CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP
Nicholas E. Chimicles, Pa. Id. No. 17928
Kimberly Donaldson Smith, Pa. Id. No. 84116
Timothy N. Mathews, Pa. Id. No. 91430
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Phone (610) 642-8500
Fax (610) 649-3633

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 UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Pursuant to Fed. R. Civ. P. 23(e) 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" or "PAO"), Court-appointed Lead Plaintiff Southeastern Pennsylvania Transportation Authority ("SEPTA" or "Lead Plaintiff") respectfully submits this Memorandum of Law in Support of its Unopposed Motion for Final Approval of the Class Action Settlement. Filed concurrently herewith is the Declaration of Kimberly Donaldson-Smith in Support of Final Approval of the Class Action Settlement and an award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "KDS Decl.")

I. INTRODUCTION

SEPTA is proud to present to the Court for final approval the proposed Settlement of this representative shareholder action which provides for a non-reversionary cash payment of $15,000,000 by Defendants to benefit Orrstown shareholders who are members of the Settlement Class.[1]

The Settlement brings finality to the federal securities law claims filed by SEPTA in 2012 that were the subject of this decade-long, hard-fought class action

[1] 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 Lead Plaintiff's declaration submitted in support of Plaintiff's Motion for Preliminary Approval (Dkt. 297).

litigation. After the filing of four complaints that were the product of extensive investigation and analyses by Lead Counsel and its industry consultants, numerous rounds of motions to dismiss, an interlocutory appeal to the Third Circuit which upheld this Court's seminal decision, review and analysis of over one million pages of documents, preparation of affirmative and rebuttal expert reports supporting class certification, preparing for and taking depositions, engaging in significant motion practice, and undertaking several rounds of mediation sessions spanning several months, the parties reached a Settlement with the assistance of an experienced mediator, Robert Meyer of JAMS.

The $15 million Settlement provides a significant recovery of approximately 29-36% of the maximum potential damages estimated by Plaintiff's expert of $42-52.5 million and is a particularly outstanding result in a case with no accounting restatement and the availability of substantial defenses that could impact certification of the class, liability determination, and the magnitude of damages.

Notably, SEPTA is precisely the type of investor – a public institution – whose participation in securities class actions the PSLRA seeks to encourage. *In re Herley Industries Inc.*, 2010 U.S. Dist. LEXIS 3463, *14 n.4 (E.D. Pa. Jan. 15, 2010) ("In drafting the PSLRA, Congress sought to encourage greater involvement of institutional investors in securities class actions."). That mandate proved out here; with SEPTA at the helm, along with its choice of Lead Counsel, the Action has

culminated in the excellent Settlement now before the Court for Final Approval.

When the Court preliminarily approved the Settlement in February 2023 (Dkt. Nos. 299, 300), the Court preliminarily addressed the questions it must answer now, *i.e.* whether: (a) the Settlement is fair, reasonable, adequate and in the best interests of the Settlement Class; (b) the Settlement Class meets the requirements of Federal Rule of Civil Procedure 23; (c) the Notice and Summary Notice, and the methods of their dissemination, were adequate; and (d) the plan of allocation is fair, reasonable, and adequate. Nothing has changed; final approval of the Settlement is warranted.

Also, in accordance with the PAO, the Notice has been disseminated, the Summary Notice published, and the settlement website established. KDS Decl. ¶89-95. As of this filing, Lead Counsel has not been notified of or been served with any objection to, or request to be excluded from, the Settlement. *Id.*

For the reasons set forth herein, the Court should grant Plaintiff's Motion in full by entering the proposed Final Judgment and Order of Dismissal with Prejudice (the "Final Judgment", which was Ex. B to the Stipulation, and submitted herewith as Exhibit 1 to KDS Decl.)

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Lead Plaintiff Vigorously Prosecuted this Action for a Decade

After Lead Counsel and its consultants conducted an investigation of the potential claims, on May 25, 2012, SEPTA filed its initial complaint asserting claims

against Orrstown and certain of Orrstown's officers and directors under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder ("Exchange Act Claims"), and under Sections 11, 12(a)(2), and 15 of the Securities Act of 1933 ("Securities Act Claims"). Dkt. No. 1; KDS Decl. ¶¶6-14.

In sum, the Action asserted that Orrstown's public filings with the Securities and Exchange Commission ("SEC") made materially false and misleading statements about Orrstown's commercial loan portfolio, loan loss reserves, and internal controls over financial reporting, beginning in March 2010. The SEC filings at issue included documents covering the March 2010 public offering of 1.7 million shares of Orrstown's common stock at $27 per share, and other annual and quarterly reports issued by Orrstown. From July 2011, when Orrstown began to identify losses tied to its commercial loan portfolio, to April 27, 2012, Orrstown's share price fell more than 65% to $7.94 per share. KDS Decl. ¶¶13-14.

The long history of the litigation that ensued is familiar to the Court, which has considered thousands of pages of pleadings and briefs from the parties, issued thorough rulings on many significant legal issues over the years, and had a landmark ruling affirmed by a unanimous, precedential opinion from the Third Circuit. There is no question that litigation of the claims required thousands of attorney hours, demanded considerable litigation costs, and was zealously prosecuted and defended by the parties. The KDS Declaration ¶¶6-68, 104, 110, summarizes the extensive

work, diligent and unrelenting efforts, and resources expended by Lead Plaintiff and Lead Counsel to investigate, initiate and prosecute this Action, and ultimately to negotiate and present the Settlement to the Court for Final Approval.

B. Key Terms of the Settlement

The Settlement provides that Defendants shall pay a total of $15 million (the "Settlement Amount") into a non-reversionary, interest-bearing qualified settlement fund (the "Settlement Fund"), in exchange for the release of all claims that were or could have been asserted relating to Defendants' conduct set forth in the TAC. Stipulation, ¶¶ 4.1-4.4. Of the total, Orrstown will pay $13 million and SEK will pay $2 million. *Id.* at ¶ 2.1.

The Parties' obligations are subject to approval by the Court and entry of the final proposed Judgment (Exhibit B to the Stipulation), resulting in full and final disposition of the Action with respect to the Released Parties and Released Claims. Stipulation at ¶¶ 4.1, 4.3; KDS Decl. ¶70.

All costs of notice to the Class and the costs of settlement administration, court-approved attorneys' fees and litigation expenses, taxes, and any other Court-approved fees or expenses shall be paid from the Settlement Fund (which includes the Settlement Amount plus any interest earned thereon), and the balance (*i.e.*, the "Net Settlement Fund") shall be distributed pursuant to the proposed Plan of Allocation to Class Members who submit timely, valid claims, and whose payments

would equal $10.00 or more. Stipulation at ¶ 5.13; KDS Decl. ¶71.

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Rule 23 requires Court approval of a class action settlement upon the determination that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e). Under Rule 23(e), courts in this Circuit and nationwide follow a two-step process in considering the approval of class action settlements. First, the court holds a preliminary approval hearing and, if the court orders preliminary approval of the settlement, "an initial presumption of fairness" arises. *Leap v. Yoshida*, 2015 U.S. Dist. LEXIS 17146, at *10 (E.D. Pa. Feb. 15, 2015). At the "second step" of the process, the "court conduct[s] a final fairness hearing in which class members, having received notice of the proposed settlement, may voice any objections they may have." *Sweda v. Univ. of Pa.*, 2021 U.S. Dist. LEXIS 121336, at *4 (E.D. Pa. June 28, 2021).

A. The Court Should Finally Certify the Settlement Class

In granting Preliminary Approval, the Court applied Rules 23(a) and (b)(3) to the proposed Settlement Class, found that they were satisfied, and conditionally certified the Settlement Class. *See* PAO, Dkt. Nos. 299 at 13-18, and 300 ¶2-4; *see also,* Plaintiff's Motion for Preliminary Approval, Dkt. 296 at 24-29. Nothing has since changed that could warrant a different analysis or result. The Court should finally certify the Settlement Class, as set forth in the Final Judgment, Exhibit 2 to

the KDS Decl.

B. The Settlement is Fair, Reasonable, and Adequate

All class action settlements require court approval, and courts should approve class action settlements if they are "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e) and (e)(2); *In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003).

The Third Circuit recognizes a "strong presumption in favor of voluntary settlement agreements," which is "especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010). Moreover, the Supreme Court has cautioned that in evaluating a proposed class-action settlement, courts should "not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Before the 2018 amendment to Rule 23, courts in the Third Circuit considered the following factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) to determine whether a settlement is "fair, reasonable, and adequate":

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment[2]; (8) the range of reasonableness of the settlement fund in

[2] This factor is immaterial here, as a defendant's professed inability to pay is not used

> light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157.[3]

Courts also could (but were not required to) consider the following additional factors set forth in *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998) (renumbered consecutively from the *Girsh* factors):

> [10] the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; [11] the existence and probable outcome of claims by other classes and subclasses; [12] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [13] whether class or subclass members are accorded the right to opt out of the settlement; [14] whether any provisions for attorneys' fees are reasonable; and [15] whether the procedure for processing individual claims under the settlement is fair and reasonable.

Prudential, 148 F.3d at 323.[4]

---

to justify the amount of the Settlement. *See, e.g.*, *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 440 (3d Cir. 2016). And, even assuming Defendants could withstand a judgment larger than the Settlement, the risk, expense, and delay of continued litigation and the value of the immediate relief provided by the Settlement present more important considerations that support final approval. *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 632 (E.D. Pa. 2004).

[3] "A court may approve a settlement even if it does not find that each of these factors weighs in favor of approval." *In re New Jersey Tax Sales Certificates Antitrust Litig.*, 750 F. App'x 73, 77 (3d Cir. 2018) (citing *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 489-90, 491 (3d Cir. 2017)).

[4] Most of the *Prudential* factors are irrelevant here (just as they were in *Prudential*, 148 F.3d at 323-24) because: here, no individual lawsuits or other class actions were

The December 2018 amendment to Rule 23(e)(2) asks the Court to consider at the final approval stage 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 the class members equitably relative to each other."

Courts have noted that the 2018 Amendments track *Girsh* and *Prudential*; thus, courts fold the Rule 23(e) factors into the *Girsh* and *Prudential* analysis. *Hall v. Accolade, Inc.*, 2019 U.S. Dist. LEXIS 143542, at *6 n.1 (E.D. Pa. Aug. 23, 2019) ("the discussion in *Girsh* substantially overlaps with the factors identified in Rule 23"); *Kanefsky v. Honeywell Int'l Inc.*, 2022 U.S. Dist. LEXIS 80328, at *11, n.3

---

filed, and thus, there has been no experience in adjudicating individual actions on these claims, or likewise, any probable outcome of claims by other classes or subclasses (factors 10-12); the scientific knowledge as understood in *Prudential* is not relevant here (factor 10); the Settlement Class members have the right to opt-out of the Settlement (factor 13), and the extent of discovery on the merits (factor 1), the provisions for attorneys' fees (factor 14) and the processing of individual claims are addressed in response to *Girsh* and Rule 23(e) factors.

(D.N.J. May 3, 2022) ("The Third Circuit has, however, continued to apply the *Girsh* and *Prudential* factors.")

1. Rule 23(e)(2)(A) and (B) have been amply demonstrated

As demonstrated by Lead Counsel's summary of the litigation (*supra*, Section II.A and KDS Decl. ¶¶6-68), the proposed Settlement was preceded by a decade of hard-fought litigation involving extensive investigation, discovery and motion practice on the merits and legal issues, utilizing consultants and experts who contributed relevant information and insights, and several sessions with an experienced mediator.

Here, Lead Counsel, who are seasoned, well-respected, and experienced securities and complex class action litigation attorneys,[5] have determined that the Settlement is fair, reasonable, and in the best interests of the Settlement Class, and, therefore, warrants final approval by the Court. Their position is firmly grounded and supported by the record, as Lead Counsel has "developed enough information about the case to appreciate sufficiently the value of the claims." *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 439 (3d Cir. 2016) *as amended* (May 2, 2016). Likewise, the quality of representation by Lead Counsel is apparent from the record before the Court, the record in the Third Circuit, and the result achieved here through the Settlement.

[5]*See* KDS Decl. ¶97 and Exhibit 4 thereto (Lead Counsel's Firm Resume).

Moreover, the Settlement was reached with the assistance of Mr. Robert Meyer, a mediator with substantial experience in mediating settlements in securities and complex class action litigation. KDS Decl. ¶¶53-57, 62-67. "The participation of an independent mediator in settlement negotiations virtually ensures that the negotiations were conducted at arm's-length and without collusion between the parties." *Alves v. Main*, 2012 U.S. Dist. LEXIS 171773, at *73-74 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014) (internal quotation omitted). Furthermore, as occurred here (KDS Decl. ¶¶18, 56), "[a] breakdown in settlement negotiations can tend to display the negotiation's arms-length and non-collusive nature." *Hicks v. Morgan Stanley & Co.*, 2005 U.S. Dist. LEXIS 24890, at *15-16 (S.D.N.Y. Oct. 19, 2005)

2. The Relief Provided for the Class Is More Than Adequate.

In granting preliminary approval of the Settlement, the Court has already found that the Settlement is sufficiently fair, reasonable, and adequate to warrant preliminary approval, and thus, the Settlement is subject to the "initial presumption of fairness." *Leap*, 2015 U.S. Dist. LEXIS 17146, at *10; *see In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). There is no reason to reach a different conclusion with respect to final approval of the Settlement.

Girsh and Rule 23(e)(2)(C) set down guidelines for the Court to evaluate the

substance of the Settlement. *Girsh* factors 1, 4-6, and 8-9 ask courts to weigh the complexity, expense, likely duration, and risks of continued litigation against the range of reasonableness in light of the possible recovery taking into account the risks of litigation. Likewise, Rule 23(e)(2)(C) directs the Court to consider whether "the relief provided for the class is adequate, taking into account [] the costs, risks, and delay of trial and appeal" along with other relevant factors (identified *supra* at p. 7-9).

First, critically, the Settlement relief represents an excellent outcome for the Settlement Class. The $15 million Settlement represents approximately 29-36% of the maximum damages estimated by Lead Plaintiff's expert of $42-52.5 million.[6] KDS Decl. ¶¶83-84. Moreover, that estimated damages range does not deduct for the potential success of all affirmative defenses that Defendants might have been able to prove at trial, meaning the Settlement amount could represent a significantly higher percentage of the damages *than would have been won at trial*, which. in theory, could be zero. *Id.*

Furthermore, a recovery of 29-36% of damages in a securities fraud lawsuit is outstanding. The median ratio of settlement to investor losses for securities class

[6] The range reflects the expert's most aggressive loss calculation for both the Securities Act and Exchange Act Claims at the high end, and the same damages less an estimated amount for "negative loss causation" on the lower end. Defendants, however, have contended that the actual, recoverable damages, if any, are much lower. KDS Decl. ¶¶83-84.

action 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) (https://securities.stanford.edu/research-reports/1996-2021/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf); *see In re Cendant Corp. Sec. Litig.*, 109 F. Supp. 2d 235, 263 (D.N.J. 2000) (citing cases with a range of recoveries from 1.6% to 14% of the maximum possible recovery 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").[7]

Thus, the Settlement here garners a recovery far above the median for comparable cases. *See In re Innocoll Holdings Pub. Ltd. Co. Sec. Litig.*, 2022 U.S. Dist. LEXIS 42793, at *12 (E.D. Pa. Mar. 10, 2022) ("12% [recovery of damages] is not an unreasonable recovery, given the 'costs, risks, and delay of trial and appeal'

[7] A NERA study found that in cases where investor damages ranged from $20-99 million, the median settlement represented 4.2-5.2% of damages. *See* NERA Economic Consulting, Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review (January 25, 2022), at https://www.nera.com/content/dam/nera/publications/2022/PUB_2021_Full-Year_Trends_012022.pdf

for both sides"); *Stevens v. SEI Invs. Co.*, 2020 U.S. Dist. LEXIS 35471, at *15-16 (E.D. Pa. Feb. 26, 2020) (a 31% recovery of total calculated damages was a "significant settlement" that "substantially outweigh[ed] the mere possibility of future relief"); *In re PNC Fin. Servs. Group., Inc., Sec. Litig.*, 440 F. Supp. 2d 421, 436 (W.D. Pa. 2006) (approving a settlement recovery of 12% of calculated total damages).

Second, the Settlement reasonably accounts for the risks and uncertainties (including in securing class certification, the outcome of dispositive motions, and opposing expert opinions), and the inevitable delays and further costs of continued litigation, all which Lead Counsel thoroughly weighed in considering the terms of the Settlement.

Although Lead Plaintiff is confident that the evidentiary record proves its claims, the Settlement acknowledges the risk that the Court might embrace Defendants' arguments against liability or its "very different damage estimates." *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 506 (W.D. Pa. 2003). Difficult and uncertain issues to be addressed in this Action would include (KDS Decl. ¶¶80-82): the materiality of the alleged false and misleading statements; proof of whether the statements were made with scienter, recklessly, and/or negligently; any motive to deceive; and, even if each Defendant's mental state was not an issue, proving reliance, damages and loss causation depends on complicated and competing expert

testimony (including about the impact of market and industry conditions on Orrstown's stock price, isolating the impact of Defendants' false statements on Orrstown's stock price to derive damages, and whether Orrstown's shares traded on an efficient market). *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 U.S. Dist. LEXIS 6680, at *28-30 (E.D. Pa. Apr. 18, 2005) (recognizing difficulty of proving damages in securities actions).

In any event, the Court "need not delve into the intricacies of the merits of each side's arguments, but rather may give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their causes of action." *Vasco v. Power Home Remodeling Group. LLC.*, 2016 U.S. Dist. 141044, at *16 (E.D. Pa. Oct. 12, 2016) (quotation marks and citations omitted).

Third, *Prudential* factor 15 and Rule 23(e)(2)(C)(ii) ask the Court to consider whether the claims processing procedure, which was detailed in the Notice at pp.7-10, is fair. Settlement Class members will complete and submit to the Claims Administrator (by mail or electronically) a Proof of Claim Form and supporting documents that identify their relevant transactions in Orrstown stock. KDS Decl. ¶¶72-73. No party possesses the individual investor trading data necessary to distribute the Net Settlement Fund; therefore, this procedure is necessary to identify Class Members, their Class Period stock purchases and sales, and to calculate their

recognized loss. *Id.* Further, the process allows claimants an opportunity to cure any deficiencies with, or request Court review of a denial of, their claims. *See* Notice, pp. 7–10.

Courts have found these well-established procedures fair and effective for accomplishing the collection and processing of Class Members' claims to meet *Prudential* factor 15. *In re Ocean Power Techs., Inc.*, 2016 U.S. Dist. LEXIS 158222, at *74-75 (D.N.J. Nov. 15, 2016) (noting that similar "claim-processing procedures are the standard ones used in securities class-action settlements").

Fourth, the Settlement is fair and adequate when the proposed award of attorneys' fees is considered, as required by Rule 23(e)(2)(C)(iii). Plaintiff's Memorandum of Law in Support of their Motion for An Award of Attorneys' Fees and Reimbursement of Litigation Expenses, filed herewith, demonstrates that the fee request of 35% of the Settlement Fund (which was disclosed in the Notice at pp. 2, 11) is reasonable in light of Lead Counsel's substantial work and efforts, the results achieved, and relative awards in similar cases.[8]

Fifth, Rule 23(e)(2)(C)(iv) also requires the Courts to consider "any agreements required to be identified under Rule 23(e)(3)." Paragraph 7.3 of the

[8] The Court's order with respect to attorneys' fees and reimbursement of litigation expenses is separate from the Court's approval of the Settlement, and the former is not a basis on which any party may terminate the Settlement. *See* Stipulation ¶¶6.2, 6.4, 7.4.

Stipulation and the Notice at p.10 expressly describe that the parties have entered into a standard, confidential agreement that provides for the possible termination of the Settlement if Settlement Class Members who had purchased in the aggregate a certain percentage of affected Orrstown shares validly exclude themselves from the Class. "This type of agreement is standard in securities class action settlements and has little to no negative impact on the fairness of the settlement." *In re Innocoll* at *13; *Christine Asia Co. v. Yun Ma,* 2019 U.S. Dist. LEXIS, at *54 (S.D.N.Y. Oct. 16, 2019).[9]

Sixth, the reaction of the Settlement Class, the second *Girsh* factor, also weighs in favor of approving the Settlement. "[I]t is generally assumed that silence constitutes tacit consent to the agreement." *In re Gen. Motors Corp.*, 55 F.3d at 812. Settlement Class Members have until April 28, 2023 to object to or exclude themselves from the Settlement. KDS Decl. ¶¶93-95. However, to date, neither Lead Counsel nor the Claims Administrator have been notified of or served with any such requests or objections. *Id.*

3. The Plan of Allocation and Settlement Treat Class Members Equitably Relative to Each Other.

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats

[9] The threshold is confidential to avoid creating incentives for a small group of class members to opt out solely to exact an individual settlement. *Hefler v. Wells Fargo & Co.*, 2018 U.S. Dist. LEXIS 150292, at *33 (N.D. Cal. Sept. 4, 2018).

class members equitably relative to one another. The Third Circuit similarly requires that the Court find that the Plan of Allocation is fair, reasonable, and adequate. *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 U.S. Dist. 12344, at *22 (D.N.J. Feb. 9, 2010).

As set forth in Section 8 of the Notice, the Plan of Allocation apportions the Net Settlement Fund among Class Members who submit valid claims, in proportion to their losses which are calculated pursuant to the model developed in consultation with Plaintiff's damages expert. KDS Decl. ¶¶74-75; Notice, at pp. 7–10; Stipulation, at ¶ 5.10. [10] The calculation of each Class Member's loss under the Plan of Allocation is detailed in the Notice and, as disclosed therein (*id.*), is based on several factors, including: when the shares of Orrstown stock were purchased and sold; the purchase and sale price of the shares; and the estimated artificial inflation in the respective prices of the shares at the time of purchase and at the time of sale. KDS Decl. ¶¶76-77.

The Plan of Allocation results in an equitable distribution of the Net Settlement Fund based on an authorized claimant's respective calculated losses tied to the alleged misstatements and omissions, as opposed to losses caused by unrelated

[10] SEPTA, despite its years of service in this lawsuit, requests no incentive award, nor reimbursement of costs or expenses relating to the representation of the class as allowed by 15 U.S.C. §78u-4(a)(4), and will share in the recovery only in proportion to all other Class Members who submit valid, accepted claims. KDS Decl. ¶78.

market- or industry-wide factors, or company-specific factors. KDS Decl. ¶¶74-77. The Net Settlement Fund will be allocated to Authorized Claimants on a *pro rata* basis based on the relative size of their calculated loss. *Id.*

Therefore, this factor weighs in favor of approving the Settlement and finally approving the Plan of Allocation, which treats Settlement Class members equitably, relative to one another, and is reasonable because it "reimburses class members based on the type and extent of their injuries." *McDonough v. Toys R Us, Inc.*, 80 F. Supp. 3d 626, 648 (E.D. Pa. 2015).

C. The Notice to the Settlement Class Satisfied All Requirements

Before finally approving a settlement, a court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). A notice program must provide the "best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-74 (1974). In the POA, the Court approved both the form of Notice and the manner of its delivery.

Lead Plaintiff followed the notice program ordered by the POA. First, with respect to the Notice, the Claims Administrator: (i) timely mailed the Notice and Claim Form to the list of approximately 2,478 record holders of Orrstown common stock during the Class Period provided by Orrstown's former transfer agent, and to

1,482 brokers and other nominees; (ii) mailed and emailed Notices and Claim Forms to beneficial holders identified by the nominees; (iii) provided unaddressed copies of the Notice and Claim Form to the nominees to be sent to their customers who are potential Class Members; and (iv) was informed by certain nominees that they electronically disseminated the Notice and Claim Forms (or links thereto) to their customers who are potential Class Members. KDS Decl. ¶¶88-93, and Exhibit 3 thereto (Claims Administrator Declaration).

Second, the Claims Administrator timely caused: (a) the Summary Notice to be published in Investor's Business Daily and transmitted over PRNewswire. Third, the Claims Administrator: established the case-specific toll-free telephone helpline and established the website dedicated to the Settlement (www.OrrstownSecuritesSettlement.com), both of which were published in the Notice and Summary Notice. *Id.*

This combination of mailing and/or emailing the Notice to all Class members who could be identified with reasonable effort, supplemented by publishing the Summary Notice in an appropriate, widely circulated publication and over the newswire, and posting it on the Settlement website, was "the best notice practicable under the circumstances." Rule 23 (c)(2)(B); *In re Royal Dutch/Shell Transp. Sec. Litig.*, 2008 U.S. Dist. LEXIS 124269, at *34-35 (D.N.J. Dec. 8, 2008) (granting final approval of a settlement and holding that notice including direct mailing,

publication on websites, and broad publication in newspapers "more than satisfie[d] due process and the requirements of Rule 23").

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the parties' agreed-upon form of Final Judgment (Exhibit 2 to the KDS Decl.), granting final approval of the Settlement, Plan of Allocation, and certification of the Settlement Class.

Dated: April 14, 2023 Respectfully submitted,

/s/ Kimberly M. Donaldson

Nicholas E. Chimicles
Kimberly Donaldson-Smith
Timothy N. Mathews
CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500
Fax: (610) 649-3633
nick@chimicles.com
kimdonaldsonsmith@chimicles.com
tnm@chimicles.com

Counsel for Plaintiff Southeastern Pennsylvania Transportation Authority

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 UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT* 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 4,942 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