UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ISRAEL SANCHEZ, Individually and On Behalf of All Others Similarly Situated, Plaintiff, v. CENTENE CORP., MICHAEL F. NEIDORFF, and JEFFREY A. SCHWANEKE, Defendants.	Case No. 4:17-cv-00806-AGF

MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES

Dated: September 21, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

RULES

OTHER AUTHORITIES

Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("Lead Counsel"), respectfully submits this memorandum of law in support of its motion, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an award of attorneys' fees for Plaintiffs' Counsel in the amount of 25% of the Settlement Fund.[1] Lead Counsel also seeks payment of $81,134.49 for litigation expenses that it reasonably and necessarily incurred in prosecuting and resolving the Action.

PRELIMINARY STATEMENT

The proposed Settlement, which provides for the payment of $7,500,000 in cash to resolve the Action, is a favorable result for the Settlement Class. In undertaking this litigation, counsel faced numerous challenges to proving both liability and damages that posed the serious risk of no recovery, or a substantially lesser recovery than the Settlement, for the Settlement Class. The recovery was achieved through the skill and effective advocacy of Lead Counsel, which litigated this Action for three years on a fully contingent fee basis against highly capable defense counsel.

The prosecution and settlement of this litigation required extensive efforts on the part of counsel. As detailed in the accompanying Declaration of Jonathan D. Uslaner (the "Uslaner Declaration"), Plaintiffs' Counsel vigorously pursued this litigation from its outset by, among other things: (i) conducting a wide-ranging investigation into the alleged fraud, which including a detailed review of publicly available documents such as Centene's SEC filings, transcripts of investor conference calls, analyst reports, and news articles, as well as interviews with dozens of former employees of Centene and Heath Net (¶¶ 14-16); (ii) researching and drafting a detailed consolidated

[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement dated March 5, 2020 (ECF No. 116-1) (the "Stipulation"), or in the Declaration of Jonathan D. Uslaner in Support of (I) Lead Plaintiff's Motion for Final Approval of Settlement and Plan of Allocation, and (II) Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses, filed herewith. In this memorandum, citations to "¶ __" refer to paragraphs in the Uslaner Declaration and citations to "Ex. __" refer to exhibits to the Uslaner Declaration.

complaint based on Lead Counsel's investigation (¶ 17); (iii) successfully opposing Defendants' motion to dismiss through briefing and argument (¶¶ 18-23); (iv) engaging in fact discovery, including serving comprehensive document requests to Defendants and subpoenas to thirteen third parties (¶¶ 25-35); (v) consulting with experts on accounting issues, market efficiency, and class-wide damages (¶¶ 16, 36-37); and (vi) engaging in arm's-length settlement negotiations, including a full-day mediation session (¶¶ 38-44).

The Settlement achieved through Lead Counsel's efforts is a favorable result particularly when considered in light of the significant risks that Lead Plaintiff would need to overcome to prove Defendants' liability and establish loss causation and damages in this securities fraud litigation. These risks are set forth in detail in the Uslaner Declaration at paragraphs 47 to 58, and are summarized in the memorandum of law supporting the Settlement. As detailed in those submissions, these risks posed a real possibility that Lead Plaintiff and the Settlement Class would not be able to recover or might have recovered a lesser amount if the Action proceeded through summary judgment, trial, and appeals. Despite these risks, Plaintiffs' Counsel collectively worked over 2,700 hours over the course of three years, all on a contingent-fee basis with no assurance of ever being paid.

As compensation for their efforts on behalf of the Settlement Class and the risks of non-payment they faced in bringing the Action on a contingent basis, Lead Counsel seeks attorneys' fees in the amount of 25% of the Settlement Fund for Plaintiffs' Counsel. The requested fee is well within the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries on a percentage basis. The requested fee represents a multiplier of 1.2 Plaintiffs' Counsel's lodestar, which is also well within the range of multipliers typically awarded in class actions with contingency risks such as this one.

The application for fees and expenses has the full support of Lead Plaintiff. *See* Declaration of Osey "Skip" McGee, Jr. on behalf of Louisiana Sheriffs (Ex. 2) ("McGee Decl."), at ¶¶ 8-9. Lead Plaintiff is a sophisticated institutional investor that actively supervised the Action and has endorsed Counsel's fee request as fair and reasonable in light of the result achieved in the Action, the quality of the work counsel performed, and the risks of the litigation. *Id*.

While the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, following the dissemination of the Notice to more than 79,000 potential Settlement Class Members and nominees, to date, no objections to the request for fees and expenses has been received. ¶ 94.[2]

In light of the recovery obtained, the time and effort devoted by counsel, the work performed, the skill and expertise required, and the substantial risks that counsel undertook, Lead Counsel submits that the requested fee award is reasonable. In addition, the litigation expenses for which Lead Counsel seeks payment were reasonable and necessary for the successful prosecution of the Action.

ARGUMENT

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

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Courts have recognized that, in addition to providing fair compensation, awards of attorneys' fees in successful cases serve to encourage skilled counsel to represent those who seek redress for damages inflicted on

[2] The deadline for the submission of objections is October 5, 2020. Lead Counsel will address any objections that may be received in its reply papers, which will be filed with the Court on October 19, 2020.

entire classes of persons, and to discourage future alleged misconduct of a similar nature. *See In re Charter Commc'ns, Inc. Sec. Litig.*, 2005 WL 4045741, at *18-19 (E.D. Mo. June 30, 2005).

The Supreme Court has emphasized that private securities actions, like this one, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[a] large segment of the public might be denied a remedy for violations of the securities laws if contingent fees awarded by the courts did not fairly compensate counsel for the services provided and the risks undertaken." *In re Sturm, Ruger & Co., Inc. Sec. Litig.*, 2012 WL 3589610, at *13 (D. Conn. Aug. 20, 2012).

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Lead Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained. The Eighth Circuit has expressly approved the percentage method in common fund cases. *See In re U.S. Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) ("[w]e have approved the percentage-of-recovery methodology to evaluate attorneys' fees in a common-fund settlement such as this"); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999) (same).

Courts have repeatedly recognized the advantages of the percentage-of-the-fund method because it aligns the interests of counsel and the class in achieving the maximum recovery possible and encourages class counsel to litigate the case in as efficient a manner as possible. *See, e.g.*, *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 991-92 (D. Minn. 2005) ("There are strong policy reasons behind the judicial and legislative preference for the percentage of recovery method"); *Charter Commc'ns*, 2005 WL 4045741, at *13 (the percentage "approach most closely aligns the interests of the lawyers with the class"). In addition, the percentage method is consistent with arrangements in the private marketplace for contingency cases, in which individual clients

typically agree to a fee based on the amount recovered. *See id*.

III. THE REQUESTED FEE PERCENTAGE IS REASONABLE

The Supreme Court has recognized that an appropriate court-awarded fee is intended to approximate what counsel would receive if they were bargaining for the services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and typically in the range of 30% to 33% of the recovery. *See Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers. In those cases, therefore, the fee is directly proportional to the recovery.") (Brennan, J., concurring).

The 25% attorney fee requested by Lead Counsel, with the agreement of Lead Plaintiff, is well within the range of percentage fees awarded in comparable cases. *See Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1061 (D. Minn. 2010) ("courts have routinely awarded attorney fees ranging from 25% to 36% of the common fund under the percentage-of-the-fund method"); *Xcel*, 364 F. Supp. at 998 (same); JANEEN MCINTOSH & SVETLANA STARYKH, NERA ECONOMIC CONSULTING, RECENT TRENDS IN SECURITIES CLASS ACTION: 2019 FULL-YEAR REVIEW (2020), at 25 (Ex. 6) (finding that, in securities class actions with settlements between $5 and $10 million, the median fee is 30% of the settlement).

The reasonableness of the 25% fee requested is confirmed by a review of fees that that have been awarded in this Circuit in securities class actions and other similar litigation with comparable recoveries. *See, e.g.*, *U.S. Bancorp Litig.*, 291 F.3d at 1038 (affirming attorney fee award of 36% of $3.5 million settlement); *Beaver Cnty. Emps.' Ret. Fund v. Tile Shop Holdings, Inc.*, 2017 WL 2588950, at *1 (D. Minn. June 14, 2017) (awarding 24% of $9.5 million settlement); *Public Pension Grp. v. KV Pharm. Co.*, No. 4:08-cv-1859 (CEJ), slip op. at 2 (E.D. Mo. Apr. 23, 2014), ECF No. 199 (awarding 30% of $12.8 million settlement) (Ex. 7); *Luman v. Anderson*, No. 4:08-cv-00514-C-W-

HFS, slip op. at 1 (W.D. Mo. July 23, 2013), ECF No. 165 (awarding 30% of $4.25 million settlement) (Ex. 8); *Ray v. Lundstrom*, 2012 WL 5458425, at *4 (D. Neb. Nov. 8, 2012) (awarding 33.3% of $3.1 million settlement); *W. Wash. Laborers-Emp'rs Pension Trust v. Panera Bread Co.*, 4:08-cv-00120-ERW, slip op. at 1 (E.D. Mo. June 22, 2011), ECF No. 103 (awarding 30% of $5.75 million settlement) (Ex. 9); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 WL 5547159, at *3 (N.D. Iowa Nov. 9, 2011) (awarding 36% of $18.5 million settlement); *Yarrington*, 697 F. Supp. 2d at 1061 (awarding 33% of $16.5 million settlement); *Nelson v. Wal-Mart Stores, Inc.,* 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (awarding 33.3% of $17.5 million settlement); *Carlson v. C.H. Robinson Worldwide, Inc.*, 2006 WL 2671105, at *8 (D. Minn. Sept. 18, 2006) (awarding 35.5% of $15 million settlement); *In re Pemstar, Inc. Sec. Litig.*, No. 02-1821 (DWF/SRN), slip op. at 2 (D. Minn. May 27, 2005), ECF No. 149 (awarding 25% of $12 million settlement) (Ex. 10); *In re IBP, Inc. Sec. Litig.*, 328 F. Supp. 2d 1056, 1065 (D.S.D. 2004) (awarding 28% of $8 million settlement).

The requested fee is also consistent with fee awards in similarly sized securities class actions in other circuits. *See, e.g.*, *Todd v. STAAR Surgical Co.*, 2017 WL 4877417, at *5-6 (C.D. Cal. Oct. 24, 2017) (awarding 25% of $7 million settlement); *Kmiec v. Powerwave Techs., Inc.*, 2016 WL 5938709, at *7 (C.D. Cal. July 11, 2016) (awarding 25% of $8.2 million settlement); *Hayes v. Harmony Gold Mining Co.*, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding 33.3% of $9 million settlement fund), *aff'd*, 509 F. App'x 21 (2d Cir. 2013); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) (awarding 30% of $10 million settlement fund).

In sum, the fee requested here is well within the range of fees awarded on a percentage basis in comparable actions.

IV. OTHER FACTORS CONSIDERED BY COURTS IN THE EIGHTH CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

The reasonableness of Lead Counsel's 25% fee request is further confirmed by additional factors considered by courts in this Circuit. The Eighth Circuit has advised that, in determining the reasonableness of the percentage fee award, "district courts may consider relevant factors from the twelve factors listed in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719–20 (5th Cir. 1974)."[3] A number of courts in this Circuit have focused on seven key factors: (1) the benefit conferred to the class, (2) the risk to which plaintiffs' counsel were exposed, (3) the difficulty of the legal and factual issues in the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) the reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases. *See Yarrington*, 697 F. Supp. 2d at 1062; *Xcel*, 364 F. Supp. 2d at 993. All of these factors strongly support approval of the requested fee.

A. The Benefit Conferred on the Settlement Class Supports the Requested Fee

The benefit conferred on the Settlement Class and the quality of the result achieved are important factors in evaluating the reasonableness of requested attorneys' fees. *See Xcel*, 364 F. Supp. 2d at 994. The $7.5 million Settlement confers a substantial and immediate benefit to the Settlement Class in contrast to the additional delays, costs, and uncertainty of continued litigation. The Settlement represents a recovery of approximately 17% of the absolute maximum damages that could be realistically established at trial, assuming Lead Plaintiff prevailed on all issues of falsity and scienter.

[3] The twelve *Johnson* factors are (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required 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 for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Rawa v. Monsanto Co.*, 2018 WL 2389040, at *8 (E.D. Mo. May 25, 2018).

In light of the significant risks of establishing liability, this level of recovery represents a very favorable result for the Settlement Class and supports the fee award. *See, e.g.*, *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (finding that settlement with recovery of "approximately 9% of the possible damages, which is more than triple the average recovery in securities class action settlements . . . weighs in favor of granting the requested 28% fee").

B. The Risks of the Litigation Support the Requested Fee

This case was litigated on a fully contingent basis. Accordingly, the risk of the litigation is a key factor in determining an appropriate fee award. *See Xcel*, 364 F. Supp. 2d at 994 ("the risk of receiving little or no recovery is a major factor in awarding attorney fees"). "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). For purposes of analyzing attorneys' fees, the risks of the litigation are considered as they existed at the commencement of the Action. *See Xcel*, 364 F. Supp. 2d at 994.

While Lead Counsel believes that the claims of Lead Plaintiff and the Settlement Class had merit, Lead Counsel recognizes that this case presented substantial risks and uncertainties from the time it was filed, which made it far from certain that any recovery would ultimately be obtained. If Defendants were to have prevailed, the Settlement Class – and therefore Lead Counsel – would have received nothing. Indeed, in the course of the litigation, one of the risks that existed in the case from the outset was realized when the Court dismissed Lead Plaintiff's allegations with respect to Defendants' statements and financials released in April 2016, which resulted in shortening of the Class Period to just two months. Other risks that Lead Plaintiff and the Settlement Class continued to face are discussed in greater detail in the Uslaner Declaration and in the memorandum of law in support of the Settlement, and include risks of proving falsity, scienter, loss causation and damages.

Falsity. There were significant challenges in proving that Defendants' alleged misstatements were materially false and misleading when made. This was not a case in which the SEC or any other governmental entity brought a formal investigation or asserted a parallel enforcement action concerning the claims asserted. ¶ 50. In addition, Centene never restated its financial statements or admitted to any control weaknesses. *Id*. To the contrary, Defendants have consistently asserted that their statements to investors about Centene's merger with HealthNet and its reserves were accurate when made, based on information available at the time, and that they updated the market as they learned more information. ¶¶ 50-51. Thus, Defendants would have likely vigorously contended that their statements were not false or misleading at summary judgment, at trial, and on appeal. ¶ 50.

Scienter. Lead Plaintiff faced additional risks in proving that Defendants made any of the alleged false statements with the intent to mislead investors or with deliberate recklessness. Defendants would likely contend that they believed, based on information available at the time, that the statements were accurate when made. ¶ 56. They would also likely point to the fact that Centene made several cautionary statements to investors and warned of possible "adjustments" in the "provisional amounts recorded" for the reserves, which, they vigorously argued, were inconsistent with Lead Plaintiff's allegations of intentional fraud on this issue. *Id*. Defendants asserted—and would likely continue to assert to a jury—that they had no motive to commit fraud and there was no logical basis for Defendants to engage in the alleged fraud. ¶ 55. Among other things, Defendants would likely point to the absence of insider stock sales as evidence of a lack of intent, as well as the absence of any "whistleblowers" or SEC inquiry as further evidence of an absence of scienter. *Id* .

Loss Causation and Damages. Even if Lead Plaintiff were able to prove falsity and scienter at trial, it still faced significant risks in proving loss causation and damages. Defendants likely would have contended at summary judgment and trial that Lead Plaintiff could not establish, as required by

law, a causal connection between the alleged misrepresentations and the losses investors suffered. ¶ 57. In support of this contention, Defendants likely would have pointed to the fact that the price of Centene's stock has fully rebounded since the Class Period, as well as to the fact that the acquisition of Health Net has proven to be extremely successful for Centene. ¶¶ 54, 57. In addition, Defendants would likely have contended that much of the information that was ultimately disclosed could not have caused a drop in Centene's stock price because that information was already publicly known or available and, therefore, already accounted for in the price of Centene's stock. ¶ 57.

C. The Difficulty, Novelty and Complexity of the Action Support the Requested Fee

The magnitude and complexity of the Action and the difficulty of the legal and factual issues involved also support the requested attorneys' fee. Courts have long recognized that "[s]ecurities fraud class actions are by their nature, complex and difficult to prove." *Charter Commc'ns*, 2005 WL 4045741, at *15. This case was no exception. As noted above and in the Uslaner Declaration, the litigation raised a number of complex factual and legal questions that required extensive efforts by Lead Counsel and consultation with experts to resolve. From the outset, Lead Counsel undertook a wide-ranging investigation of the claims and consulted with experts. To successfully litigate the Action, Lead Counsel needed to marshal evidence regarding the proper accounting for Centene's reserves and gather evidence to support its claims. ¶ 36. Further, in order to prove loss causation and damages, Lead Counsel needed to present expert testimony that Defendants' misstatements caused the decline in Centene's stock price at the end of the Class Period. ¶¶ 36, 58.

D. The Skill of the Lawyers Involved and the Quality of Lead Counsel's Representation Support the Requested Fee

The quality of the representation provided by Lead Counsel is also a factor that supports the reasonableness of the requested fee. *See Xcel*, 364 F. Supp. 2d at 995. As demonstrated in its firm resume, Lead Counsel is highly experienced in the specialized field of securities class actions. Lead

Counsel prosecuted this Action with persistence, skill, and creativity and believes that the result obtained for the Settlement Class provides strong evidence of the quality of Lead Counsel's representation.

Courts have recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration. *See, e.g.*, *Yarrington*, 697 F. Supp. 2d at 1063 (fact that defendant's attorneys were "well-respected and capable defense firms" which "consistently challenged Plaintiffs throughout the litigation" supported class counsel's request for fees); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 26, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsel's work"). Here, Defendants were ably represented by Skadden, Arps, Slate, Meagher & Flom LLP, who skillfully and zealously represented their clients throughout this litigation. ¶ 89. Notwithstanding this formidable and well-financed opposition, Lead Counsel's ability to present a strong case and vigorously prosecute the Action enabled it to achieve a favorable settlement.

E. The Time and Labor Expended and the Resulting Lodestar Cross-Check Support the Requested Fee

The substantial time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement also support the requested fee. The Uslaner Declaration details the efforts of Lead Counsel in prosecuting Lead Plaintiff's claims over the course of the litigation. As set forth in greater detail in the Uslaner Declaration, Lead Counsel, among other things:

- conducted an extensive investigation into the alleged fraud, including interviews of dozens of former employees of Centene and Health Net, and a thorough review of public information such as SEC filings, analyst reports, conference call transcripts, and news articles (¶¶ 14-16);
- researched and drafted a detailed consolidated complaint (¶ 17);

- researched, briefed and argued Lead Plaintiff's opposition to Defendants' motion to dismiss, which resulted in the partial denial of Defendants' motion (¶¶ 18-23);

- engaged in fact discovery, including serving comprehensive document requests to Defendants and subpoenas to thirteen third parties (¶¶ 25-35);

- consulted with experts in accounting, damages, and loss causation throughout the litigation including in connection with drafting the Complaint, in negotiating the Settlement and in preparing the Plan of Allocation of the Settlement fund (¶¶ 36-37); and

- engaged in arm's-length settlement negotiations with Defendants, which included a mediation process that included the preparation of detailed mediation statements and a full-day mediation session (¶¶ 38-44).

In total, Plaintiffs' Counsel expended 2,727.75 hours prosecuting this Action. ¶ 86. Lead Counsel staffed the matter efficiently and avoided any unnecessary duplication of effort. ¶ 84. The time and effort devoted to this case by counsel was critical in obtaining the favorable result achieved by the Settlement and confirms that the fee request here is reasonable.

The Eighth Circuit has held that a review of counsel's lodestar may be used to cross-check the reasonableness of a fee requested under the percentage method. *See Petrovic*, 200 F.3d at 1157; *Charter Commc'ns*, 2005 WL 4045741, at *17. Here, Plaintiffs' Counsel's total lodestar amount, derived by multiplying their hours by each firm's current hourly rates, is $1,555,442.50. ¶ 86. Accordingly, the requested 25% fee, or $1,875,000 plus interest represents a multiplier of 1.2. Such a multiplier is well within the parameters used throughout district courts in the Eighth Circuit and is additional evidence that the requested fee is reasonable. *See, e.g., Cohn v. Nelson*, 375 F. Supp. 2d 844, 862 (E.D. Mo. 2005) ("In shareholder litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation."); *Charter Commc'ns*, 2005 WL 4045741, at *22 (finding 5.61 multiplier to be "within the range of multipliers awarded in comparable complex cases"); *Yarrington*, 697 F. Supp. 2d at 1065 (awarding fee representing a 2.26 multiplier); *Xcel*, 364 F. Supp. 2d at 999 (awarding fee representing a 4.7 multiplier).

F. The Approval of Lead Plaintiff and the Reaction of the Settlement Class to Date Support the Requested Fee

Lead Plaintiff, who was actively involved in the prosecution, mediation, and settlement of this Action, has carefully considered and approved the requested fee. *See* McGee Decl. ¶ 8. Lead Plaintiff is a paradigmatic example of the type of sophisticated and financially interested investor that Congress envisioned serving as a fiduciary for the class when it enacted the PSLRA. Indeed, the PSLRA was intended to encourage institutional investors like Lead Plaintiff to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369, at *32 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 731. Congress believed that institutions like Louisiana Sheriffs would be in the best position to monitor the ongoing prosecution of the litigation and to assess the reasonableness of counsel's fee request.

Here, Lead Plaintiff has played an active role in the Action and closely supervised the work of Lead Counsel. *See* McGee Decl. ¶¶ 5-6. Accordingly, the endorsement of the fee request by Lead Plaintiff as fair and reasonable supports its approval. *See In re Comverse Tech., Inc. Sec. Litig.,* 2010 WL 2653354, at *4 (E.D.N.Y. June 24, 2010) ("The fact that this fee request is the product of arm's-length negotiation between Lead Counsel and the lead plaintiff is significant."); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *8 (S.D.N.Y. Nov. 7, 2007) ("public policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request").

The reaction of the Settlement Class to date also supports the requested fee. Through September 17, 2020, the Claims Administrator has disseminated the Notice to more than 79,000 potential Settlement Class Members or nominees informing them, among other things, that Lead

Counsel intended to apply to the Court for an award of attorneys' fees of up to 25% of the Settlement Fund and up to $200,000 in expenses. *See* Segura Decl. ¶ 9 and Ex. A ¶¶ 5, 68. While the time to object to the fee and expense application has not passed, to date, no objections have been received. ¶ 94. Should any objections be received, Lead Counsel will address them in their reply papers.

G. A Comparison of Similar Cases Supports the Requested Fee

As discussed in detail in Part III above, the requested 25% fee is well within the range of percentage fees awarded in this Circuit and around the country. *See infra* at pages 5-6.

H. Public Policy Considerations Support the Requested Fee

A strong public policy exists for rewarding counsel for bringing successful securities litigation, in order to provide counsel with incentive to help deter future wrongdoing. *See Charter Commc'ns*, 2005 WL 4045741, at *19 ("public policy favors the granting of [attorneys'] fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions"); *In re FLAG Telecom Holdings Ltd. Sec. Litig.*, 2010 WL 4537550, at *29 (S.D.N.Y. Nov. 8, 2010) (if the "important public policy [of enforcing the securities laws] is to be carried out, the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook"); *see also Basic Inc. v. Levinson*, 485 U.S. 224, 230-31 (1988) (the federal securities laws are remedial in nature, and the courts must encourage private lawsuits to effectuate their purpose of protecting investors).

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

Lead Counsel's fee application includes a request for reimbursement of the litigation expenses that Lead Counsel paid or incurred, which were reasonable in amount and necessary to the prosecution of the Action. *See* ¶¶ 95-102. These expenses are properly recovered by counsel. *See Charter*

Commc'ns, 2005 WL 4045741, at *24. As set forth in detail in the Uslaner Declaration, Lead Counsel incurred $81,134.49 in litigation expenses in the prosecution of the Action. ¶ 97.

The expenses for which reimbursement are sought 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, on-line research, court reporting and transcripts, copying, postage, and travel expenses. The largest category of expense was for the retention of Lead Plaintiff's experts, which came to $34,011.25, or 42% of the total litigation expenses. ¶ 98. The combined costs for on-line legal and factual research, in the amount of $32,296.50, represented 40% of the total amount of expenses. ¶ 99. In addition, Lead Counsel expended $7,500.00, or 9% of the total litigation expenses, for fees of the mediator, Michelle Yoshida. *Id.* A complete breakdown by category of the expenses incurred by Lead Counsel is set forth in Exhibit 5A-3 to the Uslaner Declaration.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for payment of litigation expenses in an amount not to exceed $200,000. The total amount of expenses requested by Lead Counsel is $81,134.49, an amount well below the amount listed in the Notice. To date, there has been no objection to the request for expenses. ¶ 102.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 25% of the Settlement Fund and award $81,134.49 for the reasonable litigation expenses that Lead Counsel incurred in connection with the prosecution of the Action.

Dated: September 21, 2020

Respectfully submitted,

/s/ Michael J. Flannery

CUNEO GILBERT & LADUCA, LLP
Michael J. Flannery
Bar No. 52714 (MO)
mflannery@cuneolaw.com
7733 Forsyth Boulevard, Suite 1675
Clayton, MO 63105

Tel: (314) 226-1015
Fax: (202) 789-1813

Liaison Counsel for Lead Plaintiff Louisiana Sheriffs' Pension & Relief Fund and the Settlement Class

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
Jonathan D. Uslaner (*pro hac vice*)
jonathanu@blbglaw.com
Lauren M. Cruz (*pro hac vice*)
lauren.cruz@blbglaw.com
2121 Avenue of the Stars, Suite 2575
Los Angeles, CA 90067
Tel: (310) 819-3470

Counsel for Lead Plaintiff Louisiana Sheriffs' Pension & Relief Fund and Lead Counsel for the Settlement Class

KLAUSNER, KAUFMAN, JENSEN & LEVINSON
Robert D. Klausner
bob@robertdklausner.com
7080 NW 4th Street
Plantation, Florida 33317
(954) 916-1202
(954) 916-1232 (fax)

Additional Counsel for Louisiana Sheriffs' Pension & Relief Fund

#1406836