

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION**

**IN RE 2014 RADIOSHACK ERISA
LITIGATION**

MASTER FILE NO. 4:14-cv-00959-O

THIS DOCUMENT RELATES TO:

ALL ACTIONS

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE
CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	SUMMARY OF LITIGATION EFFORTS	3
	A. Summary of the Litigation.....	3
	B. Investigation of Claims and Discovery	4
	C. Settlement Negotiations.....	6
	D. The Proposed Settlement.....	6
III.	THE REQUESTED ATTORNEYS’ FEE AWARD IS REASONABLE.....	7
	A. Legal Standard Governing Awards of Attorneys’ Fees.....	7
	B. The <i>Johnson</i> Factors Confirm the Reasonableness of the Fee Request	9
	1. The Time and Labor Required to Represent the Clients	9
	2. The Novelty and Difficulty of the issues in the Action.....	10
	3. The Skill Required to Perform the Legal Services Properly	11
	4. The Preclusion of Other Employment.....	13
	5. The Customary Fee Charged for Those Services in the Relevant Community	14
	6. The Contingent Nature of the Fee	15
	7. The Time Limitations Imposed by the client or Circumstances.....	16
	8. The Amount Involved and the Results Obtained.....	16
	9. The Experience, Reputation, and Ability of Class Counsel	17
	10. The Undesirability of the Action.....	17
	11. The Nature and Length of the Processional Relationship with the Client	18
	12. Awards in Similar Cases	18
	C. The Reaction of the Settlement Class to the Fee Request Provides Powerful Evidence that the Requested Fee is Fair and Reasonable	20

IV.	THE COURT SHOULD REIMBURSE CO-LEAD CLASS COUNSEL FOR EXPENSES INCURRED IN CONNECTION WITH THIS LITIGATION	21
V.	THE REQUESTED NAMED PLAINTIFF CASE CONTRIBUTION AWARDS ARE FAIR AND REASONABLE	22
VI.	CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
Federal Cases	
<i>In re Advanta Corp. ERISA Litig.</i> , No. 09-cv-4974, 2014 WL 7692446 (E.D. Pa. Jan. 9, 2014)	25
<i>Billitteri v. Secs. Am., Inc.</i> , Nos. 09-cv-1568, 09-cv-1833, 2011 WL 3585983 (N.D. Tex. Aug. 4, 2011)	13
<i>In re BP p.l.c. Sec. Litig.</i> , No. 10-cv-4214, 2015 WL 6674576 (S.D. Tex. Oct. 30, 2015)	10
<i>Burford v. Cargill, Inc.</i> , No. 05-cv-0283, 2012 WL 5471985 (W.D. La. Nov. 8, 2012)	8, 17
<i>In re Chesapeake Energy Corp. 2012 ERISA Class Litig.</i> , 286 F.R.D. 621 (W.D. Okla. 2012)	12
<i>City of Omaha Police & Fire Ret. Sys. v. LHC Grp.</i> , No. 12-cv-1609, 2015 WL 965696 (W.D. La. Mar. 3, 2015)	<i>passim</i>
<i>Collins v. Sanderson Farms, Inc.</i> , 568 F. Supp. 2d 714 (E.D. La. 2008)	8
<i>Dalton v. Old Second Bancorp, Inc., et al.</i> , No. 11-cv-01112 (N.D. Ill. May 14, 2013)	20
<i>In re Delphi Corp. Securities, Derivative & ERISA Litig.</i> , No. 05-cv-1725 (E.D. Mich. May 12, 2010)	14
<i>In re Enron Corp. Sec. & ERISA Litig.</i> , MDL No. 1446 (S.D. Tex. July 24, 2006)	25
<i>In re Enron Corp. Sec., Derivative & “ERISA” Litig.</i> , 228 F.R.D. 541 (S.D. Tex. 2005)	11, 25
<i>In re Fannie Mae ERISA Litig.</i> , No. 09-cv-1350 (S.D.N.Y. Aug. 13, 2015)	25
<i>Griffin v. Flagstar Bancorp. Inc.</i> , No. 10-cv-10610, 2013 WL 6511860 (E.D. Mich. Dec. 12, 2013)	25
<i>Hargrave v. TXU Corp.</i> , No. 02-cv-2573 (N.D. Tex. Mar. 25, 2008)	14, 19

In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig.,
851 F. Supp. 2d 1040 (S.D. Tex. 2012)..... 17, 18, 21, 23

Heidtman v. County of El Paso,
171 F.3d 1038 (5th Cir. 1999)..... 14

Humphrey v. United Way of Tex. Gulf Coast,
802 F. Supp. 2d 847 (S.D. Tex. 2011).....24

Johnson v. Ga. Highway Express, Inc.,
488 F.2d 714 (5th Cir. 1974).....*passim*

Kemp v. Unum Life Ins. Co. of Am.,
No. 14-cv-0944, 2015 WL 8526689 (E.D. La. Dec. 11, 2015).....*passim*

King v. United SA Fed. Credit Union,
744 F. Supp. 2d 607 (W.D. Tex. 2010) 12

In re Level 3, Inc. ERISA Litig.,
No. 09-cv-0658 (D. Colo. Mar. 26, 2012)..... 20, 25

Mertens v. Hewitt Associates,
508 U.S. 248 (1993) 11

Mogck v. Unum Life Ins Co. of America.,
289 F. Supp. 2d 1181 (S.D. Cal. 2003) 15

Mora v. Albertson’s, L.L.C.,
No. 15-cv-00071, 2015 WL 3447963 (W.D. Tex. May 28, 2015)..... 11

In re National City Corp. ERISA Litig.,
No. 08-cv-70000 (N.D. Ohio Nov. 30, 2010) 14

In re Pool Products Distribution Mkt. Antitrust Litig.,
MDL No. 2328, 2016 WL 235781 (E.D. La. Jan. 20, 2016)..... 20, 21

In re RadioShack Corp. ERISA Litig.,
No. 08-md-1875 (N.D. Tex. Feb. 8, 2011).....20

In re R.H. Donnelley Corp. ERISA Litig.,
No. 09-cv-7571 (N.D. Ill. Nov. 14, 2012)..... 20, 25

Romaguera v. Gegenheimer,
162 F.3d 893 (5th Cir. 1998) 16

Schwartz v. TXU Corp.,
No. 02-cv-2243, 2005 WL 3148350 (N.D. Tex. Nov. 8, 2005) 15

<i>Slipchenko v. Brunel Energy, Inc.</i> , No. 11-cv-1465, 2015 WL 338358 (S.D. Tex. Jan. 23, 2015)	24
<i>Union Asset Mgmt. Holding A.G. v. Dell, Inc.</i> , 669 F.3d 632 (5th Cir. 2012)	8
<i>Walker v. U.S. Dept. of Housing and Urban Development</i> , 99 F.3d 761 (5th Cir. 1996)	16
<i>In re Wash. Mut., Inc. Sec., Derivative & ERISA Litig.</i> , No. 08-cv-1919 (W.D. Wash. Jan. 7, 2011)	14
<i>In re YRC Worldwide, Inc. ERISA Litig.</i> , No. 09-cv-2593 (D. Kan. Mar. 6, 2012)	20

Federal Statutes

Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, <i>et seq.</i>	<i>passim</i>
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Rules

FED. R. CIV. P. 23(h)	8
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Other Authorities

<i>Newberg on Class Actions</i> § 15:83 (5th ed.)	8
Manual for Complex Litigation, § 21.62 (4th ed. 2004)	22, 23
Theodore Eisenberg & Geoffrey P. Miller, <i>Incentive Awards to Class Action Plaintiffs: An Empirical Study</i> , 53 UCLA L. REV. 1303, 1310 (2006)	23

Named Plaintiffs Jeffrey Snyder, Manoj P. Singh, and William A. Gerhart (“Plaintiffs”), on behalf of the Settlement Class (defined below) of participants in the RadioShack 401(k) Plan and the RadioShack Puerto Rico 1165(e) Plan (the “Plans”), respectfully submit this memorandum of law in support of Plaintiffs’ Motion For Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards for the Named Plaintiffs.

I. INTRODUCTION

On January 27, 2016,¹ this Court preliminarily approved the proposed Settlement in this Action² between the Plaintiffs and the Trustee Defendants (the “Settling Parties”) for \$900,000.00 (the “Settlement”).³ In connection with Plaintiffs’ request for final approval of the Settlement, Plaintiffs seek approval of this request for attorneys’ fees, reimbursement of expenses, and Case Contribution Awards for the three Plaintiffs, Jeffrey Snyder, Manoj P. Singh, and William A. Gerhart.

Class Counsel, experienced in ERISA-based⁴ class actions, understood and accepted the risks inherent in this type of litigation, and obtained a meaningful recovery for the Settlement Class after three and a half years of hard-fought litigation. Despite formidable opposition undertaken by the Trustee Defendants, including briefing regarding the Trustee Defendants’ motion to dismiss and Plaintiffs’ motion for class certification, Class Counsel was able to

¹ The Court’s initial preliminary approval order was entered January 25, 2016 (Dkt. No. 152), however, a corrected order was entered on January 27, 2016 (Dkt. No. 156). The January 27, 2016 Preliminary Approval Order itself was further modified by Order entered on March 23, 2016 which extended all pending due dates by two weeks.

² All capitalized, undefined terms have the meanings ascribed to them in the Class Action Settlement Agreement and Release Between Plaintiffs and Defendants Wells Fargo Bank, N.A. and Banco Popular De Puerto Rico (the “Settlement Agreement”), which is attached as Exhibit 1 (APP-1-75) to the Declaration of Mark K. Gyandoh in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Plan of Allocation and Request for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Case Contribution Awards to the Plaintiffs (the “Gyandoh Decl.”).

³ Plaintiffs’ allegations against the RadioShack Defendants (the “Non-Settling Defendants”) have not been settled and are still being prosecuted. The only effect this Settlement has on those allegations is a potential set-off in case of complete recovery.

⁴ Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*

sufficiently develop and prosecute the Action, which enabled them to engage in a productive and well-informed settlement process under the auspices of the John Bickerman, a well-respected mediator experienced in complex litigation such as this.

In all, Class Counsel has submitted declarations attesting to spending more than 4,800 hours litigating this Action.⁵ As compensation for these substantial efforts and the achievement of obtaining an excellent recovery, Class Counsel respectfully request that the Court award attorneys' fees in the amount of \$270,000, representing thirty percent (30%) of the Settlement Payment (the "Fee Request"), and reimbursement of Co-Lead Class Counsel's out-of-pocket expenses incurred in connection with the litigation of this Action in the amount of \$40,616.03. Class Counsel submits that these requests are fully justified by the facts of this case and by the applicable law.⁶

As discussed in greater detail below, the Fee Request is also appropriate in light of the fact that the lodestar "cross-check" yields a "fractional" multiplier of 0.49. Given the relative liability involved with respect to the Trustee Defendants vis-à-vis Plaintiffs' breach of fiduciary duty claims, and because this Settlement only represents a partial settlement, Class Counsel only apportioned 20% of the 4,800 plus hours billed to this case to determine the multiplier. Even with this adjustment, the Fee Request represents a fraction of the actual amount of time expended by Class Counsel in this Action. Following widespread dissemination of the Settlement terms to Settlement Class Members by both direct mail (the Class Notice) and internet and newspaper

⁵ It should also be noted, as described in greater detail herein, that the fee requested does not reflect the significant, ongoing role Class Counsel will undertake in the administration of the Settlement.

⁶ Plaintiffs are concurrently filing their Memorandum in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Plan of Allocation ("Final Approval Memo."), incorporated herein by reference, which demonstrates why the Settlement is an excellent result for the Settlement Class and should be granted final approval.

publication (the Publication Notice), no objections to the Fee Request have been received to date.⁷ *See* Gyandoh Decl. ¶ 19.

Moreover, in light of the willingness of the Plaintiffs to pursue this Action on behalf of the Settlement Class and assist with the litigation, Class Counsel asks that the Court approve Case Contribution Awards in the amount of \$5,000 to each of the three Plaintiffs.

II. SUMMARY OF LITIGATION EFFORTS

A. Summary of the Litigation

Plaintiffs Singh, Snyder, and Gerhart filed their initial complaints on November 26, 2014, December 5, 2014, and December 17, 2014, respectively, alleging that the Trustee Defendants and Non-Settling Defendants breached their fiduciary duties to the Plans and their participants under ERISA by retaining the RadioShack Stock Fund as an investment option in the Plans when a reasonable fiduciary using the “care, skill, prudence, and diligence... that a prudent man acting in a like capacity and familiar with such matters would use” would have done otherwise. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1). On January 9, 2015, the Court entered an Order consolidating the three actions and appointing Kessler Topaz Meltzer & Check, LLP (“KTMC”) as Interim Lead Class Counsel Committee Chair, appointing Stull, Stull & Brody (“SSB”) and Connelly Wells & Gray LLP (“CWG”) as Interim Lead Class Counsel Committee Members, and appointing Lackey Hershman L.L.P. (“Lackey Hershman”) as Interim Liaison Class Counsel. Dkt. No. 29.

On February 5, 2015, RadioShack filed for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. Shortly thereafter, on February 9, 2015, Plaintiffs filed a consolidated complaint to govern the

⁷ As set forth in the Class Notice, the deadline for Settlement Class members to file objections is June 20, 2016. If any objections to the Fee Request are received after the date of this submission, Class Counsel will address them in a supplemental brief to be filed with the Court on or before July 1, 2016.

Actions. Dkt. No. 39. On February 13, 2015, the Court stayed all proceedings in the District Court pending the outcome in the United States Bankruptcy Court. Dkt. No. 43. Soon after RadioShack filed for bankruptcy, Class Counsel retained Michael Etkin of Lowenstein Sandler to assist Class Counsel in navigating through Bankruptcy Court. Mr. Etkin's declaration summarizing the work performed by him in connection to this attached as Exhibit 7 to the Gyandoh Decl. (APP-190-197). On May 18, 2015, the bankruptcy stay was lifted and the litigation resumed in this Court. Dkt. No. 53.

On May 18, 2015, Plaintiffs filed their Amended Consolidated Class Action Complaint, removing RadioShack as a Defendant given its bankruptcy filing. Dkt. No. 66. All Defendants moved to dismiss the Complaint. Briefing on the motions to dismiss was completed on November 17, 2015 (Dkt. Nos. 123-125). In the interim, on November 5, 2015, Plaintiffs moved for class certification. Dkt. Nos. 114-116. On November 25, 2015, the Court granted the Settling Parties Joint Motion to Stay as to the Trustee Defendants for settlement purposes. Dkt. No. 130. This Action, however, continued against the Non-Settling Defendants. On January 25, 2016, the Court granted the Non-Settling Defendants' motion to dismiss but permitted Plaintiffs to file an amended complaint (Dkt. No. 153). Over the Non-Settling Defendants' opposition, on February 9, 2016, the Court granted Plaintiffs' request to stay the case pending the filing of an amended complaint and decision on the Non-Settling Defendants' motion to dismiss same. Dkt. No. 164. On February 15, 2016, Plaintiffs filed their Second Amended Consolidated Class Action Complaint (the "Second Amended Complaint"), and briefing on the Non-Settling Defendants' motion to dismiss the same closed on April 11, 2016 (Dkt. Nos. 171, 172, 177, 179).

B. Investigation of Claims and Discovery

Class Counsel vigorously litigated this Action and has continued to do so as to the Non-Settling Defendants. Prior to initiating the Action, Class Counsel carefully vetted Plaintiffs'

claims over several months of investigation. They then prepared initial and amended complaints containing details discerned through their extensive and thorough investigation, moved for and obtained consolidation of the initially separately filed actions, and successfully opposed Defendants' motion to stay due to the Bankruptcy Action. Moreover, prior to settling with the Trustee Defendants, Class Counsel: (i) negotiated and submitted a scheduling order and subsequent amendments thereto; (ii) responded to the Trustee and Non-Settling Defendants' three motions to dismiss; and (iii) filed Plaintiffs' opening motion for class certification. Class Counsel also actively engaged in discovery, including: (i) serving and responding to discovery requests; (ii) negotiating a protective order on confidentiality; (iii) serving Freedom of Information Act requests on the Department of Labor ("DOL");⁸ (iv) serving subpoenas on relevant third-parties and obtaining documents in response thereto;⁹ (v) preparing and exchanging initial disclosures; (vi) negotiating with the Non-Settling Defendants for the production of thousands of pages of documents previously produced by RadioShack to the DOL; and (vii) preparing for and traveling across the country to attend depositions of the Named Plaintiffs in connection with the class certification discovery.¹⁰ Additionally, Class Counsel has actively participated in the Bankruptcy Action, negotiating for and securing valuable concessions and protections of the interests of the Plaintiffs and proposed Class, including the preservation of

⁸ As noted in RadioShack's December 24, 2014 Form 11-K, on November 14, 2014, RadioShack received written notification from the DOL that the DOL would be conducting an official investigation beginning December 9, 2014 to determine if RadioShack's 401(k) Plan was operating in compliance with Title I of ERISA. The letter from the DOL indicated that its review would cover "Plan years 2011 through the present." Given that the time period concerning the DOL's investigation overlapped with Class Period in the instant Action, Plaintiffs actively sought information and documentation from the Department of Labor.

⁹ For example, Plaintiffs spent several weeks negotiating a lengthy production protocol with Lockton Investment Advisors, LLC – a third-party that performed services for RadioShack Corp.'s 401(k) plans during the class period, and upon which Plaintiffs served a subpoena. The protocol was executed on October 8, 2015, and production of just over 3,000 documents spanning roughly 21,710 was produced.

¹⁰ Plaintiff Snyder sat for a deposition on November 16, 2015, in Florida, and Plaintiff Gerhart sat for a deposition in Texas on November 23, 2015. Each deposition took approximately seven hours.

any documents related to this litigation by RadioShack. The investigative and discovery efforts undertaken have provided Class Counsel with more than sufficient information to determine that the Settlement with the Trustee Defendants is in the best interests of the Settlement Class.

C. Settlement Negotiations

On November 24, 2015, the Settling Parties participated in a full-day mediation session before John Bickerman,¹¹ a well-respected mediator experienced in complex financial matters. The Settlement negotiations were intense and arm's-length. During the mediation, the Parties engaged in spirited debate as to critical legal and factual issues concerning liability and damages. After eight hours of intense negotiations, the Settling Parties agreed in principle to a settlement with the Trustee Defendants. Thereafter, the negotiation of the precise Settlement terms took the Parties weeks before all the terms were memorialized. Indeed, the negotiations were contentious with the Parties proceeding practically line by line through the Settlement Agreement. Throughout the litigation and extensive mediation process, Class Counsel was cognizant of the strengths and weaknesses of Plaintiffs' claims and Trustee Defendants' defenses. The arm's-length nature of the settlement negotiations strongly supports the conclusion that the proposed Settlement is fair, reasonable, and adequate.

D. The Proposed Settlement

The Settlement provides that the Trustee Defendants will pay \$900,000.00 to be allocated to Settlement Class Members pursuant to the proposed Plan of Allocation discussed in greater detail in the Final Approval Memo. *See* Final Approval Memo. at Section V. In exchange, Plaintiffs and the Plans will dismiss their claims against the Trustee Defendants as set forth more fully in the Settlement Agreement. The Settlement Agreement also provides for the payment of

¹¹ *See* <http://www.bickerman.com/john-g-bickerman>.

settlement administration expenses, attorneys' fees, and Case Contribution Awards, which are subject to Court approval. As noted above, this Settlement has no bearing on the claims Plaintiffs have asserted and continue to pursue against the Non-Settling Defendants.

III. THE REQUESTED ATTORNEYS' FEE REQUEST IS REASONABLE

Class Counsel seeks \$270,000 in attorneys' fees, which is thirty percent (30%) of the Settlement Payment. This requested amount is significantly lower than Class Counsel's time billed for this Action. Based on the total billable hours of 4,873.04 spent on this Action as of June 7, 2016 and current billing rates, Plaintiffs' Counsel's¹² combined lodestar is \$2,733,219.00. *See* Gyandoh Decl. ¶ 33.¹³ However, to reflect the fact that this is a partial settlement – for the sake of determining a lodestar cross-check – Plaintiffs only apportion 20% of their lodestar to this Settlement. Even with this adjustment, the fee sought here would result in a fractional multiplier of 0.49. Class Counsel also seeks reimbursement of litigation-related expenses of \$40,616.03.

A. Legal Standard Governing Awards of Attorneys' Fees

In *Union Asset Management Holding A.G.*, with respect to “common fund” cases, the Fifth Circuit endorsed district courts' use of either the percentage or lodestar method cross-checked with the twelve-factor framework set forth in *Johnson v. Georgia Highway Express, Inc.*, specifically stating, “[w]e join the majority of circuits in allowing our district courts the flexibility to choose between the percentage and lodestar methods in common fund cases, with

¹² “Plaintiffs' Counsel” means Class Counsel and Lowenstein Sandler LLP, Robbins Arroyo LLP and Lackey Hershman L.L.P. who did approved work on this case.

¹³ These hours do not include any of the time Class Counsel have spent preparing this fee application or finalizing the motion for final approval of the Settlement, and will necessarily not include the time spent preparing for the July 18, 2016 Fairness Hearing, or any of the post-approval work that will be required to ensure that the Settlement is fully effectuated pursuant to the terms of the Settlement Agreement and the Court-approved Plan of Allocation. Class Counsel estimates that these additional efforts will require dozens of hours of additional attorney and paralegal time.

their analyses under either approach informed by the *Johnson* considerations.” See *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717, 720 (5th Cir. 1974)).

“District courts in [the Fifth] Circuit regularly use the ‘blended percentage method’ or ‘hybrid percentage method’ with a *Johnson* reasonableness check.” *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12-cv-1609, 2015 WL 965696, at *3 (W.D. La. Mar. 3, 2015). The Fifth Circuit has endorsed a “benchmark” of one-third of a common fund in awarding attorneys’ fees in a settlement. See *Kemp v. Unum Life Ins. Co. of Am.*, No. 14-cv-0944, 2015 WL 8526689, at *9 (E.D. La. Dec. 11, 2015) (referencing the “1/3 benchmark”). See also *City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *4 (“It is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third”). Indeed, as the *Kemp* court noted, “attorney fees awarded as percentages of a common fund usually range between 20 and 30%, with 50% as an upper limit.” *Kemp*, 2015 WL 8526689, at *8 (citing *Newberg on Class Actions* § 15:83 (5th ed.)). Furthermore, the *Kemp* court elaborated, “it is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third.” *Kemp*, 2015 WL 8526689, at *8 (collecting cases).¹⁴

Ultimately, the Court’s task in assessing the Fee Request by reference to the *Johnson* factors is to “ensure that attorney fees are ‘reasonable.’” *Kemp*, 2015 WL 8526689, at *8 (citing FED. R. CIV. P. 23(h)). See also *Kemp*, 2015 WL 8526689, at *9 (“The *Johnson* factors are intended to ensure a reasonable fee.”). In determining whether an attorney fee award is reasonable, and whether an upward or downward adjustment is warranted, courts consider the

¹⁴ See also *Burford v. Cargill, Inc.*, No. 05-cv-0283, 2012 WL 5471985, at *6 (W.D. La. Nov. 8, 2012) (noting an “award of one-third of the common fund is reasonable and typical”); *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 729 (E.D. La. 2008) (“it is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third.”).

following factors: (1) the time and labor required to represent the client or clients; (2) the novelty and difficulty of the issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson*, 488 F.2d at 717-20.

Plaintiffs respectfully submit that application of the *Johnson* factors strongly supports a finding that the Fee Request amounting to 30% of the Settlement Payment here is eminently reasonable.

B. The *Johnson* Factors Confirm the Reasonableness of the Fee Request¹⁵

1. The Time and Labor Required to Represent the Clients

“Although hours claimed or spent on a case should not be the sole basis for determining a fee... they are a necessary ingredient to be considered.” *Kemp*, 2015 WL 8526689, at *9 (citing *Johnson*, 488 F.2d at 717). Here, Class Counsel has submitted declarations attesting to spending more than 4,800 hours litigating the Action with respect to the Trustee Defendants.¹⁶ From the outset of this Action, Class Counsel worked diligently, requesting and reviewing documents produced by Defendants, opposing the Trustee Defendants’ (and Non-Settling Defendants’) motions to dismiss, fully briefing their motion for class certification, actively pursuing and responding to discovery, participating in a full-day mediation session, and ultimately negotiating

¹⁵ “Even though the *Johnson* factors must be addressed to ensure that the resulting fee is reasonable, not every factor need be necessarily considered.” *City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *5. As noted below, the seventh and eleventh *Johnson* factors are not applicable to this Action.

¹⁶ As explained above, for purposes of this Settlement, Class Counsel are only attributing twenty percent (20%) of their total time spent litigating this Action for purposes of a lodestar cross-check.

a fair and reasonable Settlement on behalf of the Settlement Class. And of course, work on the case has not ended, nor will it end anytime soon. Class Counsel will continue to incur additional hours in connection with the Settlement approval in general, including in connection with preparing for the Fairness Hearing. Gyandoh Decl. ¶ 39. Beyond that, past experience teaches that Class Counsel will spend a substantial amount of additional time over the course of the year following final approval responding to inquiries from Settlement Class members, interacting with personnel with respect to technical matters concerning the Plan of Allocation and generally shepherding implementation of the Settlement. *Id.* Accordingly, Class Counsel's lodestar is inherently conservative as it does not reflect the additional work Class Counsel will undertake in implementing the Settlement. Class Counsel therefore respectfully submit that given the significant efforts expended in the litigation, and those that still lay ahead, this factor supports the reasonableness of the Fee Request.

2. The Novelty and Difficulty of the Issues in the Action

"The second *Johnson* factor allows more substantial attorney fees when the legal or factual issues involved are ones of 'first impression.'" *Kemp*, 2015 WL 8526689, at *9 (quoting *Johnson*, 488 F.2d at 718). As the Fifth Circuit explained in *Johnson*:

Cases of first impression generally require more time and effort on the attorney's part. Although this greater expenditure of time in research and preparation is an investment by counsel in obtaining knowledge which can be used in similar later cases, he should not be penalized for undertaking a case which may 'make new law.' Instead, he should be appropriately compensated for accepting the challenge.

Johnson, 488 F.2d at 718.

As discussed in greater detail in the Final Approval Memo., ERISA litigation in general, and this type of "company stock" Action in particular, are both exceedingly complex. Numerous courts have recognized the inherently complex nature of ERISA litigation. *See, e.g., In re BP*

p.l.c. Sec. Litig., No. 10-cv-4214, 2015 WL 6674576, at *9 (S.D. Tex. Oct. 30, 2015) (“ERISA is a complex statutory and regulatory apparatus”); *Mora v. Albertson’s, L.L.C.*, No. 15-cv-00071, 2015 WL 3447963, at *6 (W.D. Tex. May 28, 2015) (“As the Supreme Court has noted, ‘ERISA [is] an enormously complex and detailed statute’”) (citing *Mertens v. Hewitt Associates*, 508 U.S. 248, 262 (1993)); *In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 228 F.R.D. 541, 565 (S.D. Tex. 2005) (noting ERISA is a “developing and somewhat esoteric area of law.”).

The already-complicated issues of ERISA implicated in this action were further complicated vis-à-vis the Trustee Defendants, both of whom asserted they were “directed trustees” and therefore not liable for any alleged fiduciary failures. As the Non-Settling Defendants did, the Trustee Defendants would advance strong arguments in opposition to class certification and at subsequent stages of litigation. *See* Dkt. No. 97 at 9-14. Moreover, there is considerable risk with respect to the damages issue regarding the Trustee Defendants. In particular, that Plaintiffs might receive less as a result of a judgment than is provided for by the Settlement, especially given that to the best of Class Counsel’s knowledge, only four similar “company stock” ERISA class actions have gone to trial, and, in each instance, the defendants prevailed. Thus, Plaintiffs faced and would continue to face novel and difficult questions in this area of ERISA jurisprudence which were compounded by the Trustee Defendants’ allegedly limited fiduciary duties. The difficulties in establishing liability and damages in this Action support the conclusion that this *Johnson* factor is satisfied.

3. The Skill Required to Perform the Legal Services Properly

“In evaluating the third *Johnson* factor, the ‘trial judge should closely observe the attorney’s work product, his preparation, and general ability before the court.’” *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718). “This factor is evidenced where counsel

performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution.” *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 614 (W.D. Tex. 2010).

Here, Class Counsel undertook this case due to their substantial experience handling class actions, complex litigation, and claims of the type asserted here. *See* Firm Resumes and Declarations of KTMC, SSB, CWG, Lackey Hershman, Robbins Arroyo, and Lowenstein Sandler, attached to the Gyandoh Declaration as Exhibits 5-10 (APP-105-276), respectively. As demonstrated by this Court’s Order appointing Interim Lead and Liaison Class Counsel (Dkt. No. 29 at ¶ 9), Class Counsel are among the most experienced ERISA class action attorneys in the nation, and are highly qualified to prosecute this litigation. Class Counsel are qualified, experienced attorneys with broad-based, multi-jurisdictional experience in complex class action litigation, including extensive experience in the context of analogous ERISA claims based on the imprudent retention of company stock as a plan investment option. Proposed Lead Class Counsel KTMC is exceptionally qualified to serve as counsel for the Settlement Class given that the firm is one of the most experienced ERISA litigation firms in the country, strongly weighing in favor of its appointment here.¹⁷ Additionally, Committee Members CWG and SSB, and proposed Liaison Class Counsel Lackey Hershman, along with the other Plaintiffs’ Counsel, are experienced law firms that have substantially contributed to the prosecution of this Action and will continue to serve the interests of the Settlement Class. *See also* Dkt. Nos. 23 (Agreed Motion and [Proposed] Order Regarding Consolidation of ERISA Actions and Appointment of

¹⁷ As the United States District Court for the Western District of Oklahoma stated in an ERISA class action with competing motions for appointment as interim lead counsel, “the Court finds that KTMC is one of the most experienced ERISA litigation firms in the country, with particular expertise in the area of ERISA breach of fiduciary class actions.” *In re Chesapeake Energy Corp. 2012 ERISA Class Litig.*, 286 F.R.D. 621, 624 (W.D. Okla. 2012).

Interim Class Counsel). Based on their experience with these types of cases, Class Counsel expected to be challenged at every stage of the process, from the inception of the case until a settlement in principle was reached, which is precisely what occurred.

Moreover, in evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel. *See Billitteri v. Secs. Am., Inc.*, Nos. 09-cv-1568, 09-cv-1833, 2011 WL 3585983, at *7 (N.D. Tex. Aug. 4, 2011) (“[B]ecause of the extremely effective work of opposing counsel . . . The skill required here . . . certainly justifies the contemplated award”). Throughout this Action, the Trustee Defendants were represented by extremely capable counsel – Proskauer Rose LLP (counsel for Wells Fargo) and Foley & Lardner LLP (counsel for Banco Popular). Proskauer was recognized in the 2016 edition of *Chambers USA: America’s Leading Lawyers for Business* as a top-tier law firm in 61 practice areas, including garnering a Band 1 ranked practice in ERISA Litigation (Nationwide),¹⁸ whereas 72 Foley & Lardner attorneys were recognized as leading lawyers in their fields and four of the firm’s practice areas received national rankings.¹⁹ Accordingly, the professional skill and standing of both Class Counsel and opposing counsel weigh in favor of the Fee Request.

4. The Preclusion of Other Employment

“This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client’s behalf for other purposes.” *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718). As reflected by the sheer number of hours devoted by the attorneys and staff involved in

¹⁸ See <http://www.proskauer.com/news/press-releases/proskauer-achieves-top-tier-rankings-in-61-practice-areas-in-chambers-usa-2016-06-01-2016/>.

¹⁹ See <https://www.foley.com/72-foley-attorneys-recognized-as-industry-leaders-by-2016-chambers-usa-05-27-2016/>.

litigating this case, a substantial amount of their time was devoted to this case at the preclusion of other work. Moreover, “the Fifth Circuit has held that preclusion of other employment is generally subsumed in the lodestar calculation.” *City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *7 (citing *Heidtman v. County of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999)). The time spent on this case was at the expense of time that counsel could have devoted to other matters. Accordingly, the fourth *Johnson* factor supports the requested Fee Request.

5. The Customary Fee Charged for Those Services in the Relevant Community

As the Fifth Circuit specified in *Johnson*, “[t]he customary fee for similar work in the community should be considered.” *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718). This is because as the Fifth Circuit has recognized, “[i]t is open knowledge that various types of legal work command differing scales of compensation.” *Id.*

In approving fee requests in recent ERISA class action cases, courts in this Circuit and around the country have effectively endorsed the hourly rates charged by Lead Class Counsel in this case. *See, e.g., Hargrave v. TXU Corp.*, No. 02-cv-2573, Order (N.D. Tex. Mar. 25, 2008) (Dkt. No. 163 at 2). *See also In re Wash. Mut., Inc. Sec., Derivative & ERISA Litig.*, No. 08-cv-1919 (W.D. Wash. Jan. 7, 2011) (Dkt. No. 832); *In re Delphi Corp. Securities, Derivative & ERISA Litig.*, No. 05-cv-1725 (E.D. Mich. May 12, 2010) (Dkt. No. 493 at 2); *In re National City Corp. ERISA Litig.*, No. 08-cv-70000 (N.D. Ohio Nov. 30, 2010) (Dkt. No. 137 at 2). Given that the rates charged by the other Plaintiffs’ Counsel firms are similar to those approved with respect to Lead Class Counsel, Class Counsel respectfully submit that these approvals apply with equal force as to all Plaintiffs’ Counsels’ rates.

The rates charged by counsel who specialize in large-scale, complex ERISA cases are relevant “because ERISA cases involve a national standard, and . . . ERISA cases are often

considered to be complex, ERISA plaintiff cases are often undesirable, and Plaintiff's attorneys possess extensive experience in ERISA law." *Mogck v. Unum Life Ins Co. of America.*, 289 F. Supp. 2d 1181, 1191 (S.D. Cal. 2003). Furthermore, the rates charged by Plaintiffs' Counsel comport with the rates charged by law firms in the cities of Philadelphia, New York, and Dallas – the cities in which Plaintiffs' Counsel are based. Accordingly, Class Counsel respectfully submits that this *Johnson* factor is satisfied.

6. The Contingent Nature of the Fee

"The fee quoted to the client or the percentage of the recovery agreed to is helpful in demonstrating the attorney's fee expectations when he accepted the case." *Kemp*, 2015 WL 8526689, at *10 (quoting *Johnson*, 488 F.2d at 718). "This factor considers the financial risks a contingency fee arrangement places on counsel." *Kemp*, 2015 WL 8526689, at *10.

Here, Class Counsel undertook this Action on a wholly contingent basis and took the risk from the outset that they might expend a substantial amount of time and substantial sum of money pursuing this Action, yet receive no compensation whatsoever if the Action ultimately proved unsuccessful. In the face of this substantial risk, Class Counsel has dedicated substantial time and resources litigating this Action. *See* Gyandoh Decl. ¶¶ 29-32. As discussed above, the risk in this ERISA breach of fiduciary duty action was compounded by the Trustee Defendants' unique arguments/defenses. *See supra* § III.B.2. As this Court noted in an analogous action, "[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." *Schwartz v. TXU Corp.*, No. 02-cv-2243, 2005 WL 3148350, at *31 (N.D. Tex. Nov. 8, 2005). Accordingly, Class Counsel submit that this *Johnson* factor supports the Fee Request.

7. The Time Limitations Imposed by the Client or Circumstances

The seventh *Johnson* factor is subsumed in the number of hours reasonably expended and therefore does not apply. *See, e.g., Walker v. U.S. Dept. of Housing and Urban Development*, 99 F.3d 761, 772 (5th Cir. 1996).

8. The Amount Involved and the Results Obtained

“The most critical factor in determining a fee award is the ‘degree of success obtained.’” *Kemp*, 2015 WL 8526689, at *10 (quoting *Romaguera v. Gegenheimer*, 162 F.3d 893, 896 (5th Cir. 1998)). As discussed in greater detail in the Final Approval Memo., Class Counsel faced the very real possibility of recovering nothing, especially from the Trustee Defendants in this Action. *See* Final Approval Memo. at § II.B.6. Had this case not settled, the Trustee Defendants would continue to argue that, as directed trustees, their duty to act was only triggered in “limited, extraordinary circumstances where there are clear and compelling public indicators that call into serious question a company’s viability as a going concern.” *See* Dkt. No. 124 at 2-3. Accepting this argument would significantly reduce Plaintiffs’ damages recoverable against the Trustee Defendants, as the value of RadioShack Stock declined significantly during the Class Period.

For example, as of June 30, 2011,²⁰ five months before the start of the Class Period, when RadioShack Stock was trading for or \$13.31 per share, the value of RadioShack Stock in the 401(k) Plan was \$39,580,506 and the value of RadioShack Stock in the Puerto Rico Plan was \$800,131. ¶¶ 86, 89. However, as of June 30, 2014, two and a half years into the Class Period, when RadioShack Stock was trading for or \$0.99 per share, the value of RadioShack Stock in the 401(k) Plan was \$3,511,687 and the value of RadioShack Stock in the Puerto Rico Plan was down to \$119,299. ¶¶ 102, 105. The Trustee Defendants, in particular, Wells Fargo, have

²⁰ The Plan year is defined to commence on July 1 and end on the immediately subsequent June 30. ¶ 69.

argued throughout the litigation that at the earliest, their duty to act was triggered as of September 15, 2014 when Wells Fargo received instructions from RadioShack to freeze any further investments in RadioShack Stock. *See* Dkt. No. 124 at 4. Because ERISA damages are based upon the Plans' losses, if the Court were to accept this argument, it would significantly reduce Plaintiffs' damages recoverable against the Trustee Defendants because as noted above, the value of RadioShack Stock had declined significantly by September 15, 2014.. Accordingly, the Settlement Payment represents a significant portion of the Plans' likely potential losses attributable to the alleged conduct of the Trustee Defendants.

9. The Experience, Reputation, and Ability of Class Counsel

The background, experience and accomplishments of Class Counsel are discussed above in connection with the third *Johnson* factor, *supra*, as well as in the Final Approval Memorandum, and in Class and Plaintiffs' Counsel's declarations and firm resumes attached to the Gyandoh Declaration as Exhibits 5-10 (APP-105-276). Counsel humbly suggests that this factor supports approval of the Fee Request.

10. The Undesirability of the Action

With respect to the tenth *Johnson* factor, the "undesirability of the case," a sister district court recently noted that a case may be deemed "undesirable" under this factor "when the defendant is a large corporation with substantial resources, financial and otherwise, for a vigorous defense; and the legal and factual issues presented risks to recovery absent settlement." *In re Heartland Payment Systems, Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1075 (S.D. Tex. 2012); *see also Burford*, 2012 WL 5471985, at *5 (same).

The issues presented in this case rendered the case inherently risky, if not "undesirable," from the start. The Trustee Defendants – Wells Fargo and Banco Popular – are two of the largest

financial institutions in the country. Indeed, according to a 2016 Forbes article, Wells Fargo is the fourth biggest bank in the United States²¹ and as of May 2016, Popular, Inc., the financial banking services company that operates through Banco Popular de Puerto Rico and Banco Popular North America segments had a \$3.1 billion market capitalization.²² The Trustee Defendants may clearly be characterized as “undesirable” per the *In re Heartland* classification.

Moreover, as set forth above and in the Final Approval Memo., the numerous legal and factual risks assumed by Class Counsel in prosecuting this case on a contingent fee basis were substantial, most squarely that the claims are against directed trustees with potentially limited fiduciary responsibility by virtue of their directed status. The “undesirability” of this Action is further supported by the fact that only these three Plaintiffs filed cases challenging the Trustee Defendants’ conduct in connection with the losses to the Plans. That Class Counsel filed and pursued this Action against the Trustee Defendants, and ultimately secured the Settlement, despite the “undesirability” of the Action underscores that this *Johnson* factor is satisfied and weighs in favor of granting the Fee Request

11. The Nature and Length of the ProceSSIONAL Relationship with the Client

The eleventh *Johnson* factor is not applicable to this case.

12. Awards in Similar Cases

“The reasonableness of a fee may also be considered in the light of awards made in similar litigation within and without the court’s circuit.” *Kemp*, 2015 WL 8526689, at *11 (quoting *Johnson*, 488 F.2d at 719). Here, the Fee Request amounts to 30% of the Settlement Payment. As the *Kemp* court reasoned in finding this factor satisfied, “a one-third fee is within

²¹ See <http://www.forbes.com/sites/kurtbadenhausen/2016/01/07/americas-best-banks-2016/#3922144f5cc7>.

²² See <http://www.forbes.com/companies/popular/>.

the customary range awarded by courts in similar cases.” *Kemp*, 2015 WL 8526689, at *11. Accordingly, this *Johnson* factor is satisfied.

Indeed, in 2008 this Court approved a 30% fee award in an analogous ERISA company stock breach of fiduciary duty case.²³ Specifically, the Court noted it found a fee of 30% of the Settlement Fund reasonable after application of a lodestar analysis and the *Johnson* factors. The Court noted “the applicable *Johnson* factors support the reasonableness of a fee equal to 30% of the Settlement Fund,” observing:

Counsel expended a substantial amount of time and effort on the case. The case presents complex and difficult questions of law and fact, requiring specialized skill and legal ability, exhibited by class counsel. Class Counsel undertook substantial risk by accepting this case on a contingent basis.... The amount of the fees is well within the range of fees customarily awarded in similar types of cases. The amount of the fee is reasonable in light of the excellent result obtained for the Class under the circumstances. Settlement Class counsel are experienced and capable, possessing expertise in class actions generally and ERISA cases in particular.²⁴

Id. at 3. “In sum,” the Court concluded, “application of a lodestar analysis and the *Johnson* factors supports the reasonableness of the fee award.” *Id.* Accordingly, the Court awarded attorneys’ fees representing 30% of the settlement. This award therefore supports the reasonableness of the Fee Request here, which is also 30% of the Settlement Payment. That the Fee Request in this Action is reasonable is all the more confirmed by the fact that the 30% award in *Hargrave* was deemed reasonable despite the fact that the award utilized a “lodestar multiple of approximately 1.15” *see id.* at 3, whereas here, Class Counsel has a fractional, or negative multiplier. Moreover, the Fee Request of 30% here is less than the one-third award in the prior action against RadioShack for breach of fiduciary duty regarding the imprudence of plan

²³ *See Hargrave, et al. v. TXU Corp., et al.*, No. 02-cv-2573, Order (N.D. Tex. Mar. 25, 2008) (attached to Gyandoh Decl. as Exhibit 4 (APP-98-104).

²⁴ Lead Class Counsel KTMC was one of the Class Counsel in the *Hargrave* action.

investments. See *In re RadioShack Corp. ERISA Litig.*, No. 08-md-1875, Final Order and Judgment at ¶ 7 (N.D. Tex. Feb. 8, 2011) (awarding “\$800,000 which represents thirty-three and one-third percent of the Settlement Fund which the Court finds to be fair and reasonable”).²⁵

Thus, Class Counsel respectfully submits that this *Johnson* factor is satisfied.

C. The Reaction of the Settlement Class to the Fee Request Provides Powerful Evidence that the Requested Fee is Fair and Reasonable

The reaction of the Settlement Class Members, which has thus far been uniformly positive, also supports the requested fee. This factor will be re-evaluated after the deadline for objections has run, but the lack of objections to Class Counsel’s fee application to date supports the reasonableness of the Fee Request. The Class Notice was mailed to 4,424 Settlement Class Members and published in *The USA Today* and *PR Newswire*, and informed the Class of the proposed Settlement and that Class Counsel would seek up to **33%** of the Settlement in attorneys’ fees, *less than* what Class Counsel is actually seeking, as well as the procedure by which an individual Settlement Class Member could object to the fee requested by Class Counsel. The fact that, as of the date of this filing, not a single objection to Class Counsel’s Fee and Expense requests has been received is noteworthy. See, e.g., *In re Pool Products Distribution Mkt. Antitrust Litig.*, MDL No. 2328, 2016 WL 235781, at *12 (E.D. La. Jan. 20, 2016) (“the lack of objectors provides some indication that the class considers a one-third stake for the attorneys to be fair”); *Kemp*, 2015 WL 8526689, at *10 (noting that “there have been zero opt-outs or objections to the settlement” and finding this weighed in favor of conclusion “that the

²⁵ The Fee Request is also in line with fee awards in analogous ERISA actions across the country. See, e.g., *Dalton v. Old Second Bancorp, Inc., et al.*, No. 11-cv-01112 (N.D. Ill. May 14, 2013) (Order granting plaintiffs’ motion for award of attorneys’ fees representing 30% of settlement amount); *In re R.H. Donnelley Corp. ERISA Litig.*, No. 09-cv-7571 (N.D. Ill. Nov. 14, 2012) (same); *In re Level 3, Inc. ERISA Litig.*, No. 09-cv-0658 (D. Colo. Mar. 26, 2012) (same); *In re YRC Worldwide, Inc. ERISA Litig.*, No. 09-cv-2593 (D. Kan. Mar. 6, 2012) (same).

requested fee award is reasonable in light of the overall merits of the settlement.”). The absence of any objections to date strongly supports the Fee Request.

IV. THE COURT SHOULD REIMBURSE CLASS COUNSEL FOR EXPENSES INCURRED IN CONNECTION WITH THIS LITIGATION

“Typically, class action counsel who create a common fund for the benefit of the class (as counsel have done here), are entitled to reimbursement of reasonable litigation expenses from that fund.” *In re Pool Products Distribution Mkt. Antitrust Litig.*, MDL No. 2328, 2016 WL 235781, at *11 (E.D. La. Jan. 20, 2016) (citing *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1089). *See also City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *11 (“Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.”).

Here, Plaintiffs’ Counsel have advanced or incurred \$40,616.03 in out of pocket litigation expenses to date.²⁶ The costs incurred in this Action are commercially reasonable and are reflected on the books and records of each firm. A breakdown of these unreimbursed costs by category is contained in the supporting declarations and exhibits of Class and Plaintiffs’ Counsel submitted concurrently herewith. On a firm-by-firm basis, the expenses incurred are as follows:

<i>Firm</i>	<i>Expenses</i>
Kessler Topaz Meltzer & Check, LLP	\$31,812.64
Stull, Stull & Brody	\$4,167.43
Connolly Wells & Gray LLP	\$1,333.38
Robbins Arroyo LLP	\$643.65
Lackey Hershman L.L.P.	\$968.96
TOTAL	\$40,616.03

²⁶ Class Counsel are not seeking reimbursement of any expenses related to the Settlement Conference with the Non-Settling Defendants that took place on January 12, 2016 before Magistrate Judge Stickney.

Because these expenses were advanced with no guarantee of recovery, Class Counsel had a strong incentive to keep costs to a reasonable level and subsequently achieved that objective. The categories of expenses for which Counsel seek reimbursement are the type of expenses routinely charged to hourly clients and should therefore be reimbursed here.

These costs included, *inter alia*: (1) travel; (2) telephone and facsimile charges; (3) postage; (4) commercial and internal copies; (5) court fees; (6) process server; (7) mediation; and (8) computer research. These expenses incurred were necessary to secure the resolution of this litigation and are of the type regularly reimbursed by courts. *See, e.g., Kemp*, 2015 WL 8526689, at *11 (ordering reimbursement of similar litigation expenses, noting “the Court notes that such reimbursement is typical in the settlement of class actions.”); *City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *11 (finding expenses including “postage and courier,” “filing,” “mediation, online research, photocopies, staff overtime, telephone, facsimile and data, and travel (meals, hotels and transportation” were “reasonable”).

In light of the nature of this complex litigation, the expenses incurred by Counsel were both reasonable and reasonably related to the interests of Plaintiffs and the Settlement Class. Hence, Plaintiffs respectfully request that Class Counsel be fully reimbursed for their out-of-pocket expenses in this case.

V. THE REQUESTED NAMED PLAINTIFF CASE CONTRIBUTION AWARDS ARE FAIR AND REASONABLE

At the conclusion of a class action case, courts “commonly permit payments to class representatives above those received in settlement by class members generally.” *Kemp*, 2015 WL 8526689, at *7. Such awards are designed to “compensate named plaintiffs for the services they provide and burdens they shoulder during litigation.” *City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *10. *See also* Manual for Complex Litigation, § 21.62, n.971 (4th ed.

2004) (awards are “warranted for time spent meeting with class members, monitoring cases, or responding to discovery”); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. REV. 1303, 1310 (2006) (arguing that “incentive awards serve multiple goals” including compensating representative plaintiffs for costs and superior service to the class).

“In deciding whether an incentive award is warranted, courts may consider a number of factors, such as: (1) the actions the plaintiff took to protect the interests of the class; (2) the degree to which the class benefitted from those actions; and (3) the amount of time and effort the plaintiff expended in pursuing the litigation.” *Id.* (citing *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d at 1089). Analysis of the Plaintiffs’ efforts in this Action confirms the propriety of the requested Case Contribution Awards.

Here, all three of the Plaintiffs were actively involved in the litigation from the outset. Indeed, each of them maintained regular communications with Class Counsel, searched their personal files for documents and information related to the Plans, reviewed documents such as Plan-related documents and other materials, reviewed Court filings and discussed them with Class Counsel, and discussed the proposed settlement talks with Class Counsel in advance of the mediation in 2015. Moreover, the Plaintiffs also devoted many hours to responding to the Trustee Defendants’ discovery, including requests for production of documents and interrogatories. Moreover, all of the Plaintiffs prepared for depositions in connection with Plaintiffs’ motion for class certification.²⁷ In connection with the class certification motion, each Plaintiff submitted a declaration attesting to their involvement in the Action and their willingness to represent the class. *See* Dkt. No. 116, App. 137-140 (Gerhart Declaration); Dkt. No. 116,

²⁷ As noted above, Plaintiff Snyder was deposed on November 16, 2015 in Florida, and Plaintiff Gerhart was deposed on November 23, 2015 in Texas. Plaintiff Singh prepared for his deposition scheduled for December 2, 2015, but the deposition was cancelled by the Trustee Defendants on the eve of the deposition.

App. 141-144 (Snyder Declaration); Dkt. No. 116, App. 145-148 (Singh Declaration). These efforts demonstrate the Named Plaintiffs' willingness to represent the Class, a willingness for which they should be rewarded. *See, e.g., City of Omaha Police & Fire Ret. Sys.*, 2015 WL 965696, at *10 ("Here, the class representatives were involved in initiating the litigation, and were willing to incur costs and expenses and be subjected to discovery on behalf of the class.")

The Named Plaintiffs also bore the risk to their reputations that comes with being a named plaintiff in a class action litigation. This risk is heightened because Plaintiffs here were suing their current and/or former employers for their retirement benefits. Nevertheless, the Named Plaintiffs performed their duties diligently and with care. This weighs in favor of the requested Case Contribution Award. *See, e.g., Slipchenko v. Brunel Energy, Inc.*, No. 11-cv-1465, 2015 WL 338358, at *13 (S.D. Tex. Jan. 23, 2015) ("The class representatives faced risk in acting as the public face of the class.") (citing *Humphrey v. United Way of Tex. Gulf Coast*, 802 F. Supp. 2d 847, 868-69 (S.D. Tex. 2011)).

Ultimately, Plaintiffs' efforts resulted in securing the \$900,000 Settlement for the Settlement Class despite strong advocacy from the Trustee Defendants. Class Counsel respectfully submit that the Plaintiffs' efforts and contributions should be recognized and rewarded. Indicative of the inherent propriety of the requested case contribution award, the amounts requested here are easily in line with amounts typically awarded in the Fifth Circuit. As the *Kemp* court noted, "[c]ourts within the Fifth Circuit have approved similar incentive awards, and even much larger ones, calculated as a percentage of the total settlement recovery." *Kemp*, 2015 WL 8526689, at *7 (approving requested service awards of \$5,000 apiece to seven named plaintiffs from a total settlement fund of \$4,000,000). Ultimately, the *Kemp* court awarded the \$5,000 case contribution award noting it was "in light of the considerable time and effort

expended by Kemp in pursuing this litigation, and in keeping with the average compensation often awarded for those efforts within the Fifth Circuit.” *Id.* at *8. *See also City of Omaha Police & Fire Ret. System*, 2015 WL 965696, at *10 (awarding \$5,000 to lead plaintiff). In the analogous *Enron* ERISA action, the court awarded an incentive award of \$7,000 to each of the sixteen class representatives and one named plaintiff. *See In re Enron Corp. Sec. & ERISA Litig.*, MDL No. 1446, Amended Final Order Approving an Award of Attorneys’ Fees, Reimbursement of Expense, and an Incentive Award to the Class Representatives (S.D. Tex. July 24, 2006), at 5 (attached to Gyandoh Decl. at 11) (APP-277-283).

The requested \$5,000 Case Contribution Awards are also in line with analogous ERISA company stock breach of fiduciary duty actions from around the country. *See, e.g., In re Fannie Mae ERISA Litig.*, No. 09-cv-1350 (S.D.N.Y. Aug. 13, 2015) (awarding \$5,000 case contribution award); *In re Advanta Corp. ERISA Litig.*, No. 09-cv-4974, 2014 WL 7692446 (E.D. Pa. Jan. 9, 2014) (same).²⁸ In sum, in recognition of their efforts and service to the Settlement Class, Class Counsel respectfully submits that the requested Case Contributions are reasonable and should be granted.

VI. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request the Court approve Class Counsel’s request for an award of attorneys’ fees in the amount of \$270,000, approve the reimbursement of expenses in the amount of \$43,782.61, and approve Case Contribution Awards in the amount of \$5,000 each to the three Plaintiffs.

²⁸ *See also Griffin v. Flagstar Bancorp. Inc.*, No. 10-cv-10610, 2013 WL 6511860 (E.D. Mich. Dec. 12, 2013) (order awarding \$5,000 case contribution awards to two plaintiffs noting request was “reasonable given their involvement” in the litigation); *In re R.H. Donnelley Corp. ERISA Litig.*, No. 09-cv-7571 (N.D. Ill. Nov. 14, 2012) (awarding \$5,000 case contribution award to named plaintiffs); *In re Level 3, Inc. ERISA Litig.*, No. 09-cv-0658 (D. Colo. Mar. 26, 2012) (same).

Dated: June 10, 2016

Respectfully submitted,

/s/ Mark K. Gyandoh

KESSLER TOPAZ MELTZER & CHECK LLP

Edward W. Ciolko (*admitted Pro Hac Vice*)

Donna Siegel Moffa (*admitted Pro Hac Vice*)

Mark K. Gyandoh (*admitted Pro Hac Vice*)

Julie Siebert-Johnson (*admitted Pro Hac Vice*)

280 King Of Prussia Road

Radnor, PA 19087

Telephone: (610) 667-7706

Facsimile: (610) 667-7056

Email: eciolko@ktmc.com

dmoffa@ktmc.com

mgyandoh@ktmc.com

jsjohnson@ktmc.com

Interim Lead Class Counsel Committee Chair

Gerald D. Wells, III (*admitted Pro Hac Vice*)

Robert J. Gray (*admitted Pro Hac Vice*)

CONNOLLY WELLS & GRAY, LLP

2200 Renaissance Boulevard

Suite 308

King of Prussia, PA 19406

Telephone: (610) 822-3700

Facsimile: (610) 822-3800

Email: gwells@cwg-law.com

rgray@cwg-law.com

Michael J. Klein (*admitted Pro Hac Vice*)

STULL, STULL & BRODY

6 East 45th Street

New York, NY 10017

Telephone: (212) 687-7230

Facsimile: (212) 490-2022

Email: mklein@ssbny.com

Interim Lead Class Counsel Committee Members

Roger L. Mandel
State Bar No. 12891750
Bruce E. Bagelman
State Bar No. 01509700
LACKEY HERSHMAN, LLP
3102 Oak Lawn Avenue, Suite 777
Dallas, TX 75219
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
Email: rlm@lhlaw.net
beb@lhlaw.net

Interim Liaison Class Counsel

George C. Aguilar
ROBBINS ARROYO LLP
600 B Street, Suite 1900
San Diego, CA 92101
Tel: (619) 525-3990
Fax: (619) 525-3991

Plaintiffs' Counsel

CERTIFICATE OF CONFERENCE PURSUANT TO L.R. 7.1(b)

With respect to the Trustee Defendants, as a term of the Settlement, they take no position regarding the requests made herein. Specifically, per § 14.1 of the Settlement Agreement, the Trustee Defendants take no position with respect to Class Counsels' application for attorneys' fees and expenses. Moreover, the Trustee Defendants take no position with respect to the request for Case Contribution Awards for the Named Plaintiffs per § 1.7 of the Settlement Agreement.

With respect to the Non-Settling Defendants, on June 10, 2016 counsel for the Non-Settling Defendants informed Class Counsel that they do not agree with all of the allegations/statements made in Plaintiffs' Memorandum, but that they take no position with respect to Class Counsels' application for attorneys' fees.

/s/ Mark K. Gyandoh

Mark K. Gyandoh

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to registered CM/ECF participants.

/s/ Mark K. Gyandoh

Mark K. Gyandoh