complaint to withstand a motion to dismiss. This investigation continued from 2018 into 2020, in light of Fluor's September 2020 restatement and the Court's initial dismissal of the pleadings. Second, and perhaps most importantly as the history of the Action makes clear, the services provided by Lead Counsel proved fruitful, resulting in a favorable recovery for the Settlement Class. Defendants have fiercely fought this case for more than four years, with multiple motions to dismiss, and Lead Counsel responded accordingly. Indeed, Lead Counsel alone expended over 6,900 hours on the prosecution of the Action to this point.

2. Novelty and Difficulty of the Issues

It is widely recognized that securities class actions are complex and difficult. *Alaska Elec. Pension Fund v. Flowserve*, 572 F.3d 221, 235 (5th Cir. 2009); *see also In re OCA, Inc. Sec & Derivative Litig.*, 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."); *Schwartz*, 2005 WL 3148350, at *29 ("Federal Securities class action litigation is notably difficult and notoriously uncertain."). Significant risks to establishing liability and damages are detailed in the Joint Declaration. *See* Joint Decl., App. 005, ¶10.

3. Skill Required: Experience, Reputation and Ability of Lead Counsel

The third and ninth *Johnson* factors – the skill required and the experience, reputation, and ability of the attorneys – also support the requested fee award. Here, Lead Counsel performed their work diligently and skillfully and achieved a substantial recovery for the Settlement Class. Lead Counsel have many years of experience in complex federal civil litigation, particularly the litigation of securities and other class actions, and have achieved significant acclaim for their work, as set

forth in the exhibits to Lead Counsel's accompanying fee and expense submissions. *See* RGRD Decl., Ex. C (Firm Resume), App. 073 – App. 231; Pomerantz Decl., Ex. C (Firm Resume), App. 243 – App. 299. They were assisted on matters of local practice by well-regarded local counsel. *See* Declaration of Joe Kendall Filed on Behalf of Kendall Law Group, PLLC in Support of Application for Award of Attorneys' Fees and Expenses ("Kendall Decl."), Ex. C (Firm Resume), App. 308 – App. 319; Declaration of Willie Briscoe Filed on Behalf of The Briscoe Law Firm, PLLC in Support of Application for Award of Attorneys' Fees and Expenses ("Briscoe Decl."), Ex. B (Firm Resume), App. 326 – App. 330.

Lead Counsel's experience in the field also allowed them to identify the complex issues involved in this case and formulate strategies to successfully prosecute it effectively. *See Schwartz*, 2005 WL 3148350, at *30 ("Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case."). As a result of Lead Counsel's efforts, they secured a settlement of $33 million, representing a very good result for the Settlement Class under the circumstances.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Lead Counsel. *See, e.g.*, *In re Aetna Inc.*, 2001 WL 20928, at *15 (E.D. Pa. Jan. 4, 2001). Gibson Dunn & Crutcher LLP, the defense attorneys in this case, are aggressive, experienced, and highly skilled. *See Schwartz*, 2005 WL 3148350, at *30 (fee award supported because, *inter alia*, opposing counsel were "highly experienced lawyers from prominent and well-respected law firms"). That Lead Counsel developed their case and negotiated this Settlement in the face of this formidable opposition supports the fee request.

4. Preclusion of Other Employment

Lead Plaintiffs' counsel – Lead Counsel and Local Counsel – collectively spent approximately 7,080 hours prosecuting this Action on behalf of the Settlement Class. Those hours

were time that counsel could have devoted to other matters. Accordingly, to the extent applicable, this factor supports the requested percentage.

5. Contingent Nature of the Fee

Lead Counsel undertook this Action on a contingent fee basis, assuming a substantial risk that the Action would yield no recovery and leave counsel uncompensated. Joint Decl., App. 013 – App. 015, ¶¶40-45. Lead Counsel's extensive time and effort devoted to litigating the Action in the face of a myriad of risks strongly supports the fee requested. *See Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 678 (N.D. Tex. 2010) (where "class counsel represented the class on a contingent-fee basis, with no guarantee of any recovery . . . [t]he contingent nature of the fee favors an increase" in the fee); *OCA*, 2009 WL 512081, at *22 ("[T]he risk plaintiffs' counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys' fees, and thus an upward adjustment is warranted.").

Indeed, the risk of no recovery in complex cases of this type is very real.[5] There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. Subsequent to the passage of the PSLRA, many cases in this Circuit (and across the country) have been dismissed at the pleading stage in response to defendants' arguments that the complaints do not meet the PSLRA's heightened pleading standards. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review* (NERA Jan. 25, 2022) at 14 (in securities class action cases filed and resolved between January 1, 2012 and December 31, 2021, where motions to dismiss were filed, "approximately 56% were granted while only 19% were denied"). Lead Counsel were faced with this reality here. The Court initially dismissed the complaint in full and, after Lead

[5] *See Schwartz*, 2005 WL 3148350, at *31-*32 (recognizing "the risk of no recovery in complex cases of this type is very real" and that "[c]ourts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees").

Counsel further amended the pleadings, it subsequently dismissed all but one of Lead Plaintiffs' alleged misstatements and omissions – a challenging procedural path with an uncertain (at best) outcome. To be sure, the likelihood of prevailing on a motion for reconsideration or on an appeal to the Fifth Circuit was slim. Even plaintiffs who get past summary judgment and succeed at trial may find their judgment overturned on appeal or on judgment notwithstanding the verdict.[6]

Lead Counsel have received no compensation despite expending millions of dollars in time during the more than four-year duration of this Action and incurring significant expenses in prosecuting this Action for the benefit of the Settlement Class. Any fee or expense award has always been at risk and completely contingent on the result achieved. Thus, the contingent nature of the Action strongly supports the requested percentage.

6. Amount Involved and Results Obtained

The benefit conferred on the class and the result achieved is an important factor in setting a fair fee. *See, e.g.*, *In re Terra-Drill P'ships Sec. Litig.*, 733 F. Supp. 1127, 1128 (S.D. Tex. 1990). The result achieved, given the substantial risks, is significant and supports the requested fee. Indeed, as noted in Lead Plaintiffs' contemporaneously filed motion for final approval of the Settlement, the $33 million Settlement represents a very solid 37.5% recovery rate for the estimated $88 million in class-wide damages correlating to the portion of the case upheld by the Court at the Rule 12(b)(6) stage.

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[6] *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (major portion of plaintiffs' verdict reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1998 on the basis of 1994 Supreme Court opinion); *In re BankAtlantic Bancorp, Inc.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011); *aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (granting defendants' post-trial motion for judgment as a matter of law following jury verdict for plaintiff); *In re Apollo Grp., Inc. Sec. Litig.*, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd and remanded*, 2010 WL 5927988 (9th Cir. June 23, 2010) (same).

7. Undesirability of the Case

The tenth *Johnson* factor, undesirability of the case, also supports the fee requested here. Securities cases have generally been recognized as "'undesirable'" due to the financial burden on counsel and the time demands of litigating class actions of this size and complexity. *Garza v. Sporting Goods Props., Inc.*, 1996 WL 56247, at *33 (W.D. Tex. Feb. 6, 1996) (factors such as financial burden on counsel and time demands of litigating class action of this size and complexity have caused cases to be considered "'undesirable'"). "Litigating an expensive case involving a 'well-financed corporate [defendant] on a contingent fee' can also make a case undesirable." *In re Chesapeake Energy Corp.*, 2021 WL 3725983, at *25 (S.D. Tex. Aug. 23, 2021) (alteration in original), *withdrawn and superseded*, 567 F. Supp. 754 (S.D. Tex. 2021) (quoting *Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL1942227, at *12) (N.D. Tex. Apr. 25, 2018).

This was never an easy case and the risk of no recovery was always high. The Court dismissed the majority of the case – twice. Had Lead Plaintiffs and Lead Counsel not been tenacious in pursuing this Action, it is doubtful that Settlement Class Members would have recovered anything from Defendants. The risks counsel faced must be assessed as they existed at the time counsel undertook the Action and not in retrospect in light of the settlement achieved. *See, e.g.*, *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991) (the riskiness of a case must be judged *ex ante* not *ex post*). Thus, the "undesirability" of the Action supports the requested percentage.

8. Awards in Similar Cases / Lodestar Cross Check

As discussed above in §III.C, a 30% fee is in line with several other settlements recently approved in this Circuit. Moreover, as part of the *Johnson* analysis, courts frequently engage in a lodestar cross-check as a secondary means of examining requested fees. *Halliburton*, 2018 WL 1942227, at *8-*9 (collecting cases); *City of Omaha*, 2015 WL 965696, at *9-*10. The purpose is simply to "avoid windfall fees" that would represent "'an extraordinary lodestar multiple.'" *Id.* "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent

nature of the engagement, the skill of the attorneys, and other factors." *Id.* at *10. "The Court may consider multipliers used in comparable case." *Id.*

Here, counsel's aggregate lodestar (hours multiplied by their hourly rates) is $5,171,728.25. *See* RGRD Decl., Ex. A, App. 069; Pomerantz Decl., Ex. A, App. 239; Kendall Decl., Ex. A, App. 304; and Briscoe Decl., Ex. A, App. 324. Therefore, a 30% fee represents a very reasonable 1.9 multiplier. Fifth Circuit courts routinely grant even higher multipliers in complex class action litigations such as this Action. *See, e.g.*, *DiGiacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at *11 (S.D. Tex. Dec. 19, 2001) (approving multiplier of 5.3); *In re Shell Oil Refinery*, 155 F.R.D. 552, 573 (E.D. La. 1993) (applying multiplier of 3 to 3.5); *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732, 791 (S.D. Tex. 2008) (approving 5.2 multiplier); *In re Waste Mgmt., Inc. Sec. Litig.*, 2002 WL 35644013, at *29 (S.D. Tex. May 10, 2002), *amended*, 2003 WL 27380802 (S.D. Tex. July 31, 2003) (approving 5.3 multiplier); *City of Omaha*, 2015 WL 965696, at *10 (approving 1.92 multiplier and noting that it was "on the lower end of approved multipliers").

E. Settlement Class Member Reaction

Although not formally noted in this Circuit's case law as a factor for the Court's consideration in determining an award of attorneys' fees, courts throughout the country have found that relatively few or no objections from the class to the attorneys' fees requested supports the reasonableness of the requested attorneys' fees.[7] The Postcard Notice, Long-Form Notice, and publication notice all disclosed that Lead Counsel would seek an award of up to 30% of the Settlement Fund. *See* Declaration of Luiggy Segura Regarding: (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; (C) Report on Exclusion Requests and Objections; and (D)

[7] *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion by finding that absence of substantial objections by class members to fee request weighed in favor of approval); *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *10 (E.D. Pa. Apr. 18, 2005) (absence of objections supports award of requested fee).

Claims Received to Date ("Segura Decl."). App. 024 –App. 0.25, Ex. A (Postcard Notice); App. 027, Ex. B (Long-Form Notice at 1); App. 049, Ex. C (Summary Notice at 1). To date, there have been no objections to Lead Counsel's fee request,[8] which is important evidence that the requested fee is fair. *See, e.g.*, *Halliburton*, 2018 WL 1942227, at *12 ("Although the lack of objections is not a *Johnson* factor, the Court finds it relevant in considering the reasonableness and fairness of the award.").

IV. THE REQUESTED EXPENSES ARE REASONABLE AND NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENT

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and charges. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 2004 WL 1900294, at *3 (S.D. Tex. Aug. 5, 2004); *see also Di Giacomo*, 2001 WL 34633373, at *13 (awarding litigation expenses in addition to 30% attorneys' fee, noting that "[n]o party has objected to the amount of the expenses" and that such expenses were reasonable); *Faircloth v. Certified Fin. Inc.*, 2001 WL 527489, at *12 (E.D. La. May 16, 2001) (awarding costs in addition to the percentage fee).

Lead Counsel seek payment of counsel's reasonable expenses and charges of $115,915.09 for prosecuting this Action on behalf of the Settlement Class. *See* RGRD Decl., App. 071, Ex. B; Pomerantz Decl., App. 241, Ex. B; Kendall Decl., App. 306, Ex. B. These expenses were necessary for the investigation and prosecution of the case. The expenses include consultant and expert fees, mediation fees, investigators, travel, photocopying of documents, research, messenger service, postage, express mail and next day delivery, and other incidental expenses directly related to the prosecution of this Action. The Postcard Notice, Long-Form Notice, and publication notice all disclosed that counsel would seek payment of their litigation costs, charges and expenses up to a

[8] As set forth in the Postcard and Long-Form Notices, the deadline to submit objections is the date of this filing. Should any objections be received after this date, Lead Counsel will address them in their reply brief, to be filed no later than October 31, 2022.

maximum of $200,000 – much higher than the amount actually being requested now. Segura Decl., App. 025, Ex. A (Postcard Notice); App. 027, Ex. B (Long-Form Notice at 1); App. 049, Ex. C (Summary Notice at 1). Yet, to date, there have been no objections to the expense request. Lead Counsel thus respectfully request that they should be paid from the Settlement Fund.

V. LEAD PLAINTIFFS' REQUESTED AWARDS UNDER 15 U.S.C. §78u-4(a)(4) ARE REASONABLE

Lead Plaintiffs also seek approval for awards of $1,919.25 (for Wayne County), $25,000.00 (for the FER Plan), and $25,000.00 (for the FPFR Plan), pursuant to 15 U.S.C. §78u-4(a)(4), in recognition of the time and resources they spent representing the Settlement Class. *See* Wayne County Decl., App. 333 – App. 334, ¶7; Fairfield Funds Decl., App. 340 – App. 341, ¶¶11-14. The PSLRA allows an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). As set forth in the accompanying declarations, Lead Plaintiffs took active roles in prosecuting the Action, including: (1) overseeing Lead Counsel with regard to issues and developments in the Action through periodic telephone, email, and video communications; (2) reviewing draft filings and other important documents and materials related to the case; (3) consulting with Lead Counsel on litigation and settlement strategy; and (4) taking an active role in overseeing and authorizing Lead Counsel's attempts to mediate and resolve the litigation. *See* Wayne County Decl., App. 333, ¶4; Fairfield Funds Decl., App. 339, ¶9. In performing these tasks, Wayne County expended 24.25 hours, the FER Plan expended 100.375 hours, and the FPFR Plan expended 118.525 hours.[9] Wayne County Decl., App. 333 – App. 334, ¶7; Fairfield Funds Decl.,

[9] Of the 218.90 total hours spent on behalf of the FER Plan and FPFR Plan, 140.25 hours were incurred by executive municipal leadership and joint pension leadership that are jointly attributable to the two plans. *See* Fairfield Funds Decl., App. 340, ¶11. For purposes of this application, each plan was allocated half those hours (70.125 hours each), which were added to the time logged by each plan's own oversight board – 30.25 hours by the ERB (for the FER Plan) or 48.40 hours by the

App. 340, ¶11. Many courts, including those in this District, have approved such awards under the PSLRA to compensate class representatives for the time and effort they spend on behalf of the class. *See Santander*, 2021 WL 118288, at *2; *Prause*, 2021 WL 6053219; *Harmon v. Warden, Lebanon Corr. Institution*, 2021 WL 6124483, at *2 (S.D. Ohio Dec. 28, 2021); *Isolde v. Trinity Indus., Inc.*, No. 3:15-cv-02093-K, ECF 179 (N.D. Tex. Mar. 31, 2020); *Parmelee*, 2019 WL 2352837, at *2.

To date, no Settlement Class Member has objected to such awards to Lead Plaintiffs, which are less than the maximum total of $75,000 in potential lead plaintiff awards that was published in the notices. Moreover, the Fifth Circuit has upheld a plaintiff award many times greater. *Halliburton*, 2018 WL 1942227, at *14 (granted request for $100,000 award to lead plaintiff).

VI. CONCLUSION

For all the foregoing reasons, Lead Plaintiffs and Lead Counsel respectfully request that the Court award attorneys' fees of 30% of the $33 million Settlement Amount and expenses of $115,915.09, plus interest on both amounts. Finally, Lead Plaintiffs request approval of awards pursuant to 15 U.S.C. §78u-4(a)(4) in the amounts of $1,919.25 for Wayne County, $25,000.00 for the FER Plan, and $25,000.00 for the FPFR Plan.

DATED: October 17, 2022

Respectfully submitted,

KENDALL LAW GROUP, PLLC
JOE KENDALL (Texas Bar No. 11260700)

/s/ Joe Kendall
JOE KENDALL

3811 Turtle Creek Blvd., Suite 1450
Dallas, TX 75219
Telephone: 214/744-3000
214/744-3015 (fax)
jkendall@kendalllawgroup.com

PFRB (for the FPFR Plan). *Id.* Thus, the plan-specific total is 100.375 hours for the FER Plan and 118.525 hours for the FPFR Plan. *Id.*

Local Counsel for Wayne County Employees' Retirement System

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART (CA Bar No. 144892)
DARRYL J. ALVARADO (CA Bar No. 253213)
J. MARCO JANOSKI GRAY (CA Bar No. 306547)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com
dalvarado@rgrdlaw.com
mjanoski@rgrdlaw.com

DATED: October 17, 2022

POMERANTZ LLP
JEREMY A. LIEBERMAN (NY Bar No. 4161352)
MATTHEW L. TUCCILLO (NY Bar No. 5008750)
J. ALEXANDER HOOD II (NY Bar No. 5030838)
JENNIFER BANNER SOBERS (NY Bar No. 4411922)

/s/ Matthew L. Tuccillo
MATTHEW L. TUCCILLO

600 Third Avenue, 20th Floor
New York, NY 10016
Telephone: 212/661-1100
212/661-8665 (fax)
jalieberman@pomlaw.com
mltuccillo@pomlaw.com
ahood@pomlaw.com
jsobers@pomlaw.com

Lead Counsel for Lead Plaintiffs

VANOVERBEKE, MICHAUD & TIMMONY, P.C.
THOMAS C. MICHAUD (MI Bar No. P46787)
79 Alfred Street
Detroit, MI 48201
Telephone: 313/578-1200
313/578-1201 (fax)
tmichaud@vmtlaw.com

Additional Counsel for Wayne County Employees' Retirement System

THE BRISCOE LAW FIRM, PLLC
WILLIE C. BRISCOE (Texas Bar No. 24001788)
3131 McKinney Avenue, Suite 600
Dallas, TX 75204
Telephone: 214/643-6011
281/254-7789 (fax)
wbriscoe@thebriscoelawfirm.com

Local Counsel for the Town of Fairfield Employees' Retirement Plan and the Town of Fairfield Police and Firemen's Retirement Plan

CERTIFICATE OF CONFERENCE

Counsel for Lead Plaintiffs conferred via email with counsel for Defendants on October 17, 2022. Counsel for Defendants indicated that they take no position to the relief requested.

/s/ Darryl J. Alvarado
DARRYL J. ALVARADO

CERTIFICATE OF SERVICE

This is to certify that on October 17, 2022, I have filed the above and foregoing on the Court's CM/ECF electronic filing system, and that by virtue of this filing, all attorneys of record will be served electronically with true and exact copies of this filing.

/s/ Joe Kendall
JOE KENDALL