UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAWRENCE ROUGIER, *et al.*, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. APPLIED OPTOELECTRONICS, INC., CHIH-HSIANG (THOMPSON) LIN, and STEFAN J. MURRY, Defendants.	Case No. 4:17-cv-2399-VDG-CAB

LEAD COUNSEL'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES AND MEMORANDUM OF LAW IN SUPPORT THEREOF

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Plaintiffs' Counsel succeeded in obtaining $15,500,000 in cash (the "Settlement") for the Class's benefit.[1] This is a highly favorable recovery in the face of substantial risk and is the result of Plaintiffs' Counsel's vigorous, persistent, and skilled efforts. As compensation for these efforts, Lead Counsel respectfully moves for: (i) an award of attorneys' fees in the amount of one-third (33⅓%) of the Settlement Fund; (ii) reimbursement of litigation expenses incurred by Plaintiffs' Counsel in prosecuting this Action in the amount of $167,289.09, and (iii) reimbursement of $15,000 to Lead Plaintiff Lawrence Rougier ("Lead Plaintiff") and reimbursement of $10,000 each to Plaintiffs Richard Hamilton, Kenneth X. Luthy, Roy H. Cetlin, and John Kugel as compensation for their reasonable costs and expenses in connection with representing the Class.

I. NATURE AND STAGE OF THE PROCEEDINGS AND SUMMARY OF THE ARGUMENT

The Hopkins Declaration is an integral part of this submission, and Plaintiffs incorporate it herein. To avoid repetition, Plaintiffs respectfully refer the Court to it for a full discussion of the factual and procedural history of the Action, the claims asserted, Plaintiffs' investigation and discovery, the negotiations leading to the Settlement, and the numerous risks and uncertainties posed by continued litigation, all of which support the relief requested herein.

II. STATEMENT OF THE ISSUES

Whether the Court should grant Lead Counsel's request: (i) for an award of attorneys' fees of one-third; (ii) to reimburse Plaintiffs' Counsel's litigation expenses of $167,289.09; and (iii) to reimburse Plaintiffs as compensation for their representation to the Class. Lead Counsel and

[1] Plaintiffs' Counsel consists of the Court-appointed Lead Counsel and Class Counsel Levi & Korsinsky, LLP ("L&K" or "Lead Counsel"), the Court-appointed Liaison Counsel The Kendall Law Group, PLLC, and additional counsel for Plaintiff John Kugel Bragar Eagel & Squire, P.C. Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation or the concurrently-filed Declaration of Shannon L. Hopkins in Support of Unopposed Motion for: (I) Final Approval of Class Action Settlement and Plan of Allocation of Settlement Proceeds; and (II) Lead Counsel's Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Hopkins Declaration" or "Hopkins Decl."). Unless otherwise noted, all citations to "¶" and "Ex." refer, respectively, to paragraphs in, and exhibits to the Hopkins Declaration. Unless otherwise noted, all emphasis is added, and all internal quotations and citations are omitted.

Plaintiffs submit all of the above questions should be answered in the affirmative.

III. ARGUMENT

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

It is settled that a "litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *accord Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 962 (E.D. Tex. 2000) (same). Courts also recognize that in addition to providing just compensation, fee awards serve to encourage skilled counsel to represent those who seek redress for damages inflicted on classes of persons and to discourage future misconduct. *See Jenkins v. Trustmark Nat'l. Bank*, 300 F.R.D. 291, 306 (S.D. Miss. 2014) ("The doctrine serves the twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts."). Private securities cases, like this Action, are "an indispensable tool with which defrauded investors can recover their losses—a matter crucial to the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights. Ltd.*, 551 U.S. 308, 320 n.4 (2007); *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private actions are "a most effective weapon in the enforcement of the securities laws"). Thus, common-fund fee awards of the type requested are supported by important policy concerns.

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

In common fund cases, like this one, courts use two methods for evaluating attorneys' fees:

> (1) the percentage method, in which the court awards fees as a reasonable percentage of the common fund; or (2) the lodestar method, in which the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or

downward multiplier.

Union Asset Mgmt. Holding A.G. v. Dell, Inc., 669 F.3d 632, 642-44 (5th Cir. 2012) (allowing "district courts the flexibility to choose between the percentage and lodestar methods," provided that there is satisfaction with the factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974) ("*Johnson*"), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989)). L&K is moving for attorney's fees on a percentage basis, but the request is well-supported by either method.

1. The Court Should Apply the Percentage Method

Typically, "under the common fund doctrine . . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The percentage method is customary and favored in the Fifth Circuit. *See Union Asset Mgmt.*, 669 F.3d at 643-44 (recognizing the "near-universal adoption of the percentage method" within the Fifth Circuit when "cross-checked with the *Johnson* factors."); *Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, *8-*9 (N.D. Tex. 2018) (collecting cases). The percentage method "allows for easy computation" and "aligns the interests of class counsel" with the Class. *Union Asset Mgmt.*, 669 F.3d at 643. Conversely, "[t]he lodestar method voraciously consumes enormous judicial resources, unnecessarily complicates already complex litigation, and inaccurately reflects the value of services performed." *Shaw*, 91 F. Supp. 2d at 964; *id.* at 964-65 (the "lodestar method rewards plodding mediocrity and penalizes expedient success."). Moreover, "[a]s the Fifth Circuit noted, there is near-universal adoption of the percentage method in securities cases, at least in part because it is explicitly contemplated by the [PSLRA.]" *In re Arthrocare Corp. Sec. Litig.*, 2012 WL 12951371, *4 (W.D. Tex. 2012) (quoting *Union Asset Mgmt.*, 669 F3d at 643); *Erica P. John Fund*, 2018 WL 1942227 at *8 (citing 15 U.S.C. § 78u–4(a)(6)). Accordingly, the Court should apply the percentage method.

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

There is no bright line rule as to what constitutes a reasonable percentage. Yet, courts in this District, including this Court, have routinely held that a fee of one-third of the common fund is presumptively reasonable in class actions, including securities fraud cases such as this. *Miller v. Glob. Geophysical Servs., Inc.*, 2016 WL 11645372, *1 (S.D. Tex. 2016) (Gilmore, J.) (one-third fee in a securities class action reasonable given the "time and labor required, the novelty and difficulty of the case, the skill required to prosecute the case, the experience and ability of the attorneys, awards in similar cases, the contingent nature of the representation and the result obtained for the Class."); *Campton v. Ignite Rest. Grp., Inc.*, 2015 WL 12766537, *3 (S.D. Tex. 2015) (Gilmore, J.) (same); *see also Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, 2019 WL 387409, *4 (S.D. Tex. 2019) ("The fee represents one-third of the $15 million settlement fund, which is an oft-awarded percentage in common fund class action settlements in this Circuit.") (collecting cases); *In re CBD Energy Ltd. Sec. Litig.*, 4:15-CV-01668, Dkt. No. 147, ¶1 (S.D. Tex. 2017); *Fitzpatrick v. Uni-Pixel, Inc.*, 4:13-CV-01649, Dkt. No. 58, ¶15 (S.D. Tex. 2015).

Courts across the Fifth Circuit routinely award attorneys' fees of one-third of the common fund. *See In re Forterra Inc. Sec. Litig.*, 2020 WL 4727070, *1 (N.D. Tex. 2020); *In re EZCORP, Inc. Sec. Litig.*, 2019 WL 6649017, *1 (W.D. Tex. 2019); *Parmelee v. Santander Consumer USA Holdings Inc.*, 2019 WL 2352837, *1 (N.D. Tex. 2019); *Singh v. 21Vianet Grp., Inc.*, 2018 WL 6427721, *1 (E.D. Tex. 2018); *Erica P. John Fund*, 2018 WL 1942227 at *10, *13; *Jenkins*, 300 F.R.D. at 310; *see also Lee v. Active Power, Inc.*, 1:13-CV-00797, Dkt. No 65, ¶1 (W.D. Tex. 2015); *Barfuss v. DGSE Co. Inc.,* 3:12-CV-3664, Dkt. No. 59, ¶17 (N.D. Tex. 2013); *Friedman v. Penson Worldwide, Inc.*, 3:11-CV-0298-O, Dkt. No 100, ¶1 (N.D Tex. 2013).

Consequently, ample Fifth Circuit precedent from analogous cases supports the Court awarding an attorney's fee of one third of one-third (33⅓%) of the Settlement Fund.

3. Lead Counsel's Fee Request is Reasonable Even Under the Lodestar Method

Lead Counsel's fee request is also eminently reasonable when considering Plaintiffs' counsel's lodestar, which courts in this Circuit typically utilize solely as a cross-check to confirm a requested percentage's reasonableness. *Erica P. John Fund*, 2018 WL 1942227 at *13 ("A court is to apply a lodestar calculation as a cross-check of the percentage method."). Accordingly, courts recognize that the lodestar cross-check should not displace a district court's primary reliance on the percentage method. *Id.* at *8-*9 (the purpose of the cross-check is "to avoid windfall fees" thus, "[C]ourts using a lodestar as a cross-check to the percentage method have relaxed the degree of scrutiny applied to counsel's billing records."); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087 (S.D. Tex. 2012) ("courts need not scrutinize counsel's billing records with the thoroughness required were the lodestar method applied by itself.").[2] In this case, the lodestar method—whether used directly or as a cross-check on the percentage method—strongly demonstrates the reasonableness of the requested fee.

When utilizing the lodestar method, "the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt.*, 669 F.3d at 642-43. In this case, Plaintiffs' Counsel submitted declarations including schedules identifying the lodestar of each firm (by individual, position, billing rate, and hours billed). Exs.5-7. The cumulative time expended by Counsel through August 26, 2020 is 9,784.76 hours. Hopkins Decl. at ¶87 Based on prevailing hourly rates for securities litigation practitioners, the lodestar for services rendered is $5,301,199.[3]

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[2] *See also City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, 2015 WL 965696, *3 (W.D. La. 2015) (conducting "a rough lodestar analysis"); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("[t]he district courts [] may rely on summaries submitted by the attorneys and need not review actual billing records.")

[3] Courts use current rather than historic rates to "compensate[e] for a long delay in paying for attorneys' services." *Slipchenko v. Brunel Energy, Inc.*, 2015 WL 338358, *19 (S.D. Tex. 2015); *In re Enron Corp. Sec., Deriv., & "ERISA" Litig.*, 586 F. Supp. 2d 732, 779 (S.D. Tex. 2008).

Id. This lodestar is the function of the vigorous prosecution described in the Hopkins Declaration, which included a detailed investigation, drafting two amended complaints, full briefing on a motion to dismiss and a motion by Defendants for interlocutory appeal of the Court's disposition of the motion to dismiss, defense of Plaintiffs' depositions, moving for class certification upon two rounds of briefing in this Court and a further round of briefing in connection with Defendants' Rule 23(f) appeal, consultation with experts, the review of over 400,000 pages of documents produced by Defendants and third parties, extensive written discovery with Defendants and third-parties, and preparing detailed written position statements in connection with a full-day mediation.[4] Hopkins Decl. at ¶¶4-5.

Accordingly, the requested 33⅓% fee represents a ***negative*** "multiplier" of approximately ***0.98*** on the lodestar value of Plaintiffs' Counsel's time, which demonstrates that the requested fee is reasonable and justified. Courts routinely recognize that a negative multiplier strongly supports finding that the fee award is reasonable. *See Erica P. John Fund*, 2018 WL 1942227 at *13 ("Because there is a strong presumption that the lodestar represents a reasonable fee . . . the fact that Class Counsel seeks an award less than the lodestar supports [a] finding that the fee award is reasonable."); *In re Heelys, Inc. Derivative Litig.*, 2009 WL 10704478, *11 (N.D. Tex. 2009) (where requested fee represented "a negative multiplier as compared to the actual time and labor" it was "demonstrably reasonable."). In securities class actions and other complex cases, even fees representing multiples above the cumulative lodestar are typically awarded to reflect contingency risks and other relevant factors. *See, e.g., Enron*, 586 F. Supp. 2d at 751 n.20, 752 (awarding percentage fee equal to a multiple of 5.2 times lodestar, and stating that "[m]ultiples from one to

[4] Plaintiffs' Counsel's hours and lodestar fees do not represent time spent on drafting the motion papers requesting final approval of the settlement and an award of attorneys' fees and expenses and that will be spent on additional tasks, such as attending the Settlement hearing, distributing the Settlement Fund, or any further time spent on this case.

four are frequently awarded in common fund cases when the lodestar method is applied").[5]

Furthermore, in conducting a lodestar analysis, the appropriate hourly rates are the current prevailing market rates. *Heartland Payment Sys.*, 851 F. Supp. 2d at 1087 ("An attorney's requested hourly rate is *prima facie* reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not contested."). Here, Plaintiffs' Counsel's hourly rates are reasonable. As an initial matter, the rates are not contested. Further, Plaintiff's Counsel's hourly rates range from $825 to $1,050 for partners, and $450 to $675 for associates, and $350 to $475 for staff attorneys. Exs.5-7. The hourly rates charged by Plaintiffs' Counsel, *e.g.*, $675 (highest associate rate) and $1,050 (highest partner rate), are consistent with the rates charged by other top tier securities firms, including the defense firm in this Action. *See In re Taco Bueno Restaurants, Inc., et al., Reorganized Debtors*, No. 18-33678, Dkt. 308 at 25 of 233, ¶52 (Bankr. N.D. Tex. 2019) ("V&E's hourly billing rates for attorneys ranged from $450 to $1,280. The hourly rates…are equivalent to and in some cases less than the hourly rates and corresponding rate structure used by V&E for…similar complex corporate, securities, and litigation matters"); Ex.8 (2014 billing survey listing (the most recent version available to Plaintiffs), in addition to V&E, three Houston firms with securities practices, all of which charged rates of $900 or more for partners, and $515 or more for associates).

Even using rates Judge Harmon approved ***over thirteen years ago*** in this District, Plaintiffs' Counsel's lodestar multiplier is only ***1.10***, further evidencing the requested fee's reasonableness. *See* Exs. 5-7; *see also Enron*, 586 F. Supp. 2d at 780 (Houston/Dallas salary survey in 2007 found highest partner rate was $900 per hour and the highest associate rate was $460 per

[5] *See also Burford v. Cargill, Inc.*, 2012 WL 5471985, *6 n.1 (W.D. La. 2012) (multipliers of "1 to 4 [are] typically approved by courts within [the Fifth] circuit"); *Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, *11 (S.D. Tex. 2001) (finding same and approving multiplier for 5.3).

hour). Accordingly, the requested fee is also reasonable under the lodestar method.

C. THE FIFTH CIRCUIT'S JOHNSON FACTORS CONFIRM THE REASONABLENESS OF THE REQUESTED FEE

In *Johnson*, the Fifth Circuit held that the district courts should consider several factors in determining the propriety of a fee award. These factors include:

> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances;[6] (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Johnson, 488 F.2d at 717-19; *Union Asset Mgmt.*, 669 F.3d at 642 n.25. In addition, courts may consider other factors, such as: (i) public policy considerations, (ii) plaintiffs' approval of the fee, and (iii) the reaction of the class. Consideration of all of each of these factors weigh in favor of approving a fee of one-third of the Settlement Fund in this Action

1. Time and Labor Required

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

- conducting a detailed legal and factual investigation into the Class's claims, which entailed: (i) a review and analysis of Defendants' periodic public statements including AOI's filings with the SEC, public reports and news articles concerning AOI, securities analysts' reports, and transcripts of AOI's investor calls, (ii) retaining and working with private investigators who conducted interviews with former employees and other potential witnesses with relevant information, and (iii) Fifth Circuit law applicable to the claims asserted and Defendants' potential defenses (Hopkins Decl., ¶85);

[6] Plaintiffs did not subject counsel to any time limits, thus, this factor does not apply to this case. Nevertheless, its inapplicability does not cut against Lead Counsel's requested fee. *See In re Combustion, Inc.*, 968 F. Supp. 1116, 1135 (W.D. La. 1997) ("[e]ven though it is apparent that the *Johnson* factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered."); *Erica P. John Fund*, 2018 WL 1942227 at *10, *11, *13 (same and awarding attorney's fees of one-third despite this *Johnson* factor not applying to the case).

- Drafting the First Amended Complaint ("FAC") based on this investigation (*id.*, ¶¶17-22);

- Voluminous briefing related to Defendants' motion to dismiss the FAC and prevailing against the motion to dismiss the FAC in its entirety (*id.*, ¶¶26-28);

- Preparing a motion for leave to add parties and a Second Amended Complaint ("SAC") with additional plaintiffs to protect against potential standing defenses (*id.*, ¶31, ¶37);

- Opposing Defendants' motion for interlocutory appeal of the Court's decision on the motion to dismiss pursuant to 28 U.S.C. § 1292(b) (*id.*, ¶36);

- Engaging in substantial discovery, which entailed: (i) serving interrogatories, requests for admissions, and requests for the productions of documents on Defendants; (ii) issuing 26 subpoenas on third parties; (iii) filing two successful motions to transfer motions to compel to this District; (iv) briefing two motions to compel against third parties and successfully arguing one to a full grant; (v) reviewing over 400,000 pages of documents produced by Defendants and third parties; and (vi) extensive negotiations with Defendants regarding their compliance with discovery, including numerous meet and confers, voluminous deficiency letters, and challenges to lengthy privilege logs (*id.*, ¶¶51-54, ¶85,);

- Extensive efforts in connection with class certification including: (i) preparation for, attending, and defending Plaintiffs' depositions; (ii) consulting with Plaintiffs' market efficiency and damages expert who submitted two supporting expert reports; (iii) filing a successful opening motion and a reply in connection with class certification proceedings before Judge Bryan; (iv) successfully opposing Defendants' objection to Judge Bryan's Memorandum and Recommendation; and (v) opposing Defendants' petition pursuant to Rule 23(f) in the Court of Appeals for the Fifth Circuit (*id.*, ¶¶38-44);

- Engaged in hard-fought, and arm's-length settlement negotiations facilitated and supervised by Ms. Yoshida, including extensive pre-mediation briefing, a full day mediation session, and follow-up negotiations (*id.*, ¶¶56-58);

- Negotiating and drafting the Stipulation and related settlement documents, preparing the preliminary approval papers, working with Plaintiffs' damages experts to prepare the proposed Plan of Allocation, and overseeing the Court-approved notice process (*id.*, ¶59).

Moreover, Plaintiffs' Counsel has and will necessarily expend additional hours responding to Class Members' inquiries, shepherding the claims process to conclusion, and filing a distribution motion. No additional compensation will be sought for this work. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, *10 (S.D.N.Y. 2015), *aff'd sub nom. In re Facebook, Inc.*, 674 F. App'x 37 (2d Cir. 2016) ("Considering that the work in this matter is not yet concluded

for Plaintiffs' Counsel who will necessarily need to oversee the claims process. . .the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical to obtaining the Settlement and, as a result, this factor supports the fee request.

2. Novelty and Difficulty of the Issues

The second *Johnson* factor also favors granting Lead Counsel's request for attorneys' fees. Even before passage of the PSLRA, securities litigation was known to be "notoriously difficult and unpredictable" and this case was no exception. *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983); *Clark v. Lomas & Nettleton Fin. Corp.*, 79 F.R.D. 641, 654 (N.D. Tex. 1978) ("a securities case, by its very nature, is a complex animal."), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980). In the years since, securities class actions have only grown more complex and difficult. *See, e.g.*, *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009) (O'Connor, J., sitting by designation) ("To be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action."); *Di Giacomo*, 2001 WL 34633373 at **11-12 (noting the complexities of securities actions, and how there were "significant risks of no recovery, or of limited recovery").[7] Plaintiffs' Counsel met the challenge of this difficult case in obtaining the highly successful Settlement through their specialized skill and experience. *Jenkins*, 300 F.R.D. at 308 ("Litigation of this Action required counsel trained in class-action law and procedure as well as the specialized issues presented here. Class Counsel possess these attributes, and their participation added immense value to the representation of this large Settlement Class.").

[7] *See also Schwartz v. TXU Corp.*, 2005 WL 3148350, *32 (N.D. Tex. 2005) (recognizing that cases were risky when lead counsel accepted retention because 90% of Fifth Circuit PSLRA pleading decisions upheld dismissal); *In re OCA, Inc. Sec. & Derivative Litig.*, 2009 WL 512081, *21 (E.D. La. 2009) ("Moreover, Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult").

Although Plaintiffs believe that the SAC's allegations would ultimately translate into a strong liability case, they also recognize that proving their claims involved many risks. As detailed in the Hopkins Declaration and the Final Approval Motion, Defendants raised credible arguments challenging Plaintiffs' allegations regarding materiality, falsity, and scienter. Plaintiffs, of course, bear the burden of proving each of those elements at trial. If Defendants prevailed on any element, it would be fatal to Plaintiffs' claims. Even if Defendants' liability arguments were only partially successful and portions of Plaintiffs' claims remained, Defendants' loss causation and damages arguments further posed a significant threat that the total recoverable damages would be significantly reduced, and that some Class members would not be entitled to any recovery at all.

The procedural history of this Action further demonstrates its complexity and difficulty. Defendants contested the advancement of this Action at every turn, which, as demonstrated by their motion for interlocutory appeal and Rule 23(f) petition, evidenced that no procedural stone would be left unturned. At the time the Settlement was reached, Defendants' Rule 23(f) petition was pending, and there was the real and significant risk that Plaintiffs would not be able to maintain class action status. Even assuming Plaintiffs defeated the petition and, if necessary, a subsequent appeal, continued litigation would have involved substantial briefing, extensive and costly expert involvement, the taking of numerous depositions with witnesses spread across the globe during a pandemic, and a lengthy jury trial. The costs and risks associated with litigating this Action to verdict, not to mention inevitable appeals, would have been high, and the process would require hundreds of hours of this Court's time and resources. Through an exhausted appeals process, this Action would easily require an additional two to three years (assuming no portion was remanded for further proceedings) before a recovery, if any, was obtained for the Class.

Therefore, the novelty and difficulty of these issues weighs in favor of the Court awarding

Lead Counsel the fee that they requested.

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

The third and ninth *Johnson* factors—the skill required to perform the legal services adequately and the experience, reputation, and ability of the attorneys—also support the requested fee award. As demonstrated by their respective firm résumés, Plaintiffs' Counsel have decades of experience litigating similar suits. Exs.5-7. The Settlement is a direct result of Plaintiffs' Counsel's skill and experience. Specifically, the attorneys' skills and efforts resulted in defeating Defendants' motion to dismiss despite the PSLRA's heightened pleading standard, defeating a motion for interlocutory appeal, obtaining class certification, successfully navigating complex discovery of electronically stored information, and ultimately securing a highly favorable Settlement for the Class. *See Schwartz*, 2005 WL 3148350, at *30 (this factor weighs in favor of approval where despite the PSLRA restrictions, due to Lead Counsel's "diligent efforts . . . and their skill and reputations" they "were able to negotiate a very favorable" settlement).

Courts also recognize that the quality of the opposition faced by Plaintiffs' Counsel should be taken into consideration in assessing the quality of Counsel's performance. *See id.* ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation"). Here, Defendants were represented by highly experienced lawyers from Vinson & Elkins LLP, a prestigious and well-respected national defense firm, which vigorously and ably defended the Action for three years. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by Lead Plaintiff's attorneys and "confirms the superior quality of their representation." *Id.* In the face of this formidable opposition, Lead Counsel were able to persuade Defendants to settle the case at both a point in the Action and on

terms that were highly favorable to the Class. Accordingly, the third and ninth *Johnson* factors weigh in favor of having the Court grant Lead Counsel's requested fee of one third.

4. The Preclusion of Other Employment

Plaintiffs' Counsel spent over 9,784 hours litigating this case on Plaintiffs' and the Class's behalf, despite the very significant risks of no recovery and while deferring any payment of their fees and expenses until a settlement was reached and, hopefully, approved.[8] This time counsel could have been devoted to other matters. Accordingly, this *Johnson* factor further supports the requested fee. *See Burford*, 2012 WL 5471985, at *3 ("The affidavits of Class Counsel prove that while this case did not preclude them from accepting other work, they were often times precluded from working on other cases due to the demands of the instant matter. . . .This factor weighs in favor of a substantial fee award.").

5. The Customary Fee and Awards in Similar Cases

The fifth and twelfth *Johnson* factors concern the customary fee for similar work in the community and awards in similar cases. As discussed in great detail above, the one-third (33⅓%) fee requested by Lead Counsel is well within the range of reasonable and customary fees for similar work. *Id.* at *3 (customary contingency fee "ranges from 33⅓% to 50%"); *Garza v. Sporting Goods Properties, Inc.*, 1996 WL 56247, *31 (W.D. Tex. 1996) ("33⅓% to 40% is the customary contingency fee range."). This factor, therefore, supports approving the requested fee.

6. Whether the Fee is Fixed or Contingent

The contingent nature of the fee requested by Lead Counsel—and the substantial risk posed by the litigation—also weigh in favor of awarding the requested fee. For over three years, Lead Counsel has undertaken this class action on a contingency-fee basis, carrying both the substantial out-of-pocket costs of litigation and the risk of not being paid for their services or reimbursed for

[8] If approved, Counsel will spend additional time and effort overseeing the claims process.

their costs in connection with the litigation. As the Fifth Circuit explained, lawyers who agree to take an engagement on a contingent fee "are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981), *overruled on other grounds by Int'l Woodworkers of Am., AFL-CIO & Its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 1174 (5th Cir. 1986); *see also Jenkins*, 300 F.R.D. at 309 ("courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment"); *Kirchoff v. Flynn*, 786 F.2d 320, 326 (7th Cir. 1986) ("At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.).[9]

Further, the risk of loss was not illusory.[10] Securities fraud cases are extremely complex, subject to the PSLRA's heightened pleading standards, and success is never assured. As discussed at length above, and in the Final Approval Brief, and in the Hopkins Declaration, this case was no different. Thus, any fee award has always been at risk, and completely contingent on the result achieved. Accordingly, this *Johnson* factor also supports the requested fee.

7. The Amount Involved and the Results Obtained

Another *Johnson* factor weighing in Lead Counsel's favor considers the "overall degree of

[9] *See also In re Lease Oil Antitrust Litig. (No. II)*, 186 F.R.D. 403, 445 (S.D. Tex. 1999) ("it is customary in large, complex commercial litigation for contingency fees to be set at 33 to 40%."); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1212 (S.D. Fla. 2006) ("Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency fee cases.").

[10] There have been many hard-fought lawsuits where excellent professional efforts produced no fee for counsel. *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. 2011) (granting judgment as a matter of law after verdict); *Robbins v. Koger Props. Inc.*, 116 F.3d 1441 (11th Cir. 1997) (jury verdict of $81 million for plaintiffs against accounting firm reversed on appeal); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities class action jury verdict for plaintiffs' in case filed in 1973 and tried in 1988); *Bentley v. Legent Corp.*, 849 F. Supp. 429 (E.D. Va. 1994), *aff'd sub nom., Herman v. Legent Co.*, 50 F.3d 6 (4th Cir. 1995) (directed verdict after plaintiffs' presentation of its case to the jury); *In re Apple Comput. Sec. Litig.*, 1991 WL 238298 (N.D. Cal. 1991) (overturning plaintiff's verdict following an extended trial); *Landy v. Amsterdam*, 815 F.2d 925 (3d Cir. 1987) (affirmed directed verdict for defendants after five years of litigation). Indeed, even judgments initially affirmed on appeal by an appellate panel are no assurance of a recovery. *See, e.g., Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after eleven years of litigation, and following a jury verdict for plaintiffs and an affirmance by a First Circuit panel, plaintiffs' claims were dismissed by an *en banc* decision and plaintiffs recovered nothing).

success achieved." *Roussel v. Brinker Int'l, Inc.*, 2010 WL 1881898, *3 (S.D. Tex. 2010), *aff'd*, 441 F. App'x 222 (5th Cir. 2011). Here, Plaintiffs' Counsel secured an excellent and immediate cash recovery of $15,500,000. Plaintiffs' damages expert found that under a "best case" scenario, *i.e.* if Plaintiffs prevailed on every theory of liability, loss causation, and damages, and *if* these rulings withstood all procedural obstacles, Plaintiffs' ***maximum*** theoretical damages, were approximately $535 million. If Defendants prevailed on their argument that the last two corrective disclosures (10/12/17 and 2/21/18) were unrelated to the fraud, damages would be $269.2 million.

Therefore, the Settlement represents approximately 3% to 6% of potential damages and is well within the range of reasonableness for a complex Action like this one. Ex. 2 (Laarni T. Bulan & Laura E. Simmons, *Securities Class Action Settlements 2019 Review and Analysis*, Cornerstone Research, at Appendices 1 & 3 (median 2019 settlements nationwide were $11.5 million, and median settlements in the 5th Circuit from 2010-19 were $9.9 million)); Ex. 3 (Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review*, NERA Economic Consulting, Jan. 29 2019, at 35 (finding median settlement between 1996 and 2018 in securities cases with investor losses between $400 million and $599 million recovered 1.8% of investor losses)); *Enron*, 586 F. Supp. 2d at 804 ("The typical recovery in most class actions generally is ***three-to-six*** cents on the dollar."); *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 n.20 (D. Colo. 2014) (approval granted because "recovery of approximately 1.3%" was "in line with the median ratio of settlement size to investor losses"); *In re Giant Interactive Grp., Inc.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011) (recovery of 3% of maximum damages was "average"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (settlement of 3% of maximum damages "is within the range of reasonableness").

Furthermore, a ***theoretical*** recovery of $535 million would likely never be recoverable

from AOI as it far exceeds AOI's working capital (current assets minus current liabilities) and free cash flow (net cash provided by (or used in) operating activities minus capital expenditures). Thus, if this case proceeded to trial, a plaintiff's judgment could have bankrupted AOI. By settling now, Lead Counsel was able to avoid the risks incident to litigating against individuals. For example, the Individual Defendants may not have been able to satisfy a judgment. Moreover, each Individual Defendant could have potentially established that their proportion of any liability was minute—essentially capping their responsibility for damages at a relatively small amount. When the parties reached the $15.5 million Settlement, approximately $20 million in insurance coverage remained Hopkins Decl., ¶70. Thus, Lead Counsel was able to achieve a recovery of approximately 80% of the remaining coverage. This excellent result strongly supports Lead Counsel's requested fee.

8. The Undesirability of a Case

The undesirability of a case can be a factor in justifying the award of a requested fee. Securities cases have been recognized as "undesirable" due to factors such as: (i) expensive costs; (ii) formidable and well-financed opposition; (iii) the contingent nature of the fee; and (iv) the possibility of no recovery. *See Erica P. John Fund*, 2018 WL 1942227, at *12 ("[T]he 'risk of non-recovery' and 'undertaking expensive litigation against . . . well-financed corporate defendants on a contingent fee' has been held to make a case undesirable, warranting a higher fee."). This was never an easy case and the risk of obtaining no recovery was always high. *See* Section III.C.2., *supra*. When Plaintiffs' Counsel undertook representation of Plaintiffs and the Class, it was with the knowledge that they would have to spend substantial time and resources—and face significant risk—without any assurance of being compensated for their efforts. Therefore, this *Johnson* factor supports approval of Lead Counsel's requested fee.

9. Nature and Length of the Professional Relationship

Plaintiffs' Counsel has represented Plaintiffs throughout the course of the litigation.

Plaintiffs have been actively involved in this litigation, and they approve and support the settlement. *See* Exs.9-13. Although the length of Plaintiffs' relationship with Counsel may be less relevant in this particular case, on balance it weighs in favor of approval. *Schwartz*, 2005 WL 3148350, at *28 ("The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court's discretion to apply those factors in view of the circumstances of a particular case.").

In sum, all of the *Johnson* factors support Lead Counsel's requested 33⅓% fee.

D. Other Factors Considered by Courts Further Support the Requested Fee

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

1. Public Policy Considerations Support the Requested Fee

A strong public policy interest exists for rewarding firms for bringing successful securities litigation. As noted above, the Supreme Court has emphasized that private securities actions 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. Lead Counsel advanced that public policy by achieving a meaningful recovery for AOI investors, especially here (where there has been no recovery by the SEC or another regulatory agency), where investors might have otherwise recovered nothing. *See Jenkins*, 300 F.R.D. at 309 ("Public policy concerns—in particular, ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs holding small individual claims—support the requested fee."). Thus, this factor supports the requested fee.

2. Plaintiffs Approve the Requested Fee

Plaintiffs played an active role in the prosecution and resolution of the Action, and have a sound basis for assessing the reasonableness of the fee request. Plaintiffs fully support and approve

the fee request. Exs.9-13. Plaintiffs' endorsement of the fee request supports its approval. *See, e.g., In re Veeco Instruments Inc. Sec. Litig.,* 2007 WL 4115808, *8 (S.D.N.Y. 2007) ("public policy considerations support the award in this case because the Lead Plaintiff . . . conscientiously supervised the work of lead counsel and has approved the fee request"); *In re Lucent Techs., Inc. Sec. Litig.*, 327 F. Supp. 2d 426, 442 (D.N.J. 2004) ("[s]ignificantly, the Lead Plaintiffs, . . . have reviewed and approved Lead Counsel's fees and expenses request").

3. The Reaction of the Class Supports the Requested Fee

The reaction of the Class also supports the requested fee. As of October, 20, 2020, the Claims Administrator has mailed 70,072 copies of the Notice to potential Class members and nominees, and had arranged for the mailing of an additional 15,566 Notices, informing potential Class Members of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees of up to one-third of the Settlement Fund and reimbursement of up to $630,000 in expenses. *See* Ex.1, ¶63; ECF 143-4, ¶5. To date, no objections have been received, thus favoring approval of the requested fee. *See, e.g., Williams v. Go Frac, LLC*, 2017 WL 3699350, *2-*3 (E.D. Tex. 2017) (awarding 35% of the settlement where class members had notice of the requested fees and did not object); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 515 (W.D. Pa. 2003) ("the absence of substantial objections by other class members to the fee application supports the reasonableness of Lead Counsels' request").

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

"Expenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement." *Erica P. John Fund*, 2018 WL 1942227 at *14. Here, Plaintiffs' Counsel expended $167,289.09 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by Lead Counsel. Exs.5-7. These expenses are well

documented, based on each firm's books and records, and reflect the costs of prosecuting this litigation. Moreover, these costs were reasonable and necessary. Plaintiffs' expenses include, among other things: (i) experts, including their market efficiency and damages expert Dr. Michael Hartzmark, Ph.D.; (ii) an investigator; (iii) a mediator; (iv) outside counsel to assist in prosecuting a third-party subpoena in a foreign jurisdiction; (v) databases to host, organize, and search voluminous document productions; (vi) travel and lodging expenses; (vii) deposition court reporting and transcripts; (viii) online legal research costs; (ix) court fees; (x) process servers; and (xi) postage, copying and delivery costs. Ex.5. Courts routinely permit the reimbursement of similar expenses. *Erica P. John Fund*, 2018 WL 1942227 at *14. Additionally, the Notice informed potential Class Members that Lead Counsel would seek reimbursement of expenses up to $630,000 comprised of $300,000 in estimated costs for notice and $330,000 for all other expenses. To date, no objection to the expense application has been filed. Moreover, the requested expenses for non-notice costs ($167,289.09 for Plaintiffs' Counsel and $55,000 for Plaintiffs) is far lower than Plaintiffs' estimate. Thus, Plaintiffs' expense request should be awarded. *See Williams*, 2017 WL 3699350, at *2-3 (awarding expenses in the absence of objections).

F. THE COURT SHOULD AWARD PLAINTIFFS THEIR COSTS AND EXPENSES PURSUANT TO 15 U.S.C. §78U-4(A)(4)

The PSLRA permits Plaintiffs to recoup litigation costs (including lost wages) incurred as a result of serving representatives in the Action and ensuring that the class was adequately represented. 15 U.S.C. §78u-4(a)(4). Reimbursement of such costs is allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co., Inc.*, 2000 WL 1683656, *5 n.2 (S.D.N.Y. 2000); *Buettgen v. Harless*, 2013 U.S. Dist. LEXIS 193649, *44 (N.D. Tex. 2013) ("courts routinely award such costs and expenses both to reimburse the named plaintiffs…as well as to provide an incentive for such plaintiffs to remain

involved in the litigation").

Plaintiffs respectfully request reimbursements in the amount of $15,000 to Lead Plaintiff Rougier and $10,000 to Plaintiffs Hamilton, Luthy, Cetlin, and Kugel for the time they expended on behalf of the Settlement Class. Exs.9-13. Such a request is fair and reasonable given Plaintiffs' efforts on behalf of the Settlement Class. Indeed, Plaintiffs fulfilled their duties as representatives by: (a) regularly communicating with L&K attorneys regarding the posture and progress of the case; (b) reviewing pleadings, briefs and Court orders filed in the Action and discussing them with Lead Counsel; (c) responding to Defendants' requests for discovery, including the collection and production of documents and responding to written discovery; (d) preparing for, traveling to, and attending their depositions; (e) consulting with L&K regarding the settlement negotiations; and (f) evaluating and approving the proposed Settlement. *Id.* In light of the substantial work done by Plaintiffs, the amount requested is eminently reasonable, and is consistent with, or lower than, awards in other cases. *In re Cobalt Intl. Energy, Inc. Sec. Litig.*, 2019 WL 6043440, *3 (S.D. Tex. 2019) (awarding aggregate of over $56,000, including two awards of $15,000 each); *In re Conn's, Inc. Sec. Litig.*, Case No. 4:14-cv-00548 (KPE), ECF 194 at 4 (S.D. Tex. 2018), (awarding class representative over $22,000); *Arthrocare*, 2012 WL 12951371, *6 (W.D. Tex. 2012) (awarding $55,850 for time spent "overseeing and communicating with Lead Counsel on a regular basis, reviewing and communicating on various pleadings, [and] sitting for depositions"). Plaintiffs' requested awards are reasonable and justified under the PSLRA.

IV. CONCLUSION

Wherefore, Lead Counsel respectfully requests the Court grant this Motion and award Plaintiffs' Counsel one-third (33⅓%) of the Settlement fund, award Plaintiffs' Counsel reimbursement for their expenses in the amount of $167,289.09, and award Plaintiffs payment in the cumulative amount of $55,000 to reimburse them for their time and costs.

Date: October 20, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF Filing System.

/s/ *Shannon L. Hopkins*
Shannon L. Hopkins

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LAWRENCE ROUGIER, *et al.*, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, v. APPLIED OPTOELECTRONICS, INC., CHIH-HSIANG (THOMPSON) LIN, and STEFAN J. MURRY, Defendants.	Case No. 4:17-cv-2399-VDG-CAB

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS CAUSE came before the Court for hearing on November 24, 2020, at 9:00 a.m. (the "Settlement Hearing") on Lead Counsel's Unopposed Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Final Approval Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *Investor's Business Daily* and was transmitted over *Globe Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Stipulation and Agreement of Settlement, (the "Stipulation") filed with the Court on August 3, 2020 (ECF 143-2), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

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

3. Notice of Lead Counsel's Unopposed Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"); constituted the best notice practicable under the circumstances; and constituted due, adequate, and sufficient notice to all persons entitled thereto.

4. Lead Counsel are hereby awarded, on behalf of all Plaintiffs' Counsel, attorneys' fees in the amount of $_____, plus interest at the same rate earned by the Settlement Fund (in total amount equaling _____ or _____% of the Settlement Fund), and payment of litigation expenses in the amount of $_____, which sums the Court finds to be fair and reasonable. Lead Counsel shall allocate the attorneys' fees awarded among Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. The award of attorneys' fees and expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

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

(a) Plaintiffs' Counsel devoted more than 9,784.76 hours, with a lodestar value of $5,301,199, to achieve the Settlement;

(b) The Action involves complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(c) Plaintiffs' Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy and are highly experienced in the field of securities class action litigation;

(d) Plaintiffs' Counsel represented Plaintiffs and the Settlement Class to the preclusion of other employment;

(e) The amount of attorneys' fees awarded is fair and reasonable and consistent with fee awards approved in similar cases within this Circuit and across the country;

(f) Plaintiffs' Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(g) The Settlement has created a fund of $15,500,000 in cash, pursuant to the terms of the Stipulation, and numerous Settlement Class Members who submit

acceptable Claim Forms will benefit from the Settlement created by the efforts of Plaintiffs' Counsel;

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

(i) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Plaintiffs who were directly involved in the prosecution and resolution of the Action and who have significant interests in ensuring that any fees paid to counsel are duly earned and not excessive; and

(j) _____ copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed one-third (33 and 1/3%) of the Settlement Fund and expenses in an amount not to exceed $630,000, and [there were no objections to the requested attorneys' fees and expenses.]

7. Lead Plaintiff and Class Representative Lawrence Rougier is hereby awarded $_____ and Plaintiffs and Class Representatives Richard Hamilton, Kenneth X. Luthy, Roy H. Cetlin, and John Kugel are hereby awarded $_____ each from the Settlement Fund as reimbursement for their reasonable costs directly related to their representation of the Settlement Class.

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

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

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

DATED this _____ day of _____, 2020

BY THE COURT:

_____
Honorable Vanessa D. Gilmore
UNITED STATES DISTRICT JUDGE