UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

CITY OF PONTIAC GENERAL EMPLOYEES' RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated,	§	Case No. 1:15-cv-00374-LY
	§	CLASS ACTION
Plaintiff,	§	The Honorable Lee Yeakel
vs.	§	
DELL INC., et al.,	§	
Defendants.	§	

LEAD PLAINTIFF'S MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT; (2) APPROVAL OF PLAN OF ALLOCATION; (3) AWARD OF ATTORNEYS' FEES AND EXPENSES; AND (4) AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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I. PRELIMINARY STATEMENT

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiff City of Pontiac General Employees' Retirement System respectfully submits this motion for approval of: (1) the $21 million all-cash Settlement; (2) the proposed Plan of Allocation; (3) Lead Counsel's application for an award of attorneys' fees and expenses; and (4) Lead Plaintiff's application for an award of $651.52, pursuant to 15 U.S.C. §78u-4(a)(4).[1]

The Settlement comes after more than five years of hard-fought litigation and settlement negotiations, including extensive motion practice, the completion of fact and expert discovery, and protracted arm's-length settlement negotiations. The fact and expert discovery included, among other things, the production of nearly 700,000 pages of documents by Defendants and third parties. Lead Counsel also took 22 fact and expert depositions, and defended five fact and expert depositions. At the time the parties reached an agreement-in-principle to settle the Litigation, Defendants' motions for summary judgment and to exclude expert testimony were fully briefed and pending and an October 2019 trial date was looming. There is no question that as a result of extensive litigation efforts and settlement negotiations, Lead Plaintiff and Lead Counsel had a thorough understanding of the relative strengths and weaknesses of the Class' claims and the propriety of settlement.[2]

While Lead Counsel believes that the Class' claims have significant merit based on the evidence adduced, from the outset, Defendants adamantly denied liability and asserted that they possessed absolute defenses to the Class' claims. During extensive settlement negotiations,

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[1] Unless otherwise noted, all capitalized terms used herein are defined in the September 13, 2019 Stipulation of Settlement ("Stipulation"). ECF No. 217.

[2] The efforts of Lead Counsel in obtaining this favorable result are set forth in greater detail in the accompanying Declaration of X. Jay Alvarez in Support of Lead Plaintiff's Motion for (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; (3) Award of Attorneys' Fees and Expenses; and (4) Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Alvarez Decl.").

including two mediations with two different mediators, Lead Counsel made it clear that while it was prepared to fairly assess the strengths and weaknesses of this case, it would continue to litigate (and, in fact, did) rather than settle for less than fair value. Indeed, Lead Plaintiff and its counsel persisted for more than a year from the initial mediation until they achieved an amount that they believe is in the best interest of the Class.

Lead Counsel, who is highly experienced in prosecuting securities class actions, has concluded that the Settlement is a very good result and in the best interest of the Class based on an analysis of all the relevant factors present here, including, *inter alia*: (a) the substantial risk, expense, and uncertainty in continuing the litigation through the pending summary judgment and *Daubert* motions, trial, probable post-trial motion(s), and appeal(s); (b) the relative strengths and weaknesses of the claims and defenses asserted; (c) a complete analysis of the evidence obtained and the legal and factual issues presented; (d) past experience in litigating complex actions similar to this Litigation; and (e) the serious disputes between the parties concerning the merits and damages. Importantly, the Settlement is fully supported by Lead Plaintiff, who is the type of institutional investor favored to serve as lead plaintiff by Congress when passing the Private Securities Litigation Reform Act of 1995 ("PSLRA").[3]

The reaction of the Class thus far also supports the Settlement and Plan of Allocation. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Preliminary Approval Order") (ECF No. 222), over 100,000 copies of the Notice were sent to potential Class Members and nominees, and notice was published over *Business Wire* and in *The Wall Street Journal*. *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, dated December 4, 2019 ("Sylvester Decl."), ¶¶11-12,

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[3] *See* Declaration of Walter Moore in Support of Settlement ("Moore Decl."), ¶5, submitted herewith.

submitted herewith. To date, there are no objections to the Settlement, or requests for exclusion from the Class.

Lead Plaintiff also requests that the Court approve the proposed Plan of Allocation, which was set forth in the Notice sent to Class Members. The Plan of Allocation governs how claims will be calculated and how Settlement proceeds will be distributed among Authorized Claimants. It was prepared in consultation with Lead Plaintiff's damages expert Zachary Nye, Ph.D., and is based on the out-of-pocket measure of damages, *i.e.*, the difference between what Class Members paid for their Dell common stock during the Class Period and what they would have paid had the alleged misstatements and omissions not been made. It is fair, reasonable, and adequate, and should be approved.

Lead Counsel also respectfully applies for an award of attorneys' fees in the amount of 30% of the Settlement Amount and litigation expenses of $1,382,548.67, plus interest on both amounts. Lead Counsel's fee request, approved by Lead Plaintiff (*see* Moore Decl., ¶6), is within the range of percentages awarded in class actions in this District. It is also reasonable when viewed against the result achieved here and the many risks Lead Counsel was able to overcome. Finally, Lead Plaintiff applies for an award of $651.52, pursuant to 15 U.S.C. §78u-4(a)(4), for its time incurred in prosecuting this Litigation. *See id.*, ¶7.

II. PROCEDURAL AND FACTUAL BACKGROUND

In order to avoid repetition, the Court is respectfully referred to the accompanying Alvarez Declaration for a full discussion of: (1) the factual background and procedural history of the Litigation, (¶¶3-11); (2) the efforts of Lead Counsel (*e.g.*, ¶¶13-82); (3) the negotiations leading to this Settlement (¶¶83-88); (4) the reasons why the Settlement and the Plan of Allocation are fair and reasonable and should be approved (¶¶89-95); and (5) why the Court should approve Lead Counsel's

application for an award of attorneys' fees and expenses and Lead Plaintiff's award pursuant to 15 U.S.C. §78u-4(a)(4) (¶¶96-130).

III. THE NOTICE SATISFIES RULE 23 AND DUE PROCESS

Rule 23(c)(2) requires notice of a proposed class action settlement be provided to the class through "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also* Fed. R. Civ. P. 23(e)(1). While "'[t]here are no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements . . . the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *In re Heartland Payment Sys.*, 851 F. Supp. 2d 1040, 1060 (S.D. Tex. 2012) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). "Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.'" *Manual for Complex Litigation* §21.312, at 293 (4th ed. 2004).[4] To satisfy due process requirements, notice to class members must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, in accordance with the Preliminary Approval Order, starting on October 17, 2019, the Claims Administrator caused the Notice and Proof of Claim to be mailed to potential Class Members and nominees. *See* Sylvester Decl., ¶¶5-11. As of December 4, 2019, over 100,000 copies of the Notice have been mailed to potential Class Members and nominees. *Id.*, ¶11. The Notice contains a description of the claims asserted, the Settlement, the Plan of Allocation, and Class Members' rights

[4] Internal citations are omitted and emphasis is added unless otherwise noted.

to participate in and object to the Settlement or the fees and expenses that Lead Counsel intends to request, or to exclude themselves from the Class. In addition, the Summary Notice was published over *Business Wire* and in *The Wall Street Journal*. *Id.*, ¶12. Information regarding the Settlement, including downloadable copies of the Notice and Proof of Claim, was posted on a website devoted solely to the Settlement: www.DellSecuritiesSettlement.com. *Id.*, ¶14. The notice program provided all of the information required by the PSLRA, and is adequate to meet the due process and Rules 23(c)(2) and (e) requirements for providing notice to the Class.

IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. In the Fifth Circuit, Settlements Are Generally Favored and Encouraged

The Fifth Circuit has long observed a general policy favoring the settlement of disputed claims, especially in class actions. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."); *In re Deepwater Horizon*, 739 F.3d 790, 807 (5th Cir. 2014) (noting the "'overriding public interest in favor of settlement' that we have recognized '[p]articularly in class action suits'"); *see also Marcus v. J.C. Penney Co., Inc.*, No. 6:13-CV-736, 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017), *report and recommendation adopted*, 2018 WL 307024 (E.D. Tex. Jan 4, 2018) ("There is a strong judicial policy in favor of settlement, particularly in the class action context."); *In re Enron Corp. Sec.*, No. H-01-3624, 2008 U.S. Dist. LEXIS 84656, at *40-*41 (S.D. Tex. Sept. 8, 2008) (same).

B. The Settlement Is Entitled to a Presumption of Fairness

Courts have found a strong initial presumption of fairness attaches to a proposed settlement if the settlement is reached by experienced counsel after arm's-length negotiations. *See United States v. Tex. Educ. Agency*, 679 F.2d 1104, 1108 (5th Cir. 1982); *see also In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) ("So long as the integrity of the arm's length

negotiation process is preserved . . . a strong initial presumption of fairness attaches to the proposed settlement."), *aff'd*, 117 F.3d 721 (2d Cir. 1997). To a large degree, in determining the fairness and reasonableness of a proposed settlement, courts must rely on the judgment of competent counsel, terming such counsel the "linchpin" of an adequate settlement. *Reed v. GMC*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried."). Thus, if experienced counsel determine that a settlement is in the class' best interests, "the attorney's views must be accorded great weight." *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978). Here, the Settlement was reached by experienced, fully-informed counsel after extensive investigation and substantial formal discovery was conducted, and only after extensive settlement negotiations had occurred. Alvarez Decl., ¶¶83-88. Accordingly, the Settlement is entitled to the presumption of fairness dictated by Fifth Circuit law.

C. The Settlement Meets All Requirements for Approval

Federal Rule of Civil Procedure 23(e) requires judicial approval for a settlement of claims brought as a class action. Fed. R. Civ. P. 23(e) ("The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval."). Rule 23(e)(2), as recently amended provides:

> (2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

In evaluating whether settlements are fair, reasonable, and adequate, courts in the Fifth Circuit also consider the following factors, certain of which overlap with Rule 23(e)(2): (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members. *Reed*, 703 F.2d at 172; *see also Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004). As demonstrated below, the Settlement should be approved as it satisfies each of the above factors.

1. Lead Plaintiff and Lead Counsel Have Adequately Represented the Class

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Here, Lead Plaintiff and Lead Counsel spent over five years vigorously litigating the Class' claims, including extensive motion practice, the completion of fact and expert discovery and protracted arm's-length settlement negotiations with the assistance of two mediators. Alvarez Decl., ¶¶13-88. Lead Plaintiff, like all other members of the Class, acquired shares of Dell common stock during the Class Period and was subject to the same alleged misstatements and omissions as all Class Members. Indeed, in its order certifying the Class, this Court found that Lead Plaintiff has "the ability to effectively protect the

interests of class members" and "does not have any conflicts of interest." *City of Pontiac Gen. Emps. Ret. Sys. v. Dell Inc.*, No. A-15-CV-374-LY, 2018 WL 1558571, at *4 (W.D. Tex. Mar. 29, 2018). Additionally, throughout the Litigation, Lead Plaintiff had the benefit of highly experienced counsel in securities litigation, with a long and successful track record representing investors in cases throughout the country. *See* Exhibit G to the Declaration of X. Jay Alvarez Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), submitted herewith. Accordingly, this factor is easily satisfied and warrants final approval. *See Hays v. Eaton Grp. Attys., LLC*, No. 17-88-JWD-RLB, 2019 U.S. Dist. LEXIS 17029, at *23-*24 (M.D. La. Feb. 4, 2019).

2. The Settlement Was Negotiated at Arm's Length and There Was No Fraud or Collusion

Rule 23(e)(2)(B) and the first *Reed* factor, which analyze whether the Settlement was reached at arm's length and without fraud or collusion, also support approval. Here, the settlement negotiations included in-person mediations on March 5, 2018 and June 25, 2019, with two different and equally qualified mediators – Eric Green and Gregory P. Lindstrom. Alvarez Decl., ¶¶83-88. During the negotiations, Lead Counsel zealously advanced Lead Plaintiff's position and was fully prepared to continue to litigate (and, in fact, did) rather than settle for less than fair value. Indeed, Lead Plaintiff and Lead Counsel continued to litigate the case for more than a year following the initial mediation until they achieved an amount they believe is in the best interest of the Class. Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Given the arm's-length nature of the negotiations, counsel's experience, and the active involvement of experienced mediators, there can be no question that the Settlement is procedurally fair and is not the product of fraud or collusion. *See Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-CV-1152-M, 2018 WL 1942227, at *4

(N.D. Tex. Apr. 25, 2018) (noting that "the settlement was not the result of improper dealings" where it was obtained through formal mediation); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at *10 (N.D. Tex. Aug. 4, 2011) (concluding that a settlement was free of fraud or collusion where it was "diligently negotiated after a long and hard-fought process that culminated" in a mediation before a retired judge).

3. The Settlement Is Fair and Adequate Given the Complexity, Costs and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i) and the second *Reed* factor further support approval of the Settlement. Defendants have adamantly denied liability throughout the Litigation and would continue to do so absent the Settlement. Continued litigation would require the expenditure of substantial additional time and money. Assuming Lead Plaintiff was successful in opposing Defendants' pending summary judgment motion, a trial in this case would take weeks, involving the introduction of hundreds of exhibits with dry financial matters and a battle of the experts regarding falsity, scienter, loss causation and damages. While Lead Counsel was prepared to continue litigation to trial, it cannot be disputed that achieving a litigated verdict in this action would have required an additional substantial investment of time and resources. *See Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010) ("When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened."). And even if Lead Plaintiff were to succeed at trial, it is extremely probable that the Defendants would appeal any judgment in favor of Lead Plaintiff following a trial, which would extinguish and/or delay any potential recovery. *See Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *19 (N.D. Tex. Nov. 8, 2005) (finding that the complexity and length of continued litigation supported approval of settlement given that even "if Plaintiffs were to succeed at trial, they still could expect a vigorous appeal by Defendants and an accompanying delay in the receipt of any relief"). In contrast, the Settlement provides an immediate and substantial recovery of

$21 million for the Class without exposing Class Members to the risk, expense and delay of continued litigation. Accordingly, this factor supports final approval of the Settlement.

4. The Stage of the Proceeding Warrants Final Approval of the Settlement

The third *Reed* factor also weighs in favor of final approval. "Under [this] factor, the key issue is whether 'the parties and the district court possess ample information with which to evaluate the merits of the competing positions.'" *Heartland*, 851 F. Supp. 2d at 1064; *see also In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009) ("The question is not whether the parties have completed a particular amount of discovery, but whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.").

As discussed above, by the time the Settlement was reached, the parties had extensively briefed the disputed issues in connection with Defendants' motion to dismiss, Lead Plaintiff's motion for class certification, Defendants' motions for summary judgment and to exclude motions to the other sides' expert testimony, and Lead Plaintiff was in the process of re-reviewing exhibits and testimony for the October 2019 trial. Alvarez Decl., ¶¶13-82. In addition, over the course of the Litigation, Lead Counsel reviewed and analyzed over 690,000 pages of documents produced by Defendants and non-parties and took or defended 27 fact and expert depositions. *Id.*, ¶¶29, 45, 62, 65. There is no question that at the time the Settlement was reached, the parties had sufficient information about the strengths and weaknesses of the respective cases. Accordingly, this factor also favors final approval.

5. The Risk of Further Litigation Supports Final Approval of the Settlement

Rule 23(e)(2)(C)(i) and the fourth *Reed* factor support final approval because Lead Plaintiff recognizes that although there is substantial evidence to support its claims, there are also substantial risks in establishing liability and damages at trial. *See* Alvarez Decl., ¶¶96-110; *see also OCA*, 2009 WL 512081, at *13 (approving settlement where plaintiffs faced substantial risks in establishing elements of securities law violations); *Schwartz*, 2005 WL 3148350, at *18 (plaintiffs' "uncertain prospects of success through continued litigation" supported approval of settlement). Considering all of the circumstances and risks Lead Plaintiff would have faced if it continued to litigate this case through trial and appeal(s), Lead Plaintiff and Lead Counsel concluded that the Settlement – which provides an immediate and certain payment of $21 million – was in the best interest of the Class. Thus, this factor strongly supports the Settlement.

6. The Settlement Is Within the Range of Reasonableness

The fifth *Reed* factor considers "whether the terms of the settlement 'fall within a range of reasonable recovery, given the likelihood of the plaintiffs' success on the merits." *Billitteri*, 2011 WL 3586217, at *12. Given the risks discussed in the Alvarez Decl., ¶¶96-110, and the risks associated with Defendants' pending motion for summary judgment, motions to exclude Lead Plaintiff's experts, and trial, the $21 million cash settlement is well within the range of reasonableness. Moreover, the $21 million recovery represents 7% of the maximum estimated recoverable damages for the Class in this case (as determined in consultation with Lead Plaintiff's damages expert), which is close to three times the median recovery of NERA-defined investor losses in similar securities actions settled in 2018. Alvarez Decl., ¶121. *See, e.g.*, Stefan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2018 Full-Year Review* at 34-36, Figure 28 (NERA Jan. 29, 2019) (research showing that the median recovery of NERA-defined investor losses in cases settled in 2018 was 2.6%).

7. Lead Counsel, Lead Plaintiff and Class Members Support Final Approval

The sixth *Reed* factor - the opinions of the class counsel, class representatives, and absent class members – also supports final approval of the Settlement. "[W]here the parties have conducted an extensive investigation, engaged in significant fact-finding and Lead Counsel is experienced in class-action litigation, courts typically 'defer to the judgment of experienced trial counsel who has evaluated the strength of his case.'" *Schwartz*, 2005 WL 3148350, at *21; *see also DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007) ("The endorsement of class counsel is entitled to deference, especially in light of class counsel's significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims."); *Lelsz v. Kavanagh*, 783 F. Supp. 286, 297 (N.D. Tex. 1991) (holding that the opinions of experienced counsel "deserve appropriate deference from the Court"). Given that the Settlement provides a substantial recovery for the Class and given the risks in litigating this action further, it is Lead Counsel's opinion that it is possible that a better result might not be obtained.

Additionally, Lead Plaintiff, a sophisticated institutional investor who has monitored and been kept apprised of Lead Counsel's work throughout the Litigation, endorses the Settlement. Moore Decl., ¶¶3-4. The reaction of the Class to the Settlement also supports final approval. In response to the notice procedures outlined above in §III, no Class Members have objected to the Settlement. *See Quintanilla v. A & R Demolition, Inc.*, No. H-04-1965, 2008 U.S. Dist. LEXIS 37449, at *15 (S.D. Tex. May 7, 2008) (the reaction of the class to the settlement should be considered and held that here, where there was no objections, it demonstrated that the class was "overwhelmingly" in favor of settlement); *Maher v. Zapata Corp.*, 714 F.2d 436, 456 (5th Cir. 1983) ("Other factors favoring approval of the settlement here are the minimal nature of shareholder

objection."). This lack of dissent militates heavily in favor of the Court's final approval of the Settlement.

8. The Remaining Rule 23(e)(2) Factors Are Also Met

a. The Proposed Method for Distributing Relief Is Effective

As demonstrated below in §V, the method and effectiveness of the proposed notice and claims administration process (Rule 23(e)(2)(C)(ii)) are sound. The notice plan included direct mail notice to all those who could be identified with reasonable effort supplemented by the publication of the Summary Notice in *The Wall Street Journal* and over *Business Wire*. Sylvester Decl., ¶¶11-12. In addition, the key settlement documents are posted on a designated website, including the Stipulation, Notice, Proof of Claim and Preliminary Approval Order. *Id.*, ¶14.[5]

The claims process is also effective and includes a standard claim form that requests the information necessary to calculate a claimant's claim amount pursuant to the Plan of Allocation. *Id.*, Ex. A (Proof of Claim). The Plan of Allocation will govern how Class Members' claims will be calculated and, ultimately, how money will be distributed to Authorized Claimants.

b. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." As discussed below, Lead Plaintiff's Counsel seeks an award of attorneys' fees of 30% of the Settlement Amount and expenses of $1,382,548.67, plus interest on both amounts, which is in line with other securities settlements approved in the Fifth Circuit.

[5] Upon filing, all briefs and declarations filed in support of the Settlement will be posted to the website.

c. The Parties Have No Other Agreements Besides Opt-Outs

Rule 23(e)(2)(C)(iv) requires the disclosure of any agreement made in connection with the proposed Settlement. As disclosed in the Stipulation (¶7.3), and in the memorandum in support of Lead Plaintiff's motion for entry of an order preliminarily approving settlement (ECF No. 216 at 10), the Settling Parties have entered into a standard supplemental agreement which provides that if Class Members opt out of the Settlement such that the number of shares of Dell common stock represented by such opt outs equals or exceeds a certain amount, Dell has the option to terminate the Settlement. While the supplemental agreement is identified in the Stipulation (*id.*), its ***specific*** terms are confidential. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006); *Halliburton*, 2018 WL 1942227, at *5 (granting final approval of securities class action that included a supplement confidential agreement permitting settlement termination in the event of exclusion requests by a certain portion of the class).

d. There Is No Preferential Treatment; the Proposed Plan Treats Class Members Equitably

The Plan of Allocation, discussed below in §V, which is set out in the Notice, explains how the Settlement proceeds will be distributed among Authorized Claimants. It provides formulas for calculating the recognized claim of each Class Member, based on each such person's purchases or acquisitions of Dell common stock on the open market during the Class Period and when and if they were sold. Lead Plaintiff, like all other Class Members, will be subject to the same formulas for distribution of the Settlement. It is fair, reasonable and adequate because it does not treat Lead Plaintiff or any other Class Member preferentially.

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE AND SHOULD BE APPROVED

District courts enjoy "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v.*

Able, 575 F.2d 1010, 1016 (2d Cir. 1978); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). The standard for approving a plan of allocation is the same as the standard for approving the settlement: the plan must be "fair, adequate, and reasonable" and must not be "'the product of collusion between the parties.'" *Chicken Antitrust*, 669 F.2d at 238. This analysis is to be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement." *Id.* In addition, an allocation formula need only have a reasonable basis, particularly if recommended by experienced class counsel. *Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 U.S. Dist. LEXIS 9144, at *27 (S.D.N.Y. Jan. 31, 2007). With the assistance of Lead Plaintiff's damages expert Dr. Nye, Lead Counsel prepared the Plan of Allocation after careful consideration and analysis, and without reference to any particular trading patterns of the Lead Plaintiff. The Plan of Allocation is fully set forth in the Alvarez Decl. at ¶¶91-95.

The Plan of Allocation was also fully disclosed in the Notice and to date, not a single Class Member has filed an objection to it. Overall, as is likely, if the total claims for all Authorized Claimants exceeds the Net Settlement Fund, each Authorized Claimant's share of the Net Settlement Fund will be determined based upon the percentage that his, her or its claim bears to the total of the claims for all Authorized Claimants. Alvarez Decl., ¶91. *See In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 U.S. Dist. LEXIS 9450, at *39 (S.D.N.Y. Feb. 1, 2007) ("A plan of allocation that calls for the *pro rata* distribution of settlement proceeds on the basis of investment loss is reasonable."); *see also In re Broadcom Corp. Sec. Litig.*, No. SACV 01-275 DT (MLGx), 2005 U.S. Dist. LEXIS 41976, at *17 (C.D. Cal. Sept. 12, 2005) (approving plan of allocation where the allocation was pro rata across the class). Lead Counsel believes that this method of allocation is fair, reasonable and adequate and that the Plan of Allocation should be approved.

VI. AWARD OF ATTORNEYS' FEES

A. Lead Counsel Is Entitled to an Award of Attorneys' Fees from the $21 Million Common Fund Created in the Settlement

The Supreme Court and the Fifth Circuit have long recognized that "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); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). In addition to providing just compensation, awards of attorneys' fees from a common fund also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature. *See, e.g.*, *Dolgow v. Anderson*, 43 F.R.D. 472, 481-84 (E.D.N.Y. 1968). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Major Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

B. The Court Should Award a Percentage of the Common Fund

The Supreme Court has consistently held that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Trs. v. Greenough*, 105 U.S. 527, 532 (1882); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Sprague*, 307 U.S. at 166-67; *Boeing*, 444 U.S. at 478-79. Indeed, by 1984 this point was so well established that the Supreme Court needed no more than a footnote to make it in *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class.").

The Fifth Circuit also approves the percentage method, finding that it "brings certain advantages . . . because it allows for easy computation" and "aligns the interests of class counsel with those of class members." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 643-44 (5th Cir. 2012) (endorsing "the district courts' continued use of the percentage method cross-checked with the *Johnson* factors"). Moreover, numerous district courts within the Fifth Circuit have applied the percentage-of-recovery method in awarding fees. For example, the published opinions in *In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 500 (N.D. Miss. 1996), and *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 966-67 (E.D. Tex. 2000), list numerous class action cases as examples. Indeed, the court in *Schwartz* recognized "there is a strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery." 2005 WL 3148350, at *26.

The percentage method of calculating fees is also appropriate in securities cases like this one that are governed by the PSLRA. The PSLRA explicitly authorizes the percentage method in calculating fees in securities actions. 15 U.S.C. §78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."); *see Dell*, 669 F.3d at 643 ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such a calculation.").

Here, Lead Counsel is seeking a 30% fee. As discussed below, the requested percentage is consistent with fee awards in comparable securities class actions in this Circuit.

C. The Requested Percentage Is Fair and Reasonable and Is Consistent with Fee Awards in Comparable Cases from This District

An appropriate court-awarded fee is intended to approximate what counsel would receive if they were offering their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86

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(1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum*, 465 U.S. at 904 ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.") (Brennan, J., concurring).

The requested 30% fee award, which was approved by Lead Plaintiff (*see* Moore Decl., ¶6), is well within the range of percentage fees awarded in the Fifth Circuit in securities class actions like this one. "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method." *Schwartz*, 2005 WL 3148350, at *27. A review of attorneys' fees awarded in similar cases in this Circuit supports the reasonableness of the 30% fee request. *Parmalee v. Santander Consumer USA Holdings Inc.*, No. 3:16-cv-00783-K, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) (awarding 33.33%); *Singh v. 21Vianet Grp., Inc.*, No. 2:14-cv-00894, JRG-RSP, 2018 WL 6427721, at *1 (E.D. Tex. Dec. 7, 2018) (awarding 33.30%); *In re Willbros Grp., Inc.*, No. 4:14-cv-03084-KPE, 2018 WL 10015187, at *1 (S.D. Tex. Aug. 3, 2018) (awarding 30%); *Halliburton*, 2018 WL 1942227, at *7 (awarding 33.33%); *Marcus*, 2017 WL 6590976, at *3, *6 (E.D. Tex. Dec. 18, 2017) (awarding 30%) ("It is not unusual for attorneys' fees awarded under the percentage method to range between 25% to 30% of the fund or more."); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 6:12-1609, 2015 WL 965696, at *1 (W.D. La. Mar. 3, 2015) (awarding 30%); *Buettgen v. Harless*, No. 3:09-cv-00791-K, 2013 WL 12303194, at *1 (N.D. Tex. Nov. 13, 2013) (same); *Di Giacomo v. Plains All Am. Pipeline*, No. Civ.A.H-99-4137, 2001 WL 34633373, at *12-*13 (S.D. Tex. Dec. 19, 2001) (same).

D. The *Johnson* Factors Further Confirm that the 30% Requested Fee Is Fair and Reasonable

An analysis of the factors identified by the Fifth Circuit in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), confirms the requested 30% fee award is reasonable and

appropriate in this case. The *Johnson* factors are as follows: (1) time and labor required; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) preclusion of other employment; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with the client; and (12) awards in similar cases. *Id.* The relevance of each of the *Johnson* factors will vary in any particular case, and, rather than requiring a rigid application of each factor, the Fifth Circuit has left it to the lower court's discretion to apply those factors in view of the circumstances of a particular case. *Brantley v. Surles*, 804 F.2d 321, 325-26 (5th Cir. 1986).[6]

1. Time and Labor Required

Lead Counsel committed considerable resources and time researching, investigating, and prosecuting this Litigation. First, Lead Counsel conducted a diligent investigation to build a framework for a successful securities fraud case. Second, the legal obstacles to recovery were significant, and a recovery was obtained only because of the skill and tenacity of Lead Counsel. Third, and perhaps most importantly as the history of the Litigation makes clear, the services provided by Lead Counsel were successful, resulting in a highly favorable recovery for the Class. Defendants have fiercely fought this case for over five years, and at virtually every stage of the Litigation, Lead Counsel successfully responded to these defense strategies and tactics, while

[6] The following factors do not pertain to this case: time limitations imposed by the client, and the nature and length of the professional relationship with the client. Thus, Lead Counsel will not analyze these factors.

aggressively building Lead Plaintiff's case on the merits. Alvarez Decl., ¶¶13-82. In these circumstances, the requested fee is warranted.[7]

2. Novelty and Difficulty of the Issues

It is widely recognized that securities class actions are complex and difficult and that "[t]o be successful, a securities class-action plaintiff must 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); *see also OCA*, 2009 WL 512081, at *21 ("Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult."); *Schwartz*, 2005 WL 3148350, at *29 ("Federal Securities class action litigation is notably difficult and notoriously uncertain.").

The significant risks to establishing liability and damages are detailed in the Alvarez Decl. *See* ¶¶96-110. From the outset, this action was an especially difficult and highly uncertain securities case, with no assurance that it would survive Defendants' attacks on the pleadings, motion(s) for summary judgment, trial, and appeals. There were many difficult questions presented in the Litigation, including establishing the falsity of Defendants' statements, scienter and proving loss causation. Even if Lead Plaintiff successfully proved liability, there were also complex issues concerning the calculation and amount of damages incurred by Class Members. Despite the novelty and difficulty of the issues raised, Lead Counsel secured a highly favorable result for the Class. As a result, this factor strongly supports the requested award.

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[7] The requested fee of 30% of the Settlement Fund ($6,300,000) represents a significant discount to Lead Plaintiff's Counsel's lodestar in this Litigation. Lead Plaintiff's Counsel and their para-professionals have expended over 22,000 hours in the investigation, prosecution, and settlement of this Litigation with a resulting lodestar of approximately $15,400,000. The significant resources devoted by counsel reflect the substantial effort entailed in bringing this difficult Litigation to a successful and highly favorable conclusion for the Class.

3. Skill Required: The Experience, Reputation, and Ability of the Attorneys

The third and the ninth *Johnson* factors – the skill required and the experience, reputation, and ability of the attorneys – also support the requested fee award. Here, Lead Counsel performed its work diligently, skillfully and achieved a substantial recovery for the Class. Lead Counsel has many years of experience in complex federal civil litigation, particularly the litigation of securities and other class actions, and has achieved significant acclaim for its work, as set forth in the exhibit to Lead Counsel's accompanying fee and expense submission.

Lead Counsel's experience in the field also allowed them to identify the complex issues involved in this case, and formulate strategies to successfully prosecute it effectively. *See Schwartz*, 2005 WL 3148350, at *30 ("Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case."). But for Lead Counsel's efforts, the Class' claims might have been dismissed at the pleading stage. Instead, Lead Counsel was able to secure a settlement of $21 million, representing a very good result for the Class.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Lead Counsel. *See, e.g.*, *In re Aetna Inc. Sec. Litig.*, MDL No. 1219, 2001 U.S. Dist. LEXIS 68, at *45-*46 (E.D. Pa. Jan. 4, 2001); *In re Ikon Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 195 (E.D. Pa. 2000). Alston & Bird LLP, the defense attorneys in this case, are aggressive, experienced, and highly skilled. *See Schwartz*, 2005 WL 3148350, at *30 (finding that skill factor supported the fee award because, *inter alia*, opposing counsel were "highly experienced lawyers from prominent and well-respected law firms"). The ability of Lead Counsel to develop its case and negotiate this Settlement in the face of this formidable opposition confirms the quality of Lead Counsel's representation.

4. Preclusion of Other Employment

Lead Plaintiff's Counsel spent approximately 22,400 hours prosecuting this Litigation on behalf of the Class. Those hours were time that counsel could have devoted to other matters. Accordingly, to the extent applicable, this factor supports the requested percentage.

5. Whether the Fee Is Fixed or Contingent

Lead Counsel undertook this action on a contingent fee basis, assuming a substantial risk that the action would yield no recovery and leave counsel uncompensated. Lead Counsel's extensive time and effort devoted to litigating the action in the face of a myriad of risks, strongly supports the fee requested. *See Klein*, 705 F. Supp. 2d at 678 (where "class counsel represented the class on a contingent-fee basis, with no guarantee of any recovery . . . [t]he contingent nature of the fee favors an increase" in the fee); *OCA*, 2009 WL 512081, at *22 ("the risk plaintiff's counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys' fees, and thus an upward adjustment is warranted").[8]

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. Subsequent to the passage of the PSLRA, many cases in this Circuit have been dismissed at the pleading stage in response to defendants' arguments that the complaints do not meet the PSLRA's pleading standards. Lead Counsel was faced with this very real possibility in this Litigation. Even plaintiffs who get past summary judgment and succeed at trial may find their judgment overturned on appeal or on judgment notwithstanding the verdict.[9]

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[8] *See Schwartz*, 2005 WL 3148350, at *31-*32 (recognizing "the risk of no recovery in complex cases of this type is very real" and that "[c]ourts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees").

[9] *See, e.g.*, *Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (major portion of plaintiffs' verdict reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th

Lead Counsel has received no compensation during the course of this Litigation and has incurred significant expenses in prosecuting this Litigation for the benefit of the Class. Any fee or expense award has always been at risk and completely contingent on the result achieved. Thus, the contingent nature of the Litigation supports the requested percentage.

6. The Amount Involved and Results Obtained

The benefit conferred to the class and the result achieved is an important factor in setting a fair fee. *See, e.g.*, *In re Terra-Drill P'ships Sec. Litig.*, 733 F. Supp. 1127, 1128 (S.D. Tex. 1990) (noting that the *Johnson* factors emphasize "the results obtained"). Here, Lead Counsel has achieved a highly favorable recovery of $21 million for the benefit of the Class. The result achieved, given the substantial risks, is significant and supports the requested fee.

7. The Undesirability of the Case

The tenth *Johnson* factor, undesirability of the case, also supports the fee requested here. Securities cases have generally been recognized as "undesirable" due to the financial burden on counsel and the time demands of litigating class actions of this size and complexity. *Garza v. Sporting Goods Props.*, No. SA-93-CA-1082, 1996 U.S. Dist. LEXIS 2009, at *118 (W.D. Tex. Feb. 6, 1996) (factors such as financial burden on counsel and time demands of litigating class action of this size and complexity have caused cases to be considered "undesirable"). This was never an easy case and the risk of no recovery was always high. When counsel undertook representation of Lead

Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 533 (S.D.N.Y. 2011) (after jury verdict for plaintiff, court significantly reduced scope of class by amending class definition to exclude purchasers of ordinary shares); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-61542-CIV-UNGARO, 2011 U.S. Dist. LEXIS 48057 (S.D. Fla. Apr. 25, 2011) (granting defendants' post-trial motion for judgment as a matter of law following jury verdict for plaintiff); *In re Apollo Grp., Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS 61995 (D. Ariz. Aug. 4, 2008) (same).

Plaintiff and the Class in this action, 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. No other party moved to serve as lead plaintiff and no other counsel sought to be appointed lead counsel. Had Lead Plaintiff and Lead Counsel not been tenacious in bringing and pursuing this action, it is doubtful that Class Members would have recovered anything from Defendants. The risks Lead Counsel faced must be assessed as they existed at the time counsel undertook the Litigation and not in light of the settlement ultimately achieved. *See, e.g.*, *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991) (the riskiness of a case must be judged *ex ante* not *ex post*). Thus, the "undesirability" of the Litigation supports the requested percentage.

8. The Requested Fee Is Supported by Awards in Similar Cases

As discussed above in §VI.C, a 30% fee is consistent with fee percentages that have been repeatedly awarded by courts in this Circuit.

E. Class Member Reaction

Although not formally noted in the case law for this jurisdiction as a factor for the Court's consideration in determining an award of attorneys' fees, courts throughout the country have found that relatively few or no objections from the class to the attorneys' fees requested supports the reasonableness of the requested attorneys' fees.[10] To date, there have been no objections to Lead Counsel's fee request,[11] which is important evidence that the requested fee is fair. *See, e.g.*,

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[10] *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion by finding that absence of substantial objections by class members to fee request weighed in favor of approval); *In re Ravisent Techs., Inc. Sec. Litig*., No. 00-CV-1014, 2005 U.S. Dist. LEXIS 6680, at *37 (E.D. Pa. Apr. 18, 2005) (absence of objections supports award of requested fee); *In re Charter Commc'ns, Inc.*, MDL No. 1506, 2005 U.S. Dist. LEXIS 14772, at *59 (E.D. Mo. June 30, 2005) (small number of objections from institutional investors supported approval of fee request); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) ("The reaction by members of the Class is entitled to great weight by the Court.").

[11] As set forth in the Notice, the deadline to submit objections is December 20, 2019. Should any objections be received prior to that date, Lead Counsel will address them in its reply brief, to be filed no later than January 3, 2020.

Halliburton, 2018 WL 1942227, at *12 ("Although the lack of objections is not a *Johnson* factor, the Court finds it relevant in considering the reasonableness and fairness of the award.").

VII. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENT

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and charges. *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, No. MDL 1446, 2004 WL 1900294, at *3 (S.D. Tex. Aug. 5, 2004). *See Di Giacomo*, 2001 WL 34633373, at *13 (awarding litigation expenses in addition to 30% attorneys' fee, noting that "[n]o party has objected to the amount of the expenses" and that such expenses were reasonable); *Faircloth v. Certified Fin. Inc.*, No. 99-3097, 2001 U.S. Dist. LEXIS 6793, at *36 (E.D. La. May 16, 2001) (awarding costs in addition to the percentage fee); *In re Harrah's Entm't*, No. 95-3925, 1998 U.S. Dist. LEXIS 18774, at *9 (E.D. La. Nov. 25, 1998) (same).

Lead Counsel is seeking payment of its reasonable expenses and charges of $1,382,548.67 for prosecuting this Litigation on behalf of the Class. *See* Robbins Geller Declaration, ¶5. These expenses were necessary for the investigation and prosecution of the case. *Id.* The expenses include private investigators, damage consultants, expert fees, mediation fees, travel, photocopying of documents, on-line research, messenger service, postage, express mail and next day delivery, and other incidental expenses directly related to the prosecution of this Litigation. Accordingly, Lead Counsel respectfully submits that all of these expenses were reasonable and necessarily incurred in the prosecution of the Litigation and therefore should be paid from the Settlement Fund.

VIII. LEAD PLAINTIFF'S AWARD UNDER 15 U.S.C. §78u-4(a)(4)

Lead Plaintiff also seeks approval for an award of $651.52 in recognition of the time and resources it spent representing the Class. Moore Decl., ¶7. The PSLRA allows an "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 a class." 15 U.S.C. §78u-4(a)(4). Many

courts have approved such awards under the PSLRA to compensate class representatives for the time and effort they spent on behalf of the class. *See, e.g.*, *In re Am. Int'l Grp., Inc. Sec. Litig.*, No. 04 Civ. 8141 (DAB), 2010 WL 5060697, at *3 (S.D.N.Y. Dec. 2, 2010) (granting PSLRA award of $30,000 to institutional lead plaintiffs "to compensate them for the time and effort they devoted on behalf of a class"); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM) (PED), 2010 WL 4537550, at *31 (S.D.N.Y. Nov. 8, 2010) (approving award of $100,000 to lead plaintiff for time spent on the litigation).

As set forth in the Moore Declaration (filed herewith), Lead Plaintiff took an active role in prosecuting the Litigation, including: (1) communicating with Lead Counsel on issues and developments in the Litigation; (2) reviewing documents filed in the case, including the operative complaint; (3) searching for and providing documents and information to Lead Counsel responsive to Defendants' document requests and providing deposition testimony; and (4) consulting with Lead Counsel on litigation and settlement strategy. Moore Decl., ¶¶3-4.

These are precisely the types of activities courts have found support PSLRA awards to class representatives. *See, e.g.*, *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695 (CM), 2007 WL 4115808, at *12 (S.D.N.Y. Nov. 7, 2007) (characterizing such awards as "'routine[]'" in this Circuit); *Hicks v. Stanley*, No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *10 (S.D.N.Y. Oct. 24, 2005) ("Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place."). Pursuant to the PSLRA, Lead Plaintiff requests $651.52 based on the value of its time in participating in this Litigation. Moore Decl., ¶7. To date, no Class Member has objected to such awards to Lead Plaintiff.

IX. CONCLUSION

Based on the foregoing and the entire record, Lead Plaintiff and Lead Counsel respectfully request that the Court approve: the Settlement and the Plan of Allocation; Lead Counsel's request for an award of attorneys' fees of 30% of the Settlement Amount and payment of $1,382,548.67 in expenses; and an award of $651.52 to Lead Plaintiff, as allowed by the PSLRA.

DATED: December 6, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 6, 2019, 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 e-mail 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.

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