UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

LEONARD SOKOLOW, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. LJM FUNDS MANAGEMENT, LTD., et al., Defendants.	)	No. 1:18-cv-01039 <u>CLASS ACTION</u> Judge Robert M. Dow, Jr.

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

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I. INTRODUCTION

Lead Counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Labaton Sucharow LLP ("Labaton Sucharow"), have obtained a Settlement[1] consisting of $12.85 million, plus interest earned thereon. For the reasons set forth herein and in the accompanying Memorandum of Points and Authorities in Support of Lead Plaintiffs' Motion for Final Approval of Partial Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), the settlement of this Action is a very favorable result and was achieved through the skill and effective advocacy of Lead Counsel. As compensation for their efforts in achieving this result, Lead Counsel seek an award of attorneys' fees of 28% of the $12.85 million fund, plus expenses incurred in the prosecution of the Action in the amount of $25,869.93, plus interest at the same rate and for the same period as that earned by the Settlement Fund. The requested fee is well within the range of percentages normally awarded in securities class actions in this Circuit, and is the appropriate method of compensating counsel.

The 28% fee requested is especially warranted in light of the contingent nature of counsel's representation, the efforts of counsel in obtaining this favorable result, and the risks faced in the prosecution and settlement of the litigation against the Settling Defendants.[2] Absent the Settlement, and assuming Lead Plaintiffs prevailed on Defendants' pending motion to dismiss, the claims against the Settling Defendants could have continued for many years through fact discovery, expert discovery, summary judgment, trial, and likely appeals. The Settlement provides Settlement Class

[1] All capitalized terms not otherwise defined herein have the meanings ascribed in the Stipulation and Agreement of Partial Settlement dated August 19, 2019, ECF No. 192 (the "Stipulation"). This partial Settlement does not resolve Lead Plaintiffs' claims against defendants LJM Funds Management, Ltd., Anthony J. Caine and Anish Parvateneni (the "Non-Settling Defendants").

[2] These factors are also discussed in the accompanying Declarations of James E. Barz and James W. Johnson in support of: (i) Lead Plaintiffs' Motion for Final Approval of Partial Class Action Settlement and Approval of Plan of Allocation, and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and an Award to Lead Plaintiffs Pursuant to 15 U.S.C. §77z-1(a)(4) ("Barz Decl." and "Johnson Decl.").

Members with a substantial cash benefit now, rather than a potential recovery after several years of continued litigation, and eliminates the possibility of no recovery at all or of the costs of litigation diminishing the recovery. It is rare to obtain such a significant settlement prior to a ruling on a motion to dismiss and is reflective of counsel's experience, reputation, and skill in prosecuting securities class actions.

Lead Counsel undertook representation of the Settlement Class on a contingent fee basis and no payment has been made to date for their services or the litigation expenses they have incurred on behalf of the Settlement Class. Faced with complex issues, and opposed by experienced defense counsel, Lead Counsel nevertheless succeeded in securing a favorable result for the Settlement Class. Lead Counsel believe their reputation as leaders in this field, their diligent efforts, and their dedication to the interests of the Settlement Class substantially contributed to obtaining the Settlement. In addition, Lead Plaintiffs were actively involved in the Action and have approved the requested fee. *See* accompanying Joint Declaration of the Individual Lead Plaintiffs ("Ind. Lead Plaintiffs Decl."), ¶¶1-3; Declaration of SRS Capital Advisors, Inc. ("SRS Decl."), ¶¶5, 7; Declaration of Tradition Capital Management LLC ("Tradition Decl."), ¶¶5, 7.

For all the reasons set forth herein and in the accompanying declarations, Lead Counsel respectfully submit that the requested attorneys' fees and expenses are fair and reasonable and should be awarded by the Court. Separately, the Individual Lead Plaintiffs seek awards of $2,000 each pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Settlement Class. The Individual Lead Plaintiffs support their application with a joint declaration and respectfully request that the Court approve the requested awards.

II. AWARD OF ATTORNEYS' FEES

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Approach to Awarding Attorneys' Fees in Common Fund Cases

For their efforts in creating a common fund for the benefit of the Settlement Class, Lead Counsel seek as attorneys' fees a reasonable percentage of the fund recovered for the Settlement Class. Both the Supreme Court and the Seventh Circuit have long recognized that attorneys who represent a class and aid in the creation of a settlement fund are entitled to compensation for legal services from the settlement fund. Under this "equitable" or "common fund" doctrine established more than a century ago in *Trustees v. Greenough*, 105 U.S. 527, 528 (1882), attorneys who create a common fund for a class are entitled to an award of fees and expenses from that fund as compensation for their work. *See Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007).

While the Seventh Circuit has recognized the availability of the "lodestar" method (multiplying reasonable hours by reasonable rates) to assess attorneys' fees, it and other courts have also recognized the limitations inherent in the lodestar method, as it can serve to reward and encourage inefficient staffing of cases, cause unnecessary delay in resolving disputes, and increase the burden on the judicial system. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) ("*Synthroid I*") (stating the lodestar approach creates the "incentive to run up the billable hours"); *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) (noting in civil rights fee-shifting case the challenge of judicial review of attorney time because the "judge cannot readily see what legal work was reasonably necessary at the time" and that rewarding lawyers for hours billed can create a "conflict of interests").[3]

[3] *See also, e.g.*, *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) ("'Where success is a condition precedent to compensation, "hours of time expended" is a nebulous, highly variable standard, of limited significance. One thousand plodding hours may be far less productive than one imaginative, brilliant hour.'") (citation omitted).

Thus, "[i]n a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis." *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 1:15-cv-02062-TWP-MPB, 2019 WL 4193376, at *3, *5 (S.D. Ind. Sept. 4, 2019) ("[T]he use of a lodestar cross-check is no longer recommended in the Seventh Circuit."); *see also Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming district court award of percentage of the recovery to class counsel without lodestar cross-check); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 637 (7th Cir. 2011) (rejecting objector's appeal and declining to "disturb the district court's assessment of fees" on a percentage-of-the-fund basis); *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 598-600 (7th Cir. 2005) (affirming percentage-of-the-fund fee award); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (stating that "[w]hen a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund" and affirming award).

Consistent with the Seventh Circuit, judges in this district routinely approve percentage-of-the-fund fees without any regard to lodestar. *See, e.g.*, *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (St. Eve, J.) (stating it was unnecessary to consider lodestar and citing cases); *see also In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844, 859 (N.D. Ill. Feb. 20, 2015) (Dow, J.) (finding that the percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district" and stating "the Court sees no utility in considering" counsel's submitted lodestar).

Accordingly, Lead Counsel request attorneys' fees of 28% of the Settlement Fund.

B. The Requested Fee Is Reasonable and Appropriate

The Supreme Court has emphasized that private securities actions provide a "'most effective weapon in the enforcement' of securities laws and are 'a necessary supplement to [SEC] action.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318-19 (2007) (citation omitted). It is

well documented that large defense firms representing corporations attract talented lawyers who are very well compensated, and fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs. *See Silverman*, 739 F.3d at 958; *Wolff*, 2012 WL 5290155, at *5 ("Mindful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively."). In addition to providing just compensation, awards of attorneys' fees from a common fund serve to encourage skilled counsel to take on the risk of representing plaintiffs in class action cases on a contingent fee basis. *See, e.g.*, *Silverman*, 739 F.3d at 958 (approving fee award and noting that "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel").

The percentage-of-the-fund method is intended to mirror the private marketplace for negotiated contingent fee arrangements. *See Kirchoff*, 786 F.2d at 324 ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'") (citation and emphasis omitted); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (stating "[t]he 'percentage of the fee' method is preferable" to the lodestar method "because it more closely replicates the contingency fee market rate for counsel's legal services").

Here, the requested 28% fee appropriately compensates Lead Counsel based on the prevailing market rate in similar actions, the quality of services provided, and the risks of obtaining no compensation at all. To date, no Settlement Class Member has objected to the fee, and it is supported by Lead Plaintiffs. Lead Counsel respectfully request that the 28% fee be approved.

1. The 28% Attorneys' Fee Request Is Consistent with Seventh Circuit Authority

The Seventh Circuit has held that, in deciding common fund cases, district courts should "'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Taubenfeld*, 415 F.3d at 599 (citation omitted); *Silverman*, 739 F.3d at 957, 958 (holding that attorneys' fees should "approximate the market rate" and that "[c]ontingent fees compensate lawyers for the risk of nonpayment"). Had this case been litigated on an individual rather than class basis, the customary fee arrangement would be in the range of 33-1/3% to 40% of the recovery. *See Kirchoff*, 786 F.2d at 323 (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled before trial). Moreover, this Court has recognized that in common fund cases, "an award of 33.3% of the settlement fund is within the reasonable range." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (Dow, J.).

The percentage sought here, 28% of the $12.85 million Settlement Fund, is below such ranges and consistent with percentages awarded to Lead Counsel in this district. *See, e.g.*, *Van Noppen v. InnerWorkings, Inc.*, No. 14-cv-01416, slip op., ¶4 (N.D. Ill. Nov. 2, 2016) (Blakey, J.) (awarding Labaton Sucharow 30% on $6.025 million settlement)[4]; *Bristol Cnty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.*, No. 1:12-cv-03297, slip op., ¶4 (N.D. Ill. July 22, 2015) (Alonso, J.) (awarding Robbins Geller 33% on $9.75 million settlement); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira, Inc.*, No. 1:11-cv-08332-AJS, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (St. Eve, J.) (awarding Robbins Geller and co-counsel 30% on $60 million settlement); *Wong v. Accretive Health, Inc.*, No. 1:12-cv-03102, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (Coleman, J.) (awarding Robbins Geller and co-counsel 30% on $14 million settlement).

[4] All unreported authorities are attached to the accompanying Appendix of Unreported Authorities.

The 28% fee request is also well within the range of fees awarded in this district in other securities and complex class actions. *See, e.g.*, *Rubinstein v. Gonzalez*, No. 14-cv-9465, slip op., ¶1 (N.D. Ill. Oct. 22, 2019) (Dow, J.) (awarding 30% of $16.75 million securities settlement); *Dairy Farmers of Am.*, 80 F. Supp. 3d at 862 (awarding 33% of $46 million antitrust settlement); *Gupta v. Power Solutions Int'l, Inc.*, No. 16-cv-08253, slip op., ¶4 (N.D. Ill. May 13, 2019) (Kendall, J.) (awarding 33-1/3% on $8.5 million securities settlement). Thus, Lead Counsel's request for fees in a lower amount, 28% of the total recovery, is reasonable in this case.

2. Lead Counsel Provided Quality Legal Services that Produced Excellent Benefits for the Settlement Class

In evaluating counsel's fee request, courts may consider the "quality of legal services rendered." *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at *3 (noting that "[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity"). From the outset, Lead Counsel sought to obtain the maximum recovery for the Settlement Class. This case required a determined investigation and the skill to respond to a host of legal and factual defenses raised by the Settling Defendants. During the course of the Action, Lead Counsel spent over 2,600 hours of attorney and paraprofessional time investigating the claims, drafting detailed complaints, analyzing causation issues in consultation with internal analysts, and preparing for and participating in a full-day settlement conference that included extensive analysis and written statements by the parties. During settlement negotiations, Lead Counsel demonstrated their willingness to continue to litigate the claims rather than accept a settlement that was not in the best interest of the Settlement Class. Notably, the Settlement was only obtained after the parties were unable to reach an agreement on an appropriate settlement value at the settlement conference with Judge Schenkier and Lead Counsel pressed forward in opposing Defendants' motion to dismiss.

Lead Counsel were opposed in this Action by counsel from Sidley Austin LLP, Goodwin Procter LLP, Drinker Biddle & Reath LLP, and Blank Rome LLP, firms with reputations for the defense of complex civil cases. *See Beesley v. Int'l Paper Co*., No. 3:06-cv-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (observing that "[l]itigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination"). In the face of this formidable opposition, Lead Counsel developed their case so as to persuade Settling Defendants to settle the Action on terms favorable to the Settlement Class prior to the Court deciding Defendants' motion to dismiss. Lead Counsel's skill, expertise, and excellent advocacy in representing the Settlement Class are reflected in this favorable result.

3. The Requested Attorneys' Fees Are Fair and Reasonable in Light of the Contingent Nature of the Representation

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958; *see also Taubenfeld*, 415 F.3d at 600 (stating courts should consider "the contingent nature of the case" and the fact "that lead counsel was taking on a significant degree of risk of nonpayment"). "All contingent fee class action cases involve some degree of risk for plaintiffs' counsel." *Schulte*, 805 F. Supp. 2d at 598. Lead Counsel undertook this Action on a contingent fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. As in *Schulte*, "there was no certainty that Plaintiffs would win, or that the case would settle; and if Plaintiffs had lost, Class Counsel 'would receive no fees at all.'" 805 F. Supp. 2d at 597-98 (citation omitted). Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular (*e.g.*, monthly) basis, Lead Counsel had no such guarantee of payment, had to wait for any payment while the case was prosecuted, and had to incur

unpaid expenses while the case was ongoing. While the outcome here was favorable, there was no guarantee it would be at the time counsel agreed to take the case.

Not only was there a risk of dismissal, but even if Lead Plaintiffs successfully opposed Defendants' motion to dismiss, Lead Plaintiffs still faced significant obstacles. Assuming Lead Plaintiffs were able to overcome the Settling Defendants' motion(s) for summary judgment after costly discovery efforts, they still would have faced risks in proving falsity and materiality before a jury. *See* Settlement Memorandum at 9-10. Moreover, even apart from proving liability, proving damages in securities cases (and especially in open-ended mutual fund cases) is complex and requires expert testimony to establish the amount – and indeed the existence – of actual damages. *See id*. Here, the damages assessments of the parties' respective experts who would testify at trial would likely be polar opposites and the determination of the amount, if any, of damages suffered by the Settlement Class at trial would have turned into a "battle of the experts."

There are numerous examples where plaintiffs' counsel in contingent cases such as this, after the expenditure of significant time and expenses, have received no compensation. Securities cases have been dismissed at the pleading stage, dismissed on summary judgment, lost at trial, and even reversed after plaintiffs prevailed at trial, as the law is complex and continually evolving. *See, e.g.*, *In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486 CW(EDL), 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants after lengthy trial); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (claims based on purchases on foreign exchanges eliminated by the "new 'transactional' rule" enunciated by the Supreme Court). In fact, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel*

Energy, Inc., 364 F. Supp. 2d 980, 994 (D. Minn. 2005).[5] Quite simply, "Defendants prevail outright in many securities suits." *Silverman*, 739 F.3d at 958.

These risks were heightened here due to the liquidation of the Fund, the limited available insurance that was being depleted by defense costs of four large defense firms, and the risk that the usually long timeframe to litigate such cases would seriously undermine the benefits of any recovery. Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result and that such a result would be realized only after considerable effort and after working without compensation for a period of time. Notably, despite the wasting insurance, the case did not settle at the mediation, as Lead Plaintiffs walked away without a deal and Lead Counsel continued to litigate the case toward a better result. Lead Counsel committed their time and money to the vigorous and successful prosecution of the Action for the benefit of the Settlement Class. The contingent nature of counsel's representation strongly favors approval of the requested fee. *See, e.g.*, *Sutton*, 504 F.3d at 694 (reversing district court's reduced fee award and stating "[b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated").

4. The Stakes of the Action Favor a 28% Fee Award

The Court should also consider the "stakes of the case" in assessing a reasonable attorneys' fee. *Synthroid I*, 264 F.3d at 721. As in other commercial class actions, the stakes here were high "given the size of the Class, the scale of the challenged activity, the complexity and costs of the legal proceedings, and the amount of money involved." *Schulte*, 805 F. Supp. 2d at 598.

Lead Counsel successfully obtained a favorable recovery at an early stage of the litigation, which is more beneficial to the Settlement Class than waiting several more years to obtain their

[5] *See also, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversal of jury verdict of $81 million).

recovery, not only because of the time value of money but also because the increased expenses of continued litigation could have reduced the recovery to the Settlement Class. As the litigation advances, the risks can also increase. Absent a successful outcome, Lead Counsel would not have been compensated for thousands of hours of attorney and support staff time, and would have had to write off expert and consulting fees and other expenses. And, even if Lead Plaintiffs prevailed at trial, Defendants would have the opportunity to appeal any judgment obtained, possibly delaying a favorable resolution for years. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (15-year securities action prosecuted by Robbins Geller that was filed in 2002, resulted in jury verdict for plaintiffs in 2009, remanded after appeal in 2015, and settlement approved in 2016). Lead Counsel undertook this case fully prepared to litigate against these obstacles.

5. The Reaction of the Settlement Class Supports the Requested Award

Pursuant to this Court's August 28, 2019 Preliminary Approval Order (ECF No. 197), more than 61,700 copies of the Notice have been mailed to potential Settlement Class Members and nominees. Settlement Class Members were informed in the Notice that Lead Counsel would apply for attorneys' fees not to exceed 28% of the Settlement Fund, plus expenses not to exceed $100,000, plus interest earned on both amounts. Settlement Class Members were also advised of their right to object to Lead Counsel's fee and expense request and the procedure for doing so. While the deadline to file objections – November 27, 2019 – has not yet passed, to date, no objection to any aspect of the Settlement, including the fee and expense request, has been received. Lead Counsel will address any objections received in the reply brief to be filed on December 11, 2019.

6. Lead Plaintiffs Approved the 28% Fee Request

Lead Plaintiffs, who worked with counsel throughout the Action, have approved the 28% fee request sought here. *See* Ind. Lead Plaintiff Decl., ¶5; Tradition Decl., ¶7; SRS Decl., ¶7. Unlike consumer and other class action cases, securities fraud cases have unique procedures for appointing

as the lead plaintiff the class member with the largest financial interest. *See Silverman*, 739 F.3d at 959 (stating that it is "a premise of several rules in the Private Securities Litigation Reform Act" that investors with a large stake in the settlement fund, in "looking out for themselves, help to protect the interests of class members with smaller stakes"); 15 U.S.C. §77z-1(a)(3)(B). The Seventh Circuit has also considered the makeup of the class in reviewing fee awards and considering the lack of objection. *See, e.g.*, *Synthroid I*, 264 F.3d at 717 (noting that that "[u]nlike members of the consumer class, TPPs [third party payers] are sophisticated purchasers of pharmaceuticals" and "[t]heir consent to this deal shows that a larger judgment was unlikely"); *Silverman*, 739 F.3d at 959 (noting lack of objection by "institutional investors [that] have in-house counsel with fiduciary duties to protect the beneficiaries" and high fee awards could be "worth a complaint to the district judge if the lawyers' cut seems too high"). That all Lead Plaintiffs here, two of whom are attorneys, have approved Lead Counsel's fee request also weighs in favor of its reasonableness.

Accordingly, all of the factors discussed above support the fee award requested by Lead Counsel, and the Court should grant counsel's application.

III. LEAD COUNSEL'S EXPENSES ARE REASONABLE

In addition to an award of attorneys' fees, attorneys who create a common fund for the benefit of a class are also entitled to payment of reasonable litigation expenses and costs from the fund. *Synthroid I*, 264 F.3d at 722; *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992).

Lead Counsel are requesting payment of expenses in the amount of $25,869.93. As set forth in the accompanying declarations of Robbins Geller and Labaton Sucharow, these expenses were reasonably incurred in the prosecution of this Action. *See* Robbins Geller Decl., ¶¶6-7; Labaton Sucharow Decl., ¶¶5-6; *Abbott v. Lockheed Martin Corp.*, No. 06-cv-701-MJR-DGW, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) ("It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes

such things as expert witness costs; computerized research; court reporters; travel expense; copy, phone and facsimile expenses and mediation.").[6]

Thus, Lead Counsel respectfully request payment of these reasonable litigation expenses and costs from the Settlement Fund.

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

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but it also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class." 15 U.S.C. §77z-1(a)(4).

Pursuant to this provision, courts in this district have granted awards, for example, to class representatives reflecting time spent on the litigation based on customary rates. *See, e.g.*, *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira, Inc.*, No. 11-cv-08332, ECF No. 192 (N.D. Ill. July 8, 2014) (requesting award for estimated employee time and customary rate); *id.*, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (St. Eve., J.) (awarding more than $25,000 to four institutional representatives); *Rubinstein*, No. 14-cv-9465, ECF No. 292, ¶15 (individual requesting award for time "devoted to the representation of the Class" based on hourly rate from annual salary); *id.*, slip op., ¶3 (N.D. Ill. Oct. 22, 2019) (Dow, J.) (awarding $9,900). Also pursuant to this provision,

[6] With regard to these expenses, judges in this district have split on whether electronic legal research expenses should be awarded or should be considered part of the attorneys' fee award. *Compare Silverman*, 2012 WL 1597388, at *4 (declining to approve legal research expenses) *with George v. Kraft Foods Global, Inc.*, No. 1:08-cv-3799, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (allowing recovery of electronic legal research expenses). Recent cases appear to have continued to approve electronic legal research expenses. *See Accretive*, No. 1:12-cv-03102, Transcript of Proceedings, ECF No. 85 at 4-5 (N.D. Ill. Apr. 30, 2014) (discussing split); *Accretive*, 2014 WL 7717579 (awarding legal research expenses), *Allscripts*, No. 1:12-cv-03297, ECF No. 116 at 14-15 (N.D. Ill. June 17, 2015) (memorandum discussing split); *Allscripts*, No. 1:12-cv-03297, slip op., ¶4 (N.D. Ill. July 22, 2015) (awarding legal research expenses). Allowing recovery of these expenses separate from the fee award is consistent with the Seventh Circuit's directive that fee awards should mimic the market. *See, e.g.*, *Cont'l Ill.*, 962 F.2d at 570 ("[T]he paying, arms' length market reimburses lawyers' LEXIS and WESTLAW expenses.").

individual class representatives have sought awards reflecting time spent on the litigation that could have been spent on other matters without consideration of an hourly rate or the exact time spent. *See, e.g.*, *In re Groupon, Inc. Sec. Litig.*, No. 12-cv-2450, ECF No. 365, ¶20 (N.D. Ill. June 22, 2016) (two individuals requesting award for "considerable time and effort [expended] representing the interests of the Class"); *id.*, 2016 WL 3896839, at *5 (N.D. Ill. July 13, 2016) (Norgle, J.) (awarding $5,000 to each individual class representative); *In re Akorn, Inc. Sec. Litig.*, No. 15-cv-01944, ECF No. 174-5, ¶7 (N.D. Ill. Feb. 19, 2018) (requesting award under 15 U.S.C. §78u-4(a)(4) for time devoted to the "representation of the Settlement Class" that could have otherwise been dedicated to tennis instructor business); *id.*, 2018 WL 2688877, at *4-*5 (N.D. Ill. June 5, 2018) (Feinerman, J.) (awarding $10,000 each to three individual class representatives, $30,000 total).

Here, Justin and Jenny Kaufman, Dr. Larry and Marilyn Cohen, and Joseph N. Wilson seek awards of $2,000 each ($10,000 total) for the time and effort they dedicated to bringing and supervising this Action on behalf of and for the benefit of the Settlement Class. These efforts included time spent: conferencing with counsel and each other on case strategy and developments, assembling trading data, reviewing draft filings, and reviewing and discussing the proposed Settlement. Ind. Lead Plaintiffs Decl., ¶3. This time could have been spent on work or personal-related matters. *Id.*, ¶6. The requests of $2,000 are modest compared to the awards noted herein, and there has been no objection to date. The Individual Lead Plaintiffs respectfully request the awards be approved.

V. CONCLUSION

For all the reasons stated herein, in the Settlement Memorandum, and in the accompanying declarations, Lead Counsel submit that the Court should approve the fee and expense application and enter an order awarding Lead Counsel 28% of the Settlement Amount, plus payment of $25,869.93 in expenses, plus the interest earned on both amounts at the same rate and for the same period as that

earned on that portion of the Settlement Fund until paid. The Court should also award the Individual Lead Plaintiffs $10,000 in the aggregate ($2,000 for each individual), related to their representation of the Settlement Class.

DATED: November 13, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2019, I caused the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4) to be served electronically through the Court's ECF system upon all registered ECF participants.

/s/ James E. Barz

JAMES E. BARZ