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I. INTRODUCTION

As set forth in the Stipulation, Lead Class Counsel, along with Liaison Class Counsel, have succeeded in obtaining an \$8,000,000 cash settlement for the benefit of the Class.¹ This is a very favorable result for the Class in the face of substantial risk and is a credit to Class Counsel's vigorous, persistent, and skilled efforts. For their efforts in achieving this considerable benefit for the Class, Class Counsel respectfully request that the Court award attorneys' fees in the amount of 30% of the Settlement Amount (\$2,400,000) and approve payment of their litigation expenses in the amount of \$457,541.63, plus interest on both amounts. In addition, Robert Hurwitz ("Class Representative") seeks an award to reflect his significant contribution to the Class in the amount of \$25,000 (the "Service Award").²

This Action has been vigorously litigated since August of 2015. As detailed in the accompanying Oddo Declaration,³ Lead Class Counsel, with assistance from Liaison Class Counsel, has: (i) conducted an extensive investigation into the definitive joint registration statement/proxy statement (the "Proxy") issued in connection with the acquisition of LRR Energy, L.P. ("LRE") by Vanguard Natural Resources, LLC ("Vanguard") in 2015 (the

¹ "Class Counsel" collectively refers to Robbins Arroyo LLP and Cooch and Taylor, P.A., who were appointed Lead Class Counsel and Liaison Class Counsel, respectively. D.I. 120. All capitalized terms that are not defined herein shall have the same meanings as set forth in the Stipulation of Settlement [D.I. 174], the Addendum to the Stipulation of Settlement [D.I. 182] ("Addendum"), and the Second Addendum to the Stipulation of Settlement [D.I. 188] ("Second Addendum") (collectively, the "Stipulation").

² See Declaration of Class Representative Robert Hurwitz in Support of Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Class Representative's Service Award, ¶¶4-7, 10 ("Hurwitz Decl."), filed herewith.

³ "Oddo Declaration" and "Oddo Decl." refer to the Declaration of Stephen J. Oddo in Support of Class Representative's Motion for (1) Final Approval of Class Action Settlement and Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Class Representative's Service Award, filed herewith.

"Acquisition"), which formed the factual basis of the claims asserted here under sections 11 and 15 of Securities Act of 1933 ("Securities Act") and sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 ("Exchange Act"); (ii) successfully opposed Defendants' comprehensive motion to dismiss [D.I. 37]; (iii) successfully defeated Defendants' motions for summary judgment on Class Representative's individual federal securities law claims [D.I. 119]; (iv) successfully certified the Class over Defendants' opposition [D.I. 120]; (v) engaged in significant discovery, including the review of tens of thousands of pages of documents produced by Defendants and various third-parties; (vi) deposed ten witnesses who played central roles in the Acquisition, including several current and former officers and/or directors of LRE and Vanguard; (vii) retained three leading industry and financial experts to evaluate evidence and assist with the computation of damages; (viii) exchanged merits expert reports; and (ix) engaged in extensive arm's-length settlement negotiations, including a full-day mediation with Robert A. Meyer, Esq. Oddo Decl., ¶8.

The Settlement achieved through Class Counsel's efforts is a particularly favorable result when juxtaposed against the significant procedural and substantive hurdles that Class Representative would have had to overcome in order to prevail in this complex securities class action. In undertaking this Action, Class Counsel faced numerous challenges to establishing liability, loss causation, and damages, which are detailed in paragraphs 49-53 of the Oddo Declaration. The risk of losing was a real one, and it was greatly enhanced by the fact that Class Counsel was litigating against Defendants represented by highly skilled counsel, under the exacting standards of the Exchange Act, as modified by the Private Securities Litigation Reform Act of 1995 ("PSLRA") and the Securities Act. Despite these risks, Class Counsel collectively dedicated more than 5,198.60 hours of time to this Action over the course of approximately three

years, on a fully contingent basis. *Infra* Section III.; Oddo Decl., ¶¶98, 101; Declaration of Blake A. Bennett in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Class Representative's Service Award ("Bennett Decl."), ¶¶4-5, filed herewith. As discussed below, the requested fee of \$2,400,000 results in a negative multiplier of 0.98 on Class Counsel's collective lodestar of \$2,457,400. Oddo Decl., ¶¶98, 101. In light of the recovery obtained, the time and effort devoted by Class Counsel, the work performed, the skill and expertise required, and the risks that counsel undertook, Lead Class Counsel, jointly with Liaison Class Counsel, submit that the requested fee award and the reimbursement of incurred expenses are fair and reasonable.

As discussed further below, the percentage fee requested is well within the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries. *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at *8 (E.D. Pa. Sept. 20, 2017) ("*DFC Global*") (observing "the Third Circuit has relied on studies that demonstrated that an average percentage fee recovery in large class action settlements is approximately 30%"); *see also In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *17 (E.D. Pa. Jan. 25, 2016) ("[A]wards of thirty percent are not uncommon in securities class actions.")⁴; *Schwartz v. Urban Outfitters, Inc.*, 2016 WL 7626720, at *2 (E.D. Pa. Oct. 31, 2016) ("*Urban Outfitters*") (awarding 30% fee on \$8,500,000 securities class action settlement).

For all the reasons set forth herein, Lead Class Counsel, jointly with Liaison Class Counsel, respectfully submit that the requested attorneys' fees and expenses are fair and

⁴ Here, as throughout, all emphasis is deemed as added and citations and footnotes are deemed omitted.

reasonable under the applicable legal standards and therefore, should be awarded by the Court.⁵

II. THE STANDARDS GOVERNING THE AWARD OF ATTORNEYS' FEES IN COMMON FUND CASES

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

It is well-settled that an attorney who maintains a lawsuit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *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"); *see also Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392-93 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *In re Diet Drugs*, 582 F.3d 524, 540 (3d Cir. 2009).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund ensures that "competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant action, provide "a most effective weapon in the

⁵ Submitted herewith in support of approval of the Settlement is the Opening Brief in Support of Class Representative's Motion for Final Approval of Class Action Settlement and Plan of Allocation (the "Settlement Motion"). For the sake of brevity, the Court is respectfully referred to the Oddo Declaration and the Settlement Brief for a detailed description of, among other things, the history of the Action through the submission of the Settlement to the Court; the nature of the claims asserted in the Action; the negotiations leading to the Settlement; the value of the Settlement to the Class, as compared to the risks and uncertainties of continued litigation; and a description of the services Lead Class Counsel provided for the benefit of the Class.

enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

Courts in this Circuit and District have consistently adhered to this guidance. *See, e.g., Viropharma*, 2016 WL 312108, at *15 ("The common fund doctrine provides that a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees") (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 820 n.39 (3d Cir. 1995) ("*GMC Trucks*")); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

The ultimate determination of the proper amount of attorneys' fees, of course, rests within the sound discretion of the district court. *Gunter*, 223 F.3d at 195; *GMC Trucks*, 55 F.3d at 821; *In re AT&T Corp.*, 455 F.3d 160, 168–69 (3d Cir. 2006).

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

"For many years, both the Supreme Court and Third Circuit have favored calculating attorneys' fees as a percentage of the class recovery." *In re CIGNA Corp.*, 2007 WL 2071898, at *4 (E.D. Pa. July 13, 2007) (citing *Boeing*, 444 U.S. at 478-79). The Third Circuit and district courts within it have repeatedly endorsed the percentage-of-recovery method of awarding fees in common fund securities class action cases. *See, e.g., DFC Global*, 2017 WL 4167440, at *7 ("Because this is a common fund case, the Court will employ the percentage-of-recovery method to determine the amount of attorneys' fees it will award Class Counsel"); *Urban Outfitters*, 2016

WL 7626720, at *2 (finding "a reward based on a percentage of recovery is appropriate" in securities class action case); *AT&T*, 455 F.3d at 164 ("In common fund cases such as this one, the percentage-of-recovery method is generally favored."); *ViroPharma*, 2016 WL 312108, at *15 ("The percentage-of-recovery method is 'generally favored' in cases involving a settlement that creates a common fund."). In *In re Cendant Corp. Litig.*, 264 F.3d 201, 220 (3d Cir. 2001), the Court of Appeals noted in 2001 that "[f]or the past decade, counsel fees in securities litigation have generally been fixed on a percentage basis rather than by the so-called lodestar method." That trend has continued to the present.⁶

III. THE REQUESTED 30% FEE AWARD IS FAIR AND REASONABLE

Under Third Circuit law, district courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common fund cases. *See, e.g., Gunter*, 223 F.3d at 195 ("We give [a] great deal of deference to a district court's decision to set fees."); *GMC Trucks*, 55 F.3d at 821. Nonetheless, in exercising that broad discretion, the Third Circuit has noted that a district court should consider the following factors in determining a fee award: (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases. *Gunter*, 223 F.3d at 195. These fee award factors

⁶ The use of the percentage of recovery method also comports with the language of the PSLRA, which states that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class" 15 U.S.C. §78u-4(a)(6); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (when drafting the PSRLA, Congress "indicated a preference for the use of the percentage method"). Thus, "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005).

"need not be applied in a formulaic way ... and in certain cases, one factor may outweigh the rest." *Id.*; see also *Harshbarger v. Penn Mut. Life Ins. Co.*, 2017 WL 6525783, at *3 (E.D. Pa. Dec. 20, 2017) ("Although district courts should 'engage in robust assessments of the [Gunter/Prudential factors] when evaluating a fee request,' these factors are not exhaustive, and should not be applied in a formulaic way.") (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301-02 (3d Cir. 2005), *as amended* (Feb. 25, 2005)). As set forth below, each of these factors supports the award of the reasonable fee requested by Class Counsel here.

A. The Size and Nature of the Common Fund Created and the Number of Persons Benefited by the Settlement

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Viropharma*, 2016 WL 312108, at *16 ("The 'most critical factor' for the Court to weigh is 'the degree of success obtained.>"). In *Ikon*, the court in awarding the requested fee stated "[t]he most significant factor in this case is the quality of representation, as measured by 'the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" 194 F.R.D. at 194.

Here, Class Counsel, on behalf of Class Representative and the Class, secured the Settlement, which provides for a payment of \$8,000,000. The Settlement also benefits a large number of investors. To date, the Claims Administrator has mailed the Settlement Notice to 15,889 potential Class Members and their nominees. Oddo Decl., ¶46. Each of these Persons will receive an Initial Settlement Payment and will also be eligible to receive their *pro rata* portion of the Net Settlement Amount if they submit a timely and valid Proof of Claim. See

Oddo Decl., ¶46; Second Addendum, ¶1. Accordingly, a large number of Class Members will benefit from the Settlement Fund.⁷ *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (size of benefitted population "is best estimated by the number of entities that were sent the notice describing the [Settlement].").

B. The Absence of Objections by Class Members to the Fee Request

The Settlement Notice, which was sent to 15,889 potential Class Members and their nominees and posted on publicly accessible websites created specifically for this Action, provided that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund. *See* Oddo Decl., Ex. 4. The Settlement Notice also advised Class Members that they could object to the fee request and explained the procedure for doing so. *Id.* While the deadline set by the Court for Class Members to object to the fee request has not yet expired, to date, no objections have been received.⁸ This is significant, as the Third Circuit has noted, "[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement." *Cendant*, 264 F.3d at 235.

C. The Skill and Efficiency of Class Counsel

A considerable amount of skill was required to achieve the Settlement for the benefit of the Class. Class Counsel's efforts in bringing this Action to a successful conclusion are the best

⁷ As of the date of this brief, which is still three weeks from the claim submission deadline, more than 1,342 Proof of Claim forms have been submitted to the Claims Administrator. Oddo Decl., ¶71. That total is expected to climb significantly as the deadline approaches, and Class Counsel will provide the Court with more up-to-date information prior to the hearing currently set for December 14, 2018.

⁸ The deadline for submitting objections is November 9, 2018. As provided in the Preliminary Approval Order, Lead Class Counsel will file reply papers no later than December 7, 2018, addressing any objections that may be received.

indicator of the experience and ability of the attorneys involved. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002) ("the single clearest factor reflecting the quality of class counsels' services to the class are the results obtained") (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000)); *see also Bodnar v. Bank of America, N.A.*, 2016 WL 4582084, at *5-*6 (E.D. Pa. Aug. 4, 2016).

Class Counsel's efforts have resulted in a highly favorable outcome for the benefit of the Class. The substantial and certain recovery obtained for the Class is the direct result of the significant efforts of highly skilled and specialized attorneys who possess substantial experience in the prosecution of complex securities class actions.⁹ Class Counsel's reputation as attorneys who zealously carry meritorious cases through all stages of litigation, as well as their demonstrated ability to vigorously develop the evidence in this Action, enabled them to negotiate the outstanding recovery for the benefit of the Class.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by plaintiff's counsel. *See, e.g., Ikon*, 194 F.R.D. at 194; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Defendants here were represented by attorneys with undeniable experience and skill from several prominent law firms, including Vinson & Elkins LLP, Hunton Andrews Kurth LLP, McKool Smith, P.C., and Blank Rome LLP. Oddo Decl., ¶88. The ability of Class Counsel to obtain a favorable outcome for the Class in the face of such formidable legal opposition further confirms the quality of Class Counsel's representation.

⁹ The firm resumes of Robbins Arroyo and Cooch & Taylor are attached to the Oddo Decl. and Bennett Decl. each as Exhibit 1. As those submissions demonstrate, Class Counsel are highly regarded and practice extensively in the highly complex field of shareholder securities litigation. *See ViroPharma*, 2016 WL 312108, at *15; *Urban Outfitters*, 2016 WL 7626720, at *3.

D. The Complexity and Duration of the Litigation

As the Court in *DFC Global* noted, "[s]ecurities litigation is tough stuff." 2017 WL 4167440, at *8. Class actions asserting violations of federal securities law are regularly acknowledged to be particularly complex and expensive, usually requiring expert testimony on several issues, including loss causation and damages. *See, e.g., Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *4 (D.N.J. June 29, 2017) ("Federal securities class actions by definition involve complicated issues of fact and law."); *Fogarazzo v. Lehman Bros.*, 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Genta Sec. Litig.*, 2008 WL 2229843, at *3 (D.N.J. May 28, 2008) ("This [securities class] action involves complex legal and factual issues, and pursuing them would be costly and expensive.").

The \$8,000,000 recovery is substantial in light of the complexity of this Action and the significant risks and expenses that the Class would have faced by litigating through trial. At the time the Settlement was reached, Lead Class Counsel, assisted by Liaison Class Counsel, and on behalf of Class Representative, had: (i) conducted a wide-ranging investigation concerning the allegedly material omissions/misstatements in the Proxy issued in connection with the Acquisition; (ii) drafted the Amended Complaint [D.I. 15]; (iii) researched and drafted extensive papers in opposition to Defendants' motion to dismiss the Amended Complaint, which the Court denied in its entirety [D.I. 37]; (iv) successfully opposed Defendants' motions for summary judgment on Class Representative's individual claims [D.I. 119]; (v) successfully certified the Class over Defendants' opposition [D.I. 120]; (vi) propounded written discovery and received and analyzed tens of thousands of pages of documents produced by Defendants and various third-parties; (vii) deposed ten witnesses, including several current and former officers and/or directors of LRE and Vanguard; (viii) retained three industry and financial experts to evaluate

evidence and assist with the computation of damages; and (x) exchanged merits expert reports with Defendants. Oddo Decl., ¶48.

Nonetheless, had this Action continued, it was very likely that Defendants would have attempted to enforce the various release provisions contained in Vanguard's Bankruptcy Plan in order to obtain dismissal of the claims held by Class Representative and a majority of the Class. Oddo Decl., ¶54. At a minimum, Lead Class Counsel, on behalf of Class Representative and the Class, would have been forced to vigorously respond to Defendants' efforts to enforce these provisions, which may have delayed the trial in this Action for months. In addition, in the absence of Settlement, Class Representative and the Class would have been required to submit rebuttal expert reports and complete expert discovery. After the close of fact and expert discovery, Class Representative and the Class would have likely faced renewed motions for summary judgment, which would have to be briefed and argued. Assuming the claims held by Class Representative and the Class were able to survive summary judgment, substantial time and expense would then need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself.").

Considering the magnitude, expense, and complexity of this securities class action case—especially when compared against the significant and certain recovery achieved by the Settlement—Class Counsel's fee request is reasonable. Accordingly, this factor weighs in Class Counsel's favor.

E. The Risk of Nonpayment

Class Counsel undertook this Action on an entirely contingent fee basis, taking the risk that the litigation would yield no or very little recovery and leave them uncompensated for their time, as well as for their out-of-pocket expenses. As explained in detail in paragraphs 94-96 of the Oddo Declaration, Class Counsel faced numerous significant risks in this case that could have resulted in no recovery or a recovery smaller than \$8,000,000 guaranteed by the Settlement. Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., Warner Comm'cns*, 618 F. Supp. at 747-49 (citing cases). This is particularly true here because securities litigation has long been regarded as "notably difficult and notoriously uncertain." *See Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993).

Here, Class Counsel undertook this litigation on a fully-contingent basis and with no guarantee of their time or expenses being reimbursed. Indeed, as set forth in the Oddo Declaration, the risk of nonpayment was particularly acute here given that Vanguard declared bankruptcy before Judge Robinson denied Defendants' motion to dismiss, and Vanguard and LRE were both dismissed from this Action with prejudice following the confirmation of Vanguard's Bankruptcy Plan. Oddo Decl., ¶96.

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. This strongly favors approval of the requested fee.

F. The Significant Time Devoted to This Case by Class Counsel

To date, Class Counsel and their professionals have expended over 5,198.60 hours and incurred \$457,541.63 in expenses prosecuting this Action for the benefit of the Class. As more fully discussed above (*supra* Section I.) and in the Oddo Declaration, this Action has been vigorously litigated and defended from its inception in August of 2015. This includes, *inter alia*: the considerable time spent in the initial investigation of the claims underlying this Action; researching complex issues of federal securities law; researching and briefing the issues in connection with Defendants' motion to dismiss; researching and briefing the issues in connection with Defendants' motions for summary judgment on Class Representative's individual claims; researching and briefing the issues in connection with Class Representative's motion for class certification; propounding and responding to requests for production, requests for admissions, and interrogatories; reviewing and analyzing documents produced by Defendants and various third-parties; defending the deposition of Class Representative; taking ten depositions of key witnesses, including several current and/or former officers and directors of LRE and Vanguard; engaging and working with three industry and financial expert to develop merits expert reports; preparing for the mediation, drafting mediation statements, and engaging in further discussions on merits and damages with Defendants' counsel; negotiating the Settlement; preparing the motion for preliminary approval and supporting papers; and finalizing the Settlement documents. *See* Oddo Decl., ¶¶1-42. At all times, Class Counsel conducted their work with skill and efficiency, conserving resources and avoiding any duplication of efforts. The foregoing unquestionably represents a very significant commitment of time, personnel and out-of-pocket expenses by Lead Class Counsel, assisted by Liaison Class Counsel, while taking on the substantial risk of recovering nothing for their efforts.

G. The Requested Fee of 30% of the Settlement Fund Is Within the Range of Fees Typically Awarded in Actions of This Nature

While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has observed that fee awards generally range from 19% to 45% of the settlement fund. *GMC Trucks*, 55 F.3d at 822; *see also Ikon*, 194 F.R.D. at 194. Indeed, numerous courts within the Third Circuit have awarded fees of 30% or more of the recovery. *Urban Outfitters*, 2016 WL 7626720 (awarding 30% of \$8,500,000 settlement fund); *Cullen*, 197 F.R.D. at 150 ("the award of one-third of the [settlement] fund for attorneys' fees is consistent with fee awards in a number of recent decisions within this district").¹⁰

The requested fee is also consistent with the median fee award for securities cases based on a recent analysis of fee awards conducted in 2017 by National Economic Research Associates, Inc., titled "*Recent Trends in Securities Class Action Litigation: 2017 Full-Year Review*." Oddo Decl., Ex 3, Fig. 33. Using data from securities class actions from 2012 through 2017, the study found that for settlements between \$5 million and \$10 million—where this Settlement falls—the median fee award was 30% of the settlement amount. *Id.*

¹⁰ *See also City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, 2016 WL 10570211, at *1 (D.N.J. Sept. 29, 2016) (awarding 30% of \$9,900,000 settlement fund); *Bodnar*, 2016 WL 4582084, at *5 (awarding 33% of \$27,500,000 fund); *Schuler v. Meds. Co.*, 2016 U.S. Dist. LEXIS 82344, at *28 (D.N.J. June 24, 2016) (awarding 33% of \$4,250,000 settlement fund); *ViroPharma*, 2016 WL 312108, at *15-*16 (awarding 30% of \$8 million settlement fund); *Esslinger v. HSBC Bank Nev., N.A.*, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) ("a fee award of 30% of the [\$23.5 million] settlement here is reasonable and in keeping with similar precedent"); *W. Pa. Elec. Emps.' Pension Fund v. Alter*, No. 2:09-cv-04730-CMR, slip op. (E.D. Pa. Aug. 4, 2014) (court awarded 30% of \$13.25 million settlement), Oddo Decl., Ex. 6; *In re Advanta Corp. ERISA Litig.*, No. 2:09-cv-04974-CMR, slip op. (E.D. Pa. Jan. 9, 2014) (court awarded 30% of a \$4.5 million settlement), Oddo Decl., Ex. 7; *In re PAR Pharm. Sec. Litig.*, 2013 U.S. Dist. LEXIS 106150, at *30 (D.N.J. July 29, 2013) (court awarded 30% of an \$8.1 million settlement to counsel noting that "Lead Counsel's fee request is comparable to fees typically awarded in analogous cases"); *In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815 (3d Cir. 2010) the 30% award of a \$21.5 million settlement by the district court).

Equally important, the requested fees have been approved by the Court-appointed Class Representative. *See* Hurwitz Decl., ¶9. Class Representative has evaluated the request for fees and has come to the conclusion that the requested fees are warranted based on his substantial involvement in the prosecution of the Action. *Id.*, ¶¶4-7, 10. Class Representative also considered Class Counsel's substantial efforts in obtaining the recovery particularly in light of the substantial risks of litigation. *Id.*, ¶8. As a result, the fee request is entitled to a "presumption of reasonableness."¹¹ *Cendant*, 264 F.3d at 220; *ViroPharma*, 2016 WL 312108, at *15 ("Where the Lead Plaintiff approves the Lead Plaintiff's counsel's request fee award—as Lead Plaintiff does here—the Court should afford the fee requested a presumption of reasonableness.").

Accordingly, the application of the *Gunter* factors makes clear that Class Counsel's requested fee of 30% of the Settlement Fund is fair and reasonable.

IV. THE REQUESTED FEE IS REASONABLE UNDER A LODESTAR CROSS-CHECK

Although courts in this Circuit almost uniformly apply the percentage approach to determine attorneys' fees in common fund cases like this one, a court may, but is not required to, use a lodestar "cross-check" to confirm the reasonableness of the requested fee.¹² In this case, if the cross-check is applied, the requested fee of 30% is clearly fair and reasonable.¹³ The lodestar

¹¹ The requested fee of 30% is also consistent with the retention agreement entered into by Class Representative, which permits Lead Class Counsel to recover a fee of 25% to 33% of the amount recovered, as well as reasonable expenses. *Oddo Decl.*, ¶105.

¹² "Even if such a cross-check is performed, 'the lodestar cross-check does not trump the primary reliance on the percentage of the common fund method.'" *Bodnar*, 2016 WL 4582084, at *5 (citing *Rite Aid*, 396 F.3d at 307).

¹³ The lodestar cross-check is a tool to "ensure that the percentage approach does not lead to a fee that represents an extraordinary lodestar multiple." *Cendant*, 404 F.3d at 188.

method, as set forth in the seminal case, *Lindy Bros. Builders of Philadelphia v. American Radiator & Standard Sanitary Corp.*, 487 F.2d 161 (3d Cir. 1973), is a two-step process. The first step requires that the court ascertain the "lodestar" figure by multiplying the number of hours reasonably worked by the reasonable normal hourly rate of counsel. The second step permits the court to adjust the lodestar to take into account the contingent nature and risks of the litigation, the result obtained and the quality of the services rendered by counsel. *See id.* at 167-68. A multiplier "need not fall within any pre-defined range, provided that the [d]istrict [c]ourt's analysis justifies the award." *Schuler*, 2016 U.S. Dist. LEXIS 82344, at *30 (alteration in original) (citing *Rite Aid*, 396 F.3d at 307).

The declarations submitted by Class Counsel contain the lodestar calculations, showing that Class Counsel expended 5,198.60 hours of attorney and professional support staff time in the prosecution of this Action. *See* Oddo Decl., ¶¶98, 101; Bennett Decl., ¶¶4-5. These hours have been multiplied by each firm's 2018 hourly rates¹⁴ for the attorneys and professional support staff who worked on this Action to arrive at the base lodestar amount of \$2,457,400. Oddo Decl., ¶98.

Finally, to perform the lodestar cross-check, the court should determine what the effective multiplier is, and then determine whether the resulting fee would be so unreasonable as to warrant a downward adjustment. As noted, the cumulative lodestar of the services performed

¹⁴ In determining whether the rates are reasonable, the court should take into account the attorneys' legal reputation, experience, and status. The accompanying declarations describe the legal background and experience of Class Counsel. *See* Oddo Decl., Ex. 1; Bennett Decl., Ex. 1. These descriptions provide support for the hourly rates charged in the case. To arrive at the lodestar, the hours expended are typically multiplied by each attorney's respective hourly rate. The hourly rate to be applied in calculating the lodestar is that which is normally charged in the community where the attorney practices. *See Blum v. Stenson*, 465 U.S. 886, 895 (1984); *In re Fine Paper Antitrust Litig.*, 751 F.2d 562, 590-91 (3d Cir. 1984). In addition, the United States Supreme Court and other courts have held that the use of current rates is proper since such rates compensate for inflation and the loss of use of funds. *See Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989); *Ikon*, 194 F.R.D. at 195.

by Class Counsel in this litigation is \$2,457,400. *Id.* Class Counsel seeks an award of 30% of the Settlement Fund, which equals \$2,400,000 (before interest). Therefore, the requested fee represents a multiplier of 0.98, or approximately \$57,400 less than Class Counsel's collective lodestar through July 25, 2018, the date that the Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement [D.I. 189] was filed.¹⁵ Courts often approve fees in class cases that correspond to multiples of one to four times lodestar. *See, e.g., Martin v. Foster Wheeler Energy Corp.*, 2008 WL 906472, at *8 (M.D. Pa. Mar. 31, 2008) ("Lodestar multiples of less than four (4) are well within the range awarded by district courts in the Third Circuit."); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 341 (3d Cir. 1998) ("[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"). Thus, Class Counsel's loadstar further supports the reasonableness of the fee being requested here.

V. CLASS COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Class Counsel also request payment of expenses incurred in connection with the prosecution of this Action. Class Counsel have submitted declarations attesting to the accuracy of their expenses. *See* Oddo Decl., ¶110; Bennett Decl., ¶7. Class Counsel have incurred expenses in the aggregate amount of \$457,541.63 in prosecuting this Action.¹⁶ Oddo Decl.,

¹⁵ Accordingly, Class Counsel's cumulative lodestar does not include any work done since preliminary approval was granted, including all work performed in connection with the preparation of the Motion for Final Approval of the Settlement.

¹⁶ In connection with Preliminary Approval, Lead Class Counsel indicated that they would seek up to \$325,000 in expense reimbursement. That figure was based on the invoices Lead Class Counsel had received prior to July 25, 2018, the date the Unopposed Supplement to Class Representative's Amended Unopposed Motion for Preliminary Approval of Settlement [D.I. 189] was filed. Since that time, however, Lead Class Counsel has received additional invoices for services rendered and expenses incurred prior to and in connection with the Settlement of this Action, totaling \$132,541.63. Lead Class Counsel believes they are entitled to reimbursement

¶106. Counsel in a class action are entitled to recover expenses that were "adequately documented and reasonable and appropriately incurred in the prosecution of the class action." *ViroPharma*, 2016 WL 312108, at *18 (quoting *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)).

The expenses for which Class Counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, expert fees, online research, document hosting, deposition reporting and transcripts, photocopying, transportation, meals, and lodging, postage and delivery expenses, filing fees, and expenses related to mediation. *See* Oddo Decl., ¶107. The largest expense incurred by Lead Class Counsel was the retention of the three industry and financial experts who prepared detailed reports addressing liability, loss causation, and damages. *Id.* Due to the complexity and specialized nature of the factual issues in this Action, it was necessary for Class Representative to consult highly qualified experts and the efforts of the experts retained on behalf of Class Representative and the Class were integral in achieving the Settlement on behalf of the Class.

Another significant component of Lead Class Counsel's expenses include necessary travel, including meals, lodging, and transportation. Oddo Decl., ¶107. In order to prosecute this Action, Lead Class Counsel was required to travel to appear before the Court for hearings, attend depositions, and to attend mediation. *Id.* Other expenses that were necessarily incurred in the prosecution of this Action include expenses for database management and document hosting,

for these additional expenses, including \$122,800 in expert fees, because they relate to services rendered prior to or in connection with the Settlement, were necessary for the prosecution of this Action, and benefited Class Representative and the Class. *See* Oddo Decl., ¶112 & n.14.

mediation fees, court reporters, photocopying and imaging costs, postage and overnight delivery charges, and telephone and telecopier expenses. *Id.*

Because these were all necessary expenses incurred by Class Counsel, they should be paid from the Settlement Fund. *E.g., DFC Global*, 2017 WL 4167440, at *9 ("Items such as photocopying, telephone and fax charges, express mail charges, expert witness fees, travel and lodging, and computer-assisted research are necessary for the prosecution of a large class action lawsuit. Accordingly, class counsel are entitled to be reimbursed for those costs.").

VI. CLASS REPRESENTATIVE IS ENTITLED TO REIMBURSEMENT OF REASONABLE COSTS AND EXPENSES

Under the PSLRA, the Court may also award "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." *See* 15 U.S.C. §78u-4(a)(4). Class Representative requests payment of \$25,000 (the "Service Award"). As set forth in the accompanying Hurwitz Declaration, Class Representative has been actively involved in every aspect of this Action and his efforts include: (i) regularly consulting with his attorneys through written communications, telephone calls, and in-person meetings; (ii) reviewing documents filed by his attorneys and various orders entered by the Court; (iii) producing documents to the Defendants (including years of personal financial records) and answering written interrogatories; (iv) preparing for and providing deposition testimony; (v) providing input regarding the litigation and settlement strategy; and (vi) discussing the parameters for an appropriate resolution of the case and ultimately agreeing to the Settlement.¹⁷

¹⁷ Class Counsel also believe that the Service Award is particularly appropriate here in light of Class Representative's willingness to vigorously prosecute this Action even after his motives and abilities were publicly challenged by Defendants in connection with their efforts to oppose class certification. *Oddo Decl.*, ¶117 & Ex. 5 (*Energy Co. Derides Potential Investor Class Rep as Ignorant*, Law360 (Dec. 8, 2017)).

These are precisely the types of activities that courts have found to support awards to class representatives. *See, e.g., DFC Global*, 2017 WL 4167440, at *10 (awarding a total of \$21,640 to three lead plaintiffs).¹⁸ The Service Award requested by Class Representative is reasonable and justified under the PSLRA based on his involvement in the Action from inception to settlement, and should be granted.¹⁹

VII. CONCLUSION

For all of the foregoing reasons, Class Representative's counsel respectfully request that the Court award attorneys' fees of 30% of the Settlement Amount and expenses in the amount of \$457,541.63, plus interest at the same rate as earned by the Settlement Fund, and \$25,000 to Class Representative for the time he spent representing the Class.

Dated: November 2, 2018

Respectfully submitted,

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¹⁸ *See also In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 WL 9447623, at *29 (D.N.J. Dec. 9, 2008) (awarding "\$150,000 to Lead Plaintiffs to compensate them for their reasonable costs and expenses directly relating to their representation of the Class pursuant to 15 U.S.C. §78u-4(a)(4)"); *Veritas*, 396 F. App'x at 816 (awarding each lead plaintiff \$15,000 in PSLRA case); *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *11 (D.N.J. July 29, 2013) (\$18,000 award made to lead plaintiff in PSLRA case based on time and effort devoted to the case); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1049 (N.D. Cal. 2008) (finding it "appropriate to reimburse Lead Plaintiff [a total of \$29,913.80 to the four Lead Plaintiffs] for their reasonable costs and expenses").

¹⁹ To date, there have been no objections to the request for the Service Award.

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I electronically filed the *Opening Brief in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Class Representative's Service Award* with the Clerk of Court using CM/ECF which will send notification of such filing to those registered as CM/ECF participants.

/s/ Blake A. Bennett

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