

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CHASE MORTIMER, Individually and on	)	Case No. 1:19-cv-01735
Behalf of All Others Similarly Situated,	)	<b>(Consolidated)</b>
	)	
Plaintiff,	)	<u>CLASS ACTION</u>
	)	
vs.	)	Honorable John F. Kness
	)	
DIPLOMAT PHARMACY, INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF LEAD COUNSEL'S  
MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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## I. INTRODUCTION

Lead Counsel, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”), has obtained a Settlement<sup>1</sup> consisting of \$15.5 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 and was achieved through 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 25% of the \$15.5 million fund, plus expenses/charges (“expenses”) incurred in the prosecution of the Litigation in the amount of \$18,155.42, plus interest at the same rate and for the same period as that earned by the Settlement Fund.<sup>2</sup> As detailed in §II.B.1. below, the 25% fee request, negotiated by Lead Plaintiff, is below the 28%-33% fees often awarded in comparable securities class action settlements.

The 25% 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’ pending motion to dismiss, the claims against Defendants could have continued for many years through fact discovery, expert discovery, summary judgment, trial, and likely appeals. The Settlement 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

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<sup>1</sup> All capitalized terms not otherwise defined herein have the meanings ascribed in the Amended Stipulation of Settlement dated January 24, 2022, ECF 133 (the “Stipulation”). Citations are omitted and emphasis is added unless otherwise noted.

<sup>2</sup> Counsel that will be sharing in the fee award are Plaintiffs’ Counsel on the operative Complaint (ECF 82; *see also* Stipulation, ¶1.25) as well as Johnson Fistel, LLP and Miller Law LLC, who together filed the initial complaint in this action (*see* ECF 1). A copy of this memorandum and supporting materials will be available on the Settlement website for Class Members.

no recovery at all or of the costs of litigation diminishing the recovery. It is rare to obtain such a significant settlement prior to a ruling on a motion to dismiss and 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 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 well within the range of percentages normally awarded in securities class actions in this Circuit, 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 Michael Randick and Richard J. Sawhill in Support of Settlement and Award of Attorneys' Fees and Expenses ("Randick and Sawhill Decl."), ¶3.

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).

While the “lodestar” method (multiplying reasonable hours by reasonable rates) to assess attorneys’ fees is an additional method for assessing an appropriate fee award, 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”).<sup>3</sup>

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

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<sup>3</sup> *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 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.”).



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., 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. Feb. 20, 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 25% of the Settlement Amount.

#### **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 that large defense firms representing corporations attract talented lawyers who are very well compensated, and fee awards should serve to attract equally talented lawyers to take on the risks of contingent fee representation of plaintiffs. *See Silverman v. Motorola, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013); *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.”). In addition to providing just compensation, awards of attorneys’ fees from a common fund serve to encourage skilled counsel to take on the risk of representing plaintiffs in class action cases on a contingent fee basis. *See, e.g., Silverman*, 739 F.3d at 958 (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”).

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 25% 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 negotiated by Lead Plaintiff. Lead Counsel respectfully requests that the 25% fee be approved.

**1. The 25% Attorneys’ Fee Request Is Consistent with, and Below, 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 33-1/3% 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.).

The percentage sought here, 25% of the \$15.5 million Settlement Amount, is below this range and also below percentages awarded to Lead Counsel (Robbins Geller) in other securities class action cases in this District. *See, e.g., Ronge v. Camping World Holdings, Inc.*, No. 1:18-cv-07030, slip op. at ¶4 (N.D. Ill. Aug. 5, 2020) (Pallmeyer, J.) (awarding Robbins Geller and co-counsel 30% on \$12.5 million settlement);<sup>4</sup> *Sokolow v. LJM Funds Management, LTD*, No. 1:18-cv-01039, slip op. at ¶4 (N.D. Ill. Dec. 18, 2019) (Dow, J.) (awarding Robbins Geller and co-counsel 28% on \$12.85 million settlement); *Bristol Cty. Ret. Sys. v. Allscripts Healthcare Sols., Inc.*, No. 1:12-cv-03297, slip op. at ¶4 (N.D. Ill. July 22, 2015) (Alonso, J.) (awarding Robbins Geller 33% on \$9.75 million settlement); *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); *In re Spiegel, Inc. Sec. Litig.*, No. 1:02-cv-08946, slip op. at ¶3 (N.D. Ill. Mar. 2, 2007) (Pallmeyer, J.) (awarding Robbins Geller 30% on \$17.5 million settlement).

The 25% fee request is also below the range of fees often awarded in this District to other law firms in securities and complex class actions. *See, e.g., 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); *Lowry v. RTI Surgical Holdings, Inc.*, No. 20-cv-01939, slip op. at ¶18 (N.D. Ill. Jan. 26, 2022) (Kennelly, J.) (awarding 30% fee on \$10.5 million securities settlement); *Gupta v. Power Sols.*

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<sup>4</sup> Attached hereto as Exhibit A is an appendix of unreported authorities cited herein.

*Int'l, Inc.*, 2019 WL 2135914, at \*1 (N.D. Ill. May 13, 2019) (Kendall, J.) (awarding 33-1/3% on \$8.5 million securities settlement); *Van Noppen v. Innerworkings, Inc.*, No. 1:14-cv-01416, slip op. at ¶4 (N.D. Ill. Nov. 2, 2016) (Blakey, J.) (awarding 30% fee on \$6.025 million securities settlement).<sup>5</sup> Thus, Lead Counsel's request for fees of 25% of the total recovery is fair and reasonable and consistent with, if not below, prior fee awards in this District.

## **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.,* Cornerstone Research, *Securities Class Action Filings: 2020 Year in Review* (2021), at 18 (noting that for federal securities class actions, excluding mergers and acquisition actions, "[r]ecent annual dismissal rates have been closer to 50%").

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<sup>5</sup> The securities class action cases cited all awarded fees based on a percentage of the 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 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.). But *Redman* was a consumer case 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 also because such settlements might provide for a reversion feature where any unclaimed funds revert 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 has affirmed a percentage fee award in a securities class action based on the aggregate settlement, without deducting 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").

This case required a determined investigation and the skill to respond to a host of legal and factual defenses raised by Defendants. During the course of the Litigation, Lead Counsel spent over 1,600 hours of attorney and paraprofessional time investigating the claims, drafting the detailed Complaint, preparing an extensive brief in opposition to Defendants' motion to dismiss (followed by additional briefing regarding supplemental authority), and preparing for and participating in two mediation sessions that included the exchange of mediation statements and joint session discussions regarding the parties' respective positions on the claims and defenses, and damages. *See* accompanying Declaration of Frank A. Richter in Support of: (I) Lead Plaintiff's Motion for Final Approval of Class Action Settlement; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, ¶6. 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 mediation, but rather Lead Counsel pressed forward with litigation efforts.

Lead Counsel was opposed in this Litigation by counsel from Sidley Austin LLP, which has an excellent reputation for the defense of 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 prior to the Court deciding Defendants' pending motion to dismiss, sparing the Class both the risk of an unfavorable outcome and the considerable costs of further litigation (*e.g.*, depositions, experts, etc.). 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; *see also 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”). “All contingent fee class action cases involve some degree of risk for plaintiffs’ counsel.” *Schulte*, 805 F. Supp. 2d at 598. 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. As in *Schulte*, “there was no certainty that Plaintiff would win, or that the case would settle; and if Plaintiff had lost, Class Counsel ‘would receive no fees at all.’” 805 F. Supp. 2d at 597-98. Unlike counsel for defendants, who are paid an hourly rate and paid for their expenses on a regular (*e.g.*, monthly) basis, Lead Counsel had no such guarantee of payment, had to wait for any payment while the case was prosecuted, 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.

Not only was there a risk of dismissal, but even if Lead Plaintiff successfully opposed Defendants’ motion to dismiss, Lead Plaintiff still faced significant obstacles. Assuming Lead Plaintiff was able to overcome Defendants’ motion for summary judgment after costly 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 who would testify at trial would likely be polar opposites 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

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). 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).<sup>6</sup> 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 there would be no fee without a successful result and that such a result would be realized only after considerable effort and after working without compensation. Notably, the case did not settle during the two mediation sessions, as Lead Counsel continued to negotiate toward a better result. It was not until the mediator issued a “mediator’s proposal” following the second mediation session that the case settled. 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”).

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<sup>6</sup> *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).

#### **4. The Stakes of the Litigation Favor a 25% 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 proceedings, and the amount of money involved.” *Schulte*, 805 F. Supp. 2d at 598.

Lead Counsel successfully obtained a favorable recovery at an early stage of the litigation, which 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 recovery to the Class. As the litigation advances, the risks can also increase. Absent a successful outcome, Lead Counsel would not have been compensated for more than 1,600 hours of attorney and support staff time, and would have had to write off all of its litigation expenses. 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 Glickenhau & 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). 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 January 27, 2022 Preliminary Approval Order (ECF 135), more than 22,000 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 25% of the Settlement Amount, plus expenses not to exceed \$25,000, 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 – May 16,



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 May 27, 2022.

**6. Lead Plaintiff Approved the 25% Fee Request**

Lead Plaintiff, who worked with counsel throughout the Litigation, has negotiated and approved the 25% fee request sought here. *See* Randick and Sawhill Decl., ¶5. Unlike consumer and other class action cases, securities fraud cases have unique procedures for appointing as the lead plaintiff the class member with the largest financial interest. *See Silverman*, 739 F.3d at 959 (stating that 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). The Seventh Circuit has also considered the makeup of the class in reviewing fee awards and considering the lack of objection. *See, e.g., Synthroid*, 264 F.3d at 717 (noting that “[u]nlike members of the consumer class, TPPs [third party payers] are sophisticated purchasers of pharmaceuticals” and “[t]heir consent to this deal shows that a larger judgment was unlikely”); *Silverman*, 739 F.3d at 959 (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, a sophisticated institutional investor, approved Lead Counsel’s fee request also weighs in favor of its reasonableness.

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 \$18,155.42. As set forth in the accompanying counsel declarations, these expenses were reasonably incurred in the prosecution of this Litigation. *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; Declaration of Corey D. Holzer Filed on Behalf of Holzer & Holzer, LLC in Support of Application for Award of Attorneys' Fees and Expenses, ¶¶5, 6; Declaration of Frank J. Johnson Filed on Behalf of Johnson Fistel, LLP in Support of Application for Award of Attorneys' Fees and Expenses, ¶5; Declaration of Marvin A. Miller Filed on Behalf of Miller Law LLC in Support of Application for Award of Attorneys' Fees and Expenses, ¶¶5, 6; *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.")<sup>7</sup>

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<sup>7</sup> With regard to these expenses, 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 electronic legal research expenses). Recent cases appear to have continued to approve electronic legal research expenses. *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); *Allscripts*, No. 1:12-cv-03297, ECF 116 at 14-15 (N.D. Ill. June 17, 2015) (memorandum discussing split); *Allscripts*, slip op. at ¶4 (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). 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

Thus, Lead Counsel respectfully requests payment of these reasonable litigation expenses from the Settlement Fund.

#### IV. CONCLUSION

For all the reasons stated herein, in the Settlement Memorandum, and in the accompanying declarations, Lead Counsel submits that the Court should approve the fee and expense application and enter an order awarding Lead Counsel 25% of the Settlement Amount, plus payment of \$18,155.42 in expenses, plus the interest earned on both amounts at the same rate and for the same period as that earned on that portion of the Settlement Fund until paid.

DATED: May 2, 2022

Respectfully submitted,

ROBBINS GELLER RUDMAN  
& DOWD LLP  
JAMES E. BARZ (IL Bar # 6255605)  
FRANK A. RICHTER (IL Bar # 6310011)  
CAMERAN M. GILLIAM (IL Bar # 6332723)

---

*s/ Frank A. Richter*  
FRANK A. RICHTER

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---

WESTLAW expenses.”). In this case, legal research expenses amount to \$2,068.77 of the total \$18,155.42 in expenses for which reimbursement is being sought.

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cholzer@holzerlaw.com

Counsel for named Plaintiff Eugene Klabak

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on May 2, 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/ FRANK A. RICHTER

---

FRANK A. RICHTER

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## Mailing Information for a Case 1:19-cv-01735 Iron Workers Local No. 25 Pension Fund, et al., v. Diplomat Pharmacy, Inc. et al

### Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **James E Barz**  
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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

<b>CASE</b>	<b>TAB</b>
<i>Bristol Cty. Ret. Sys. v. Allscripts Healthcare Solutions, Inc.</i> , No. 1:12-cv-03297, slip op. (N.D. Ill. July 22, 2015)	1
<i>In re Spiegel, Inc. Sec. Litig.</i> , No. 1:02-cv-08946, slip op. (N.D. Ill. Mar. 2, 2007)	2
<i>Lowry v. RTI Surgical Holdings, Inc.</i> , No. 20-cv-01939, slip op. (N.D. Ill. Jan. 26, 2022)	3
<i>Ronge v. Camping World Holdings, Inc.</i> , No. 1:18-cv-07030, slip op. (N.D. Ill. Aug. 5, 2020)	4
<i>Rubinstein v. Gonzalez</i> , No. 1:14-cv-09465, slip op. (N.D. Ill. Oct. 22, 2019)	5
<i>Sokolow v. LJM Funds Management, LTD</i> , No. 1:18-cv-01039, slip op. (N.D. Ill. Dec. 18, 2019)	6
<i>St. Lucie Fire Dist. Firefighters Pen. Tr. Fund v. Stericycle, Inc.</i> , No. 1:16-cv-07145, slip op. (N.D. Ill. May 19, 2020)	7
<i>Van Noppen v. InnerWorkings, Inc.</i> , No. 1:14-cv-01416, slip op. (N.D. Ill. Nov. 2, 2016)	8



**TAB 1**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

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



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JORGE L. ALONSO  
UNITED STATES DISTRICT JUDGE

**TAB 2**

Case 1:02-cv-08946 Document 191 Filed 03/02/2007 Page 1 of 4

Case 1:02-cv-08946 Document 186 Filed 02/23/2007 Page 1 of 4

*eu*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

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

Case 1:02-cv-08946 Document 191 Filed 03/02/2007 Page 2 of 4

Case 1:02-cv-08946 Document 186 Filed 02/23/2007 Page 2 of 4

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.

Case 1:02-cv-08946 Document 191 Filed 03/02/2007 Page 3 of 4

Case 1:02-cv-08946 Document 186 Filed 02/23/2007 Page 3 of 4

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. PALIMEYER  
UNITED STATES DISTRICT JUDGE

Submitted by:

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s/ Patrick E. Cafferty  
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Case 1:02-cv-08946 Document 191 Filed 03/02/2007 Page 4 of 4

Case 1:02-cv-08946 Document 186 Filed 02/23/2007 Page 4 of 4

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Co-Lead Counsel for Plaintiffs

S:\Settlement\Spiegel.set\ORDER FEES 00039359.doc

**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)

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

CLASS ACTION

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	)	Case No. 1:18-cv-07030
of All Others Similarly Situated,	)	<b>(Consolidated)</b>
	)	
Plaintiff,	)	<u>CLASS ACTION</u>
	)	
vs.	)	Judge Rebecca R. Pallmeyer
	)	
CAMPING WORLD HOLDINGS, INC., et al.,	)	
	)	
Defendants.	)	
	)	
_____	)	

**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

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UNITED STATES DISTRICT JUDGE

**TAB 5**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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

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

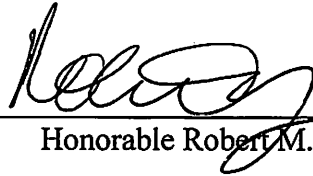
On October 22, 2019, this Court heard Lead Plaintiff’s Motion for an Award of Attorney’s Fees, Reimbursement of Expenses and approval of Plan of Allocation (the “Motion”). This Court has considered the Motion and other related materials submitted by Lead Plaintiff, as well as Lead Plaintiff’s presentation 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



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Honorable Robert M. Dow, Jr.

**TAB 6**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

LEONARD SOKOLOW, Individually and on	)	Case No. 1:18-cv-01039
Behalf of All Others Similarly Situated,	)	
	)	Hon. Judge Robert M. Dow, Jr.
Plaintiff,	)	
	)	
vs.	)	
	)	
LJM FUNDS MANAGEMENT, LTD., et al.,	)	
	)	
Defendants.	)	
	)	
_____	)	

**ORDER AWARDING ATTORNEYS' FEES AND EXPENSES  
AND AN AWARD TO INDIVIDUAL LEAD PLAINTIFFS  
PURSUANT TO 15 U.S.C. §77z-1(a)(4)**

This matter came before the Court for hearing on December 18, 2019 (the “Settlement Hearing”) on Lead Counsel’s motion for an award of attorneys’ fees and payment of expenses. ECF Nos. 204 & 205. 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 Settlement 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 Stipulation and Agreement of Partial Settlement, dated August 19, 2019, ECF No. 192 (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 Settlement Class Members.
3. Notice of Lead Counsel’s motion for an award of attorneys’ fees and payment of expenses was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion satisfied the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), 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 28% of the Settlement Fund, plus interest at the same rate earned by the Settlement Fund, and payment of litigation expenses in the amount of \$25,869.93, plus accrued interest, which sums the Court finds to be fair and reasonable.

5. Lead Plaintiffs Justin and Jenny Kaufman, Dr. Larry and Marilyn Cohen, and Joseph N. Wilson are each awarded \$2,000, for a total of \$10,000.00, from the Settlement Fund, pursuant to the PSLRA, 15 U.S.C. §77z-1(a)(4), related to their representation of the Settlement 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 \$12,850,000 in cash, pursuant to the terms of the Stipulation, and Settlement 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 a 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 Settling Defendants involve complex factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain; and

(g) 64,106 copies of the Notice were mailed to potential Settlement Class Members and nominees stating that Lead Counsel would apply for attorneys' fees in an amount not to exceed 28% of the Settlement Fund and expenses in an amount not to exceed \$100,000, and there were no objections to the requested attorneys' fees and expenses.

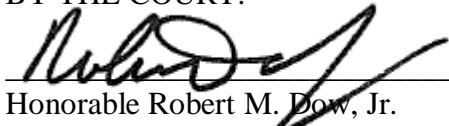
8. Any appeal or any challenge affecting this Court's approval regarding any of the attorneys' fees and expense applications shall in no way disturb or affect the finality of the Judgment.

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 this 18th day of December, 2019

BY THE COURT:

  
\_\_\_\_\_  
Honorable Robert M. Dow, Jr.  
UNITED STATES DISTRICT JUDGE

**TAB 7**



**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 P*”). 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.<sup>1</sup> (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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<sup>1</sup> 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

A handwritten signature in black ink, appearing to read "Andrea R. Wood". The signature is fluid and cursive, with a large initial "A" and "R".

---

Andrea R. Wood  
United States District Judge

**TAB 8**



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PETER IKAI VAN NOPPEN, Individually and On Behalf of All Others Similarly Situated,  <p style="text-align: right;">Plaintiff,</p>	)	
	)	
	)	Case No. 14 CV 1416
	)	
	)	Judge John Robert Blakey
	)	
vs.	)	
	)	CLASS ACTION
INNERWORKINGS, INC., ERIC D. BELCHER, and JOSEPH M. BUSKY,  <p style="text-align: right;">Defendants.</p>	)	
	)	

**ORDER AWARDING ATTORNEYS' FEES AND PAYMENT OF EXPENSES**

WHEREAS:

A. As of May 11, 2016, Lead Plaintiff Plymouth County Retirement System (“Plymouth” or “Lead Plaintiff”), on behalf of itself and the Settlement Class, on the one hand, and InnerWorkings, Inc. (“InnerWorkings” or the “Company”), Eric D. Belcher and Joseph M. Busky (the “Individual Defendants” and, collectively with InnerWorkings, the “Defendants”), on the other, entered into a Stipulation and Agreement of Settlement (the “Stipulation”) in the above-titled litigation (the “Action”);

B. Pursuant to the Order Granting Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement, entered May 25, 2016 (the “Preliminary Approval



Order”), the Court scheduled a hearing for October 13, 2016, at 9:45 a.m. (the “Settlement Hearing”) to, among other things: (i) determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether a judgment as provided for in the Stipulation should be entered; and (iii) rule on Lead Counsel’s Fee and Expense Application;

C. The Court ordered that the Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Notice”) and a Proof of Claim and Release form (“Proof of Claim”), substantially in the forms attached to the Preliminary Approval Order as Exhibits 1 and 2, respectively, be mailed by first-class mail, postage prepaid, on or before ten (10) business days after the date of entry of the Preliminary Approval Order (“Notice Date”) to all potential Settlement Class Members who could be identified through reasonable effort, and that a Summary Notice of Pendency of Class Action, Proposed Settlement, and Motion for Attorneys’ Fees and Expenses (the “Summary Notice”), substantially in the form attached to the Preliminary Approval Order as Exhibit 3, be published in *Investor’s Business Daily* and transmitted over *PR Newswire* within fourteen (14) calendar days of the Notice Date;

D. The Notice and the Summary Notice advised potential Settlement Class Members of the date, time, place, and purpose of the Settlement Hearing. The Notice further advised that any objections to the Fee and Expense Application,

among other things, were required to be filed with the Court and served on counsel for the Parties such that they were received by September 21, 2016;

E. The provisions of the Preliminary Approval Order as to notice were complied with;

F. On September 6, 2016, Lead Plaintiff moved for final approval of the Settlement and Lead Counsel moved for an award of fees and expenses, as set forth in the Preliminary Approval Order. The Settlement Hearing was duly held before this Court on October 13, 2016, at which time all interested Persons were afforded the opportunity to be heard; and

G. This Court has duly considered Lead Counsel's motion for an award of attorneys' fees and expenses, the affidavits, declarations, memoranda of law submitted in support thereof, the Stipulation, and all of the submissions and arguments presented with respect to the proposed Settlement;

NOW, THEREFORE, after due deliberation, IT IS ORDERED, ADJUDGED AND DECREED that:

1. The Court has jurisdiction over the subject matter of this Action and over all parties to the Action, including all Settlement Class Members, counsel, and the Claims Administrator.

2. All capitalized terms used herein have the meanings set forth and defined in the Stipulation.

3. Notice of Lead Counsel's application for attorneys' fees and payment of expenses was given to all Settlement Class Members who could be identified with

reasonable effort. The form and method of notifying the Settlement Class of the application for attorneys' fees and expenses met the 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), as amended by the Private Securities Litigation Reform Act of 1995 (the "PSLRA"), due process, and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby awards Lead Counsel attorneys' fees in the amount of \$1,807,500, plus interest at the same rate earned by the Settlement Fund, which is 30% of the Settlement Fund, and payment of litigation expenses in the amount of \$124,535.43, plus interest at the same rate earned by the Settlement Fund, which sums the Court finds to be fair and reasonable.

5. The award of attorneys' fees and litigation expenses may be paid to Lead Counsel from the Settlement Fund subject to the terms, conditions, and obligations of the Stipulation, which terms, conditions, and obligations are incorporated herein.

6. In making this award of attorneys' fees and payment of litigation 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 common fund of \$6,025,000 in cash and that numerous Settlement Class Members who submit acceptable Claim Forms will benefit from the Settlement created by the efforts of Lead Counsel;

(b) The requested attorneys' fees and payment of litigation expenses have been reviewed and approved as fair and reasonable by Lead Plaintiff, a sophisticated institutional investor that was directly involved in the prosecution and resolution of the Action and which has a substantial interest in ensuring that any fees paid are duly earned and not excessive;

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

(d) Lead Counsel is highly experienced in the field of securities class actions and conducted the Action and achieved the Settlement with skillful and diligent advocacy;

(e) Lead Counsel undertook the Action on a contingent basis, and has borne all the ensuing risk, including the risk of no recovery, given, among other things, the risks of succeeding in a case governed by the PSLRA and those presented by Defendants' defenses concerning scienter, loss causation, and damages;

(f) The Action involves difficult factual and legal issues and, in the absence of settlement, would involve lengthy proceedings whose resolution would be uncertain;

(g) Lead and Liaison Counsel have devoted more than 2,400 hours, with a lodestar value of \$1,542,726.00, to achieve the Settlement; and


(h) Notice was disseminated to Settlement Class Members stating that Lead Counsel would be submitting an application for attorneys' fees in an amount not to exceed 30% of the Settlement Fund, plus interest, and payment of litigation expenses incurred in connection with the prosecution of this Action in an amount not to exceed \$225,000, plus interest. No Settlement Class Members have filed an objection to the application for fees and expenses submitted by Lead Counsel.

7. Any appeal or challenge affecting this Court's approval of any attorneys' fee or expense application in the Action shall in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

8. In the event that the Settlement is terminated or does not become Final or the Effective Date does not occur in accordance with the terms of the Stipulation, this order shall be rendered null and void to the extent provided by the Stipulation and shall be vacated in accordance with the Stipulation.

Date: November 2, 2016

ENTERED:

  
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John Robert Blakey  
United States District Judge