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: _____ _____
DEPUTY CLERK

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

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BEFORE ME, the undersigned authority, duly commissioned in and for the state and county aforesaid, came and appeared:

DAVID A. KNOTTS

who, after being sworn, did depose and state as follows:

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, duly commissioned in and for the state and parish aforesaid, came and appeared:

MICHAEL J. PALESTINA

who, after being sworn, did depose and state as follows:

1. I, David A. Knotts, am a person of the full age of majority, and I am competent to make this affidavit. I am a duly licensed attorney in the State of California, admitted *pro hac vice* in this matter, and a partner at the law firm of Robbins Geller Rudman & Dowd LLP, which is one of two co-lead counsel for the Class ("Class Counsel") in the above-captioned action. The facts stated in this affidavit with respect to my firm's actions and involvement are within my personal knowledge and are true and correct to the best of my knowledge, information, and belief. I submit this affidavit 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.

2. I, Michael J. Palestina, am a person of the full age of majority, and I am competent to make this affidavit. I am a duly licensed attorney in the State of Louisiana and a partner at the law firm of Kahn Swick & Foti, LLC, which is the other Class Counsel in the above-captioned action. The facts stated in this affidavit with respect to my firm's actions and involvement are within my personal knowledge and are true and correct to the best of my knowledge, information, and belief. I submit this affidavit 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.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Parties and Non-Parties

3. This Action arises out of the 2016 acquisition of Cleco for $55.37 per share (the "Merger" or the "Buyout"). Plaintiffs Lawrence L'Herisson, Helen Moore, and Calvin Trahan ("Plaintiffs") were holders of Cleco common stock prior to the Merger.

4. Prior to the Buyout, Cleco Corporation ("Cleco" or the "Company") was a public utility holding company and owner of Cleco Power, LLC ("Cleco Power"), a regulated electric utility business. Cleco Power serves approximately 284,000 customers in Louisiana through its retail business and supplies wholesale power in both Louisiana and Mississippi.

5. At the time of the Merger, the Cleco Board of Directors (the "Board") consisted of Defendant Bruce Williamson and non-Defendants William H. Walker, Jr., Elton R. King, William L. Marks, Logan W. Kruger, Peter M. Scott, III, Shelley Stewart, Jr., and Vicky A. Bailey. At the time of the Merger, Defendant Williamson served as both Cleco's CEO and the Chairman of its Board, and Defendant Darren Olagues served as President of Cleco Power.

6. Non-parties Macquarie Infrastructure and Real Assets ("Macquarie"), British Columbia Investment Management Corporation ("bcIMC"), and John Hancock Financial ("John Hancock," and together with Macquarie and bcIMC, the "Buyout Group") acquired Cleco in the Merger through their indirect acquisition subsidiaries.

B. Initial Suits and Consolidation

7. On October 20, 2014, Cleco announced its entry into a merger agreement pursuant to which the Buyout Group would acquire the Company for $55.37 per Cleco share.

8. Following this announcement, a number of lawsuits were filed both in the Ninth Judicial District Court for the Parish of Rapides and in the Civil District Court for the Parish of Orleans.

9. On November 25, 2014, Plaintiffs voluntarily dismissed the Buyout Group as defendants. On the same day, Plaintiffs filed an Unopposed Motion to Consolidate Related Actions, Enter Scheduling Order, and Appoint Interim Co-Lead Counsel.

10. On December 3, 2014, the Court (a) dismissed the Buyout Group as defendants, (b) 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 (including, specifically, those pending in the Orleans Parish Court), into the Action, and (c) appointed 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.

11. On December 18, 2014, Plaintiffs amended their petition to consolidate their related petitions in accordance with the Consolidation Order.

C. Injunction Proceedings and Shareholder Vote

12. On January 14, 2015, Cleco disseminated its Definitive Proxy Statement to shareholders (the "Proxy Statement"). In the interim and thereafter, Plaintiffs engaged in detailed and time-consuming expedited discovery, which included the production of documents in January 2015 and the depositions of Defendant Bruce Williamson, Defendant Darren Olagues, Peter Scott (director), John Rice (banker), and Stephan Feldgoise (banker) in early February 2015.

13. Thereafter, on February 10, 2015, Plaintiffs moved to enjoin the shareholder vote on the Buyout based on their claims that the Proxy was materially false and misleading. After briefing, on February 25, 2015, this Court held a hearing and denied that motion. On February 26, 2015, a majority of Cleco shares were voted to approve the Merger.

14. Based on Class Counsel's ongoing analysis and investigation, on June 19, 2015, Plaintiffs filed their second consolidated amended class action petition. On July 24, 2015, the then-defendants filed exceptions of no right and no cause of action to that petition. On August 24, 2015, Plaintiffs opposed those exceptions. No hearing was held on these exceptions due to the pendency of the Regulatory Proceeding (defined below).

D. The Regulatory Proceeding

15. Because Cleco Power (Cleco's regulated utility subsidiary) was a public utility, the sale of Cleco to the Buyout Group was subject to approval by the Louisiana Public Service Commission ("LPSC"). On February 10, 2015, Cleco Partners, L.P. (which was formerly known as Como 1, L.P.) and Cleco Power (the "Joint Applicants") submitted a joint application (the "Joint Application") seeking the LPSC's authorization for the Buyout (the "Regulatory Proceeding"). Neither Defendant was a party to the Regulatory Proceeding. Plaintiffs, in their capacity as individual shareholders of Cleco, intervened and participated in the Regulatory Proceeding.

16. The purpose of the Regulatory Proceeding was to "determine whether the proposed acquisition is in the public interest and should be approved." In order to make this determination, the LPSC considers eighteen *public* interest factors, ranging from "[w]hether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility's ratepayers," to "[w]hether the transfer will adversely affect competition," to "[w]hether the transfer will be beneficial on an overall basis to State and local economies and to the communities in the area served by the public utility." One of these eighteen factors is "[w]hether the transfer will be fair and reasonable to the majority [but not all] of all affected public utility shareholders."

This factor is not determinative, and a sale of a regulated utility can be approved even if this factor is not met.

17. The Regulatory Proceeding consisted of two parts. First, in November 2015, Judge Meiners, Chief Administrative Law Judge, conducted a four-day hearing. Class Counsel participated in the document and witness discovery and motion practice leading up to the hearing. Class Counsel participated in the four-day hearing itself, including by cross-examining certain witnesses.

18. On February 17, 2016, Judge Meiners issued her opinion to the LPSC (the "ALJ Opinion"), in which she found that "the transaction, as currently structured, is not in the public interest" and recommended against approving the Buyout. Judge Meiners also noted that "a specific investigation and/or and [sic] analysis concerning the process by which the shareholders voted on the proposed merger is outside the parameters of this proceeding."

19. Second, on February 24, 2016, the LPSC held a hearing on the transaction, at the conclusion of which the LPSC rejected the proposed sale. Again, Class Counsel participated in the motion practice leading up to this hearing and in this hearing as well. On March 8, 2016, the LPSC issued an opinion that supported its decision, reinforced Judge Meiners' findings, and concluded that "the proposed transaction, as currently structured, is not in the *public* interest." The LPSC's order again stated that "the process by which the shareholders voted on the proposed merger is outside the parameters of this proceeding."

20. In light of the rejection of the Buyout by the LPSC, in mid-March 2016, Plaintiffs filed a third consolidated amended petition and sought and secured a temporary restraining order from this Court that (i) prohibited Cleco from paying any incentive and severance compensation that would otherwise have been paid to Williamson pursuant to his employment agreement with Cleco and (ii) suspended the vesting of any currently unvested equity interests in Cleco held by Williamson.

21. In the interim, the Joint Applicants subsequently offered new concessions to the LPSC and moved for a re-hearing. With these concessions, the LPSC voted on March 28, 2016 to approve the Joint Application and found that the Buyout was in the best interests of the public. Class Counsel again participated in the related motion practice and in this hearing as well. In its second opinion approving the Joint Application, the LPSC again noted that "a specific investigation and/or and [sic] analysis concerning the process by which the shareholders voted on the proposed merger is outside the parameters of this proceeding."

22. The Merger thereafter closed on April 13, 2016.

E. Dispositive Motion Practice and Appellate Practice

23. Class Counsel continued to analyze the documents and deposition testimony obtained in expedited discovery and in the regulatory proceeding. In consultation with financial experts, Class Counsel (with Plaintiffs' agreement) determined that a post-close breach of fiduciary claim for money damages was worth pursuing, given the potential that Cleco was undersold relative to its standalone value. Based on Class Counsel's extensive analysis and investigation, on May 13, 2016, Plaintiffs filed their fourth consolidated amended petition, in which they added Mr. Olagues as a Defendant and brought direct claims on behalf of themselves and a proposed class of Cleco's former shareholders.

24. On June 13, 2016, Defendants filed peremptory exceptions of no right of action, no cause of action, and *res judicata*. After briefing and oral argument from the parties, on September 26, 2016, this Court sustained the first two exceptions, finding that Plaintiffs did not have a direct cause or right of action.

25. On November 9, 2016, Plaintiffs appealed. On appeal, Plaintiffs challenged the underlying ruling on the exceptions of no right and no cause of action and also asserted a precautionary assignment of error regarding any potential *res judicata* effects that this Court may have afforded the Regulatory Proceeding in granting Defendants' peremptory exceptions.

26. Citing LA. CODE CIV. PROC. art. 2164, Defendants argued that the Third Circuit should affirm the grant of the exception of no cause of action and dismiss Plaintiffs' claims, should also affirm the dismissal of Plaintiffs' claims on *res judicata* grounds, and should find that Plaintiffs' claims were be barred by *res judicata*. Both parties fully briefed these issues before the Third Circuit.

27. On December 13, 2017, the Third Circuit reversed, finding that, under the facts and circumstances of this case, Plaintiffs had a direct cause of action to recover "losses they personally sustained when Defendants engaged in practices that sold/merged Cleco for a price less than its potential, using a method more beneficial to Defendants, personally." *Moore v. Macquarie Infrastructure Real Assets*, 258 So. 3d 750, 757(La. App. 3 Cir. 12/13/17). Although the Third Circuit had the authority to affirm the grant of the exception of no cause of action and also dismiss Plaintiffs' claims on *res judicata* grounds, it declined to affirm the exception or otherwise dismiss Plaintiffs' claims based on *res judicata*. *Id.* at 758.

28. On January 12, 2018, Defendants sought writs from the Louisiana Supreme Court. Defendants argued that the Court should affirm the grant of the exception of no cause of action and dismiss Plaintiffs' claims and should also affirm the dismissal of Plaintiffs' claims on *res judicata* grounds. Defendants also filed a separate, new exception of *res judicata* at the Supreme Court, in which they again urged the Supreme Court to dismiss this case on *res judicata* grounds. Again, both parties briefed the issues before the Supreme Court. On March 2, 2018, the Supreme Court denied writs and declined to grant the exception, to affirm the dismissal of Plaintiffs' claims on these grounds, or to otherwise dismiss Plaintiffs' claims based on *res judicata*.

29. On November 2, 2018, Defendants filed renewed exceptions of no cause of action and *res judicata*. Again, the parties briefed both issues. On January 29, 2019, after briefing and oral argument, this Court overruled Defendants' renewed exceptions of no cause of action and *res judicata*.

30. On February 11, 2019, after more than four years of litigation, Defendants filed an Answer to Plaintiffs' operative complaint.

F. Class Certification

31. In late 2018, Defendants propounded discovery on Plaintiffs. On January 11, 2019, Plaintiffs responded to those discovery requests.

32. On January 25, 2019, Defendants moved to strike Plaintiffs' request for class relief. On April 24, 2019, after briefing and oral argument, this Court denied Defendants' motion to strike the request for class relief.

33. Meanwhile, on April 11, 2019, Plaintiffs moved for class certification. On May 17, 2019, Defendants propounded further discovery requests on Plaintiffs, to which Plaintiffs responded on June 17 and 28, 2019. On July 2, 2019, Plaintiffs propounded discovery requests regarding class certification on Defendants. On July 22, 23, and 24, 2019, Defendants conducted the depositions of Plaintiffs.

34. On August 23, 2019, the parties executed a Stipulation Regarding Class Certification. On September 9, 2019, 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.

35. 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.

G. Fact Discovery

36. After the Supreme Court denied writs, Plaintiffs conducted broad and extensive fact discovery, which involved document discovery from the parties, the Buyout Group, the successor-in-interest to Cleco, and countless third-party bankers and bidders. In total, Class Counsel received and reviewed the following numbers of documents from Defendants and the following third parties (for the sake of brevity, third parties producing less than 500 documents are not shown in the rows, but their produced documents are included in the totals):

Producing Party	Document Count	Page Count
Defendants and Cleco	13,694	75,485
Edward Jones	740	4,646
Goldman Sachs	31,131	149,641
LPSC	509	1,064
Macquarie	3,555	33,815
TECO Energy	1,760	14,508
Tudor Pickering	1,614	12,759
TOTAL:	**53,279**	**297,516**

37. Thereafter, beginning in late 2019 and continuing through 2022 (with a pause in the interim caused by the onset of the COVID-19 pandemic), Class Counsel conducted a total of twenty-one additional fact depositions of Defendants, former Cleco directors and officers, representatives of the bankers that advised the directors and officers, and representatives of the Buyout Group. Throughout the duration of the case, Class Counsel took or defended the following fact and expert depositions:

Deponent	Date	Location
Stephan Feldgoise	2/3/2015	New York, New York
Darren Olagues	2/4/2015	New Orleans, Louisiana
Bruce Williamson	2/5/2015	New Orleans, Louisiana
John Rice	2/6/2015	New York, New York
Peter Scott, III	2/9/2015	Raleigh, North Carolina
L'Herisson, Lawrence (Plaintiff)	7/22/2019	Baton Rouge, Louisiana
Moore, Helen (Plaintiff)	7/23/2019	Alexandria, Louisiana

Trahan, Calvin (Plaintiff)	7/24/2019	Lafayette, Louisiana
Vicky Bailey	11/7/2019	Washington, D.C.
Elton King	11/15/2019	Atlanta, Georgia
Shelley Stewart, Jr.	11/21/2019	Philadelphia, Pennsylvania
William Walker, Jr.	12/17/2019	Jackson, Mississippi
Patrick Garrett	1/10/2020	Angel Fire, New Mexico
Logan Kruger	1/15/2020	Dallas, Texas
Peter Scott, III	1/24/2020	Raleigh, North Carolina
William Marks	1/29/2020	New Orleans, Louisiana
Kristin Guillory	1/31/2020	Alexandria, Louisiana
Larry Watts	2/1/2020	Alexandria, Louisiana
Matthew Gibson	2/14/2020	Chicago, Illinois
Tom Miller	3/13/2020	Dallas, Texas
Chris Cox	5/21/2020	Remote
Keith Crump	7/22/2020	Remote
Bill Fontenot	3/31/2021	Remote
Richard Carroll	8/24/2021	Remote
Darren Olagues	12/7/2021	Houston, Texas
Andrew Murphy	4/18/2022	Remote
Christopher Leslie	4/22/2022	Remote
Bruce Williamson	6/23/2022	Remote
Robert Tudor	9/9/2022	Houston, Texas
Mathew Morris (expert)	5/10/2022	Dallas, Texas
Daniel Beaulne (expert)	5/22/2023	Dallas, Texas
Jonathan R. Bourg (expert)	5/16/2023	New Orleans, Louisiana

In total, Class Counsel conducted or defended at least thirty-two fact and expert depositions in this matter.

H. <u>Class Notice</u>

38. After a delay caused by the COVID pandemic and the completion of the depositions of all non-executive former directors, on May 27, 2021, the parties stipulated to the dismissal of

all defendants except Williamson and Olagues. On or about the same day, the parties also jointly moved for approval of the Notice of Pendency to the Class. On October 18, 2021, the Court approved the dismissal and the notice of pendency.

39. Soon thereafter, 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."

I. Expert Discovery

40. Early in the litigation, Plaintiffs retained a well-respected valuation expert: Matthew R. Morris, CFA, CLP, a managing partner at Baker Tilly US, LLP. Mr. Morris identified his billing rate at $530 per hour.

41. After the completion of fact discovery, Defendants also disclosed the retention of an experienced and well-regarded valuation expert: Daniel B. Beaulne, CPA, CA, CBV, CFA, a director at Houlihan Lokey Financial Advisors, Inc. Additionally, Defendants retained Jonathan R. Bourg, vice president of regulatory policy at United Professionals Company, LLC. Mr. Beaulne identified his and his team's hourly rates ranging from $400 per hour to $750 per hour, and Mr. Bourg identified his billing rate at $295 per hour.

42. Mr. Morris submitted his opening report on October 3, 2022, while Mr. Beaulne and Mr. Bourg submitted their reports on January 5, 2023. Mr. Morris submitted his rebuttal report on April 7, 2023.

43. In his opening report, Mr. Morris opined that (i) Cleco's "High Case" projections were the most appropriate set of projections to value Cleco as of each of the valuation dates (October 17, 2014, and April 12, 2016) because, among other, the High Case took into account the additional capital expenditure opportunities the Company expected to achieve as a result of joining the Midcontinent Independent System Operator ("MISO"); (ii) Cleco was intrinsically worth $63.12 per share as of October 17, 2014 (the recommendation date) and $76.12 per share as of April 12, 2016 (the proximate close date); and (iii) if the triers of fact determine economic damages are appropriate, the relevant valuation date for damages determination should be the proximate close date.

44. In contrast, Mr. Beaulne opined in his report that (i) Cleco's unaffected stock price ($50.76), and the transaction price ($55.37), are the most reliable indicators of Cleco's fair value; and (ii) Cleco was intrinsically worth $41.46 per share as of the recommendation date, and $50.80 per share as of the closing date (or proximate close date). With respect to Mr. Morris' damage calculations, Mr. Beaulne opined that Mr. Morris "erred in several ways," including by (i) "resort[ing] solely to a discounted cash flow ('DCF') analysis and ignored every other method of calculating Fair Value;" and (ii) "compound[ing] this error by basing his DCF analysis on speculative 15-year High Case financial projections that no witness has characterized as reliable."

45. In his report, Mr. Bourg opined that (i) Cleco's participation in MISO would not lead to an increase in Cleco's transmission capital expenditures or benefit Cleco's investors; (ii) because of the speculative nature of MISO's purported benefits for the Company, Cleco's "Base Case" projections, and not the High Case, were the most appropriate set of projections upon which the valuation of Cleco should have been based; and (iii) Mr. Morris' opinions demonstrated a lack of understanding as to how MISO operates and therefore overstated and mischaracterized MISO's potential benefits to Cleco. In particular, Mr. Bourg opined that "Mr. Morris' conclusions about MISO and the consequences of Cleco Power's membership in MISO are erroneous," and that "[t]o the contrary, the prospects of Cleco Power's profits being increased due to its membership in MISO were, and are, speculative and uncertain."

46. In his rebuttal report, Mr. Morris opined that (i) Mr. Beaulne's reliance on Cleco's unaffected stock price ($50.76), and the transaction price ($55.37) as the most reliable indicators of Cleco's fair value was erroneous; (ii) Mr. Beaulne's reliance on the Base Case projections in his DCF analysis was erroneous; and (iii) Mr. Bourg misrepresented the opportunity MISO membership provided to Cleco and was directly contrary to the documentary record.

47. The parties deposed the experts as follows:

Date	Deponent	Location	Deposing Firm
May 10, 2023	Matthew R. Morris	Dallas, TX	Hunton Andrews Kurth LLP
May 16, 2023	Jonathan R. Bourg	New Orleans, LA	KSF
May 22, 2023	Daniel B. Beaulne	Dallas, TX	Robbins Geller

J. Summary Judgment Motions

48. Following fact and expert discovery, on June 2, 2023, Plaintiffs filed a Motion for Partial Summary Judgment and Defendants filed respective Motions for Summary Judgment.

49. Defendants' briefs spanned sixty (60) pages in total, and included over eighty (80) purportedly undisputed material facts, including, but not limited to, that (i) Williamson's outreach

to potential buyers without the Board's authorization or approval was not inappropriate; (ii) the Board solicited bids from buyers likely to pay in cash and buyers likely to pay in stock, and considered both throughout the sale process; (iii) the price that Macquarie ultimately offered was better than Cleco's standalone prospects; and (iv) management viewed the Base Case projections as more reliable than the High Case projections. Defendants' motions argued that Defendants could not have breached their fiduciary duties because, among other arguments, (i) Williamson's conflicts were fully disclosed; and (ii) between August 2013 and the closing of the Merger, Olagues was president of Cleco Power, a wholly owned subsidiary of Cleco, and thus was not a Cleco fiduciary. In addition, Defendants argued that "Plaintiffs cannot prove damages" because "Louisiana law limits Plaintiffs' damages to what they could have recovered in a statutory appraisal proceeding[,]" and that, "[f]or a company like Cleco, whose stock was publicly traded, recovery is limited to the stock price on the day before the Merger closed[,]" and "[t]hat price was lower than the negotiated sale price."

50. Plaintiffs' brief was sixty-three (63) pages and was comprised of thirty-three (33) purportedly undisputed material facts, including, but not limited to, claims that (i) after being installed as CEO, Defendant Bruce Williamson promptly worked behind the scenes to put the Company up for sale without the Board's full knowledge or authorization; (ii) despite the Board's refusal to launch the Company into a sale process, Williamson, with the assistance of Goldman Sachs and Defendant Darren Olagues, continued to have unauthorized communications and meetings with potential bidders; (iii) Williamson and the bankers told potential buyers that Cleco had a preference for all-cash bids; (iv) Williamson favored Macquarie over other bidders; (v) the Base Case failed to account for Cleco's recent integration into MISO; and (vi) Cleco management expected significant financial benefits from MISO. Moreover, Plaintiffs argued that the Court should grant partial summary judgment dismissing Defendants' affirmative defenses of the business judgment rule, ratification, and *res judicata*.

51. After exchanging briefs on June 2, 2023, Class Counsel worked to respond by the July 14, 2023 opposition deadline. On that day, Plaintiffs filed their sixty (60) page opposition and a list of thirty-eight (38) material facts purportedly in dispute and precluding summary judgment. Also on that day, Defendants filed their thirty-three (33) page opposition and a response to all of Plaintiffs' purportedly undisputed facts. In addition, Defendants also filed a table listing evidentiary objections to one hundred and four (104) exhibits offered in support of Plaintiffs' Motion for Partial Summary Judgment.

52. The parties filed their reply briefs on August 4, 2023. Plaintiffs' reply brief was seventy-four (74) pages and included seventy two (72) potential evidentiary objections to Defendants' exhibits offered in support of their motions for summary judgment. Defendants' reply briefs, also filed on August 4, 2023, were sixty-one (61) total pages and included one hundred and eight (108) evidentiary objections to Plaintiffs' exhibits offered in support of their Opposition to Defendants' Motions for Summary Judgment. Plaintiffs responded to the evidentiary objections on August 9, 2023, and further supplemented their response on August 16, 2023.

53. The Court held a hearing on the parties' motions on August 11, 2023. The hearing lasted several hours and Plaintiffs' counsel walked through an extensively prepared and detailed hearing binder, which included thirty-nine (39) key exhibits of evidence supporting Plaintiffs' claims. The Court took the motions under advisement, and in an order dated September 14, 2023, the Court denied Defendants' motions in full and granted Plaintiffs' motion in part regarding Defendants' affirmative defense of *res judicata*, but denied the motion as to Defendants' other affirmative defenses.

K. <u>Article 1425/*Daubert* Motions</u>

54. On June 30, 2023, the parties filed Article 1425/*Daubert* motions. With respect to Mr. Beaulne, Plaintiffs argued that the Court should exclude Mr. Beaulne's report and testimony because (i) Mr. Beaulne offered no reliable methodology to support his opinions; (ii) Mr. Beaulne did not base his opinion on sufficient facts or data and his opinion was in fact contrary to the contemporaneous record and deposition testimony in this case; and (iii) Mr. Beaulne sought to improperly usurp the role of the jury in this case. Regarding Mr. Bourg, Plaintiffs argued that the Court should exclude Mr. Bourg's report and testimony because (i) Mr. Bourg's opinions were unreliable because they were not supported by any methodology, documents, authoritative sources, other expert opinion, or any other industry participant; (ii) Mr. Bourg lacked sufficient specialized knowledge; and (iii) Mr. Bourg's opinions would confuse the jury because they are incompatible with the contemporaneously-held opinions of Cleco's management, Mr. Bourg's former employer, and Macquarie.

55. In turn, Defendants sought to exclude the report and testimony of Mr. Morris because (i) the High Case projections used by Mr. Morris in his analyses were unreliable; and (ii) Mr. Morris ignored all other evidence of Cleco's value. In particular, Defendants argued that "Mr. Morris crafted his hypothetical valuation using a single technique, a discounted cash flow analysis ('DCF'), that is highly subject to manipulation" and that "Mr. Morris used a single set of overly

optimistic 'high case' projections of Cleco's future financial performance in his DCF analysis in an arbitrary effort to inflate his resulting valuation." In support of their arguments, Defendants stated that "[n]o fact witness has ever testified that the high case projections that Mr. Morris used most accurately reflected Cleco's operative reality. To the contrary, witnesses have uniformly testified that even the lower 'base case' projections were 'aggressive,' 'very optimistic,' and designed to 'focus[] on the favorable things.'"

56. On August 31, 2023, the Court, ruling from the bench, denied all pending Article 1425/*Daubert* motions, except for Plaintiffs' motion to exclude Mr. Bourg's report and testimony, which the Court granted in part.

L. Mediation and Settlement

57. On September 20, 2023, the parties participated in a full-day mediation in New York with mediator David M. Murphy of Phillips ADR (the "Mediator"). More than twenty attorneys and party representatives were in attendance.

58. 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.

59. On October 2, 2023, the parties signed a Memorandum of Understanding regarding the Settlement. On November 16, 2023, after another forty-five days of negotiations, the parties executed a formal Stipulation of Settlement.

60. After a review of case law and other searches for applicable settlements, Class Counsel believes that this is the largest shareholder class action settlement in Louisiana state court history. Class Counsel is aware of no other shareholder class action settlement in Louisiana state court that exceeded the $37 million Settlement in this case.

M. Preliminary Approval and Notice

61. 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.

62. 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. Gilardi has informed us that, 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.

II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE: ANALYSIS OF THE CLAIMS

63. This section is meant to provide the Court with behind-the-scenes insights into Class Counsel's thought process when deciding to recommend the $37 million common fund settlement to Plaintiffs. Plaintiffs' claims were multifaceted and complex, alleging that conflicted fiduciaries caused the Board to effectuate an undervalued sale to Macquarie. On the other hand, Defendants set forth factually strong and legally formidable defenses contending that no breach was committed and that Cleco shareholders were not harmed by the Merger and therefore cannot prove damages.

64. Based on Class Counsel's review of the contemporaneous evidence, it appeared that a series of problematic events occurred in the Cleco sale process, and that Defendants were right in the middle each time. More specifically, Plaintiffs alleged that Defendants (1) pursued the Merger without the Board's knowledge or authorization to further their own self-interest; (2) misled the Board and Cleco shareholders in connection with those efforts; (3) tilted the sale process in favor of the eventual buyer; and (4) prepared undervalued projections to facilitate the acquisition. We were confident before the Settlement, and still are, that Plaintiffs might have proven that all of these events in fact happened. Whether Plaintiffs could prove breaches of fiduciary duty and damages for those breaches, however, was less certain.

65. Even if liability was established, Plaintiffs faced further risk and uncertainty regarding damages. While Class Counsel believed that Cleco was undersold, to recover anything for the Class, we would have to win the "battle of experts," which is often an uncertain and difficult-to-predict endeavor. Defendants argued in their motions for summary judgment that the Base Case projections, which Plaintiffs argued undervalued Cleco significantly, were "optimistic" and that "[n]ot a single witness in this case, including the other members of management that prepared the projections, has testified that they were pessimistic." If Plaintiffs' damages

arguments and Plaintiffs' expert's calculations were accepted, damages would be significant. If Defendants' damages arguments or Defendants' expert's calculations were accepted, damages would be zero. Defendants also received a fairness opinion from two respected financial advisors, Goldman Sachs and Tudor, Pickering, Holt & Co.

66. Plaintiffs thus faced the prospect of advancing all the way to trial and winning the liability phase, but recovering nothing for the Class and losing the case. That is precisely what happened in both the *Trados* and *PLX* merger cases – plaintiffs proved liability in a merger trial, but the court found that the price was fair and damages were zero. *See In re Trados Inc. S'holder Litig.*, 73 A.3d 17 (Del. Ch. 2013) (unfair sale process by fiduciaries nevertheless produced a fair price); *In re PLX Tech. Inc. Stockholders Litig.*, 2018 WL 5018535 (Del. Ch. Oct. 16, 2018) (activist who aided and abetted the board's breach of fiduciary duty was not liable for any damages because the court had determined the amount of damages to be zero).

67. We took into account all of these factors when we recommended the $37 million settlement, which we firmly believe is the optimal result for the Cleco shareholder Class. In sum, it is the collective opinion of Class Counsel that the Settlement is fair, adequate, and reasonable under the circumstances and should be approved by the Court. While Class Counsel believe that we might have prevailed at trial and on appeal, there is no guarantee of such success; therefore it is in the interest of all concerned that this litigation be settled at this time. Class Counsel are satisfied that Plaintiffs were not guaranteed to obtain additional economic benefits over and above what was achieved through the Settlement, and thus any judgment against Defendants following trial may not have produced a better result than the Settlement achieved here. 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 and after both parties accepted an unsolicited "Mediator's Recommendation" after an additional five days of on-going, arm's-length negotiations. In short, there is no hint of fraud or collusion behind the Settlement.

68. After weighing the benefits of the Settlement against the uncertainty and risks of protracted litigation, Class Counsel have determined that the proposed Settlement is fair, reasonable, and adequate and warrants approval. Indeed, we believe it is an excellent result on the facts of this case.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

David A. Knotts

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss:
County of San Diego)

Subscribed and sworn to (or affirmed) before me on this 18 day of December, by David A. Knotts, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

ARIANA M. GONZALES
Notary Public - California
San Diego County
Commission # 2443154
My Comm. Expires Apr 2, 2027

Notary Public, State of California

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Michael J. Palestina

SWORN TO AND SUBSCRIBED
before me, this 27 day
of December, 2023.

Notary Public

Name: BRIAN MEARS

Bar/Notary No.: 35909

Brian C. Mears
Notary Public
State of Louisiana
Bar No. 35909
My Commission is for Life