UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(COLUMBIA DIVISION)

In re SCANA Corporation Securities Litigation	Civil Action No. 3:17-CV-2616-MBS

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Labaton Sucharow LLP ("Labaton Sucharow," and together with BLB&G, "Lead Counsel"), respectfully submit this memorandum of law in support of their motion for (i) an award of attorneys' fees for Plaintiffs' Counsel[1] in the amount of 14% of the Settlement Fund; (ii) an award of $729,303.12 for expenses that were reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving the Action; and (iii) awards of $34,048.82 to West Virginia Investment Management Board ("West Virginia IMB") and $7,783.39 to Stichting Blue Sky Global Equity Active Low Volatility Fund and Stichting Blue Sky Active Large Cap Equity USA Fund ("Blue Sky," and together with West Virginia IMB, "Lead Plaintiffs") for their costs and expenses directly related to their representation of the Settlement Class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[2]

PRELIMINARY STATEMENT

The proposed Settlement, which provides for a payment of $192,500,000—with $160,000,000 paid in cash and $32,500,000 paid in freely-tradable Dominion Energy, Inc. ("Dominion Energy")[3] common stock, or cash at the option of SCANA—represents an excellent

[1] "Plaintiffs' Counsel" consist of Lead Counsel, BLB&G and Labaton Sucharow, and Liaison Counsel, Motley Rice LLC ("Motley Rice"). Only BLB&G, Labaton Sucharow, and Motley Rice will be paid from the attorneys' fees awarded by the Court.

[2] Unless otherwise defined herein, all capitalized terms have the meanings set forth in the Stipulation and Agreement of Settlement, dated December 20, 2019, previously filed with the Court (ECF No. 214-2) (the "Stipulation") or in the Joint Declaration of John C. Browne and James W. Johnson in Support of (I) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses (the "Joint Declaration"), filed herewith. Citations to "¶ __" refer to paragraphs in the Joint Declaration and citations to "Ex. __" refer to exhibits to the Joint Declaration.

[3] Dominion Energy merged with Defendant SCANA Corporation ("SCANA" or the "Company")

result for the Settlement Class. As noted in the accompanying Settlement Memorandum, the proposed Settlement ranks as the largest securities class action recovery ever obtained in the District of South Carolina, the fifth largest securities class action recovery in the history of the Fourth Circuit, and among the top 100 securities class action recoveries nationwide.

In undertaking this litigation, Lead Counsel faced numerous challenges to proving liability, loss causation, and damages that posed the serious risk of no recovery, or a substantially lesser recovery than the Settlement, for the Settlement Class. The significant recovery was achieved through the skill, tenacity, and effective advocacy of Lead Counsel, which litigated this Action on a fully contingent basis against highly skilled defense counsel. The Settlement was reached only after more than two years of hard-fought litigation, including substantial discovery, which required an enormous amount of counsel's time and resources.

As detailed in the accompanying Joint Declaration,[4] Lead Counsel vigorously pursued this litigation from its outset by, among other things: (i) conducting an extensive investigation into the alleged fraud, including a thorough review of the voluminous public record and documents obtained pursuant to the South Carolina Freedom of Information Act ("FOIA") and other informal discovery requests, as well as interviews with 69 former employees of SCANA, its lead contractors on the Nuclear Project, and others with relevant knowledge of the alleged fraud; (ii) researching, drafting, and filing a detailed, 183-page amended complaint based on

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effective January 2, 2019, upon which SCANA common stock was converted into Dominion Energy common stock.

[4] The Joint Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for detailed descriptions of, *inter alia*: the Court is respectfully referred to it for a detailed description of, *inter alia*: the nature of the claims asserted (¶¶ 15-19); the history of the Action (¶¶ 20-72); the negotiations leading to the Settlement (¶¶ 73-77); the risks and uncertainties of continued litigation (¶¶ 78-105); and the services Plaintiffs' Counsel provided for the benefit of the Settlement Class (¶¶ 8-9; 20-33; 42-77).

Lead Counsel's investigation; (iii) engaging in extensive briefing and conducting oral argument before the Court in successfully defeating the bulk of Defendants' motions to dismiss the amended complaint; (iv) engaging in substantial informal and formal discovery efforts, including obtaining and reviewing voluminous additional documents pursuant to FOIA and other informal requests, and, in connection with formal discovery, drafting and serving initial disclosures and numerous document requests on Defendants, obtaining 565,507 documents (totaling 5,215,238 pages) produced by Defendants in response to those document requests, responding to Defendants' interrogatories and document requests, including by producing over 2,120 documents (totaling 146,963 pages) on Lead Plaintiffs' behalves, and engaging in extensive meet and confer negotiations with Defendants regarding the parties' document requests, interrogatories, and productions; (v) moving for class certification, which involved the preparation of an expert report from Lead Plaintiffs' economic expert, defending the depositions of each of the Lead Plaintiffs, Lead Plaintiffs' economic expert, and cross-examining representatives from each of the Lead Plaintiffs' four relevant non-party investment managers; (vi) undertaking months-long efforts to mediate and settle the Action, including two mediation sessions under the auspices of a highly experienced class action mediator; (vii) negotiating the final terms of the Settlement with Defendants; and (viii) drafting, finalizing, and filing the Stipulation and related Settlement documents. *See* ¶¶ 8-9; 20-33; 42-77.

The Settlement is a particularly favorable result when considered in light of the substantial litigation risks in this Action, including the risks associated with proving Defendants' liability and establishing loss causation and damages. These risks are detailed in the Joint Declaration at paragraphs 78 to 105 and are summarized in the memorandum of law supporting the Settlement. These risks posed a real possibility that Lead Plaintiffs and the Settlement Class

would not be able to recover or would have recovered a much lesser amount if the Action proceeded.

As compensation for their efforts on behalf of the Settlement Class and the risks of non-payment they faced in bringing the Action on a contingent basis, Lead Counsel now seek an attorney-fee award for all Plaintiffs' Counsel of 14% of the Settlement Fund, payable proportionately in cash and stock. The requested fee is well within the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries on a percentage basis. Further, the requested fee represents a multiplier of approximately 1.36 on Plaintiffs' Counsel's total lodestar, which is in the range of multipliers typically awarded in class actions with significant contingency risks such as this one.

Moreover, the fee request has the full support of Lead Plaintiffs. *See* Declaration of Harmen Nieuwenhuis (Ex. 1) ("Nieuwenhuis Decl."), ¶ 9; Declaration of Craig Slaughter (Ex. 2) ("Slaughter Decl."), ¶ 8. West Virginia IMB and Blue Sky—both sophisticated institutional investors that actively supervised the Action—have each endorsed the fee request and believe that a 14% fee award is reasonable in light of result achieved in the Action, the quality of the work counsel performed, and the risks of the litigation. *Id.* As a result, the fee result is entitled to a "presumption of reasonableness." *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 261 (E.D. Va. 2009) ("a PSLRA case in which a fee request has been approved and endorsed by properly-appointed lead plaintiffs . . . enjoys a presumption of reasonableness"); *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *15 (E.D. Pa. Jan. 25, 2016) ("Where the Lead Plaintiff approves the Lead Plaintiff's counsel's request[ed] fee award – as Lead Plaintiff does here – the Court should afford the fee requested a presumption of reasonableness.")

In addition, while the deadline set by the Court for Settlement Class Members to object to

the requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 111; 135. The Notice mailed to potential Class Members states that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 14% of the Settlement Fund and for payment of litigation expenses (including the reasonable costs and expenses of Lead Plaintiffs) in an amount not to exceed $1,200,000. ¶¶ 135; 148. The fees and expenses sought by Lead Counsel are within the amounts set forth in the Notice.[5]

Lead Counsel submit that, in light of the recovery, the time, effort, and work performed by Plaintiffs' Counsel, the skill and expertise required, and the risks that counsel undertook, the requested fee award is reasonable. In addition, the Litigation Expenses for which Lead Counsel seek payment were reasonable and necessary for the successful prosecution of the Action.

ARGUMENT

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

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).

As the Supreme Court has emphasized, private securities actions such as this Action are "an essential supplement to criminal prosecutions and civil enforcement actions" by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). Given the importance of such suits, "the process of setting a proper fee in a PSLRA case must include an incentive component to ensure that competent, experienced counsel will be encouraged to undertake the

[5] The deadline for submitting objections is May 27, 2020. As provided in the Court's Preliminary Approval Order (ECF No. 219), Lead Plaintiffs will file reply papers no later than June 10, 2020 addressing any objections that may be received.

often risky and arduous task of representing a class in a securities fraud case." *In re MicroStrategy, Inc. Sec. Litig.*, 172 F. Supp. 2d 778, 788 (E.D. Va. 2001).

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

For their efforts in creating a common fund for the benefit of the Settlement Class, Lead Counsel seek a reasonable percentage of the fund recovered as attorneys' fees. Over the last few decades, the percentage method of awarding fees has become an accepted method, if not the prevailing method, for awarding fees in common fund cases throughout the United States. This is particularly true in securities fraud class actions, where the PSLRA dictates that attorneys' fees shall not exceed a "reasonable percentage" of the damages recovered for the class. 15 U.S.C. §78u-4(a)(6); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005) (the PSLRA contemplates that "the percentage method will be used to calculate attorneys' fees in securities fraud class actions").

A percentage fee award is also appropriate because it encourages counsel to obtain the maximum recovery for the class at the earliest possible stage of the litigation and, hence, most fairly correlates plaintiffs' counsel's compensation to the benefit achieved for the class. This rule, known as the common fund doctrine, is firmly rooted in U.S. case law. *See, e.g., Trustees v. Greenough*, 105 U.S. 527 (1881); *Central R.R. & Banking Co. v. Pettus*, 113 U.S. 116 (1885).

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the "common fund doctrine" a reasonable fee may be based "on a percentage of the fund bestowed on the class." *Id.* at 900 n.16. Furthermore, two Circuit Court of Appeals have ruled that the percentage method is mandatory in common fund cases, *see Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261 (D.C. Cir. 1993); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991), and other Circuits and commentators have expressly approved the use of the percentage

method. *See Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994) (expressly authorizing percentage method and holding that use of lodestar/multiplier method was abuse of discretion); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (citing *Blum*, 465 U.S. at 900 n.16, recognizing both "implicitly" and "explicitly" that a percentage recovery is reasonable in common fund cases); *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); Report of the Third Circuit Task Force, *Court Awarded Attorney Fees*, 108 F.R.D. 237, 254 (Oct. 8, 1985).[6]

Courts in the Fourth Circuit have recognized this "overwhelming[]" preference for awarding attorneys' fees based on a common fund recovery pursuant to the percentage-of-the-fund method of calculation. *See, e.g., Phillips v. Triad Guar., Inc.*, No. 1:09CV71, 2016 U.S. Dist. LEXIS 60950, at *6 (M.D.N.C. May 9, 2016) ("'[o]verwhelmingly,' courts prefer the percentage method . . . , in part because the percentage method closely associates the attorneys' fees with the overall result achieved") (citations omitted). "In the context of class actions, the vast majority of courts use the percentage of recovery method, which is advantageous because it ties the attorneys' award to the overall result achieved rather than the number of hours worked." *McClaran v. Carolina Ale House Operating Co., LLC*, No. 3:14–cv–03884–MBS, 2015 WL 5037836 (D.S.C. Aug. 26, 2015) (Seymour, J.). Percentage-of-recovery fees also have the salutary effect of conserving judicial resources. Percentage fees are simple to calculate and do not require the court to "second guess" each and every decision made by counsel during the course of a complex case. *See Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 503 (E.D. Va. 1995) ("the percentage method is

[6] The *Manual for Complex Litigation* also endorses the use of the percentage-of-the-fund method in awarding attorneys' fees in common fund cases. *See Manual for Complex Litigation* §14.121, at 187 (4th ed. 2004) ("the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases") (footnotes omitted).

more efficient and less burdensome than the traditional lodestar method, and offers a more reasonable measure of compensation for common fund cases").

In sum, whether calculated as a percentage of the fund or in relation to Plaintiffs' Counsel's lodestar, the fee requested here is well within the range of fees approved by courts in the Fourth Circuit.

III. LEAD COUNSEL'S FEE REQUEST IS REASONABLE UNDER FOURTH CIRCUIT CRITERIA

Lead Counsel request a fee representing 14% of the Settlement Fund. This request is fair and reasonable under the relevant standards. To determine the reasonableness of the percentage fee award sought by Lead Counsel in this Action, this Court may elect to apply all or some of the factors that the Fifth Circuit announced in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), which were adopted by the Fourth Circuit in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 & n.28 (4th Cir. 1978).[7] The relevant factors are:

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

The following factors, many of which overlap with the *Barber* factors, are also relevant for an analysis of Lead Counsel's fee application under the percentage-of-the-fund method:

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[7] The Local Civil Rules of this District require that petitions for attorneys' fees comply with the *Barber* requirements, which "are also relevant when a common fund is created and a percentage-fee method is sought in the application." Local Civ. Rule 54.02 DSC.

[8] The following *Barber/Johnson* factors are not applicable to this Action: preclusion of other employment; time limitations imposed by the client or the circumstances; and the nature and length of the professional relationship with the client. Thus, Lead Counsel will not analyze these factors. *See Phillips Petroleum*, 838 F.2d at 456 (noting that "rarely are all of the *Johnson* factors applicable.").

> (1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy.

Kirven v. Central States Health & Life Co. of Omaha, No. CA 3:11-2149-MBS, 2015 WL 1314086, at *4 (D.S.C. Mar. 23, 2015) (Seymour, J.) ("*Kirven II*").

As described below, an analysis of the applicable factors supports the requested fee.

A. The Duration of the Case and Time and Labor Involved in Obtaining the Settlement Supports the Fee Request

Plaintiffs' Counsel have marshaled considerable resources and time in the investigation, prosecution, and settlement of the Action on behalf of the Settlement Class over the course of more than two years. As detailed above and in the Joint Declaration, the Settlement was only reached after counsel had, among other things: (i) conducted an extensive investigation into the underlying facts and allegations set forth in the 183-page Complaint, which included interviews with 69 witnesses with information concerning the alleged fraud and the analysis of voluminous documents obtained through FOIA and other informal requests; (ii) thoroughly researched the law pertinent to the claims asserted in the Complaint and the defenses likely to be raised by Defendants; (iii) successfully defeated, in substantial part, Defendants' motions to dismiss the Complaint, which required extensive briefing and oral argument before the Court; (iv) engaged in substantial discovery efforts, including the review of more than 1.8 million pages of documents obtained through FOIA and other informal requests prior to the start of formal discovery and beginning the analysis of over 5.2 million of pages of documents obtained from Defendants in connection with formal discovery; (v) researched, drafted, and filed Lead Plaintiffs' motion for class certification, which involved consultation with and preparation of a report from Lead Plaintiffs' expert on market efficiency and damages methodology, defending the depositions of Lead Plaintiffs' expert and of each of the Lead Plaintiffs, and cross-examining representatives from each of the Lead Plaintiffs'

four relevant non-party investment managers; (vi) engaged in months-long efforts to mediate and settle the Action, including drafting and exchanging two rounds of mediation statements and participating in two in-person mediation sessions under the auspices of Judge Phillips, an experienced and highly regarded class action mediator; and (vii) drafted and finalized the Stipulation, and related Settlement documents, which set forth the final terms and conditions of the Settlement negotiated by the Parties. ¶¶ 8-9; 20-33; 42-77. As a result of Plaintiffs' Counsel's extensive efforts litigating the Action, Lead Plaintiffs and their counsel were fully cognizant of the strengths and weaknesses of the case, and the risks of continued litigation, at the time the Settlement was reached.

In order to achieve the outstanding recovery provided under the Settlement, Plaintiffs' Counsel spent a total of 41,189.60 hours of attorney and other professional-support time prosecuting the Action on behalf of the Settlement Class. ¶ 127. Plaintiffs' Counsel's lodestar, derived by multiplying the hours spent by each attorney and other professional by their current hourly rates, is $19,859,952.00.[9] *See id.*

The requested fee of 14% of the $192.5 million Settlement Amount, or $26.95 million (before interest), therefore represents a multiplier of approximately 1.36 of the total lodestar. This multiplier is at the lower end of the range of multipliers commonly awarded in securities class actions and other comparable litigation with significant contingency risks such as this one. As the Court explained in *McClaran v. Carolina Ale House Operating Co., LLC*, No. 3:14–cv–03884–MBS, 2015 WL 5037836 (D.S.C. Aug. 26, 2015), "Courts have generally held that a lodestar multiplier falling between 2 and 4.5 demonstrate a reasonable attorney's fees." *See also,*

[9] The Supreme Court has approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *Missouri v. Jenkins*, 491 U.S. 274, 284 (1989).

In re Genworth Fin. Sec. Litig., 210 F. Supp. 3d 837, 845 (E.D. Va. 2016) ("The fee awarded in this case, $61,320,000, results in a lodestar multiplier of 1.97. District courts within the Fourth Circuit have regularly approved attorneys' fees awards with 2-3 times lodestar."); *Nieman v. Duke Energy Corp.*, 3:12-cv-00456-MOC-DSC, 2015 WL 13609363 (W.D.N.C. Nov. 2, 2015) (awarding fee representing a 6.4 multiplier); *In re Massey Energy Co. Sec. Litig.*, No. 5:10-cv-00689, 2014 WL 12656719 (S.D. W. Va. June 4, 2014) (awarding fee representing a 2.9 multiplier). Thus, a "cross-check" of the requested fee award against counsel's total lodestar supports the reasonableness of the fee application under the percentage-of-the-fund method. *See In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 264 (E.D. Va. 2009) (awarding $36,495,000 fee resulting in a 1.3 lodestar multiplier and noting that "[w]hen using lodestar method as a 'cross-check,' the Court needs not apply the "exhaustive scrutiny" typically mandated, and the Court may accept the hours estimates provided by Lead Counsel.").

In sum, Plaintiffs' Counsel spent a significant amount of time and resources in litigating this Action, and were successful in achieving an historic recovery on behalf of the Settlement Class. This factor therefore strongly supports approval of the requested fee.

B. The Novelty and Difficulty of the Questions Presented and the Complexity of the Case Support the Requested Fee

Courts have long recognized that the novelty and difficulty of the issues in a case are significant factors to be considered in making a fee award. *See Johnson*, 488 F.2d at 718; *see also S.C. Nat. Bank v. Stone*, 139 F.R.D. 335, 340 (D.S.C. 1991) ("[C]ourts recognize "that stockholder litigation is notably difficult and notoriously uncertain.") (quotation marks and citations omitted). While securities cases have always been complex and difficult to prosecute, the PSLRA has only increased the difficulty in successfully prosecuting a securities class action. *See Mills*, 265 F.R.D. 246, 263 ("The very nature of a securities fraud case demands a difficult level of

proof to establish liability. Elements such as scienter, reliance, and materiality of misrepresentation are notoriously difficult to establish. . . . Proving damages further implicate[s] complex economic modeling at the hands of sophisticated experts, who, in order to ascertain the fluid and shifting effects of alleged widespread fraudulent reporting, necessarily engage[] in complex measurements of stock valuation and price movement."); *Genworth*, 210 F. Supp. 3d at 844 (same). From the outset, prosecution of this PSLRA action was highly uncertain, with no assurance that Lead Plaintiffs would survive Defendants' attacks at the pleading stage, class certification, summary judgment, and trial.

While Lead Plaintiffs and Lead Counsel believe that the claims asserted against Defendants are strong, they recognize the very substantial risks they would face in establishing liability and damages. For instance, Defendants consistently maintained that: (i) many of Defendants' alleged statements, including those concerning the projected completion dates, costs, and eligibility for federal nuclear production tax credits of the Nuclear Project, were forward-looking statements protected under the PSLRA safe harbor because they were accompanied by meaningful cautionary language and made without actual knowledge of falsity; (ii) other allegedly false statements, *e.g.*, those regarding the Nuclear Project's supposedly positive progress and Defendants' purported "transparency" and "prudent" oversight, were equally non-actionable puffery or statements of opinion; (iii) Defendants' failure to disclose the independent adverse assessment of the Nuclear Project by Bechtel Corporation ("Bechtel") were non-actionable because, *inter alia*, Defendants had no duty to disclose such preliminary, unreliable opinions of this third party; and (iv) Lead Plaintiffs would be unable to establish scienter because the Individual Defendants reasonably relied on the schedule and cost estimates provided to SCANA by Westinghouse, its lead contractor on the Nuclear Project, and further

believed in good faith that the "EPC Amendment" entered into between SCANA and Westinghouse, just days before the start of the Class Period, fixed many of the problems with the Nuclear Project identified by Bechtel in its report to SCANA. ¶¶ 79-87.

Lead Plaintiffs also faced significant hurdles in proving loss causation—that the alleged misstatements were the cause of investors' losses—and in proving damages with respect to at least some of the alleged corrective disclosures. For example, Defendants argued in their opposition to Lead Plaintiffs' motion for class certification that the Court should end the Class Period on July 31, 2017, when Defendants announced their abandonment of the Nuclear Project—nearly five months before the end of the alleged Class Period—on the grounds that by that date, the risks related to the completion of the Nuclear Project were fully disclosed. ¶¶ 88-90. In the alternative, Defendants argued that at the least the Class Period should end no later than September 27, 2017, when the market learned of the existence of Bechtel's original report and its adverse findings, thereby eliminating numerous other subsequent corrective disclosures. ¶ 91. If Defendants prevailed on such and other loss causation arguments, recoverable damages would have declined substantially or been eliminated altogether. ¶¶ 92-94. Indeed, if the Class Period concluded on July 31, 2017 and earlier corrective disclosures contested by Defendants were also dismissed, maximum recoverable damages could have been as low as $200 million.

Despite the novelty, difficulty, and complexity of the case, Lead Counsel secured a very favorable result for the Settlement Class under difficult and challenging circumstances. This factor supports the requested fee award.

C. The Skill Requisite to Perform the Legal Service Properly Supports the Requested Fee

The Settlement was achieved by Lead Counsel—some of most skilled law firms in the securities litigation field—with long and successful track record representing investors in such

cases. *See* BLB&G and Labaton Firm Resumes, Ex. 5-C and 6-C, respectively.[10] As the court recognized in *Edmonds v. United States*, the "prosecution and management of a complex national class action requires unique legal skills and abilities." 658 F. Supp. 1126, 1137 (D.S.C. 1987). These unique skills were called upon here and support the requested fee. From the outset, Lead Counsel engaged in a concerted effort to obtain the maximum recovery for the Settlement Class. The historic recovery obtained for the Settlement Class is the direct result of the significant efforts of Lead Counsel, whose reputations as attorneys who will zealously carry a meritorious case through the trial and appellate levels enabled them to negotiate the favorable recovery for the Class under difficult and challenging circumstances. *Genworth*, 210 F. Supp. 3d at 844.

The quality of opposing counsel can also be important in evaluating the quality of plaintiffs' counsel's work. *See Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 U.S. Dist. LEXIS 27077, at *100 (N.D. Tex. Nov. 8, 2005) (weighing standing of opposing counsel when determining attorneys' fees "because such standing reflects the challenge faced by plaintiffs' attorneys"); *In re Adelphia Commc'ns Corp. Sec. & Derivative Litig.*, 2006 WL 3378705, at *3 (S.D.N.Y. Nov. 16, 2006) ("The fact that the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work") (citation omitted), *aff'd*, 272 F. App'x 9 (2d Cir. 2008). Defendants are represented by highly skilled and capable counsel from McGuireWoods LLP,

[10] *See also Mills*, 265 F.R.D. 246, 256 ("[W]hen Class Counsel [including Bernstein Litowitz] are nationally recognized members of the securities litigation bar, it is entirely warranted for this Court to pay heed to their judgment in approving, negotiating, and entering into a putative settlement."); *In re NeuStar, Inc. Sec. Litig.*, No. 14CV885, 2015 WL 5674798, at *11 (E.D. Va. Sept. 23, 2015) ("Counsel in this case [including Labaton Sucharow] are affiliated with national law firms recognized for their experience in securities litigation and class representation.").

Cadwalader, Wickersham & Taft LLP, Alston & Bird, and Wilmer Cutler Pickering Hale and Dorr, LLP, law firms with reputations for vigorous advocacy in the defense of complex securities class actions such as this Action. ¶ 131. The ability of Lead Counsel to obtain a favorable settlement for the Settlement Class in the face of such formidable opposition confirms the quality of their representation.

D. The Customary Fee and Awards in Similar Cases Supports the Requested Fee

Courts often look at fees awarded in comparable cases to determine if the fee requested is reasonable. *Genworth*, 210 F. Supp. 3d at 845. In this securities class action, Lead Counsel seek an attorney fee award equal to 14% of the Settlement Fund. Courts in South Carolina routinely approve fee awards in securities class actions as high as 30% of total recovery. *See e.g.*, *KBC Asset Mgmt. NV v. 3D Sys. Corp.*, No. 0:15-CV-02393-MGL, 2018 WL 3105072, at *1 (D.S.C. June 25, 2018) (Lewis, J.) (approving 30% fee award in securities class action); *Epstein v. World Acceptance Corp.*, No. 6:14-cv-01606-MGL, 2017 WL 11461887, at *1 (D.S.C. Dec. 18, 2017) (Lewis, J.) (awarding 30% fee award in securities class action); Order Awarding Lead Counsel's Attorneys' Fees and Expenses, *City of Ann Arbor Emps.' Ret. Sys. v. Sonoco Prods. Co.*, No. 4:08-cv-02348-TLW-KDW (D.S.C. Sept. 7, 2012), ECF No. 225 (Wooten, J.) (awarding 30% fee award in securities class action) (Ex. 10).

Moreover, the 14% attorney fee requested by Lead Counsel is well within, and indeed at the lower end of, the range of percentage fees that have been awarded in the Fourth Circuit in securities class actions with comparable recoveries. *See, e.g.*, *Genworth*, 210 F. Supp. 3d, 845 (awarding 28% of $219 million settlement fund in securities class action); *Mills*, 265 F.R.D. 246, 264 (awarding 18% of $202.8 million settlement fund in securities class action); *MicroStrategy*, 172 F. Supp. 2d, 790 (awarding 18% of $154 million settlement fund in securities class action).

The requested fee is also at the low end of the range of fee awards in similarly sized securities class actions in other circuits.[11]

In sum, the 14% fee requested here is at the low end of the range of fees awarded on a percentage basis in comparable actions, a factor which strongly supports approval of Lead Counsel's fee application.

E. The Contingent Nature of Lead Counsel's Representation and the Risk of Nonpayment Supports the Requested Fee

A determination of a fair fee must include consideration of the contingent nature of the fee and the difficulties which were overcome in obtaining the settlement. *Genworth*, 210 F. Supp. 3d at 844; *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *19-20. Lead Counsel undertook to prosecute the Action on a contingent fee basis, assuming a risk that the case would yield no recovery and leave them uncompensated for their efforts. Unlike counsel for Defendants who are paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel have not been compensated for their time or expense in representing the Settlement Class.

Lead Counsel prosecuted this Action for over two years on a wholly-contingent basis and have borne all the possible risks, including surviving dispositive motions, obtaining class certification, proving liability, causation, and damages, prevailing on a "battle of the experts," and litigating the case through trial and possible appeals. Lead Counsel understood from the outset that

[11] *See, e.g.*, *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG)(RER), 2010 WL 2653354, at *6 (E.D.N.Y. June 24, 2010) (awarding 25% of $225 million settlement); *In re Merck & Co., Vytorin/Zetia Sec. Litig.*, No. 08-2177 (DMC) (JAD), 2013 WL 5505744, at *3, *46 (D.N.J. Oct. 1, 2013) (awarding a 28% of $215 million settlement); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 130-35 (D.N.J. 2002) (awarding 21.6% of $194 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 736 (E.D. Pa. 2001) (awarding 25% of $193 million settlement); *Silverman v. Motorola, Inc.*, No. 07 C 4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement), *aff'd*, 739 F.3d 956 (7th Cir. 2013); *In re CMS Energy Sec. Litig.*, No. 02-cv-72004, 2007 WL 9611274, at *4 (E.D. Mich. Sept. 6, 2007) (awarding 22.5% of $200 million settlement).

they were embarking on a complex, expensive and potentially lengthy litigation, which could require the investment of a significant amount of money and attorney time, with no guarantee of ever being compensated for the investment of such time and money. Lead Counsel also understood that Defendants were well-financed and would (and, in fact, did) retain large and highly experienced corporate defense firms to mount a strong defense. In undertaking this risk, Lead Counsel were obligated to, and did, ensure that sufficient resources were dedicated to the prosecution of the Action.

Defendants steadfastly maintained they did nothing actionable, and had litigation continued, they would have persisted in attacking the elements of Lead Plaintiffs' securities fraud claims, including falsity, materiality, scienter, loss causation, and damages. Indeed, the risk of no recovery in complex cases of this type is very real. There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. Notably, securities class actions are increasingly dismissed at the class certification stage, in connection with *Daubert* motions, or at summary judgment.[12] Also, even plaintiffs who get past summary judgment and succeed at trial may find their judgment overturned on appeal or on a post-trial motion.[13]

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[12] *See, e.g.*, *Ohio Pub. Emps. Ret. Sys. v. Fed. Home Loan Mortg. Corp.*, No. 4:08CV0160, 2018 WL 3861840, at *20 (N.D. Ohio Aug. 14, 2018) (class certification denied); *In re Barclays Bank PLC Sec. Litig.*, 09 Civ. 1989 (PAC), 2017 WL 4082305, at *25 (S.D.N.Y. Sept. 13, 2017) (summary judgment granted after eight years of litigation); *Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554-55 (S.D.N.Y. 2008), *aff'd* 597 F.3d 501 (2d Cir. 2010) (summary judgment granted after six years of litigation and millions of dollars spent by plaintiffs' counsel); *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse First Boston*, 853 F. Supp. 2d 181 (D. Mass. 2012), *aff'd* 752 F.3d 82 (1st Cir. 2014) (granting summary judgment *sua sponte* in favor of defendants after finding that plaintiffs' expert was unreliable).

[13] *See, e.g.*, *In re BankAtlantic Bancorp, Inc.*, No. 07-61542, 2011 WL 1585605 (S.D. Fl. Apr. 25, 2011) (following jury verdict in plaintiffs' favor on liability, district court granted defendants' motion for judgment as a matter of law and entered judgment in favor of the

Because the fee in this matter was entirely contingent, the only certainties were that there would be no fee without a successful result and that such a result would be realized only after considerable and difficult effort. Lead Counsel committed significant resources of both time and money to the vigorous prosecution of this Action and, based on their efforts, Lead Plaintiffs were successful in obtaining an excellent recovery for the Settlement Class. The contingent nature of counsel's representation favors approval of the requested fee. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk.").

F. The Amount Involved and the Results Obtained Support Lead Counsel's Fee Request

Courts have consistently recognized that the result achieved is one of the most important factors to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 630 (D. Colo. 1976) ("the amount of the recovery, and end result achieved are of primary importance, for these are the true benefit to the client").

Here, a recovery valued at $192.5 million has been obtained through the efforts of Lead Counsel without the substantial expense, delay, and uncertainty of continued litigation. As noted

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defendants on all claims); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 524, 533 (S.D.N.Y. 2011) (after a verdict for class plaintiffs finding defendant company acted recklessly with respect to 57 statements, district court granted judgment for defendants following a change in the law announced by Supreme Court in *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010)); *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict after 19-day trial and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *In re Apple Comp. Sec. Litig.*, No. 84-20148, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) ($100 million jury verdict vacated on post-trial motions).

above, the proposed Settlement is the largest securities class action recovery in the history of the District of South Carolina and ranks as the fifth largest securities class action recovery ever in the Fourth Circuit. As a result of this Settlement, investors who have suffered losses on their purchases or acquisitions of publicly traded SCANA common stock during the Settlement Class Period not only will receive this historic recovery, but will also realize that recovery in the near future instead of a recovery many years down the road or no recovery at all. Thus, the recovery obtained for the Settlement Class strongly supports Lead Counsel's fee request.

G. The Experience, Reputation, and Ability of Lead Counsel Support the Fee Request

Lead Counsel's efforts in efficiently bringing this Action against Defendants to a successful conclusion are the best indicator of the experience and ability of the attorneys involved. That Lead Counsel have managed this Action in a disciplined and pragmatic fashion confirms that the Action was ably prosecuted for the benefit of the Settlement Class. Also, as discussed above, Lead Counsel are well regarded for their successful representation of clients in complex class action matters, and it is respectfully submitted that Lead Counsel's experience and ability added valuable leverage in the settlement negotiations which resulted in the outstanding recovery achieved for the Settlement Class. This factor supports the requested fee.

H. The "Undesirability" of the Case Supports the Requested Attorneys' Fees and Expenses

Class action cases have often been recognized as "undesirable" due to the financial burden on counsel, and the time demands of litigating class actions of this size and complexity. *See, e.g.*, *Millsap v. McDonnell Douglas Corp.*, No. 94-CV-633-H(M), 2003 U.S. Dist. LEXIS 26223, at *41 (N.D. Okla. May 28, 2003) ("This case is . . . undesirable, in the way that all contingent fee cases are undesirable, because it produced no income, but has required significant expenditures . . . .").

Although the claims here were strong, this was never an easy case and the risk of no

recovery was real. When counsel undertook representation of Lead Plaintiffs and the Settlement Class here, it was with the knowledge that they would have to spend substantial time and money and face significant risks without any assurance of being compensated for their efforts. This factor supports the requested percentage.

I. The Reaction of the Settlement Class to Date Confirms that the Requested Fee Is Reasonable

The reaction of the Settlement Class to date also supports the requested fee. In accordance with the Preliminary Approval Order, and the Court's related order concerning the Notice Date (ECF No. 225), the Claims Administrator began mailing copies of the Notice to potential Class Members on March 25, 2020. *See* Declaration of Alexander Villanova (Ex. 3) ¶¶ 2-6. The Notice informs potential members of the Settlement Class that Lead Counsel intends to apply to the Court for an award of attorneys' fees in an amount not to exceed 14% of the Settlement Fund, plus up to $1,200,000 in Litigation Expenses. *See id.* ¶ 2 and Ex. A thereto. While the time to object to the fee and expense application does not expire until May 27, 2020, to date, no objections have been received. ¶¶ 111; 135. Should any objections be received, Lead Counsel will address them in their reply papers.

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

Lead Counsel's fee application includes a request for payment of expenses incurred by Plaintiffs' Counsel, which were reasonable in amount and necessary to the prosecution of the Action. *See* ¶¶ 137-149. Payment of reasonable costs and expenses to counsel who create a common fund is both necessary and routine. *See Genworth*, 210 F. Supp. 3d at 845; *MicroStrategy*, 172 F. Supp. 2d at 791 ("There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."); *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 418 (S.D.N.Y. 2018) (in a class action,

attorneys should be compensated for reasonable expenses "as long as they were incidental and necessary to the representation"). As set forth in detail in the Joint Declaration, Plaintiffs' Counsel incurred expenses totaling $729,303.12 in connection with the prosecution of the Action. ¶¶ 13; 120; 137; 151.

The expenses for which payment are sought are the types of expenses that are necessarily incurred in litigation and routinely reimbursed in class actions. These expenses include, among others, expert fees, document management costs, on-line research, mediation fees, court reporting and transcripts, photocopying, travel costs, and telephone and postage expenses. The largest expense is for retention of Lead Plaintiffs' experts, in the amount of $296,351.08, or approximately 41% of the total litigation expenses. ¶ 140. Another significant category of expenses was for document management and discovery support, which total $140,053.40, or approximately 19% of the total amount of expenses. ¶ 141. The combined costs for on-line legal and factual research, in the amount of $68,569.26, represent approximately 9% of the total amount of expenses. ¶ 143. A complete breakdown by category of the expenses incurred by Plaintiffs' Counsel is set forth in Exhibit 9 to the Joint Declaration.

The Notice informed potential Class Members that Lead Counsel would apply for payment of Litigation Expenses in an amount not to exceed $1,200,000, which might include the reasonable costs and expenses of Lead Plaintiffs directly related to their representation of the Settlement Class. The total amount of Litigation Expenses requested by Lead Counsel is $771,135.33, which includes $729,303.12 for expenses incurred by Plaintiffs' Counsel and, as discussed below, a combined $41,832.21 for the costs and expenses directly incurred by Lead Plaintiffs, an amount below the amount listed in the Notice. To date, there has been no objection to the request for expenses.

V. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS AND EXPENSES UNDER THE PSLRA

In connection with their request for an award of Litigation Expenses, Lead Counsel also seek an award of a combined $41,832.21 in costs and expenses incurred by Lead Plaintiffs West Virginia IMB and Blue Sky directly related to their representation of the Settlement Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Here, each of the Lead Plaintiffs seek an award based on the time dedicated by their employees in furthering and supervising the Action. In addition, West Virginia IMB seeks reimbursement of out-of-pocket expenses incurred in connection with traveling to the May 17, 2019 and October 2, 2019 mediation sessions. Specifically, West Virginia IMB seeks an award of $34,048.82 and Blue Sky seeks an award of $7,783.39. *See* Slaughter Decl. at ¶¶ 9-13; Nieuwenhuis Decl. at ¶¶ 11-13.

Each of the Lead Plaintiffs took an active role in the litigation and has been fully committed to pursuing the claims on behalf of the proposed class since they became involved in the case. During the course of the litigation, Lead Plaintiffs, *inter alia*: communicated with Lead Counsel regarding case strategy and developments, reviewed pleadings and briefs filed in the Action, worked with counsel to respond to discovery requests, consulted with Lead Counsel regarding settlement negotiations, and evaluated and approved the proposed Settlement. *See* Slaughter Decl. at ¶ 6; Nieuwenhuis Decl. at ¶ 6. In addition, representatives of each of the Lead Plaintiffs prepared for, traveled to, and testified at depositions in connection with the class certification motion, and representatives of West Virginia IMB attended both the May and October 2019 mediation sessions that preceded the proposed Settlement. Slaughter Decl. at ¶ 6; Nieuwenhuis Decl. at ¶ 7. These efforts required representatives of Lead Plaintiffs to dedicate

considerable time and resources to the Action that they would have otherwise devoted to their regular duties.

Numerous courts have reimbursed lead plaintiffs for similar time and effort. *See, e.g.*, *In re Computer Scis. Corp. Sec. Litig.*, No. 11-cv-00610, 2013 WL 12155436, at *2 (E.D. Va. Sept. 20, 2013) (reimbursing lead plaintiffs $60,905.00); *Mills*, 265 F.R.D. at 265 (reimbursing lead plaintiffs $42,419.50); *Genworth*, 210 F. Supp. 3d at 846 (reimbursing lead plaintiffs $23,128.73); *Nieman v. Duke Energy*, No. 3:12-cv-00456, 2015 WL 13609363, at *2 (W.D.N.C. Nov. 2, 2015) (reimbursing lead plaintiff $20,612.50); *Massey Energy*, 2014 WL 12656719, at *2 (reimbursing lead plaintiff $33,889.18); *see also In re Marsh & McLennan Cos. Sec. Litig.*, No. 04 Civ. 8144, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding lead plaintiffs $214,657); *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400, 2010 WL 4537550, at *31 (S.D.N.Y. Nov. 8, 2010) (approving award of $100,000 to lead plaintiff); *In re Gilat Satellite Networks, Ltd.*, No. CV-02-1510, 2007 WL 2743675, at *19 (E.D.N.Y. Sept. 18, 2007) (granting PSLRA awards where, as here, "the tasks undertaken by employees of Lead Plaintiffs reduced the amount of time those employees would have spent on other work and these tasks and rates appear reasonable to the furtherance of the litigation").

The awards sought by Lead Plaintiffs are reasonable and justified under the PSLRA.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award attorneys' fees in the amount of 14% of the Settlement Fund; award $729,303.12 for the reasonable expenses that Plaintiffs' Counsel incurred in connection with the prosecution and resolution of the Action; and award a combined $41,832.21 for Lead Plaintiffs' costs and expenses related to their representation of the Settlement Class.

DATED: April 22, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Marlon E. Kimpson
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