

FILED  
07-16-2020  
CIRCUIT COURT  
DANE COUNTY, WI  
2019CV000982

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 3

DANE COUNTY

PLYMOUTH COUNTY RETIREMENT  
ASSOCIATION, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

SPECTRUM BRANDS HOLDINGS, INC.,  
DAVID M. MAURA, JOSEPH S.  
STEINBERG, GEORGE C. NICHOLSON,  
CURTIS GLOVIER, FRANK IANNA,  
GERALD LUTERMAN, ANDREW A.  
MCKNIGHT, ANDREW WHITTAKER and  
HRG GROUP, INC.,

Defendants.

Case No. 2019-CV-000982  
Case Code: 30301 (Money Judgment)

Hon. Valerie L. Bailey-Rihn

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**MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN  
AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

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Lead Counsel Labaton Sucharow LLP (“Labaton Sucharow”), on behalf of Plaintiff’s Counsel, hereby respectfully requests, in connection with the proposed settlement of the above-captioned class action: (i) an award of attorneys’ fees in the amount of 30% of the Settlement Fund, including accrued interest; (ii) payment of litigation expenses incurred by Plaintiff’s Counsel in the amount of \$46,081.53, plus accrued interest; and (iii) an award of \$3,200 to Plaintiff Plymouth County Retirement Association (“Plaintiff” or “Plymouth County”) for its efforts on behalf of the proposed Settlement Class.<sup>1</sup>

The Motion is based on the following memorandum of law and the Declaration of Jonathan Gardner in Support of (I) Plaintiff’s 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 Expenses, (the “Gardner Declaration”), submitted herewith.<sup>2</sup> A proposed order will be submitted on August 13, 2020, with Lead Counsel’s reply papers after the deadline for objections has passed.

### **PRELIMINARY STATEMENT**

Lead Counsel has vigorously litigated this case since its inception, on an entirely contingent basis against a tenacious and well-resourced defense. The \$9 million proposed

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<sup>1</sup> Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated May 1, 2020 (the “Settlement Agreement”), filed with the Court on May 4, 2020. Dkt. 110. Plaintiff’s Counsel are the law firms of Labaton Sucharow LLP, Michael Best & Friedrich LLP, and Thornton Law Firm LLP.

<sup>2</sup> The Gardner Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the litigation efforts; and the risks and uncertainties of continued litigation, among other things. Citations to “¶” in this memorandum refer to paragraphs in the Gardner Declaration.

All exhibits referenced herein are annexed to the Gardner Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as “Ex. \_\_\_ - \_\_\_.” The first numerical reference is to the designation of the entire exhibit attached to the Gardner Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

Settlement, if approved by the Court, represents a very favorable outcome for the Settlement Class. The Settlement is particularly beneficial in light of the significant litigation risks present in this case. As discussed below, and detailed in the accompanying Gardner Declaration, Defendants advanced powerful defenses to Plaintiff's claims and there was considerable uncertainty throughout the case as to whether Plaintiff would be able to achieve a meaningful recovery, if litigation continued.

To achieve the recovery here, Lead Counsel devoted substantial resources to this litigation by, among other things: (i) conducting a thorough investigation; (ii) preparing and filing a detailed Initial Complaint and Amended Complaint; (iii) opposing Defendants' comprehensive motion to dismiss the Amended Complaint; (iv) consulting with experts; (v) reviewing documents produced in advance of mediation; and (vi) engaging in settlement discussions under the guidance of an experienced Mediator. At the time the Parties reached the Settlement, Plaintiff and Lead Counsel had a deep understanding of the strengths and weaknesses of the Parties' positions. *See generally* Gardner Decl. at §§III-IV. Lead Counsel undertook these efforts and achieved the proposed Settlement in the face of substantial challenges with respect to establishing Defendants' liability, particularly with respect to proving materiality, falsity, traceability of the class's shares to the Merger, damages, and overcoming a negative causation defense.

As discussed below, the 30% fee requested for these efforts is in-line with the range of fees awarded in comparable class action settlements by many courts in Wisconsin and within the Seventh Circuit. Additionally, the requested fee has the support of Plaintiff, Plymouth County, a sophisticated institutional investor. *See* Ex. 1 at ¶5.

Finally, the reaction of the Settlement Class to date supports the request. Pursuant to the

Court's Preliminary Approval Order, 31,154 copies of the Notice have been mailed to potential Settlement Class Members and nominees. *See* Ex. 2 at ¶¶2-9. The Notice advised potential Settlement Class Members that Plaintiff's Counsel would seek fees in an amount not to exceed 30% of the Settlement Fund and payment of litigation expenses in an amount not to exceed \$70,000. *See* Ex. 2-A at p. 1 and ¶28. While the July 30, 2020 deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the attorneys' fees or expenses set forth in the Notice have been filed.

### ARGUMENT

#### **I. LEAD COUNSEL'S REQUEST FOR ATTORNEYS' FEES OF 30% OF THE COMMON FUND SHOULD BE APPROVED**

##### **A. Counsel Is Entitled to an Award of Attorneys' Fees from the Common Fund**

It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has 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).<sup>3</sup> Wisconsin courts also recognize the common fund doctrine. *See, e.g., Wisconsin Ret. Teachers Ass'n, Inc. v. Emp. Tr. Funds Bd.*, 207 Wis. 2d 1, 36 (1997). Indeed, "Wisconsin law recognizes that parties to an action that either creates or preserves a fund because of their efforts are entitled to reimbursement of their attorneys' fees from the fund protected or created." *Milwaukee Police Ass'n v. City of Milwaukee*, 222 Wis. 2d 259, 273 (Ct. App. 1998). Similarly, the Seventh Circuit has held that "[w]hen a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund." *Florin v.*

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<sup>3</sup> All internal quotations and citations are omitted unless otherwise noted.



*Nationsbank of Ga., N.A. (“Florin I”)*, 34 F.3d 560, 563 (7th Cir. 1994).<sup>4</sup>

The Supreme Court has emphasized that private securities actions, like this Action, are “an essential supplement to criminal prosecutions and civil enforcement actions” brought by the U.S. Securities and Exchange Commission (“SEC”). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); accord *Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (private securities actions provide “‘a most effective weapon in the enforcement’ of the securities laws and are ‘a necessary supplement to [SEC] action’”). It is well documented that large defense firms representing corporations attract talented lawyers who are well compensated, and fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs. See *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013); *Wolff v. Cash 4 Titles*, No. 03-22778-CIV, 2012 WL 5290155, at \*5 (S.D. Fla. Sept. 26, 2012) (“Mindful of the need to attract counsel of this high caliber, courts have recognized the importance of providing incentives to experienced counsel who take on complex litigation cases on a contingent fee basis so those cases can be prosecuted both efficiently and effectively.”).

#### **B. A Fee Applying the Percentage of the Fund Method Would Be Reasonable**

In calculating reasonable attorney fees, the court has discretion to base its award on either a percentage of the fund recovered or the lodestar method of a reasonable hourly rate multiplied

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<sup>4</sup> Effective July 1, 2018, Wis. Stat. Section 803.08 was repealed and recreated by Supreme Court Order to align with the federal class action rule, Federal Rule of Civil Procedure 23. The Supreme Court Order directs Wisconsin courts to look to federal cases for guidance. S. Ct. Order No. 17-03, 2017 WI 108 (“The Judicial Council’s intent was to craft a Wisconsin class action rule that tracks as closely as possible federal practice so that Wisconsin courts and practitioners can look to the well-developed body of federal case law interpreting Rule 23 for guidance. . . . To the extent that the language of Section 803.08 differs from federal Rule 23, the Committee’s intent was to conform the federal rule to Wisconsin statutory drafting standards without changing the substantive meaning of any provision.”) (Judicial Council Committee Notes); see also *Harwood v. Wheaton Franciscan Servs., Inc.*, 388 Wis. 2d 546, 552-53 & n.4 (Ct. App. 2019).

by a reasonable number of hours. *Wisconsin Ret. Teachers Ass'n, Inc.*, 207 Wis. 2d at 38 (citing *Florin I*, 34 F.3d at 565). Although courts in Wisconsin “have discretion to choose either the lodestar or percentage method of calculating fees,” the Seventh Circuit has strongly endorsed the percentage method, pursuant to which fees are awarded as a percentage of the common fund, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (“it is commonplace to award the lawyers for the class a percentage of the fund . . . in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis”); *Taubenfeld v. AON Corp.*, 415 F.3d 597 (7th Cir. 2005) (affirming fee award under the percentage of the fund method); *see also Hale v. State Farm Mut. Auto. Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at \*7 (S.D. Ill. Dec. 16, 2018) (noting that while courts have discretion, “the percentage method is employed by ‘the vast majority of courts in the Seventh Circuit...’”).

The Seventh Circuit has recognized “that there are advantages to utilizing the percentage method in common fund cases because of its relative ease of administration.” *Florin I*, 34 F.3d at 566; *see also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage “than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so forth”); *Great Neck Capital Appreciation Inv. P’Ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 411 (E.D. Wis. 2002) (noting that the Seventh Circuit recognizes the advantages of the percentage of the fund, including “its relative objectivity and the fact that it is easily administered”).

**C. The Requested Fee Would Be Reasonable Under the Applicable Factors**

In determining the reasonableness of a fee request, Wisconsin courts typically consider the following factors: “the time and labor required, the novelty and difficulty of the question presented by the case, the skill requisite to perform the legal service properly, the preclusion of other employment by the attorneys due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, any time limitation imposed by the client or the circumstances, the amount involved and the results obtained, the experience, reputation and ability of the attorney, the ‘undesirability’ of the case, the nature and length of the professional relationship with the client, and awards in similar cases.” *Wisconsin Ret. Teachers Ass’n Inc.*, 207 Wis. 2d at 39. *See also Taubenfeld*, 415 F.3d at 600 (the Seventh Circuit considers the following factors: (1) “awards made by courts in other class actions”; (2) “the quality of legal services rendered”; and (3) “the contingent nature of the case”); *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) (a reasonableness determination “depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case”).

These factors strongly support the fee requested here.

**1. Time and Labor Expended in the Action**

The time and effort expended by Plaintiff’s Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As explained in the Gardner Declaration, Lead Counsel, among other things: (i) conducted a thorough investigation concerning the allegedly material false and misleading statements and omissions made by Defendants in connection with HRG’s offering of stock to investors in connection with the July 2018 merger (the “Merger”) of Old Spectrum and HRG, including gathering and analyzing information about

both companies—specifically, publicly available information and analyst reports regarding Old Spectrum and HRG, and contacting 56 former employees and interviewing 18 of them, four of whom provided information for the Amended Complaint; (ii) prepared and filed a detailed Initial Complaint and Amended Complaint; (iii) researched and drafted an opposition to Defendants’ comprehensive motion to dismiss the Amended Complaint; (iv) consulted with retained accounting and damages experts; (v) reviewed a core set of documents produced in advance of mediation; (vi) and engaged in settlement discussions under the guidance of an experienced Mediator. *See generally* Gardner Declaration at §§III-IV.

In light of the above efforts, Plaintiff’s Counsel expended more than 2,069 hours prosecuting this Action with a lodestar value of \$1,236,296.50. *See* Ex. 5. At all times, Plaintiff’s Counsel took care to staff the matter efficiently and to avoid duplication of effort. The substantial time and effort devoted to this case by Plaintiff’s Counsel, and their efficient and effective management of the litigation, was critical to obtaining the favorable result achieved by the Settlement. Plaintiff’s Counsel’s efforts for the benefit of the Settlement Class will continue, if the Court approves the Settlement. Counsel will also work through the settlement administration process, assist Settlement Class Members, and distribute the Settlement proceeds, without seeking any additional compensation.

Accordingly, the amount of time and effort devoted to this Action by Plaintiff’s Counsel and the efficient and effective management of the litigation confirm that the fee award requested is reasonable.

## **2. Novelty and Difficulty**

Here, at every turn, the litigation raised difficult legal and factual issues that required creativity and sophisticated analysis. As one court stated, “[s]hareholder class actions are

difficult and unpredictable, and skepticism about optimistic forecasts of recovery is warranted.” *Great Neck*, 212 F.R.D. at 409.

The difficulties that Plaintiff would encounter with continued litigation through the pending motion to dismiss the Amended Complaint, briefing on class certification, summary judgment, preparing and trying the case before a jury, subsequent post-trial motion practice, and a likely appeal of the Court’s rulings on class certification, summary judgment, post-trial motions, and a jury verdict would be significant. As detailed in the Gardner Declaration, the Action alleged violations of the Securities Act of 1933 (“Securities Act”), raising a panoply of difficult legal and factual issues that required sophisticated analysis of the Registration Statement, accounting rules, and the Company’s financial results, among other things. ¶¶42-50.

Additionally, Defendants would have continued to raise and press difficult traceability issues and a strong “negative causation” defense, arguing that the alleged materially misleading statements in the Registration Statement did not cause a substantial portion of the damages Plaintiff claimed, because most of the decline in the stock price after the Merger was not caused by any alleged omissions. ¶¶51-57.

### **3. Amount Involved and Results Obtained**

Courts have consistently recognized that the result achieved is an important factor for courts to consider in awarding a fee. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the degree of success obtained”). Here, Lead Counsel, on behalf of Plaintiff, has secured a Settlement that provides for a substantial and certain payment of \$9,000,000. The Settlement is higher than the median value of securities class action settlements in actions asserting claims under the Securities Act. For the ten years from 2010 through 2019, the median settlement amount in such cases was \$7.2 million. *See* Laarni T. Bulan & Laura E. Simmons,

*Securities Class Action Settlements – 2019 Review and Analysis*, at 7 (Cornerstone Research 2020), Ex. 7.

Furthermore, as detailed in the Gardner Declaration, the Settlement represents a recovery in a range from approximately 4.5% to 9.5% of estimated aggregate damages in the Action—a favorable recovery that is well within the range of reasonableness, particularly in light of the countervailing legal and factual arguments tenaciously pursued by Defendants and attendant litigation risks. ¶¶55-56; *see also* Memorandum of Law in Support of Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation at §I.B.1.(c).

#### **4. Skill of Counsel**

In evaluating fee requests, the Court can consider the “quality of legal services rendered.” *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at \*3 (approving class counsel’s fee request and noting that “[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity”). Here, Lead Counsel worked very hard to investigate and develop the complex claims against Defendants. As detailed in the Gardner Declaration, this is a complex case involving difficult factual and legal issues on the merits, and it was subjected to an extremely rigorous defense. Given the many contested issues, it took highly skilled counsel to pursue the claims and bring about the substantial recovery that has been obtained.

Lead Counsel has extensive and significant experience in the highly specialized field of securities class action litigation and is known as a leader in the field. *See* ¶¶90-91. Lead Counsel has not only used its knowledge and skill from prior cases but also developed specific expertise in the unique issues presented in this case to overcome the arguments and hurdles put forth by Defendants.

The quality of opposing counsel is also important in evaluating the quality of the work done by Lead Counsel. *See, e.g., Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at \*2 (S.D. Ill. Jan. 31, 2014) (“Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination.”). Here, Lead Counsel was opposed by very skilled and highly respected lawyers with well-deserved reputations for vigorous advocacy in the defense of complex civil cases such as this. In the face of this formidable opposition, Lead Counsel was able to develop the Settlement Class’s case to the point where it was able to settle the Action on terms favorable to the Settlement Class.

#### **5. Whether the Fee was Fixed or Contingent**

Plaintiff’s Counsel undertook the Action on a wholly contingent-fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. Courts have consistently recognized that this risk is an important factor favoring an award of attorneys’ fees. *See, e.g., Synthroid*, 264 F.3d at 721 (“the market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear”); *Silverman*, 739 F.3d at 958 (“The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel.”). “Thus, [w]hen determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit.” *Hale*, 2018 WL 6606079, at \*8. Indeed, “court[s] must also be careful to sustain the incentive for attorneys to continue to represent such clients on an inescapably contingent basis.” *Florin v. Nationsbank of Ga., N.A. (Florin II)*, 60 F.3d 1245, 1247 (7th Cir. 1995).

Plaintiff’s Counsel prosecuted the Action on a wholly contingent basis, knowing that the litigation could last for years and would require them to devote a substantial amount of attorney

time and a significant advance of litigation expenses with no guarantee of compensation or reimbursement. Plaintiff's Counsel's assumption of this contingency fee risk, and the extensive litigation of the Action in the face of these risks, strongly supports the reasonableness of the requested fee. *See Taubenfeld*, 415 F.3d at 600 (approving requested fee and noting that "lead counsel was taking on a significant degree of risk of nonpayment with the case").

**6. A Fee Award of 30% Is Within the Range of Fees Awarded in Similar Cases by Courts in Wisconsin and Within the Seventh Circuit**

"[A]ttorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court." *Taubenfeld*, 415 F.3d at 600. In complex class action cases like this one, courts within the Seventh Circuit have held that percentages in the range of 30% to 40% of the recovery are appropriate. *See Great Neck*, 212 F.R.D. at 412 (approving a fee request equal to 30% of the \$10.15 million settlement, plus expenses); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (stating that "an award of 33.3% of the settlement fund is within the reasonable range"); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at \*4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.").

A review of attorneys' fees awarded in class actions with comparably sized settlements in Wisconsin courts and other courts within the Seventh Circuit also supports the reasonableness of the 30% fee request. *See e.g., Great Neck*, 212 F.R.D. at 412 (awarding 30% of \$10.5 million settlement); *Retsky*, 2001 WL 1568856, at \*3 (awarding 33.3% of \$14 million settlement); *Gupta v. Power Sols. Int'l Inc.*, Case No. 1:16-cv-08253, slip op. at 2 (N.D. Ill. May 13, 2019) (awarding 33 1/3% of \$8.5 million settlement) (Ex. 8); *Taubenfeld*, 415 F.3d at 600 (affirming the district court's award of 30% of \$7.25 settlement); *Van Noppen v. Innerworkings, Inc.*, No.



1:14-cv-01416, slip op. at 4 (N.D. Ill. Nov. 2, 2016) (awarding 30% of \$6.025 settlement) (Ex. 8); *Beesley*, 2014 WL 375432, at \*2 (awarding 33.3% of \$30 million settlement).<sup>5</sup>

District courts within the Seventh Circuit have also awarded fees of 30% or more in much larger settlements, including the recent class action settlement in *Hale*, in which the Court awarded 33.3% of a \$250 million settlement. *See Hale*, 2018 WL 6606079, at \*13; *see also Heekin v. Anthem, Inc.*, No. 05 cv 01908, 2012 WL 5878032, at \*2 (S.D. Ind. Nov. 20, 2012) (awarding 33.3% of \$90 million settlement).

In sum, the percentage fee requested here is reasonable and comparable to percentage fee awards made within the Seventh Circuit.

**D. The Requested Attorneys' Fees Are Reasonable**  
**Applying the Lodestar Method**

While a lodestar analysis is not required, a lodestar cross check confirms the reasonableness of the fee request. *See Silverman*, 2012 WL 1597388, at \*4 (“It is unnecessary to resort to a lodestar calculation to reinforce the same conclusion.”). Under the lodestar method, “the starting point is measured by the attorney hours spent on the litigation multiplied by the attorney’s hourly billing rate.” *Riverstone Creek Condo. Owners Ass’n Inc. v. Hall*, 377 Wis. 2d 730 (Ct. App. 2017). *See also Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010) (“the court computes fees by “multiplying the number of hours each attorney or other professional expended on the case by his or her hourly rate”). The court then typically adjusts the lodestar, by applying a multiplier, to reflect factors such as the contingent nature of the case, and the consequent risk of non-payment (or under-payment), and the quality of work performed. *See Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1998) (discussing rationale for risk multiplier and method of assessing it).

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<sup>5</sup> A compendium of unreported “slip” opinions, in alphabetical order, is attached as Exhibit 8 to the Gardner Declaration.

As noted above, Plaintiff's Counsel spent more than 2,000 hours of attorney and other professional support time prosecuting this Action through July 10, 2020. ¶80; Exs. 3-A, 4-A, and 5. Based on Plaintiff's Counsel's hourly rates, the total lodestar is \$1,236,296.50.<sup>6</sup> *See id.* This lodestar is a function of the litigation efforts in the case, as described in the Gardner Declaration, which included a detailed investigation, filing an Initial Complaint and an Amended Complaint, extensive motion practice on Defendants' motion to dismiss the Amended Complaint, a review of core documents in connection with the mediation, and thorough mediation discussions. The hourly rates of Plaintiff's Counsel here range from \$575 to \$1,100 for partners, \$750 to \$775 for of counsels, and \$230 to \$500 for associates. *See* Exs. 3-A and 4-A.

Plaintiff's Counsel's rates are reasonable in light of prevailing market rates for lawyers with comparable levels of experience and expertise in securities litigation and other complex commercial litigation. Sample defense firm rates in 2019, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. ¶79; Ex. 6. Moreover, the Seventh Circuit has recognized that "if an out-of-town attorney has a higher hourly rate than local practitioners, district courts should defer to the out-of-town attorney's rate when calculating the lodestar amount." *Freeland v. Unum Life Ins. Co. of Am.*, No. 11-CV-053-WMC, 2014 WL 988761, at \*2 (W.D. Wis. Mar. 13, 2014).

The requested 30% fee, which would amount to \$2,700,000 (before interest), would represent multiplier of approximately 2.18 of Plaintiff's Counsel's total lodestar. This multiplier

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<sup>6</sup> The Supreme Court and courts in the Seventh Circuit have approved the use of current hourly rates, rather than historical rates, to calculate base lodestar figures in order to compensate counsel for the delay in receiving payment. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Smith v. Vill. of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) ("A court may elect to use ... current rates ... as acceptable compensation for the delay in payment of fees"); *Skelton*, 860 F.2d at 255 n.5 ("The courts in this circuit generally use current rates").

is within the range of multipliers awarded in securities class actions and other comparable litigation in the Seventh Circuit. *See, e.g., Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) (“Multipliers anywhere between 1.0 and 4.0 have been approved.”); *Hale*, 2018 WL 6606079, at \*14 (finding a multiplier of 2.83 reasonable).

**E. Plaintiff Has Approved the Requested Fee**

Plaintiff Plymouth County is a sophisticated institutional investor that assisted Lead Counsel with the litigation of the Action and has a sound basis for assessing the reasonableness of the fee request. *See* Ex. 1 at ¶¶1-4. Plaintiff fully supports and approves the fee request. *Id.* at ¶5.

**F. The Reaction of the Settlement Class to Date**

The reaction of the Settlement Class to date also supports the requested fee. As of July 14, 2020, the Claims Administrator has disseminated 31,154 Notice packets to potential Settlement Class Members and nominees informing them of, among other things, Lead Counsel’s intention to apply to the Court for an award of attorneys’ fees not to exceed 30% of the Settlement Fund and payment of up to \$70,000 in expenses. *See* Ex. 2 at ¶9, and Ex. A thereto at p. 1 and ¶28. To date, no objections have been received. Lead Counsel will address any future objections in its reply papers to be filed with the Court on August 13, 2020.

**II. THE REQUESTED EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED**

Lead Counsel’s fee application includes a request for payment of Plaintiff’s Counsel’s litigation expenses, which were reasonably incurred and necessary to the prosecution of this Action. These expenses are properly recovered by counsel and are outlined in Plaintiff’s Counsel’s individual fee and expense declarations submitted to the Court herewith. *See* Exs. 3-B and 4-B; *Beesley*, 2014 WL 375432, at \*3 (“It is well established that counsel who create a

common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.”) (citing *Boeing*, 444 U.S. at 478).

As set forth in the Gardner Declaration, Plaintiff’s Counsel incurred \$46,081.53 in litigation expenses on behalf of the class in the prosecution of the Action. ¶¶92-100; Exs. 3-B, 4-B, and 5. The largest component of expenses related to experts and consultants. Specifically, \$15,099.50 or approximately 33% of total expenses, was expended on such services. ¶94. Lead Counsel retained experts in the fields of damages, causation, and accounting to assist in the prosecution and resolution of the Action. These experts were valuable for the analysis and development of the claims and in connection with mediation. Lead Counsel’s loss causation and damages expert also assisted Lead Counsel with the development of the proposed Plan of Allocation. *Id.*

Lead Counsel also incurred expenses in connection with the mediation, totaling \$12,808.07 (or approximately 28% of total expenses). ¶97; Ex. 3-B.

Another component of the litigation expenses was the costs of electronic factual and legal research (\$8,376.37 or approximately 18% of total expenses). ¶96; Ex. 3-B. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues.

The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to fee-paying clients. These expenses include, among others, duplicating costs, long distance telephone and conference call charges, service fees, and filing fees.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for payment of expenses in an amount not to exceed \$70,000. The amount of litigation expenses requested, \$46,081.53, is below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

### III. PLAINTIFF'S REQUEST FOR A SERVICE AWARD

Plaintiff Plymouth County seeks an award of \$3,200, which is proportional to the forty hours that it dedicated to serving as Plaintiff in the Action and ensuring that the Settlement Class was adequately represented. The service and time devoted to this Action by Plaintiff are set forth in the declaration of David Sullivan, filed concurrently herewith. *See* Ex. 1. at ¶¶3, 6.

Such awards have been regularly provided by courts in Wisconsin. *See, e.g., Chesemore v. Alliance Holdings, Inc.*, No. 09-CV-413-WMC, 2014 WL 4415919, at \*5 (W.D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (awarding awards to plaintiffs in the amounts of \$25,000 and \$10,000); *Great Neck*, 212 F.R.D. at 412 (awarding two named plaintiffs \$5,000 each for their work relating to the representation of the class).

Awards to plaintiffs in other state and federal securities class actions have also regularly been made to compensate a plaintiff for the time and effort they spent on behalf of a class. *See, e.g., Pub. Emps. Ret. Sys. of Miss. v. Endo Int'l PLC*, Case No. 2017-02081-MJ, slip op. at 14 (Pa. Com. Pl., Chester Cty. Dec. 5, 2019) (awarding service award to plaintiff in the amount of \$21,602.50) (Ex. 8); *Pub. Emps. Ret. Sys. of Miss. v. Sprouts Farmers Market, Inc.*, No. CV2016-050480, slip op. at 14 (Super. Ct. Ariz. Maricopa Cty. May 31, 2019) (awarding service award to plaintiff in the amount of \$25,050) (Ex. 8); *Pension Trust Fund for Operating Eng'rs v. DeVry Educ. Grp, Inc., et al.*, No. 1:16-cv-05198 slip op. at 2 (N.D. Ill. Dec. 6, 2019) (awarding \$10,000 to plaintiff) (Ex. 8); *In re Groupon, Inc. Sec. Litig.*, No. 12 cv 2450, 2016 WL 3896839, at \*4 (N.D. Ill. July 13, 2016) (awarding class plaintiffs \$5,000 each for their time and expenses

incurred in prosecuting the action); *In re ITT Educ. Servs., Inc. Sec. Litig. (Indiana)*, No. 14 cv 01599, 2016 WL 1162534 at \*5 (S.D. Ind. Mar. 24, 2016) (awarding institutional plaintiff \$10,000 for reasonable costs and expenses directly related to its representation of the settlement class).

Accordingly, it is respectfully submitted that the amount sought by Plaintiff is reasonable and should be granted.

### **CONCLUSION**

For the foregoing reasons, Lead Counsel respectfully requests that the Court award (i) attorneys' fees in the amount of 30% of the Settlement Fund; (ii) payment of litigation expenses totaling \$46,081.53, plus interest incurred at the same rate as the Settlement Fund; and (iii) \$3,200.00 to Plaintiff for its efforts on behalf of the class.<sup>7</sup>

Dated: July 16, 2020

Respectfully submitted,

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<sup>7</sup> A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

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