UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

DEKA INVESTMENT GMBH, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. SANTANDER CONSUMER USA HOLDINGS INC., et al., Defendants.	§	Civil Action No. 3:15-cv-02129-K CLASS ACTION Hon. Ed Kinkeade

MEMORANDUM IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT, (2) APPROVAL OF PLAN OF ALLOCATION, (3) AWARD OF ATTORNEYS' FEES AND EXPENSES, AND (4) AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(A)(4)

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Lead Plaintiffs Deka Investment GmbH and City of Dearborn Heights Act 345 Police & Fire Retirement System, by and through Co-Lead Counsel Robbins Geller Rudman & Dowd LLP and Grant & Eisenhofer P.A., respectfully submit this memorandum in support of their motion for final approval of: (i) the $47 million Settlement reached in this Action; (ii) the proposed Plan of Allocation; (iii) Co-Lead Counsel's application for an award of attorneys' fees and expenses; and (iv) Lead Plaintiffs' application for awards pursuant to 15 U.S.C. §78u-4(a)(4).[1]

I. PRELIMINARY STATEMENT

The proposed Settlement is an excellent result for the class of investors who suffered economic damages in connection with false and misleading statements contained in the public filings of Santander Consumer USA Holdings Inc. ("SCUSA" or the "Company") in connection with the Company's IPO and during the Class Period. It provides for a substantial cash payment of $47,000,000, which has been fully funded for the benefit of the Classes in exchange for dismissal of all claims brought against the Defendants.

The Settlement comes after more than five years of contentious litigation, including significant motion practice, extensive discovery of Lead Plaintiffs, retention and depositions of expert witnesses, and protracted and arm's-length settlement negotiations. There is no question that as a result of their considerable litigation and settlement efforts, Lead Plaintiffs and Co-Lead Counsel have a thorough understanding of the relative strengths and weaknesses of the proposed Classes' claims and the propriety of settlement. It is their view that the Settlement Amount is a superior result for the Classes.

[1] All capitalized terms not otherwise defined herein shall have the meanings set forth in the Stipulation of Settlement or the Notice of Motion and Motion for (1) Final Approval of Class Action Settlement, (2) Approval of Plan of Allocation, (3) Award of Attorneys' Fees and Expenses, and (4) Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4).

While Co-Lead Counsel believe in the strength of the Classes' claims, Defendants have adamantly denied liability. During lengthy settlement negotiations, which included two in-person mediations as well as numerous follow-up conversations with a nationally-renowned mediator, Robert A. Meyer, Esq., Co-Lead Counsel made clear that the case would continue to be litigated rather than settle for an amount that was not fair to the Classes. The protracted arm's-length negotiations resulted in a fair settlement and favorable result for the Classes.

Lead Counsel are highly experienced in prosecuting securities class actions. Based on an analysis of all the relevant factors, including: (1) the substantial risk, expense, and uncertainty in continuing the litigation, including the risk that Lead Plaintiffs' motion for class certification would have been denied, and through likely motions for summary judgment, trial, post-trial motions and appeals; (2) the relative strengths and weaknesses of the claims and defenses asserted; (3) past experience in litigating complex actions similar to this one; and (4) the serious disputes among the parties concerning the merits and damages, the Settlement is an outstanding result and is in the best interests of the proposed Classes. The Settlement is also supported by Lead Plaintiffs, who are precisely the type of institutional investors Congress sought to have serve as lead plaintiffs and engage in major strategic decisions in actions such as this one when it passed the Private Securities Litigation Reform Act of 1995 ("PSLRA").

The reaction of the proposed Classes so far also supports the Settlement and Plan of Allocation. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice ("Notice Order") (ECF No. 253), over 17,950 copies of the Notice were sent to potential Class Members and nominees, and notice was published in *Investor's Business Daily* and transmitted over *Business Wire*, where it was available to be accessed for one month. *See* Murray Declaration, App.

312 – App. 314, ¶¶7-14.[2] To date, there have been no objections to the Settlement nor have any requests for exclusion been received. *Id.* at App. 315, ¶18.

Lead Plaintiffs also request that the Court approve the Plan of Allocation, which was set forth in the Notice sent to Class Members. The Plan of Allocation governs how claims will be calculated and how the Settlement proceeds will be distributed among Claimants. It was prepared in consultation with Lead Plaintiffs' economic consultant, Forensic Economics, Inc., which has experience calculating damages in securities actions such as this one. The Plan of Allocation provides for calculation of investors' "Recognized Loss Amounts" for those with 1933 and 1934 Act claims. Joint Decl., App. 023 – App. 026, ¶¶78-88.

Co-Lead Counsel also respectfully apply for an award of attorneys' fees on behalf of all Plaintiffs' Counsel in the amount of 30% of the Settlement Amount ($14,100,000) and litigation expenses of $715,742.17, plus interest on both amounts. This fee request is supported by Lead Plaintiffs (*see* Riley Declaration, App. 301, ¶11, and Zinkand Declaration, App. 306 – App. 307, ¶9, submitted herewith) and is well within the range of percentages awarded in class actions in this Circuit. It is also reasonable when viewed against the result achieved here and the many hurdles Co-Lead Counsel were able to overcome. Finally, Lead Plaintiffs City of Dearborn Heights Act 345 Police & Fire Retirement System and Deka Investment GmbH apply for awards of $2,700.00 and $34,375.03, respectively, pursuant to 15 U.S.C. §78u-4(a)(4), in connection with their representation of the Classes.

II. PROCEDURAL AND FACTUAL BACKGROUND

To avoid repetition, Lead Plaintiffs respectfully refer the Court to the accompanying Joint Declaration for a full discussion of: (i) the factual background and procedural history of the Action;

[2] All "App." citations refer to the Appendix of Declarations in Support of (1) Final Approval of Class Action Settlement, (2) Approval of Plan of Allocation, (3) Award of Attorneys' Fees and Expenses, and (4) Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4), filed concurrently.

(ii) the efforts of Co-Lead Counsel in prosecuting the claims in this Action; (iii) the negotiations resulting in this Settlement; (iv) the reasons why the Settlement and the Plan of Allocation are fair and reasonable and should be approved; and (v) the reasons why the Court should approve Co-Lead Counsel's application for an award of attorneys' fees and expenses, and Lead Plaintiffs' application for awards pursuant to 15 U.S.C. §78u-4(a)(4). App. 001 – App. 040.

III. THE NOTICE SATISFIES RULE 23 AND DUE PROCESS STANDARDS

Members of a proposed class action must be provided with notice of the existence of the litigation and settlement through "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B); *see also* Fed. R. Civ. P. 23(e)(1). "'There are no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements,'" but "'the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *In re Heartland Payment Sys. Inc.*, 851 F. Supp. 2d 1040, 1060 (S.D. Tex. 2012) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). "Rule 23(e)(1)(B) requires the court to 'direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.'" David F. Herr, *Manual for Complex Litigation* §21.312, at 293 (4th ed. 2019).[3] Notice to class members must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover & Tr. Co.*, 339 U.S. 306, 314 (1950).

Here, in accordance with the Notice Order, starting on September 3, 2020, the Claims Administrator caused the Notice and Proof of Claim to be mailed to potential Class Members and

[3] Citations are omitted and emphases are added unless otherwise noted.

nominees. *See* Murray Decl., App. 312 – App. 314, ¶¶7-12. As of December 7, 2020, 17,957 copies of the Notice have been mailed to potential Class Members and nominees. App. 314, ¶13. The Notice contains a description of the claims asserted, the Settlement, the Plan of Allocation, and Class Members' rights to participate in and object to the Settlement or the requested fees and expenses, or to exclude themselves from the Classes. In addition, the Summary Notice was published over *Business Wire* and in *Investor's Business Daily*. App. 314, ¶14. Information regarding the Settlement, including copies of the Notice and Proof of Claim which could be easily downloaded, was posted on a website devoted solely to the Settlement. App. 314, ¶16. The notice program provided all the information required by the PSLRA and is adequate to meet requirements of due process and Rules 23(c)(2) and (e) for providing notice to the Classes.

IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Fifth Circuit Supports Settlements of Class Actions

The Fifth Circuit has long adhered to a general policy that favors and promotes the settlement of disputed claims, particularly in class actions. *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977) ("Particularly in class action suits, there is an overriding public interest in favor of settlement."); *In re Deepwater Horizon*, 739 F.3d 790, 807 (5th Cir. 2014) (noting the "'overriding public interest in favor of settlement' that we have recognized '[p]articularly in class action suits'"); *see also Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-736, 2017 WL 6590976, at *3 (E.D. Tex. Dec. 18, 2017) ("There is a strong judicial policy in favor of settlements, particularly in the class action context.").

B. A Presumption of Fairness Applies to This Settlement

A presumption of fairness is warranted where, as here, a proposed settlement is reached by experienced counsel through arm's-length negotiations. *See United States v. Tex. Educ. Agency*, 679 F.2d 1104, 1108 (5th Cir. 1982); *see also In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104,

125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997) ("So long as the integrity of the arm's length negotiation process is preserved . . . a strong initial presumption of fairness attaches to the proposed settlement."). Courts routinely rely on the judgment of competent counsel – deemed the "linchpin" of an adequate settlement – in determining whether a proposed settlement is reasonable. *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried."). Thus, if experienced counsel determine that a settlement is in the class's best interests, "the attorney's views must be accorded great weight." *Peltway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978).

The Settlement was reached in this case by experienced, fully-informed counsel after an extensive investigation was conducted, and only following lengthy negotiations. App. 001 – App. 040. The settlement negotiations included in-person mediations on December 16, 2016 and November 14, 2019, followed by additional negotiations facilitated by the parties' experienced mediator, Robert A. Meyer, Esq. *Id.* During the negotiations, Co-Lead Counsel zealously advanced Lead Plaintiffs' position, and were prepared to continue to litigate to and through trial rather than settle for less than a fair value. *Id.* Likewise, Defendants were represented by law firms with reputations for the tenacious defense of class actions and other complex civil matters. *Id.*

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Given the arm's-length nature of the negotiations, counsel's experience and the active involvement of an experienced mediator, the Settlement is procedurally fair and not the product of fraud or collusion. *See Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152-M, 2018 WL 1942227, at *4 (N.D. Tex. Apr. 25, 2018) (noting that "the settlement was not the result of improper dealings" where it was obtained through formal mediation); *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3586217, at *10 (N.D. Tex.

Aug. 4, 2011) (concluding that a settlement was free of fraud or collusion where it was "diligently negotiated after a long and hard-fought process that culminated" in a mediation).

C. The Settlement Satisfies the Requirements for Approval

Under Rule 23(e)(1), the question for preliminary approval is whether "the court will likely be able to . . . approve the proposal under Rule 23(e)(2)," which is the provision that governs final approval. Thus, in determining that this Settlement deserved preliminary approval, this Court has already considered the standards governing final approval, which is whether the settlement is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(2).

In determining fairness, reasonableness and adequacy, for purposes of final approval the Court must look at whether under Rule 23(e)(2): (i) "the class representatives and class counsel have adequately represented the class"; (ii) "the proposal was negotiated at arm's length"; and (iii) "the relief provided for the class is adequate, taking into account":

> (a) the costs, risks, and delay of trial and appeal;
>
> (b) factors such as the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (c) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (d) the proposal treats class members equitably relative to each other.

The Fifth Circuit has also established a six-pronged test to be applied to the approval of class settlements: (i) "the assurance that there is no fraud or collusion behind the settlement"; (ii) "the stage of the proceedings and the amount of discovery completed"; (iii) "the probability of plaintiff's success on the merits"; (iv) "the range of possible recovery"; (v) "the complexity, expense, and likely duration of the litigation"; and (vi) "the opinions of class counsel, class representatives, and absent class members." *Reed*, 703 F.2d at 172; *see also Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004). The Settlement satisfies each factor established by Rule 23(e)(2) and the Fifth Circuit.

1. Lead Plaintiffs and Co-Lead Counsel Have Adequately Represented the Classes

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Here, Lead Plaintiffs and Co-Lead Counsel spent over five years litigating the Classes' claims, which included complex motion practice, extensive discovery of Lead Plaintiffs, the preparation of expert reports and the giving of deposition testimony, and an in-person hearing regarding class certification. Throughout these processes, Co-Lead Counsel gained understanding of the key issues at the core of the Action, which in turn enabled them to negotiate the Settlement with a "full understanding of the legal and factual issues surrounding this case." *Manchaca v. Chater*, 927 F. Supp. 962, 967 (E.D. Tex. 1996). Lead Plaintiffs also had the benefit of highly experienced counsel in securities litigation, with long and successful track records representing investors in cases throughout the country. *See* §VII. D.3.

2. The Settlement Was Negotiated at Arm's Length and Is Absent of Fraud or Collusion

As detailed in §IV.B., above, the Settlement was negotiated at arm's length and presents no fraud or collusion. Thus, final approval of the Settlement is warranted pursuant to Rule 23(e)(2)(B) and *Reed*, 703 F.2d at 172.

3. The Risks and Costs of Further Litigation Demonstrate the Fairness and Adequacy of the Settlement

Rule 23(e)(2)(C)(i) examines "the costs, risks, and delay of trial and appeal," the second *Reed* factor looks at the "complexity, expense, and likely duration of the litigation," and the fourth *Reed* factor considers "the probability of plaintiffs' success on the merits." *Reed*, 703 F.2d at 172. The Settlement is fair and adequate in light of Rule 23(e)(2)(cc)(i) and the Fifth Circuit factors.

Lead Plaintiffs faced formidable obstacles to recovery at trial, both with respect to liability and damages. The principal claims are based on §§11 and 12(a)(2) of the 1933 Act, and §§10(b) and 20(a) of the 1934 Act. Lead Plaintiffs allege that Defendants failed to make material disclosures

concerning certain restrictions on SCUSA's ability to pay dividends and regarding its compliance framework. When the Company announced that it had not received approval from the Federal Reserve to pay dividends, the price of SCUSA's stock fell. The stock price fell further when the Company announced material weaknesses in its risk management and compliance controls.

Lead Plaintiffs believe that the allegations of the Complaint would ultimately be borne out by the evidence. Nevertheless, they also recognize that they faced significant hurdles to proving liability at trial. In particular, Defendants have argued that Lead Plaintiffs' 1933 Act claims are time-barred (ECF No. 106 at 10-12), and that Lead Plaintiffs failed to allege any actionable misstatement, both for purposes of the 1933 Act and the 1934 Act (*id.* at 13-22). Defendants also argued that SCUSA and certain of its officers did not possess the requisite scienter required for a 1934 Act claim. *Id.* at 25-29. These arguments posed the risk that Lead Plaintiffs' claims would not proceed to final judgment.

Even if Lead Plaintiffs established falsity and/or scienter at trial, they faced additional risks regarding causation and damages. App. 001 – App. 040. Defendants have and would continue to argue that any losses suffered by Class Members on their purchases of SCUSA securities were not attributable to the alleged misstatements and omissions.[4] Issues relating to causation and damages would also have likely come down to unpredictable expert disputes. Indeed, such a battle of the experts already occurred at the class certification stage. Joint Decl., App. 016 – 018, ¶¶52-60. Even if the Court granted Lead Plaintiffs' pending motion for class certification, Defendants would likely seek an interlocutory appeal or move to decertify one or both classes prior to trial. Accordingly, in the absence of the Settlement, there was a very real risk that the Classes may have recovered an amount significantly less than the Settlement Amount – or even nothing at all. In addition, even if

[4] Defendants also argued that Class Members would be unable to trace their stock purchases to the initial public offering. ECF No. 171-2 at 13-16.

Lead Plaintiffs prevailed there was substantial risk of appeal and associated delays. Thus, the payment of $47,000,000 weighs strongly in favor of approving the Settlement.

Several factors are present here which make it a practical certainty that, without the Settlement, this case would require additional large expenditures of time and money and there would be a significant risk that the Classes would obtain a result less beneficial than the one provided by the Settlement. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry v. Anderson*, 390 U.S. 414, 424 (1968) (court must consider, *inter alia*, "the complexity, expense, and likely duration of such litigation"); *Manchaca*, 927 F. Supp. at 966. The factors include the following:

- Defendants are and have been at all times represented by very capable counsel who are well versed in the defense of complex securities class actions such as the Action.
- At the time of the proposed Settlement, Lead Plaintiffs' motion for class certification remained pending, and there was a risk that the Court would not certify the Classes.
- Assuming the Classes were certified, Lead Plaintiffs would face months, if not years, of fact and expert discovery. Discovery – always complicated, contentious and challenging in these types of class actions – would have posed even more unusual burdens in this instance considering that the operative facts occurred more than five years ago, and many of the Company's employees who are central to the allegations are no longer employed by SCUSA. After a lengthy discovery period, which would have included taking depositions of dozens of witnesses, and reviewing extensive documents, the parties would have engaged in extensive expert discovery, likely motions for summary judgment and possible appeals. All of these efforts would be time consuming and resource intensive.
- A trial of the Action would unquestionably require months of effort and involve the introduction of hundreds of exhibits, addressing complicated regulatory matters, vigorously contested evidentiary motions, the expenditure of substantial additional expenses, and conflicting expert testimony.
- Even if a judgment after trial yielded a larger sum than the value of the Settlement, given the time value of money, such a future recovery might not be more beneficial than receiving the benefits of the proposed Settlement now.
- Finally, any judgment after trial would still be subject to the continuing risk through likely appeals. Experience shows that even very large judgments, recovered after lengthy litigation and trial, can be lost or significantly winnowed on appeal.

All of these foregoing factors demonstrate that, given the significant risks inherent in this litigation, the result achieved for the Classes is exceptional. Indeed, the Fifth Circuit has recognized that securities class actions are among the riskiest litigations from the plaintiffs' perspective, opining that "[t]o be successful, a securities class-action plaintiff must thread the eye of a needle made smaller and smaller over the years by judicial decree and congressional action." *Alaska Elec. Pension Fund v. Flowserve Corp.*, 572 F.3d 221, 235 (5th Cir. 2009).

4. The Stage of the Proceedings Warrants Final Approval of the Settlement

The third *Reed* factor requires courts to take into account the stage of the litigation so that they may evaluate "whether the 'parties and the district court possess ample information with which to evaluate the merits of the competing positions.'" *Heartland*, 851 F. Supp. 2d at 1064; *see also In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009) ("The question is . . . whether the parties have obtained sufficient information about the strengths and weaknesses of their respective cases to make a reasoned judgment about the desirability of settling the case on the terms proposed or continuing to litigate it.").

As discussed above, by the time the Settlement was reached, the parties had briefed the disputed issues in connection with Defendants' motions to dismiss and Lead Plaintiffs' motion for class certification, and had engaged in arm's-length mediation, including the preparation and exchange of detailed, fact-intensive mediation briefs. This factor also favors final approval.

5. The Settlement Is Within the Range of Reasonableness

The fifth *Reed* factor considers "whether the terms of the settlement 'fall within a reasonable range of recovery, given the likelihood of the plaintiffs' success on the merits.'" *Billitteri*, 2011 WL 3586217, at *12. Given the risks discussed in the Joint Decl., App. 030 – App. 032, ¶¶99-103, including that the Court still had not determined whether class certification was appropriate, and the additional risks associated with Defendants' anticipated motions for summary judgment, and with a

trial itself, the $47,000,000 recovery achieved by Lead Plaintiffs represents a very good result for the Classes.

6. Co-Lead Counsel, Lead Plaintiffs and Class Members Support Final Approval

The sixth *Reed* factor – the opinions of class counsel, class representatives, and absent class members – also supports final approval of the Settlement. "[W]here the parties have conducted an extensive investigation, engaged in significant fact-finding and Lead Counsel is experienced in class-action litigation, courts typically 'defer to the judgment of experienced trial counsel who has evaluated the strength of his case.'" *Schwartz v. TXU Corp.*, No. 3:02-CV-2243, 2005 WL 3148350, at *21 (N.D. Tex. Nov. 8, 2005).[5] Given that the Settlement provides a favorable recovery for the Classes in light of the significant risks in litigating this Action further, it is Co-Lead Counsel's opinion that there is a real possibility of never achieving as good a result as the Settlement provides.

Additionally, Lead Plaintiffs, who are institutional investors and have monitored and been kept apprised of Co-Lead Counsel's work throughout the Action, and who participated extensively in discovery, including sitting for depositions and searching for and producing thousands of pages of documents, support the Settlement. Riley Decl., App. 300 – App. 301, ¶¶7-8; Zinkand Decl., App. 307 – App. 308, ¶¶10-11. The reaction of the Classes to the Settlement also supports final approval. In response to the notice procedures outlined above in §III, to date, no Class Members have objected to the Settlement. *See Quintanilla v. A & R Demolition Inc.*, No. H-04-1965, 2008 WL 9410399, at *5 (S.D. Tex. May 7, 2008) (the reaction of the class to the settlement should be considered and holding that the lack of objections demonstrated that the class "overwhelmingly" favored the

[5] *See also Marcus*, 2017 WL 6590976, at *3 ("Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class and the court is not to substitute its own judgment for that of counsel."); *DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 292 (W.D. Tex. 2007) ("The endorsement of class counsel is entitled to deference.").

settlement); *Maher v. Zapata Corp.*, 714 F.2d 436, 456 (5th Cir. 1983) ("Other factors favoring approval of the settlement here are the minimal nature of shareholder objection.").

7. The Settlement Satisfies the Remaining Rule 23(e)(2) Factors

a. The Proposed Method for Distributing Relief Is Effective

Co-Lead Counsel in consultation with expert assistance, devised a plan of allocation that will fairly distribute the Net Settlement Fund to Authorized Claimants. *See* Rule 23(e)(2)(C)(ii); Joint Decl., App. 023 – App. 026, ¶¶78-88. As explained more fully below, in §V, the Plan of Allocation provides a fair method of distribution.

b. Attorneys' Fees

Rule 23(e)(2)(C)(iii) addresses the proposed award of attorneys' fees, including the timing of payment. Co-Lead Counsel seek an award of attorneys' fees of 30% of the Settlement Amount and expenses of $715,742.17, plus interest on both amounts, which is within the range of settlements approved in this Circuit.

c. The Parties' Sole Side Agreement Is the Agreement Concerning Opt-Outs

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreement made in connection with the proposed Settlement. As disclosed in the Stipulation (¶7.3), and in the memorandum in support of Lead Plaintiffs' motion for preliminary approval (ECF No. 249 at 26), the Settling Parties have entered into a standard Supplemental Agreement which provides that if the number of shares of Santander common stock purchased or acquired by Class Members who request to opt out of the Classes equals or exceeds a certain amount, SCUSA has the right to terminate the Settlement. While the Supplemental Agreement is identified in the Stipulation, its specific terms are confidential.[6]

[6] There are "compelling reasons" for keeping the Supplemental Agreement confidential. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). Keeping confidential the threshold number of exclusions which gives SCUSA the option to terminate the Settlement is necessary to avoid enabling one or more stockholders to selfishly use this knowledge to insist on a

Such side agreements are standard and their existence does not preclude final approval of settlements. *Halliburton*, 2018 WL 1942227, at *5 (granting final approval of securities class action that included a supplemental confidential agreement permitting settlement termination in the event of exclusion requests by a certain portion of the class). The parties have no additional side agreements.

d. No Class Member Receives Preferential Treatment

As explained more fully below, the Plan of Allocation explains how the Settlement proceeds will be distributed among Authorized Claimants. It provides specific formulas for calculating the recognized claim of each Class Member, based on each Class Member's purchases or acquisitions of SCUSA common stock and when and if they were sold. Lead Plaintiffs, like all other Class Members, will have their recognized losses calculated in the exact same manner, and their *pro rata* distribution will be calculated in the same manner as in all other Class Members; *i.e.*, according to the amount of their Recognized Loss.

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

This Court has "broad supervisory powers over the administration of class-action settlements to allocate the proceeds among the claiming class members . . . equitably." *Beecher v. Able*, 575 F.2d 1010, 1016 (2d Cir. 1978); *accord In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982). The standard for approving a plan of allocation is the same as the standard for approving the settlement: the plan must be "fair, adequate, and reasonable," and cannot be "the product of collusion between the parties." *Id.* (quoting *Cotton*, 559 F.2d at 1330). In addition, an allocation needs only to have a reasonable basis, particularly where, as here, it is recommended by class counsel. *Taft v. Ackermans*, No. 02 Civ. 7951 (PKL), 2007 WL 414493, at *9 (S.D.N.Y.

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higher payout for themselves while threatening to eviscerate the Settlement, which would be detrimental to the interests of the Classes.

Jan. 31, 2007); *see also Marcus*, 2017 WL 6590976, at *5 ("Where, as here, the plan is formulated by competent and experienced class counsel, the plan need only have a reasonable and rational basis.") (citing *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 145 (S.D.N.Y Jan. 29, 2010)). With the assistance of Lead Plaintiffs' economic and damages expert, Co-Lead Counsel prepared the Plan of Allocation after careful consideration and analysis, and without reference to any particular trading patterns of Lead Plaintiffs. The Plan of Allocation is fully set forth in the Notice.

If the total claims for all Authorized Claimants exceed the Net Settlement Fund, each Authorized Claimant's share of the Net Settlement Fund will be determined based upon the percentage that his, her or its claim bears to the total of the claims for all Authorized Claimants. *See In re Merrill Lynch & Co. Rsch. Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *12 (S.D.N.Y. Feb. 1, 2007) ("A plan of allocation that calls for the pro rata distribution of settlement proceeds on the basis of investment loss is reasonable."). Moreover, to date, not a single Class Member has filed an objection to the Plan of Allocation. Thus, this method of allocation is fair, reasonable and adequate, and should be approved by the Court.

VI. CLASS CERTIFICATION REMAINS WARRANTED

The Court previously, for settlement purposes only, preliminarily: (1) approved this Litigation as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and (2) appointed Lead Plaintiffs as class representatives and Co-Lead Counsel as class counsel. ECF No. 253. None of the facts regarding certification of the Classes have changed since the Court's Order, and there has been no objection to certification. Accordingly, Lead Plaintiffs respectfully request that the Court confirm final certification of the Classes for settlement purposes only.

VII. AWARD OF ATTORNEYS' FEES

A. Co-Lead Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

The Supreme Court and the Fifth Circuit have 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); *see also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161 (1939); *Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). In addition to providing compensation, attorneys' fee awards from a common fund serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature. *See, e.g.*, *Doglow v. Anderson*, 43 F.R.D. 472, 481-84 (E.D.N.Y. 1968). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

B. The Court Should Award a Percentage of the Common Fund

The Supreme Court has consistently held 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 fee should be determined on a percentage-of-the-fund basis. *See, e.g.*, *Internal Imp. Fund Trs. v. Greenough*, 105 U.S. 527, 532 (1882); *Cent. R.R. & Banking Co. v. Pettus*, 113 U.S. 116, 124-25 (1885); *Sprague*, 307 U.S. at 166-67; *Boeing*, 444 U.S. at 478-79. Indeed, by 1984 this point was so well established that the Supreme Court needed no more than a footnote to make it in *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class.").

The Fifth Circuit also approves the percentage method, finding that it "brings certain advantages . . . because it allows for easy computation" and "aligns the interests of class counsel with those of class members." *Union Asset Mgmt. Hldg. A.G. v. Dell, Inc.*, 669 F.3d 632, 643-44 (5th Cir. 2012) (endorsing "the district courts' continued use of the percentage method cross-checked with the *Johnson* factors"). Moreover, numerous district courts within the Fifth Circuit have applied the percentage-of-recovery method in awarding fees. *See, e.g., In re Catfish Antitrust Litig.*, 939 F. Supp. 493, 500 (N.D. Miss. 1996) (listing examples); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 966-67 (E.D. Tex. 2000) (same). Indeed, this Court in *Schwartz* recognized "there is a strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery." 2005 WL 3148350, at *26.

Moreover, the PSLRA explicitly authorizes the percentage method in calculating fees in securities actions. 15 U.S.C. §78u-4(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."); *see Dell*, 669 F.3d at 643 ("Part of the reason behind the near-universal adoption of the percentage method in securities cases is that the PSLRA contemplates such calculation.").

As discussed below, the requested 30% fee is reasonable under the circumstance of this case and falls squarely within the range of percentages regularly approved in the Fifth Circuit.

C. The Requested Percentage Is Fair and Reasonable

An appropriate court-awarded fee is intended to approximate what counsel would receive if they were offering their services in the marketplace. *See Missouri v. Jenkins*, 491 U.S. 274, 285-86 (1989). If this were a non-representative action, the customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to 33% of the recovery. *See Blum*, 465

U.S. at 904 ("'In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.'") (Brennan, J., concurring).

The requested 30% fee award, which was supported by Lead Plaintiffs (*see* Riley Decl., App. 301, ¶11 and Zinkand Decl., App. 306 – App. 307, ¶9), is consistent with percentage fees awarded in the Fifth Circuit in securities class actions like this one. "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method." *Schwartz*, 2005 WL 3148350, at *27. A review of attorneys' fees awarded in similar cases in this Circuit supports the reasonableness of the 30% fee request. *In re EZCORP, Inc. Sec. Litig.*, No. 1:15-CV-00608-SS, 2019 WL 6649017, at *1 (W.D. Tex. Dec. 6, 2019) (awarding 33%); *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 3:16-cv-00783-K, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) (awarding 33.33%).[7]

D. The *Johnson* Factors Further Confirm that the Requested Fee Is Fair and Reasonable

The *Johnson* factors support that the requested fee is reasonable and appropriate, and include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) skill required to perform the legal services properly; (4) preclusion of other employment; (5) customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) amount involved and results obtained; (9) experience, reputation, and ability of the attorneys; (10) undesirability of the case; (11) nature and length of professional relationship with the client; and (12) awards in similar cases. *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir.

[7] *See also Marcus v. J.C. Penney Co., Inc.*, No. 6:13-cv-00736-RWS-KNM, slip op. at 2 (E.D. Tex. Jan. 5, 2018) (awarding 30%); *Singh v. 21Vianet Grp., Inc.*, No. 2:14-cv-00894-JRG-RSP, 2018 WL 6427721, at *1 (E.D. Tex. Dec. 7, 2018) (awarding 33.30%); *In re Willbros Grp., Inc.*, 407 F. Supp. 3d 689, 690 (S.D. Tex. 2018) (awarding 30%); *Halliburton*, 2018 WL 1942227, at *7 (awarding 33.33%); *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 6:12-1609, 2015 WL 965696, at *1 (W.D. La. Mar. 3, 2015) (awarding 30%); *Buettgen v. Harless*, No. 3:09-CV-00971-K, 2013 WL 12303194, at *1 (N.D. Tex. Nov. 13, 2013); *Rines v. Heelys, Inc.*, No. 3:07-cv-01468-K, slip op. at 2 (N.D. Tex. Nov. 17, 2009) (awarding 30%).

1974). The Fifth Circuit has left it to the lower court's discretion to apply the *Johnson* factors in view of the circumstances of a particular case, and indicated it does not require a rigid application. *Brantley v. Surles*, 804 F.2d 321, 325-26 (5th Cir. 1986).[8]

1. Time and Labor

Co-Lead Counsel committed considerable resources and time researching, investigating, and prosecuting this Action over a more than five year period. First, Co-Lead Counsel conducted a diligent investigation to ensure it had a sound Amended Complaint that would (and did) withstand a motion to dismiss. ECF No. 128; App. 001 – App. 040. Second, Co-Lead Counsel moved for class certification. Class certification entailed overseeing discovery and depositions of Lead Plaintiffs, hiring and directing the efforts of their expert, Mr. Frank Torchio, and rebutting and deposing Defendants' expert, Lucy Allen. In addition, Co-Lead Counsel prepared for and presented at the evidentiary hearing argument and testimony before this Court on May 30, 2017. While the motion was pending, Co-Lead Counsel made several submissions to the Court to update it on relevant developments in similar cases pending elsewhere. Joint Decl., App. 019 – App. 021, ¶¶61-70. Third, and perhaps most importantly as the history of the Action makes clear, the services provided by Co-Lead Counsel proved fruitful, resulting in a favorable recovery for the Classes. Defendants have fiercely fought this case for more than five years, and Co-Lead Counsel responded accordingly.

2. Novelty and Difficulty of the Issues

It is widely recognized that securities class actions are complex and difficult. *Flowserve*, 572 F.3d at 235; *see also OCA*, 2009 WL 512081, at *21 ("Fifth Circuit decisions on causation, pleading and proof at the class certification stage make PSLRA claims particularly difficult."); *Schwartz*, 2005 WL 3148350, at *29 ("Federal Securities class action litigation is notably difficult and

[8] The factors that look at time limitations imposed by the client and the "nature and length" of the professional relationship with the client are not relevant here, and will not be addressed.

notoriously uncertain."). Significant risks to establishing liability and damages are detailed in the Joint Declaration. *See* Joint Decl., App. 029 – App. 032, ¶¶98-105.

3. Skill Required: Experience, Reputation and Ability of Co-Lead Counsel

The third and ninth *Johnson* factors – the skill required and the experience, reputation, and ability of the attorneys – also support the requested fee award. Here, Co-Lead Counsel performed their work diligently, skillfully and achieved a substantial recovery for the Classes. Co-Lead Counsel have many years of experience in complex federal civil litigation, particularly the litigation of securities and other class actions, and have achieved significant acclaim for their work, as set forth in the exhibits to Co-Lead Counsel's accompanying fee and expense submissions.

Co-Lead Counsel's experience in the field also allowed them to identify the complex issues involved in this case, and formulate strategies to successfully prosecute it effectively. *See Schwartz,* 2005 WL 3148350, at *30 ("Plaintiffs' counsel demonstrated that notwithstanding the barriers erected by the PSLRA, they would develop evidence to support a convincing case."). As a result of Co-Lead Counsel's efforts, they secured a settlement of $47 million, representing a very good result for the Classes.

The quality of opposing counsel is also important in evaluating the quality of services rendered by Co-Lead Counsel. *See, e.g., In re Aetna Inc. Sec. Litig.*, MDL No. 1219, 2001 WL 20928, at *15 (E.D. Pa. Jan. 4, 2001). Wachtell, Lipton, Rosen & Katz, Skadden, Arps, Slate, Meagher & Flom, LLP, and Haynes and Boone, LLP, the defense attorneys in this case, are aggressive, experienced, and highly skilled. *See Schwartz*, 2005 WL 3148350, at *30 (fee award supported because, *inter alia*, opposing counsel were "highly experienced lawyers from prominent and well-respected law firms"). That Co-Lead Counsel developed their case and negotiated this Settlement in the face of this formidable opposition supports the fee request.

4. Preclusion of Other Employment

Plaintiffs' Counsel spent approximately 9,250 hours prosecuting this Action on behalf of the Classes. Those hours were time that counsel could have devoted to other matters. Accordingly, to the extent applicable, this factor supports the requested percentage.

5. Contingent Nature of the Fee

Co-Lead Counsel undertook this Action on a contingent fee basis, assuming a substantial risk that the Action would yield no recovery and leave counsel uncompensated. Co-Lead Counsel's extensive time and effort devoted to litigating the Action in the face of a myriad of risks strongly supports the fee requested. *See Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 678 (N.D. Tex. 2010) (where "class counsel represented the class on a contingent-fee basis, with no guarantee of any recover … [t]he contingent nature of the fee favors an increase" in the fee); *OCA*, 2009 WL 512081, at *22 ("[T]he risk plaintiffs' counsel undertook in litigating this case on a contingency basis must be considered in its award of attorneys' fees, and thus an upward adjustment is warranted.").

Indeed, the risk of no recovery in complex cases of this type is very real.[9] There are numerous class actions in which plaintiffs' counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. Subsequent to the passage of the PSLRA, many cases in this Circuit have been dismissed at the pleading stage in response to defendants' arguments that the complaints do not meet the PSLRA's pleading standards. Co-Lead Counsel were faced with this very real possibility in this Action. Even plaintiffs who get past summary judgment and succeed at trial may find their judgment overturned on appeal or on judgment notwithstanding the verdict.[10]

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[9] *See Schwartz*, 2005 WL 3148350, at *31-*32 (recognizing "the risk of no recovery in complex cases of this type is very real" and that "[c]ourts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees").

[10] *See, e.g., Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408 (7th Cir. 2015) (major portion of plaintiffs' verdict reversed on appeal); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th

Co-Lead Counsel have received no compensation during the more than five-year duration of this Action and have incurred significant expenses in prosecuting this Action for the benefit of the Classes. Any fee or expense award has always been at risk and completely contingent on the result achieved. Thus, the contingent nature of the Action supports the requested percentage.

6. Amount Involved and Results Obtained

The benefit conferred on the class and the result achieved is an important factor in setting a fair fee. *See, e.g.*, *In re Terra-Drill P'ships Sec. Litig.*, 733 F. Supp. 1127, 1128 (S.D. Tex. 1990). The result achieved, given the substantial risks, is significant and supports the requested fee.

7. Undesirability of the Case

The tenth *Johnson* factor, undesirability of the case, also supports the fee requested here. Securities cases have generally been recognized as "undesirable" due to the financial burden on counsel and the time demands of litigating class actions of this size and complexity. *Garza v. Sporting Goods Props., Inc.*, No. Civ. A. SA-93-CA-108, 1996 WL 56247, at *33 (W.D. Tex. Feb. 6, 1996) (factors such as financial burden on counsel and time demands of litigating class action of this size and complexity have caused cases to be considered "undesirable"). This was never an easy case and the risk of no recovery was always high. Had Lead Plaintiffs and Co-Lead Counsel not been tenacious in pursuing this Action, it is doubtful that Class Members would have recovered anything from Defendants. The risks counsel faced must be assessed as they existed at the time counsel undertook the Action and not in light of the settlement achieved. *See, e.g.*, *Harman v.*

Cir. 1997) (jury verdict of $81 million for plaintiffs against an accounting firm reversed on appeal on loss causation grounds and judgment entered for defendant); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (Tenth Circuit overturned securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1998 on the basis of 1994 Supreme Court opinion); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, No. 07-61541-CIV, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011); *aff'd sub nom., Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012) (granting defendants' post-trial motion for judgment as a matter of law following jury verdict for plaintiff); *In re Apollo Grp., Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008) (same).

Lyphomed, Inc., 945 F.2d 969, 974 (7th Cir. 1991) (the riskiness of a case must be judged *ex ante* not *ex post*). Thus, the "undesirability" of the Action supports the requested percentage.

8. Awards in Similar Cases

As discussed above in §VII.C, a 30% fee is in line with several other settlements recently approved in this Circuit.

E. Class Member Reaction

Although not formally noted in the case law for this jurisdiction as a factor for the Court's consideration in determining an award of attorneys' fees, courts throughout the country have found that relatively few or no objections from the class to the attorneys' fees requested supports the reasonableness of the requested attorneys' fees.[11] To date, there have been no objections to Lead Counsel's fee request,[12] which is important evidence that the requested fee is fair. *See, e.g.*, *Halliburton*, 2018 WL 1942227, at *12 ("Although the lack of objections is not a *Johnson* factor, the Court finds it relevant in considering the reasonableness and fairness of the award.").

VIII. THE REQUESTED EXPENSES ARE REASONABLE AND NECESSARILY INCURRED TO ACHIEVE THE SETTLEMENT

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and charges. *In re Enron Corp. Sec., Derivative & ERISA Litig.*, No. Civ. A. H-01-3624, 2004 WL 1900294, at *3 (S.D. Tex. Aug. 5, 2004); *see also Di Giacomo v. Plains All Am. Pipeline*, No. Civ.A.H-99-4137, 2001 WL 34633373, at *13 (S.D. Tex. Dec. 19, 2001) (awarding litigation expenses in addition to 30% attorneys' fee, noting that "[n]o

[11] *See, e.g.*, *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (district court did not abuse its discretion by finding that absence of substantial objections by class members to fee request weighed in favor of approval); *In re Ravisent Techs., Inc. Sec. Litig.*, No. Civ. A. 00-CV-1014, 2005 WL 906361, at *10 (E.D. Pa. Apr. 18, 2005) (absence of objections supports award of requested fee).

[12] As set forth in the Notice, the deadline to submit objections is December 22, 2020. Should any objections be received prior to that date, Co-Lead Counsel will address them in their reply brief, to be filed no later than January 5, 2021.

party has objected to the amount of the expenses" and that such expenses were reasonable); *Faircloth v. Certified Fin. Inc.*, No. 99-3097, 2001 WL 527489, at *12 (E.D. La. May 16, 2001) (awarding costs in addition to the percentage fee).

Co-Lead Counsel seek payment of counsel's reasonable expenses and charges of $715,742.17 for prosecuting this Action on behalf of the Classes. *See* Robbins Geller Decl., App. 043, ¶¶5-6; G&E Decl., App. 206 – App. 207, ¶¶6-12; Declaration of Joe Kendall Filed on Behalf of Kendall Law Group, PLLC in Support of Application for Award of Attorneys' Fees and Expenses, App. 278 – App. 279, ¶¶5-6. These expenses were necessary for the investigation and prosecution of the case. The expenses include consultant and expert fees, mediation fees, investigators, travel, photocopying of documents, research, messenger service, postage, express mail and next day delivery, and other incidental expenses directly related to the prosecution of this Action, and therefore should be paid from the Settlement Fund.

IX. LEAD PLAINTIFFS' REQUESTS FOR AWARDS UNDER 15 U.S.C. §78u-4(a)(4)

Lead Plaintiffs City of Dearborn Heights Act 345 Police & Fire Retirement System and Deka Investment GmbH also seek approval for awards of $2,700 and $34,375.03, respectively, in recognition of the time and resources they spent representing the Classes. The PSLRA allows an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" to "any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). As set forth in the Riley and Zinkand Declarations, Lead Plaintiffs took active roles in prosecuting the Action, including: (1) overseeing Co-Lead Counsel with regard to issues and developments in the Action; (2) reviewing draft filings and other important documents and materials related to the case; and (3) consulting with Co-Lead Counsel on litigation and settlement strategy. Riley Decl., App. 300 – App. 301,¶¶6, 8; Zinkand Decl., App. 305 – App. 308, ¶¶6, 10-11. Many courts, including this one, have approved such awards under the PSLRA to compensate class representatives for the

time and effort they spend on behalf of the class. *Isolde v. Trinity Indus., Inc.*, No. 3:15-cv-02093-K, slip op. (N.D. Tex. Mar. 31, 2020); *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 3:16-cv-00783-K, slip op. (N.D. Tex. June 3, 2019); *see also J.C. Penney*, 2017 WL 6590976, at *6 (finding requested awards to lead plaintiffs were reasonable where they "complied with discovery requests, reviewed pleadings and motions, participated in a deposition, monitored settlement negotiations and communicated with counsel).

To date, no Class Member has objected to such awards to Lead Plaintiffs.

X. CONCLUSION

For all the foregoing reasons, Lead Plaintiffs and Co-Lead Counsel respectfully request that the Court approve the Settlement and Plan of Allocation as fair, reasonable and adequate, confirm certification of the Classes, and award attorneys' fees of 30% of the Settlement Amount, and expenses of $715,742.17, plus interest on both amounts. Finally, Lead Plaintiffs request approval of awards pursuant to 15 U.S.C. §78u-4(a)(4).

DATED: December 8, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on all counsel of record on December 8, 2020 via CM/ECF, in accordance with the Federal Rules of Civil Procedure.

/s/ Joe Kendall
JOE KENDALL