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**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA**

SOUTHEASTERN PENNSYLVANIA  
TRANSPORTATION AUTHORITY, on  
behalf of itself and all others similarly  
situated,

Plaintiff,

v.

ORRSTOWN FINANCIAL SERVICES,  
INC., ORRSTOWN BANK, ANTHONY  
F. CEDDIA, JEFFREY W. COY, MARK  
K. KELLER, ANDREA PUGH,  
THOMAS R. QUINN, JR., GREGORY A.  
ROSENBERRY, KENNETH R.  
SHOEMAKER, GLENN W. SNOKE,  
JOHN S. WARD, BRADLEY S.  
EVERLY, JOEL R. ZULLINGER,  
JEFFREY W. EMBLY, SMITH  
ELLIOTT KEARNS & COMPANY,  
LLC, SANDLER O'NEILL &  
PARTNERS L.P., and JANNEY  
MONTGOMERY SCOTT LLC,

Defendants.

Civil Action No. 1:12-cv-00993

CLASS ACTION

**LEAD PLAINTIFF'S  
MEMORANDUM OF LAW IN  
SUPPORT OF ITS MOTION FOR  
AN AWARD OF ATTORNEYS'  
FEES AND REIMBURSEMENT  
OF LITIGATION EXPENSES**

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Pursuant to Fed. R. Civ. P. 23(h) and the Court’s Order Preliminarily Approving the Settlement, Establishing Notice Procedures, and Setting the Settlement Hearing Date, entered on February 1, 2023 (Dkt. Nos. 299, 300, the “Preliminary Approval Order”),<sup>1</sup> Court-appointed Lead Plaintiff Southeastern Pennsylvania Transportation Authority (“Plaintiff” or “SEPTA”) respectfully submits this memorandum in support of its Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Fee and Expense Application”). Submitted currently herewith is the Declaration of Kimberly Donaldson-Smith (“KDS Decl.”) in support of Lead Plaintiff’s Fee and Expense Application and concurrently filed Motion for Final Approval of the Class Action Settlement.

## **I. INTRODUCTION**

Lead Counsel, Chimicles Schwartz Kriner & Donaldson-Smith LLP (“CSKD” or “Lead Counsel”), solely, have litigated this Action without compensation for ten years. Through the proposed Settlement, CSKD brings finality to the federal securities law claims filed by SEPTA in 2012, which were litigated through and by: the filing of four complaints (which were the product of extensive investigation and analyses by Lead Counsel and the work of industry and financial

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<sup>1</sup> Unless otherwise stated or defined, all capitalized terms used herein have the definitions provided in the Stipulation and Agreement of Settlement dated December 5, 2022 (“Stipulation”), which was filed as Exhibit 1 to the Donaldson-Smith Declaration submitted in support of Plaintiff’s Motion for Preliminary Approval (Dkt. No. 297).



experts and consultants retained by Lead Counsel); numerous rounds of motions to dismiss; an interlocutory appeal to the Third Circuit; review and analysis of over 1 million pages of documents; depositions; hiring of class certification and damages experts and the preparation of affirmative and rebuttal expert reports supporting class certification; and, significant motion practice.

Throughout the initiation, prosecution, and settlement of this Action, Lead Counsel devoted over 13,900 hours with a lodestar value of approximately \$8,900,000 and incurred \$717,488.55 in litigation expenses. It was because of Lead Counsel's tenacity that, ten years after the case was filed, Defendants agreed to settle all claims in this Action for \$15,000,000 paid into a non-reversionary cash fund (the "Settlement Fund") for the benefit of the Settlement Class members (the "Settlement").

The long history of this class action litigation is familiar to the Court. The history and as well as the Settlement, are addressed in Lead Plaintiff's Memorandum in Support of Final Approval of the Class Action Settlement and the KDS Declaration ¶¶6-68. By any measure this was a complicated case. There is no question that this Litigation absorbed thousands of attorney hours, demanded considerable litigation costs, was zealously prosecuted and defended by the parties, and resulted in an excellent Settlement for the Settlement Class. The prosecution and settlement of the Action required and benefitted from Lead Counsel's experience in

litigating complex class actions, and Lead Counsel's unwavering commitment of extensive time and resources to the Action. Moreover, the Settlement represents a significant recovery for the Settlement Class of approximately 29-36% of the maximum estimated damages.

For their work in litigating the claims and securing this substantial benefit for the Settlement Class, Lead Counsel respectfully seek and request (i) a fee award of 35% of the Settlement Fund, which is \$5,250,000 and, (ii) reimbursement of their litigation expenses in the amount of \$717,488.55, plus the proportionate amount of interest that has accrued on the awarded amounts from the inception of the Settlement Fund, through the date of payment from the Settlement Fund. These amounts (*i.e.* 35% of the Settlement Fund, up to \$800,000 of litigation expenses, and interest) were disclosed to Class Members in the Notice (Dkt. No. 297-1, Exhibit B, Notice at PDF pg. 61-62/93; Stipulation ¶6).

For all the reasons outlined herein, Lead Plaintiff's Fee and Expense Application, which is in line with awards granted in comparable securities fraud and other complex litigation in the Third Circuit and nationwide, should be approved in full.

## **II. THE COURT SHOULD APPROVE THE FEE REQUESTED**

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

Rule 23(h) provides that "[i]n a certified class action, the court may award

reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement.” It is well-established by both the Supreme Court and the Third Circuit that counsel should be compensated from any “common fund” they help create for the benefit of a class. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) (“[W]e agree with the long line of common fund cases that hold that attorneys ‘whose efforts create, discover, increase, or preserve a [common] fund’ [] are entitled to compensation.”). The common fund doctrine is also designed to prevent unjust enrichment of class members who benefit from a lawsuit without paying for its costs. *See Boeing Co.*, 444 U.S. at 478.

In addition, “Congress, the Executive Branch, and [the Supreme] Court, moreover, have recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions[.]” *Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 478 (2013). For meritorious private actions to continue to function as an “essential supplement” to regulatory enforcement, counsel who pursue these actions to a successful conclusion must receive sufficient compensation. *See In re Worldcom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (“In order to attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide

appropriate financial incentives.”).

**B. The Court Should Award Lead Counsel a Percentage of the Settlement Fund**

In the Third Circuit, a percentage-of-recovery method of calculating appropriate attorneys’ fees is “generally favored” in cases involving a settlement creating a common fund. *See Glaberson v. Comcast Corp.*, 2015 U.S. Dist. LEXIS 127370, at \*36 (E.D. Pa. Sep. 22, 2015)(“The Third Circuit favors the percentage-of-recovery method of calculating fee awards in common fund cases.”); *In re ViroPharma Inc. Sec. Litig.*, 2016 U.S. Dist. LEXIS 8626, at \*46 (E.D. Pa. Jan. 25, 2016) (same); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005) (same). “[T]he PSLRA has made percentage-of-recovery the standard for determining whether attorneys’ fees are reasonable.” *In re Cendant Corp.*, 404 F.3d 173, 188 n.7.

**C. The *Gunter* and *Prudential* Factors Support the Request for a Fee of 35% of the Settlement Fund**

District courts in the Third Circuit have substantial discretion in setting an appropriate percentage-based attorneys’ fees award in common fund cases. *See Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 (3d Cir. 2000) (“We give [a] great deal of deference to a district court’s decision to set fees.”); *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998).

Courts using the percentage-of-recovery method to calculate attorneys’ fees

generally approve fees ranging “from roughly 20-45%.” *Mabry v. Hildebrandt*, 2015 U.S. Dist. LEXIS 112137, at \*9 (E.D. Pa. Aug. 24, 2015) (collecting cases). Courts are instructed to consider the *Gunter* and *Prudential* factors when exercising deference to award attorneys’ fees. *In re Diet Drugs Prod. Liab. Litig.*, 582 F.3d 524, 541 (3d Cir. 2009). The *Gunter* factors are:

(1) [T]he size of the fund created and the number of beneficiaries, (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel, (3) the skill and efficiency of the attorneys involved, (4) the complexity and duration of the litigation, (5) the risk of nonpayment, (6) the amount of time devoted to the case by plaintiffs' counsel, and (7) the awards in similar cases.

*Gunter*, 223 F.3d at 195 n.1. The *Prudential* factors (consecutively renumbered from the *Gunter* factors) are:

[8] the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations; [9] the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained;<sup>2</sup> and [10] any “innovative” terms of settlement.

*In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 165 (3d Cir. 2006). These “factors ‘need not be applied in a formulaic way’ because each case is different...” *Id.* at 166; *In re Ocean Power Techs., Inc.*, 2016 U.S. Dist. LEXIS 158222, at \*83 (D.N.J. Nov.

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<sup>2</sup> In cases involving a cash common fund, *Prudential* factor 9 mirrors *Gunter* factor 7. See *Wallace v. Powell*, 288 F.R.D. 347, 375 (M.D. Pa. 2012) (“In private contingency fee cases, attorneys routinely negotiate agreements for between thirty percent and forty percent of the recovery.”)

15, 2016) (“The Court may give some of these factors less weight in evaluating a fee award.”).

The *Gunter/Prudential* factors support an attorney fee award to Lead Counsel of 35% of the Settlement Fund here.

### ***1. The Size of the Fund Created Supports the Requested Fees***

In evaluating this first *Gunter* factor, “courts ‘consider the fee request in comparison to the size of the fund created and the number of class members to be benefitted.’” *Dartell v. Tibet Pharms., Inc.*, 2017 U.S. Dist. LEXIS 100872, at \*21 (D.N.J. June 29, 2017) (quoting *Yedlowski v. Roka Bioscience*, 2016 U.S. Dist. LEXIS 155951, at \*20 (D.N.J. Nov. 10, 2016)).

Here, Lead Counsel negotiated a settlement to provide the Settlement Class with a common fund of \$15 million (plus accrued interest), which represents a substantial recovery of approximately 29 to 36% of the maximum damages recoverable by the Class at trial as estimated by Plaintiff’s expert (KDS Decl. ¶¶83-84). This percentage of recovery exceeds the median recovery for securities class actions over the years.<sup>3</sup>

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<sup>3</sup> The median ratio of settlement to investor losses for securities class actions settlements approved from 2012 through 2021 with damages of \$25 - \$75 million was approximately 7.3%, and 6.1% for settlements involving both Securities Act and Exchange Act Claims. Laarna T. Bulan *et al*, Securities Class Action Settlements: 2021 Year in Review, at 6-7 (Cornerstone Research 2022) (“Cornerstone Report”)(Available at: <https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and->

Further, while “the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund” (*In re Cigna-Am. Specialty Health Admin. Fee Litig.*, 2019 U.S. Dist. LEXIS 146899, at \*36(E.D. Pa. Aug. 29, 2019) (citations omitted)), courts recognize that in securities settlements “granting counsel a [lower percentage of fees, such as those awarded in “mega-fund” securities settlements] of a smaller fund may simply punish counsel for having litigated a smaller case.” *Yedlowski*, 2016 U.S. Dist. LEXIS 155951, at \*60; *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 U.S. Dist. LEXIS 96450, at \*64 (D.N.J. Aug. 26, 2011) (“The rationale for [a] sliding scale [fee, in which the greater the fund the *lower* the fee percentage,] is that, in most cases, the size of the award is more directly related to the size of the class, not the efforts of counsel.”).

Thus, the requested fee award of 35% of the Settlement Fund is supported by consideration of the size of the Settlement Fund relative to the percentage of damages recovered for the Settlement Class.

## ***2. No Class Members Have Objected to the Fee Request***

A court should consider “the presence or absence of substantial objections[.]”

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Analysis.pdf); *In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d at 263 (citing cases with a range of recoveries from 1.6% to 14% for approved securities class action settlements); *Whiteley v. Zynerba Pharms., Inc.*, 2021 U.S. Dist. LEXIS 176101, at \*16, 32 (E.D. Pa. Sept. 16, 2021) (finding a settlement of 10.4% of estimated damages “is well above similar average settlements in securities litigation”).

*Gunter*, 223 F.3d at 195 n.1. “[I]t is generally assumed that silence constitutes tacit consent to the agreement.” *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995). The Notice informed Settlement Class members that Lead Counsel would apply for an award of attorneys’ fees of up to 35% of the Settlement Fund and reimbursement of litigation expenses not to exceed \$800,000. (Dkt. 297-1, Exhibit B, Notice at ECF PDF pg. 61-62/93, and 71/93). The Notice also advised Settlement Class Members that by April 28, 2023 they could object to any part of the Settlement, including the Fee and Expense Application. (KDS Decl. ¶93). To date, neither Lead Counsel nor the Claims Administrator have been notified of or served with any objection from a Settlement Class Member to the Settlement or any part thereof. *Id.* ¶94-95. Accordingly, this factor weighs in favor of approving the requested fees.

### ***3. Lead Counsel Represented Plaintiff and the Class Skillfully***

Under the third *Gunter* factor, “courts consider the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case, and the performance and quality of opposing counsel.” *In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 U.S. Dist. LEXIS 196845, at \*30 (E.D. Pa. Oct. 28, 2022) (cleaned up).

The Court has already recognized that Lead Counsel are “experienced in



complex litigation” (Dkt. No. 299 at 21), and their decade-long representation of the interests of the Settlement Class was “relentless and effective” (*Id.* at 24). Lead Counsel, who have decades of experience prosecuting large-scale class actions, including securities and shareholder class actions (KDS Decl. ¶¶97), have been diligently and actively litigating this case for more than ten years—through four complaints, multiple rounds of motions to dismiss, an interlocutory appeal to the Third Circuit Court of Appeals, discovery and retention of experts, extensive document review and motion practice related to that discovery, and participation in a lengthy mediation process—to arrive at this result. *Id.* ¶¶6-68.

Lead Counsel’s skill, as measured by the quality of the results achieved in the Settlement, which secures a substantial percentage of recoverable damages for the Settlement Class members, warrants approval of the requested fee and expenses. *See footnote 3, supra* (Cornerstone Report at 6-7, ratio of losses to damages approximately 7.3% and 6.1%).

In sum, as this Court noted, “[e]ven the most cursory review of the docket in this matter reflects the vigorous advocacy and evident competence of [Lead Counsel].” Dkt. No. 299, at 20. The skill and competence of Lead Counsel weighs in favor of approving the requested fees.

***4. The Complexity, Expense, Duration and Likely Continued Duration of the Litigation Warrant Approval of the Requested Fee***

The fourth *Gunter* factor captures “the probable costs, in both time and

money, of continued litigation.” *In re Gen. Motors*, 55 F.3d at 812 (cleaned up). “Securities fraud class actions are notably complex, lengthy, and expensive cases to litigate.” *In re PAR Pharm. Sec. Litig.*, 2013 U.S. Dist. LEXIS 106150, at \*13 (D.N.J. July 29, 2013). They are “by nature particularly expensive to prosecute, usually requiring expert testimony on, at least questions of damages and loss causation.” *Yedlowski*, 2016 U.S. Dist. LEXIS 155951, at \*63.

Proving the foregoing true, Lead Plaintiff’s claims have been the subject of hard-fought litigation since the Action was filed in 2012, have warranted and benefitted from the retention of industry experts, the thousands of hours of time expended by Lead Counsel, and Lead Counsel’s retention of class certification and damages-related experts. KDS Decl. ¶¶17, 36, 37, 41, and 6-86, generally.

Notwithstanding the passage of ten years, before this Action would reach the Courthouse steps, a contested motion for class certification would need to be resolved, additional expert discovery and disclosures exchanged, including on class certification, liability and damages, additional deposition discovery and further motion practice needed to occur, all of which would delay reaching trial and securing a jury verdict and judgment, and require substantial additional expense and time. *Id.* ¶¶80-87. Moreover, even if Lead Plaintiff would have recovered a larger judgment at trial, the Class’ actual recovery would likely be postponed for years due to post-trial motions and appeals. *Id.* This factor, therefore, weighs in favor of approval.

### ***5. Lead Counsel Assumed the Risk of Nonpayment***

“Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp.*, 2012 U.S. Dist. LEXIS 75213, at \*19 (D.N.J. May 31, 2012). Notably, “[t]he risk of non-payment is especially high in securities class actions, as they are notably difficult and notoriously uncertain.” *Yedlowski*, 2016 U.S. Dist. LEXIS 155951, at \*65 (internal quotations omitted).

Lead Counsel undertook this complex securities action completely on contingency and litigated the claims unwaveringly for over a decade without a guarantee of compensation for fees or reimbursement of their expenses incurred. KDS Decl. ¶102. Despite the risk of nonpayment, Lead Counsel relentlessly pursued the action, providing labor and funding to ensure proper pursuit of the litigation, and, ultimately, to achieve the proposed Settlement. This factor weighs in favor of awarding the Fee and Expense Application as requested.

### ***6. Lead Counsel Dedicated a Significant Amount of Time and Resources to Pursuing the Case***

The sixth *Gunter/Prudential* factor considers the amount of time Lead Counsel devoted to the litigation. *Gunter*, 223 F.3d at 199. Lead Counsel expended over 13,900 hours, over the course of ten years, of attorney and other professional time to investigate, prosecute, and resolve this Action. KDS Decl. ¶104.

The complexity and difficulty of this litigation required work to be performed

by CSKD's attorneys (including senior partners, senior counsel, of counsel and associates) and professional staff (consisting of paralegals, law clerks, and an IT specialist), who dedicated substantial time and expenses at each stage of the litigation to: prevail on contested legal issues; prepare, file and defend four extensively researched and supported complaints; secure extensive document discovery, including productions of banking regulator documents; analyze over one million pages of documents; respond to discovery requests; prepare for and take depositions; prevail on an interlocutory appeal; conduct expert discovery, including the preparation of opening and rebuttal expert reports; and, mediate and settle this Action, all for the benefit of the Settlement Class. *Id.* ¶¶6-68, 104. The hours spent performing this work are well within a reasonable range for a complex case, taking into consideration the duration of the litigation. *See Lincoln Adventures LLC v. Certain Underwriters at Lloyd's*, 2019 U.S. Dist. LEXIS 171917, at \*23-24 (D.N.J. Oct. 3, 2019) (approving request for attorneys' fees in a case litigated for over a decade where counsel reported over 35,000 hours of work). *See* Section II.D, *infra*.

***7. Fee Awards in Similar Cases and Those Negotiated in the Open Market Support Attorneys' Fees of 35% of the Settlement Fund***

Under *Gunter* factor seven and *Prudential* factor nine, an award of 35% of the Settlement Fund falls within the range of the fee awards in percentage-of-recovery

cases, and in private contingency fee cases.<sup>4</sup> “In common fund cases, fee awards generally range from anywhere from nineteen percent (19%) to forty-five percent (45%) of the settlement fund.” *Bredbenner v. Liberty Travel, Inc.*, 2011 U.S. Dist. LEXIS 38663, at \*59 (D.N.J. Apr. 8, 2011). *See also*, Section II.C.1, *supra*.

Plaintiffs who bring securities cases, which are subject to the PSLRA, like this Action, face uniquely high burdens including with respect to pleading standards, materiality standards, availability to defendants of substantive affirmative defenses, and the burden and complex methods of proof of damages and challenges thereto. There is no “small case” exception to these burdens, and Plaintiff and Lead Counsel must expend the necessary time and bear necessary costs whether damages are \$5 million or \$2 billion. Thus, “[f]or smaller securities fraud class actions, courts within [the Third] Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses.” *Dartell v. Tibet Pharms., Inc.*, at \*25 (quotation omitted); *see In re Ravisent Techs., Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 6680, at \*40 (E.D. Pa. Apr. 18, 2005) (“[C]ourts within this Circuit have typically awarded attorneys’ fees of 30% to 35% of the recovery, plus expenses.”).

Courts have awarded such fee percentages even when settlements are reached (unlike here) prior to decisions on motions to dismiss or recover a percentage of the

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<sup>4</sup> *Wallace v. Powell*, 288 F.R.D. 347, 375 (M.D. Pa. 2012) (“In private contingency fee cases, attorneys routinely negotiate agreements for between thirty percent and forty percent of the recovery.”)

Class's estimated damages that is materially less than what Lead Plaintiff and its Counsel have achieved here. *See Schuler v. Meds. Co.*, 2016 U.S. Dist. 82344, at \*31 (D.N.J. June 23, 2016) (awarding one-third of \$4.25 million settlement reached before a decision on motion to dismiss); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431, 433-34 (E.D. Pa. 2001) (awarding one third of the settlement fund where plaintiffs recovered 11% of the high-end range of damages).

These factors weigh in favor of approving the requested Fee and Expense Application.

***8. The Settlement Results from Lead Plaintiff's and its Counsel's Efforts***

The settled claims were filed, prosecuted, and settled solely by Lead Plaintiff and its Counsel in this Action. Moreover, only after Lead Plaintiff's case was filed and prosecuted for several years, did Orrstown and certain individual defendants in September 2016 enter into cease-and-desist orders with the Securities & Exchange Commission, and Orrstown paid a civil monetary penalty of just \$1 million; indeed, the SEC investigation and findings did not concern Lead Plaintiff's claims related to Orrstown's March 2010 Offering and 2009 Form 10-K, which were recently upheld by the Court. KDS Decl. ¶¶29-30, 58. Accordingly, as the Settlement is solely due to Lead Plaintiff's and its Counsel's efforts, this factor weighs in favor of approval of the Fee and Expense Application.

**D. A Lodestar Cross-Check Confirms that an Award of 35% of the Settlement Fund is Reasonable**

While it need not, the Court may “cross-check the percentage award at which [it] arrive[s] against the ‘lodestar’ award method[.]” *Gunter*, 223 F.3d at 195 n.1. “The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method.” *Rite Aid*, 396 F.3d at 306.<sup>5</sup> That circumstance is not present here.

Lead Counsel’s lodestar is \$8,972,785, calculated by multiplying the hours expended by each CSKD attorney and professional staff by each of their current<sup>6</sup> hourly rates. *See* KDS Decl. ¶104. Lead Counsel’s rates are reasonable. In 2018, the Delaware District Court acknowledged that an hourly rate of \$1,250 was reasonable in a securities class action. *In re Wilmington Tr. Sec. Litig.*, 2018 U.S. Dist. LEXIS 196644, at \*29 n.4 (D. Del. Nov. 19, 2018). The highest current hourly rate of any CSKD attorney in this case is \$1,100.<sup>7</sup> KDS Decl. ¶104, 109. Likewise, in *Whiteley*

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<sup>5</sup> A lodestar cross-check is “not a full-blown lodestar inquiry” and need not entail “mathematical precision” or “bean-counting.” *AT&T*, 455 F.3d at 169 n.6. It also should not “displace a district court’s primary reliance on the percentage-of-recovery method.” *Id.* at 164. And, “the district court may rely on summaries submitted by counsel and need not review billing records.” *Rite Aid*, 396 F.3d at 306-07.

<sup>6</sup> “[T]he current market rate for lodestar purposes is the rate at the time of the fee petition.” *Wade v. State Trooper Michael Colaner*, No. CV 06-3715 (FLW), 2011 WL 13364168, at \*3 (D.N.J. Apr. 1, 2011) (emphasis in original).

<sup>7</sup> The lodestar amount also represents a blended hourly rate of approximately \$645, which is within the range of blended hourly rates approved by courts in the Third

*v. Zynerva Pharms., Inc.*, 2021 U.S. Dist. LEXIS 176101, at \*40, the court approved hourly rates of up to \$1,100 for “attorneys [who] have substantial experience in complex class action litigation, and their hourly rates are within the range charged by attorneys with comparable experience levels for litigation of a similar nature.” Further, the reasonableness of the hours expended by Lead Counsel are discussed in Section II.C.6, *supra*.

Lead Counsel’s lodestar confirms that the requested 35% fee is fair and reasonable. Lead Counsel devoted over 13,900 hours to prosecuting and resolving this Action for a lodestar of \$8,972,785; therefore, the requested fee award represents a fractional multiplier of .585 on Lead Counsel’s lodestar (*i.e.* the proposed fee of \$5,250,000 divided by the lodestar). KDS Decl. ¶101. A fractional (or negative) multiplier (which is a lodestar multiplier below one) confirms the reasonableness of Lead Counsel’s fee request. *Dickerson v. York Int’l Corp.*, 2017 U.S. Dist. LEXIS 133587, at \*30 (M.D. Pa. Aug. 22, 2017) (“A negative multiplier reflects that counsel is requesting only a fraction of the billed fee; negative multipliers thus favor approval.”); *In re Comcast Corp. Set-Top Cable TV Box*

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Circuit in similar settlements. *Sweda v. Univ. of Pa.*, 2021 U.S. Dist. LEXIS 239990, at \*7 (E.D. Pa. Dec. 14, 2021) (approving class action fee award with blended hourly rate of \$756); *Pfeifer v. Wawa, Inc.*, 2018 U.S. Dist. LEXIS 155001, at \*14 (E.D. Pa. Aug. 31, 2018) (approving class action fee award with “blended hourly rate of approximately \$685”). The actual blended hourly rate that Lead Counsel will be paid if the Court approves the requested award is approximately \$377.



*Antitrust Litig.*, 333 F.R.D. 364, 389 (E.D. Pa. 2019) (“[A] negative multiplier suggests that Plaintiffs’ fee request is reasonable.”); cf. *In re Cigna-Am.*, at \*41 (“[M]ultiples ranging from 1 to 4 are often used in common fund cases.”). Thus, the lodestar crosscheck confirms the reasonableness Class Counsel’s 35% fee request.

**III. LEAD COUNSEL’S REQUESTED EXPENSES ARE REASONABLE AND WERE REASONABLY NECESSARY TO ACHIEVE THE SETTLEMENT**

The Court may award reasonable litigation expenses. *See* Fed. R. Civ. P. 23(h). “In the Third Circuit, it is standard practice to reimburse litigation expenses in addition to granting fee awards.” *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 658 (E.D. Pa. 2015). The Court need not examine every receipt – a “summary of expenses” is sufficient. *Chemi v. Champion Mortg.*, 2009 U.S. Dist. LEXIS 44860, at \*36-37 (D.N.J. May 26, 2009).

Here, as documented in Lead Counsel’s books and records, litigation expenses reasonably incurred in this Action total \$717,488.55. KDS Decl. ¶¶110-113. The Notice informed Class Members that Lead Counsel would seek reimbursement of expenses of up to \$800,000. (Dkt. No. 297-1, Exhibit B, Notice at PDF pg. 61-62/93). These expenses, which were incurred and necessary for the investigation, prosecution, and settlement of this Action included expenses for court filings, research costs, electronic document review and discovery vendors, and, most significantly, costs for investigators, industry and financial consultants, and

testifying and non-testifying experts. KDS Decl. ¶¶110-112.

Of the total expenses incurred, the largest were for consultants and experts. Lead Counsel incurred \$573,780.27 in the aggregate for the extensive and necessary work performed by the following experts and consultants: its class certification and damages expert who, among other things, prepared class certification expert reports and prepared estimated damages and damages models in connection with the prosecution and settlement of the Action; its non-testifying financial analyst who, among other things, performed estimates and analyses concerning market efficiency and damages, at the outset of the litigation, and aided Lead Counsel with testifying expert-related damages work; a forensic accountant, who conducted a detail review of Orrstown's financial statements, SEK's workpapers, financial and regulator documents, and a loan-by-loan review of Orrstown's troubled commercial lending relationships; two banking industry experts, who were needed to formulate and assert allegations relevant to applicable banking regulations, operations, and policies (among other things); and, investigators who identified former employees and borrowers who provided information relevant to the claims asserted, all of which was integral to the preparation of the Third Amended Complaint, prevailing on the motions to dismiss, analyzing discovery for purposes of liability and damages, class certification, and the settlement achieved. KDS Decl. ¶¶110-112.

The \$40,264.34 incurred for technology related services, primarily the

document hosting and review platform, were significant but necessary because of the substantial volume of documents produced in discovery. *Id.* ¶¶33-35. Lead Counsel also paid \$28,442.88 for several sessions with Mr. Robert Meyer who served as the mediator and aided the parties in reaching the proposed Settlement. *Id.* ¶¶53-57, 62-67. The remaining expenses consist of fees incurred by Lead Counsel for online legal research, copying, mail, court and filing fees, court reporter fees, travel, and publication of the required PSLRA notice announcing the commencement of the Action. *Id.* ¶110.

Courts routinely allow reimbursement of similar expenses. *See W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 U.S. Dist. LEXIS 152725 (E.D. Pa. Sept. 20, 2017) (approving reimbursement for “photocopying, telephone and fax charges, express mail charges, expert witness fees, travel and lodging, and computer-assisted research” because such things “are necessary for the prosecution of a large class action lawsuit”); *In re Remeron End-Payor Antitrust Litig.*, 2005 U.S. Dist. LEXIS 27011, at \*92 (D.N.J. Sept. 13, 2005) (approving reimbursement of “costs expended for purposes of prosecuting this litigation, including substantial fees for experts; . . . travel and lodging expenses; [and] copying costs”); *In re Cendant Corp., Deriv. Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002) (“costs associated with expert witnesses and consultants” are reasonably incurred during litigation); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013)

(reimbursement of mediator's fees); *Katz v. China Century Dragon Media, Inc.*, 2013 U.S. Dist. 189987, at \*25 (C.D. Cal. Oct. 10, 2013) (press releases).

#### IV. CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that the Court enter the proposed form of Order (Exhibit 2 to the KDS Decl.) approving in full its Fee and Expense Application, thereby awarding Lead Counsel (i) fees of 35% of the Settlement Fund, which is \$5,250,000 and, (ii) reimbursement of their litigation expenses in the amount of \$717,488.55, plus the proportionate amount of interest that has accrued on the awarded amounts from the inception of the Settlement Fund, through the date of payment from the Settlement Fund.

Dated: April 14, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kimberly M. Donaldson Smith, a specially admitted member of the bar of this Court, hereby certify that a true and correct copy of ***LEAD PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES*** was served on all counsel of record via the Court's ECF system on April 14, 2023.

By: /s/ Kimberly M. Donaldson Smith  
Kimberly M. Donaldson Smith

**CERTIFICATE OF COMPLIANCE WITH L.R. 7.8(b)**

This brief complies with the word-count limitation of Local Rule 7.8(b) because this brief contains 4,975 words, excluding the cover page, table of contents, table of authorities, signature blocks, and certificates. Counsel relied on the word count feature of Microsoft Word in calculating this number.

/s/ Kimberly M. Donaldson Smith  
Kimberly M. Donaldson Smith