NINTH JUDICIAL DISTRICT COURT FOR THE PARISH OF RAPIDES

STATE OF LOUISIANA

NO.: 251,417 c/w NOS. 251,456; 251,515; 252,446; 252,458; and 252,459 DIVISION B

HELEN MOORE, et al., Individually and on Behalf of All Others Similarly Situated, Plaintiffs

versus

MACQUARIE INFRASTRUCTURE AND REAL ASSETS, et al., Defendants

FILED: _____

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DEPUTY CLERK

PLAINTIFFS' MOTION AND INCORPORATED SUPPORTING MEMORANDUM FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND FOR ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS

Plaintiffs Helen Moore, Calvin I. Trahan, and Lawrence E. L'Herisson and Class Counsel hereby move for final approval of the proposed $37 million class action settlement ("Settlement") and Plan of Allocation, as well as approval of the request for an award of attorneys' fees and expenses and service awards to Plaintiffs.[1]

I. INTRODUCTION

After more than nine years of extensive, hard-fought litigation and with an eleven-day jury trial fast approaching, Plaintiffs have secured a cash settlement in the amount of $37,000,000 for the benefit of the Class of former shareholders of Cleco Corporation ("Cleco" or the "Company"). This is an outstanding result. Class Counsel believe that this is the largest shareholder class action recovery in Louisiana state court history.

The proposed Settlement is fair, reasonable, and adequate; meets all indicia of fairness; and merits the Court's final approval. The Settlement was only reached after extensive discovery, thirty-two fact and expert depositions, significant dispositive motion practice, and a

[1] Capitalized terms not otherwise defined herein have the same meaning as in the parties' Stipulation of Settlement dated November 16, 2023 (the "Stipulation"), attached as Exhibit 1. All emphasis is added, and internal citations, quotations, and punctuation are omitted unless otherwise noted.

comprehensive mediation process; through arm's-length bargaining; and with the assistance of an experienced mediator.

The Class is represented by well-respected and experienced Class Counsel who have concluded that the Settlement is a highly favorable result and in the best interest of the Class. This conclusion is based on, among other things: (i) their investigation and vigorous prosecution of this Action, which assured that the Settlement was entered into on a fully informed basis; (ii) the recovery when weighed against the significant risk, expense, and delay inherent in protracted litigation; (iii) a complete analysis of the evidence obtained; (iv) past experience in litigating complex actions similar to the present Action; and (v) the serious disputes among the parties on both liability and damages issues. While Plaintiffs and Class Counsel believe that the litigation has merit, they also considered the numerous risks to proceeding and the arguments raised by Defendants in the course of this litigation (including on summary judgment, at mediation, and during settlement discussions), as well as the risks in establishing liability and damages at trial, which may have resulted in the Class receiving little or no recovery at all, and concluded that the Settlement was the best path to recovery for shareholders.

Finally, and importantly, to date, there have been no written objections to the Settlement or the Plan of Allocation. Accordingly, Plaintiffs respectfully request that the Court approve the Settlement and the Plan of Allocation.

Having secured this significant monetary benefit for the Class, Plaintiffs and Class Counsel also respectfully move this Court for: (i) an award of attorneys' fees in the amount of 33% of the Settlement (or $12,210,000); (ii) payment of $922,500.69 for expenses that were necessary for the prosecution of this Action; and (iii) an incentive award of $30,000.00 for each Plaintiff in connection with their time spent prosecuting this Action on behalf of the Class. In light of the risks undertaken, the diligent efforts of counsel, and the excellent result obtained, the requested attorneys' fees are fair and reasonable and should be approved. The expenses requested by Class Counsel are similarly reasonable, were necessary for the successful prosecution of the Action, and should also be approved. Finally, given their active involvement in and supervision of this multi-year litigation and their essential role in securing the Settlement, the incentive awards requested for Plaintiffs are reasonable and should likewise be approved.

For these and other reasons set forth below, as well as those set forth in Plaintiffs' Motion for Preliminary Approval of the Settlement and in the attached Joint Affidavit of Class Counsel in

Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation and for Attorneys' Fees and Expenses and Service Awards (the "Joint Affidavit") (Exhibit 2), Plaintiffs respectfully request that the Court (i) approve the Settlement; (ii) enter the Final Approval Order submitted herewith; (iii) approve Plaintiffs' Plan of Allocation; (iv) approve the requested attorneys' fees and expenses; and (v) approve the incentive awards requested for Plaintiffs.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND[2]

This Action arises out of the 2016 acquisition of Cleco for $55.37 per share (the "Merger" or the "Buyout"). On October 20, 2014, Cleco announced its entry into a merger agreement pursuant to which a consortium of firms (the "Buyout Group") would acquire the Company for $55.37 per Cleco share.

On December 3, 2014, the Court entered an order (the "Consolidation Order") consolidating the separate lawsuits, as well as any additional related actions filed in the Court or transferred to the Court from another court, into the Action, and appointing Class Counsel as Interim Co-Lead Counsel and Liaison Counsel as Interim Liaison Counsel for all named plaintiffs and the class of shareholders of Cleco on whose behalf all related actions were brought. On December 18, 2014, Plaintiffs amended their petition to consolidate their related petitions in accordance with the Consolidation Order.

Cleco disseminated its Definitive Proxy Statement to shareholders on January 14, 2015 (the "Proxy Statement"). The Court denied Plaintiffs' motion for preliminary injunction on February 25, 2015. A majority of Cleco shares were voted to approve the Merger on February 26, 2015. The Merger closed on April 13, 2016.

Following the close of the Merger, Plaintiffs amended their petition to add Mr. Olagues as a Defendant and to bring direct claims on behalf of themselves and a proposed class of Cleco's former shareholders. On June 13, 2016, Defendants filed peremptory exceptions of no right of action, no cause of action, and *res judicata*. The Court sustained the first two exceptions, finding that Plaintiffs did not have a direct right or cause of action. On November 9, 2016, Plaintiffs

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[2] The Court is well familiar with the factual background of this dispute. Accordingly, for the purposes of judicial economy, Plaintiffs incorporate herein by reference the facts and procedural history outlined in the Stipulation of Settlement and in their June 2, 2023 Motion for Partial Summary Judgment. In addition, the Joint Affidavit contains an extensive summary of relevant facts, procedural history, and reasons for settlement for the Court's consideration. Below is a mere summary.

appealed. On December 13, 2017, the Third Circuit reversed, finding that Plaintiffs had a direct right and cause of action.

Defendants sought writs from the Louisiana Supreme Court and, on March 2, 2018, the Supreme Court denied writs. Defendants thereafter renewed their exceptions of no cause of action and *res judicata* and, on January 29, 2019, the Court overruled Defendants' renewed exceptions of no cause of action and *res judicata.*

Plaintiffs moved for class certification on April 11, 2019. On September 9, 2019, following discovery of Plaintiffs, the Court entered a stipulated order certifying the following class of shareholders:

> [a]ll persons or entities (and their successors in interest) who owned Cleco common stock, whether beneficially or of record, as of January 13, 2015 and who voted against, abstained from voting, or did not vote on Proposal 1 on the Proxy Statement issued in connection with the February 26, 2015 shareholder vote on the Buyout, except for Defendants and their affiliates or family members.

The Court also appointed Plaintiffs as Class Representatives; Robbins Geller Rudman & Dowd LLP ("Robbins Geller") and Kahn Swick & Foti, LLC ("KSF") as Class Counsel; and the Knoll Law Firm as Liaison Counsel.

In 2021, a Notice of Pendency that included a definition of the certified class was widely distributed to former shareholders of Cleco who held stock as of January 13, 2015. The Notice of Pendency explained that, *inter alia*, with respect to any former shareholders of Cleco who were not included in the definition of the certified class, "any suspension of liberative prescription that may have occurred with respect to your claims as a result of the Plaintiffs filing this class action will end 30 days after the mailing, delivery, or publication of this notice."

Following fact and expert discovery, which included the collection and review of hundreds of thousands of pages of documents produced by Defendants, Cleco, the Buyout Group, and third-party advisors and bidders involved to the transaction, and the taking or defending of thirty-two depositions, on June 2, 2023, Plaintiffs filed a Motion for Partial Summary Judgment and Defendants filed respective Motions for Summary Judgment, and, on June 30, 2023, the parties filed Article 1425/*Daubert* motions. On September 14, 2023, the Court issued written reasons for judgment granting in part and denying in part Plaintiffs' Motion for Partial Summary Judgment and denying Defendants' Motions for Summary Judgment. On August 31, 2023, the Court, ruling from the bench, denied all pending Article 1425/*Daubert* motions, with the exception of one of Plaintiffs' motions, which the Court granted in part.

On September 20, 2023, the parties participated in a full-day mediation in front of mediator David M. Murphy of Phillips ADR (the "Mediator"). The parties did not reach a resolution that day, but discussions continued with the assistance of the Mediator. Following five additional days of arm's-length negotiations, on September 25, 2023, the parties accepted an unsolicited "Mediator's Recommendation" from the Mediator. On October 2, 2023, the parties signed a Memorandum of Understanding regarding the Settlement.

Plaintiffs filed their Motion for Preliminary Approval of the proposed Settlement on November 17, 2023, along with the Stipulation of Settlement and its accompanying exhibits, including the Notice of Proposed Settlement of Class Action, Proof of Claim and Release, Summary Notice, proposed Order Preliminarily Approving Settlement and Providing for Notice, and proposed Final Judgment and Order of Dismissal with Prejudice. On November 27, 2023, the Court entered the Preliminary Approval Order preliminarily approving the Settlement, approving the form and methods for class notice, and setting a final approval hearing for February 2, 2024.

Pursuant to the Preliminary Approval Order, on December 7, 2023, the Claims Administrator, Gilardi & Co. LLC ("Gilardi"), mailed over 14,200 copies of the Notice and Proof of Claim to reasonably identifiable Class Members. As of today's date, Gilardi has mailed out 18,612 claim and notice packets. In addition, on December 21, 2023, the Summary Notice was published in the national edition of the *The Wall Street Journal* and over *Business Wire*, and on December 7, 2023, the Stipulation, Notice, and Proof of Claim were posted online at www.ClecoMergerSettlement.com.

III. THE TERMS OF THE PROPOSED SETTLEMENT

Defendants have agreed to fund a Settlement Amount of $37 million in cash, in exchange for the releases provided in the Stipulation and the dismissal of this consolidated Action with prejudice. Importantly, this is not a claims-made settlement. Accordingly, if the Settlement is ultimately approved and becomes effective, Defendants will have no reversionary interest in the $37 million Settlement Fund under any circumstance.

The Settlement Fund, after deduction of Court-approved attorneys' fees and expenses, Notice and Administration Expenses, Taxes, incentive awards to the Plaintiffs, and any other fees or expenses approved by the Court, is the "Net Settlement Fund." If the Settlement is approved by the Court, the Net Settlement Fund will be distributed to eligible Authorized Claimants – members of the Class who timely submit valid Claim Forms that are accepted for payment by the Claims

Administrator – in accordance with the proposed Plan of Allocation. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. The Net Settlement Fund will be disbursed by the Claims Administrator to the Authorized Claimants and will be allocated on a *pro rata*, equal per-share basis amongst the Authorized Claimants. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. Any distribution will require a $10.00 minimum.

IV. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

A. The Applicable Standard

Louisiana "[j]urisprudence has long noted that '[t]he public interest strongly favors the voluntary settlement of class actions.'" *Soileau v. Churchill Downs La. Horseracing Co., LLC*, (La. App. 4 Cir. 12/22/21), 334 So. 3d 901, 947. In approving a proposed settlement of a class action, the court must find that the proposed settlement is "fair, adequate and reasonable," and that it is not the result of collusion between the parties. *Id.* at 931; *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977). Where a settlement has been reached through arm's length negotiations by competent counsel, courts accord counsel's opinion great weight, and presume the compromise is fair and reasonable. *United States v. Tex. Educ. Agency*, 679 F.2d 1104, 1108 (5th Cir. 1982).

Pursuant to La. Code Civ. Proc. article 594(A)(1), Court approval is necessary to compromise or settle a class action. Court approval of a class action settlement is a two-stage process. *Soileau*, 334 So. 3d at 130-31. First, as has already occurred here, the Court issues a preliminary approval of the settlement, where the Court reviews the proposed settlement for obvious deficiencies, schedules a fairness hearing, and provides the Class with notice of the proposed settlement and hearing. *Id.* at 931 (quoting *Pollard v. Alpha Tech.*, 2010-0788, p. 53 (La. App. 4 Cir. 8/12/11), 102 So.3d 71, 106). Second, the Court considers the final approval of the proposed settlement at a formal fairness hearing during which arguments and evidence are presented in support of and in opposition to the proposed settlement. *Id. Accord* Kent A. Lambert, *Class Action Settlements in Louisiana*, 61 La. L. Rev. 89, 91-92 (2000); *Manual for Complex Litigation* § 13.14, at 173 (4th ed. 2004) ("First, the [court] reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing.").

In determining whether final approval of a class action settlement is warranted, Louisiana courts often refer to cases interpreting the federal class action statute because the Louisiana class action statute is largely derived from the federal statute, which is codified as Federal Rule of Civil Procedure 23 ("Rule 23"). *Soileau*, 334 So. 3d at 932 (citing *Pollard*, 102. So.3d. at 79-80).[3] Consistent with the factors provided in Rule 23(e), Louisiana courts have adopted from the Fifth Circuit the following six factors in determining whether to approve a proposed class action settlement: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives, and absent class members. *Soileau*, 334 So. 3d at 953, 960 (citing *Reed v. General Motors Corp.*, 703 F.2d 170 (5th Cir. 1983)).

Importantly, though, when evaluating a proposed class action settlement, the court "must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial." *Reed*, 703 F.2d at 172. Indeed, "[b]ecause the public interest strongly favors the voluntary settlement of class actions, there is a ***strong presumption*** in favor of finding the settlement fair, reasonable and adequate." *Soileau*, 334 So. 3d at 947. Here, all factors favor final approval of the Settlement.

B. The Settlement Is Fair, Reasonable, and Adequate, and Thus Merits Final Approval under Louisiana's Six-Factor Test

1. No Existence of Fraud or Collusion Behind the Settlement

With respect to the first factor, Louisiana courts acknowledge that "a protracted period of litigation prior to settlement is evidence of a lack of fraud or collusion." *Soileau*, 334 So. 3d at 960. Moreover, in the absence of any affirmative evidence to the contrary, courts may presume that settlement negotiations are free from fraud or collusion. *See Camp v. Progressive Corp.*, Nos. Civ.A. 01-2680, Civ.A. 03-2507, 2004 U.S. Dist. LEXIS 19172, at *24, 2004 WL 2149079, at *7 (E.D. La. Sept. 23, 2004) (citing Alba Conte, Herbert B. Newberg, 4 *Newberg on Class Actions* §

[3] Rule 23(e) sets out four factors for the court to consider when making its decision to approve a proposed class action settlement: whether (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's-length; (3) the relief provided for the class is adequate, taking into consideration the risks associated with continued litigation, the effectiveness of proposed relief to the class, the terms of any proposed award of attorney's fees, and any other agreement required to be disclosed under Rule 23(e)(3); and (4) the proposal treats class members equitably relative to each other. *See Soileau*, 334 So. 3d at 958-59 (quoting Fed. R. Civ. P. 23(e)).

11.51 (4th ed. 2002)). Here, there of course has been no fraud or collusion in the parties' settlement negotiations, nor has there been any allegations of such. To the contrary, this case has been actively litigated for more than nine years by experienced and competent counsel on both sides, and has included extensive document production, thirty-two depositions, and significant factual and legal briefing related to dispositive motions. Moreover, this Court witnessed first-hand the parties' adversarial litigation, and the case did not reach a compromise until the parties conducted a full-day mediation with an experienced mediator, just weeks away from trial. Both parties accepted an unsolicited "Mediator's Recommendation" after an additional five days of on-going, arm's-length negotiations. Accordingly, there is no hint of fraud or collusion behind the Settlement.

2. The Complexity, Expense, and Likely Duration of the Litigation

In analyzing the second factor, the trial court may consider "the time and money the litigants will save, and the savings the judicial system will realize, if the settlement is approved - evaluating whether settling avoids the 'risks and burdens of potentially protracted litigation.'" *Soileau*, 334 So. 3d at 960. This matter involves consideration of complex claims for breach of fiduciary duty and civil conspiracy by directors and officers of a publicly-traded company. A scheduled eleven-day jury trial was fast approaching, which would have required expensive expert testimony from both parties. Following trial, this case almost certainly would have resulted in significant post-trial litigation and appeals, regardless of the prevailing party. Simply put – and as all parties acknowledged in the Stipulation – further litigation would have been protracted, burdensome, and expensive, and the parties have determined that it makes imminent sense for the Action be settled at this juncture.

3. The Stage of the Proceedings and the Amount of Discovery Completed

The third factor directs the trial court to "determine whether the parties are in a position to assess their respective cases and to make reasonable decisions with respect to settlement, considering the information to which they are privy and the stage of the proceedings when the tentative deal is struck." *Id.* at 961. Given the length of time the Action has been ongoing, the extensive discovery taken place to date, the fact that the Court has already ruled on both parties' motions for summary judgment and pre-trial 1425/*Daubert* motions, and the fact that the matter was less than six weeks from trial, there can be no dispute that the parties were in a position to assess the relative strengths and weaknesses of their cases when negotiating the proposed Settlement.

4. The Probability of Plaintiffs' Success on the Merits

The fourth factor directs the trial court to determine "whether the 'relief' provided to the class in the compromise agreement being considered is 'adequate' in light of the strengths and weaknesses of the plaintiffs' case." *Soileau*, 334 So. 3d at 961-62. Courts need not determine the precise merits of the claims and defenses asserted because the point of settlement is to avoid trial. *Id.* at 963. Indeed, "it would be unwise 'to risk the substantial benefits which the settlement confers upon the class to the vagaries of a trial.'" *Id. See also Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.") (citing A Conte & H. Newberg, *Newberg on Class Actions*, § 11:50 at 155 (4 ed. 2002)).

This Court is well-familiar with the facts of this case and the law applicable to those facts. *Soileau*, 334 So. 3d at 945, 950 (affirming trial court's grant of approval where the "trial court, over a period exceeding six years, gained knowledge of the defenses to the claims asserted in the petitions sufficient to determine probable cause").[4] As this Court found when it denied the parties' motions for summary judgment, Defendants asserted multiple affirmative defenses, any one of which could have resulted in no recovery for the Class. For example, Defendants would have argued at trial (as they did throughout the Action) that they did not breach their fiduciary duties, that the Board was fully informed and exercised its business judgment in approving the Merger, and that Plaintiffs suffered no damages. Moreover, Defendants claimed that, even if Plaintiffs were successful in proving their breach of fiduciary duty claims, they would not have been able to prove damages because Plaintiffs' expert relied upon purportedly "unreliable" projections in his damages model. *See, e.g., In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985) (approving settlement where "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors such as general market conditions"), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *see also Streber v. Hunter*, 221 F.3d 701, 726 (5th Cir. 2000) (stating jury can believe whichever expert it finds more credible). As such, Plaintiffs faced significant risk in proving their case (and damages) at trial, and could have recovered nothing for the Class, even if they prevailed on liability.

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[4] The Joint Affidavit contains a discussion about the risks and the probability of success on the merits. Joint Aff., ¶¶63-66.

In short, this case would have come down to factual disputes decided by the jury, which is notoriously unpredictable in a complex case like this. The immediate certainty of the proposed Settlement outweighs this risk and supports final approval. *Soileau*, 334 So. 3d at 963 ("when considering the various defenses, it would be unwise 'to risk the substantial benefits which the settlement confers upon the class to the vagaries of a trial'").

5. The Range of Possible Recovery

Relatedly, the fifth factor "requires the Court to determine whether the proposed settlement agreement reflects 'a fair, reasonable, and adequate estimation of the value of the case considering what might or could happen at trial.'" *Id.* at 963. Importantly, "[t]he fact that a proposed settlement ... only amount[s] to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disproved." *Id.* Accordingly, the fact that the Class potentially could have achieved a better recovery after trial does not preclude the Court from finding that the settlement is reasonable and appropriate for approval. *Id.*

Here, Plaintiffs calculated a variety of potential damages numbers, which ranged from $2.57 per share (or $36 million for the Class) to $20.75 per share (or $290 million for the Class, as calculated by Plaintiffs' expert). Importantly, Plaintiffs' expert's damage model assumed all significant liability and damages issues would have been resolved in Plaintiffs' favor. However, as outlined in the preceding section, Defendants had multiple remaining affirmative defenses available to them, any one of which could have resulted in no recovery at all. As such, the $37 million Settlement represents a very substantial (and immediate) benefit to Class Members relative to the range of possible recovery in this case, after Defendants exhausted their appeals, years into the future. *Id.* at 963 (affirming trial court's grant of final approval of settlement that recovered "a mere 3% of the undisputed amount" because, "considering what might happen at trial in light of the numerous defenses asserted by ... Defendants as detailed above, the proposed settlement agreement is a fair, reasonable, and adequate estimation of the value of the case").

6. The Opinions of Class Counsel, Class Representatives, and Absent Class Members

Finally, the court must assess the opinions of class counsel, class representatives, and absent class members. Courts have repeatedly stated that "the opinion of class counsel should be accorded great weight." *Id.* at 964; *see also Reed*, 703 F.2d at 175 (stating that competent class counsel are the "linchpin" of an adequate settlement); *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 U.S. Dist. LEXIS 218116, at *14-15 (S.D.N.Y. Dec. 18, 2019) ("a class action

settlement enjoys a strong 'presumption of fairness' where it is the product of arm's-length negotiations conducted by experienced, capable counsel after meaningful discovery"); *Chandler v. U.S.*, 218 F.3d 1305, 1316 (11th Cir. 2000) ("When courts are examining the performance of an experienced trial counsel, the presumption that his conduct was reasonable is even greater.").

Class Counsel in this case carefully considered and evaluated the relevant legal authorities and evidence, the likelihood of prevailing on the Class's claims and securing damages, and the risks of continued litigation. And, while Class Counsel are confident in Plaintiffs' case, they also recognize the significant risks associated with a jury trial and likely appeal(s). After more than nine years of litigation, Class Counsel believes that the Settlement is more than fair, reasonable, and adequate. That belief is based upon their significant experience litigating complex class action securities cases throughout the country and deep knowledge of this case in particular.

Indeed, as outlined in their respective firm resumes, which are attached as Exhibit H to the Affidavit of David A. Knotts Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Aff.") (Exhibit 3) and Exhibit D to the Affidavit of Michael J. Palestina Filed on Behalf of Kahn Swick & Foti, LLC in Support of Application for Award of Attorneys' Fees and Expenses ("KSF Aff.") (Exhibit 4), both Robbins Geller and KSF have a stellar record of achieving outstanding results in prosecuting stockholder class actions. Robbins Geller and KSF possess extensive knowledge and experience litigating complex securities and M&A class actions, both together and separately, and have successfully obtained significant recoveries for aggrieved shareholders. They fully support the Settlement and believe it to be a highly favorable result when weighed against the uncertainty and substantial risk of continuing this litigation through trial and appeals. The fact that qualified and well-informed counsel endorse the Settlement as being fair, adequate, and reasonable should be afforded great weight. What is more, *all three* class representatives – who have stewarded this case for nine years – support the Settlement, further evincing its fairness. *See Soileau*, 334 So. 3d at 964 (affirming trial court's grant of final approval where class counsel strongly supported settlement in 2021 and class counsel "ha[d] participated in this litigation since 2014").

Finally, the reaction of the Class to the Settlement is a significant factor in assessing its fairness and adequacy. As of today's date, Gilardi has mailed out 18,612 claim and notice packets. In addition, on December 21, 2023, the Summary Notice was published in the national edition of the *The Wall Street Journal* and over *Business Wire*, and on December 7, 2023, the Stipulation,

Notice, and Proof of Claim were posted online at www.ClecoMergerSettlement.com. Pursuant to the Preliminary Approval Order and as set forth in the Notice, potential Class Members have until January 12, 2024 to object to the Settlement, Plan of Allocation, Class Counsel's request for an award of attorneys' fees and litigation expenses, and Plaintiffs' request for service awards. Since the mailing of the Notice and publication of the Summary Notice, there have been no objections from the Settlement Class. *See Patel v. Axesstel, Inc.*, No. 3:14-CV-1037-CAB-BGS, 2015 U.S. Dist. LEXIS 146949, at *16 (S.D. Cal. Oct. 23, 2015) ("The absence of a single objection to the settlement 'is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate.'"). Accordingly, this factor weighs heavily in favor of the fairness and reasonableness of the Settlement, and of final approval.

V. THE PLAN OF ALLOCATION IS A FAIR METHOD OF DISTRIBUTING THE SETTLEMENT PROCEEDS AND SHOULD BE APPROVED

The purpose of a plan of allocation is to provide an equitable basis for the distribution of the settlement fund among eligible class members. *See Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978) (noting that courts have "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably."). Assessment of the plan of allocation is governed by the same standards of review applicable to the settlement as a whole – the plan must be fair, reasonable, and adequate. *In re Chicken Antitrust Litg. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1284 (9th Cir. 1992). To meet this standard, an allocation formula must only have a reasonable, rational basis, particularly if recommended by "experienced and competent" class counsel. *White v. NFL*, 822 F. Supp. 1389, 1420-24 (D. Minn. 1993).

Here, the Net Settlement Fund will be distributed to all Authorized Claimants on a *pro rata* basis, based on the number of outstanding Cleco shares owned by such Authorized Claimant immediately prior to the Merger. The objective of this plan is to provide Authorized Claimants with their *pro rata* share of the Net Settlement Fund on a fair basis by automatically providing each with the same recovery per share. This process will result in fair distribution of the Net Settlement Fund among Class Members, and it is consistent with how post-trial damages are calculated and distributed for cases of this nature that proceed through trial. *See In re Rural/Metro Corp. Stockholders Litigation*, 102 A.3d 205, 224 (Del. Ch. Oct. 10, 2014) (explaining that monetary damages are "equal to the 'fair' or 'intrinsic' value of their stock at the time of the merger, less the price per share that they actually received"). This Plan of Allocation is also similar

to plans approved across the country in merger cases. *See, e.g.*, *Campbell v. Transgenomic, Inc.*, 2020 U.S. Dist. LEXIS 97063, at *13 (D. Neb. June 3, 2020); *Baum v. Harman International Industries, Incorporated*, No. 3:17-cv-00246-RNC, ECF No. 214 (D. Conn. 2022); *NECA-IBEW Pension Tr. Fund v. Precision Castparts Corp.*, No. 3:16-cv-01756, ECF No. 168 (D. Or. 2021); *Duncan v. Joy Global*, Civil No. 2:16-cv-01229-PP, ECF No. 77 (E.D. Wis. 2018). In sum, the Plan of Allocation is fair, reasonable, and adequate; is supported by authority in other merger settlements; and therefore merits approval.

VI. THE COURT SHOULD AWARD PLAINTIFFS' COUNSEL REASONABLE ATTORNEYS' FEES

After more than nine years of hard-fought litigation, which included the filing of multiple complaints, defeating multiple dispositive exceptions and motions, winning an appeal, successfully opposing a writ to the Louisiana Supreme Court, significant document discovery, thirty-two depositions, expert discovery, extensive dispositive and pre-trial briefing, and a full day of mediation, Class Counsel achieved an outstanding result – $37 million on behalf of the Class. This achievement was obtained through the zealous efforts of Plaintiffs and Class Counsel, who collectively prosecuted difficult claims informed by significant discovery. Plaintiffs and Class Counsel were pitted against highly skilled defense firms representing clients firmly committed to their defenses, and the Settlement is the result of a hard-fought but reasonable compromise. Under these circumstances, and when measured against fees typically awarded by courts across the country in similar litigation, the requested fee award is a reasonable and customary measure of compensation for the achievement Class Counsel obtained for the Class.

A. The Common Fund Doctrine Allows the Court to Compensate Attorneys for Their Efforts in Creating a Common Fund by Awarding Them a Percentage of that Fund

In cases such as this, where a common fund has been secured, both the common law and the Louisiana Code of Civil Procedure recognize that the attorneys whose efforts created the fund are entitled to a reasonable fee to prevent unjust enrichment of those benefitting from a lawsuit without contributing to its cost. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980) ("this Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); La. Code Civ. Proc. Art. 595 ("The court may allow the representative parties their reasonable expenses of litigation, *including attorney's*

fees, when as a result of the class action a fund is made available, or a recovery or compromise is had which is beneficial, to the class.").

"In determining what is a reasonable attorneys' fee, Louisiana courts, as well as numerous federal circuits, employ the 'percentage of the fund' approach, as opposed to the 'lodestar' approach." *White v. GMC*, 718 So. 2d 480, 508-09 (La. App. 1st Cir. 1998), *writ denied*, 729 So.2d 590 (La. 1998). This determination is consistent with decisions from courts throughout the country, including the United States Supreme Court. *See, e.g., Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (under common fund doctrine, a reasonable fee may be based "on a percentage of the fund bestowed on the class"); *Braud v. Transport Service Co. of Illinois*, Civ. A. No. 05-1898, 2010 U.S. Dist. LEXIS 93433, at *25, 2010 WL 3283398 (E.D. La. Aug. 17, 2010) ("the Fifth Circuit has recognized the propriety of the percentage fee method in situations in which each member of a class has an 'undisputed and mathematically ascertainable claim to part of [a] judgment'").

The rationale for compensating counsel in common fund cases on a percentage basis is sound. First, it is consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery. Second, it more closely aligns the lawyers' interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery in the shortest amount of time. The Seventh Circuit Court of Appeal aptly described this rationale as follows:

> The contingent fee uses private incentives rather than careful monitoring to align the interests of lawyer and client. The lawyer gains only to the extent his client gains. . . . The unscrupulous lawyer paid by the hour may be willing to settle for a lower recovery coupled with a payment for more hours. Contingent fees eliminate this incentive and also ensure a reasonable proportion between the recovery and the fees assessed to defendants. . . .
>
> At the same time as it automatically aligns interests of lawyer and client, rewards exceptional success, and penalizes failure, the contingent fee automatically handles compensation for the uncertainty of litigation.

Kirchoff v. Flynn, 786 F.2d 320, 325-326 (7th Cir. 1986). Likewise, the Eastern District has noted that "percentage of the fund" fee awards are appropriate because they "encourage redress for wrongs caused to entire classes of persons and deter future misconduct of similar nature," "allow[] for easy computation[,]" and "reduce[] incentives to protract litigation." *Fairway Med. Ctr., L.L.C. v. McGowan Enters.*, No. 16-3782, 2018 U.S. Dist. LEXIS 50403, at *3-4 (E.D. La. Mar. 27, 2018).

B. The Requested Fee of 33% of the Settlement Fund Is Reasonable

1. The Requested Fee Is Well Within the Customary Range of Fees Awarded in Common Fund Cases

Louisiana courts have consistently recognized that 33% (or one-third) of the amount recovered in a class action is reasonable. *See Pillow v. Bd. of Comm'rs*, 425 So. 2d 1267, 1283 (La. App. 2nd Cir. 1982) (approving a 33% fee award); *Vela v. Plaquemines Par. Gov't*, 00-2221 (La. App. 4 Cir 03/13/02), 811 So. 2d 1263, 1280-81 (awarding 30% of the judgment value); *Fairway Med. Ctr., L.L.C. v. McGowan Enters.*, No. 16-3782, 2018 U.S. Dist. LEXIS 50403, at *4 (E.D. La. Mar. 27, 2018) ("[i]t is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third") (citing *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714 at 729 (E.D. La. 2008). Thus, the customary contingent fee in the private marketplace is squarely in line with the percentage fee requested in this case and supports a fee award of 33% of the Settlement Fund.

These decisions are all based on the principle that when assessing the reasonableness of a fee award, it is important to take into account the contingent nature of the representation. Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *White v. GMC*, 718 So. 2d 480, 509-10 (La. App. 1st Cir. 1998) ("The Court further finds that the contingency nature of plaintiff class action work, which is the cornerstone of the percentage of the fund approach to awarding attorneys' fees, is a factor to be considered in any class action attorneys' fees/cost analysis"); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 54 (2d Cir. 2000) (the level of risk taken by plaintiff's counsel is "'perhaps the foremost' factor" in considering the appropriate percentage award). For example, in awarding counsel's attorneys' fees in *In re Prudential-Bache Energy Income P'ships Sec. Litig.* ("*Prudential II*"), the Eastern District of Louisiana noted the risks that plaintiffs' counsel had taken:

> Although today it might appear that risk was not great based on Prudential Securities' global settlement with the Securities and Exchange Commission, such was not the case when the action was commenced and throughout most of the litigation. Counsel's contingent fee risk is an important factor in determining the fee award. Success is never guaranteed and counsel faced serious risks since both trial and judicial review are unpredictable. Counsel advanced all of the costs of litigation, a not insubstantial amount, and bore the additional risk of unsuccessful prosecution.

No. 888, 1994 WL 202394, at *6, 1994 U.S. Dist. LEXIS 6621, at *16 (E.D. La. May 18, 1994).[5]

It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. *See* Richard Posner, *Economic Analysis of Law* §21.9, at 534-35 (3d ed. 1986). "Contingent fees that may far exceed the market value of the services if rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). If this were a non-representative litigation, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 33% to 40% of the recovery. *Blum v. Stenson*, 465 U.S. 886, 903 (1984) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers."); *Taylor v. Prod. Servs., Inc.*, 600 So. 2d 63, 67 (La. 1992) ("One-third of the total recovery is a reasonable fee...").

Courts often look at fees awarded in comparable cases to determine if the fee requested is reasonable. Here, the requested fee of 33% of the common fund is consistent with recent awards from courts nationwide in similar shareholder class actions and common fund cases. *See, e.g., In re Pool Prods. Distrib. Mkt. Antitrust Litig.*, 2015 U.S. Dist. LEXIS 97578, at *59-60, 2015 WL 4528880, at *23 (E.D. La July 27, 2015) (awarding one-third of settlement amount without lodestar cross-check); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 310 (S.D. Miss. 2014) (awarding one-third fee without lodestar cross-check); *Burford v. Cargill, Inc.*, Civ. A. No. 05-283, 2012 U.S. Dist. LEXIS 161232, at *3-6, 2012 WL 5471985, at *1 (W.D. La. Nov. 8, 2012) (awarding one-third); *Braud v. Transport Service Co. of Illinois*, Civ. A. No. 05-1898, 2010 U.S. Dist. LEXIS 93433, at *37, 2010 WL 3283398 (E.D. La. Aug. 17, 2010) (awarding a 37% fee); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663, 664 (9th Cir. 2003) (affirming 33% fee in $14.8 million settlement); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming

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[5] *Accord, Cazares v. Saenz*, 208 Cal. App. 3d 279, 288 (1989) ("In addition to compensation for the legal services rendered, there is the raison d'etre for the contingent fee: the contingency. The lawyer on a contingent fee contract receives nothing unless the plaintiff obtains a recovery. Thus, in theory, a contingent fee in a case with a 50 percent chance of success should be twice the amount of a noncontingent fee for the same case . . . . Finally, even putting aside the contingent nature of the fee, the lawyer under such an arrangement agrees to delay receiving his fee until the conclusion of the case, which is often years in the future. The lawyer in effect finances the case for the client during the pendency of the lawsuit. If a lawyer was forced to borrow against the legal services already performed on a case which took five years to complete, the cost of such a financing arrangement could be significant.").

33% fee in $12 million settlement); *Muhammad v. Nat'l City Mortg., Inc.*, C.A. No. 2:07-0423, 2008 U.S. Dist. LEXIS 103534, at *26 (S.D. W. Va. Dec. 19, 2008) (one-third of recovery); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS 53416, at *23 (S.D. Cal. 2010) ("33.33% of the common fund falls within the typical range of 20% to 50% awarded in similar cases"); *see also* 4 *Newberg on Class Actions* § 14:6 (4th ed. 2002) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). Accordingly, based on the traditional "percentage of the benefit" approach, the requested fee award is well within reason and should be approved.

2. The Requested Fee Is Also Consistent with Louisiana's Reasonableness Factors

"Regardless of the language of the statutory authorization for an award of attorney fees or the method employed by a trial court in making an award of attorney fees, courts may inquire as to the reasonableness of attorney fees as part of their prevailing, inherent authority to regulate the practice of law." *State v. La. Land & Expl. Co.*, 18-890 (La. App. 3 Cir 05/15/19), 272 So. 3d 937, 939-940 (quoting *Rivet v. State*, 96-0145 (La. 9/5/96), 680 So. 2d 1154, 1161). The factors that Louisiana courts take into consideration in determining the reasonableness of an award of attorneys' fees include: (1) the ultimate result obtained; (2) the responsibility incurred; (3) the importance of the litigation; (4) amount of money involved; (5) the extent and character of the work performed; (6) the legal knowledge, attainment, and skill of the attorneys; (7) the number of appearances made; (8) the intricacies of the facts involved; (9) the diligence and skill of counsel; and (10) the court's own knowledge. *Id.* As discussed below, the requested fee award for Class Counsel is also supported by an analysis of these factors.

i. <u>The Ultimate Result</u>

Courts have consistently recognized that the result achieved is one of the most important factors to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *State v. La. Land & Expl. Co.*, 18-890 (La. App. 3 Cir 05/15/19), 272 So. 3d 937, 941 ("the degree of success is the most crucial element in determining a reasonable attorney's fee"); *Dow Jones & Co. v. Shields*, No. 184,1991, 1992 Del. Ch. LEXIS 24, at *5 (Del. Ch. Jan. 10, 1992) (same). The Class consists of shareholders that held 14,018,179 shares of Cleco stock as of January 13, 2015 and who voted against, or abstained from voting in favor of, the Buyout, in which each shareholder received $55.37 per share.

Accordingly, if all members of the Class submitted a claim, on a per share basis, the Settlement represents a $2.64 per share increase in the merger consideration.

This $37 million recovery is remarkable. The Class is, in effect, receiving a premium on top of a premium. As Defendants repeatedly noted, the Merger represented a 14.7% premium to Cleco's unaffected, pre-merger trading price. On top of that premium, the Settlement represents another 4.8% premium to the per-share merger consideration and an approximately *36% premium* to the Merger premium. Indeed, the Delaware Chancery Court – which sees more merger cases than any other jurisdiction and on whose jurisprudence the parties in this case have relied extensively – routinely approves merger settlement premiums *near and even below 1%. See, e.g., In re Sauer-Danfoss, Inc. S'holders Litig.*, C.A. No. 8396-VCL (Del. Ch. June 19, 2017) (approving settlement that represented an approximately 1.46% price increase); *In re TD Banknorth S'holders Litig.*, C.A. No. 2557-VCL, 2009 WL 1834308 (Del. Ch. June 25, 2009) (approving settlement that represented an approximately 1.6% price increase); *In re El Paso Corp. S'holder Litig.*, C.A. No. 6949-CS, 2012 WL 6057331 (Del. Ch. Dec. 3, 2012) (approving settlement that represented an approximately 0.5% price increase); *In re Delphi Fin. Grp. S'holder Litig.*, C.A. No. 7144-VCG, 2012 WL 3113652 (Del. Ch. July 31, 2012) (approving settlement that represented an approximately 2.0% price increase); *In re Del Monte Foods Co. S'holder Litig.*, C.A. No. 6027-VCL, 2011 WL 6008590 (Del. Ch. Dec. 1, 2011) (approving settlement that represented an approximately 2.4% price increase). Against this backdrop, there can be no doubt that this monetary recovery represents a substantial benefit for the Class.

ii. The Responsibility Incurred

For nine years, Class Counsel have diligently represented thousands of Cleco shareholders before a variety of forums, including in this trial court and before both the Third Circuit Court of Appeals and the Louisiana Supreme Court. In that time, as outlined below, Class Counsel devoted over 14,200 hours of time to this matter and fronted nearly $1 million in expenses – time and money they could have lost entirely had they not successfully litigated this Action to a resolution. Class Counsel have undoubtedly assumed significant responsibility in prosecuting this litigation.

iii. The Importance of the Litigation

Contingent fees are also favored – and rewarded – because they grant access to the courts to those not otherwise able to pursue claims by shifting significant risks and costs onto plaintiff's counsel. "The importance of assuring adequate representation for plaintiffs who could not

otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1047 (N.D Cal. 2007). Thus, "courts tend to find above-market-value fee awards" in contingency fee cases more appropriate, to encourage counsel to take on such cases for the benefit of plaintiffs who could not afford to pay hourly fees. *Deaver v. Compass Bank*, 2015 U.S. Dist. LEXIS 166484, at *35 (N.D. Cal. Dec. 11, 2015); *Vela*, 811 So. 2d at 1280-81 ("the nature of this litigation as a class action [] justifies an award that is higher than...in a more typical [] case").

iv. The Amount of Money Involved

Here, Plaintiffs calculated a variety of potential damages figures, which ranged from $2.57 per share (or $36 million for the Class) to $20.75 per share (or $290 million for the Class, as calculated by Plaintiffs' expert). However, as outlined *supra*, Defendants had multiple remaining affirmative defenses available to them, any one of which could have resulted in no recovery at all. In this context, the $37 million Settlement is an excellent result that merits approval as it represents an immediate and substantial benefit to Class Members.

v. The Extent and Character of the Work Performed

Class Counsel have spent nine years and over 14,200 hours researching, investigating, and prosecuting this case on behalf of the Class. During this time, Class Counsel put forth exceptional effort and achieved outstanding results. Before discovery even began, Class Counsel (1) researched, drafted and filed several complaints; (2) pursued preliminary injunction; (3) opposed Defendants' initial peremptory exceptions of no right of action, no cause of action, and *res judicata*; (4) briefed and won an appeal at the Third Circuit of the trial court's ruling regarding Defendants' exceptions of no right of action and no cause of action; (5) successfully opposed Defendants' writ application to the Louisiana Supreme Court on the Third Circuit's reversal; and (6) successfully opposed Defendants' renewed exceptions of no cause of action and *res judicata* before the trial court. Thereafter, Plaintiffs moved for and secured class certification. From there, the parties began engaging in extensive document production and review, including voluminous productions from the Company, the Company's two financial advisors, the Buyout Group, and other third parties involved in the Company's sales process. In sum, Plaintiffs collected, reviewed, and analyzed hundreds of thousands of pages of documents.

Class Counsel then hired a damages expert regarding the calculation of damages, and the parties collectively deposed thirty-two fact and expert witnesses. Following discovery, Plaintiffs filed a motion for partial summary judgment and opposed Defendants' respective motions for summary judgment. Both parties also filed multiple Article 1425/*Daubert* motions, all of which were argued before the trial court. Finally, Class Counsel prepared memorandum and argument for mediation, engaged in a full-day mediation, and continued participating in post-mediation negotiations until a compromise was reached. For nine years, Class Counsel have shouldered the significant costs, risks, and expenses of this protracted litigation. This was all time well spent, as the $37 million Settlement could not have been secured but for these efforts. This effort easily satisfies this element.

vi. The Legal Knowledge, Attainment, and Skill of the Attorneys

The "prosecution and management of a complex national class action requires unique legal skills and abilities." *Edmonds v. United States*, 658 F. Supp. 1126, 1137 (D.S.C. 1987). As noted above, Class Counsel are preeminent securities class action attorneys with decades of experience in prosecuting and trying complex securities class actions. Class Counsel's experience and skill are demonstrated by their effective investigation and prosecution of this Action, which resulted in the Settlement before the Court. That result is the clearest reflection of counsel's skill and expertise, and that result is all the more impressive in light of the fact that Class Counsel negotiated the Settlement in the face of formidable opposition from highly skilled and experienced defense attorneys. *See White v. GMC*, 718 So. 2d 480, 509 (La. Ct. App. 1998) (awarding $24 million in attorneys' fees, and finding that "significant and quality work was performed by the Class Counsel [], including extensive discovery and intensive settlement negotiations, which culminated in Class Counsel's ability to achieve the substantial benefits afforded by this Settlement.").

vii. The Number of Appearances Involved

Class Counsel estimate that they have appeared for substantive and contested hearings no less than ten times throughout the course of this case. Nearly all of these hearings involved hotly-contested matters, and not simple status conferences.

viii. The Intricacies of the Facts Involved

As previously discussed, this case involved the collection and review of hundreds of thousands of pages of documents and the taking of thirty-two depositions. The parties' extensive

summary judgment briefing, consisting of around 195 pages and 329 exhibits, underscores the substantial complexity and intricacy of Plaintiffs' claims in relation to the facts in this case.

ix. The Diligence and Skill of Counsel

As noted *supra* in Sections v (the extent and character of the work performed) and vi (the legal knowledge, attainment, and skill of the attorneys) Class Counsel demonstrated both diligence and skill in prosecuting the Class's claims and achieving the Settlement.

x. The Court's Own Knowledge

Finally, while Class Counsel respectfully defer to the Court's discretion in evaluating this factor, Class Counsel note that over the course of this litigation the Court has had the opportunity to extensively review the parties' briefing on their respective dispositive motions, hear oral arguments, and issue well-reasoned opinions. As such, the Court is well positioned to assess the vigor with which Class Counsel have pursued the Class's claims.

3. Although Not Required, A Lodestar Crosscheck Further Confirms the Reasonableness of the Requested Fee

Even though, as discussed above, Louisiana courts favor calculating contingent class action attorneys' fees using the percentage-of-the-fund approach, a crosscheck of the lodestar calculation, should the Court desire to conduct it, also demonstrates that the fees requested are more than reasonable and should be approved. *See White v. GMC*, 718 So. 2d 480, 509-10 (La. Ct. App. 1998). Under the lodestar method, "the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012). "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 6:12-1609, 2015 U.S. Dist. LEXIS 26053, at *21 (W.D. La. Feb. 11, 2015); *In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327, 340-41 (D.N.J. 2002) (payment of a multiplier to lodestar is appropriate to "reflect the risks of nonrecovery, to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation").

Class Counsel devoted over 14,200 hours to this litigation, amounting to a lodestar of $10,766,395.75. Ex. 3, Robbins Geller Aff., Ex. A; Ex. 4, KSF Aff., Ex. A.[6] Here, the requested fee of $12,210,000 represents a lodestar multiplier of 1.13, which is more than reasonable. Indeed, far more significant multipliers are routinely approved by courts across the nation, including in Louisiana. *See City of Omaha Police & Fire Ret. Sys.*, 2015 U.S. Dist. LEXIS 26053, at *22 ("Multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied."); *Vela v. Plaquemines Par. Gov't*, 00-2221 (La. App. 4 Cir 03/13/02), 811 So. 2d 1263, 1280-81 (awarding 30% of the judgment value, where the multiplier was three, and the court considered expert testimony to the effect that the multiplier commonly ranges from three to seven); *In re Shell Oil Refinery*, 155 F.R.D. 552, 573 (E.D. La. 1993) (applying a risk multiplier of 3 to 3.5); *Di Giacomo v. Plains All Am. Pipeline*, Nos. H-99-4137, H-99-4212, 2001 U.S. Dist. LEXIS 25532, at *32 (S.D. Tex. Dec. 18, 2001) (awarding 30% fee

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[6] In considering the hourly rates used to generate the lodestar figures, courts generally assess their reasonableness based on the standards applicable to experienced, national firms in their practice areas. *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 6:12-1609, 2015 U.S. Dist. LEXIS 26053, at *20 (W.D. La. Feb. 11, 2015) (in performing a lodestar cross-check, the court reviewed national rates because the court was "unaware of any local firms (in the Lafayette Louisiana geographic area) who handle [securities class actions] routinely, so there are no firms in this area which can be used for realistic comparison"); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 U.S. Dist. LEXIS 69143, at *31 (N.D. Tex. Apr. 25, 2018) ("A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation."); *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 386 n.6 (D. Md. 2006) ("[t]hese hourly rates, while somewhat high for this district, are within a reasonable range for the national firms that prosecuted the case"); *MicroStrategy*, 172 F. Supp. 2d at 788 (same). The rates charged by Class Counsel (between $350-$725 for associates and between $840-$1,200 for senior attorneys) are market billing rates that reflect the attorneys' skill and experience. Ex. 3, Robbins Geller Aff., Ex. A; Ex. 4, KSF Aff., Ex. A; *Blackmon v. Zachary Holdings, Inc.*, No. SA-20-CV-00988-JKP, 2022 U.S. Dist. LEXIS 139417, at *13 (W.D. Tex. Aug. 5, 2022) (approving 1/3 attorneys fee, with application of the lodestar check where attorney rates ranged from $475-$1100 per hour); *Soler v. City. of San Diego*, No. 14cv2470MMA (RBB), 2021 U.S. Dist. LEXIS 114484, *15 (S.D. Cal. Jun. 18, 2021) (collecting cases and noting that "courts in this District have awarded hourly rates for work performed in civil cases by attorneys with significant experience anywhere in the range of $550 per hour to more than $1000 per hour"); *Herring Networks, Inc. v. Maddow*, No. 19cv1713, 2021 U.S. Dist. LEXIS 23163, *18-21 (S.D. Cal. Feb. 5, 2021) (collecting cases and concluding that "reasonable rates in this district for those of comparable skill, experience, and reputation" justified rates between $470 to $1,150); *Khoja v. Orexigen Therapeutics*, No. 15cv00540-JLS-AGS, 2021 U.S. Dist. LEXIS 230105, at *31 and ECF No. 149-5, PageID.3786 (S.D. Cal. Nov. 30, 2021) (holding the lodestar cross-check (which included KSF partner rates of $925-$1,100) supported a 33% fee).

The rates charged by Defendants' attorneys also provide a useful guide to rates customarily charged in securities litigation of this nature. Here, Defendants are represented by attorneys from Hunton Andrews Kurth LLP, an international law firm that regularly engages in M&A work, having handled "1,000 transactions worth approximately $250 billion in the past five years." https://www.huntonak.com/en/practices/mergers-and-acquisitions/. For insight on such billing rates, *see* David Lat, *When $1,000 an Hour Is Not Enough*, N.Y. Times (Oct. 3, 2007) https://www.nytimes.com/2007/10/03/business/03fees.html?ref=todayspaper (describing "[a] survey of corporate counsel by the BTI Consulting Group [which] found that mergers-and-acquisitions work is viewed as a premium service by 25 percent of clients, the highest of any specialty. 'All practice areas are not created equal,' the BTI president, Michael Rynowecer, said, and 'M.&A. is clearly at the top of the range.'").

equal to lodestar with 5.3 multiplier); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 370-71 (S.D.N.Y. 2002) (awarding fees of 33-1/3% of settlement fund and finding that "it clearly appears that the modest multiplier of 4.65 is fair and reasonable"); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999) ("In recent years multipliers of between 3 and 4.5 have been common in federal securities cases."); *Lloyd v. Navy Federal Credit Union*, No. 17-cv-1280-BAS-RBB, 2019 U.S. Dist. LEXIS 89246, at *36-37 (S.D. Cal. May 28, 2019) (Bashant J.) (awarding attorneys' fees of $6,125,000, representing a 10.96 multiplier). Thus, a lodestar "sanity check" confirms the reasonableness of Class Counsel's fee request.

4. The Class Members' Reactions Also Supports the Fee Award

Although not a formal factor, courts nationwide have considered the absence of substantial objections to requested attorneys' fees as supporting the reasonableness of such requests. *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (the absence of substantial objections by class members to fee request weighed in favor of approval); *Maley*, 186 F. Supp. 2d at 374 ("The reaction by members of the Class is entitled to great weight by the Court."). Here, Class Members were informed in the Notice that Class Counsel would seek a fee award in an amount not to exceed 33% of the Settlement Amount and for payment of litigation expenses. Class Members were also advised of their right to object to the fee and expense request. While that deadline has not yet passed, to date, not a **single** objection has been received. Should any objections be received, Class Counsel will address them in their reply papers. This lack of objections by Class Members is important evidence that the requested fee is fair. *See Ressler v. Jacobson*, 149 F.R.D. 651, 656 (M.D. Fla. 1992) (noting that the lack of objections "is strong evidence of the propriety and acceptability" of the fee request).

VII. THE REQUESTED EXPENSES ARE REASONABLE, WERE NECESSARY FOR PROSECUTING THE ACTION, AND SHOULD BE APPROVED

Reimbursement of reasonable litigation costs and expenses to counsel who create a common fund is both appropriate and routine. *City of Omaha Police & Fire Ret.*, 2004 WL 1900294, at *24; (awarding reimbursement of approximately $4.8 million of expenses); *Di Giacomo*, 2001 U.S. LEXIS 25532, at *37-38 (awarding full amount of expenses in addition to attorneys' fees award, noting that "[n]o party has objected to the amount of the expenses" and that such expenses were reasonable); *Faircloth v. Certified Fin. Inc.*, No. 99-3907, 2001 LEXIS 6793, at *37 (E.D. La. May 15, 2001) (awarding reimbursement of all costs). Class Counsel, in the prosecution of this complex case over the past nine years, expended $922,500.69 in expenses. Those expenses include travel costs, expert

fees, mediation fees, photocopying, legal research, postage and mail services, long distance and facsimile expenses, and other expenses directly related to the litigation. Ex. 3, Robbins Geller Aff., ¶6; Ex. 4, KSF Aff., ¶6.

These expenses are of the type that are normally charged to paying clients and reasonable in light of the work performed, the scale and duration of the Action, the legal and factual issues presented, and the outstanding recovery achieved. They should therefore be reimbursed in the amount requested. *See Missouri v. Jenkins*, 491 U.S. 274,287 n.9 (1989) (expenses billed in accordance with "prevailing practice" are reimbursable); *City of Omaha Police & Fire Ret. Sys.*, 2015 U.S. Dist. Lexis 26053, at *24 (approving expenses of "postage and courier; document production and electronic database set up and maintenance; expert fees; filing, witness and other fees; mediation; on-line research; photocopies; press releases; staff overtime; telephone, facsimile and data, and travel (meals, hotels and transportation"); *In re Am. Bus. Fin. Servs. Noteholders Litig.*, No. 05-232, 2008 U.S. Dist. LEXIS 95437, at *53-*54 (E.D. Pa. Nov. 21, 2008) (approving expenses for "delivery and freight, class notice costs, duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, transportation and press releases" based on declarations of counsel).

VIII. THE REQUESTED SERVICE AWARDS ARE REASONABLE AND SHOULD BE APPROVED

Finally, Lead Plaintiffs also respectfully request an award of $30,000 to each Plaintiff to compensate them for the time they devoted to the representation of the Class. Service awards find solid grounding in public policy aims and are supported by ample legal precedent. Courts "approve incentive awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they shoulder during litigation." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 6:12-1609, 2015 U.S. Dist. LEXIS 26053, at *23 (W.D. La. Feb. 11, 2015). The purpose of service awards is to "encourage participation of plaintiffs in the active supervision of their counsel." *Varljen v. HJ Meyers & Co.*, No. 97 CIV. 6742 (DLC), 2000 U.S. Dist. LEXIS 16205, at *14 n.2 (S.D.N.Y. Nov. 8, 2000). Service awards are essential in securities class action litigation because individual plaintiffs often have small amounts at stake and, "without a named plaintiff there can be no class action." *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804, 96 Cal. Rptr. 3d 441, 455 (2009). As a result, a service award "is appropriate 'if it is necessary to induce an individual to participate in the suit.'" *Id.* at 456. *See also Diaz v. Tak Communs. Ca*, 2021 Cal. Super. LEXIS 124703, *24 (Alameda Cnty. Super. Ct. Apr. 2, 2021) ("Courts award

service payments to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class, as well as to compensate class representatives for their time, effort, inconvenience, and for any expense or risk incurred.").

"[I]ncentive awards that are intended to compensate class representatives for work undertaken on behalf of a class 'are fairly typical in class actions cases'" and "do not, by themselves, create an impermissible conflict between class members and their representatives." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). Here, Lead Plaintiffs spent considerable time gathering documents in preparation for discovery, preparing for and providing deposition testimony, reviewing documents that were filed in the course of the litigation, and conferring with Class Counsel throughout the litigation and settlement negotiations. *See* Affidavits of Helen Moore, Calvin I. Trahan, and Lawrence E. L'Herisson, submitted herewith (Exhibits 5-7). Lead Plaintiffs have thus fulfilled their duties as representatives of the Class, and, in so doing, expended valuable time for which they should be reimbursed. These facts amply support the approval of a reasonable service award. Moreover, given the length of time and amount of effort involved, the amount requested is reasonable. *See, e.g., Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 U.S. Dist. LEXIS 69143, at *47 (N.D. Tex. Apr. 25, 2018) (awarding $100,000 incentive award to lead plaintiff where involvement included discussing strategy, reviewing pleadings, participating in discovery, being deposed, and attending mediation); *Shaw v. Toshiba America Information Systems, Inc.*, 91 F.Supp.2d 942, 973 (E.D. Texas 2000) (awarding two lead plaintiffs $25,000 each as compensation for serving as class representatives); *Pearlstein v. Blackberry Ltd.*, 2022 U.S. Dist. LEXIS 177786, at *31-32 (S.D.N.Y. Sep. 29, 2022) (approving awards of $100,000 each to two class representatives where the awards were "commensurate with the level of their involvement in the Action" and "represented only approximately 0.3% of the total settlement amount"); *In re Chi. Bridge & Iron Co. Sec. Litig.*, No. 1:17-CV-1580, ECF No. 444 (S.D.N.Y. Aug. 2, 2022) (approving award of $60,000 to lead plaintiff).

Finally, the Notice to the Class stated that Lead Plaintiffs would seek service awards, and, to date, no objections have been made. Based on the foregoing, Lead Plaintiffs respectfully submit that a $30,000.00 service award for each Plaintiff is fair and reasonable in this Action.

IX. CONCLUSION

The substantial and immediate recovery that the Settlement provides to the Class is a highly favorable result, and is fair, reasonable, and adequate. The Plan of Allocation is a simple and straightforward method of allocating the net settlement proceeds among Class Members, consistent with how damages would be calculated at trial, and is thereby necessarily fair, reasonable, and adequate. Class Counsel's requested attorneys' fees and expenses are fair, reasonable, and appropriate. Finally, the requested service awards for Plaintiffs for their representation of the Class are fair, reasonable, and appropriate. For the foregoing reasons, Plaintiffs and Class Counsel respectfully request that the Court approve the Settlement, Plan of Allocation, Class Counsel's request for attorneys' fees and expenses, and Plaintiffs' requested service awards.

Dated: December 29, 2023

Respectfully Submitted,

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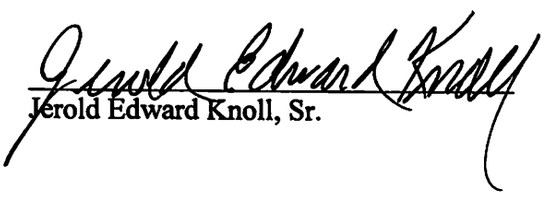
CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties by electronic mail and/or by hand, facsimile, and/or by mailing same via U.S. mail, properly addressed, and postage prepaid this 29th day of December, 2023.



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