IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

In re ADT INC. SHAREHOLDER LITIGATION This Document Relates To: ALL ACTIONS.	Case No. 502018CA003494XXXXMB-AG CLASS ACTION LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

Lead Counsel, on behalf of all Plaintiffs' Counsel, respectfully moves this Court to enter an order awarding attorneys' fees and litigation expenses. This motion is based on the Memorandum of Law in Support of Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses, the declarations submitted in support thereof, the Stipulation of Settlement, all other pleadings and matters of record and such additional evidence or argument that may be presented at the hearing on this matter.

A proposed order will be submitted with Plaintiffs' reply submission on or before January 5, 2021.

DATED: December 16, 2020

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s/ Jack Reise
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Lead Counsel and Chair of Executive Committee in the State Action

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2020, a true and correct copy of the foregoing was served via the e-portal on all counsel of record.

s/ Jack Reise
JACK REISE

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
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MEMORANDUM OF LAW IN SUPPORT OF IN SUPPORT OF LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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STATUTES, RULES AND REGULATIONS

Court-appointed Lead Counsel Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), on behalf of all Plaintiffs' Counsel, respectfully submits this memorandum of law in support of its request for attorneys' fees of $10 million, which equates to 33⅓% of the $30 million Settlement.[1] Plaintiffs' Counsel also request $114,266.34 in litigation-related expenses, charges and costs, as well as $2,500 each for Court-appointed lead plaintiffs Richard Krebsbach, Howard Katz, Daniel M. Sweet and Robert Lowinger (collectively, along with Goldstrand Investment Inc. ("Goldstrand"), "State Court Plaintiffs") in the above-captioned action (the "State Action"), and $2,500 for the court-appointed lead plaintiff Husam Asaff ("Federal Court Plaintiff" and together with the State Court Plaintiffs, "Plaintiffs"), in the action entitled *Perdomo v. ADT Inc., et al.*, Case No. 18-80668-cv-Middlebrooks (S.D. Fla.) (the "Federal Action" and together with the State Action, the "Actions"), as authorized by the Private Securities Litigation Reform Act of 1995 ("PSLRA").[2]

I. INTRODUCTION

The proposed $30 million, non-reversionary Settlement represents an excellent result for the Settlement Class, particularly when juxtaposed against the significant obstacles that Plaintiffs would have had to overcome in order to prevail in this complex securities class action litigation. In undertaking this case, Plaintiffs' Counsel faced numerous challenges to establishing liability and damages, and would have faced significant negative causation arguments from Defendants.

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[1] All capitalized terms used herein that are not otherwise defined have the meanings ascribed to them in the Stipulation of Settlement dated September 15, 2020 (the "Stipulation") (Dkt. No. 152) and the Declaration of Jack Reise in Support of: (I) Plaintiffs' Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation; and (II) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Reise Declaration"). Unless otherwise noted, all citations to "¶__" and "Ex." refer, respectively, to paragraphs in, and exhibits to, the Reise Declaration.

[2] Goldstrand is not seeking a PSLRA award.

The risk of losing was very real, and it was greatly enhanced by the fact that Lead Counsel would be litigating against defendants represented by highly-skilled defense counsel, subject to the automatic stay of discovery imposed by the Private Litigation Reform Act of 1995 ("PSLRA"). *See* 15 U.S.C. §77z-1(b)(1); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("[S]ecurities actions have become more difficult from a plaintiff's perspective in the wake of the PSLRA.").[3] Despite these risks, Plaintiffs' Counsel collectively worked over 7,450 hours over the course of almost three years, and incurred $114,266.34 in charges, costs and expenses all on a contingency basis with no guarantee of ever being compensated. The work performed by Plaintiffs' Counsel is summarized below and set forth in detail in the Reise Declaration.

Lead Counsel respectfully requests a fee award in the amount of 33⅓% of the Settlement Amount, which is equal to the lodestar in this case enhanced by a modest multiplier of 1.90, as compensation for the significant efforts and achievements by Plaintiffs' Counsel on behalf of the Settlement Class. The requested fee is consistent with attorney-fee awards in comparable class action settlements, whether considered as a percentage of the Settlement or in relation to Plaintiffs' Counsel's lodestar. Indeed, the slight 1.90 multiplier is below the multipliers awarded in common fund class actions with substantial contingency risks such as this one. *See Ramos v. Philip Morris Cos., Inc.*, 743 So.2d 24, 33 (Fla. 3d DCA 1999) ("based on the risk factor alone, the multiplier would have to be five."); *Dreidame v. Village Center Cmty. Development Dist.*, 2008 WL 7079074 (Fla. 5th Cir. Ct. Mar. 29, 2008) ("This court agrees … that a multiplier of five (5) is proper in this case.").

[3] Unless otherwise indicated, all emphasis is added and all internal citations and quotations are omitted.

Lead Counsel also seek $114,266.34 in litigation expenses incurred in prosecuting the Actions. *See* ¶¶82-85. This amount is below the limit disclosed in the Notice, and equates to less than 0.40% of the Settlement Amount. The expenses were necessarily incurred in the successful prosecution of the Actions. Accordingly, they should be approved.

Finally, each of the Plaintiffs, with the exception of Goldstrand, respectfully request PSLRA awards of $2,500, to compensate them for the time and effort they expended on behalf of the Settlement Class. Exs. 5-9. Plaintiffs familiarized themselves with the facts of the case, reviewed relevant pleadings, conferred with Plaintiffs' Counsel about the litigation, collected and produced relevant documents to Plaintiffs' Counsel, and authorized Lead Counsel to settle the case. *Id*. But for their "commitment to pursuing these claims, the successful recovery for the Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For the reasons set forth herein, and in the Reise Declaration, Lead Counsel respectfully requests that the Court grant the requested relief.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

The Reise Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*, the factual and procedural history of the Actions; the nature of the claims asserted; the work performed by Plaintiffs' Counsel; the expenses incurred by Plaintiffs' Counsel during the litigation; and additional information on the factors that support this fee request.

III. THE REQUESTED FEE IS FAIR AND REASONABLE

A. Plaintiffs' Counsel Are Entitled To An Award Of Attorneys' Fees From The $30,000,000 Settlement Fund

In Florida, "attorneys' fees may properly be awarded to an attorney who creates or brings a fund into the court. This principle has long been recognized by Florida courts." *Cmty. Nat'l Bank v. Rishoi*, 567 So.2d 1053, 1054 (Fla. 5th DCA, 1990). "The right of an attorney to receive fees under the common fund doctrine is based on the theory that the successful efforts of the attorney benefits the class entitled to receive the fund and equity requires that each class member bear his or her *pro rata* share of the cost of recovering the fund." *Id*. at 1055. "The operation of the rule has primarily been premised upon the following prerequisites:

> 1. The existence of a fund over which the court has jurisdiction and from which fees can be awarded;
>
> 2. The commencement of litigation by one party which is terminated successfully;
>
> 3. The existence of a class which received, without otherwise contributing to the lawsuit, substantial benefits as a result of the litigation;
>
> 4. The creation, preservation, protection or increase of the fund as a direct and proximate result of the efforts of counsel for that party;
>
> 5. A reasonable relationship between the benefit established and the fees incurred."

Id. at 1054.

Here, Plaintiffs have plainly met these five criteria for a fee award out of the common fund: (1) the fund of $30 million exists and Defendants have funded it into an escrow account under the Court's control; (2) Plaintiffs commenced this litigation, and the creation and existence of the common fund attests to its successful termination; (3) the Settlement Class was certified, will receive the benefit net of fees and expenses, and did not contribute to the lawsuit; (4) Plaintiffs' Counsel's efforts alone created and preserved the fund; and (5) the fees are reasonable in relation

to the size of the recovery. Payment of the requested attorneys' fees from the common fund is, therefore, appropriate. *See id.* at 1054-55.

B. The Proper Measure Of Attorneys' Fees Is A Multiple Of Plaintiffs' Counsel's Lodestar

In *Kuhnlein v. Dept. of Revenue*, 662 So.2d 309 (Fla. 1995), the Florida Supreme Court held that in a common fund case, attorneys' fees are calculated based on lodestar, not a percentage of the recovery. 662 So.2d at 311-13. Lodestar is the hours expended multiplied by hourly market rate for similar services. *Id*. at 312. Following calculation of the lodestar, the court is to consider "whether a multiplier is needed in [the] case to give effect to the contingency factor and in recognition of the substantial benefit class counsel conferred upon the class members." *Id*. at 315. While determination of an award of attorneys' fees is left to the discretion of the trial court (*see id.* at 312, n.4), the Florida Supreme Court has "reaffirm[ed] [its] adherence to the use of contingency fee multipliers in this State and [made] clear that there is not a 'rare' and 'exceptional' circumstances requirement before a contingency fee multiplier can be applied." *Joyce v. Federated Nat'l Ins. Co.*, 228 So. 3d 1122, 1135 (Fla. 2017). Rather, "[m]ultipliers were specifically designed to enhance the amount of attorney fees awarded based on the contingency risk factor and the results obtained." *Kuhnlein,* 662 So.2d at 313.

C. Plaintiffs' Counsel's Lodestar

As detailed in the Reise Declaration, Plaintiffs' Counsel spent 7,450 hours of attorney and other professional time prosecuting the Actions for the benefit of the Settlement Class. ¶80; Exs. 10-21 (Plaintiffs' Counsel's firm-specific declarations summarizing the time expended, lodestar, and expenses of each firm). Plaintiffs' Counsel's total lodestar, derived by multiplying the hours spent on the litigation by each attorney or other professional by his or her current hourly rate, is

$5,238,884.50.[4] Accordingly, the requested fee of $10 million, or 33⅓% of the Settlement Amount, represents a multiplier of approximately 1.90 on Plaintiffs' Counsel's lodestar. *Id*.

D. Application Of The Rowe Factors And The Guidelines Set Forth In Rowe and Kuhnlein Support The Fee Request

In *Kuhnlein*, the Florida Supreme Court set the maximum multiplier in a common fund lawsuit at 5 times lodestar, twice the 2.5 times maximum in a statutory fee shifting case. *Kuhnlein*, 662 So.2d at 315 (citing *Standard Guar. Ins. Co. v. Quanstrom*, 555 So.2d 828, 834 (Fla. 1990)). The *Kuhnlein* Court held that the multiplier permitted in common fund cases is greater because of the contingency risk factor, the need to attract qualified counsel to risky common fund cases, and the importance of the monetary results achieved. Specifically, in awarding a five multiplier, the Court stated:

> We have considered whether a multiplier is needed in this case to give effect to the contingency factor and in recognition of the substantial benefit class counsel conferred upon the class members. First, we find that the instant case presents another distinct class of attorney-fee cases, in addition to those presented in *Quanstrom,* in which a multiplier is appropriate. ***Next, we set the maximum multiplier available in this common-fund category of cases at 5. By allowing for this increased maximum multiplier, we recognize that it is appropriate in common-fund cases, as differentiated from fee-shifting cases where the multiplier is capped at a 2.5 multiplier pursuant to Quanstrom, to place greater emphasis on the monetary results achieved. Furthermore, a multiplier which increases fees to five times the accepted hourly rate is sufficient to alleviate the contingency risk factor involved and attract high level counsel to common fund cases while producing a fee which remains within the bounds of reasonableness.*** We emphasize that 5 is a maximum multiplier, and what multiplier, if any, applies depends on the particular case. Based upon the record before us, we conclude that class counsel in this case is entitled to the maximum multiplier available.

Kuhnlein, 662 So.2d at 315 (footnotes omitted).

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[4] Courts have approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989); *In re Enron Corp.*, 586 F. Supp. 2d 732, 779 (S.D. Tex. 2008) (using current rates to "compensate for delay in receiving fees.").

At the same time, *Kuhnlein* held that the same criteria set forth in *Quanstrom*, and in *Florida Patient's Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985), are to be applied to determine the size of the multiplier in common fund cases. *Kuhnlein*, 662 So.2d at 315, n.9. The eight criteria are the same as those for determining reasonableness of legal fees as set forth in Florida State Bar Rule 4-1.5 and, as recited in *Rowe* (the "*Rowe* Factors"), are:

> (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
>
> (3) The fee customarily charged in the locality for similar legal services.
>
> (4) The amount involved and the results obtained.
>
> (5) The time limitations imposed by the client or by the circumstances.
>
> (6) The nature and length of the professional relationship with the client.
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
>
> (8) Whether the fee is fixed or contingent.

Rowe, 472 So.2d at 1150.[5]

Besides the eight *Rowe* Factors, analyzed below, the Court mandated that a trial court apply the following guideline in setting the lodestar multiplier (the "*Rowe* Guideline"):

> Based on our review of the decisions of other jurisdictions and commentaries on the subject, we conclude that in contingent fee cases, the lodestar figure calculated by the court is entitled to enhancement by an appropriate contingency risk multiplier in the range from 1.5 to 3. When the trial court determines that success was more likely than not at the outset, the multiplier should be 1.5; when the

[5] The *Rowe* Factors are virtually identical to the criteria established in the case of *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989), and known as the "*Johnson* factors," that are routinely considered in the Fifth and Eleventh Circuits in determining a reasonable fee. *See Camden I Condominium Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 772 n.3 (11th Cir. 1991) (adopting percentage of the fund fee approach with use of the *Johnson* factors).

> likelihood of success was approximately even at the outset, the multiplier should be 2; and, when success was unlikely at the time the case was initiated, the multiplier should be in the range of 2.5 and 3.

Rowe, 472 So.2d at 1151, *modified*, *Kuhnlein*, 662 So.2d at 315 (allowing for a maximum multiplier of 5 in common fund cases). In other words, "[b]oth *Rowe* and *Quanstrom* . . . make clear that where chances of success at the outset of the litigation is less than 50-50, a multiplier at or near the maximum is indicated. Thus, to a very large extent, the amount of the multiplier … depends on the likelihood of success at the outset of the case." *In re Bluegreen Corp. S'holder Litig.*, 2015 WL 6866226, at *3 (Fla. 15th Cir. Ct. Sept. 22, 2015); *see also In re Gould Sec. Litig.*, 727 F. Supp. 1201, 1208 (N.D. Ill. 1989) ("risk is to be assessed as . . . of the inception of the litigation.").

This case was never easy, and the risk of no recovery was always high. Indeed, federal district courts have repeatedly dismissed Securities Act claims. *See City of St. Clair Shores Police v. Nationstar Mortg. Holdings Inc.*, 2016 WL 4705718, at *10 (S.D. Fla. June 21, 2016) (dismissing Securities Act claims); *In re BitConnect Sec. Litig.*, 2019 WL 9171208, at *8 (S.D. Fla., Nov. 15, 2019) (same); *Belmont Holdings Corp. v. SunTrust Banks, Inc.*, 896 F. Supp. 2d 1210 (N.D. Ga. 2012) (same).[6] And, Courts of Appeal have repeatedly affirmed the dismissal of Securities Act claims. *See Miyahira v. Vitacost.com, Inc.*, 715 F.3d 1257 (11th Cir. 2013)

[6] *See also Rudd v. Suburban Lodges of Am., Inc.*, 67 F. Supp. 2d 1366 (N.D. Ga. 1999) (dismissing Securities Act claims); *Nguyen v. MaxPoint Interactive, Inc.*, 234 F. Supp. 3d 540 (S.D.N.Y. 2017) (same); *Ladmen Partners, Inc. v. Globalstar, Inc.*, 2008 WL 4449280, at *1 (S.D.N.Y. Sept. 30, 2008) (same); *Congregation of Ezra Sholom v. Blockbuster, Inc.*, 504 F. Supp. 2d 151, 160 (N.D. Tex. 2007) (same); *In re Alamosa Holdings, Inc.*, 382 F. Supp. 2d 832, 864-66 (N.D. Tex. 2005) (same); *In re Weight Watchers Int'l Inc. Sec. Litig.*, 2020 WL 7029134, at *1 (S.D.N.Y. Nov. 30, 2020) (same); *Rubinstein v. Credit Suisse Grp. AG*, 457 F. Supp. 3d 289 (S.D.N.Y. 2020) (same); *Greenberg v. Sunrun Inc.*, 233 F. Supp. 3d 764 (N.D. Cal. 2017) (same); *Firefighters Pension & Relief Fund of the City of New Orleans v. Bulmahn*, 53 F. Supp. 3d 882, 888 (E.D. La. 2014) (same).

(affirming dismissal of Section 11 claims); *Police & Fire Ret. Sys. of City of Detroit v. Plains All Am. Pipeline, L.P.*, 777 F. App'x 726, 733 (5th Cir. 2019) (same).[7] As the Fifth Circuit has aptly recognized, "[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).

When Plaintiffs' Counsel undertook representation of Plaintiffs and the putative classes in the Actions, it was with the knowledge that they would have to spend substantial time and resources – and face significant risks – without any assurance of compensation for their efforts. Unlike counsel for Defendants, who are typically paid an hourly rate and regularly reimbursed for their expenses, Plaintiffs' Counsel have not been compensated for ***any time*** or ***any of their expenses*** since the beginning of this case ***almost three years ago***. ¶78. And, the risks in this case were not illusory; rather, they were very real from the time Plaintiffs' Counsel initiated the Actions, and they continued throughout the litigation. *Trief v. Dun & Bradstreet Corp*., 840 F. Supp. 277, 282 (S.D.N.Y. 1993) ("It is beyond cavil that continued litigation in this multi-district securities class action would be complex, lengthy, and expensive, with no guarantee of recovery by the class members."). Leaving aside the many obstacles to recovery inherent in a complex securities class

[7] *See also Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182 (11th Cir. 2002) (affirming dismissal of Securities Act claims); *Ehlert v. Singer*, 85 F. Supp. 2d 1269 (M.D. Fla. 1999), *aff'd and remanded*, 245 F.3d 1313 (11th Cir. 2001) (same); *Altayyar v. Etsy, Inc.*, 731 F. App'x 35 (2d Cir. 2018) (same); *Lampkin v. UBS Fin. Servs., Inc.*, 925 F.3d 727, 737 (5th Cir. 2019), *cert. denied,* 140 S. Ct. 389, 205 L. Ed. 2d 218 (2019) (same); *Yan v. ReWalk Robotics Ltd.*, 973 F.3d 22 (1st Cir. 2020) (same); *Shetty v. Trivago N.V.*, 796 F. App'x 31 (2d Cir. 2019) (same); *IBEW Local No. 58 Annuity Fund v. EveryWare Glob., Inc.*, 849 F.3d 325 (6th Cir. 2017) (same); *Hopson v. Chase Home Fin., L.L.C.*, 605 F. App'x 267, 269 (5th Cir. 2015) (same); *ECA, Local 134 IBEW Joint Pension Tr. of Chicago v. JP Morgan Chase Co.*, 553 F.3d 187 (2d Cir. 2009) (same); *Krim v. pcOrder.com, Inc.*, 402 F.3d 489, 502 (5th Cir. 2005) (affirming dismissal of Securities Act claims); *Lyu v. Ruhnn Holdings Ltd.*, 2020 WL 7062118 (N.Y. App. Div. Dec. 3, 2020) (dismissing Securities Act claims on appeal).

action – including, but not limited to, the PSLRA's automatic stay of discovery (15 U.S.C. §§77z-1(b)(1)) – this was an particularly unattractive and highly risky case.

"One proxy for assessing risk is whether the litigation followed on the heels of some prior criminal or civil proceeding involving the same parties or subject matter." *In re Dairy Farmers of Am.*, 80 F. Supp. 3d 838, 848 (N.D. Ill. 2015). "This inquiry provides insight into whether class counsel benefitted from the work of others, which acts a red flag for judges assessing fee petitions." *Id.* In the instant case, there was no governmental or journalistic investigation of any sort. Rather, "Plaintiffs' counsel (and their teams and experts) were truly the authors of the favorable outcome for the class." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015); *In Re: Syngenta Ag Mir 162 Corn Litig.*, 2018 WL 6436074, at *12 (D. Kan. Dec. 7, 2018) (concluding that attorney fee award of 1/3 in super-mega-fund case was justified, in part, by the fact that the "case did not involve a government investigation or prosecution of the defendant").[8]

Additionally, this was not a restatement case. When companies restate their financials, they are admitting a material misstatement of their financial reporting. A case predicated on a restatement is, therefore, less risky because the misstatement and materiality elements of a securities claim are already met. *See In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744 at *30 (D.N.J. Oct. 1, 2013) (granting fee request where the case was the antithesis of cases where liability is virtually certain due to a financial restatement); *In re Xcel Energy, Inc.,*

[8] *See also Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *3 (N.D. Ill. May 7,2012) (fee request supported by fact that "there were no governmental investigations or prosecutions related to the alleged fraud upon which Class Counsel could rest their theory of the case. Rather, they investigated the facts and developed their theory of liability from scratch, involving significant time and expense."); *Dial Corp. v. News Corp*., 317 F.R.D. 426, 434 (S.D.N.Y. 2016) ("While many class actions are filed on the heels of a government investigation, the claims in this case were formulated entirely from the findings of a private investigation."); Alexander Dyck, *et al.*, *Who Blows the Whistle on Corporate Fraud?*, 65 The Journal of Finance 2213, 2225 (2010) (private lawyers were the first to discover fraud only 3% of the time).

Sec., Deriv. & "ERISA" Litig., 364 F. Supp. 2d 980, 995 (D. Minn. 2005) (noting that one of the many hurdles plaintiffs faced was the fact that the case did not involve a restatement of financials). Such cases, as well as those involving accounting allegations, are also more likely to settle for a higher amount.[9] The lack of a governmental investigation, restatement and accounting allegations are strong indicators of the riskiness of this case.

While the focus of the inquiry is on assessing risk at the beginning of the case, it should be noted that the litigation risks did not end with the filing of the complaint or even with the partial denial of the motions to dismiss. At the time the Parties agreed in principle to settle the Actions, the Court had not yet decided the issue of class certification. Had the Court denied class certification, the potential recovery would have been dramatically reduced, or eliminated altogether. Moreover, the Court could have revisited the issue at any time. *See In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2008) (even if a class is certified, "there is no guarantee the certification would survive through trial, as Defendants might have sought decertification or modification of the class").

Nor did the risks end there. Plaintiffs would still have to ***prove*** their case. "[I]n the end, . . . more than mere allegations will be necessary to survive summary judgment or win at trial. As with all lawsuits, if the admissible evidence does not live up to the allegations, plaintiffs won't win their case." *Shah v. Zimmer Biomet Holdings, Inc.*, 2019 WL 762510, at *9 (N.D. Ind. Feb. 20, 2019). And, of course, even when a plaintiff is successful at trial, payment is not guaranteed. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing $81 million jury

[9] *See* John C. Coffee Jr., *Reforming the Securities Class Action: An Essay on Deterrence and Its Implementation*, 106 COLUMBIA L. REV. 1534, 1544-1545 (2006) ("cases involving accounting allegations and restatements appear to have a higher settlement value than cases lacking these factors.").

verdict and dismissing securities action with prejudice); *In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants' motion for judgment as a matter of law following plaintiffs' verdict).[10]

In short, this was an extremely high risk case, and at no point in this litigation were Plaintiffs' Counsel "assured of a paycheck." *Florin v. Nationsbank of Ga., N.A.*, 60 F.3d 1245, 1247 (7th Cir. 1995); *see also In re Xcel Energy*, 364 F. Supp. 2d at 994 ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy."). Under such circumstances, the requested fee is both fair and reasonable. *See Ramos v. Philip Morris Cos., Inc.*, 743 So. 2d 24, 33 (Fla. 3d DCA 1999) (finding a multiplier of 5 was reasonable given the extraordinary risk involved); *Ouellette v. Wal-Mart Stores, Inc.*, 2013 WL 9850664, at *5 (Fla. 14th Cir. Ct. 15, 2013) ("although multiplier of 5 would be appropriate, a multiplier of 4.68 is fair and reasonable"); *Mashburn v. Nat'l Healthcare, Inc*., 684 F. Supp. 679, 702 (M.D. Ala. 1988) ("A multiplier of approximately 3.1 in a national class action securities case is not unusual or unreasonable.").[11]

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[10] *See also Glickenhaus & Co. v. Household Int'l, Inc.*, 787 F.3d 408, 414, 433 (7th Cir. 2015) (reversing and remanding jury verdict of $2.46 billion after 13 years of litigation on loss causation grounds and error in jury instruction in light of *Janus Cap. Grp., Inc. v. First Deriv. Traders*, 564 U.S. 135 (2011)); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning securities fraud class action jury verdict for plaintiffs in case filed in 1973 and tried in 1988 on the basis of 1994 Supreme Court opinion); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for judgment N.O.V. was denied; on appeal, the judgment was reversed and the case was dismissed – after 11 years of litigation); *Geffon v. Micrion Corp.*, 249 F.3d 29 (1st Cir. 2001); *Greebel v. FTP Software, Inc.*, 194 F.3d 185 (1st Cir. 1999); *Green v. Nuveen Advisory Corp.*, 295 F.3d 738 (7th Cir. 2002); *In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991) (rendering verdict against two individual defendants, but vacating judgment on motion for judgment notwithstanding the verdict).

[11] *Dreidame*, 2008 WL 7079074 (stating "that a multiplier of five (5) is proper in this case," but awarding multiplier of 3.96 based on limitation agreed to as part of settlement); *Pinto v. Princess Cruise Lines Ltd.*, 513 F. Supp. 2d 1334, 1344 (S.D. Fla. 2007) (noting that lodestar multipliers

The reasonableness of the requested fee is further confirmed by application of the *Rowe* Factors.

***Rowe* Factor #1(a): The Time And Labor Required**

The time and effort expended by Plaintiffs' Counsel in prosecuting the Action and achieving the Settlement supports the requested fee. As set forth in greater detail in the Reise Declaration, Plaintiffs' Counsel's work on this matter included, among other things:

- conducting detailed and substantive investigations of the claims asserted in the Actions, which included: (i) review and analysis of ADT's filings with the U.S. Securities and Exchange Commission ("SEC"), press releases, transcripts of ADT's investor calls, and other public statements made by Defendants prior to, during, and after the Settlement Class Period, as well as research reports prepared by securities and financial analysts regarding ADT, and publicly available documents, reports, announcements, and news articles concerning Defendants; (ii) hiring and working with private investigators to locate and conduct interviews with former ADT employees and other potential witnesses; (iii) reviewing and analyzing the trial transcripts and evidence submitted in the *Zonoff* Litigation filed in Delaware Chancery Court; and (iv) consultation with experts in market efficiency, loss causation and damages;

- preparing and filing the initial complaint in the State Action, as well as several other complaints, including the comprehensive and factually detailed 50-page State Court Consolidated Class Action Complaint for Violations of the Securities Act of 1933 (the "State Court Complaint") incorporating the foregoing research and investigative efforts, and the 40-page Amended Class Action Complaint in the Federal Action (the "Federal Court Complaint"), based on the investigation of the Federal Lead Counsel;

"'in large and complicated class actions' range from 2.26 to 4.5" and that "three appears to be the average"); *In re Waste Mgmt., Inc.*, No. 99-2183, ECF No. 254 at 64 (S.D. Tex. May 10, 2002) (multiplier of 5.3 "is supported by case law and within the range of multipliers approved in other class actions. Numerous courts, including this court have awarded multipliers exceeding four in class action cases."); *Di Giacomo v. Plains All Am. Pipeline*, 2001 WL 34633373, at *11 (S.D. Tex. Dec. 19, 2001) (approving 5.3 multiplier); *Enron*, 586 F. Supp. 2d at 751 & n.20 (awarding percentage fee equal to a multiple of 5.2 times lodestar, and stating that "[m]ultiples from one to four are frequently awarded in common fund cases when the lodestar method is applied"); *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 2012 WL 12540344, at *5 (N.D. Ga. Oct. 26, 2012) ("a multiplier of approximately four times lodestar . . . is well within the range of approved fees").

- preparing and serving discovery in the State Action as well as preparing a draft motion for class certification;

- fully briefing Defendants' three motions to dismiss the State Court Complaint, and partially prevailing against the motions;

- fully briefing Defendants' three motions to dismiss the Federal Court Complaint, which were pending at the time the Settlement was reached;

- providing the State Court with supplemental briefing on why the State Court has personal jurisdiction over certain Defendants, including the Apollo Defendants, Underwriter Defendants and certain Individual Defendants;

- consulting extensively with experts on damages and loss causation issues in connection with preparing for settlement negotiations;

- engaging in an adversarial mediation process and extensive settlement negotiations, which involved (i) preparing a detailed mediation statement addressing liability, loss causation, and damages; (ii) reviewing and analyzing Defendants' mediation statement; and (iii) participating in a full-day mediation session with an experienced and highly respected mediator, David Geronemus, Esq., where the Parties and counsel for the D&O insurance carrier engaged in full and frank discussions concerning the merits of the Actions, including, for example, Plaintiffs' ability to prove a material misstatement and Defendants' ability to demonstrate negative causation;

- drafting and negotiating the Stipulation, including the exhibits thereto;

- drafting the preliminary and final approval briefs;

- working with one of Plaintiffs' damages experts to prepare the proposed Plan of Allocation; and

- overseeing the notice process that was approved by the Court. ¶¶6, 32-35.

Moreover, the legal work on this case will not end with the Court's approval of the proposed Settlement. Plaintiffs' Counsel will necessarily expend additional hours and resources assisting Settlement Class Members with their Proof of Claim forms, responding to Settlement Class Members' inquiries, and shepherding the claims process to conclusion. No additional compensation will be sought for this work. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom. In re Facebook, Inc.*, 674 F.

App'x 37 (2d Cir. 2016) ("Considering that the work in this matter is not yet concluded for Lead Counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."). The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical to obtaining the Settlement and, as a result, this factor supports the fee request.

***Rowe* Factor #1(b): The Novelty And Difficulty Of The Question Involved**

Courts have repeatedly recognized that securities litigation is "notoriously difficult and unpredictable" (*Maher v. Zapata Corp.,* 714 F.2d 436, 455 (5th Cir. 1983)), and that "a securities case, by its very nature, is a complex animal." *Clark v. Lomas & Nettleton Fin. Corp*., 79 F.R.D. 641, 654 (N.D. Tex. 1978), *vacated on other grounds*, 625 F.2d 49 (5th Cir. 1980). This case was no exception.

Although Plaintiffs believe that their allegations would have ultimately translated into a strong case as detailed more fully in the Reise Declaration and the Final Approval Motion, Defendants raised credible arguments regarding liability, negative causation, and damages. ¶¶67, 68. If Defendants had prevailed on their arguments with respect to liability, it could prove fatal to Plaintiffs' claims. And, Defendants' arguments regarding negative causation and damages posed a significant threat that the total recoverable damages would be significantly reduced or eliminated. ¶75.

Even assuming that Plaintiffs ultimately prevailed against Defendants' personal jurisdiction motion, continued litigation would have involved substantial motion practice, extensive and costly expert involvement, and the taking of numerous depositions. Thus, the costs and risks associated with litigating this Action to a verdict – notwithstanding the inevitable appeals

– would have been high, and the process would have required thousands of hours of time and millions of dollars of hard costs. Accordingly, because there is no question that this Action was difficult and complex, this factor weighs in favor of approving the requested fee. *See In re NetBank, Inc. Sec. Litig.*, 2011 WL 13353222, at *3 (N.D. Ga. Nov. 9, 2011) (awarding 34% fee and noting that "securities class action litigation is notably difficult and notoriously uncertain."); *In re Flowers Foods, Inc. Sec. Litig.*, 2019 WL 6771749, at *2 (M.D. Ga. Dec. 11, 2019) (awarding 33⅓% of $21 million settlement fund and noting that the securities class action "raised a number of complex issues.").

Rowe Factor #1(c) and 7: The Skill Required to Adequately Perform the Legal Services and the Experience, Reputation, and Ability of the Attorneys

The Court should also consider "the skill and acumen required to successfully investigate, file, litigate, and settle a complicated class action lawsuit such as this one," *David v. Am. Suzuki Motor Corp.*, 2010 WL 1628362, at *8 n.15 (S.D. Fla. April 15, 2010), and the "experience, reputation, and ability of the lawyer or lawyers performing the services." *Rowe*, 472 So.2d at 1150.

Considerable litigation skills were required and called upon here. As noted above, this is a highly-complex case involving difficult factual and legal issues. Given the complexity of the Action and the presence of numerous contested issues, it took highly-skilled counsel to represent the Settlement Class and bring about the excellent recovery obtained. As demonstrated by their respective firm résumés, Plaintiffs' Counsel are qualified and experienced firms in complex class action litigation involving claims under, among other statutes, the federal securities laws. *See* Exs. 10-21. Without question, Plaintiffs' Counsel's skills and experience were a major factor in obtaining the excellent result achieved in this Settlement.

In evaluating the quality of Plaintiffs' Counsel's work, it is also important to consider the "quality of the opposition the plaintiffs' attorneys faced." *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001). Here, Defendants were vigorously represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP, O'Melveny & Myers LLP, Willkie Farr & Gallagher LLP, Nelson Mullins Broad and Cassel, Greenberg Traurig, LLP, and Atherton Galardi Mullen & Reeder PA, all of which are experienced, prominent and capable law firms. Lead Counsel's ability to obtain a favorable Settlement despite this formidable legal opposition confirms the quality of the representation. *See Masco*, 2012 WL 12540344, at *4 ("The appropriate fee should also reflect the degree of experience, competence, and effort required by the litigation.").

***Rowe* Factor #2: Preclusion Of Other Employment**

This factor considers "the fact that once the employment is undertaken, the attorney is not free to use the time spent on the case for other purposes." *Allapattah Services, Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1209 (S.D. Fla. 2006). Here, Plaintiffs' Counsel expended more than 7,450 hours in prosecuting the Actions. Reise Decl., ¶80. This considerable undertaking precluded other employment, as the substantial number of hours could have been spent on other matters. Thus, this factor supports the requested fee award. *See Yates v. Mobile County Personnel Bd.*, 719 F.2d 1530, 1535 (11th Cir. 1983) ("The expenditure of 1,000 billable hours – and often in significant blocks of time – necessarily had some adverse impact upon the ability of counsel for plaintiff to accept other work, and this factor should raise the amount of the award."); *Burford v. Cargill*, 2012 WL 5471985, at *3 (W.D. La. Nov. 8, 2012) ("The affidavits of Class Counsel prove that while this case did not preclude them from accepting other work, they were often times precluded from working on other cases due to the demands of the instant matter. This factor weighs in favor of a substantial fee award.").

***Rowe* Factor #3: The Customary Fee for Similar Work in the Community**

In *Camden I*, the Eleventh Circuit announced the rule that "attorneys' fees awarded from a common fund ***shall*** be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I*, 946 F.2d at 774. This approach is consistent with the PSLRA. 15 U.S.C. §77z-1(a)(6) ("Total attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class."); *see also In re Arthrocare Corp. Sec. Litig.*, 2012 WL 12951371, at *4 (W.D. Tex. June 4, 2012) ("As the Fifth Circuit noted, there is near-universal adoption of the percentage method in securities cases, at least in part because it is explicitly contemplated by the Private Securities Litigation Reform Act [of 1995.]").

When *Camden I* was decided 27 years ago, the "'bench mark' percentage fee award" was considered to be 25%, although the Court made clear that there "is no hard and fast rule mandating a certain percentage of a common fund . . . because the amount of any fee must be determined upon the facts of each case." 946 F.2d at 774-75. Today's "bench mark" is much higher, particularly in complex cases like this. *See Reyes* v. *AT&T Mobility Servs., LLC*, 2013 WL 12219252, at *3 (S.D. Fla. June 21, 2013) (collecting cases and stating, "Class Counsel's request for one-third of the settlement fund is consistent with the trend in this Circuit."); *Morgan*, 301 F. Supp. 3d at 1257-8 (collecting cases and stating, "a fee award of 33% . . . is consistent with attorneys' fees awards in federal class actions in this Circuit . . . ."). Indeed, recent empirical studies have shown that, in this Circuit, the median percentage fee award is currently 33%, which is not surprising as "courts within this Circuit have routinely awarded attorneys' fees of ***33 percent or more*** of the gross settlement fund." *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017) (collecting cases); Theodore Eisenberg,

Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 951 (Oct. 2017) (finding that, over a four year period, the mean fee award in the Eleventh Circuit was 30% and the median award was 33%); *Gonzalez v. TCR Sports Broad. Holding, LLP*, 2019 WL 2249941, at *6 (S.D. Fla. May 24, 2019) ("courts in the Eleventh Circuit routinely approve fee awards of one-third of the common settlement fund").[12]

Moreover, a review of attorneys' fees awarded in comparable complex litigation settlements in the Eleventh Circuit strongly supports the reasonableness of the 33⅓% fee request here. *See Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1294-95 (11th Cir. 1999) (affirming 33⅓% award of $40 million common fund); *Fernandez*, 2017 WL 7798110, at *4 (awarding 35% of $25 million); *In re Flowers Foods, Inc. Sec. Litig.*, 2019 WL 6771749, at *2 (M.D. Ga. Dec. 11, 2019) (awarding 33⅓% of $21 million); *Cabot E. Broward 2 LLC v. Cabot*, 2018 WL 5905415, at *1 (S.D. Fla. Nov. 9, 2018) (awarding 33⅓% of $100 million settlement fund); *In re: Managed Care Litig. v. Aetna*, 2003 WL 22850070 (S.D. Fla. Oct. 24, 2003) (awarding fees and costs of 35.5% of settlement of $100 million); *Masco*, 2012 WL 12540344, at *1 (awarding one-third of the $75 million settlement fund, plus expenses); *see also* Ex. 2 (collecting Eleventh Circuit cases).

In sum, the fees commonly awarded in comparable complex litigation settlements strongly demonstrate the reasonableness of the requested fee. *See In re Bluegreen Corp. Shareholder Litig.*, 2015 WL 6866226, at *4 (Fla. 15th Cir. Ct. Sept. 22, 2015) ("The implied percentage of the

[12] *See also Shaw v. Toshiba Am. Info. Sys., Inc*., 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that … fee awards in class actions average around one-third of the recovery."); *Wolff v. Cash 4 Titles*, 2012 WL 5290155, at *6 (S.D. Fla. Sept. 26, 2012) (collecting cases and stating that "the [33%] requested fee is entirely consistent with the percentage awarded in class actions in the Southern and Middle Districts of Florida since the percentage-of-fund approach was adopted by the Eleventh Circuit in *Camden I*.").

Common Fund represented by the Fee Request, 32.88%, is within the range of recovery percentages in major commercial litigations undertaken entirely on a contingent basis.").

***Rowe* Factor #4: The Amount Involved And The Results Obtained.**

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *Ressler v. Jacobson*, 149 F.R.D. 651, 655 (M.D. Fla. 1992) ("It is well-settled that one of the primary determinants of the quality of the work performed is the result obtained."). The proposed $30,000,000 all cash, non-reversionary Settlement is an excellent result for the Settlement Class, both quantitatively and when considering the risk of a lesser (or no) recovery if the case proceeded through a decision on class certification, summary judgment, and trial.

Plaintiffs' damages expert estimates that had Plaintiffs ***fully prevailed*** at both summary judgment and after a jury trial, if the Court certified the same class period as the Settlement Class Period, and if the Court and jury accepted Plaintiffs' damages theory – *i.e.*, Plaintiffs' ***best case scenario*** – the total ***maximum*** damages would be approximately $528 million. Thus, the $30,000,000 Settlement Amount equates to approximately 5.68% of the total ***maximum*** damages ***potentially*** available.[13] However, Section 11 of the Securities Act provides defendants with the affirmative defense of negative causation, which prohibits recovery for losses that defendants prove are not attributable to alleged misrepresentations and/or omissions in the Registration Statement. If Defendants' claims that certain drops in ADT's stock price were based on factors unrelated to the alleged misstatements in, or omissions from, the Registration Statement, that

[13] The $528 million figure represents the difference between the $14 IPO price and the price of ADT stock on March 21, 2018 (*i.e.*, the date of the first-filed complaint in the state court action) ($8.97), multiplied by 105 million shares offered in the IPO.

certain allegedly omitted information was already in the public domain prior to the IPO, and that the disclosure of certain information did not trigger a statistically significant price reaction in ADT stock were accepted by the trier of fact, Plaintiffs' total ***maximum*** damages available would be roughly $100 million. Under such a scenario, the Settlement represents a recovery of approximately 30% of the Settlement Class's maximum damages.

A recovery within the range of 5.6%-30% is well above the average recovery in securities class actions. *See* Ex. 1 (Excerpt from Stefan Boettrich and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at p. 20, Fig. 13 (median recovery in securities class actions in 2019 was approximately 2.1% of estimated damages). Moreover, assuming *arguendo*, Defendants demonstrated that Amazon's February 27, 2018 announcement of its intent to acquire Ring was not foreseeable, the decline in ADT's stock price in reaction to this announcement would not constitute compensable damages, and damages could have easily been reduced to $0. Accordingly, given the significant risks of this litigation, the $30 million Settlement is an outstanding result and weighs heavily in favor of the requested fee.

Rowe Factor #5: Time Limitations Imposed By The Client Or The Circumstances

This factor does not pertain to this case.

Rowe Factor #6: Nature And Length Of The Professional Relationship With The Client

This factor does not pertain to this case.

Rowe Factor #8: Whether The Fee Is Fixed Or Contingent

Courts have consistently recognized that the risk that class counsel could receive little or no recovery is a major factor in determining a fee award:

> A determination of a fair fee for Class Counsel must include consideration of the contingent nature of the fee . . . and the fact that the risks of failure and nonpayment

> in a class action are extremely high. Cases recognize that attorneys' risk is "'perhaps the foremost' factor" in determining an appropriate fee award.

Princess Cruise Lines, 513 F. Supp. 2d at 1339.[14] "Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981). This is so because of the risk that after investing thousands of hours, plaintiffs' counsel may receive no compensation whatsoever. Indeed, *Behrens* provides:

> In a securities fraud action, a contingency fee arrangement has added significance. The federal securities laws are remedial in nature and, in order to effectuate their statutory purpose of protecting investors and consumers, private lawsuits should be encouraged. If the ultimate effectiveness of these remedies is to be preserved, the efficacy of class actions and of contingency fee arrangements – often the only means of legal representation available given the incredible expense associated with these actions – must be promoted.

118 F.R.D at 548.

Further, the risk of loss in this case was not illusory. As discussed herein, securities actions are extremely complex, and success is never assured. Here, Plaintiffs' Counsel faced significant challenges in establishing liability and proving damages. ¶¶67, 68. Moreover, had Plaintiffs won at trial, there was no guarantee that a jury would have awarded a judgment greater than the Settlement, and there was still a risk of loss on appeal. ¶68. Consequently, this factor weighs in favor of approving the fee request. *See Dreidame*, 2008 WL 7079074 (finding a 5 multiplier proper and stating: "[i]f defeated, class counsel in both cases would have received no fees or compensation for their enormous investment of time, expense and effort expended on the case.").

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[14] *See also Cash 4 Titles*, 2012 WL 5290155, at *1 ("It was Class Counsel alone that bore the entire risk of this representation – a significant finding in support of the requested fee."); *In re Friedman's Inc. Sec. Litig*., 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2009) ("The contingent nature of fees in this case should be given substantial weight in assessing the requested fee award."); *Behrens*, 118 F.R.D at 548 ("A contingency fee arrangement often justifies an increase in the award of attorneys' fees.").

E. The Lack Of Objections Further Supports The Requested Fee Award

The Notice advised the Settlement Class that Lead Counsel intended to apply for a fee of 33⅓% of the Settlement Fund. As set forth in the Murray Declaration, the Notice was mailed to the Settlement Class and made available on the settlement website (www.adtsecuritieslitigation.com). Ex. 4, ¶¶5-11 and 14. In all, the Court-appointed claims administrator, Gilardi & Co. LLC, has mailed 33,720 Notices to Settlement Class Members. Ex. 4, ¶11. Moreover, the Summary Notice was published once in *Investor's Business Daily* and transmitted once over the *Businesswire*. *Id*. To date, there are no objections from the Settlement Class to either the Settlement or the requested fee award. "The lack of significant objection from the Class supports the reasonableness of the fee request." *Allapattah*, 454 F. Supp. 2d at 1204; *see also Ressler*, 149 F.R.D. at 656 (lack of objections is "strong evidence of the propriety and acceptability" of the fee request).

IV. THE LITIGATION EXPENSES INCURRED ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Lead Counsel's fee application includes a request for payment of expenses that are "reasonable and necessary to obtain the [S]ettlement reached." *Ressler*, 149 F.R.D. at 657; *see also* ¶¶82-85. These expenses are properly recoverable. *See In re Bluegreen Corp. Shareholder Litig*., 2015 WL 6866226, at *6 (Fla. 15th Cir. Ct. Sept. 22, 2015) (granting request for reimbursement of $603,335.03 in expenses from the common fund); *In re Authentec, Inc. Shareholder Litig*., 2016 WL 7647085, at *3 (Fla. 18th Cir. Ct. Nov. 28, 2016) (awarding $242,299.19 in expenses from common fund).[15] As set forth in detail in the Reise Declaration,

[15] *See also Dowdell v. City of Apopka*, 698 F.2d 1181 (11th Cir. 1983) ("all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of the case" may be recovered); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534 (S.D. Fla. 1988), *aff'd*

Plaintiffs' Counsel incurred $114,266.34 in litigation-related expenses. *See* ¶¶82-85; *see also* Exs. 10-21 (Plaintiffs' Counsel's fee and expense declarations).

The types of expenses for which Plaintiffs' Counsel seek reimbursement were necessarily incurred in the litigation and are routinely charged to classes in contingent litigation and clients billed by the hour. These expenses include, among others, costs and fees for experts and consultants, investigators, mediation, on-line legal and factual research, copying, court filing fees, and travel. *Id.* "Reimbursement of similar expenses is routinely permitted." *In re Remeron End-Payor Antitrust Litig*., 2005 WL 2230314, at *32 (D.N.J. Sept. 13, 2005); *see also Gevaerts v. TD Bank*, 2015 WL 6751061, at *14 (S.D. Fla. Nov. 5 2015) (approving reimbursement of expenses related to, among other things, "fees for experts, photocopies, travel, online research, translation services, [and] mediator fees.").

In terms of the reasonableness of the expenses, it is important to recognize that Plaintiffs' Counsel would have borne these costs had this case not reached a successful resolution. Thus, "[Plaintiffs'] Counsel had a strong incentive to keep expenses at a reasonable level due to the high risk of no recovery when the fee is contingent." *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014). The reasonableness of the expenses is also confirmed by the fact that they equate to approximately 0.40% of the recovery, which "is less than the average of 4 percent of the relief for the class." *Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *15 (S.D. Ill. Nov. 16, 2018) (citing Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study,* 1 J. Empirical Legal Stud. 27, 70 (2004)). Finally, the Notice informed potential Settlement Class Members that Lead Counsel would apply for payment

899 F.2d 21 (11th Cir. 1990) ("plaintiff's counsel is entitled to be reimbursed from the class fund for the reasonable expenses incurred in this action").

of expenses in an amount not to exceed $200,000. The amount of Litigation Expenses requested, $114,266.34, is significantly below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

For all of these reasons, Lead Counsel respectfully requests that the Court approve the requested expenses.

V. THE COURT SHOULD AWARD PLAINTIFFS THEIR COSTS AND EXPENSES PURSUANT TO 15 U.S.C. §77Z-1(a)(4)

The PSLRA permits plaintiffs to recover litigation costs (including lost wages) incurred as a result of serving as lead plaintiff and/or representative plaintiff in the Action. 15 U.S.C. §77z-1(a)(4). Reimbursement of such costs is allowed because it "encourages participation of plaintiffs in the active supervision of their counsel." *Varljen v. H.J. Meyers & Co.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000); *see also Buettgen v. Harless*, 2013 WL 12303143, at *14 (N.D. Tex. Nov. 13, 2013) ("courts routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place.").[16]

Here, Lead Counsel respectfully requests reimbursement in the total amount of $12,500 ($2,500 for four of the five State Court Plaintiffs, and $2,500 for the Federal Court Lead Plaintiff) for the time they expended on behalf of the Settlement Class. As set forth in their respective declarations, Plaintiffs have actively and effectively fulfilled their obligations as representatives

[16] The fact that the Plaintiff awards requested here are specifically allowed by federal statute differentiates them from the "incentive payments" that the Eleventh Circuit recently held were forbidden in certain class actions. *See Johnson v. NPAS Sols., LLC*, 2020 WL 5553312, at *12 (11th Cir. Sept. 17, 2020) ("If either the Rules Committee or Congress doesn't like the result we've reached, they are free to amend Rule 23 or to provide for incentive awards by statute.").

of the Settlement Class. Plaintiffs, among other things: (i) participated in regular discussions with their counsel concerning the prosecution of the Actions and strengths and weaknesses of the claims; (ii) reviewed significant pleadings; (iii) collected and produced documents related to ADT to counsel; (iv) were closely involved in mediation efforts and settlement negotiations; and (v) approved the proposed Settlement. *See* Exs. 5-9. The foregoing efforts are precisely the types of activities that Courts have found to support reimbursement to class representatives. *See, e.g.*, *In re Marsh & McLennan Cos. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009) (awarding over $200,000 to lead plaintiffs to compensate them spent supervising the litigation and noting that these efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives").

In light of the substantial work performed by Plaintiffs, the amount requested for each Plaintiff is eminently reasonable, and it is consistent with, or lower than, awards in other cases. *See Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 WL 10518902, at *12 (S.D. Fla. Oct. 14, 2016) (awarding $15,000 to each class representative as "fair and reasonable"); *In re Flowers Foods, Inc. Sec. Litig*., 2019 WL 6771749, at *2 (M.D. Ga. Dec. 11, 2019) (awarding plaintiffs $10,000 each "as reimbursement for [their] reasonable costs and expenses directly related to [their] representation of the Settlement Class"); *In re Bluegreen Corp. Shareholder Litig.*, 2015 WL 6866226, at *6 (Fla. 15th Cir. Ct. Sept. 22, 2015) (awarding service awards of $10,000 to each of the three class representatives).[17]

[17] *See also Miller v. Global Geophysical Servs. Inc.*, No. 4:14-cv-00708, Order, ECF No. 137 (S.D. Tex. Jan. 14, 2016) (awarding $15,000 to Lead Plaintiff pursuant to PSLRA); *Aranaz v. Catalyst Pharm. Partners Inc.*, No. 1:13-cv-23878-UU, ECF No. 153 at p. 8 (S.D. Fla Mar. 16, 2015) (awarding $10,000 to each class representative); *Altamonte Springs Imaging, L.C. v. State Farm Mut. Auto. Ins. Co.*, 12 So. 3d 850, 857 (Fla. 3d DCA 2009) ("The trial court correctly found that a payment of $10,000 to Open MRI as representative plaintiff was reasonable."); *Law Offices of Henry E. Gare, P.A. v. Healthport Techs. LLC*, 2014 WL 7715558, at *4 (Fla. 4th Cir. Ct. June

Accordingly, Lead Counsel respectfully request that the Court award $2,500 to each of the Plaintiffs as reimbursement for their reasonable costs incurred in representing the Settlement Class.[18]

DATED: December 16, 2020

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Lead Counsel and Chair of Executive Committee in the State Action

11, 2014) ("The Court approves the payment of $8,500.00 to the Class Representative, the Law Offices of Henry E. Gare, P.A., as a Service Award for its contribution to the litigation.").

[18] To date, there has been no objections to this request.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 16, 2020, a true and correct copy of the foregoing was served upon all counsel of record via the Florida e-filing portal.

s/ Jack Reise
JACK REISE
(FL Bar No. 058149)