UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

In re ENVISION HEALTHCARE CORPORATION SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Civil Action No. 3:17-cv-01112 (**Consolidated with Case Nos. 3:17-cv-01323 and 3:17-cv-01397**) CLASS ACTION Honorable William L. Campbell, Jr. Magistrate Judge Jeffery S. Frensley

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

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Class Counsel respectfully submits this memorandum in support of its motion for an award of attorneys' fees and expenses, and for awards to Lead Plaintiffs Laborers Pension Trust Fund for Northern California, LIUNA National (Industrial) Pension Fund and LIUNA Staff & Affiliates Pension Fund ("LIUNA Funds") and named plaintiffs Central Laborers' Pension Fund and United Food and Commercial Workers Union Local 655 Food Employers Joint Pension Fund (collectively, "Plaintiffs") pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

I. INTRODUCTION

After more than six years of hard-fought litigation, and following lengthy mediation efforts, Plaintiffs and Class Counsel have succeeded in obtaining a $177.5 million cash recovery for the benefit of the Class.[1] This substantial and definite recovery, the second largest securities class action recovery ever in this District, was achieved through the skill, hard work, and persistent advocacy of Class Counsel, who now respectfully move this Court for an award of attorneys' fees in the amount of thirty percent of the Settlement Amount and litigation expenses of $1,571,265.44, plus interest earned on both amounts. In addition, pursuant to 15 U.S.C. §78u-4(a)(4), Plaintiffs seek an aggregate award of $73,500.47 for their time and expenses incurred in representing the Class.

The requested fee award is within the range, if not below, percentages routinely awarded in securities class actions in this District and in this Circuit, and is warranted in light of the significant

[1] Submitted herewith in support of approval of the proposed Settlement is the Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Brief"). The Court is also respectfully referred to the accompanying Declaration of Christopher M. Wood in Support of: (1) Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) an Award of Attorneys' Fees and Expenses and Awards to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) (the "Wood Declaration" or "Wood Decl.") for a more detailed history of the Litigation, the extensive efforts of Class Counsel, and the factors bearing on the reasonableness of the requested award of attorneys' fees and expenses. All terms capitalized herein are defined in the Stipulation of Settlement dated September 22, 2023 (the "Stipulation") (ECF 451), unless otherwise indicated. Unless otherwise noted, all emphasis in quotations is added and citations and footnotes are omitted.

recovery obtained for the Class under the circumstances, including the fact that Envision filed for Chapter 11 bankruptcy during the pendency of the Litigation.

The fee award is also reasonable in light of the significant risks involved in bringing and prosecuting the Litigation on behalf of the Class and the extensive efforts of counsel in obtaining this result. The Litigation is subject to the provisions of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), which requires plaintiffs to "thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

Although Plaintiffs were largely successful in threading the eye of a needle at the pleading stage, and were able to move forward on many of their claims, the Court's motion to dismiss order dismissed several categories of false and misleading statements alleged, as well as a key party to the action. The Order both impaired Plaintiffs' liability case, and significantly impacted both the scope and complexity of proving class-wide damages. For example, the Court dismissed misstatements concerning Plaintiffs' allegations that Envision unlawfully upcoded the severity of claims and improperly increased hospital admissions in order to boost profits. The Court also dismissed all misstatements that Defendants made at healthcare conferences, all statements relating to Envision's ability to transition in-network in a revenue neutral manner, and all misstatements relating to the adequacy of Defendants' due diligence with respect to certain failing hospital contracts. The Court also deferred ruling on whether certain statements in the Joint Proxy/Registration Statement were forward-looking and could be dismissed under the PSLRA's safe harbor protections. Finally, the Court also dismissed all claims against the private equity firm that backed Envision – Clayton, Dubilier & Rice – which sold substantial amounts of Envision stock at allegedly artificially inflated prices during the Class Period.

When Envision filed for bankruptcy protection in May 2023, after six years of hard-fought litigation, the risks of collecting a substantial judgment escalated significantly. Only the Individual Defendants remained in the case as it headed toward trial. Additionally, many of the insurers that were supposed to provide coverage to the Individual Defendants had refused to do so, and that issue was being separately litigated in Tennessee state court at the time the case settled. After years of contentious litigation and unsuccessful attempts to settle the case, Class Counsel overcame significant obstacles to recovery, and negotiated one of the largest settlements in the nation last year, and the second largest ever in this District.

In addition to the significant risks in prosecuting the Litigation under the PSLRA, the skill and effort required to achieve the Settlement was substantial. Class Counsel marshaled considerable resources and committed substantial amounts of time and expense to prosecuting the Litigation. As set forth in the Wood Declaration, the Settlement was not achieved until Class Counsel: (1) thoroughly researched and drafted Plaintiffs' Consolidated Class Action Complaint for Violation of the Federal Securities Laws, as well as the Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws; (2) opposed Defendants' motions to dismiss; (3) completed over three years of fact discovery, including reviewing and analyzing more than 3.1 million pages of documents produced by Defendants and third parties, and taking and defending 57 fact and expert depositions; (4) litigated discovery disputes; (5) moved twice for class certification; (6) propounded and responded to written discovery; (7) retained experts in the fields of healthcare practices, economics and damages, to prepare opening and rebuttal reports; (8) retained an economic consultant to assist with class certification; (9) engaged in extensive settlement negotiations with Defendants, assisted by a nationally-recognized, experienced mediator; and (10) assessed the risks of prevailing at summary judgment and trial. *See generally* Wood Decl.

Class Counsel undertook the representation of the Class on a fully contingent fee basis, and no payment has been made to it to date for its six years of service or for the substantial litigation expenses incurred on behalf of the Class. Class Counsel firmly believes that the Settlement is the result of its diligent and effective advocacy, as well as its reputation as a firm that will not waver in its dedication to the interests of class members, and that is committed to zealously prosecuting a meritorious case through trial and subsequent appeals. In litigation asserting claims based on complex legal and factual issues that were vigorously opposed by highly skilled and experienced defense counsel, Class Counsel succeeded in securing a very favorable result for the Class. Significantly, all four Plaintiffs support the fee and expense request. *See* Declarations of Bryan Berthiaume, Adam Downs, Kenton Day and David A. Cook (collectively, "Plaintiffs' Decls."), submitted herewith. Plaintiffs were actively involved in the Litigation, including producing discovery and providing deposition testimony, as well as participating in and keeping informed about settlement discussions, and ultimately approving the Settlement. *Id.* Because of this involvement, now, at the end of the case, Plaintiffs are in a unique position to evaluate this result and assess whether the fee request is fair, reasonable, and should be awarded.

As discussed herein, and for the reasons detailed in the Settlement Brief and the Wood Declaration, the requested fee is fair and reasonable when considered under applicable Sixth Circuit standards and is below other awards in securities class actions approved by courts in this Circuit. Moreover, the requested expenses and charges are reasonable in amount and were necessarily incurred for the successful prosecution of the Litigation. No objections to these requests have been received by Class Counsel.[2]

[2] As detailed in Section IV, and pursuant to 15 U.S.C. §78u-4(a)(4), Plaintiffs seek an aggregate award of $73,500.47 in connection with their representation of the Class.

II. AWARD OF ATTORNEYS' FEES

A. Class Counsel Is Entitled to a Fee from the Common Fund It Obtained

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

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

444 U.S. 472, 478 (1980). The common fund doctrine both prevents unjust enrichment and encourages counsel to protect the rights of those who have small claims. *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 n.4 (2013); *see also Bd. of Trs. of City of Birmingham Emps.' Ret. Sys. v. Comerica Bank*, 2013 WL 12239522, at *6 (E.D. Mich. Dec. 27, 2013) (noting that "[t]he Sixth Circuit has recognized the trend in adopting the percentage of the fund method of calculating attorney's fees in common fund cases") (citing *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)). This is particularly applicable to claims brought under the federal securities laws, as the Supreme Court has emphasized that private actions provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] Commission action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964)).[3]

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

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

Class Counsel's efforts resulted in the creation of a $177.5 million common fund. Courts favor awarding fees from a common fund based on "a percentage of the fund bestowed on the class." *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Greenough*, 105 U.S. at 532; *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165-66 (1939). Congress followed the Supreme Court's lead and endorsed the efficacy of the percentage-of-the-fund approach to fee awards in the context of common fund PSLRA cases. *See* 15 U.S.C. §78u-4(a)(6); *N.Y. State Tchrs.' Ret. Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243 (E.D. Mich. 2016) ("*GMC*") ("[B]ecause the PSLRA refers to an award of attorneys' fees and expenses in relation to 'a reasonable percentage of the amount of any damages . . . actually paid to the class,' the Court concludes that the percentage-of-the-fund approach is the better method for calculating Lead Counsel's fee award.") (ellipsis in original), *aff'd sub nom. Marro v. N.Y. State Tchrs.' Ret. Sys.*, 2017 WL 6398014 (6th Cir. Nov. 27, 2017).

District courts in this Circuit, including this Court, apply the percentage method, endorsed by the Sixth Circuit in *Rawlings*, 9 F.3d at 515-16, in awarding fees in common fund cases,[4]

[4] *Jackson Cnty. Emps.' Ret. Sys. v. Ghosn*, No. 3:18-cv-01368, ECF 267 at ¶3 (M.D. Tenn. Oct. 7, 2022) (Campbell, J.) (Ex. 1) (using "'percentage-of-recovery'" to award class counsel fees in §10b-5 case); *Cosby v. KPMG LLP*, 2022 WL 4129703, at *2 (E.D. Tenn. July 12, 2022) (finding the percentage-of-the-fund approach "the preferred method where, as here, 'a substantial common fund has been established for the benefit of class members through the efforts of class counsel'"); *Stein v. U.S. Xpress Enters., Inc.*, No. 1:19-cv-98, ECF 248 at ¶3 (E.D. Tenn. July 12, 2023) (Ex. 2) (using "'percentage-of-recovery'" to award class counsel fees in securities case); *Grae v. Corrs. Corp. of Am.*, 2021 WL 5234966, at *1 (M.D. Tenn. Nov. 8, 2021) (same); *Burges v. BancorpSouth, Inc.*, No. 3:14-cv-01564, ECF 265 at ¶3 (M.D. Tenn. Sept. 21, 2018) (Ex. 3) (same); *Schuh v. HCA Holdings, Inc.*, 2016 WL 10570957, at *1 (M.D. Tenn. Apr. 14, 2016) (same); *Garden City Emps.' Ret. Sys. v. Psychiatric Sols., Inc.*, 2015 WL 13647397, at *1 (M.D. Tenn. Jan. 16, 2015) (same); *N. Port Firefighters' Pension-Loc. Option Plan v. Fushi Copperweld, Inc.*, No. 3:11-cv-00595, ECF 143 at ¶3 (M.D. Tenn. May 12, 2014) (Ex. 4) (same); *Winslow v. BancorpSouth, Inc.*, No. 3:10-cv-00463, ECF 103 at ¶3 (M.D. Tenn. Oct. 31, 2012) (Ex. 5) (same); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) ("The Court recognizes that the

recognizing that "the percentage-of-the-fund approach more accurately reflects the result achieved [and] . . . has the virtue of reducing the incentive for plaintiffs' attorneys to over-litigate or 'churn' cases." *Skelaxin*, 2014 WL 2946459, at *1.[5] The percentage-of-the-fund method also "affords the Court greater flexibility in assuring that Counsel are adequately compensated for the results that they have achieved and the work that they have done, while also protecting the Class' interest in the fund." *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1280 (S.D. Ohio 1996), *aff'd*, 102 F.3d 777 (6th Cir. 1996).

C. The Requested Fee Award Is Consistent with Awards Approved in Similar Cases

In selecting an appropriate percentage award, the Supreme Court recognizes that an appropriate fee is intended to approximate what counsel would receive if they were bargaining for their services in the marketplace. *Mo. v. Jenkins by Agyei*, 491 U.S. 274, 285 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of one-third of the recovery. *Blum*, 465 U.S. at 903 n* ("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.").

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trend in 'common fund cases has been toward use of the percentage method.'"); *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) ("The percentage-of-the-fund method, however, clearly appears to have become the preferred method in common fund cases."); *Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 528 (E.D. Ky. 2010), *aff'd sub nom. Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011).

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

District courts throughout Tennessee often approve percentage awards of as much as one-third of the settlement amount, holding such an award is "'certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit.'" *Cosby*, 2022 WL 4129703, at *2 (awarding 33-1/3%); *Jackson Cnty. Emps.*, ECF 267 at ¶3 (Ex. 1) (awarding 33-1/3%, plus expenses); *Grae*, 2021 WL 5234966, at *1 (awarding 33-1/3%, plus expenses); *BancorpSouth*, ECF 265 at ¶3 (Ex. 3) (awarding 33-1/3%, plus expenses); *Skeete v. Republic Schs. Nashville*, No. 3:16-cv-00043, ECF 105, ECF 112 at ¶14 (M.D. Tenn. Feb. 26, 2018) (Ex. 6) (approving 33-1/3% fee, plus expenses); *Schuh*, 2016 WL 10570957, at *1 (awarding 30% of $215 million settlement, plus expenses); *Skelaxin*, 2014 WL 2946459, at *1 ("The Court finds that the requested counsel fee of [33-1/3% of $73 million recovery] is fair and reasonable and fully justified. The Court finds it is within the range of fees ordinarily awarded.").[6] The fee award requested here is consistent with such awards.

D. The Fee Is Reasonable Under the Circumstances

The touchstone of an appropriate fee award in common fund cases is whether the award is reasonable under the circumstances. *See Rawlings*, 9 F.3d at 517. The Sixth Circuit grants a district court "'considerable latitude of discretion on the subject, since it has far better means of knowing what is just and reasonable than an appellate court.'" *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d

[6] *See also Winslow*, ECF 103 at ¶3 (Ex. 5) (awarding 30% of settlement, plus expenses); *Beach v. Healthways Inc.*, No. 3:08-cv-00569, ECF 252 at ¶3 (M.D. Tenn. Sept. 27, 2010) (Ex. 7) (awarding 30% of settlement, plus expenses); *In re Direct Gen. Corp. Sec. Litig.*, No. 3:05-cv-0077, ECF 290 at ¶3 (M.D. Tenn. July 20, 2007) (Ex. 8) (awarding 30% of settlement, plus expenses); *Thacker*, 695 F. Supp. 2d at 528 (awarding 30% of settlement and explaining "[u]sing the percentage approach, courts in this jurisdiction and beyond have regularly determined that 30% fee awards are reasonable"); *In re Nat'l Century Fin. Enters., Inc. Inv. Litig.*, 2009 WL 1473975, at *3 (S.D. Ohio May 27, 2009) (concluding 30% of the settlement amount was "within the percentage range that courts have awarded in securities class action settlements in the Sixth Circuit"); *Manners v. Am. Gen. Life Ins. Co.*, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 11, 1999) ("[T]hroughout the Sixth Circuit, attorneys' fees in class actions have ranged from 20%-50%.").

1188, 1196 (6th Cir. 1974). In determining the reasonableness of attorneys' fees, the Sixth Circuit over the years has identified several relevant factors that district courts "[o]ften, but by no means invariably," consider. *Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009). These factors include:

> "(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides."

Id.; *see also Smillie v. Park Chem. Co.*, 710 F.2d 271, 275 (6th Cir. 1983); *Denney v. Phillips & Buttorff Corp.*, 331 F.2d 249, 251 (6th Cir. 1964) (describing relevant considerations as "the complexity of the legal questions involved, the results accomplished, the professional standing of [counsel], and the professional standing of [defendants'] lawyers," the effort expended, and the public policy aspect of the case). Here, the circumstances support the requested fee award.

1. The Value of the Benefits Achieved

Courts have consistently recognized that in making a fee award the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).[7] Here, Class Counsel has secured a recovery that provides for a substantial (and definite) cash payment of $177.5 million. This is the second largest securities class action settlement ever in this District and one of the largest in the nation in 2023. This Settlement was achieved as a direct result of the skill, effort, and tenacity of Class Counsel in prosecuting the Litigation. As detailed in the Wood Declaration, there is no

[7] *Rawlings*, 9 F.3d at 516 (a percentage of the fund will compensate counsel for the result achieved); *In re Regions Morgan Keegan Sec.*, 2013 WL 12110279, at *8 (W.D. Tenn. Aug. 6, 2013) (finding "[t]he most important factor in determining the reasonableness of the requested attorney's fees . . . is the value of the benefit conferred on the Class," particularly given the complexity of the case and the fact that plaintiffs' likelihood of success was in question); *In re Delphi Corp. Sec., Derivative, & "ERISA" Litig.*, 248 F.R.D. 483, 503 (E.D. Mich. 2008) ("primary factor in determining a reasonable fee is the result achieved on behalf of the class").

question Class Counsel overcame numerous obstacles and took significant risks in obtaining this highly favorable result for the Class.

While Class Counsel believes Plaintiffs' claims have substantial merit, if litigation were to proceed to trial there would be a meaningful risk that the Class could recover less than the amount of the Settlement or nothing at all. This risk was heightened because Envision filed for Chapter 11 bankruptcy protection, instantly staying all litigation against it, and ultimately extinguishing all claims against Envision itself. ECF 439. Certain of the directors' and officers' liability carriers also refused coverage, and litigation in Tennessee state court regarding this coverage dispute was pending at the time of the Settlement. Thus, the sources for funding any recovery for the Class were limited and uncertain.

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

More specifically, Defendants argued, and were expected to continue to argue, that: (a) the remaining alleged misstatements were inactionable forward-looking statements or inactionable puffery; and (b) Envision adequately disclosed its out-of-network billing and the transition to in-network billing with analysts and investors as early as May 2016. *Id.*, ¶93.

Plaintiffs also faced risks establishing that their damages were caused by Defendants' fraudulent misrepresentations and omissions, as well as proving the amount of damages. Defendants consistently argued that other factors caused the declines in the price of Envision's common stock. For instance, Defendants maintained that the stock drop on November 1, 2017 was caused by developments unrelated to Plaintiffs' out-of-network billing allegations, including a reduction in anesthesia reimbursements, a decline in emergency department volumes, and two major hurricanes

in Texas and Florida. *Id.* In briefing class certification, disputes regarding the calculation of class-wide damages had already involved a hotly contested battle of the experts, which would have waged on through summary judgment and trial as the parties' experts disputed the calculation method and expressed vastly different opinions regarding the amount of damages, if any. It is impossible to predict the outcome of such a battle or which expert's opinion would carry the day before a jury.

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

2. Public Policy Considerations

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

Without the willingness of Class Counsel to assume the significant risks associated with litigation such as this one, members of the Class may not have recovered anything. Society benefits from strong advocacy on behalf of investors, and public policy favors the granting of reasonable fee and expense applications such as this one. *See Tellabs*, 551 U.S. at 313 (the Court has "long recognized that meritorious private actions to enforce federal antifraud securities laws are an

essential supplement to criminal prosecutions and civil enforcement actions"); *Se. Milk*, 2013 WL 2155387, at *5 (Attorney fee awards "are necessary to incentivize attorneys to shoulder the risk of nonpayment to expose violations of the law and to achieve compensation for injured parties.").

3. The Contingent Nature of the Fee

Class Counsel undertook the Litigation on a contingent fee basis, assuming a significant risk that the Litigation would yield no recovery and leave counsel uncompensated. Wood Decl., ¶¶114-118. This risk encompasses not only the risk of zero payment but also the risk of underpayment. *See In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992).

Unlike counsel for Defendants, who are typically paid an hourly rate and reimbursed for their out-of-pocket expenses on a regular basis, and thereby assumed no risk of non-payment, Class Counsel has not been compensated for any of its time or expenses since prosecution of this case began over six years ago. Courts have consistently and rightly recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See Se. Milk*, 2013 WL 2155387, at *5 ("This Court finds that the fee awarded should fully reflect the risk taken by these lawyers and is a very substantial factor in this case which weighs in favor of the requested fee.").

While high-stakes complex class actions are inherently difficult to prosecute, the PSLRA's mandatory discovery stay make securities class actions especially arduous. According to data from NERA Economic Consulting, motions to dismiss are granted, either in whole or in part, in 81% of all securities class actions, sometimes years after a case is filed.[8] Even when cases proceed past a motion to dismiss, the risk of no recovery is very real. There are numerous class actions in which

[8] Edward Flores and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2023 Full-Year Review*, at 16, fig. 14 (NERA Jan. 23, 2024), available at www.nera.com/content/dam/nera/publications/2024/PUB_2023_Full-Year_Sec_Trends_0123.pdf.

plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g.*, *Ark. Tchr. Ret. Sys. v. Goldman Sachs Grp., Inc.*, 77 F.4th 74 (2d Cir. 2023) (class decertified following more than 12 years of litigation and appellate and Supreme Court review, after plaintiffs' counsel incurred millions of dollars in expenses and worked over 115,000 hours); *Pompano Beach Police & Firefighters' Ret. Sys. v. Las Vegas Sands Corp.*, 732 F. App'x 543 (9th Cir. 2018) (summary judgment granted in favor of defendants in securities fraud action after seven years of litigation); *In re Oracle Corp. Sec. Litig.*, 2009 WL 1709050 (N.D. Cal. June 19, 2009) (summary judgment granted in favor of defendants after eight years of litigation and after plaintiffs' counsel incurred over $6 million in expenses and worked over 100,000 hours), *aff'd*, 627 F.3d 376 (9th Cir. 2010). Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. For example, in *BankAtlantic*, the Eleventh Circuit upheld a lower court's decision overturning a jury verdict in favor of the lead plaintiff on the issue of loss causation. *See Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012). The contingent nature of the representation supports the reasonable fee sought here.

4. The Diligent Prosecution of the Litigation

As discussed in more detail in the Wood Declaration, the Litigation was highly contentious and involved disputes as to practically all elements of the case. In order to obtain the $177.5 million recovery on behalf of the Class, Class Counsel: (1) researched and drafted detailed complaints; (2) opposed Defendants' motions to dismiss; (3) completed years of fact discovery, including reviewing and analyzing more than 3.1 million pages of documents produced by Defendants and third parties, and taking and defending 57 fact and expert depositions; (4) filed discovery motions and litigated discovery disputes; (5) propounded and responded to written discovery; (6) retained experts in the fields of healthcare practices, economics and damages; (7) prepared opening and

supplemental reports; (8) engaged in extensive settlement negotiations with Defendants, assisted by a well-respected mediator; and (9) assessed the risks of prevailing at summary judgment and trial. *See generally* Wood Decl.

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

5. The Complexity of the Litigation

The complexity of the issues is a significant factor to be considered in making a fee award. Courts have long recognized that securities class actions present inherently complex and novel issues. *Nat'l Century*, 2009 WL 1473975, at *4; *GMC*, 315 F.R.D. at 244; *New Eng. Health Care Emps. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 634 (W.D. Ky. 2006) (the complexity of securities class action litigations "cannot be overstated"), *aff'd sub nom. Fidel v. Farley*, 534 F.3d 508 (6th Cir. 2008). As Judge Finesilver noted over four decades ago in *Miller v. Woodmoor Corp.*, 1978 WL 1146 (D. Colo. Sept. 28, 1978):

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

Id. at *4.

Judge Finesilver's comments ring even more true today and for this Litigation in particular. Despite the fact that Plaintiffs believe they have uncovered sufficient evidence to sustain a jury verdict in Plaintiffs' favor, Defendants believe they have countering evidence to defend each of Plaintiffs' claims. Likewise, the complexity of proving and recovering full damages here cannot be overstated.

These legal and factual complexities required skill and resources to deal with efficiently, and made the case more difficult and unpredictable. These complexities support the requested award.

6. The Quality of Representation

Class Counsel include locally and nationally known leaders in the fields of securities class actions and complex litigation. Robbins Geller served as sole lead counsel in *In re Enron Corp. Sec., Derivative & ERISA Litig*., No. H-01-3624 (S.D. Tex.), in which it secured the largest recovery ever obtained in a shareholder class action. Specifically, commenting on counsel's "clearly superlative litigating and negotiating skills" and the firm's "outstanding reputation, experience, and success in securities litigation nationwide," the court in *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 586 F. Supp. 2d 732 (S.D. Tex. 2008), stated, "[t]he experience, ability, and reputation of the attorneys of [Robbins Geller] is not disputed; it is one of the most successful law firms in securities class actions, if not the preeminent one, in the country." *Id*. at 789-90, 797. Robbins Geller served as sole lead counsel in *In re Cardinal Health Inc. Sec. Litig*., No. C2-04-575 (S.D. Ohio), obtaining the largest securities settlement in the Sixth Circuit. In approving the requested attorneys' fees, the court noted that "[t]he quality of representation in this case was superb." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 768 (S.D. Ohio 2007). Robbins Geller also served as sole lead counsel in *Schuh v. HCA Holdings, Inc.*, No. 3:11-cv-01033 (M.D. Tenn.), obtaining a $215 million recovery on behalf of the class – the largest securities class action recovery ever in Tennessee.

Achieving these types of recoveries are not the product of one-off endeavors, but are the result of consistently providing aggressive and dedicated representation to harmed investors – even in the most difficult cases. Here, Class Counsel used its considerable skill, experience, and reputation for tenacity to negotiate a favorable result for the Class under the circumstances that eliminates the substantial delay and risk associated with summary judgment, trial, and inevitable appeal.

The quality of opposing counsel is also important when the court evaluates the services rendered by plaintiffs' counsel. *See Delphi*, 248 F.R.D. at 504 ("The ability of [Class] Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested."). Defendants were represented by extremely capable attorneys from Bass, Berry & Sims PLC, and Simpson Thacher & Bartlett LLP, with reputations for vigorous advocacy in the defense of complex civil cases. As detailed herein, and in the Wood Declaration, Defendants' Counsel asserted an arsenal of arguments and litigation strategies in an attempt to obtain the dismissal of this case and to minimize their clients' exposure. The ability of Class Counsel to obtain a favorable result for the Class in the face of such formidable opposition further evidences the quality of its work.

E. Class Member Reaction

"The Class's reaction to the requested fee award is also important evidence of the fairness and reasonableness of the fee request." *Delphi*, 248 F.R.D. at 504; *In re Nationwide Fin. Servs. Litig.*, 2009 WL 8747486, at *14 (S.D. Ohio Aug. 19, 2009) ("The reaction of the Class [only one objection out of nearly 125,000 individual notices sent] also supports the requested fee and expense award.").[9] Over 146,600 individual notices have been mailed or emailed to potential Class Members

[9] *See also In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534 (E.D. Mich. 2003) ("absence of objection is remarkable," particularly among "sophisticated" class members, and such a

and nominees, and a summary notice was published in *The Wall Street Journal* and over *Business Wire*. Murray Decl., ¶¶11-12. To date, there have been no objections to the fee request.[10] Even a small number of objections by class members is evidence that the requested fee is fair given "[t]he Class's overwhelming favorable response." *Delphi*, 248 F.R.D. at 504.

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

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

Class Counsel also requests payment of litigation expenses and charges of $1,571,265.44. *Se. Milk*, 2013 WL 2155387, at *8 ("'Expense awards are customary when litigants have created a common settlement fund for the benefit of a class.'"); *see* accompanying Declaration of Spencer A. Burkholz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Decl.") and Declaration of Jerry Martin Filed on Behalf of Barrett Johnston Martin & Garrison, PLLC in Support of Application for Award of Attorneys' Fees and Expenses ("Barrett Johnston Decl."), attesting to the accuracy of Plaintiffs' Counsel's expenses. The appropriate analysis to apply in deciding which expenses are compensable in a common fund case of this type is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace. *New Eng. Health Care*, 234 F.R.D. at 635 ("In determining whether the requested expenses are compensable, the Court has considered 'whether the particular costs are the type routinely billed by attorneys to paying clients in similar cases.'");

"favorable response lends further support" to the conclusion that the requested fee is reasonable and fair).

[10] As set forth in the Notice, the deadline to provide the Court and counsel with objections is February 29, 2024. *See* accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date ("Murray Decl."), Ex. B.

Comerica Bank, 2013 WL 12239522, at *7 (finding expenses incurred in connection with, for example, experts, computerized research, travel, mediation, photocopying, and court filing to be "the type of expenses routinely charged to hourly clients"). Because the categories of expenses for which counsel seek payment here are the type of expenses routinely charged in similar cases, they are properly awarded from the common fund. *See Cosby*, 2022 WL 4129703, at *3 (Counsel "'is entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims and in obtaining settlement, including expenses incurred in connection with document productions, consulting with experts and consultants, travel and other litigation-related expenses.'").

A significant component of counsel's expenses are the costs of experts and consultants. Class Counsel engaged an economics and damages expert to consult on issues relating to class certification, specifically market efficiency, price impact, and the calculation of class-wide damages. This expert prepared written reports, was deposed by Defendants, assisted Class Counsel in the deposition of Defendants' expert, and actively participated in the mediation process. Additionally, this expert, along with an expert in healthcare economics were consulted on various matters relating to Plaintiffs' claims and had begun developing their respective reports on the merits. Each of Plaintiffs' experts were essential to understanding the relevant issues and aiding Class Counsel in developing its litigation strategy and proving its claims. *See* RGRD Decl., ¶13(e).

The engagement of outside bankruptcy counsel also formed a portion of Class Counsel's expenses. This expense was necessary to protect Class Members' interests during the course of Envision's bankruptcy proceedings. Bankruptcy counsel helped to ensure that claims against the individual defendants were not released during the bankruptcy process.

Other expenses and charges that were necessarily incurred in the prosecution of the Litigation include expenses for mediation fees, filing and witness fees, transcripts, travel, and document hosting and retrieval. *Id.*, ¶13.

Because these were all necessary expenses incurred by counsel, they should be paid from the Settlement Fund. These expenses are described in detail in the accompanying declarations of counsel (*see generally* RGRD Decl. and Barrett Johnston Decl.).

IV. PLAINTIFFS' AWARDS PURSUANT TO 15 U.S.C. §78u-4(a)(4) ARE REASONABLE

Finally, Plaintiffs respectfully suggest that the time and expenses that they directly and reasonably incurred for their services to the Class in connection with this Litigation, which totals $73,500.47, should be reimbursed, as provided for by the PSLRA. *See* 15 U.S.C. §78u-4(a)(4) (class representatives may recover the "reasonable costs and expenses (including lost wages) directly relating to the representation of the class"); *see New Eng. Health Care*, 234 F.R.D. at 635 ("'Courts . . . routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages . . . .'") (first ellipsis in original). The Notice advised that Plaintiffs may seek reimbursement of up to $95,000 for their time and expenses directly related to their representation of the Class. *See* Murray Decl., Ex. B at 9. The amount requested here is significantly below that amount.

Plaintiffs' declarations support their requests for reimbursement of their time and expenses incurred in their roles as class representatives. *See* Plaintiffs' Decls. Consistent with district courts across the country, Judges of this Court and in this Circuit have approved similar awards to class representatives for their time and effort expended on behalf of shareholder classes. *Norfolk Cnty. Ret. Sys. v. Cmty. Health Sys., Inc., et al.*, No. 3:11-cv-00433-ER-AEN, ECF 457 at ¶3 (M.D. Tenn. June 22, 2020) (Ex. 9) (awarding $163,275 to lead plaintiff); *Grae*, 2021 WL 5234966, at *1

(awarding $17,525 to lead plaintiff); *Garden City Emps.' Ret. Sys.*, 2015 WL 13647397, at *1 (lead plaintiff award of $23,173 for time spent representing the class); *see also Stein*, ECF 248 at ¶5 (Ex. 2) (awarding a total of $32,000 to the representative plaintiffs); *Cosby*, 2022 WL 4129703, at *3 (plaintiff awards of $25,000, $10,000, and $10,000).

As set forth in their declarations, Plaintiffs actively oversaw the prosecution of this Litigation by regularly communicating with Class Counsel, responding to Defendants' discovery requests, preparing for and providing deposition testimony, reviewing documents filed in the case, discussing settlement strategy with Class Counsel, and ultimately approving the Settlement. *See* Plaintiffs' Decls. *See Dougherty v. Esperion Therapeutics, Inc.*, 2020 WL 6793326, at *8 (E.D. Mich. Nov. 19, 2020) ("Lead Plaintiffs have 'vigorously prosecute[d] the interests of the class.'"). Accordingly, Plaintiffs' requested reimbursement awards are reasonable and justified under the PSLRA. No objections to these awards have been filed.

V. CONCLUSION

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

DATED: February 15, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 15, 2024, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Christopher M. Wood

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

EXHIBIT 1

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

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

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

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

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

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

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

IT IS SO ORDERED.

DATED: 10/7/2022

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

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

LEWIS STEIN, et al., individually and on behalf of all others similarly situated,	)	Case No. 1:19-cv-98
Plaintiffs,	)	Judge Travis R. McDonough
v.	)	Magistrate Judge Christopher H. Steger
U.S. XPRESS ENTERPRISES, INC., et al.,	)	
Defendants.	)	

ORDER

Before the Court is class counsel's motion for attorneys' fees and expenses and plaintiffs' motion for an award pursuant to 15 U.S.C. §77z-1(a)(4) (Doc. 228). This matter having come before the Court on July 10, 2023, on Class Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore GRANTS the motion (Doc. 228). It is hereby **ORDERED**, **ADJUDGED**, AND **DECREED** that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated March 27, 2023 (the "Stipulation"). (Doc. 221.)

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

3. The Court hereby awards Class Counsel attorneys' fees of one-third of the Settlement Amount, and litigation expenses in the amount of $1,368,163.51, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated amongst counsel in a manner which, in Class Counsel's good faith judgment, reflects each such counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method considering, among other things, the following: the highly favorable result achieved for the Class; the contingent nature of Class Counsel's representation; Class Counsel's diligent prosecution of the Litigation; the quality of legal services provided by Class Counsel that produced the Settlement; that the Plaintiffs appointed by the Court to represent the Class support the requested fee; the reaction of the Class to the fee request; and that the awarded fee is in accord with Sixth Circuit precedent.

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

5. Pursuant to 15 U.S.C. §77z-1(a)(4), the Court awards $15,000 to Plaintiff Deirdre Terry, $10,000 to Plaintiff Charles Clowdis, and $7,000 to Plaintiff Bryan K. Robbins for the time they spent representing the Class.

SO ORDERED.

/s/ Travis R. McDonough
TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

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

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

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

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

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

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

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

IT IS SO ORDERED.

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

EXHIBIT 4

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

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

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

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

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

IT IS SO ORDERED.

DATED: 5-12-14

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

EXHIBIT 5

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

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

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

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

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

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

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

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

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

IT IS SO ORDERED.

DATED: October 31, 2012

Kevin H. Sharp

THE HONORABLE KEVIN H. SHARP
UNITED STATES DISTRICT JUDGE

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

IRIKA SKEETE, *et al.*,	)	
	)	
Plaintiffs,	)	**No. 3:16-cv-0043**
	)	
v.	)	**District Judge Waverly Crenshaw**
	)	
REPUBLIC SCHOOLS NASHVILLE,	)	**Magistrate Judge Joe Brown**
	)	
Defendant.	)	**JURY DEMAND**
	)	

REPRESENTATIVE PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY'S FEES, COSTS, AND INCENTIVE AWARDS

Irika Skeete and Allison Baird (the "Representative Plaintiffs"), on behalf of themselves and on behalf of a preliminarily certified Class, respectfully submit this Memorandum in support of their Motion for Attorney's Fees, Costs, and Incentive Awards. For the reasons explained herein, the Representative Plaintiffs respectfully request that the Court issue an order: (1) awarding attorney's fees to counsel for the Class ("Class Counsel") in the amount of one-third of the $2,200,000 Settlement Fund, or $733,333.33; (2) reimbursing Class Counsel for costs and expenses;[1] and (3) approving a $7,500 incentive award to each Representative Plaintiff.

INTRODUCTION

This case is a certified class action brought under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq*. ("TCPA"), against the defendant, RePublic Schools Nashville ("RePublic"), for sending unsolicited robo-texts to over 5,300 cell phone numbers between August 2015 and January 2016. After defeating a Rule 12 motion, conducting full discovery

[1] As of the date of filing, those costs are $15,995.96. To the extent that Class Counsel incurs any additional costs in bringing this case to resolution, the Representative Plaintiffs respectfully request that the Court award payment of those costs and expenses as well.

(both as to class certification and the merits), obtaining certification of the Class under Rules 23(b)(2) and 23(b)(3), and defeating RePublic's petition for interlocutory appeal to the Sixth Circuit under Rule 23(f), Class Counsel and the Representative Plaintiffs negotiated a non-reversionary $2,200,000 settlement and a prohibition on RePublic from sending unsolicited robo-text messages in the future absent consent.

Class Counsel requests a fee award of one-third of this Settlement Fund, which is well within the range of acceptable fee awards in similar common fund cases (including TCPA class actions) and is objectively reasonable under the relevant factors articulated by the Sixth Circuit. The Settlement reflects one of the most favorable – if not the most favorable – monetary settlements in a TCPA robo-texting case ever achieved for a class of this size. A lodestar cross-check reflects a multiplier of only 1.33, which is on the low end of multipliers that this Court and others have found to reflect a reasonable fee award. Furthermore, Class Counsel took this case on a contingency fee basis with no guarantee of recovery, successfully litigated the action (which involved complex issues pertaining to liability and class certification) before this Court and before the Sixth Circuit against sophisticated and skilled defense counsel, and achieved excellent results for Class Members who likely would have had no legal recourse but for consolidation of their claims as a class action. These factors all confirm that the requested award is justified.

The Representative Plaintiffs also seek incentive awards of $7,500 each, which is reasonable in light of their active participation in this case for the benefit of the Class.

BACKGROUND

I. The Complaint and Representative Plaintiff Irika Skeete's Defeat of the Defendant's Motion to Dismiss

On January 15, 2016, Plaintiff Irika Skeete filed this action on behalf of herself and a putative class, naming RePublic as a defendant and alleging that it violated the TCPA by sending

unsolicited, mass robo-texts to Ms. Skeete and class members without their prior express consent.[2] On March 18, 2016, RePublic filed a motion to dismiss the Complaint for failure to state a claim upon which relief could be granted.[3] On May 4, 2016, after full briefing, the Court denied the motion.[4]

II. The Parties Engaged in Extensive Discovery

The parties engaged in full discovery. This included the production of documents, answering interrogatory and document requests, issuing a third-party subpoena to the entity through which RePublic sent the offending texts (CallMultiplier) and reviewing responsive records, issuing Public Records Act requests of Metropolitan Nashville Public Schools and reviewing the responses thereto, serving and responding to requests for admission, and conducting depositions of multiple party witnesses. The Representative Plaintiffs each sat for a full deposition and timely responded to all written discovery served on them.

On June 1, 2016, Representative Plaintiff Skeete filed a motion for leave to amend to file a First Amended Complaint against RePublic (the "First Amended Complaint"),[5] which the Court granted on June 10, 2016.[6] The First Amended Complaint added an additional named Representative Plaintiff, Allison Baird, and included a sub-class of individuals who indicated their desire to stop receiving unsolicited text messages from RePublic.[7]

[2] Dkt. No. 1.
[3] Dkt. No. 11.
[4] Dkt. No. 30.
[5] Dkt. No. 32.
[6] Dkt. No. 34.
[7] The Court did not certify the Subclass, but both Representative Plaintiffs are Class Members of the certified Class.

III. The Representative Plaintiffs Prevailed on Class Certification

On August 1, 2016, Plaintiffs filed a motion for class certification, which RePublic vigorously contested, and with respect to which the parties made extensive written submissions.[8] On March 14, 2017, the Court held a hearing on the Motion for Class Certification. On March 21, 2017, the Court granted in part and denied in part the motion for class certification.[9] Under Rule 23(b)(3) and Rule 23(b)(2), the Court certified a class of "[a]ll individuals who were sent and received a text to their cellular telephones by RePublic Schools Nashville ('RSN') from the number (615) 270-4554 during the time period August 17, 2015, through January 15, 2016, and whose cellular phone number was obtained by RSN from the Metropolitan Nashville Public Schools database." The Class consisted of over 5,300 cell phone numbers. The Court also ordered the parties to participate in alternative dispute resolution under Local Rules.[10]

IV. The Representative Plaintiffs Defeat RePublic's Petition to the Sixth Circuit for Interlocutory Appeal of the Rule 23 Certification Order

On April 4, 2017, RePublic filed a Fed. R. Civ. P 23(f) petition with the Sixth Circuit, seeking permission to appeal the Court's class certification order.[11] On May 12, 2017, after full briefing the Sixth Circuit issued an order denying RePublic's petition.[12]

V. After Denial of the Rule 23(f) Petition, the Parties Engage in a Successful Mediation through a Distinguished Third-Party Neutral Mediator.

On May 31, 2017, the Parties participated in a full-day mediation through a third-party neutral mediator, the Honorable Judge Wayne Andersen (Ret.) of JAMS (the "Mediator"). Judge Andersen served as U.S. District Judge for the Northern District of Illinois for 19 years and as a

[8] Dkt. Nos. 37-43, 51-52, 58-64, 66-67, 77, and 79.
[9] Dkt. No. 81.
[10] *Id.*
[11] Dkt. No. 88.
[12] *Id.*

state court trial judge for seven years. The mediation and subsequent negotiations resulted in a settlement in principle for the Class (the "Settlement"), as reflected in the settlement agreement that this Court preliminarily approved (the "Settlement Agreement").[13] The parties did not negotiate attorney's fees until they had resolved all other material terms of the Settlement.[14]

As explained in the Motion for Preliminary Approval (and as will be explained in forthcoming Motion for Final Approval), the Settlement involves both monetary relief and contractual relief against future violations. The Settlement requires RePublic to pay **$2,200,000** into a non-reversionary Settlement Fund (Settlement Agreement, ¶¶ II.23 and III.A), from which Class Members can recover *pro rata* cash payments (net of attorney's fees and expenses, claims administration costs, and the Representative Plaintiffs' Incentive Awards) on a claims-made basis. As a condition of the Settlement, RePublic has also agreed to cease sending any text messages using an automatic telephone dialing system without prior express consent, either directly or by authorizing another entity to do so. (*Id*. at ¶ II.A.)

The Settlement provides that Class Counsel will apply to the Court for an award of attorney's fees up to one-third of the Settlement Fund, as well as for out-of-pocket expenses incurred in pursuing the litigation through final approval. (*Id*. at ¶ III.G.) As part of the Settlement, Defendants also agree not to object to the application for a payment of up $7,500 from the Settlement Fund as an incentive award to each of the Representative Plaintiffs, subject to Court approval. (*Id*. at ¶ III.F.). The Settlement is not conditional on the Court's approval of the requested attorney attorneys and costs or the requested incentive awards. (*Id*. at ¶¶ III.G and III.F.)

[13] Dkt. No. 102-1 (Ex. A to Notice).
[14] Stranch Decl., ¶ 18.

VI. Preliminary Approval

On September 15, 2017, the Representative Plaintiffs filed a Motion for Preliminary Approval, Approving Notice, Setting Objection and Opt-Out Deadlines, and Scheduling Final Approval Hearing ("Motion for Preliminary Approval").[15] The Court held a hearing on the motion on September 18, 2017,[16] the Representative Plaintiffs (with RePublic's assent) filed a revised Settlement Agreement thereafter for the Court's approval.[17]

On November 7, 2017, the Court issued an Order (1) Preliminarily Approving Class Action Settlement, (2) Approving Notice Plan, and (3) Setting Final Approval Hearing ("Preliminary Approval Order").[18] The Court found that the proposed Settlement Agreement is "fair, reasonable, and adequate, and within the range of possible approval" (*id.* ¶ 4), was "negotiated in good faith at arm's length between experienced attorneys familiar with the legal and factual issues of this case aided by an experienced and neutral third-party mediator" (*id.*), and (c) that the form of notice and associated class notification procedures were "appropriate and reasonable" (*id.*). The Order set deadlines for objections and opt-out notices, and set a final approval hearing for February 26, 2018.

VII. Class Counsel Oversees the Claims Administrator and Expands Class Notice

Following the Preliminary Approval Order, Class Counsel has worked with the Claims Administrator, Dahl Administration, to facilitate notice to the Class. These efforts have included reviewing and cross-checking a master list of numbers provided by RePublic to link addresses to particular Class Members, handling questions from the Claims Administrator about class notice

[15] Dkt. Nos. 95-98.
[16] Dkt. Nos. 100 and 101.
[17] Dkt. No. 102.
[18] Dkt. No. 103.

procedures, and analyzing updates from the Claims Administrator about the status of class notice.

In an exercise of diligence and good faith, Class Counsel expanded Class notice procedures beyond those previously approved by the Court as consistent with due process. First, after the Claims Administrator alerted Class Counsel that mailings relative to approximately 900 numbers in the Class were returned as undeliverable, Class Counsel worked with the Claims Administrator to set up two rounds of live calls to those numbers to provide notice of the Settlement and to explain claims procedures, and the Claims Administrator was able to speak with a live person and/or leave voicemails for most of those numbers.[19] According to the Claims Administrator, additional Class Members received notice of the Settlement and filed valid claims as a result of these extra notification efforts. Second, Class Counsel directed the Claims Administrator to send an additional round of mailings to Class Members who had not yet submitted a claims form as of January 17, 2018. The Claims Administrator has informed Class Counsel that these efforts have also resulted in the submission of additional claims. Finally, Class Counsel also engaged in social media efforts to publicize the Settlement, including multiple posts to the firm's website, Facebook page, and Twitter account.

Class Counsel undertook these efforts for the benefit of the Class. Class Counsel has sought to ensure that as many Class members as possible – including at least every Class Member with either a valid address in RePublic's records or a functioning cell phone number – received notice of the Settlement. At Class Counsel's direction, the vast majority of Class

[19]As will be explained in connection with the final approval papers, (1) in some cases, the Claims Administrator contacted a particular number twice (through a direct conversation and/or voicemail); and (2) holders of certain cell phone numbers in the Class could not be reached at all for one of several reasons (*e.g.*, the number was disconnected or the number simply rang through without going to voicemail).

Members have received noticed twice, participation in the Settlement has increased as a result, and no Class Members have filed any objections or exclusion requests as of the date of filing.

LEGAL STANDARD FOR FEE AWARDS

I. Class Counsel is Entitled to a Reasonable Fee from the Settlement Fund

The Supreme Court "has recognized consistently that a litigant or 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."[20] This doctrine, often referred to the as "common fund doctrine," "rests on the on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense."[21]

Reasonableness is the ultimate standard for setting fees in a common fund case. "In this circuit, we require only that awards of attorney's fees by federal courts in common fund cases be reasonable under the circumstances."[22] When awarding fees, a court must make sure that counsel is fairly compensated for the amount of work done as well as for the results achieved.[23] Several factors may affect the reasonableness of an award: (1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides.[24]

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[20] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).
[21] *Boeing*, 444 U.S. at 478.
[22] *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993); *accord Moulton v. U.S. Steel Corp.*, 581 F.3d 344, 352 (6th Cir. 2009).
[23] *Rawlings*, 9 F.3d at 516.
[24] *Moulton*, 581 F.3d at 352 (citing *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996)); *accord Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188, 1196 (6th Cir. 1974).

II. The Percentage-of-the Fund Method of Assessing the Reasonableness of the Plaintiff's Fee Request is Appropriate in This Case

Trial courts have discretion to award fees based on either (1) a percentage-of-the-fund calculation, or (2) a lodestar/multiplier approach.[25] Under the "percentage-of-fund" method, the court determines a percentage of the settlement to award class counsel.[26] In the "lodestar/multiplier approach," "the court calculate[s] the reasonable number of hours submitted multiplied by the attorneys' reasonable hourly rates," which the Court then increases using a "multiplier" to account for, *inter alia*, the costs and risks involved in the litigation.[27]

The percentage-of-the fund method is the preferred method in common fund cases within the Sixth Circuit.[28] As the Sixth Circuit has explained, this method "more accurately reflects the results achieved," and "has a number of advantages: it is easy to calculate, it establishes more reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."[29] Courts within the Sixth Circuit have agreed that this method promotes efficiency, aligns the interests of class counsel

[25] *Rawlings*, 9 F.3d at 516.
[26] *See In re Telectronics Pacing Sys. Inc*., 137 F. Supp. 2d 1029, 1041 (S.D. Ohio 2001).
[27] *Id.* at 104 (citing *Newberg*, § 12.55 (3d ed. 1992).
[28] *See In Re Se. Milk Antritrust Litig.*, Master File No. 2:08-MD-1000, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013) ("[T]he trend in the Sixth Circuit is towards adoption of a percentage of the fund method in common fund cases") (internal quotation omitted); *In re Skelaxin (Metaxalone Antitrust Litig.)*, No. 2:12-cv-83, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) (observing trend and adopting percentage of the fund approach); *Manners v. Am. Gen. Life Ins. Co.*, No. Civ. A 3-98-0266, 1999 WL 33581944, at *29 (M.D. Tenn. Aug. 10, 1999) ("The preferred approach to calculating attorney's fees to be awarded in a common benefit case is as a percentage of the class benefit"); *see also Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. Feb. 16, 2017) (approving 38% of fund award in common fund class action settlement).
[29] *Rawlings*, 9 F.3d at 516; *see also in Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 381 (S.D. Ohio 2006) ("The percentage of the fund . . . method . . . most closely approximates how lawyers are paid in the private market and incentivizes lawyers to maximize the Class recovery, but in an efficient manner.").

with the class, and conserves judicial resources.[30] Indeed, the Supreme Court has suggested that the percentage-of-the-fund approach is part and parcel of a common fund award.[31]

APPLICATION

I. The Requested Fee Falls Within the Range of Percentage Fees Considered Reasonable and Fair by Courts within the Sixth Circuit.

Courts in this Circuit routinely cite 20 to 50 percent as a reasonable range for attorney's fees in common fund cases.[32] Thus, a request for one-third of a common fund "is certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit."[33] Furthermore, even in cases involving circumstances less compelling than those presented here, courts in TCPA class action litigation have consistently awarded fees consisting of one-third or more of the settlement.[34] The fee requested here is therefore well within the

[30] *In re Skelaxin*, 2014 WL 2946459, at *1. By contrast, the lodestar method has been criticized as wasting judicial resources by requiring courts to "pore over time sheets," as not appropriately correlating a fee award with results achieved, and as creating a disincentive for class counsel to handle a case efficiently. *Id.* Courts have thus re-embraced the percentage-of-fund method after a "period of experimentation with the lodestar method." *Manual for Complex Litigation (Fourth)* § 14.121, at 187 (2004). The lodestar method is now used to award fees in only a small number of class actions, usually when the settlement calls for substantial non-monetary relief.

[31] *See Blum*, 465 U.S. at 900 n. 16 ("Unlike the calculation of attorney's fees under the 'common fund doctrine,' where a reasonable fee is based on a percentage of the fund bestowed on the class, a reasonable fee under § 1988 reflects the amount of attorney time reasonably expended on the litigation.")

[32] *See Broadwing*, 252 F.R.D. at 380; *New England Health Care Employees Pension Fund v. Fruit of the Loom*, 234 F.R.D. 627, 633 (W.D. Ky. 2006); *Manners*, 1999 WL 33581944, at *29; *Wise v. Popoff*, 835 F. Supp. 977, 980 (E.D. Mich. 1993).

[33] *In re Se. Milk Antitrust Litig.*, 2013 WL 2155387, at *3 (awarding one-third of common fund); *see also Bessey v. Packerland Plainwell, Inc.*, 2007 WL 3173972, at *4 (W.D. Mich. Oct. 26, 2007) (awarding one-third of common fund and noting that "[e]mpirical studies show that . . . fee awards in class actions average around one-third of recovery"); *In Re Prandin Direct Purchaser Antitrust Litig.*, No. 10-cv-12141, 2015 WL 1396473 (E.D. Mich. Jan. 20, 2015) (awarding one-third of the common fund).

[34] *See, e.g.*, *G.M. Sign, Inc. v. Finish Thompson, Inc.*, No. 07 C 5953 (N.D. Ill. Nov. 1, 2010), Dkt. No. 146, Final Approval Order (attached as **Exhibit A** hereto) (approving fee award of one-third of settlement fund in a TCPA case); *Martin v. JTH Tax, Inc.*, Case No. 1:13-cv-6923 (N.D. Ill. Sept. 23, 2015), Dkt. No. 86 (attached as **Exhibit B** hereto) (approving fee award of 1/3 of

range of fees considered to reasonable in a common fund case generally and a TCPA common fund case in particular.

II. Application of Relevant Factors Identified by the Sixth Circuit Confirms that the Requested Fee is Reasonable

A. The Benefits Conferred on the Class are Extraordinary

The primary factor in determining a reasonable fee is the result achieved on behalf of the class.[35] Here, Class Counsel have procured a $2,200,000 non-reversionary Settlement Fund and relief against future violations. As previously explained in support of the Motion for Preliminary Approval (and as will be reinforced in the final approval papers), the prospective monetary recovery for each Class Member is extraordinary. To the best of Class Counsel's knowledge, for a case of this magnitude this is one of the largest – if not the largest – TCPA robo-texting class settlements ever reached on a per-Class Member basis.[36] Class Members stand to recover hundreds or even thousands of dollars per text. The Settlement also contractually binds RePublic not to send robo-texts in the future using an auto-dialer without prior express consent, which protect Settlement Class Members against further violations. That relief is also significant, given

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common fund and $10,000 incentive payment to class representative in a TCPA case); *Bridgeview Health Care Ctr., Ltd. v. Clark*, 2015 WL 4498741 (N.D. Ill. July 23, 2015) (approving award of one-third of the common fund in a TCPA case, because "the one-third contingency fee is well within the normal range in common fund cases"); *Cummings v. Sallie Mae*, No. 12-9984 (N.D. Ill. May 30, 2014) (Dkt. Nos. 87 (without attachments) and 91) (awarding one-third of common fund) (attached as collective **Exhibit C** hereto); *Hanley v. Fifth Third Bank*, No. 12-01612 (N.D. Ill. Dec. 23, 2013) (Dkt. Nos. 79 and 87) (attached as collective **Exhibit D** hereto) (reflecting fee award of one-third of settlement fund).

[35] *In re Delphi Corp. Sec. Derivative & ERISA Litigation*, 248 F.R.D. 483, 503 (E.D. Mich. 2008); *see also Rawlings*, 9 F.3d at 517 ("[O]ne of the primary determinants of the quality of work performed in the result of obtained."); *Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983) (noting that the most critical factor in awarding fees is the result achieved by counsel).

[36] *See* Dkt. No. 96 at p. 12 and p. 12 n. 36 (collecting cases). As explained therein, the monetary recovery in this case dwarfs recoveries in other TCPA class actions, which often amount to under $3.00 per class member on average.

that, notwithstanding numerous complaints from text recipients, RePublic had continued to send waves of unsolicited texts to Class Members until the day that this lawsuit was filed.

As this Court has already acknowledged, individual Class Members likely would have received no relief at all absent a Class settlement. Furthermore, Class Counsel faced substantial obstacles to achieving a recovery in this case, including a Rule 12 motion, class certification, a Rule 23(f) petition to the Sixth Circuit, a potential Class-wide defense in light of the Federal Communications Commission's intervening *Blackboard* decision, and a potential Class-wide defense that CallMultiplier did not constitute an "automatic telephone dialing system" under the TCPA. The risks and complexities inherent in this litigation therefore reinforce the value of the benefits conferred on the Class. Finally, the overall value of the Settlement is reinforced by the lack of any objections from Settlement Class Members as of the date of this filing.

This factor therefore supports the requested fee.

B. The Value of the Services on an Hourly Basis as a Lodestar Cross-Check

Courts may use the lodestar method as a "cross-check" on the reasonableness of the requested fee. To do so, the Court calculates the lodestar (the hours reasonably expended on the litigation multiplied by reasonable hourly rates), and then calculates a "multiplier" by comparing the lodestar to the amount of fees requested.[37] A reasonable multiplier above the lodestar reflects a reasonable fee, because it accounts for factors such as the contingency risk of the litigation and the quality of the work performed.[38] Courts within the Sixth Circuit typically approve lodestar

[37] *See, e.g., In re Cardinal Health, Inc. Sec. Litig.*, 528 F. Supp. 2d 752, 767 (S.D. Ohio 2007); *Broadwing*, 252 F.R.D. at 381.
[38] *See New York State Teacher's Retirement Sys. v. Gen. Motors Co.*, 315 F.R.D. 226, 243-44 (E.D. Mich. 2016).

multipliers of up to 4.5, and even as high as 10.[39] In contrast to a full lodestar analysis, a lodestar cross-check does not call for exhaustive scrutiny of the hours recorded by counsel.[40]

Here, as supported by the accompanying Stranch Declaration, Class Counsel already has spent over 835 combined hours on this litigation (exclusive of fees associated with this petition itself). These hours were reasonable and the necessary to prosecuting the claims of the Representative Plaintiffs and the Class, relating to such tasks as drafting pleadings, briefing (and defeating) a Rule 12 motion, conducting written and deposition discovery, analyzing voluminous records and spreadsheets of information produced by the defendant and CallMultiplier, responding to written discovery from the defendant, preparing clients for deposition and defending depositions, taking depositions of multiple witnesses, briefing and arguing a disputed motion for class certification, drafting preliminary approval papers, participating in a mediation and settlement negotiations, and overseeing the notice process.

At reasonable and customary complex litigation rates, this results in a lodestar figure of approximately **$550,000**.[41] Measured against the requested fee of $733,333.33, the current

[39] *See, e.g.*, *Manners*, 1999 WL 33581944, at *31 ("[p]laintiffs' counsel's request for a multiplier of 3.8 is fully warranted. This multiplier is well within the range of multipliers for similar litigations, which have ranged from 1-4 and have reached as high as 10."); *In Re Se. Milk*, 2013 WL 2155387, at *4 (lodestar multiplier of 1.9 was "within, but in the bottom half of, the range of typical lodestar multipliers"); *Lowther v. AK Steel Corp.*, No. 1::11-cv-877, 2012 WL 6676131, at *5 (S.D. Ohio Dec. 21, 2012) (finding that 3.06 multiplier was "very acceptable . . . especially in light of the extraordinary service rendered by counsel on behalf of the Class").

[40] *Cardinal*, 528 F. Supp. 2d at 767.

[41] The rates for this calculation are Branstetter's usual and customary complex litigation rates, which are equivalent to rates customarily charged for comparable attorney services in non-contingent matters. *See* Stranch Decl. at ¶ 27; *see also Lonardo v. Travelers Indem. Co.*, 706 F. Supp. 2d 766, 793-94 (N.D. Ohio 2010) (accepting as reasonable rates of $825 per hour and $650 for attorneys and $215 per hour for staff); *Gilbert v. Abercrombie & Fitch, Co.*, No. 15-cv-2854, 2016 WL 4159682, at *16-17 (S.D. Ohio Aug. 5, 2017) (accepting attorney rates as high as $850 per hour as reasonable). The rates reflect the firm's expertise and pre-eminent nationwide success in complex, consumer protection, and class action litigation. It is proper to use current rates, rather than historical rates, to compensate counsel for delay by using current

lodestar multiplier is therefore **just 1.33**. This low multiplier reinforces the reasonableness of the requested fees, as it is substantially lower than multipliers approved as reasonable in common fund cases within the Sixth Circuit [42] and in TCPA common fund settlements.[43]

Of course, this multiplier and the associated lodestar do not account for additional fees that Class Counsel reasonably will incur, including further time spent overseeing claims administration, preparing final approval papers, participating in a final approval hearing, and handling any post-approval proceedings. The multiplier therefore will drop even further.

Accordingly, the lodestar cross-check confirms that the requested fee is reasonable.

C. Class Counsel Undertook this Case on a Contingency Fee Basis

Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorney's fees. When counsel brings a putative class action on a contingency fee basis, counsel assumes "a substantial risk of non-payment for legal work and reimbursement of out-of-pocket expenses advanced."[44] This factor therefore "accounts for the substantial risk an attorney takes when he or she devotes substantial time and energy to a class action despite the fact that it will be uncompensated if the case does not settle and is dismissed."[45] Thus, the "[f]ailure to make any provision for risk of loss may result in systemic

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hourly rates in examining the lodestar. *See Barnes v. City of Cincinnati*, 401 F.3d 729, 745 (6th Cir. 2005); *Broadwing*, 252 F.R.D. at 381; *see also Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1984) (indicating that use of current rates is appropriate in lodestar analysis).

[42] *See supra* FN 36; *see also Huyer*, 849 F.3d at 399-400 (approving lodestar multiplier of 1.82 as "well within the range of multipliers awarded in this and other circuits").

[43] *See, e.g., Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal.) (approving fee award of 1/3 of settlement fund that reflected a lodestar multiplier of 2.52); *Landsman & Funk, P.C. v. Skinder-Strauss Assocs.*, Civil Action No. 08CV3610 (CLW), 2015 WL 2383358, at * 8 (D.N.J. May 18, 2015) (approving one-third fee award reflecting a lodestar multiplier of approximately two, which was "well within the acceptable range").

[44] *In Se. Milk*, 2013 WL 2155387, at *5.

[45] *Lonardo*, 706 F. Supp. 2d at 796.

undercompensation of plaintiffs' counsel in a class action case, where . . . the only fee that counsel can obtain is, in the nature of the case, a contingent one."[46]

Here, Class Counsel undertook this litigation on a contingent fee basis. Class Counsel therefore assumed a significant risk that the litigation would yield no recovery, thereby leaving counsel entirely uncompensated for its time and its out-of-pocket expenses. Indeed, Class Counsel brought this case in January 2016, has devoted over 835 hours of time on the case already, and has incurred almost $16,000 of reasonable and necessary expenses. Because the fee in this matter is entirely contingent, Class Counsel has faced a real risk that it could recover nothing for its efforts. Nevertheless, as reflected on the docket and as supported by the Stranch Declaration, Class Counsel committed substantial time and money to the vigorous – and ultimately successful – prosecution of this litigation for the benefit of the Class. Accordingly, the contingent nature of the Class Counsel's representation strongly favors approval of the requested fee.

D. Public Policy Favors the Requested Award

"Adequate compensatory fee awards in successful class actions promote private enforcement of and compliance with important areas of" law.[47] Accordingly, "[e]ncouraging qualified counsel to bring inherently difficult and risky but beneficial class actions . . . benefits society."[48] Here, the Court has already held in this case that, "[g]iven the limited statutory damages available, individual class members would likely not file their own actions against

[46] *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569 (7th Cir. 1992); *see also Blum*, 465 U.S. at 902 (Brennan, J., concurring) (noting "the risk of not prevailing, and therefore the risk of not recovering any attorney's fees, is a proper basis on which a district court may award an upward adjustment to an otherwise compensatory fee").
[47] *In re Broadwing*, 252 F.R.D. at 381 (citing *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985)).
[48] *In re Cardizem*, 218 F.R.D. at 534.

RSN, simply because of the expense."[49] Class Counsel therefore undertook a difficult and time-consuming class action case – which has already spanned over two years of litigation – to pool the claims of numerous class members who otherwise would not have vindicated their TCPA rights. Awarding an appropriate fee will continue to encourage highly qualified counsel to undertake time-consuming class action litigation (at substantial monetary risk) to vindicate the rights of Class members who otherwise might have no practical means of redress. This factor therefore also supports the requested fee award.

E. Complexity of the Litigation

The complexity and novelty of the factual and legal issues presented, and the settlement negotiations necessary to resolve those issues, are factors to be considered in the approval of a fee request.[50] To the best of Class Counsel's knowledge, this case involved the first (and perhaps only) lawsuit against a charter school for sending recruitment texts using robo-texting technology. From the outset, it therefore involved a novel factual posture and the likelihood of novel liability defenses. Indeed, on August 4, 2016, during the pendency of this case, the FCC released a declaratory ruling in *Blackboard* (FC16-88, CG Docket No. 02-278), defining certain special exceptions to the application of the TCPA relative to public schools. RePublic cited this ruling as reinforcing a novel Class-wide defense to liability in this case. This case also involved difficult issues regarding class certification, including whether individualized issues of consent would predominate over Class issues (as RePublic strenuously argued). Class Counsel therefore faced many hurdles in prosecuting this litigation, including the real possibilities that (1) the Court would deny class certification, (2) the Sixth Circuit would overrule any class certification

[49] Dkt. No. 80 at p. 10.
[50] *See Sulzer Hip Prosthesis & Knee Prosthesis*, 268 F. Supp. 2d 907, 939 (N.D. Ohio June 12, 2003).

order in response to the petition for interlocutory appeal, or (3) the Court would grant class certification but dismiss the claims on the merits in their entirety in light of the *Blackboard* ruling or on some other basis. Accordingly, this factor also strongly supports Class Counsel's fee and expense request.

F. Class Counsel Are Qualified Complex Litigation Practitioners Who Prevailed Against Against Skilled Defense Counsel

Class Counsel submits that it has significant legal expertise, which it brought to bear in successfully prosecuting this class action and in securing the settlement. As detailed in the accompanying Stranch Declaration, Class Counsel has substantial expertise and decades of success nationwide in class actions, consumer rights, TCPA matters, and other forms of complex civil litigation.[51] A firm resume, which identifies some of the firm's most notable accomplishments, is attached as Exhibit A to the accompanying Stranch Declaration.

[51] For example, J. Gerard Stranch, IV was appointed to the Plaintiffs' Steering Committee in the *In re: Volkswagen "Clean Diesel" Multi-District Litigation*, in which the district court recently approved a settlement of $15 billion (including a buyback fund of over $10 billion to eligible class members). This settlement was reported as the largest auto scandal payout in U.S. history. Similarly, in *In re Wellbutrin XL Antitrust Litigation*, in its role as co-lead counsel, the firm also successfully petitioned for certification of a class of indirect purchasers for a brand and generic version of a pharmaceutical antidepressant, achieved a $12 million settlement for that class, and received praise from the presiding district court judge for its work. The Firm also served on the Plaintiffs' Executive Committee in *Dahl v. Bain Capital Partners, LLC*, a federal antitrust case challenging bid rigging and market allocation in the private equity/leveraged-buyout industry, which reached a $590.5 million settlement approximately two months before trial and was finally approved in 2015. J. Gerard Stranch IV also currently serves on the Plaintiffs' Steering Committee in the *In re New England Compounding Pharmacy, Inc. Products Liability Litigation*, a mass-tort MDL proceeding stemming from the 2012 fungal meningitis catastrophe caused by tainted pharmaceuticals that resulted in the deaths of over 60 people and 700 fungal infections across the country. Although the compounding pharmacy ultimately filed for Chapter 11 bankruptcy protection, Branstetter (along with the rest of the Plaintiffs' Steering Committee) secured over $230 million for victims in settlements with the compounding pharmacy, its vendors, and its health-care facility customers. Finally, Class Counsel also recently obtained final approval of a $1.6 million class settlement in a TCPA "junk fax" class action in *Davis Neurology, P.A. v. Dental Equities, LLC, et al.* (E.D. Ark.).

The quality of opposing counsel is also important when the Court evaluates services provided by plaintiffs' counsel.[52] Here, RePublic is represented by qualified counsel from the law firm of Bass, Berry & Sims, which has a well-deserved reputation for vigorous advocacy in defending complex civil actions. Defense counsel mounted formidable opposition in this case throughout, including a Rule 12 motion, opposition to the Rule 23 certification motion, and a petition for interlocutory appeal under Rule 23(f). Class Counsel defeated each of these efforts and thereafter obtained an extraordinary settlement for the Class. The ability of Class Counsel to obtain these extraordinary results in the face of determined, skilled opposition attests to the quality of Class Counsel's work.[53]

This factor therefore also strongly favors the requested fee award.

G. Summary

All six factors strongly favor the requested fee award of one-third of the Settlement Fund.

III. The Court Should Approve Class Counsel's Request for Expenses

"Expense awards are customary when litigants have created a common settlement fund for the benefit of a class."[54] These expenses are typically awarded so long as they were "fair and

[52] *See Dick v. Sprint Commc'ns Co., L.P.*, 297 F.R.D. 283, 301 (W.D. Ky. 2014) ("Counsel for both sides are skilled attorneys who brought extensive experience and knowledge to their motion practice, the fairness hearing, and the bargaining table."); *see also In re Delphi*, 248 F.R.D. at 504 ("The ability of Co-Lead Counsel to negotiate a favorable settlement in the face of formidable legal opposition further evidences the reasonableness of the fee award requested.");

[53] *See In re Se. Milk*, 2013 WL 2155387, at *4 ("Class counsel, have efficiently and competently managed their enormous tasks and have vigorously and effectively prosecuted the case on behalf of the class. They have also been opposed by equally experienced and highly competent counsel for defendants and have achieved an excellent result for their clients.")

[54] *Id.* at *8; *Broadwing*, 252 F.R.D. at 382 (awarding requested expenses as "reasonable and necessary expenses, including photocopying, postage, travel, lodging, filing fees and Pacer expenses, long distance telephone, telecopier, computer database research, deposition expenses, and expert fees and expenses"); *Delphi*, 248 F.R.D. at 504.

reasonable."[55] Here, Class Counsel respectfully requests that the Court reimburse expenses of $15,995.96, reflecting the out-of-pocket expenses incurred in this case. These include costs and expenses for filing fees, service of process, transcript fees, expert fees, mediation fees, and travel expenses associated with the mediation (which took place in Chicago, Illinois). Class Counsel incurred these charges with no guarantee of reimbursement. These charges were fair, reasonable, and incurred for the benefit of the Class, and therefore should be reimbursed.[56]

IV. The Requested Incentive Awards to Plaintiffs are Reasonable

Courts routinely approve service payments to recognize individuals' service to the Class and to reward them for contributing to the enforcement of laws through the class action mechanism.[57] These awards are "intended to compensate class representatives for work done on behalf of the class, to make up for the financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."[58]

Here, the Representative Plaintiffs initiated this litigation and were instrumental to its successful outcome. They reviewed pleadings, provided timely written discovery responses, sat for full depositions, and were actively involved in settlement negotiations. They remained apprised of the status of the litigation throughout this case, including regular correspondence with undersigned counsel. They also reviewed and agreed to all terms of the Settlement before it was executed. Accordingly, the Representative Plaintiffs respectfully request service awards of $7,500 each. This reward is well within the reasonable range for a case of this size and

[55] *In re Se. Milk*, 2013 WL 2155387 at *8.
[56] Class Counsel also respectfully requests that the Court authorize payment of any additional costs and expenses that will be reasonably incurred by Class Counsel through the final resolution of this lawsuit.
[57] *See, e.g., Fruit of the Loom, Inc.*, 234 F.R.D. at 635 (approving reimbursement payments exceeding $27,000 to four lead plaintiffs in a class action).
[58] *In re Se. Milk*, 2013 WL 2155387 at *8 (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

complexity,[59] and awarding these amounts to the Representative Plaintiffs will still result in extraordinary monetary compensation to participating Class Members.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court (1) award attorney's fees in the amount of $733,333.33, (2) award payment of litigation expenses of $15,995.96 plus any further expenses accrued through final resolution of this lawsuit, and (3) award $7,500 to each Representative Plaintiff.

Dated: January 26, 2018

Respectfully submitted,

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[59] *See In re Se. Milk*, 2013 WL 2155387, at *8 (approving $10,000 incentive awards and referencing incentive awards in other cases up to $50,000); *Landsman & Funk*, 2015 WL 2383358, at *8-*9 (issuing $10,000 incentive award to representative plaintiff in TCPA class action).

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on January 26, 2018 a true and correct copy of the foregoing has been served on the following counsel of record via the Court's electronic filing system:

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***/s/* J. Gerard Stranch, IV**
J. Gerard Stranch, IV

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

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

FINAL APPROVAL ORDER AND JUDGMENT

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

It is hereby ORDERED AND DECREED as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Waverly D. Crenshaw, Jr.

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

EXHIBIT 7

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

JOHN RICHARD BEACH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. HEALTHWAYS INC., et al., Defendants.	Civil Action No. 3:08-cv-00569 **(Consolidated)** CLASS ACTION Judge Todd J. Campbell Magistrate Judge Juliet Griffin [PROPOSED] ORDER AWARDING PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND EXPENSES

The matter having come before the Court on September 24, 2010, on Plaintiffs' Counsel's motion for an award of attorneys' fees and expenses incurred in this action, the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this action to be fair, reasonable, and adequate and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated May 21, 2010 (the "Stipulation);

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

3. The Court hereby awards Plaintiffs' Counsel attorneys' fees of 30% of the Settlement Fund, and litigation expense in the amount of $763,372.03, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees and expenses shall be allocated among Plaintiffs' Counsel in a manner which, in Lead Counsel's good faith judgment, reflects each such Plaintiffs' Counsel's contribution to the institution, prosecution and resolution of the litigation.

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

5. Pursuant to 15 U.S.C. §78u-4(a)(4), Lead Plaintiff West Palm Beach Firefighters' Pension Fund is awarded $3,781.00 in reimbursement of its time and expenses in serving on behalf of the Class.

IT IS SO ORDERED.

DATED: _____

Todd Campbell
THE HONORABLE TODD J. CAMPBELL
CHIEF UNITED STATES DISTRICT JUDGE

EXHIBIT 8

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

In re DIRECT GENERAL CORPORATION SECURITIES LITIGATION	Civil Action No. 3:05-0077
This Document Relates To: ALL ACTIONS.	Judge Todd J. Campbell Magistrate Judge Juliet E. Griffin CLASS ACTION

~~[PROPOSED]~~ ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on July 20, 2007, on the application of Lead Counsel for an award of attorneys' fees and expenses incurred in the Litigation; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this Litigation to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of March 30, 2007 (the "Stipulation").

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

3. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund and reimbursement of expenses in an aggregate amount of $531,085.07 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees shall be allocated by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶¶6.2-6.3 thereof, which terms, conditions, and obligations are incorporated herein.

5. Lead Plaintiff John Dzaugis is hereby awarded $7,300.00.

IT IS SO ORDERED.

DATED: 7-26-07

Todd Campbell
THE HONORABLE TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE

Submitted by,

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EXHIBIT 9

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

NORFOLK COUNTY RETIREMENT SYSTEM, individually and on behalf of all others similarly situated, *Plaintiff*, v. COMMUNITY HEALTH SYSTEMS, INC., WAYNE T. SMITH and W. LARRY CASH, *Defendants*.	Consolidated Civil Action No.: 11-cv-0433 Judge Eli Richardson Magistrate Judge Alistair E. Newbern

ORDER AWARDING ATTORNEY'S FEES AND EXPENSES

This matter came before the Court for hearing on June 19, 2020, on the motion of counsel for Lead Plaintiff for an award of attorney's fees and expenses incurred in this action, and Lead Plaintiff's requests for an award pursuant to the Private Securities Law Reform Act of 1995, and the Court having considered all papers filed and proceedings held herein and having found the settlement of this action to be fair, reasonable and adequate, and otherwise being fully informed of the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated January 21, 2020.

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

3. The Court finds that the Lead Counsel's request for attorney's fees and reimbursement of expenses, and the fee award to Lead Plaintiff pursuant to 15. U.S.C. §78u-4(a)(4), are fair, reasonable, and adequate. The Court hereby awards Lead Counsel attorney's fees

of $5,028,459.39, calculated based upon 9.75% of the net amount after deducting Lead Counsel's case expenses and the costs of notice and claims administration from the Settlement Fund, and reimbursement of expenses of $977,946.35, plus accrued interest of $1,086.18 through June 22, 2020. The Court awards Lead Plaintiff's attorney's fees of $163,275.00 plus $29.53 in accrued interest through June 22, 2020. Interest will continue to accrue at the same rate as the Settlement Fund if the fee awards to Lead Counsel or Lead Plaintiff are paid on a later date. The fee awards are payable upon entry of this order awarding fees and expenses, subject to the terms, conditions and obligations of the Stipulation, and in particular ¶6.2 thereof, which terms, conditions and obligations are incorporated herein,

4. The Court finds that the amount of attorney's fees awarded is fair and reasonable under the "percentage-of-recovery" method, considering, among other things, the highly favorable result achieved for the Class; the contingent nature of Lead Plaintiff's counsel's representation; Lead Plaintiff's diligent prosecution of the Litigation in this Court and the Court of Appeals for the Sixth Circuit; the quality of legal services provided by Lead Plaintiff's counsel in light of the complexity of the case and significant litigation risks; the public interest in encouraging private lawsuits to enforce violations of the federal securities laws; the absence of any timely and valid objections by members of the Class; the awarded fee is lower than the range of percentage fee awards approved by courts within the Sixth Circuit in cases of this size; and an independent "lodestar" cross-check shows that the numbers of hours expended and the hourly rates charged by Lead Plaintiff's attorneys are fair and reasonable, particularly since the requested fee as a percentage of recovery represents a significant discount to Lead Counsel's time charges.

IT IS SO ORDERED.

Dated: June 22, 2020

Eli Richardson

THE HONORABLE ELI RICHARDSON
UNITED STATES DISTRICT JUDGE