IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

STEVEN FOX, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. FIFTH THIRD BANCORP, GREG D. CARMICHAEL, TAYFUN TUZUN, MARK D. HAZEL, NICHOLAS K. AKINS, B. EVAN BAYH III, JORGE L. BENITEZ, KATHERINE B. BLACKBURN, EMERSON L. BRUMBACK, JERRY W. BURRIS, GARY R. HEMINGER, JEWELL D. HOOVER, EILEEN A. MALLESCH, MICHAEL B. MCCALLISTER, and MARSHA C. WILLIAMS. Defendants.	Case No. 2020CH05219 Judge: Hon. Celia G. Gamrath

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

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Lead Counsel Labaton Sucharow LLP hereby respectfully requests, on behalf of Plaintiff's Counsel in connection with the proposed settlement of the above-captioned class action, an award of attorneys' fees and Litigation Expenses in the amount of 33.3 % of the Settlement Fund, which includes an award of $10,000 to Plaintiff Dr. Steven Fox ("Plaintiff"), for his efforts on behalf of the proposed Settlement Class.[1]

The Motion is based on the following memorandum of law and the Declaration of Alfred L. Fatale III in Support of (I) Plaintiff's Motion for Final Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses (the "Fatale Declaration"), submitted herewith.[2] A proposed final order and judgment, negotiated by the Parties as part of the Settlement, is also submitted herewith.

PRELIMINARY STATEMENT

Lead Counsel has vigorously litigated this case on an entirely contingent basis against a tenacious and well-resourced defense. The $5,500,000 proposed Settlement, if approved by the Court, represents a favorable outcome for the Settlement Class. The Settlement is particularly beneficial in light of the significant litigation risks present in this case. As discussed below, and detailed in the accompanying Fatale Declaration, Defendants advanced strong defenses to

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[1] Unless otherwise noted, capitalized terms have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated May 9, 2023 (the "Stipulation"), filed with the Court on May 11, 2023. Lead Counsel Labaton Sucharow LLP and Liaison Counsel The Law Office of Michael D. Smith, P.C. are Plaintiff's Counsel in the Action.

[2] The Fatale Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Action; the nature of the claims asserted; the litigation efforts; and the risks and uncertainties of continued litigation, among other things. Citations to "¶" in this memorandum refer to paragraphs in the Fatale Declaration.

All exhibits referenced herein are annexed to the Fatale Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced herein as "Ex.__-__." The first numerical reference is to the designation of the entire exhibit attached to the Fatale Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself.

Plaintiff's claims and there was considerable uncertainty throughout the case as to whether Plaintiff would be able to achieve a meaningful recovery, if litigation continued.

To achieve the recovery here, Lead Counsel devoted substantial resources to this litigation by, among other things: (i) conducting a thorough investigation of the allegations, including gathering and analyzing information about the Company and the Defendants; (ii) preparing and filing a class action Complaint; (iii) successfully opposing Defendants' comprehensive motion to dismiss the Complaint; (iv) filing a motion for class certification; (v) moved to strike six of Defendants' eight affirmative defenses; (vi) consulting with an economic expert on damages and causation issues; (vii) engaged in discovery, including document requests, interrogatories, and requests for admission, a motion to compel, and the exchange and analysis of over 30,000 pages of documents; and (viii) engaging in settlement discussions under the guidance of a highly regarded and experienced mediator. At the time the Settlement was reached, Lead Counsel had a deep understanding of the strengths and weaknesses of the claims and defenses in the Action. *See generally* Fatale Declaration at §§III-V.

Lead Counsel undertook these efforts and achieved the proposed Settlement in the face of substantial challenges with respect to establishing Defendants' liability, particularly with respect to proving materiality, falsity, damages, and overcoming a negative causation defense.

As discussed below, the fee requested for these efforts, which calculates to approximately 32% of the Settlement Fund, is well within the range of fees awarded in comparable class action settlements by courts in Illinois and within the Seventh Circuit. The requested fee represents a negative multiplier of approximately 0.87 of Lead Counsel's lodestar, meaning that Lead Counsel is seeking less than its lodestar in fees. The Litigation Expenses are also fair and reasonable, and were necessary for the pursuit of the claims. Both the requested fee and expenses have the full

support of Plaintiff. *See* Declaration of Dr. Steven Fox, Ex. 1 at ¶4.

Finally, the reaction of the Settlement Class to date supports the motion. Pursuant to the Court's Preliminary Approval Order, 128,110 copies of the Notice have been mailed to potential Settlement Class Members and their nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. Ex. 2 at ¶¶2-9. The Notice advised potential Settlement Class Members that Lead Counsel would seek an award of attorneys' fees and Litigation Expenses in an amount not to exceed 33.3% of the Settlement Fund (which may include an application for a service award to Plaintiff related to his representation of the Settlement Class in an amount no greater than $10,000). *See* Ex. 2-A at ¶¶4, 42. While the August 24, 2023 deadline for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objection has been received.

ARGUMENT

I. THE REQUSTED ATTORNEYS' FEES ARE FAIR AND REASONABLE AND WARRANT COURT APPROVAL

A. Plaintiff's Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

It is well settled that attorneys who represent a class and achieve a benefit for class members are entitled to a reasonable fee as compensation for their services. The Supreme Court has long recognized that "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." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).[3] Illinois has also adopted the "common fund doctrine" for the payment of attorneys' fees in class action cases. *Wendling v. S. Ill. Hosp. Servs.,* 242 Ill. 2d 261, 265 (2011); *see also Brundidge v. Glendale Fed. Bank, F.S.B*., 168 Ill. 2d

[3] All internal quotations and citations are omitted unless otherwise noted.

235, 238, (1995) ("where the outcome of the litigation has created a common fund, this court has adopted the 'common fund doctrine'"). The Supreme Court of Illinois in *Brundidge* further noted that the common fund doctrine "finds its source in the court's inherent equitable powers and is founded on the rationale that successful litigants would be unjustly enriched if their attorneys were not compensated from the common fund created for the litigants' benefit." *Id*. at 238. !

Similarly, the Seventh Circuit has held that "[w]hen a case results in the creation of a common fund for the benefit of the plaintiff class, the common fund doctrine allows plaintiffs' attorneys to petition the court to recover its fees out of the fund." *Florin v. Nationsbank of Ga., N.A*. 34 F.3d 560, 563 (7th Cir. 1994) ("*Florin I*");[4] *see also Sutton v. Bernard*, 504 F.3d 688, 691-92 (7th Cir. 2007) (the "common fund doctrine" is "based on the equitable notion that those who have benefited from litigation should share in its costs").

Courts have also emphasized that the award of attorneys' fees from a common fund serves to encourage skilled counsel to represent classes of persons who otherwise may not be able to retain counsel to represent them in complex and risky litigation. *See Wendling v. S. Ill. Hosp. Servs.,* 242 Ill. 2d 261, 265 (2011) ("The doctrine provides 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.'"). Indeed, the Supreme Court has repeatedly recognized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions," brought by the U.S. Securities and Exchange Commission ("SEC"). *Tellabs, Inc. v. Makor Issues & Rights, Ltd*., 551 U.S. 308, 313 (2007);

[4] Illinois courts recognize that the Illinois class action statute is patterned after Rule 23 of the Federal Rules of Civil Procedure, accordingly they regularly rely upon Federal case law as "persuasive authority." *See, e.g.*, *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 125 (Ill. 2005); *Mashal v. City of Chicago*, 2012 IL 112341, ¶27 (Ill. 2012).

accord Bateman Eichler, Hill Richards, Inc. v. Berner, 472 U.S. 299, 310 (1985) (private securities actions provide "a most effective weapon in the enforcement' of the securities laws and are a necessary supplement to [SEC] action").

B. The Attorneys' Fee Request Should be Evaluated Under the Percentage of Recovery Method

In *Blum v. Stenson*, 465 U.S. 886 (1984), the Supreme Court recognized that under the common fund doctrine a reasonable fee may be based "on a percentage of the fund bestowed on the class. . . ." *Id*. at 900 n.16.

Many courts have recognized that where a common fund has been created for the benefit of a class as a result of counsel's efforts, the award of counsel's fees on a percentage-of-the fund basis is the preferred approach. *See, e.g., McCormick v. Adtalem Glob. Educ., Inc*., No. 1-20-1197, 2022 WL 1417513, at *8 (Ill. App. Ct. May 4, 2022) (noting the Third Circuit task force "concluded that the percentage of recovery was the best way to calculate reasonable attorney fees in class action cases"); *In re Dairy Farmers of Am., Inc. Cheese Antitrust Litig.*, 80 F. Supp. 3d 838, 844, 849 (N.D. Ill. Feb. 20, 2015) (finding that the percentage method has "emerged as the favored method for calculating fees in common-fund cases in this district" and stating "the Court sees no utility in considering" counsel's submitted lodestar); *see also Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming district court award of percentage of the recovery to class counsel without lodestar cross-check); *Taubenfeld v. Aon Corp*., 415 F.3d 597, 598-600 (7th Cir. 2005) (affirming percentage-of-the-fund fee award); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (stating that "[w]hen a class suit produces a fund for the class, it is commonplace to award the lawyers for the class a percentage of the fund" and affirming award). "Furthermore, in addition to being efficient and fair, the percentage approach is likely what the

class members and counsel would have negotiated when counsel agreed to take on the case." *McCormick,* 2022 WL 1417513, at *8.

In *Brundidge*, the Supreme Court of Illinois held that a trial judge has discretionary authority to choose a percentage or a lodestar method when determining the fee award in a common fund case but noted some of the major flaws with the lodestar approach. 168 Ill. 2d at 242. While courts within Illinois have recognized the availability of the "lodestar" method to assess attorneys' fees, and while a lodestar cross check is not required, the requested fee award here represents a negative multiplier of approximately 0.87 of Lead Counsel's lodestar. This is below the range of multipliers that are commonly awarded in complex class action cases. *See In re Tik Tok, Inc. Consumer Privacy Litig.,* 617 F. Supp. 3d 904, 943 (N.D. Ill. 2022) ("In practice, most multipliers fall between one and four"); *Harmon v. Lyphomed, Inc.,* 945 F.2d 969, 976 (7th Cir. 1991) ("Multipliers anywhere between 1.0 and 4.0 have been approved.").

C. The Requested Fee Would Be Comparable to Awards in Similar Cases

"[A]ttorneys' fees from analogous class action settlements are indicative of a rational relationship between the record in this similar case and the fees awarded by the district court." *Taubenfeld*, 415 F.3d at 600. The fee requested here calculates to approximately 32% of the Settlement Fund, which is well within the range of percentage fees typically awarded by courts in Illinois and within the Seventh Circuit. *See e.g., McCormick*, 2022 WL 1417513, at *9 (affirming trial court's award of 35% of $44.95 consumer fraud settlement and noting that "[t]he supporting memo included Illinois state and federal court cases in which attorney fees were awarded in the 30-to-39% or higher range"); *Ryan v. City of Chicago*, 274 Ill. App. 3d 913, 916 (1st Dist. 1995). (affirming trial court's award of 33 1/3% of total recovery); *Hale v. State Farm Mut. Auto. Ins. Co*., No. 12-0660-DRH, 2018 WL 6606079, at *10 (S.D. Ill. Dec. 16, 2018) ("Courts within the Seventh Circuit, and elsewhere, regularly award percentages of 33.3% or higher to counsel in class

action litigation."); *Schulte v. Fifth Third Bank,* 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (stating that "an award of 33.3% of the settlement fund is within the reasonable range"); *Retsky Family Ltd. P'ship v. Price Waterhouse LLP*, No. 97 C 7694, 2001 WL 1568856, at *4 (N.D. Ill. Dec. 10, 2001) ("A customary contingency fee would range from 33 1/3% to 40% of the amount recovered.").

A review of attorneys' fee awards in class actions with comparably sized (and larger) settlements in both Illinois state and federal courts also supports the fee request. *See, e.g., Labarre v. Ceridian HMC, Inc*., Case No. 2019 CH 06489, slip op. at 5 (Cir. Ct. Cook Cnty. Nov. 30, 2022) (J. Gamrath) (awarding 35% of $3,493,074 settlement in BIPA class action) (Ex. 5)[5]; *Bristol Cnty. Ret. Sys. v. Allscripts Healthcare Sols., Inc.*, No. 1:12-cv-03297, slip op. at ¶4 (N.D. Ill. July 22, 2015) (awarding 33% of $9.75 million settlement in securities class action) (Ex. 5); *Gupta v. Power Sols. Int'l, Inc*., No. 16-08253, 2019 WL 2135914, at *1 (N.D. Ill. May 13, 2019) (awarding 33 1/3% of $8.5 million settlement); *Retsky*, 2001 WL 1568856, at *3 (awarding 33.3% of $14 million settlement); *Pierrelouis v. Gogo, Inc*., No. 18-cv-04473, slip op. at 2 (E.D. Ill. Oct. 13, 2022) (awarding 33 1/3% of $17.3 million settlement in securities class action) (Ex. 5); *Burton v. Bway Corp.*, Case No. 2018 CH 09797, slip op. at 5 (Cir. Ct. Cook Cnty. Apr. 4, 2023) (awarding 35% of $1,563,750 settlement in BIPA class action) (Ex. 5); *Conlee v. WMS Indus. Inc*., No. 1:11-cv-03503-JBZ, slip op. at 2 (N.D. Ill. May 20, 2014) (awarding 33% of $3.7 million settlement in securities class action) (Ex. 5).

In sum, the percentage fee requested here is reasonable and well within the range of percentage fees awarded in Illinois courts and in connection with similarly sized class action settlements.

[5] Unreported "slip" opinions are provided in Exhibit 5 to the Fatale Declaration.

D. The Requested Fee is Fair and Reasonable Under Applicable Standards

In addition to falling within the range of typical fee awards given in Illinois courts, the requested fee here is further justified—as explained below—in light of both (1) the risk Lead Counsel undertook in pursuing this difficult litigation on a contingency basis, and (2) the favorable relief Lead Counsel ultimately obtained for the Settlement Class. *See Ryan*, 274 Ill. App. 3d at 924 (affirming district court's attorneys' fee award due to the "extreme contingency risk" of pursuing the litigation, the "hard cash benefit obtained from a tenacious adversary"); *McCormick*, 2022 WL 1417513, at *9 (plaintiff "set out the procedural history of the case, discussed relevant authority, and explained why counsel considered [the fee request] to be fair compensation for the work and risks that were undertaken and the result that was achieved").

E. Risks of Continuing the Litigation

As noted by the Seventh Circuit in *In re Synthroid Marketing Litigation,* "the market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear." 264 F.3d 712,721 (7th Cir. 2001); *see also Silverman* 739 F.3d at 958 ("The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel."). "Thus, [w]hen determining the reasonableness of a fee request, courts put a fair amount of emphasis on the severity of the risk (read: financial risk) that class counsel assumed in undertaking the lawsuit." *Hale*, 2018 WL 6606079, at *8. Indeed, as the Seventh Circuit has emphasized, "court[s] must also be careful to sustain the incentive for attorneys to continue to represent such clients on an inescapably contingent basis." *Florin v. Nationsbank of Ga., N.A.* ("*Florin II*"), 60 F.3d 1245, 1247 (7th Cir. 1995). The Supreme Court has emphasized that private securities actions such as this provide "'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc.*, 472 U.S. at 310.

Plaintiff's Counsel undertook this Action on a wholly contingent-fee basis, assuming a significant risk that the Action would yield no recovery and leave them uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Plaintiff's Counsel had no such guarantee of payment, have had to wait for any payment while the case was prosecuted, and have had to incur unpaid expenses while the case was ongoing. While the outcome here was favorable, there was no guarantee it would be at the time counsel agreed to take the case.

"Contingent fees compensate lawyers for the risk of nonpayment. The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman*, 739 F.3d at 958; *see also Taubenfeld*, 415 F.3d at 600 (stating courts should consider "the contingent nature of the case" and the fact "that lead counsel was taking on a significant degree of risk of nonpayment…"). "All contingent fee class action cases involve some degree of risk for plaintiffs' counsel." *Schulte*, 805 F. Supp. 2d at 598. As in *Schulte*, "there was no certainty that Plaintiffs would win, or that the case would settle; and if Plaintiffs had lost, Class Counsel 'would receive no fees at all.'" 805 F. Supp. 2d at 597-98.

Indeed, there have been many class actions in which plaintiffs' counsel took on the risk of pursuing claims on a contingent basis, expended thousands of hours and dollars, yet received no remuneration whatsoever despite their diligence and expertise. *See generally* Fatale Decl. at §IX.B. For example, Labaton Sucharow tried *In re JDS Uniphase Securities Litigation*, Case No. C-02-1486 CW (EDL) slip op, (N.D. Cal. Nov. 27, 2007) through to a disappointing verdict for the defendants, receiving no compensation and expending millions of dollars in time and expenses. *See also In re Oracle Corp. Sec. Litig.*, No. C 01-00988 SI, 2009 WL 1709050 (N.D. Cal. June 19, 2009), *aff'd*, 627 F.3d 376 (9th Cir. 2010) (granting summary judgment to defendants after eight

years of litigation, and after plaintiff's counsel incurred over $6 million in expenses and worked over 100,000 hours, representing a lodestar of approximately $48 million). Lead Counsel is aware of many other hard-fought lawsuits where, because of the discovery of facts unknown when the case was commenced, changes in the law during the pendency of the case, or a decision of a judge or jury following a trial on the merits, excellent professional efforts by members of the plaintiff's bar produced no fee for counsel. *See, e.g.*, *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc*., 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury verdict and dismissing case with prejudice); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation). Even plaintiffs who get past summary judgment and succeed at trial may find a judgment in their favor overturned on appeal or on a post-trial motion. *See, e.g., Glickenhaus & Co. v. Household Int'l, Inc*., 787 F.3d 408 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction under *Janus Cap. Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011)). ¶¶127-30.

In this case, even though Plaintiff successfully opposed Defendants' motion to dismiss, Plaintiff still faced significant obstacles regarding liability and damages if litigation continued. Assuming Plaintiff was able to overcome the Defendants' likely motion(s) for summary judgment, after costly discovery efforts, he would have faced ongoing risks with respect to proving falsity and materiality, in addition to overcoming a negative causation defense with respect to damages before a jury. As detailed in the Fatale Declaration, the Action alleged violations of the Securities Act, raising a panoply of difficult legal and factual issues that required sophisticated analysis of the Registration Statement issued in connection with the Offering, the cross-selling or the opening

of unauthorized accounts by Fifth Third employees, the alleged impact of the conduct at issue on the Company's net sales, revenues or income, among other things. *See generally* Fatale Declaration at §VI.

Notably, Defendants would argue, as they have throughout the litigation, that the Registration Statement did not contain material omissions or misleading statements. In particular, among other things, Defendants would have continued to argue that a federal court has already found that the statements in the Registration Statement were not false and misleading and could not serve as a basis for an action under the federal securities laws. ¶¶69-72. Defendants would have also argued that there is no evidence of severe, widespread misconduct by Fifth Third employees between 2015 and 2018. And, to the extent that any Fifth Third employees opened unauthorized accounts, they did so years ago, in very small numbers, and any customers affected long ago received compensation for any fees they paid. ¶¶73-79. *See also* Settlement Memorandum at § I.B.1.

Even apart from proving liability, proving damages in securities cases is extremely complex and requires intricate expert testimony to establish the amount – and indeed the existence – of actual damages. Here, the damages assessments of the Parties' respective experts who would testify at trial would likely be polar opposites and the determination of the amount, if any, of damages suffered by the class at trial would have turned into a "battle of the experts." *See, e.g.*, ¶¶88-90, 99. Moreover, Defendants would have also continued to raise and press a strong "negative causation" defense to damages, arguing that the alleged materially misleading statements and omissions in the Registration Statement did not cause a substantial portion of the damages Plaintiff claimed, because most of the declines in the stock prices after the Offering were caused by other factors. *See, e.g.,* ¶¶90-98.

F. Result Achieved

Courts have consistently recognized that the result achieved is an important factor 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"). Here, Lead Counsel, on behalf of Plaintiff, has secured a Settlement that provides for a substantial and certain payment of $5,500,000. As detailed in the Fatale Declaration, according to Plaintiff's consulting damages expert, assuming Plaintiff was able to prevail in establishing liability at trial, maximum aggregate damages (assuming Defendants were unable to prove any negative causation) would be approximately $287.9 million. However, Defendants would have vigorously pursued their negative causation arguments at every stage of the litigation and, if Defendants succeeded in this regard, estimated aggregate damages would significantly decrease or be eliminated altogether. ¶¶87-99 (working through scenarios which could potentially decrease or eliminate statutory damages).

Lead Counsel successfully obtained this recovery at an early stage of the litigation, which is more beneficial to a class than waiting several more years to obtain their recovery, assuming of course that liability and damages were established, not only because of the time value of money but also because the increased expenses of continued litigation could have reduced the recovery to the class. As the litigation advances, the risks can also increase. And, even if Plaintiff prevailed at trial, Defendants would have the opportunity to appeal any judgment obtained, possibly delaying a favorable resolution for years. *See Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (15-year securities action prosecuted by Robbins Geller that was filed in 2002, resulted in jury verdict for plaintiffs in 2009, remanded after appeal in 2015, and settlement approved in 2016). Lead Counsel undertook this case fully prepared to litigate against these obstacles.

G. Time and Effort Expended on the Action

The time and effort expended by Lead Counsel in prosecuting the Action and achieving the Settlement support the requested fee. As explained in the Fatale Declaration, Lead Counsel, among other things: (i) conducted a thorough investigation concerning the allegedly material false and misleading statements and omissions in the Registration Statement[6] issued in connection with the Company's March 2019 acquisition of MB Financial (the "MB Financial Acquisition"), through which Fifth Third registered and issued over 131 million new shares of Fifth Third common stock (the "Offering"); (ii) requested, received, and reviewed information regarding Fifth Third's alleged misconduct through a Freedom of Information Act request submitted to the Consumer Financial Protection Bureau; (iii) drafted and filed a thorough and detailed Complaint; (iv) drafted and filed a motion for class certification; (v) successfully opposed Defendants' motion to dismiss the Complaint; (vi) moved to strike six of Defendant's eight affirmative defenses; (vii) consulted with experts on damages and causation issues; (viii) successfully negotiated a discovery protocol and case schedule; (ix) engaged in discovery, including propounding document requests, interrogatories, and request for admission, a motion to compel, producing 121 pages of documents from Plaintiff, and analysis of over 30,000 pages of documents produced by Fifth Third prior to the mediation; and (x) engaged in settlement discussions, including the exchange of detailed written mediation statements, under the guidance of a highly regarded and experienced mediator. *See generally* Fatale Declaration at §§III-V. In connection with these efforts, Lead Counsel

[6] In connection with the Offering, Defendants filed a registration statement on Form S-4 with the Securities Exchange Commission ("SEC") on June 21, 2018, which, following an amendment thereto on August 2, 2018, was declared effective by the SEC on August 3, 2018 (the "Form S-4"). On August 3, 2018, both Fifth Third and MB Financial filed with the SEC a prospectus for the Offering on Form 424B3 (the "Proxy/Prospectus"), which forms part of the registration statement (the Proxy/Prospectus and the Form S-4, as amended, are referred to collectively herein as the "Registration Statement").

expended 3,277 hours prosecuting the Action with a lodestar value of $2,024,603.50, meaning that the requested fee represents a negative multiplier of 0.87. *See* Ex. 3-A.[7]

At all times, Lead Counsel took care to staff the matter efficiently and to avoid duplication of effort. The substantial time and effort devoted to this case was critical to obtaining the favorable result achieved by the Settlement. Lead Counsel's efforts will continue, if the Court approves the Settlement, as they work through the settlement administration process, assist Settlement Class Members, and distribute the Settlement proceeds, without seeking any additional compensation. Accordingly, the amount of time and effort devoted to this Action by Plaintiff's Counsel confirm that the fee award requested is reasonable.

The quality of opposing counsel is also important in evaluating the quality of the work done by Lead Counsel. *See, e.g.*, *Beesley v. Int'l Paper Co*., No. 3:06-cv-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (observing that "[l]itigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination."). Lead Counsel was opposed in this Action by counsel from Skadden, Arps, Slate, Meagher & Flom LLP, a firm with a reputation for vigorous advocacy in the defense of complex civil cases. Notwithstanding this capable opposition, Lead Counsel was able to develop its case so as to persuade Defendants to settle the Action on terms favorable to the Settlement Class.

[7] As noted above, lodestar multipliers in Illinois courts typically range from 1 to 4 and multipliers of 3 are routinely approved as being "well within the range of multipliers used in other common-fund cases." *Shaun Fauley, Sabon, Inc., v. Metro Life Ins. Co.* 2016 IL App (2d) 150236, ¶ 59 (Ill. 2016); *Gambino v. Boulevard Mortg. Corp*., 398 Ill. App. 3d 21, 68 (1st Dist. 2009) (risk multiplier of 3 found to be "imminently reasonable"); *Baksinski v. Northwestern Univ*., 231 Ill. App. 3d 7 (1st Dist. 1992) (finding that a multiplier of 3 is reasonable); *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (approving 2.5 multiplier).

II. LEAD COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for payment of Lead Counsel's Litigation Expenses, which were reasonably incurred and necessary to prosecute the Action. These expenses are properly recovered by counsel. *See Beesley*, 2014 WL 375432, at *3 ("It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation.").

Here, Lead Counsel incurred $69,715.91 in Litigation Expenses. Ex. 3-B. The Litigation Expenses, broken down by category, are attested to in Lead Counsel's firm declaration (and totaled by category for the Court's convenience). *Id*. The largest component of expenses related to Plaintiff's economic expert. Specifically, $20,115.00, or approximately 29% of total expenses, was expended on such services. ¶137. Lead Counsel retained an expert in the fields of damages and loss causation to assist in the prosecution and resolution of the Action. This expert was valuable for the analysis and development of the claims and in connection with mediation. Plaintiff's loss causation and damages expert also assisted with the development of the proposed Plan of Allocation. *Id*.

Lead Counsel incurred expenses in connection with the mediation, totaling $18,714.93 (or approximately 27% of total expenses). ¶138; Ex. 3-B. The expenses also include the costs of Lead Counsel's document management vendor ($14,779.80 or approximately 21% of total expenses) and electronic factual and legal research ($10,947.17 or approximately 16% of total expenses). ¶¶139-40; Ex. 3-B. The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely assessed. These expenses include, among others, duplicating costs, court fees, and postage and delivery expenses. ¶141; Ex. 3-B.

In sum, Lead Counsel's expenses, in an aggregate amount of $69,715.91, were reasonable and necessary to the prosecution of the Action and should be approved.

III. PLAINTIFF'S REQUEST FOR A SERVICE AWARD

Plaintiff Dr. Steven Fox seeks an award of $10,000 for the time and effort he dedicated to serving as Plaintiff in the Action and ensuring that the Settlement Class was adequately represented. His efforts, which included regularly consulting with Lead Counsel regarding the progress of the litigation and, later on, the proposed Settlement, participating in discovery (including producing documents), and reviewing and discussing significant pleadings, motions, and briefs filed by Lead Counsel, are described in his declaration, filed concurrently herewith. *See* Ex. 1.

A service award is appropriate in class actions because a representative's efforts benefit the absent class members and encourage the filing of beneficial litigation. *See, e.g.*, *In re Synthroid Mktg. Litig*., 264 F.3d at 721 ("Incentive awards are justified when necessary to induce individuals to become named representatives."). Such awards have been regularly provided by courts in Illinois. *See, e.g., Pierrelouis v. Gogo, Inc*., No. 18-cv-04473, slip op. at 3 (awarding $20,000 to plaintiff in securities class action); *Spano v. Boeing Co.*, No. 06-cv-743-NJR-DGW, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016) (approving incentive awards of $25,000 and $10,000 for class representatives); *Power Sols*., 2019 WL 2135914, at *2 (awarding plaintiffs $5,000 each for reasonable costs and expenses directly related to their representation of the settlement class in securities class action).

CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully requests that the Court award it 33.3% of the Settlement Fund as payment of its attorneys' fees, Litigation Expenses ($69,715.91), and a service award to Plaintiff ($10,000).

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Respectfully submitted,

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