BARRETT JOHNSTON MARTIN
& GARRISON, PLLC
JERRY E. MARTIN, #20193
DAVID GARRISON, #24968
Bank of America Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: 615/244-2202
615/252-3798 (fax)

Local Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
CHRISTOPHER M. WOOD, #032977
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: 615/244-2203
615/252-3798 (fax)
cwood@rgrdlaw.com

Class Counsel

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TENNESSEE

CHATTANOOGA DIVISION

LEWIS STEIN, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. U.S. XPRESS ENTERPRISES, INC., et al., Defendants.	Civil Action No. 1:19-cv-00098-TRM-CHS CLASS ACTION Judge Travis R. McDonough Magistrate Judge Christopher H. Steger

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)

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Class Counsel respectfully submit this memorandum in support of their motion for an award of attorneys' fees and expenses, and for awards to Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Class.

I. INTRODUCTION

After years of hard-fought litigation, and following lengthy mediation efforts, Plaintiffs and Class Counsel have succeeded in obtaining a $13 million cash recovery for the benefit of the Class.[1] This substantial and definite recovery was achieved through the skill, hard work, and persistent advocacy of Class Counsel, who now respectfully move this Court for an award of attorneys' fees in the amount of one-third of the Settlement Amount and litigation expenses of $1,368,163.51, plus interest earned on both amounts.

The requested fee award is within the range of percentages awarded in class actions in this District, in this Circuit, and across the country, and is warranted in light of the excellent result obtained for the Class under the circumstances.

The fee award is also reasonable in light of the significant risks involved in bringing and prosecuting the Litigation on behalf of the Class and the extensive effort of counsel in obtaining this result. The Litigation is subject to the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which requires plaintiffs to "thread the eye of a needle made smaller and smaller

[1] Submitted herewith in support of approval of the proposed Settlement is the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Brief"). The Court is also respectfully referred to the accompanying Declaration of Christopher M. Wood in Support of: (1) Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Award to Plaintiffs Pursuant to 15 U.S.C. §77z-1(a)(4) ("Wood Decl.") for a more detailed history of the Litigation, the extensive efforts of Class Counsel, and the factors bearing on the reasonableness of the requested award of attorneys' fees and expenses. All terms capitalized herein are defined in the Stipulation of Settlement dated March 27, 2023 (the "Stipulation") (ECF 221), unless otherwise indicated. Unless otherwise noted, all emphasis in quotations is added and citations and footnotes are omitted.

over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

In addition to the significant risks in prosecuting the Litigation under the PSLRA, the skill and effort required to achieve the Settlement was substantial. Class Counsel marshaled considerable resources and committed substantial amounts of time and expense to prosecuting the Litigation. As set forth in the Wood Declaration, the Settlement was not achieved until Class Counsel: (1) researched and drafted Lead Plaintiff's Complaint for Violation of the Federal Securities Laws (the "Complaint") with the assistance of an independent private investigator retained to identify and interview percipient witnesses; (2) opposed Defendants' motions to dismiss; (3) retained an economic consultant to assist with class certification and obtained class certification; (4) completed years of fact discovery, including reviewing and analyzing more than 480,000 pages of documents produced by Defendants and third parties, and taking numerous fact depositions; (5) filed or responded to six discovery motions; (6) retained experts in the fields of disclosure standards and due diligence, and economics and damages, who prepared opening and rebuttal reports; (7) completed expert discovery, including taking Defendants' three experts' depositions and defending Plaintiffs' two experts' depositions; (8) engaged in settlement negotiations with Defendants, assisted by a nationally-recognized, experienced mediator; and (9) assessed the risks of prevailing at summary judgment and trial. *See generally* Wood Decl.

Class Counsel undertook the representation of the Class on a contingent fee basis, and no payment has been made to them to date for their services or for the substantial litigation expenses they have incurred on behalf of the Class. Class Counsel firmly believe that the Settlement is the result of their diligent and effective advocacy, as well as their reputations as firms that will not waver in their dedication to the interests of class members, and that are committed to zealously prosecuting a meritorious case through trial and subsequent appeals. In litigation asserting claims

based on complex legal and factual issues that were vigorously opposed by highly skilled and experienced defense counsel, Class Counsel succeeded in securing a very favorable result for the Class. Significantly, the fee and expense request is supported by Plaintiffs. *See* Declaration of Deirdre Terry ("Terry Decl."), ¶9, Declaration of Charles Clowdis ("Clowdis Decl."), ¶6, and Declaration of Bryan K. Robbins ("Robbins Decl."), ¶6, filed herewith. Plaintiffs were actively involved in the Litigation, including producing discovery and providing deposition testimony, as well as during settlement discussions. Terry Decl., ¶¶6-7, Clowdis Decl., ¶4, Robbins Decl., ¶4. Because of this involvement, now, at the end of the case, Plaintiffs are in a unique position to evaluate this multi-million dollar result and assess whether the fee request is fair, reasonable, and should be awarded. As the Third Circuit held in *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001), "courts should afford a presumption of reasonableness to fee requests submitted pursuant to an agreement between a properly-selected lead plaintiff and properly-selected lead counsel."

As discussed herein, and for the reasons detailed in the Settlement Brief and the Wood Declaration, the requested fee is fair and reasonable when considered under applicable Sixth Circuit standards and is within the range of awards in class actions approved by courts in this Circuit and nationwide. Moreover, the requested expenses and charges are reasonable in amount and were necessarily incurred for the successful prosecution of the Litigation. No objections to these requests have been received by Class Counsel.

II. AWARD OF ATTORNEYS' FEES

A. Class Counsel Are Entitled to a Fee from the Common Fund They Obtained

This Settlement has created a common fund. The Supreme Court has long recognized the "common fund" exception to the general rule that litigants bear their own attorneys' fees. *Trustees v. Greenough*, 105 U.S. 527 (1881). The rationale for the common fund principle was explained in *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980):

> [A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

The common fund doctrine both prevents unjust enrichment and encourages counsel to protect the rights of those who have small claims. *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 n.4 (2013). This is particularly applicable to claims brought under the federal securities laws, as the Supreme Court has emphasized that private actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] Commission action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).[2]

B. The Court Should Award Attorneys' Fees Using the Percentage Approach

Class Counsel's efforts have resulted in the creation of a $13 million common fund. Courts favor awarding fees from a common fund based on "a percentage of the fund bestowed on the class." *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Greenough*, 105 U.S. at 532; *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165-66 (1939). Congress followed the Supreme Court's lead and endorsed the efficacy of the percentage-of-the-fund approach to fee awards in the context of common fund PSLRA cases. *See* 15 U.S.C. §77z-1(a)(6); *New York State Tchrs.' Ret. Sys. v. GMC*, 315 F.R.D. 226, 243 (E.D. Mich. 2016) ("[B]ecause the PSLRA refers to an award of attorneys' fees and expenses in relation to 'a reasonable percentage of the amount of any damages . . . actually paid to the class,' the Court concludes that the percentage-of-the-fund approach is the better method for calculating Lead

[2] *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007) (noting that the Court has "long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions").

Counsel's fee award."), *aff'd sub nom. Marro v. New York State Tchrs.' Ret. Sys.*, 2017 WL 6398014 (6th Cir. Nov. 27, 2017).

District courts in this Circuit overwhelmingly apply the percentage method, endorsed by the Sixth Circuit in *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 515-16 (6th Cir. 1993), in awarding fees in common fund cases,[3] recognizing that "the percentage-of-the-fund approach more accurately reflects the result achieved [and] . . . has the virtue of reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases." *Skelaxin*, 2014 WL 2946459, at *1.[4] The percentage-of-the-fund method also "affords the Court greater flexibility in assuring that Counsel are adequately compensated for the results that they have achieved and the work that they have done, while also

[3] *Cosby v. KPMG LLP*, 2022 WL 4129703, at *2 (E.D. Tenn. July 12, 2022) (finding the percentage-of-the-fund approach "the preferred method where, as here, 'a substantial common fund has been established for the benefit of class members through the efforts of class counsel'"); *Jackson County Emps. Ret. Sys. v. Ghosn*, No. 3:18-cv-01368, ECF 267 at ¶3 (M.D. Tenn. Oct. 7, 2022) (Ex. 1) (using "'percentage-of-recovery'" to award class counsel fees in §10b-5 case); *Grae v. Corrections Corp. of America*, 2021 WL 5234966, at *1 (M.D. Tenn. Nov. 8, 2021); *Burges v. BancorpSouth, Inc.*, No. 3:14-cv-01564, ECF 265 at ¶3 (M.D. Tenn. Sept. 21, 2018) (same) (Ex. 2); *Schuh v. HCA Holdings, Inc.*, 2016 WL 10570957, at *1 (M.D. Tenn. Apr. 14, 2016); *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, 2015 WL 13647397, at *1 (M.D. Tenn. Jan. 16, 2015) (same); *North Port Firefighters' Pension-Local Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595, ECF 143 at ¶3 (M.D. Tenn. May 12, 2014) (same) (Ex. 3); *Winslow v. BancorpSouth, Inc.*, No. 3:10-cv-00463, ECF 103 at ¶3 (M.D. Tenn. Oct. 31, 2012) (same) (Ex. 4); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) ("The Court recognizes that the trend in 'common fund cases has been toward use of the percentage method.'"); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) ("The percentage-of-the-fund method, however, clearly appears to have become the preferred method in common fund cases."); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010), *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011).

[4] The Sixth Circuit is not alone in its adoption of the percentage approach. *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 301 (1st Cir. 1995); *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295 (9th Cir. 1994); *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991).

protecting the Class' interest in the fund." *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1280 (S.D. Ohio 1996), *aff'd*, 102 F.3d 777 (6th Cir. 1996).

C. The Requested Fee Award Is Within the Applicable Range of Percentage-of-the-Fund Awards

In selecting an appropriate percentage award, the Supreme Court recognizes that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *Missouri v. Jenkins*, 491 U.S. 274, 285 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of one-third of the recovery. *Blum*, 465 U.S. at 903 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.").

The fee requested here is "'certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit,' and is appropriate given the excellent result Co-Lead Counsel achieved notwithstanding substantial risk." *Cosby v. KPMG LLP*, 2022 WL 4129703, at *2 (E.D. Tenn. July 12, 2022) (awarding one-third of $35 million settlement); *Skelaxin*, 2014 WL 2946459, at *5 ("The Court finds that the requested counsel fee of one third [of $73 million recovery] is fair and reasonable and fully justified. The Court finds it is within the range of fees ordinarily awarded."). *Jackson County Emps.*, ECF 267 at ¶3 (Ex. 1) (awarding one-third of $36 million settlement, plus expenses); *Grae*, 2021 WL 5234966, at *1 (awarding one-third of $56 million settlement, plus expenses); *BancorpSouth*, ECF 265 at ¶3 (Ex. 2); *Morse v. McWhorter*, No. 3:97-0370, slip op. at 1 (M.D. Tenn. Mar. 12, 2004) (awarding a 33-1/3% fee, plus expenses) (Ex. 5); *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 11, 1999) ("[T]hroughout the Sixth Circuit, attorneys' fees in class actions have ranged from 20%-50%."); *In re Sirrom Cap. Corp. Sec. Litig.*, No. 3-98-0643, slip op. at 6 (M.D. Tenn. Feb. 4, 2000) (awarding

33-1/3% of $15 million settlement) (Ex. 6); *Skeete v. Republic Schs. Nashville*, No. 3:16-cv-00043, ECF 112 at ¶14 (M.D. Tenn. Feb. 26, 2018) (Ex. 7) (ECF 105, 112) (approving one-third fee).[5]

D. The Fee Is Reasonable Under the Circumstances

The touchstone of an appropriate fee award in common fund cases is whether the award is reasonable under the circumstances. *See Rawlings*, 9 F.3d at 517. The Sixth Circuit grants a district court "'considerable latitude of discretion on the subject, since it has far better means of knowing what is just and reasonable than an appellate court.'" *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974). In determining the reasonableness of attorneys' fees, the Sixth Circuit over the years has identified several relevant factors that District Courts "[o]ften, but by no means invariably," consider. *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009). These have included "the complexity of the legal questions involved, the results accomplished, the professional standing of [counsel], and the professional standing of [defendants'] lawyers," the effort expended, and the public policy aspect of the case. *Denney v. Phillips & Buttorff Corp.*, 331 F.2d 249, 251 (6th Cir. 1964); *Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983). Courts also consider "'[t]he extent and nature of the services; the labor, time and trouble involved; the results achieved; the character and importance of the matter in hand; the value of the property or the amount of money involved; the learning, skill and experience exercised; whether the fee is absolute or contingent; and the ability to pay.'" *Pergament v. Kaiser-Frazer Corp.*, 224 F.2d 80, 83 (6th Cir. 1955). Application of the factors articulated by the Sixth Circuit support the requested fee award here.

[5] *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015) (awarding one-third of common fund as attorneys' fees); *Fushi Copperweld*, ECF 143 at ¶3 (awarding 33-1/3% of settlement in §10b-5 case) (Ex. 3); *Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (awarding one-third of common fund and noting that "'[e]mpirical studies show that . . . fee awards in class actions average around one-third of the recovery'").

1. The Value of the Benefits Achieved

Class Counsel have secured a recovery that provides for a substantial (and definite) cash payment of $13 million. Courts have consistently recognized that in making a fee award the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).[6] This outstanding Settlement was achieved as a direct result of the skill, effort, and tenacity of Class Counsel in prosecuting the Litigation. There is no question Class Counsel overcame numerous obstacles and took significant risks in obtaining this highly favorable result for the Class.

While Class Counsel believe Plaintiffs' claims have substantial merit, if litigation were to proceed to trial there is nonetheless a significant risk that the Class could recover less than the amount of the Settlement or nothing at all.

Defendants consistently maintained that Plaintiffs could not establish liability and/or damages, and challenged, or intended to challenge, virtually every factual and legal issue in the Litigation in an effort to defeat Plaintiffs' claims. *See generally* Wood Declaration.

More specifically, Defendants argued, and were expected to continue to argue, that: (a) the Offering Materials were not misleading because they adequately disclosed the Company's driver retention problems; (b) the practice of OTR cannibalization was a common practice in the industry, and investors were aware that this was occurring at the Company; and (c) the OTR cannibalization did not materially negatively impact the Company's operations at the time of the IPO. Wood Decl., ¶14. Plaintiffs also faced risks in proving falsity as a result of the limited statements that remained in the case following the Court's motion to dismiss ruling. *Id*., ¶37. At trial, Defendants likely would isolate the two specific statements upheld by the Court to narrow the issue of falsity and

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[6] *Rawlings*, 9 F.3d at 516 (a percentage of the fund will compensate counsel for the result achieved); *In re Delphi Corp. Sec., Derivative, & "ERISA" Litig.*, 248 F.R.D. 483, 503 (E.D. Mich. 2008); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 547-48 (S.D. Fla. 1988) ("The quality of work performed in a case that settles before trial is best measured by the benefit obtained."), *aff'd*, 899 F.2d 21 (11th Cir. 1990).

would seek to prevent Plaintiffs from making any reference to any other alleged misrepresentations for purposes of providing the jury with the proper context in which to evaluate the misleading nature of the Offering Materials. *Id*., ¶14. If Defendants were successful, the Court or jury may not have found the specific statements upheld by the Court materially false or misleading.

Plaintiffs also faced risks establishing that their damages were caused by Defendants' misrepresentations and proving the amount of damages. Defendants asserted a negative causation defense contending that Plaintiffs are not entitled to damages. *Id*., ¶15. Defendants argued that Plaintiffs' alleged damages were caused by something other than the decline of USX's stock price as a result of the alleged misrepresentations in the Offering Materials. *Id*. Defendants provided expert testimony opining that the alleged misrepresentations could not have caused the stock to decline because the Company had already disclosed driver shortage issues and its practice of OTR cannibalization to the public. *Id*. Plaintiffs anticipated a hotly contested battle of the experts on these issues. It is impossible to predict the outcome of such a battle.

Further, there was significant risk regarding the amount of damages that Plaintiffs should be awarded should they prevail on their claims. *Id*., ¶16. Plaintiffs' and Defendants' experts had vastly different opinions regarding the amount of damages. There was significant uncertainty as to which expert's opinion would carry the day before a jury.

Faced with these substantial risks, and with a keen recognition of the delay and costs to the Class that would be involved in overcoming these risks, Class Counsel achieved a highly favorable settlement on behalf of the Class, fully justifying a fee award "within the range of fees ordinarily awarded" in this District and Circuit. *Skelaxin*, 2014 WL 2946459, at *1.

2. Public Policy Considerations

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*, 472 U.S. at 310; *Tellabs*, 551 U.S. at 313. Adequate compensation to encourage attorneys to assume the risk of litigation is in the public interest. *Cosby*, 2022 WL 4129703, at *2. Without adequate compensation, it would be difficult to retain the caliber of lawyers necessary, willing, and able to properly prosecute to a favorable conclusion complex, risky, and expensive class actions such as this one. *GMC*, 315 F.R.D. at 244 ("The federal securities laws are remedial in nature and adequate compensation is necessary to encourage attorneys to assume the risk of litigating private lawsuits to protect investors.").

Without the willingness of Class Counsel to assume the risks associated with litigation such as this one, members of the Class may not have recovered anything. Society benefits from strong advocacy on behalf of investors, and public policy favors the granting of reasonable fee and expense applications such as this one. *See Tellabs*, 551 U.S. at 313 (the Court has "long recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions"); *Se. Milk*, 2013 WL 2155387, at *5 (Attorney fee awards "are necessary to incentivize attorneys to shoulder the risk of nonpayment to expose violations of the law and to achieve compensation for injured parties.").

3. The Contingent Nature of the Fee

Class Counsel undertook the Litigation on a contingent fee basis, assuming a significant risk that the Litigation would yield no recovery and leave counsel uncompensated. Wood Decl., ¶¶117-121. This risk encompasses not only the risk of zero payment but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992).

Unlike counsel for Defendants, who are typically paid an hourly rate and reimbursed for their out-of-pocket expenses on a regular basis, and thereby assumed no risk of non-payment, Class Counsel have not been compensated for any of their time or expenses since litigation of this case began over four years ago. Courts have consistently and rightly recognized that the risk of receiving

little or no recovery is a major factor in considering an award of attorneys' fees. *See Se. Milk*, 2013 WL 2155387, at *5 ("This Court finds that the fee awarded should fully reflect the risk taken by these lawyers and is a very substantial factor in this case which weighs in favor of the requested fee.").

While high-stakes complex class actions are inherently difficult to prosecute, the PSLRA's mandatory discovery stay make securities class actions especially arduous. According to data from NERA Economic Consulting, motions to dismiss are granted, either in whole or in part, in 75% of all securities class actions, sometimes years after a case is filed.[7] Even when cases proceed past a motion to dismiss, the risk of no recovery is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th Cir. 2018) (summary judgment granted in favor of defendants in securities fraud action after seven years of litigation); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009) (summary judgment granted in favor of defendants after eight years of litigation and after plaintiffs' counsel incurred over $6 million in expenses and worked over 100,000 hours), *aff'd*, 627 F.3d 376 (9th Cir. 2010). Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. For example, in *BankAtlantic*, the Eleventh Circuit upheld a lower court's decision overturning a jury verdict in favor of the lead plaintiff on the issue of loss causation. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012). The contingent nature of the representation supports the reasonable fee sought here.

[7] Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*, at 19 (NERA Jan. 29, 2018), available at nera.com/content/dam/nera/publications/2018/PUB_Year_End_Trends_Report_0118_final.pdf.

4. The Diligent Prosecution of the Litigation

As discussed in more detail in the Wood Declaration, the Litigation was highly contentious and involved disputes as to practically all elements of the case. In order to obtain the $13 million recovery on behalf of the Class, Class Counsel: (1) researched and drafted the Complaint with the assistance of an independent private investigator retained to identify and interview percipient witnesses; (2) opposed Defendants' motions to dismiss; (3) retained an economic consultant to assist with class certification and obtained class certification; (4) completed years of fact discovery, including reviewing and analyzing more than 480,000 pages of documents produced by Defendants and third parties, and taking numerous fact depositions; (5) filed or responded to six discovery motions; (6) retained experts in the fields of disclosure standards and due diligence, and economics and damages, who prepared opening and rebuttal reports; (7) completed expert discovery, including taking Defendants' three experts' depositions and defending Plaintiffs' two experts' depositions; (8) engaged in settlement negotiations with Defendants, assisted by a nationally-recognized, experienced mediator; and (9) assessed the risks of prevailing at summary judgment and trial. *See generally* Wood Decl.

The Settlement was achieved only by Class Counsel's tenacious advocacy and diligent prosecution. The significant resources devoted by Class Counsel reflect the effort required to bring this difficult Litigation to a successful conclusion and warrants approval of the requested fee.

5. The Complexity of the Litigation

The complexity of the issues is a significant factor to be considered in making a fee award. Courts have long recognized that securities class actions present inherently complex and novel issues. *In re Nat'l Century Fin. Enters., Inc. Inv. Litig.*, 2009 WL 1473975, at *4 (S.D. Ohio May 27, 2009); *GMC*, 315 F.R.D. at 244. As Judge Finesilver noted four decades ago in *Miller v. Woodmoor Corp.*, 1978 WL 1146 (D. Colo. Sept. 28, 1978):

> The benefit to the class must also be viewed in its relationship to the complexity, magnitude, and novelty of the case. . . .
>
> Despite years of litigation, the area of securities law has gained little predictability. There are few "routine" or "simple" securities actions. Courts are continually modifying and/or reversing prior decisions in an attempt to interpret the securities law in such a way as to follow the spirit of the law while adapting to new situations which arise. Indeed, many facets of securities law have taken drastically new directions during the pendency of this action. . . .
>
> The complexity of a case is compounded when it is certified as a class action. . . . Management of the case, in and of itself, is a monumental task for counsel and the Court.

Id. at *4.

Judge Finesilver's comments ring even more true today. Despite the fact that Plaintiffs believe they have uncovered sufficient evidence to sustain a jury verdict in Plaintiffs' favor, Defendants believe they have countering evidence to defend each of Plaintiffs' claims.

The complexity of proving and recovering full damages here cannot be overstated. If Defendants' negative causation defense was successful, that could have eliminated or significantly reduced the amount of damages recoverable by the Class. *Id.*, ¶93. Thus, risks concerning the establishment of damages subjected the Class to a reduced recovery. *Id.*

These legal and factual complexities required skill and resources to deal with efficiently, and made the case more difficult and unpredictable, as an inherently uncertain "battle of the experts" would undoubtedly affect the outcome of the upcoming trial. These complexities support the requested award.

6. The Quality of Representation

Class Counsel include locally and nationally known leaders in the fields of securities class actions and complex litigation. Robbins Geller served as sole lead counsel in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, No. H-01-3624 (S.D. Tex.), in which it secured the largest recovery ever obtained in a shareholder class action. Specifically, commenting on counsel's "clearly

superlative litigating and negotiating skills" and the firm's "outstanding reputation, experience, and success in securities litigation nationwide," the court in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), stated, "[t]he experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country." *Id*. at 789-90, 797. Robbins Geller served as sole lead counsel in *In re Cardinal Health Inc. Sec. Litig*., No. C2-04-575 (S.D. Ohio), obtaining the then-largest securities settlement in the Sixth Circuit. In approving the requested attorneys' fees, the court noted that "[t]he quality of representation in this case was superb." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007). Robbins Geller also served as sole lead counsel in *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033 (M.D. Tenn.), obtaining a $215 million recovery on behalf of the class – the largest securities class action recovery ever in Tennessee.

Levi & Korsinsky has represented investor classes throughout the country and in this Circuit, resulting in the recovery of hundreds of millions of dollars for shareholders. *See E-Trade Fin. Corp. Sec. Litig.*, No. 07-cv-8538 (S.D.N.Y. 2012) ($79 million recovery for the shareholder class); *In re U.S. Steel Consolidated Cases*, No. 17-579 (W.D. Pa. Mar. 21, 2023) (recovering $40 million for the class); *Rougier v. Applied Optoelectronics, Inc., et al.*, No. 17-cv-2399 (S.D. Tex. 2020) ($15.5 million); *In re Illumina, Inc. Sec. Litig.*, No. 3:16-cv-03044 (S.D. Cal. 2021) ($13.85 million); *In re Prothena Corp. plc Sec. Litig.*, No. 1:18-cv-06425 (S.D.N.Y. 2019) ($15.75 million); *In re Regulus Therapeutics Inc. Sec. Litig.*, 2020 WL 6381898 (S.D. Cal. Oct. 30, 2020) ("[Levi & Korsinsky] have demonstrated that they are skilled in this area of the law and therefore adequate to represent the Settlement Class."); *Balestra v. ATBCOIN LLC*, 380 F. Supp. 3d 340, 363 (S.D.N.Y. 2019) ("I find that the attorneys at Levi & Korsinsky have substantial experience in successfully prosecuting complex securities class actions and that Levi & Korsinsky is well qualified to serve as lead counsel in the instant case."); *Forman v. Meridian Bioscience Inc.*, No. 1:17-cv-00774 (S.D. Ohio); *Teoh v.*

Ferrantino, No. 356627 (Cir. Ct. for Montgomery Cnty., MD 2012) ("I think you've done a superb job and I really appreciate the way this case was handled.").

But the quality of representation here is best demonstrated by the amount of the Settlement. Class Counsel used their considerable skill, experience, and reputations for tenacity to negotiate a highly favorable result for the Class that eliminates the substantial delay and risk associated with trial and inevitable appeal.

The quality of opposing counsel is also important when the court evaluates the services rendered by plaintiffs' counsel. *See Delphi*, 248 F.R.D. at 504 ("The ability of [Class] Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested."). Defendants were represented by extremely capable attorneys from King & Spalding LLP, Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., O'Melveny & Myers LLP, and Miller & Martin, PLLC, with reputations for vigorous advocacy in the defense of complex civil cases. As detailed in the Wood Declaration, Defendants' Counsel asserted an arsenal of arguments and litigation strategies in an attempt to obtain the dismissal of this case and to minimize their clients' exposure. The ability of Class Counsel to obtain a favorable result for the Class in the face of such formidable opposition further evidences the quality of their work.

E. Class Member Reaction

"The Class's reaction to the requested fee award is also important evidence of the fairness and reasonableness of the fee request." *Delphi*, 248 F.R.D. at 504; *In re Nationwide Fin. Servs. Litig.*, 2009 WL 8747486, at *14 (S.D. Ohio Aug. 19, 2009) ("The reaction of the Class [only one objection out of nearly 125,000 individual notices sent] also supports the requested fee and expense

award.").[8] Over 14,870 individual notices have been mailed to potential Class Members and nominees, and a summary notice was published in *The Wall Street Journal* and over the *Business Wire*. Murray Decl., ¶12. To date, there have been no objections to the fee request.[9] Even a small number of objections by class members is evidence that the requested fee is fair. *See, e.g.*, *Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (noting that the lack of objections is "strong evidence of the propriety and acceptability" of fee request).

There can be no dispute that all of the factors discussed above weigh in favor of the requested fee award.

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

Class Counsel also request payment of litigation expenses and charges of $1,368,163.51.[10] *Se. Milk*, 2013 WL 2155387, at *8 ("'Expense awards are customary when litigants have created a common settlement fund for the benefit of a class.'"); *see* accompanying Declaration of Christopher M. Wood Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Litigation Expenses ("RGRD Decl."), Declaration of Shannon L. Hopkins Filed on Behalf of Levi & Korsinsky, LLP in Support of Application for Award of Litigation Expenses ("Levi & Korsinsky Decl."), Declaration of Jerry E. Martin Filed on Behalf of Barrett Johnston Martin &

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[8] *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 *11 (E.D. Pa. Apr. 18, 2005) (absence of objections supports award of requested fee); *In re Charter Commc'ns, Inc.*, 2005 U.S. Dist. LEXIS 14772, at *59 (E.D. Mo. June 30, 2005) (small number of objections from institutional investors supported approval of fee request).

[9] As set forth in the Notice, the deadline to provide counsel with objections is June 19, 2023. *See* accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), Ex. A.

[10] The requested expense amounts include expenses incurred by plaintiffs' counsel in the State Action which, pursuant to the Stipulation of Settlement, will be resolved in connection the Settlement. *See* Stranch Decl., Barrack Decl., and GPM Decl.; Stipulation, ¶4.5.

Garrison, PLLC in Support of Application for Award of Litigation Expenses ("Barrett Johnston Decl."), Declaration of Lawrence P. Eagel Filed on Behalf of Bragar Eagel & Squire, P.C. in Support of Application for Award of Litigation Expenses ("Bragar Eagel Decl."), Declaration of J. Gerard Stranch, IV Filed on Behalf of Stranch, Jennings & Garvey, PLLC (Formerly Known as Branstetter, Stranch & Jennings, PLLC) in Support of Application for Award of Litigation Expenses ("Stranch Decl."), Declaration of Stephen R. Basser Filed on Behalf of Barrack, Rodos & Bacine in Support of Application for an Award of Litigation Expenses ("Barrack Decl."), Declaration of Ex Kano S. Sams II Filed on Behalf of Glancy Prongay & Murray LLP in Support of Application for an Award of Litigation Expenses ("GPM Decl."), attesting to the accuracy of Counsel's expenses. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.[11] The categories of expenses for which counsel seek payment here are precisely the type of expenses routinely charged in similar cases and, therefore, are properly awarded from the common fund. *See Cosby*, 2022 WL 4129703, at *3 (Counsel "'is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses.'").

A significant component of counsel's expenses are the costs of investigators, experts, and consultants. In light of the PSLRA discovery stay, the use of investigators to gather detailed fact-specific information from percipient witnesses in order to plead complaints that will survive motions

[11] *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) ("Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that 'would normally be charged to a fee paying client.'"); *see also New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) ("In determining whether the requested expenses are compensable, the Court has considered 'whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.'"), *aff'd sub nom. Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008).

to dismiss is frequently a necessity. The retention of these investigators, experts and consultants with significant experience in the trucking industry, due diligence with respect to public offerings, and economic analysis and damages in securities class actions was essential to understanding the relevant issues. *See* RGRD Decl., ¶5(f); Levi & Korsinsky Decl., ¶5(d).

Class Counsel also incurred the costs of electronic legal research. It is standard practice for attorneys to use these services to assist them in researching legal and factual issues. Other expenses and charges that were necessarily incurred in the prosecution of the Litigation include expenses for document management, mediation fees, photocopying, filing and witness fees, transcripts, travel, and document retrieval. Because these were all necessary expenses incurred by counsel, they should be paid from the Settlement Fund. These expenses are described in detail in the accompanying declarations of counsel. *See generally* RGRD Decl., Levi & Korsinsky Decl., Barrett Johnston Decl., Bragar Eagel Decl., Stranch Decl., Barrack Decl., and GPM Decl.

IV. PLAINTIFFS' AWARDS PURSUANT TO 15 U.S.C. §77z-1(a)(4) ARE REASONABLE

Finally, Plaintiffs respectfully suggest that the time and expenses that they directly and reasonably incurred for their services to the Class in connection with this Litigation should be reimbursed, as provided for by the PSLRA. *See* 15 U.S.C. §77z-1(a)(4) (class representatives may recover the "reasonable costs and expenses (including lost wages) directly relating to the representation of the class"); *see New Eng. Health Care*, 234 F.R.D. at 635 ("'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[.]'"). The Notice advised that Plaintiffs may seek reimbursement up to $35,000 in the aggregate for the costs and expenses directly related to their representation of the Class. *See* Murray Decl., Ex. A. at 8.

Plaintiffs' declarations support their requests to compensate them for time incurred in their roles as Class Representatives. *See* Terry Decl., ¶8, Clowdis Decl., ¶8, and Robbins Decl., ¶8.

Numerous courts have approved similar awards to reimburse class representatives for their time and efforts on behalf of a class. *Cosby*, 2022 WL 4129703, at *3 (awarding plaintiff awards of $25,000, $10,000 and $10,000); *Grae*, 2021 WL 5234966, at *1 (awarding $17,525 to lead plaintiff); *Dougherty v. Esperion Therapeutics, Inc.*, No. 2:16-cv-10089-AJT-RSW, ECF 228 at 4 (E.D. Mich. Aug. 24, 2021) (awarding $7,500 to each plaintiff); *Garden City Emps.' Ret. Sys*., 2015 WL 13647397, at *1 (awarding lead plaintiff more than $20,000 for payment of its time spent and costs incurred in representing the class).

As set forth in their declarations, Plaintiffs actively prosecuted this Litigation by regularly communicating with Class Counsel, responding to Defendants' discovery requests, preparing for and providing deposition testimony, reviewing documents filed in the case, and discussing settlement strategy with Class Counsel. Terry Decl., ¶¶6-7, Clowdis Decl., ¶4, Robbins Decl., ¶4. *See Dougherty v. Esperion Therapeutics, Inc.*, 2020 WL 6793326, at *8 (E.D. Mich. Nov. 19, 2020) ("Lead Plaintiffs have 'vigorously prosecute[d] the interests of the class[.]'"). Accordingly, Plaintiffs' requested reimbursement awards are reasonable and justified under the PSLRA.

V. CONCLUSION

Counsel obtained an excellent result for the Class. Therefore, for all of the foregoing reasons, Class Counsel respectfully request that the Court approve their motion for an award of attorneys' fees and expenses, and awards to Plaintiffs in connection with their representation of the Class.

DATED: June 5, 2023

Respectfully submitted,

ROBBINS GELLER RUDMAN
& DOWD LLP
CHRISTOPHER M. WOOD, #032977

s/ Christopher M. Wood
CHRISTOPHER M. WOOD

414 Union Street, Suite 900
Nashville, TN 37219
Telephone: 615/244-2203
615/252-3798 (fax)
cwood@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
WILLOW E. RADCLIFFE (*pro hac vice*)
HADIYA K. DESHMUKH (*pro hac vice*)
SNEHEE KHANDESHI (*pro hac vice*)
Post Montgomery Center
One Montgomery Street, Suite 1800
San Francisco, CA 94104
Telephone: 415/288-4545
415/288-4534 (fax)
willowr@rgrdlaw.com
hdeshmukh@rgrdlaw.com
skhandeshi@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
ELLEN GUSIKOFF STEWART (*pro hac vice*)
KEVIN S. SCIARANI (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
elleng@rgrdlaw.com
ksciarani@rgrdlaw.com

ROBBINS GELLER RUDMAN
& DOWD LLP
JACK REISE (*pro hac vice*)
120 East Palmetto Park Road, Suite 500
Boca Raton, FL 33432
Telephone: 561/750-3000
561/750-3364 (fax)
jreise@rgrdlaw.com

LEVI & KORSINSKY, LLP
SHANNON L. HOPKINS (*pro hac vice*)
ANDREW E. LENCYK (*pro hac vice*)
DAVID C. JAYNES (*pro hac vice*)
1111 Summer Street, Suite 403
Stamford, CT 06905
Telephone: 203/992-4523
212/363-7171 (fax)
shopkins@zlk.com
alencyk@zlk.com
djaynes@zlk.com

Class Counsel

BARRETT JOHNSTON MARTIN
& GARRISON, LLC
JERRY E. MARTIN, #20193
DAVID GARRISON, #24968
Bank of America Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: 615/244-2202
615/252-3798 (fax)
jmartin@barrettjohnston.com
dgarrison@barrettjohnston.com

Local Counsel
BRAGAR EAGEL & SQUIRE, P.C.
LAWRENCE P. EAGEL (*pro hac vice*)
MARION C. PASSMORE (*pro hac vice*)
810 Seventh Avenue, Suite 620
New York, NY 10019
Telephone: 212/308-5858
212/214-0506 (fax)
eagel@bepsc.com
passmore@bespc.com

Additional Counsel for Plaintiffs Charles Clowdis and Bryan K. Robbins

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 5, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses of the CM/ECF participants in this case.

s/ Christopher M. Wood
CHRISTOPHER M. WOOD

ROBBINS GELLER RUDMAN & DOWD LLP
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: 615/244-2203
615/252-3798 (fax)
cwood@rgrdlaw.com

EXHIBIT 1

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

JACKSON COUNTY EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CARLOS GHOSN, et al., Defendants.	Civil Action No. 3:18-cv-01368 CLASS ACTION Hon. William L. Campbell, Jr. Magistrate Judge Alistair Newbern ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on September 19, 2022, on Lead Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated April 22, 2022 (the "Stipulation"). ECF 241.

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Counsel attorneys' fees of one-third of the Settlement Amount, and litigation expenses in the amount of $170,067.83, together with the interest earned

thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated amongst counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Lead Counsel's representation; Lead Counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Counsel that produced the Settlement; that the Plaintiffs appointed by the Court to represent the Class supports the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit precedent.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the Court executes the Judgment and this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: 10/7/2022

THE HONORABLE WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WILLIAM E. BURGES and ROSE M. BURGES, Individually and on Behalf of All Others Similarly Situated, **Plaintiffs,** **vs.** **BANCORPSOUTH, INC., et al.,** **Defendants.**	**Civil Action No. 3:14-cv-01564** **The Honorable Waverly D. Crenshaw, Jr.** **The Honorable Jeffery S. Frensley** **CLASS ACTION**

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter having come before the Court on September 21, 2018, on Class Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated March 30, 2018 (the "Stipulation"). (Doc. No. 245.)

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Class Counsel attorneys' fees of one-third of the Settlement Amount, and litigation expenses in the total amount of $528,469.01, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated amongst counsel in a manner

which, in Class Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Class Counsel's representation; Class Counsel's diligent prosecution of the Litigation; the quality of legal services provided by Class Counsel that produced the Settlement; that the Class Representative appointed by the Court to represent the Class approved the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with legal authority and consistent with other fee awards in cases of this size.

4. The awarded attorneys' fees and expenses shall be paid to Class Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Class Representative City of Palm Beach Gardens Firefighters' Pension Fund is awarded $1,235 as payment for its time and expenses representing the Class.

IT IS SO ORDERED.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

NORTH PORT FIREFIGHTERS' PENSION-LOCAL OPTION PLAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. FUSHI COPPERWELD, INC., et al., Defendants.	Civil Action No. 3:11-cv-00595 Honorable William J. Haynes, Jr. Magistrate Judge John S. Bryant CLASS ACTION

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on May 12, 2014, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated August 29, 2013 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 33-1/3% of the Settlement Fund, and litigation expenses in the amount of $68,212.80, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among Lead Plaintiff's counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such Plaintiffs' Counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the highly favorable result achieved for the Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the Litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the settlement; that the Lead Plaintiff appointed by the Court to represent the Class reviewed and approved the requested fee; the reaction of the Class to the fee request; and the awarded fee is in accord with Sixth Circuit authority and consistent with empirical data regarding fee awards in cases of this size.

4. The awarded attorneys' fees and expenses shall be paid to Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: 5-12-14

THE HONORABLE WILLIAM J. HAYNES, JR.
UNITED STATES CHIEF DISTRICT JUDGE

EXHIBIT 4

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

EDWARD B. WINSLOW, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. BANCORPSOUTH, INC., et al., Defendants.	Civil Action No. 3:10-cv-00463 CLASS ACTION Judge Kevin H. Sharp Magistrate Judge John S. Bryant REVISED ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on October 31, 2012, on the motion of counsel for the Lead Plaintiff for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of May 24, 2012 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Settlement Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Plaintiff's counsel attorneys' fees of 30% of the Settlement Fund, and litigation expenses in the amount of $198,397.36, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among Lead Plaintiff's counsel in a manner which, in Co-Lead Counsel's good faith judgment, reflects each such plaintiffs' counsel's contribution to the institution, prosecution and resolution of the litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things the highly favorable result achieved for the Settlement Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's counsel's diligent prosecution of the litigation; the quality of legal services provided by Lead Plaintiff's counsel that produced the settlement; that the Lead Plaintiff appointed by the Court to represent the Settlement Class reviewed and approved the requested fee; the reaction of the Settlement Class to the fee

request; and the awarded fee is in accord with Sixth Circuit authority and consistent with empirical data regarding fee awards in cases of this size.

4. The awarded attorneys' fees and expenses shall be paid to Co-Lead Counsel immediately after the date this Order is executed subject to the terms, conditions and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein.

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff Edward B. Winslow is awarded $5,000.00 for his time and expenses (plus interest) in serving on behalf of the Settlement Class.

IT IS SO ORDERED.

DATED: October 31, 2012

Kevin H. Sharp

THE HONORABLE KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

SIDNEY MORSE, et al.	]	
	]	
v.	]	NO. 3:97-0370
	]	Judge Higgins
R. CLAYTON MCWHORTER, et al.	]	

O R D E R

In accordance with the memorandum contemporaneously entered, the plaintiffs' petition for an award of attorney fees and expenses is granted.

Accordingly, the plaintiffs are awarded attorney fees in the amount of $16,500,000, and other expenses in the amount of $849,147.03, for a total award of $17,349,147.03, plus interest at the same rate as that earned by the Settlement Fund until paid.

The court shall retain jurisdiction over this matter with respect to any dispute about the distribution of such fees.

It is so ORDERED.

Thomas A. Higgins

THOMAS A. HIGGINS
United States District Judge
3-12-04

EXHIBIT 6

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

	) C.A. NO. 3-98-0643
IN RE SIRROM CAPITAL CORPORATION SECURITIES LITIGATION,	) JUDGE CAMPBELL
	) MAGISTRATE JUDGE GRIFFIN

ORDER AND FINAL JUDGMENT

On this 4th day of Feb, 2000, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation and Agreement of Settlement, dated Nov 15 1999 (the "Settlement Stipulation") are fair, reasonable and adequate for the settlement of all claims asserted by the Class against the Settling Defendants in the complaint now pending in this Court under the above caption, including the release of the Settling Defendants and the Released Parties and should be approved; (2) whether judgment should be entered dismissing the complaint on the merits and with prejudice in favor of the Defendants and as against all persons or entities who are members of the Class herein who have not requested exclusion therefrom; (3) whether to approve the Plan of Allocation as a fair and reasonable method to allocate the settlement proceeds among the members of the Class; and (4) whether and in what amount to award counsel for plaintiffs and the Class fees and reimbursement of expenses. The Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons or entities reasonably identifiable, who purchased or otherwise acquired the common stock of Sirrom Capital

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Corporation between January 20, 1998 and July 10, 1998, inclusive (the "Class Period"), except those persons or entities excluded from the definition of the Class, as shown by the records of Sirrom's transfer agent, at the respective addresses set forth in such records, and that a summary notice of the hearing substantially in the form approved by the Court was published in The Wall Street Journal 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 expenses requested; and all capitalized terms used herein having the meanings as set forth and defined in the Settlement Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Court has jurisdiction over the subject matter of the Litigation, the Plaintiffs, all Class Members and the Defendants.

2. The Court finds the prerequisites to a class action under Fed. R. Civ. P. 23 (a) and (b)(3) have been satisfied in that: (a) the number of Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) the claims of the Class Representatives are typical of the claims of the Class they seek to represent; (d) the Class Representatives have and will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby finally certifies this action as a class action on behalf of all persons who purchased or

otherwise acquired the common stock of Sirrom Capital Corporation between January 20, 1998 and July 10, 1998, inclusive, including all persons or entities that purchased Sirrom common stock pursuant or traceable to the Registration Statement and Prospectus, issued in connection with the Secondary Offering on or about March 5, 1998. Excluded from the Class are the Defendants in this action, members of the immediate families of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of any such excluded party. Also excluded from the Class are the persons and/or entities who requested exclusion from the Class as listed on Exhibit A annexed hereto.

4. The Settlement Stipulation is approved as fair, reasonable and adequate, and in the best interests of the Class, and the Class Members and the Parties are directed to consummate the Settlement Stipulation in accordance with its terms and provisions.

5. The Complaint is hereby dismissed with prejudice and without costs, except as provided in the Settlement Stipulation, as against any and all of the Defendants.

6. Members of the Class and the successors and assigns of any of them, are hereby forever permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims, that have been or could have been asserted in any forum by the Class Members or any of them against any of the Released Parties (defined

below) which arise out of or relate in any way to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, referred to or that could have been asserted in the Complaint relating to the purchase of shares of the common stock of Sirrom during the Class Period (the "Settled Claims") against any and all of the Defendants, their past or present subsidiaries, parents, successors-in-interest, predecessors, present and former officers, directors, shareholders, agents, insurers, employees, attorneys, advisors, and investment advisors, auditors, accountants and any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, heirs, successors in interest or assigns of the Defendants (the "Released Parties"). The Settled Claims are hereby compromised, settled, released, discharged and dismissed as against the Released Parties on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

7. The Defendants and the successors and assigns of any of them, are hereby permanently barred and enjoined from instituting, commencing or prosecuting, either directly or in any other capacity, any Settled Defendants' Claims against any of the Plaintiffs, Class Members or their attorneys. The Settled Defendants' Claims are hereby compromised, settled, released, discharged and dismissed on the merits and with prejudice by virtue of the proceedings herein and this Order and Final Judgment.

8. Neither the Settlement Stipulation, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any of the documents or statements referred to therein shall be:

(a) offered or received against the Defendants as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any of the Defendants of the truth of any fact alleged by Plaintiffs or the validity of any claim that had been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault, or wrongdoing of Defendants;

(b) offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Plaintiffs and the Class as evidence of any infirmity in the claims of Plaintiffs and the Class;

(c) offered or received against the Defendants as evidence of a presumption, concession or admission of any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any of the parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that if this Stipulation is approved by the Court, Defendants may refer to it to effectuate the liability protection granted them hereunder; and

(d) construed against the Defendants or the Plaintiffs and the Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

(e) construed as or received in evidence as an admission, concession or presumption against plaintiffs or the Class or any of them that any of their claims are without merit or that damages recoverable under the Consolidated Complaint would not have exceeded the Settlement Fund.

9. The Plan of Allocation is approved as fair and reasonable, and in the best interests of the Class, and Plaintiffs' Counsel and the Claims Administrator are directed to administer the Stipulation in accordance with its terms and provisions.

10. Counsel for plaintiffs and the Class are hereby awarded the sum of $5,000,000.00 in fees, which sum the Court finds to be fair and reasonable, and $122,186.99 in reimbursement of expenses, which shall be paid to the Chair of Plaintiffs' Executive Committee from the Settlement Fund with interest from the date such Settlement Fund was funded to the date of payment at the same rate that the Settlement Amount earns. The award of attorneys' fees shall be allocated among counsel for plaintiffs and the Class in a fashion which, in the opinion of a majority of Plaintiffs' Executive Committee, fairly compensates counsel for the plaintiffs and the Class for their respective contributions in the prosecution of the litigation.

11. Exclusive jurisdiction is hereby retained over the Parties and the Class Members for all matters relating to this litigation, including the administration, interpretation, effectuation or enforcement of the Settlement Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the members of the Class.

12. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Stipulation.

13. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54 (b) of the Federal Rules of Civil Procedure.

Dated: Nashville, Tennessee
Feb. 4, 2000

Todd Campbell
UNITED STATES DISTRICT JUDGE

EXHIBIT 7

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IRIKA SKEETE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**NO. 3:16-cv-00043**
	)	**JUDGE CRENSHAW**
REPUBLIC SCHOOLS NASHVILLE,	)	
	)	
Defendant.	)	

FINAL APPROVAL ORDER AND JUDGMENT

The Court having held a final approval hearing on February 26, 2018, notice of the hearing having been duly given in accordance with this Court's Order (1) Preliminarily Approving Class Action Settlement, (2) Approving Notice Plan, and (3) Setting Final Approval Hearing (the "Preliminary Approval Order"), under Fed. R. Civ. P. 23(c)(2), and having considered all matters submitted to it at the final approval hearing and otherwise, and finding no just reason for delay in entry of this Final Approval Order and Judgment.

It is hereby ORDERED AND DECREED as follows:

1. The Settlement Agreement dated October 30, 2017, including its Exhibits (the "Agreement"), and the definition of words and terms contained therein are incorporated by reference and are used hereafter. The terms and definitions of this Court's Preliminary Approval Order (Dkt. No. 103) are also incorporated by reference in this Final Approval Order and Judgment.

2. This Court has jurisdiction over the subject matter of the Action and Over the Parties, including all Settlement Class Members with respect to the following Class certified under Rules 23(a), 23(b)(2) and 23(b)(3):

> All individuals who were sent and received a text to their cellular telephones by RePublic Schools Nashville ("RePublic") from the number (615) 270-4554 during the time period August 17, 2015 through January 15, 2016, and whose cellular phone number was obtained by RePublic from the Metropolitan Nashville Public Schools database.
>
> Excluded from the Class are RePublic, and any affiliate, subsidiary or division of RePublic, along with any employees thereof, and any entities in which any of such companies have a controlling interest, as well as all persons who validly opt-out of the Class.

3. The Court here by finds that the Settlement Agreement is the product of arm's length settlement negotiations between the Parties facilitated by a third-party neutral mediator.

4. The Court hereby finds and concludes that Class Notice was disseminated to persons in the Settlement Class in accordance with the terms of the Settlement Agreement.

5. The Court further finds and concludes that the Class Notice and claims submission procedures set forth in the Settlement Agreement fully satisfy Rule 23 of the Federal Rules of Civil Procedure and the requirements of due process, were the best means of providing notice practicable under the circumstances, provided due and sufficient individual notice to all persons in the Settlement Class who could be identified through reasonable effort and support the Court's exercise of jurisdiction over the Settlement Class as contemplated in the Settlement Agreement and this Final Approval Order and Judgment.

6. The Court hereby fully and finally approves the Settlement Agreement and finds that the terms constitute, in all respects, a fair, reasonable and adequate settlement as to all Settlement Class Members in accordance with Rule 23 of the Federal Rules of Civil Procedure.

7. The Court, consistent with the provisions of the Settlement Agreement between the parties, hereby enjoins RePublic from sending any text messages using an automatic telephone dialing system without the prior express consent of the recipient, either directly or by authorizing another entity to do so. This Court hereby dismisses this Action, with prejudice, without costs to any party, except as expressly provided for in the Agreement.

8. On final approval of this settlement (including, without limitation, the exhaustion of any judicial review, or requests for judicial review, from this Final Approval Order and Judgment), the Plaintiffs and each and every one of the Settlement Class Members unconditionally, fully and finally release and forever discharge the Released Parties from the Released Claims.

9. Plaintiffs and each and every Settlement Class Member, and any person actually or purportedly acting on behalf of Plaintiffs or any Settlement Class Member, are hereby permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting or enforcing any Released Claims (including, without limitation, in any individual, class or putative class, representative or other action or proceeding), directly or indirectly, in any judicial, administrative, arbitral or other forum, against the Released Parties. This permanent bar and injunction is necessary to protect and effectuate the Agreement, this Final Approval Order and Judgment and this Court's authority to effectuate the Agreement, and is ordered in aid of this Court's jurisdiction and to protect its judgments.

10. The Settlement Agreement (including, without limitation, its Exhibits), and any and all negotiations, documents and discussions associated with it, including, but not

limited to, confirmatory discovery, shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation or principle of common law or equity, or of any liability or wrongdoing by RePublic, or of the truth of any of the claims asserted in the Action, and evidence relating to the Settlement Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of enforcing the terms and conditions of the Settlement Agreement, the Preliminary Approval Order and/or this Final Approval Order and Judgment.

11. If for any reason the Settlement Agreement is terminated or the Effective Date does not occur, the Settlement Agreement and all proceedings in connection with the Agreement shall be without prejudice to the right of the Released Parties, including RePublic or Plaintiffs, to assert any right or position that could have been asserted if the Settlement Agreement had never been reached or proposed to the Court, except insofar as the Settlement Agreement expressly provides to the contrary. In such an event, the Parties shall return to the status quo ante in the Action. In addition, in such an event, the Settlement Amount, including any monies advanced prior to final approval for settlement administration but not yet spent, shall be returned to RePublic with all applicable interest.

12. In the event that any provision of the Settlement Agreement or this Final Approval Order and Judgment is asserted by the Released Parties, including RePublic, as a defense in whole or in part to any claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action or proceeding brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any Settlement Class Member(s), that suit, action or other proceeding shall be immediately

stayed and enjoined until this Court or the court or tribunal in which the claim is pending has determined any issues related to such defense or assertion. Solely for purposes of such suit, action or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an inconvenient forum. These provisions are necessary to protect the Settlement Agreement, this Final Approval Order and Judgment and this Court's authority to effectuate the Agreement, and are ordered in aid of this Court's jurisdiction and to protect its judgment.

13. By incorporating the Settlement Agreement and its terms herein, the Court determines that this Final Approval Order and Judgment complies in all respects with Federal Rule of Civil Procedure 65(d)(1).

14. The Court approves Class Counsel's application for $733,333.33, in attorneys' fees, reimbursement of expenses incurred in the prosecution of the case in the amount of $15,995.96 and incentive award for each Representative Plaintiff in the amount of $7,500.00.

IT IS SO ORDERED.

Waverly D. Crenshaw, Jr.

WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE