UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

ROEI AZAR, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. GRUBHUB INC., et al., Defendants.	Case No. 1:19-cv-07665 CLASS ACTION Judge Matthew F. Kennelly Magistrate Judge Jeffrey Cole

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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I. INTRODUCTION

Lead Counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), has obtained a substantial Settlement[1] consisting of $42 million, plus interest earned thereon. For the reasons set forth herein and in the accompanying Memorandum of Points and Authorities in Support of Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), the Settlement is a very favorable result. It was achieved through Lead Counsel's vigorous litigation of this matter and the skill and effective advocacy of Lead Counsel. As compensation for its efforts in achieving this result, Lead Counsel seeks an award of attorneys' fees of 30% of the $42 million fund, plus expenses/charges ("expenses") incurred in the prosecution of the Litigation in the amount of $228,889.82, plus interest at the same rate and for the same period as that earned by the Settlement Fund. As detailed in §II.B.1. below, the 30% fee request, approved by Lead Plaintiff, is consistent with the fees often awarded in comparable securities class action settlements.

The 30% fee requested is warranted in light of the contingent nature of counsel's representation, the efforts of counsel in obtaining this favorable result, and the risks faced in the prosecution and settlement of the Litigation. Absent the Settlement, and assuming Lead Plaintiff prevailed on Defendants' anticipated motion for summary judgment, the claims against Defendants could have continued for many years through trial and likely appeals. As a result of Lead Counsel's diligent prosecution of this Litigation, a favorable settlement was achieved that provides Class Members with a substantial cash benefit now, rather than a potential recovery after several years of continued litigation, and eliminates the possibility of no recovery at all or of the costs of litigation

[1] All capitalized terms not otherwise defined herein have the meanings ascribed in the Stipulation of Settlement dated October 7, 2022, ECF 94 (the "Stipulation"). Citations are omitted and emphasis is added unless otherwise noted.

diminishing the recovery. The significant settlement is reflective of counsel's experience, reputation, and skill in prosecuting securities class actions.

Lead Counsel undertook representation of the Class on a contingent fee basis and no payment has been made to date for its services or the litigation expenses it has incurred on behalf of the Class. Faced with complex issues, and opposed by experienced defense counsel, Lead Counsel nevertheless achieved a substantial litigation victory early in the case, as Defendants' motion to dismiss was denied in full, conducted extensive discovery, and succeeded in securing a favorable result for the Class. Lead Counsel believes its reputation as a leader in this field, its diligent efforts, and its dedication to the interests of the Class substantially contributed to obtaining the Settlement. The requested fee is within the range of percentages normally awarded in securities class actions in this Circuit and District, and is the appropriate method of compensating counsel. In addition, Lead Plaintiff was actively involved in the Litigation and has approved the requested fee. *See* accompanying Declaration of Sheldon Albritton in Support of Lead Plaintiff's Motion for Final Approval of Settlement ("Albritton Decl."), ¶8; Declaration of Matthew Nye in Support of Lead Plaintiff's Motion for Final Approval of Settlement ("Nye Decl."), ¶8.

Separately, Lead Plaintiff seeks awards of $1,000 each for the City of Pontiac Reestablished General Employees' Retirement System ("Retirement System") and the City of Pontiac Police & Fire Retirement System ("Police & Fire"), pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class. Lead Plaintiff supports its application with declarations setting forth the basis for the awards, which are substantially lower than awards in recent cases. Lead Plaintiff respectfully requests that the Court approve the requested awards.

For all the reasons set forth herein and in the accompanying declarations, Lead Counsel respectfully submits that the requested attorneys' fees and expenses are fair and reasonable and should be awarded by the Court.

II. AWARD OF ATTORNEYS' FEES

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Approach to Awarding Attorneys' Fees in Common Fund Cases

For its efforts in creating a common fund for the benefit of the Class, Lead Counsel seeks as attorneys' fees a reasonable percentage of the fund recovered for the Class. Both the Supreme Court and the Seventh Circuit have long recognized that attorneys who represent a class and aid in the creation of a settlement fund are entitled to compensation for legal services from the settlement fund. Under this "equitable" or "common fund" doctrine established more than a century ago in *Trustees v. Greenough*, 105 U.S. 527, 528 (1881), attorneys who create a common fund for a class are entitled to an award of fees and expenses from that fund as compensation for their work. *See Sutton v. Bernard*, 504 F.3d 688, 691 (7th Cir. 2007).

The "lodestar" method (multiplying reasonable hours by reasonable rates) to assess attorneys' fees is an additional method for assessing an appropriate fee award, and is often used in fee-shifting cases or cases involving statutory fee awards. While it can be used in securities class actions as a cross-check on fee awards, courts have recognized it can create perverse incentives that reward inefficient staffing of cases, discourage early settlement talks, cause unnecessary delay in resolving disputes, and thereby increase the burden on the judicial system. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 721 (7th Cir. 2001) (stating the lodestar approach creates the "incentive to run up the billable hours"); *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986) (noting in civil rights fee-shifting case the challenge of judicial review of attorney time because the "judge cannot readily see what legal work was reasonably necessary at the time" and that rewarding lawyers for hours billed can create a "conflict of interests").[2]

[2] *See also, e.g.*, *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) ("The use of a lodestar cross-check in a common fund case is unnecessary, arbitrary, and potentially counterproductive."); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) ("'Where

Thus, "[i]n a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *3, *5 (S.D. Ind. Sept. 4, 2019) (noting that while district courts have discretion on the appropriate method for a given case, "the use of a lodestar cross-check is no longer recommended in the Seventh Circuit"); *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 637 (7th Cir. 2011) (rejecting objector's appeal and declining to "disturb the district court's assessment of fees" on a percentage-of-the-fund basis); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (stating that "[w]hen a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund" and affirming award).

Consistent with this case law, judges in this District routinely award a reasonable percentage-of-the-fund as fees without any regard to lodestar. *See, e.g.*, *Macovski v. Groupon, Inc.*, 2022 WL 17256417, at *1 (N.D. Ill. Oct. 28, 2022) (Kennelly, J.) (fees awarded as a percentage of the settlement fund); *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (St. Eve, J.) (stating it was unnecessary to consider lodestar and citing cases), *aff'd*, 739 F.3d 956 (7th Cir. 2013) (affirming percentage award without any discussion of lodestar); *see also In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844, 849 (N.D. Ill. 2015) (Dow, J.) (finding that the percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district" and stating "the Court sees no utility in considering" counsel's submitted lodestar).

Accordingly, Lead Counsel requests attorneys' fees of 30% of the Settlement Amount.

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success is a condition precedent to compensation, "hours of time expended" is a nebulous, highly variable standard, of limited significance. One thousand plodding hours may be far less productive than one imaginative, brilliant hour.'").

B. The Requested Fee Is Reasonable and Appropriate

The Supreme Court has emphasized that private securities actions provide a "'most effective weapon in the enforcement' of securities laws and are 'a necessary supplement to [SEC] action.'" *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 318-19 (2007). It is well documented in publicly-available media that large defense firms representing corporations attract talented lawyers with very high compensation, and fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs in class action cases. *See, e.g.*, *Silverman v. Motorola, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (approving fee award and noting that "[t]he greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel"); *Wolff*, 2012 WL 5290155, at *5 ("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.").

The percentage-of-the-fund method is intended to mirror the private marketplace for negotiated contingent fee arrangements. *See Kirchoff*, 786 F.2d at 324 ("When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'"); *see also McKinnie v. JP Morgan Chase Bank, N.A.*, 678 F. Supp. 2d 806, 816 (E.D. Wis. 2009) (stating "[t]he 'percentage of the fee' method is preferable" to the lodestar method "because it more closely replicates the contingency fee market rate for counsel's legal services").

Here, the requested 30% fee appropriately compensates Lead Counsel for the quality of services provided and the risks of obtaining no compensation at all. To date, no Class Member has objected to the fee, and it was approved by Lead Plaintiff. Lead Counsel respectfully requests that the 30% fee be approved.

1. The 30% Attorneys' Fee Request Is Consistent with Fees Awarded in this District

The Seventh Circuit has held that, in deciding common fund cases, district courts should "'do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.'" *Taubenfeld v. Aon Corp.*, 415 F.3d 597, 599 (7th Cir. 2005); *Silverman*, 739 F.3d at 957, 958 (holding that attorneys' fees should "approximate the market rate" and that "[c]ontingent fees compensate lawyers for the risk of nonpayment"). Had this case been litigated on an individual rather than class basis, the customary fee arrangement would be in the range of one-third to 40% of the recovery. *See Kirchoff*, 786 F.2d at 323 (observing that "40% is the customary fee in tort litigation" and noting, with approval, contract providing for one-third contingent fee if litigation settled before trial). Moreover, courts in this District have recognized that in common fund cases, "an award of 33.3% of the settlement fund is within the reasonable range." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (Dow, J.); *see In re Broiler Chicken Antitrust Litig.*, 2022 WL 6124787, at *4 (N.D. Ill. Oct. 7, 2022) (Durkin, J.) (awarding 33% noting that "in large cases like this, the only available evidence of the 'market rate' is past awards").

The percentage sought here, 30% of the $42 million Settlement Amount, is consistent with percentages awarded to Robbins Geller in other securities class action cases in this District. *See, e.g.*, *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Hospira, Inc.*, 2014 WL 12767763, at *1 (N.D. Ill. Aug. 5, 2014) (St. Eve, J.) (awarding Robbins Geller and co-counsel 30% on $60 million settlement); *Wong v. Accretive Health, Inc.*, 2014 WL 7717579, at *1 (N.D. Ill. Apr. 30, 2014) (Coleman, J.) (awarding Robbins Geller and co-counsel 30% on $14 million settlement).[3]

[3] *See also Ronge v. Camping World Holdings, Inc.*, No. 1:18-cv-07030, slip op. at ¶4 (N.D. Ill. Aug. 5, 2020) (Pallmeyer, J.) (awarding 30% of $12.5 million); *In re Spiegel, Inc. Sec. Litig.*, No. 1:02-cv-08946, slip

The 30% fee request is also consistent with fee percentages often awarded in this District to other law firms in securities and other complex class actions. *See, e.g.*, *Groupon*, 2022 WL 17256417, at *1-*2 (awarding 33-1/3% of $13.5 million securities settlement, which "is consistent with the market rate in similarly complex actions litigat[ed] on a wholly contingent basis"); *Broiler Chicken*, 2022 WL 6124787, at *3 (awarding 33% on $181 million antitrust settlement, net of expenses, rejecting "declining fee scale award structures"); *Lowry v. RTI Surgical Holdings, Inc.*, No. 1:20-cv-01939, slip op. at ¶18 (N.D. Ill. Jan. 26, 2022) (Kennelly, J.) (awarding 30% fee of $10.5 million securities settlement); *Rubinstein v. Gonzalez*, No. 1:14-cv-09465, slip op. at ¶1 (N.D. Ill. Oct. 22, 2019) (Dow, J.) (awarding 30% of $16.75 million securities settlement); *Dairy Farmers of Am.*, 80 F. Supp. 3d at 862 (awarding 33% of $46 million antitrust settlement).[4] Thus, Lead Counsel's request for 30% of the total recovery is fair and reasonable and consistent with the "market rate" based on prior fee awards in this District.[5]

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op. at ¶3 (N.D. Ill. Mar. 2, 2007) (Pallmeyer, J.) (awarding 30% of $17.5 million). Attached hereto as Exhibit A is an appendix of unreported authorities cited herein.

[4] The securities class action cases cited all awarded fees based on a percentage of the gross settlement amount. Recently, a court held that, under *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014), expenses and notice and administration costs should be deducted from the gross settlement amount and the fee awarded as a percentage of the remainder. *See, e.g.*, *St. Lucie Fire Dist. Firefighters Pen. Tr. Fund v. Stericycle, Inc.*, No. 1:16-cv-07145, slip op. at 4 (N.D. Ill. May 19, 2020) (Wood, J.), *rev'd on other grounds*, 35 F.4th 555, 559 n.1 (7th Cir. 2022) (noting that district court's decision to deduct costs before awarding percentage fee was "not at issue on appeal"). But *Redman* was a consumer case involving a coupon settlement, and the Seventh Circuit has repeatedly noted concerns regarding assessing the actual recovery in coupon settlements because such cases can have a low claims rate and might provide for any unclaimed funds to revert back to the defendants. *See Redman*, 768 F.3d at 629-37; *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 708 (7th Cir. 2015). In contrast, the Seventh Circuit affirmed a percentage fee award in a securities class action based on the aggregate settlement, without any discussion of the need to deduct such expenses. *See Silverman*, 739 F.3d 956 (affirming fee award of 27.5% of $200 million settlement); *see also Wong v. Accretive Health, Inc.*, 773 F.3d 859, 862 (7th Cir. 2014) (affirming final approval of settlement and noting that district court "awarded attorneys' fees of 30% of the [$14 million] settlement proceeds, or $4.2 million").

[5] The Seventh Circuit recently remanded a 27.5% fee award in a securities class action. *St. Lucie Fire Dist. Firefighters Pen. Tr. Fund v. Stericycle, Inc.*, 35 F.4th 555, 568 (7th Cir. 2022). However, that case involved a settlement that was obtained prior to a ruling on a motion to dismiss, that followed large settlements with the government and consumers that "substantially reduced the risk of non-payment" in the securities action, and that involved a Lead Plaintiff that had apparently negotiated a lower fee scale agreement at the outset. *Id.*

2. Lead Counsel Provided Quality Legal Services that Produced Excellent Benefits for the Class

In evaluating counsel's fee request, courts may consider the "quality of legal services rendered." *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at *3 (noting that "[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity"). From the outset, Lead Counsel sought to obtain the best possible recovery for the Class. Securities cases are well known to be complex and recovery is far from certain due to the heightened pleading standards, which has resulted in a significant dismissal rate. *See, e.g.*, Settlement Memorandum, Ex. A (Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2021 Full-Year Review*, NERA Economic Consulting (Jan. 25, 2022)) at 14, Fig. 14 (noting that for federal securities class actions filed and resolved between January 2012 and December 2021, where a decision was entered on a motion to dismiss, 56% were granted).

This case required a determined investigation and the skill to respond to a host of legal and factual defenses raised by Defendants in connection with both their motion to dismiss and Lead Plaintiff's class certification motion. During the course of the Litigation, Lead Counsel spent over 8,560 hours of attorney and paraprofessional time investigating the claims, drafting the detailed Complaint, preparing an extensive brief in opposition to Defendants' motion to dismiss (which was denied in full), conducting substantial discovery (including obtaining and analyzing more than two million pages of documents), preparing a thorough brief in support of class certification, defending Lead Plaintiff's expert's deposition and the Rule 30(b)(6) depositions of Lead Plaintiff, and preparing for and participating in two mediation sessions that included the exchange of mediation statements regarding the parties' respective positions on the claims and defenses, and damages. *See*

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at 561-67. Thus, that case is distinguishable from the facts here and does not overrule or undercut the rationale of the fee awards in the cases cited herein.

accompanying Declaration of James E. Barz in Support of: (1) Lead Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (2) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses and Awards to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Barz Decl."), ¶¶5(a)-(j), 10. During settlement negotiations, Lead Counsel demonstrated its willingness to continue to litigate the claims rather than accept a settlement that was not in the best interest of the Class. Notably, the case did not settle at the first or second mediation, but rather Lead Counsel pressed forward with the litigation and negotiations.

Moreover, given the stakes involved, it can be difficult to settle these cases prior to defendants exhausting all their legal challenges through summary judgment. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (securities action prosecuted by Robbins Geller that was filed in 2002, resulted in jury verdict for plaintiffs in 2009, remanded after appeal and settled in 2016). Not only was Lead Counsel, based on its reputation and willingness to litigate the case as long as necessary, able to secure a (relatively) prompt resolution less than three years after the case was filed, but it was also able to obtain a very good result. The result for the Class is also impressive as a percentage of recoverable damages. *See* Settlement Memorandum, §IV.A.3.b.

This result is all the more impressive given Lead Counsel was opposed in this Litigation by counsel from Kirkland & Ellis LLP, which has a reputation for being a leading defense firm in complex civil cases. In the face of this formidable opposition, Lead Counsel developed its case so as to persuade Defendants to settle the Litigation on terms favorable to the Class. Lead Counsel's skill, expertise, and excellent advocacy in representing the Class is reflected in this favorable result.

3. The Requested Attorneys' Fees Are Fair and Reasonable in Light of the Contingent Nature of the Representation

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic

counsel." *Silverman*, 739 F.3d at 958.[6] Lead Counsel undertook this Litigation on a contingent fee basis, assuming a significant risk that the Litigation would yield no recovery and leave them uncompensated. Unlike counsel for defendants, who are paid an hourly rate and paid for their expenses on a regular (*e.g.*, monthly) basis, regardless of whether they win or lose, Lead Counsel had no such guarantee of payment, had to wait for any payment while the case was prosecuted for several years, and had to incur unpaid expenses while the case was ongoing. While the outcome here was favorable, there was no guarantee it would be at the time counsel agreed to take the case.

Lead Counsel had to build this case from its investigation without the benefit of any SEC or other government investigation, findings, or settlements. Even though Lead Plaintiff successfully opposed Defendants' motion to dismiss, Lead Plaintiff still faced significant obstacles. Assuming Lead Plaintiff was successful in certifying a class and able to overcome Defendants' motion for summary judgment after costly, additional discovery efforts, it still would have faced risks in proving falsity, materiality, scienter, and loss causation before a jury. *See* Settlement Memorandum §IV.A.3. Moreover, even apart from proving liability, proving damages in securities cases is complex and requires expert testimony to establish the amount – and indeed the existence – of actual damages. *See id*. Here, the damages assessments of the parties' respective experts would be heavily disputed (*see* ECF 82 at 21; Settlement Memorandum, §IV.A.3.b) and the determination of the amount, if any, of damages suffered by the Class at trial would have turned into a "battle of the experts."

There are numerous examples where plaintiffs' counsel in contingent cases such as this, after the expenditure of significant time and expenses, have received no compensation. Securities cases

[6] *See also Schulte*, 805 F. Supp. 2d at 598 ("All contingent fee class action cases involve some degree of risk for plaintiffs' counsel."); *Taubenfeld*, 415 F.3d at 600 (stating courts should consider "the contingent nature of the case" and the fact "that lead counsel was taking on a significant degree of risk of nonpayment"); *Hospira*, 2014 WL 12767763, at *1 ("the contingent nature of the Action favors a fee award of 30%").

have been dismissed at the pleading stage, dismissed on summary judgment, lost at trial, and even reversed after plaintiffs prevailed at trial, as the law is complex and continually evolving. *See, e.g.*, *In re JDS Uniphase Corp. Sec. Litig.*, 2007 WL 4788556, at *1 (N.D. Cal. Nov. 27, 2007) (jury verdict for defendants after lengthy trial); *In re Alstom SA Sec. Litig.*, 741 F. Supp. 2d 469, 471-73 (S.D.N.Y. 2010) (claims based on purchases on foreign exchanges eliminated by the "new 'transactional' rule" enunciated by the Supreme Court).[7] Quite simply, "Defendants prevail outright in many securities suits." *Silverman*, 739 F.3d at 958.

Because the fee in this matter was entirely contingent, the only certainty was that Lead Counsel would have to commit to years of work without pay, knowing that there would be no fee without a successful result and that such a result would be realized only after considerable effort and expense. Notably, the case did not settle during the two mediation sessions, as Lead Counsel committed its time and money to the vigorous and successful prosecution of the Litigation for the benefit of the Class. The contingent nature of counsel's representation strongly favors approval of the requested fee. *See, e.g.*, *Sutton*, 504 F.3d at 694 (reversing district court's reduced fee award and stating "[b]ecause the district court failed to provide for the risk of loss, the possibility exists that Counsel, whose only source of a fee was a contingent one, was undercompensated").

4. The Stakes of the Litigation Favor a 30% Fee Award

The Court should also consider the "stakes of the case" in assessing a reasonable attorneys' fee. *Synthroid*, 264 F.3d at 721. As in other commercial class actions, the stakes here were high "given the size of the Class, the scale of the challenged activity, the complexity and costs of the legal

[7] In fact, "[p]recedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy." *In re Xcel Energy, Inc. Sec., Derivative & ERISA Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005); *see also, e.g.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiffs' favor); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversal of jury verdict of $81 million).

proceedings, and the amount of money involved." *Schulte*, 805 F. Supp. 2d at 598. In this high stakes litigation, Lead Counsel successfully obtained a favorable recovery even before the completion of fact discovery. A settlement now is more beneficial to the Class than waiting several more years to obtain a recovery, not only because of the time value of money but also because the increased expenses of continued litigation could have reduced the amount of any available insurance to fund a recovery to the Class. As the litigation advances, the risks can also increase. And, even if Lead Plaintiff prevailed at trial, Defendants would have the opportunity to appeal any judgment obtained, possibly delaying a favorable resolution for years. *See supra*, §II.B.2-3. Lead Counsel undertook this case fully prepared to litigate against these obstacles.

5. The Reaction of the Class Supports the Requested Award

Pursuant to this Court's October 14, 2022 Preliminary Approval Order (ECF 99), more than 70,600 copies of the Notice have been mailed to potential Class Members and nominees. Class Members were informed in the Notice that Lead Counsel would apply for attorneys' fees not to exceed 30% of the Settlement Amount, plus expenses in an amount not to exceed $265,000, plus interest earned on both amounts. Class Members were also advised of their right to object to Lead Counsel's fee and expense request and the procedure for doing so. While the deadline to file objections – December 22, 2022 – has not yet passed, to date, no objection to any aspect of the Settlement, including the fee and expense request, has been received. Lead Counsel will address any objections received in its reply brief to be filed on January 5, 2023.

6. Lead Plaintiff Approved the 30% Fee Request

Lead Plaintiff, who worked with counsel throughout the Litigation, has approved the 30% fee request. *See* Albritton Decl., ¶8; Nye Decl., ¶8. Unlike consumer and other class action cases where lead plaintiffs may have little or no stake in the litigation, securities fraud cases have unique procedures for appointing as lead plaintiff the movant with the largest financial interest, which serve

to protect class members. *See Silverman*, 739 F.3d at 959 (stating it is "a premise of several rules in the Private Securities Litigation Reform Act" that investors with a large stake in the settlement fund, in "looking out for themselves, help to protect the interests of class members with smaller stakes"); 15 U.S.C. §78u-4(a)(3)(B). Moreover, the Class consists of many sophisticated Class Members who have counsel and incentive to object to the fee award, and the Seventh Circuit has also considered the absence of objection from such class members as supporting the reasonableness of a fee award. *See Silverman*, 739 F.3d at 959 (affirming fee award in securities class action and noting lack of objection by "institutional investors [that] have in-house counsel with fiduciary duties to protect the beneficiaries" and high fee awards could be "worth a complaint to the district judge if the lawyers' cut seems too high"). That Lead Plaintiff, two sophisticated institutional investors, approved the fee request also weighs in favor of its reasonableness. *See Groupon*, 2022 WL 17256417, at *2 ("The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Lead Plaintiff, who oversaw the prosecution and resolution of the Action.").

Accordingly, all of the factors discussed above support the fee award requested by Lead Counsel, and the Court should grant counsel's application.

III. LEAD COUNSEL'S EXPENSES ARE REASONABLE

In addition to an award of attorneys' fees, attorneys who create a common fund for the benefit of a class are entitled to payment of reasonable litigation expenses from the fund. *Synthroid*, 264 F.3d at 722; *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 570 (7th Cir. 1992).

Lead Counsel is requesting payment of expenses in the amount of $228,889.82. As set forth in the accompanying Declaration, these expenses were reasonably incurred in the prosecution of this Litigation and are adequately described. *See* Declaration of James E. Barz Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶¶6, 7; *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17,

2015) ("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 reporters; travel expense; copy, phone and facsimile expenses and mediation.").[8] Thus, Lead Counsel respectfully requests payment of these reasonable litigation expenses from the Settlement Fund.

IV. AWARDS TO LEAD PLAINTIFF PURSUANT TO THE PSLRA

The PSLRA limits a class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but it also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class." 15 U.S.C. §78u-4(a)(4). Pursuant to these provisions, courts in this District have granted awards, for example, reflecting time spent on the litigation based on customary rates. *See, e.g.*, *City of Sterling Heights Gen. Emps.' Ret. Sys. v.*

[8] Note that judges in this District have split on whether electronic legal research expenses should be awarded or should be considered part of the attorneys' fee award. *Compare Silverman*, 2012 WL 1597388, at *4 (declining to approve legal research expenses) *with George v. Kraft Foods Global, Inc*., 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (allowing recovery of such expenses). While initially such costs were considered to be absorbed by rate increases for attorney time in the transition from paper to electronic legal research, more recently cases appear to have continued to approve electronic legal research expenses as an additional expense passed on to clients in the marketplace. *See Wong v. Accretive Health, Inc.*, No. 1:12-cv-03102, Transcript of Proceedings, ECF 85 at 4-5 (N.D. Ill. Apr. 30, 2014) (discussing split); *Accretive*, 2014 WL 7717579 (awarding legal research expenses); *Bristol Cnty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.*, No. 1:12-cv-03297, ECF 116 at 14-15 (N.D. Ill. June 17, 2015) (memorandum discussing split); *Bristol Cnty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.*, No. 1:12-cv-03297, slip op. at ¶4 (N.D. Ill. July 22, 2015) (Alonso, J.) (awarding legal research expenses); *Camping World*, No. 1:18-cv-07030, ECF 140 at 13 n.7 (N.D. Ill. July 1, 2020) (memorandum noting split); *Camping World*, slip op. at ¶4 (awarding expenses). But *see Stericycle*, slip op. at 4 (declining to approve legal research expenses). This Court has recently approved reimbursement of expenses that included amounts for "Online Research." *See, e.g.*, *Groupon*, No. 1:20-cv-02581, ECF 121, ¶107 (N.D. Ill. Sept. 8, 2022) (counsel including "Online Research" in categories of expenses); *Groupon*, 2022 WL 17256417, at *1 (awarding reimbursement of counsel's expenses). Allowing recovery of these expenses separate from the fee award is consistent with the Seventh Circuit's directive that fee awards should mimic the market. *See, e.g.*, *Cont'l Ill.*, 962 F.2d at 570 ("[T]he paying, arms' length market reimburses lawyers' LEXIS and WESTLAW expenses."). In this case, legal research expenses amount to $26,449.37 of the total $228,889.82 in expenses for which an award is being sought.

Hospira, Inc., 2014 WL 4950173 (N.D. Ill. July 8, 2014) (requesting award for estimated employee time and customary rate); *Hospira*, 2014 WL 12767763, at *1 (St. Eve., J.) (awarding more than $25,000 to four institutional representatives). Also pursuant to these provisions, courts in this District have granted awards reflecting time spent on the litigation that could have been spent on other matters without consideration of an hourly rate or the exact time spent. *See, e.g.*, *Groupon*, No. 1:20-cv-02581, ECF 121, ¶107 (N.D. Ill. Sept. 8, 2022) (requesting lead plaintiff award where individual lead plaintiff "contributed time for the benefit of the Settlement Class"); *Groupon*, 2022 WL 17256417, at *2 (awarding $5,000 to lead plaintiff); *In re Akorn, Inc. Sec. Litig.*, No. 1:15-cv-01944, ECF 174-5, ¶7 (N.D. Ill. Feb. 19, 2018) (requesting award under 15 U.S.C. §78u-4(a)(4) for time devoted to the "representation of the Settlement Class" that could have otherwise been dedicated to tennis instructor business); *In re Akorn, Inc. Sec. Litig.*, 2018 WL 2688877, at *4-*5 (N.D. Ill. June 5, 2018) (Feinerman, J.) (awarding $10,000 each to three individual class representatives, $30,000 total).

Here, the Lead Plaintiff Pension Funds have submitted accompanying declarations seeking awards of $1,000 each for the time they dedicated to pursuing the claims. *See* Albritton Decl., ¶9; Nye Decl., ¶9. The requests of $2,000, combined, are well below the $10,000 maximum combined award amount set forth in the Notice, well below the amounts awarded in other cases in this District, and there has been no objection to date.

V. CONCLUSION

For all the reasons stated herein, and in the accompanying Settlement Memorandum and declarations, Lead Counsel submits that the Court should approve the fee and expense application. Lead Counsel also submits that Lead Plaintiff's request for awards of $1,000 each for Retirement System and Police & Fire, are reasonable and should be awarded pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: December 8, 2022

Respectfully submitted,

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Additional Counsel for Lead Plaintiff

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 8, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/James E. Barz

JAMES E. BARZ

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Mailing Information for a Case 1:19-cv-07665 Azar v. Grubhub Inc. et al

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing

program in order to create notices or labels for these recipients.

- (No manual recipients)

EXHIBIT A

APPENDIX OF UNREPORTED AUTHORITIES CITED IN SUPPORT OF MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARDS TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

TAB 1

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

BRISTOL COUNTY RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ALLSCRIPTS HEALTHCARE SOLUTIONS, INC., et al., Defendants.	No. 1:12-cv-03297 CLASS ACTION Judge Jorge L. Alonso Magistrate Judge Young B. Kim

ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

THIS MATTER having come before the Court on the motion of Lead Plaintiffs for an award of attorneys' fees and expenses; the Court, having considered all papers filed and proceedings conducted herein, having found the Settlement of the Action to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefore;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Settlement Agreement dated April 1, 2015 (the "Settlement Agreement").

2. The Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all members of the Class who have not timely and validly requested exclusion.

3. Pursuant to and in full compliance with Rule 23 of the Federal Rules of Civil Procedure, the Court finds and concludes that due and adequate notice of Lead Plaintiffs' motion for an award of attorneys' fees and expenses was directed to all Persons and entities who are Class Members, including individual notice to those who could be identified with reasonable effort, advising them of the application for fees and expenses and of their right to object thereto, and a full and fair opportunity was accorded to all Persons and entities who are members of the Class to be heard with respect to the motion for fees and expenses.

4. The Court hereby awards Lead Counsel attorneys' fees of 33% of the Settlement Amount and expenses of $119,060.10, together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees shall be allocated among other Plaintiffs' Counsel by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution, and resolution of the Action. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of recovery" method considering, among other things that:

(a) the requested fee is consistent with percentage fees negotiated *ex ante* in the private market for legal services;

(b) the contingent nature of the Action favors a fee award of 33%;

(c) the Settlement Fund of $9.75 million was not likely at the outset of the Action;

(d) the awarded fee is in accord with Seventh Circuit authority and consistent with empirical data regarding fee awards in cases of this size;

(e) the quality legal services provided by Lead Counsel produced the Settlement;

(f) the Lead Plaintiffs appointed by the Court to represent the Class reviewed and approved the requested fee;

(g) the stakes of the litigation favor the fee awarded; and

(h) the reaction of the Class to the fee request supports the fee awarded.

5. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Settlement Agreement, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

7/22/15

JORGE L. ALONSO
UNITED STATES DISTRICT JUDGE

TAB 2

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

In re SPIEGEL, INC. SECURITIES LITIGATION	No. 02 8946
	CLASS ACTION
This Document Relates To:	Judge Rebecca R. Pallmeyer
ALL ACTIONS.	

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

THIS MATTER having come before the Court on March 2, 2007, on the application of Lead Counsel for an award of attorneys' fees and reimbursement of expenses incurred in the Litigation; the Court, having considered all papers filed and proceedings conducted herein, having found the settlement of this Litigation to be fair, reasonable and adequate and otherwise being fully informed in the premises and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All of the capitalized terms used herein shall have the same meanings as set forth in the Stipulation of Settlement dated as of November 1, 2006 (the "Stipulation").

2. This Court has jurisdiction over the subject matter of this application and all matters relating thereto, including all Members of the Class who have not timely and validly requested exclusion.

3. The Court hereby awards Lead Counsel attorneys' fees of 30% of the Settlement Fund and reimbursement of expenses in an aggregate amount of $237,536.54 together with the interest earned thereon for the same time period and at the same rate as that earned on the Settlement Fund until paid. Said fees shall be allocated by Lead Counsel in a manner which, in their good-faith judgment, reflects each counsel's contribution to the institution, prosecution and resolution of the Litigation. The Court finds that the amount of fees awarded is fair and reasonable under the "percentage-of-recovery" method.

4. The awarded attorneys' fees and expenses, and interest earned thereon, shall be paid to Lead Counsel from the Settlement Fund immediately after the date this Order is executed subject to the terms, conditions, and obligations of the Stipulation and in particular ¶6.2 thereof, which terms, conditions, and obligations are incorporated herein.

IT IS SO ORDERED.

DATED: March 2, 2007

THE HONORABLE REBECCA R. PALLMEYER
UNITED STATES DISTRICT JUDGE

Submitted by:

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s/ Patrick E. Cafferty
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TAB 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

----------X
PATRICIA LOWRY, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

Civil Action No. 20 C 01939 (MFK)

CLASS ACTION

RTI SURGICAL HOLDINGS, INC., CAMILLE I. FARHAT, BRIAN K. HUTCHISON, JONATHON M. SINGER, ROBERT P. JORDHEIM, and JOHANNES W. LOUW,

Defendants.

----------X

ORDER AND JUDGMENT

WHEREAS, this matter came before the Court for hearing on January 24, 2022, pursuant to the Preliminary Approval Order entered September 22, 2021, on the application of the Parties for final approval of the Settlement as set forth in the Stipulation of Settlement (the "Stipulation"); and

WHEREAS, the Court has heard all persons properly appearing and requesting to be heard, read and considered the motions and supporting papers, and found good cause appearing;

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Order incorporates by reference the definitions in the Stipulation, and all capitalized terms used in this Order that are not otherwise identified herein have a meaning assigned to them as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the action and over all parties

to the Action, including all Class members.

3. On January 24, 2022, the Court held a Final Approval Hearing, after due and proper notice, to consider the fairness, reasonableness and adequacy of the proposed Settlement. In reaching its decision in this Action, the Court considered the Parties' Stipulation, the Court file in this case, and the presentations by Lead Counsel on behalf of the Plaintiff and the Class and counsel for Defendants in support of the fairness, reasonableness, and adequacy of the Settlement.

4. In the Preliminary Approval Order, the Court found that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) were satisfied, warranting conditional certification of the Class. The Court finds that such requirements continue to be satisfied and that the Class defined in the Preliminary Approval Order shall remain certified, consisting of:

> All individuals and entities who purchased or otherwise acquired RTI Surgical Holdings, Inc. common stock from March 7, 2016 through March 27, 2020, both dates inclusive and were damaged thereby.

5. Excluded from the Class are Defendants, the officers and directors of RTI Surgical Holdings, Inc. at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any of the above have or had a controlling interest.

6. In the Preliminary Approval Order, the Court preliminarily approved the Notice and the Summary Notice and found that their proposed form, content and plan of dissemination to Class members satisfied the requirements of Rule 23(e) of the Federal Rules of Civil Procedure, due process, and the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u4(a)(7). The Court reaffirms that finding and holds that the best practicable notice was given to Class members under the circumstances and constitutes due and sufficient notice of the Settlement, Stipulation in support thereof, and Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement or the Final Approval Hearing. Furthermore, the

Court hereby affirms that due and sufficient notice has been given to the appropriate State and Federal officials pursuant to the Class Action Fairness Act ("CAFA"), 28 U.S.C § 1715.

7. The Court has determined that the Settlement is fair, reasonable, and adequate and is hereby finally approved in all respects. In making this determination, the Court has considered factors with respect to fairness, which include, *inter alia*, the complexity, expense and likely duration of the litigation; the reaction of the class to the settlement; the risks of establishing liability; the risks of establishing damages; the risk of maintaining the class action through the trial; the risks of collection; and the reasonableness of the settlement fund to a possible recovery in light of all the attendant risks. The Court has considered the submissions of the Parties along with the record in this Action, all of which show that the proposed Settlement is fair, reasonable and adequate.

8. The Court has also considered each of the factors identified in Federal Rule of Civil Procedure 23(e)(2), and finds that those factors likewise demonstrate that the proposed Settlement is fair, reasonable and adequate.

9. The Settlement provides that Defendants will cause $10,500,000 in cash to be paid into a Settlement Fund for the benefit of the Class. Among other things, the recovery of an individual Class member depends on the number of RTI shares that the Class member purchased and sold, and the prices at which other Class members who filed claims purchased and sold those shares.

10. The Court has considered, separately from its consideration of the fairness, reasonableness and adequacy of the Settlement reflected in the Stipulation as a whole, the Plan of Allocation proposed by Lead Counsel. The Court finds that the proposed Plan of Allocation is fair, just, reasonable, and adequate, and is therefore finally approved in all respects.

11. The Court notes that there were no objections filed to the Settlement from Class members.

12. In addition to finding the terms of the Settlement to be fair, reasonable, and adequate, the Court determines that there was no fraud or collusion between the Parties or their counsel in negotiating the Settlement's terms, and that all negotiations were made at arm's length. Furthermore, the terms of the Settlement make it clear that the process by which the Settlement was achieved was fair.

13. This Order and Judgment shall be binding on all Class members, including Plaintiff. Further, the Action is hereby dismissed with prejudice. The Parties are to bear their own costs, except as otherwise provided in the Stipulation.

14. Upon the Effective Date, Plaintiff, each Class member, and anyone claiming through or on behalf of any of them, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished and discharged all claims against the Released Persons, whether or not any individual Class member executes and delivers the Proof of Claim and Release form.

15. Upon the Effective Date, Plaintiff, each Class member and anyone claiming through or on behalf of any of them, by operation of the Judgment, shall be forever barred and enjoined from commencing, instituting, or continuing to prosecute any action or any proceeding, in any court of law or equity, arbitration, tribunal, administrative forum, or other forum of any kind asserting any of Plaintiff's claims against any of the Released Persons.

16. Upon the Effective Date, Defendants and anyone claiming through or on behalf of any of them, shall hereby be deemed to have, and by operation of this Order shall be, released and permanently barred and enjoined from instituting, commencing, or prosecuting any claim

against Plaintiff, Class members or Lead Counsel related to this Action or the prosecution thereof.

17. The Court finds and concludes that throughout this Action, the Defendants, Plaintiff, and their respective counsel complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure. The Court further finds that Plaintiff and Lead Counsel adequately represented Class members for purposes of entering into and implementing the Settlement.

18. Separate from its consideration of the Settlement set forth in the Stipulation, the Court hereby awards Lead Counsel attorneys' fees of $3,150,000, plus reimbursement of their expenses in the amount of $60,943.44, together with the interest earned thereon for the same time period and at the same rate as that earned on the Gross Settlement Fund until paid. The Court finds that the amount of fees awarded is appropriate and that the amount of fees awarded is fair and reasonable given the time and labor expended by counsel, the complexity of the litigation, the risk of the litigation, the quality of representation, the fee requested in relation to the recovery under the settlement, and public policy.

19. Separate from its consideration of the Settlement set forth in the Stipulation, the Court hereby awards the Plaintiff a reimbursement award pursuant to §78u-4(a)(4) of the PSLRA of $5,000.

20. Without affecting the finality of this Final Approval Order and Judgment, the Court reserves continuing and exclusive jurisdiction over all matters relating to the administration, implementation, effectuation, and enforcement of the Settlement.

21. There is no just reason for delay in the entry of this Order and Judgment, and immediate entry thereof by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated: 1/26/2022

Honorable Matthew F. Kennelly
United States District Judge

TAB 4

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

DAVID RONGE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. CAMPING WORLD HOLDINGS, INC., et al., Defendants.	Case No. 1:18-cv-07030 **(Consolidated)** CLASS ACTION Judge Rebecca R. Pallmeyer

ORDER AWARDING ATTORNEYS' FEES, EXPENSES, AND AWARDS TO PLAINTIFFS PURSUANT TO THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

This matter came before the Court for hearing on August 5, 2020 (the "Settlement Hearing") on Lead Counsel's motion for an award of attorneys' fees and payment of expenses. ECF Nos. 137 & 140. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Class Members who could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the award of attorneys' fees and expenses, requested,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement Agreement, dated March 12, 2020, ECF No. 122 (the "Stipulation"), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

2. The Court has jurisdiction to enter this Order and over the subject matter of the Action and all parties to the Action, including all Class Members.

3. Notice of Lead Counsel's motion for an award of attorneys' fees and payment of expenses was given to all Class Members who could be identified with reasonable effort. The form and method of notifying the Class of the motion satisfied the notice requirements of Rules 23 and 54 of the Federal Rules of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7) and Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"); constituted the best notice practicable under the circumstances; and constituted due, adequate, and sufficient notice to all Persons entitled thereto.

4. Lead Counsel are hereby awarded attorneys' fees of 30% of the Settlement Amount, plus interest at the same rate earned by the Settlement Fund, and payment of litigation expenses in the amount of $55,364.27, plus accrued interest, which sums the Court finds to be fair and reasonable.

5. Named plaintiff Daniel Geis is awarded $5,000, and named plaintiff Plumbers & Steamfitters Local Union #486 Pension Fund is awarded $3,500, for a total of $8,500, from the Settlement Fund, pursuant to 15 U.S.C. §78u-4(a)(7) and 15 U.S.C. §77z-1(a)(4), related to their representation of the Class.

6. The award of attorneys' fees and expenses may be paid to Lead Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

7. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has analyzed the factors considered within the Seventh Circuit and found that:

(a) The Settlement has created a fund of $12,500,000 in cash, pursuant to the terms of the Stipulation, and Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by the Lead Plaintiffs, who were directly involved in the prosecution and resolution of the Action and who have substantial interest in ensuring that any fees paid to counsel are duly earned and not excessive;

(c) The amount of attorneys' fees awarded are fair and reasonable and are consistent with fee awards approved in cases within the Seventh Circuit with similar recoveries;

(d) Lead Counsel have conducted the litigation and achieved the Settlement with skill, perseverance, and diligent advocacy and are highly experienced in the field of securities class action litigation;

(e) Lead Counsel undertook the Action on a contingent basis, and have received no compensation during the Action, and any fee and expense award has been contingent on the result achieved;

(f) The claims against the Defendants involve complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain; and

(g) 71,824 copies of the Notice were mailed to potential Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 30% of the Settlement Amount and expenses in an amount not to exceed $165,000, plus interest on such fees and expenses, and there were no objections to the requested attorneys' fees and expenses.

8. Any appeal or any challenge affecting this Court's approval regarding any of the attorneys' fees and expense applications shall in no way disturb or affect the finality of the Judgment.

9. In the event that the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order shall be rendered null and void to the extent provided by the Stipulation.

10. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

DATED: August 5, 2020

THE HONORABLE REBECCA R. PALLMEYER

UNITED STATES DISTRICT JUDGE

TAB 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MURRAY RUBINSTEIN, et al., Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. RICHARD GONZALEZ and ABBVIE INC., Defendants.	)	No. 14-cv-9465 Honorable Robert M. Dow, Jr.

ORDER GRANTING APPROVAL OF LEAD COUNSEL'S FEES, AND EXPENSES, COSTS TO LEAD PLAINTIFF AND PLAN OF ALLOCATION

On October 22, 2019, this Court heard Lead Plaintiff's Motion for an Award of Attorney's Fees, Reimbursement of Expenses and approval of Plan of Allocation (the "Motion"). This Court has considered the Motion and other related materials submitted by Lead Plaintiff, as well as Lead Plaintiff's presentation at the Final Approval Hearing, and otherwise being fully informed on the premises, hereby finds and orders as follows:

1. Lead Counsel are awarded $5,025,000 in attorneys' fees.

2. Lead Counsel are awarded $530,133.17 as reimbursement of litigation expenses.

3. This Court finds that Lead Plaintiff Dawn Bradley, in prosecuting the case on behalf of the Class, made a substantial contribution to its outcome, and is therefore awarded $9,937.20 in costs, in addition to any share of the Settlement Fund to which she is entitled.

4. The foregoing awards shall be paid from the Settlement Fund in accordance with the Stipulation of Settlement.

5. This Court approves the proposed Plan of Allocation and finds it is fair, reasonable and adequate.

DATED: October 22, 2019

Honorable Robert M. Dow, Jr.

TAB 6

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ST. LUCIE COUNTY FIRE DISTRICT FIREFIGHTERS PENSION TRUST FUND, et al.,	)	
Plaintiffs,	)	No. 16-cv-07145
v.	)	Judge Andrea R. Wood
STERICYCLE, INC., et al.,	)	
Defendants.	)	

ORDER

Plaintiffs' motion for an award of attorneys' fees and reimbursement of litigation expenses [116] is granted in part and denied in part. Specifically, the Court awards Class Counsel attorneys' fees in the amount of 25% of the settlement fund, net of litigation expenses and notice and administration costs. The Court also grants Plaintiffs' request for reimbursement of litigation expenses in the amount of $21,618.75 to Public Employees' Retirement System of Mississippi and $873.36 to Arkansas Teacher Retirement System. However, the Court denies Plaintiffs' request to reimburse Class Counsel's litigation expenses in the amount of $192,433.77, and instead finds that Class Counsel is entitled to a reimbursement of $134,812.30. Objector Mark G. Petri's motion to lift the stay on discovery [121] is denied. Enter Order Awarding Attorneys' Fees and Reimbursement of Litigation Expenses. See the accompanying Statement for details.

STATEMENT

Public Employees' Retirement System of Mississippi ("MissPERS") and Arkansas Teacher Retirement System ("ATRS") brought this securities class action on behalf of themselves and other shareholders in Defendant Stericycle, Inc. ("Stericycle"), alleging that Stericycle defrauded shareholders by artificially inflating its financials. (Fourth Am. Compl. at 5, Dkt. No. 84.) (The Court refers to MissPERS and ATRS collectively as "Lead Plaintiffs.") After the parties had briefed Defendants' motion to dismiss but before the Court ruled on it, the parties filed a motion for final approval of their proposed $45 million settlement. (Dkt. No. 113.) The Court approved that settlement on July 22, 2019. (Dkt. No. 139.) Now, the Court addresses the request for an award of attorneys' fees by Bernstein, Litowitz, Berger & Grossmann LLP ("Lead Counsel"), counsel for Lead Plaintiffs and Plaintiffs St. Lucie County Fire District Firefighters Pension Trust Fund and Boynton Beach Firefighters Pension Fund. (Dkt. No. 116.)

Lead Plaintiffs propose to divide the fee award among Lead Counsel and two other firms that represent Plaintiffs, Gadow Tyler, PLLC and Klausner, Kaufman, Jensen & Levinson

("KKJ&L"), based on the amount of work each firm contributed, with Lead Counsel receiving the lion's share. (Lead Pls.' Mem. of Law in Opp'n to Objector's Mot. to Lift Stay for Limited Disc. ("Mem. in Opp'n to Objector's Mot.") at 7–8, Dkt. No. 132.) (The Court refers to Lead Counsel, Gadow Tyler, PLLC, and KKJ&L collectively as "Class Counsel.") Lead Counsel moves pursuant to Federal Rule of Civil Procedure 23(h) for (i) an award of attorneys' fees in the amount of 25% of the settlement amount; (ii) reimbursement of $192,433.77 for Lead Counsel's litigation expenses; and (iii) reimbursements of $21,618.75 to MissPERS and $873.36 to ATRS for costs and expenses arising from their representation of class members. Only one class member, Mark G. Petri, has objected to Lead Counsel's motion. (Dkt. No. 120.) Petri requests that the Court lift its stay on discovery to allow limited discovery into Lead Counsel's calculation of and Lead Plaintiffs' approval of attorneys' fees. (Dkt. No. 121.)

I.

The Court first addresses the award of attorneys' fees. In this District, the "favored method for calculating fees in common-fund cases . . . sets the fee award as a percentage of the recovered settlement fund, plus expenses and interest." *In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844 (N.D. Ill. 2015). The percentage method has the advantage of aligning counsel's interests with those of the class and may be particularly suitable for common fund cases "because of its relative simplicity of administration." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 566 (7th Cir. 1994). The other option for calculating attorneys' fees is the lodestar method, which is based on the number of hours the attorneys contributed to the suit multiplied by a reasonable hourly billing rate. *Gastinaeu v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). The Seventh Circuit has held that "the decision whether to use a percentage method or a lodestar method remains in the discretion of the district court." *Florin*, 34 F.3d at 566. The Court finds the percentage method reasonable here.

To determine the appropriate percentage, courts should strive to award attorneys the market price for their legal services. *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599 (7th Cir. 2005) (citing *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 719 (7th Cir. 2001) ("*Synthroid I*")). In other words, courts should attempt to give counsel an amount that the parties themselves might have bargained for, taking into consideration the quality of the legal services provided and the contingent nature of the case. *Synthroid I*, 264 F.3d at 718. Courts consider factors such as the size of awards granted in other cases; the complexity, length, and expense of the litigation; and the risk of nonpayment assumed by the attorneys. *Dairy Farmers of Am.*, 80 F. Supp. 3d at 845–48 The Seventh Circuit will reverse a district court's award of attorneys' fees as an abuse of discretion only if record does not rationally support the award. *Taubenfeld*, 415 F.3d at 600.

Applying the *Synthroid I* factors to this case, Class Counsel secured a good outcome with a $45 million settlement, especially given the early stage of the litigation and the fact that Stericycle was reporting only $52 million in available cash at the time of the settlement. (John C. Browne Decl. ("Browne Decl.") ¶ 86, Dkt. No. 119.) Class Counsel also pursued the matter entirely on a contingency basis. (*Id.* ¶ 18.) And given the complexities of the case, it faced a substantial risk of nonpayment. In order to prove Defendants' liability, Class Counsel would have had to show not only that Defendants caused Plaintiffs' losses, but that Defendants did so with the intent to defraud. (*Id.* ¶¶ 77–82.) Additionally, at the time of settlement, Defendants' motion to

dismiss was pending. (Dkt. No. 91.) If granted, Class Counsel would not have received any compensation for their services.

Nonetheless, objector Petri contends that Lead Counsel's requested 25% award is much too high, arguing that the risks of litigation were low and the parties settled early, before the Court ruled on Defendants' motion to dismiss. (Obj. to Mot. for Att'ys' Fees ("Obj.") at 7–10, Dkt. No. 120.) Petri also asserts that Lead Counsel supports its fee request with "cherry-picked examples" of attorneys' fee awards between one-third and 40% of the settlement amount, but he fails to provide sufficient authority that a lower percentage is required. (*Id.* at 8–9.) He contends that "empirical data show the market rate for large settlements obtained prior to resolution of a motion to dismiss is 8%." (*Id.* at 8.) In support of that assertion, Petri does not attach any empirical data; instead, he provides a copy of an objector's letter from an unrelated class action in another district. (*See* Obj. Ex. I at 2, 4, Dkt. No. 120-12.) Moreover, the cases upon which Petri relies, which he claims support awarding Lead Counsel a lower fee award, actually support the reasonableness of its request for 25% of the settlement amount. *See Swift v. Direct Buy, Inc.*, Nos. 2:11–CV–401–TLS, 2:11–CV–415–TLS, 2:11–CV–417–TLS, 2:12–CV–45–TLS, 2013 WL 5770633, at *8 (N.D. Ind. Oct. 24, 2013) (awarding class counsel its requested 20% of the settlement amount after noting that percentage fell far below the standard 33% award); *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *8–9 (N.D. Ill. Oct. 10, 1995) (awarding class counsel 33 1/3% of a $4.6 million settlement).

As Lead Counsel contends, attorneys' fees of one-third to 40% of the class settlement amount are typical in this District. *See, e.g.*, *Taubenfeld*, 415 F.3d 597, at 600 (affirming attorneys' fee award to class counsel of 30% of the $7.25 million settlement fund plus expenses, based partly on data that awards of 30–39% are routine in the Northern District of Illinois). This suit is somewhat distinguishable because the $45 million settlement amount is larger than those in many of Lead Counsel's cited cases. *See, e.g.*, *id.*; *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97-cv-7694, 2001 WL 1568856, at *4–5 (N.D. Ill. Dec. 10, 2001) (awarding attorneys one-third of the $14 million settlement in a stockholder class action). The Seventh Circuit has observed that when calculating the appropriate attorneys' fees, "the market rate, as a percentage of recovery, likely falls as the stakes increase." *In re Synthroid Mktg. Litig.*, 325 F.3d 974, 975 (7th Cir. 2003). But in this Court's view, Lead Counsel has accounted appropriately for this correlation by proposing an award of 25% rather than 30% or more. Considering the contingent nature of Class Counsel's litigation and the positive outcome reached for class members, the Court finds that attorneys' fees of 25% of the settlement amount are reasonable.

Petri suggests a $4.5 million award would be more appropriate here, since it would still overcompensate Class Counsel under the lodestar method of calculating attorneys' fees. (Obj. at 15.) Petri also disputes Lead Counsel's lodestar calculation of its proposed fee. (Obj. at 13–15.) But Lead Counsel offers its lodestar calculation only as a cross-check for its proposed percentage-based fee. (Mem. of Law in Supp. of Lead Counsel's Mot. for an Award of Att'ys' Fees and Reimbursement of Litig. Expenses at 10–11, Dkt. No. 118.) Lead Counsel is not required to provide such information or to justify its fee award based on the lodestar method. *See Dairy Farmers of Am.*, 80 F. Supp. 3d at 849 ("A district court is under no obligation to cross-check the requested fees against the lodestar." (citing *Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011); *Cook v. Niedert*, 142 F.3d 1004, 1013 (7th Cir. 1998))). Because the

Court employs the percentage method in this case, it finds that no additional analysis or calculation based on the lodestar method is necessary.

One further point on Class Counsel's fees—its percentage does not come out of the entire settlement amount, but is determined by "the ratio of (1) the fee to (2) the fee plus what the class members received." *Redman. v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014). The Seventh Circuit explained in *Redman* that district courts must remove litigation expenses and notice and administration costs from the settlement amount before calculating the attorneys' percentage, as such costs are "part of the settlement but not part of the value received from the settlement by members of the class." *Id.* Lead Counsel agrees as to litigation expenses but argues that the Court is not required to set aside notice and administration costs because *Redman* applies only to narrow situations in which the ultimate recovery is unknown. Lead Counsel's argument lacks merit. Courts routinely apply *Redman* to remove notice and administration costs from cash settlement amounts prior to calculating the attorneys' percentage, as demonstrated even in several of the cases upon which Lead Counsel relies in asserting the opposite. *See, e.g.*, *In re Nat'l Collegiate Athletic Assoc. Student-Athlete Concussion Injury Litig.*, 332 F.R.D. 202, 226 (N.D. Ill. 2019); *Wilkins v. HSBC Bank Nev., N.A.*, No. 14-cv-190, 2015 WL 890566, at *9–12 (N.D. Ill. Feb. 27, 2015); *Craftwood Lumber Co. v. Interline Brands, Inc.*, No. 11-cv-4462, 2015 WL 1399367, at *5 n.2 (N.D. Ill. Mar. 23, 2015). Thus, this Court concludes that Class Counsel is entitled to its percentage of the settlement after removing notice and administration costs. Lead Counsel estimates such costs at $900,000. (Reply in Further Supp. of Lead Counsel's Mot. at 20 n.17, Dkt. No. 134).

II.

The Court now turns to Lead Counsel's request for reimbursement of $192,433.77 in litigation expenses, which Petri does not oppose. Lead Counsel has provided a declaration detailing the litigation-related expenses incurred in this case. (Browne Decl., Ex. 6, Dkt. No. 119-8.) The Court finds all expenses reasonable, except charges related to online research. The Seventh Circuit has held that "[w]hen a court uses the percentage-of-recovery method of calculating attorney's [sic] fees, such charges are simply subsumed in the award of attorneys' fees." *Montgomery v. Aetna Plywood*, 231 F.3d 399, 409 (7th Cir. 2000); *see also Silverman v. Motorola, Inc.*, No. 07-cv-4507, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012). Lead Counsel attributes $47,862.29 to online legal research and $9,759.18 to online factual research. (Browne Decl., Ex. 6.) Because the Court has awarded Class Counsel its fees using the percentage method, Lead Counsel may not separately recover for online research. Therefore, Lead Counsel is only entitled to a reimbursement of $134,812.30 in litigation expenses.

Lead Counsel also requests reimbursement of $21,618.75 to MissPERS and $873.36 to ATRS for their costs and expenses directly related to their representation of the class pursuant to the Private Securities Litigation Reform Act ("PSLRA"), 15 U.S.C. § 78u-4(a)(4). Petri also does not object to these reimbursements. Generally, in class action suits named plaintiffs may receive a higher amount of the settlement fund to compensate their extra efforts representing the class. This practice is impermissible under the PSLRA, which requires distribution of any settlement to shareholders solely on a per share basis. 15 U.S.C. § 78u-4(a)(4). But the PSLRA does allow reimbursement of parties' reasonable costs and expenses in representing the class, including lost

wages. *Id.* Here, a representative of MissPERS attests that four employees dedicated a total of 77.5 hours of work to this case, and requests reimbursement of $21,618.75 based on those employees' salaries. (Decl. of Donald L. Kilgore at 5–6, Dkt. No. 119-2.) The Deputy Director of ATRS attests that he spent 12 hours on the case, totaling $873.36 based on his salary. (Decl. of Rod Graves at 5, Dkt. No. 119-3.) The Court finds that MissPERS and ATRS' requests for reimbursements of 77.5 and 12 hours, respectively, of employees' work on the case are reasonable. Additionally, it is reasonable to grant such reimbursements based on those employees' estimated salaries per hour. The Court therefore grants Lead Counsel's motion as to the reimbursements of MissPERS and ATRS' expenses.

III.

Finally, the Court turns to Petri's motion to lift the stay on discovery. (Dkt. No. 121.) The Court previously ordered a stay in all proceedings in this case, other than those necessary to carry out the terms of the parties' settlement agreement.[1] (Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement ¶ 20, Dkt. No. 111.) Petri requests that the Court lift that stay and allow discovery regarding (i) Lead Counsel's billing methods; (ii) how Lead Plaintiffs intend to split the attorneys' fee among Class Counsel; and (iii) Lead Counsel's financial and political relationship with MissPERS. As noted above, the Court does not need to inquire into Lead Counsel's billing methods because its fee is based on a percentage of the settlement. And Lead Plaintiffs have already explained how they intend to distribute the fee award. (*See* Mem. in Opp'n to Objector's Mot. at 7–8.) Therefore, the Court addresses only Petri's request for information regarding Lead Counsel's political contributions.

If a class member opposes a Rule 23(h) motion for attorneys' fees, the court may allow discovery relevant to the class member's objections. *See* Fed. R. Civ. P. 23(h) advisory committee's note to the 2003 amendments. "In determining whether to allow discovery, the court should weigh the need for the information against the cost and delay that would attend discovery." *Id.* When class counsel's motion for attorneys' fees provides thorough information supporting its entitlement to a particular award, "the burden should be on the objector to justify discovery to obtain further information." *Id.* Here, Lead Counsel has provided comprehensive information about the work it contributed to this case and how the attorneys' fees it requests are reasonable in light of that work. Accordingly, Petri bears the burden of showing why further discovery into Lead Counsel's attorneys' fees is necessary.

In support of his motion, Petri asserts that Mississippi Attorney General Jim Hood, who manages MissPERS, regularly receives campaign contributions from Class Counsel. (Objector's Mot. to Lift Stay for Limited Disc. at 5, Dkt. No. 121.) Petri argues that this connection "partially explains why MissPERS has endorsed 25% attorneys' fees on the gross common fund" and justifies the requested discovery. (*Id.*) But Petri's argument is purely speculative. He has provided

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[1] Defendants argue that the mandatory stay of discovery during the pendency of any motions to dismiss required by PSLRA § 78u-4(b)(3)(B) precludes the requested discovery. (Mem. in Opp'n to Objector's Mot. at 4–5.) But because the Court denied Defendants' motion to dismiss without prejudice in light of parties' settlement (*see* Dkt. No. 112), and so the motion is no longer pending.

no evidence of any wrongdoing or illicit understanding between Class Counsel and MissPERS. Absent such evidence, the Court finds the mere allegation that Class Counsel has made political donations to the campaigns of a figure associated with MissPERS insufficient to justify additional discovery, particularly when Lead Counsel's request for attorneys' fees is detailed and reasonable. Accordingly, the Court sees no reason to delay payouts to the class by allowing further discovery and Petri's motion is denied.

Dated: May 19, 2020

Andrea R. Wood
United States District Judge