

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

PENSION TRUST FUND FOR OPERATING
ENGINEERS, Individually and on Behalf of All
Others Similarly Situated,

Plaintiff,

v.

DEVRY EDUCATION GROUP, INC., DANIEL
HAMBURGER, RICHARD M. GUNST,
PATRICK J. UNZICKER, AND
TIMOTHY J. WIGGINS,

Defendants.

Case No. 1:16-CV-05198

Hon. Mary M. Rowland

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

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Lead Counsel Labaton Sucharow LLP (“Labaton Sucharow”), respectfully submits this memorandum of law in support of its motion seeking: (i) an award of attorneys’ fees on behalf of Plaintiffs’ Counsel;¹ (ii) the payment of litigation expenses incurred by Plaintiffs’ Counsel; and (iii) the costs and expenses incurred by Lead Plaintiff in connection with litigating the claims in the above-captioned class action on behalf of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 (the “PSLRA”).²

PRELIMINARY STATEMENT

As detailed in the Settlement Agreement, Defendants have agreed to cause \$27,500,000 to be paid to secure a settlement of the claims in this class action and related claims (the “Settlement”). This recovery is a very favorable result for the Settlement Class when evaluated in light of all the relevant circumstances, including the risks associated with pursuing the Action through summary judgment and trial.

Lead Counsel has not received any compensation for its successful prosecution of this case and respectfully requests that Plaintiffs’ Counsel be awarded an attorneys’ fee equal to 27% of the Settlement Fund, which will include any accrued interest; that Plaintiffs’ Counsel be paid out of the Settlement Fund for litigation expenses in the amount of \$184,192.69; and that Lead Plaintiff’s request for reimbursement in the amount of \$10,000.00, pursuant to the PSLRA, be approved. This 27% fee request is consistent with fees awarded in comparable class action settlements in district courts within the Seventh Circuit. The requested fee is also consistent with

¹ Plaintiffs’ Counsel consist of Lead Counsel; Spector, Roseman & Kodroff, PC, and Liaison Counsel Wexler Wallace LLP.

² All capitalized terms not otherwise defined herein have the same meaning as those in the Stipulation of Settlement, dated as of August 29, 2019 (the “Settlement Agreement”) (ECF No. 146-1).

a pre-settlement agreement with Lead Plaintiff Utah Retirement Systems (“URS” or “Lead Plaintiff”) and has been approved by URS. *See* Ex. 1 at ¶7.³

As discussed herein, as well as in the Villegas Declaration, it is respectfully submitted that the requested fee is fair and reasonable when considered under the applicable standards in the Seventh Circuit, particularly in view of the substantial risks of pursuing the Action, the considerable litigation efforts undertaken here, and the wholly contingent nature of the representation. Furthermore, the expenses requested are reasonable in amount and were necessarily incurred for the successful prosecution of the Action. The requested fees and expenses should therefore be awarded in full.

ARGUMENT

I. LEAD COUNSEL’S REQUEST FOR ATTORNEYS’ FEES OF 27% OF THE COMMON FUND SHOULD BE APPROVED

A. Counsel Is 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 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*

³ All exhibits referenced herein are annexed to the Declaration of Carol C. Villegas in Support of (I) Lead Plaintiff’s Motion for Approval of Class Action Settlement and Plan of Allocation and (II) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Litigation Expenses (the “Villegas Declaration” or “Villegas Decl.”), filed herewith. 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 Villegas Declaration and the second alphabetical reference is to the exhibit designation within the exhibit itself. The Villegas Declaration is an integral part of this motion and is incorporated herein by reference. For the sake of brevity, the Court is respectfully referred to the Villegas Declaration for, *inter alia*, a detailed description of the allegations and claims, the procedural history of the Action, the risks faced by the Settlement Class in pursuing litigation, the efforts that led to a settlement, and a description of the services provided by Plaintiffs’ Counsel. Citations to “¶” in this motion refer to paragraphs in the Villegas Declaration.

Co. v. Van Gemert, 444 U.S. 472, 478 (1980).⁴ 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.* (“*Florin I*”), 34 F.3d 560, 563 (7th Cir. 1994).

The Supreme Court has also emphasized that private securities actions, like this 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); 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. A Fee Applying the Percentage of the Fund Method Would Be Reasonable

Although courts within this Circuit “have discretion to choose either the lodestar or percentage method of calculating fees,” the Seventh Circuit has strongly endorsed the percentage method, pursuant to which fees are awarded as a percentage of the common fund, because it most closely approximates the manner in which attorneys are compensated in the marketplace for contingent work. *See Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (“it is commonplace to award the lawyers for the class a percentage of the fund . . . in recognition of the fact that most suits for damages in this country are handled on the plaintiff’s side on a contingent-fee basis”); *Taubenfeld v. AON Corp.*, 415 F.3d 597 (7th Cir. 2005) (affirming fee award under the percentage of the fund method); *see also Hale v. State Farm Mut. Automobile Ins. Co.*, No. 12-0660-DRH, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (noting that while courts have discretion, “the percentage method is employed by ‘the vast majority of courts in the Seventh Circuit”).

⁴ All internal quotations and citations are omitted unless otherwise noted.

The Seventh Circuit has recognized “that there are advantages to utilizing the percentage method in common fund cases because of its relative ease of administration.” *Florin I*, 34 F.3d at 566. *See also In re Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 573 (7th Cir. 1992) (noting it is easier to award a percentage “than it would be to hassle over every item or category of hours and expenses and what multiple to fix and so forth”); *Great Neck Capital Appreciation Inv. P’Ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400, 411 (E.D. Wis. 2002) (noting that the Seventh Circuit recognizes the advantages of the percentage of the fund, including “its relative objectivity and the fact that it is easily administered”).

C. The Requested Fee Would Be Reasonable Under the Applicable Seventh Circuit Factors

When considering the reasonableness of a requested fee award, courts in the Seventh Circuit “must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001); *see also Hale*, 2018 WL 6606079, at *7.

In applying this standard, the Seventh Circuit considers the following factors: (1) “awards made by courts in other class actions”; (2) “the quality of legal services rendered”; and (3) “the contingent nature of the case.” *Taubenfeld*, 415 F.3d at 600; *see also Synthroid*, 264 F.3d at 721 (a reasonableness determination “depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case”). Additionally, the court can also consider the agreement between plaintiff and counsel. *See Hale*, 2018 WL 6606079, at *7 (“the first benchmark of the market rate is [the] actual agreements between plaintiffs and counsel”). These factors strongly support the fee requested here.

1. A Fee Award of 27% Is Well Within the Range of Fees Awarded in Similar Cases Within the Seventh Circuit

“[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. In complex class action cases like this one, courts within the Seventh Circuit have held that percentages in the range of 33 1/3% to 40% of the recovery are appropriate. *See 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.”); *Goldsmith v. Tech. Sols. Co.*, No. 92 C 4374, 1995 WL 17009594, at *8 (N.D. Ill. Oct. 11, 1995) (“courts in this District commonly award attorneys’ fees equal to approximately one-third or more of the recovery”).

A review of attorneys’ fees awarded in class actions with comparably sized settlements within the Seventh Circuit supports the reasonableness of the 27% fee request. *See e.g., In re Groupon, Inc. Sec. Litig.*, No. 12 CV 2450, 2016 WL 3896839, at *4 (N.D. Ill. July 13, 2016) (awarding 30% of \$45 million settlement); *In re Dairy Farmers of America*, 80 F. Supp. 3d 838, 842 (N.D. Ill. Feb. 20, 2015) (awarding 33% of \$46 million settlement); *Abbott v. Lockheed Martin Corp.*, No. 06 cv 701, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015) (awarding 33% of \$62 million settlement); *Beesley v. Int’l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (awarding 33.3% of \$30 million settlement); *Retsky*, 2001 WL 1568856, at *3 (awarding 33.3% of \$14 million settlement).⁵ Fee awards of 27% or more

⁵ *See also Gupta v. Power Sols. Int’l Inc.*, Case No. 1:16-cv-9599, slip op. (N.D. Ill. May 13, 2019) (awarding 33 1/3% of \$8.5 million settlement) (Ex. 9); *Taubenfeld*, 415 F.3d at 600 (affirming the district courts’ award of 30% of the \$7.25 settlement amount); *Van Noppen v.*

also have been awarded by district courts within the Seventh Circuit in much larger settlements, including the recent class action settlement in *Hale*, in which the Court awarded 33.3% of a \$250 million settlement. *See Hale*, 2018 WL 6606079, at *13; *see also Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 959 (7th Cir. 2013) (affirming a few award of 27.5% of a \$200 million settlement); *Heekin v. Anthem, Inc.*, No. 05 cv 01908, 2012 WL 5878032, at *2 (S.D. Ind. Nov. 20, 2012) (awarding 33.3% of \$90 million settlement).

In sum, the percentage fee requested here is reasonable and comparable to percentage fee awards made within the Seventh Circuit.

2. The Quality of Legal Services Rendered

In evaluating fee requests, the Seventh Circuit considers the “quality of legal services rendered.” *Taubenfeld*, 415 F.3d at 600; *see also Silverman*, 2012 WL 1597388, at *3 (approving class counsel’s fee request and noting that “[t]he representation that Class Counsel provided to the class was significant, both in terms of quality and quantity”). Courts have acknowledged that securities actions have become even more difficult from a plaintiff’s perspective in the wake of the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the effect of which is to make it harder for investors to bring and successfully conclude securities class actions. *See, e.g., Jorling v. Anthem, Inc.*, 836 F. Supp. 2d 821, 831 (S.D. Ind. 2011) (discussing the PSLRA’s “heightened pleading requirements, making it more difficult for plaintiffs to survive a motion to dismiss, and thus receive the keys to unlock the discovery process”).

Here, Plaintiffs’ Counsel worked very hard to investigate and develop the complex claims against Defendants. Lead Counsel conducted a thorough investigation to formulate its theory of the case and develop sufficient facts to, ultimately, defeat Defendants’ second motion

Innerworkings, Inc., No. 1:14-cv-01416, slip op. at 4 (N.D. Ill. Nov. 2, 2016) (awarding 30% of \$6.025 settlement) (Ex. 9). (A compendium of unreported “slip” opinions, in alphabetical order, is Exhibit 9 to the Villegas Declaration.)

to dismiss. As detailed in the Villegas Declaration, this is a complex case involving difficult factual and legal issues on the merits, and it was subjected to an extremely rigorous defense. Given the many contested issues, it took highly skilled counsel to pursue the claims and bring about the substantial recovery that has been obtained.

Further, Lead Counsel has extensive and significant experience in the highly specialized field of securities class action litigation and is known as a leader in the field. *See* ¶97. Lead Counsel has not only used its knowledge and skill from prior cases but also developed specific expertise in the unique issues presented in this case to overcome the arguments and hurdles repeatedly put forth by Defendants.

The quality of opposing counsel is also important in evaluating the quality of the work done by Lead Counsel. *See, e.g., Beesley*, 2014 WL 375432, at *2 (“Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination.”). Here, Lead Counsel was opposed in this Action by very skilled and highly respected lawyers with well-deserved reputations for vigorous advocacy in the defense of complex civil cases such as this. In the face of this formidable opposition, Lead Counsel was able to develop the Settlement Class’s case to the point where it was able to settle the Action on terms favorable to the Settlement Class.

3. Contingent Nature of the Case

As noted by the Seventh Circuit in *Synthroid*, “the market rate for legal fees depends in part on the risk of nonpayment a firm agrees to bear.” 264 F.3d at 721. *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).

As set forth in the Villegas Declaration, Plaintiffs’ Counsel faced significant challenges to establishing liability and damages in this Action. Defendants vigorously contested the elements of scienter, falsity, reliance, loss causation and damages and would have continued to do so through summary judgment, trial, and any appeals. In the face of these very real uncertainties regarding the outcome of the case, Plaintiffs’ Counsel prosecuted this Action on a wholly contingent basis, knowing that the litigation could last for years and would require devotion of a substantial amount of attorney time and a significant advance of litigation expenses with no guarantee of compensation or reimbursement. Plainly, Plaintiffs’ Counsel here were not “assured of a paycheck.” *Florin II*, 60 F.3d at 1247. Plaintiffs’ Counsel’s assumption of this contingency fee risk, and the extensive litigation of the Action in the face of these risks, strongly supports the reasonableness of the requested fee. *See Taubenfeld*, 415 F.3d at 600 (approving requested fee and noting that “lead counsel was taking on a significant degree of risk of nonpayment with the case”).

**D. The Requested Attorneys’ Fees Are Reasonable
Applying the Lodestar Method**

While a lodestar analysis is not required, a lodestar cross check confirms the reasonableness of the fee request. *See Silverman*, 2012 WL 1597388, at * 4 (“It is unnecessary to resort to a lodestar calculation to reinforce the same conclusion.”). Under the lodestar method, the court computes fees by “multiplying the number of hours each attorney or other professional expended on the case by his or her hourly rate.” *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010). The court then typically adjusts the lodestar, by applying a multiplier, to reflect factors

such as the contingent nature of the case, and the consequent risk of non-payment (or underpayment), and the quality of work performed. *See Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir. 1998) (discussing rationale for risk multiplier and method of assessing it).

Plaintiffs' Counsel spent more than 6,600 hours of attorney and other professional support time prosecuting this Action through October 15, 2019. ¶93; Exs. 4-7. Based on Plaintiffs' Counsel's hourly rates, the total lodestar is \$3,486,985.50.⁶ *See id.* This lodestar is a function of the vigorous prosecution of the case, as described in the Villegas Declaration, which included a detailed investigation, filing of three comprehensive amended complaints, extensive motion practice on Defendants' motions to dismiss the complaints, a review of documents in connection with the mediation, and thorough mediation discussions. The hourly rates of Plaintiffs' Counsel here range from \$585 to \$975 for partners, \$675 for of counsels, and \$335 to \$625 for staff attorneys and associates. *See* Exs. 4-A to 6-A.

Lead Counsel submits that Plaintiffs' Counsel's rates are less than, or comparable to, those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2018, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. ¶92; Ex. 8. Additionally, Labaton Sucharow's rates were recently approved in *Van Noppen v. Innerworkings, Inc.*, No. 1:14-cv-01416, slip op. at 4 (N.D. Ill. Nov. 2, 2016) (Ex. 9) (awarding 30% fee award to plaintiffs' counsel in connection with \$6.025 million settlement).

⁶ The Supreme Court and courts in this Circuit have approved the use of current hourly rates, rather than historical rates, to calculate base lodestar figures in order to compensate counsel for the delay in receiving payment. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *Smith v. Vill. of Maywood*, 17 F.3d 219, 221 (7th Cir. 1994) ("A court may elect to use ... current rates ... as acceptable compensation for the delay in payment of fees"); *Skelton*, 860 F.2d at 255 n.5 ("The courts in this circuit generally use current rates").

The requested 27% fee, which would amount to \$7,425,000 (before interest), would represent multiplier of approximately 2.1 of Plaintiffs' Counsel's total lodestar. This multiplier is within the range of multipliers regularly awarded in securities class actions and other comparable litigation in the Seventh Circuit. *See, e.g., Harmon v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th Cir. 1991) ("Multipliers anywhere between 1.0 and 4.0 have been approved."); *Hale*, 2018 WL 6606079, at *14 (finding a multiplier of 2.83 reasonable).

E. Lead Plaintiff Has Approved the Requested Fee

Lead Plaintiff URS is a sophisticated institutional investor that assisted Lead Counsel with the litigation of the Action and has a sound basis for assessing the reasonableness of the fee request. *See* Ex. 1 at ¶¶1-5. Lead Plaintiff fully supports and approves the fee request. *Id.* ¶7. Furthermore, the requested fee is based on a pre-settlement agreement with URS, *see* Villegas Decl. ¶86, providing further support to the reasonableness of the requested fee. *See Synthroid*, 264 F.3d at 719 ("benchmark" of the market rate "is actual agreement" between the plaintiffs and counsel); *Hale*, 2018 WL 6606079, at *8 (same).

Further, the PSLRA was intended to encourage institutional investors like Lead Plaintiff to assume control of securities class actions in order to "increase the likelihood that parties with significant holdings in issuers, whose interests are more strongly aligned with the class of shareholders, will participate in the litigation and exercise control over the selection and actions of plaintiff's counsel." H.R. Conf. Rep. No. 104-369 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 731 (1995). Congress believed that these institutions would be in the best position to monitor the prosecution and to assess the reasonableness of counsel's fee requests. Accordingly, Lead Plaintiff's endorsement of the fee request in this PSLRA action supports its approval.

F. The Reaction of the Settlement Class to Date

The reaction of the Settlement Class to date also supports the requested fee. As of

October 31, 2019, the Claims Administrator has disseminated 65,217 Notice packets to potential Settlement Class Members and nominees informing them of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees not to exceed 27% of the Settlement Fund and payment of up to \$225,000 in expenses. *See* Ex. 3-A at ¶¶4, 41. To date, no objections have been received. Lead Counsel will address any future objections in its reply papers to be filed with the Court on November 27, 2019.

II. THE REQUESTED EXPENSES ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for payment of Plaintiffs' Counsel's litigation expenses, which were reasonably incurred and necessary to the prosecution of this 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.") (citing *Boeing*, 444 U.S. at 478).

As set forth in the Villegas Declaration, Plaintiffs' Counsel incurred \$184,192.69 in litigation expenses on behalf of the class in the prosecution of the Action. ¶¶108-116; Exs. 4-B to 6-B, 7. The largest component of expenses related to experts and consultants. Specifically, \$69,362.03, or approximately 38% of total expenses, was expended on such services. ¶111. Plaintiffs' Counsel retained experts in the fields of damages and loss causation to assist in the prosecution and resolution of the Action. These experts were valuable for the analysis and development of the claims and in connection with mediation. Lead Counsel's loss causation and damages expert also assisted Lead Counsel with the development of the proposed Plan of Allocation. Plaintiffs' Counsel utilized these experts in order to efficiently frame the issues in the

Action, gather relevant evidence, make a realistic assessment of provable damages, and structure a resolution of the Action. Lead Counsel also utilized the services of outside investigators to help develop potential witnesses in the case. *Id.*

Plaintiffs' Counsel were also required to work late hours and travel in connection with court appearances, witness meetings, and the mediations. Work-related transportation, lodging, and meal costs totaled approximately \$27,389.14, or approximately 15% of aggregate expenses. ¶113; Exs. 4-B to 6-B. Any first class airfare has been reduced to economy rates.

Lead Counsel also incurred expenses in connection with the mediation, totaling \$37,750.00 (or approximately 21% of total expenses). ¶114; Ex. 4-B.

Another component of the litigation expenses was for litigation support services, which were needed to host the electronic documents produced in the Action. These charges amounted to \$8,259.25, or approximately 5% of total expenses. ¶112; Ex. 4-B. The expenses here also include the costs of electronic factual and legal research (\$22,932.31 or approximately 13% of total expenses). Exs. 4-B to 6-B. It is standard practice for attorneys to use LEXIS/Nexis and Westlaw to assist them in researching legal and factual issues.

The other expenses for which Lead Counsel seeks payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients who are billed by the hour. These expenses include, among others, duplicating costs, long distance telephone and conference call charges, service fees, and filing fees.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for payment of expenses in an amount not to exceed \$225,000. The amount of litigation expenses requested, \$184,192.69, is below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

III. LEAD PLAINTIFF'S REQUEST FOR COSTS AND EXPENSES PURSUANT TO THE PSLRA

Lastly, in connection with its request for payment of litigation expenses, Lead Counsel also seeks reimbursement of \$10,000.00 for the costs and expenses of Lead Plaintiff in connection with its efforts to oversee and assist Lead Counsel with the litigation of the Action. *See* Ex. 1 at ¶¶8-9.

The PSLRA specifically provides that an “award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class” may be made. 15 U.S.C. §78u-4(a)(4). Lead Plaintiff took an active role in the litigation and has been fully committed to pursuing the class’s claims since it became involved in the litigation. For instance, Lead Plaintiff reviewed documents filed in the Action and assisted counsel with responding to Defendants’ discovery requests. Lead Plaintiff also prepared for, traveled to, and participated in both mediations in the case, which took place in California and New York. *See* Ex. 1 at ¶¶4-5. These efforts required Lead Plaintiff to dedicate time and resources to the Action that it would have otherwise devoted to its regular duties. The requested reimbursement amounts are based on the hours that Lead Plaintiff committed to these activities. *Id.* ¶¶8-9.

Numerous courts have approved reasonable awards to compensate plaintiffs for the time and effort they spent on behalf of a class. *See, e.g., In re Groupon, Inc. Sec. Litig.*, 2016 WL 3896839, at *4 (awarding class plaintiffs \$5,000 each for their time and expenses incurred in prosecuting the action); *In re ITT Educ. Servs., Inc. Sec. Litig. (Indiana)*, No. 14 cv 01599, 2016 WL 1162534 at *5 (S.D. Ind. Mar. 24, 2016) (awarding institutional lead plaintiff \$10,000 for reasonable costs and expenses directly related to its representation of the settlement class).

Accordingly, it is respectfully submitted that the amount sought by Lead Plaintiff is reasonable and should be granted.

CONCLUSION

For the foregoing reasons, Lead Counsel respectfully requests that the Court award (i) attorneys' fees in the amount of 27% of the Settlement Fund; (ii) payment of litigation expenses totaling \$184,192.69, plus interest incurred at the same rate as the Settlement Fund; and (iii) reimbursement of \$10,000.00 to Lead Plaintiff.⁷

Dated: November 1, 2019

By: /s/ Carol C. Villegas

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⁷ A proposed order will be submitted with Lead Counsel's reply papers, after the deadline for objecting has passed.

CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2019, I caused the foregoing document to be electronically filed, using the Court's CM/ECF system, which will cause the document to be sent electronically to the registered participants as identified on the attached Electronic Mail Notice List.

/s/ Carol C. Villegas

Carol C. Villegas

Mailing Information for a Case 1:16-cv-05198

Pension Trust Fund for Operating Engineers v. DeVry Education Group, Inc. et al.

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Manual Notice List

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- (No manual recipients)