UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE CONN'S, INC. SECURITIES LITIGATION	§ § § § § §	Civil Action No. 4: 14-cv-00548 (KPE) (Consolidated Action)

CLASS COUNSEL'S UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, PAYMENT OF LITIGATION EXPENSES, AND PAYMENT OF CLASS REPRESENTATIVES' COSTS AND EXPENSES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

TREATISES

Court-appointed Class Counsel, Motley Rice LLC ("Motley Rice") and Scott+Scott Attorneys at Law LLP ("Scott+Scott," and, with Motley Rice, "Class Counsel"), having achieved a Settlement of $22,500,000 in cash for the benefit of the Class, respectfully bring this unopposed motion for an award of attorneys' fees in the amount of 20% of the Settlement Fund, or $4,500,000, plus accrued interest, on behalf of themselves and all Plaintiffs' Counsel.[1] Class Counsel, on behalf of all Plaintiffs' Counsel, also seek payment of $1,171,092.41 in litigation expenses incurred in prosecuting the Action, as well as the reimbursement of $29.924.06 to Class Representatives to compensate them for the time they spent litigating the Action.[2]

PRELIMINARY STATEMENT

The $22.5 million proposed Settlement, if approved by the Court, represents a very favorable recovery for the Class. The Settlement is particularly beneficial in light of the significant litigation risks present in this case. As discussed below, Defendants advanced formidable defenses

[1] "Plaintiffs' Counsel" means Class Counsel, Labaton Sucharow LLP ("Labaton Sucharow"), Ajamie LLP, and all other legal counsel who performed services in the Action on behalf of Class Representatives or, at Class Counsel's direction, the Class. Motley Rice has a fee-sharing agreement with Sturman LLC, which has served as counsel to Universal during this Action, and which has been consented to by Universal. Labaton Sucharow has a referral obligation to The Thornton Law Firm, which has been consented to by St. Paul. Scott+Scott has a referral obligation to Sachs Waldman PC, which has been consented to by Detroit Laborers. None of these obligations will increase the overall fee deducted from the Settlement Fund. Unless otherwise noted, capitalized terms have the meanings set out in the Stipulation and Agreement of Settlement dated June 13, 2018 (the "Stipulation") (ECF No. 180-82).

[2] Class Representatives are simultaneously submitting the Joint Declaration of James M. Hughes and Max Schwartz in Support of Class Representatives' Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation and Class Counsel's Motion for Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Reimbursement of Class Representatives' Costs and Expenses (the "Joint Declaration"). Citations to "¶ _" refer to paragraphs of the Joint Declaration. All exhibits referenced herein are attached to the Joint Declaration. The Court is respectfully referred to the Joint Declaration for a detailed description of the history of the Action; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of continued litigation; and a description of the services Plaintiffs' Counsel provided for the benefit of the Class.

to Class Representatives' claims and there was considerable uncertainty throughout the case as to whether Class Representatives would be able to obtain any recovery. *See* ¶¶ 70-92. Nonetheless, Plaintiffs' Counsel vigorously litigated this case for three-and-a-half years on an entirely contingent basis against one of the largest and most well-respected law firms in the country. Class Counsel respectfully submit that, for the reasons discussed herein and in the Joint Declaration, Plaintiffs' Counsel should be awarded the requested attorneys' fees and litigation expenses and Class Representatives awarded the requested reimbursement for their time and expenses. To date, there have been no objections filed to any of these requests.

As detailed in the accompanying Joint Declaration, to achieve the recovery here, Plaintiffs' Counsel devoted substantial resources to pursuing this litigation by, among other things: (i) a thorough investigation of the claims in the Action, including interviews with numerous former employees of Conn's and an extensive review of SEC filings, news reports, analyst reports; (ii) researching and drafting four comprehensive amended complaints; (iii) briefing four rounds of motions to dismiss and participating in multiple days of oral argument on Defendants' successive motions to dismiss; (iv) interviewing and obtaining declarations from all five confidential witnesses cited in the operative complaint; (v) working with experts in accounting, damages, and retail credit and underwriting regarding the underlying allegations and the damages suffered by the Class; (vi) successfully moving for class certification and participating in oral argument on Plaintiffs' motion for class certification; (vii) briefing on Defendants' Rule 23(f) appeal of the class certification order; (viii) reviewing and analyzing nearly 700,000 pages of documents and taking ten fact depositions, including a deposition of a corporate representative of Conn's under Rule 30(b)(6); (ix) reviewing and producing documents and defending the depositions of the four class representatives; (x) reviewing SEC testimony and exhibits of Conn's current and former

employees; and (xi) engaging in extensive settlement negotiations over the course of one year that included preparing detailed mediation statements and participating in three mediation sessions conducted by Robert A. Meyer, Esq. of JAMS ("Mr. Meyer"), a well-respected and experienced mediator. *See* ¶¶ 66-69.

Plaintiffs' Counsel undertook these substantial efforts and achieved the proposed Settlement in the face of considerable litigation risk. The case was subject to the heightened pleading standards of the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and Defendants vigorously disputed Class Representatives' claims for securities fraud. Among the many challenges Class Representatives faced from the outset of this case were showing that statements and omissions about Conn's underwriting standards were materially false and misleading in light of Defendants' arguments that Conn's disclosed the various factors it took into account in making its credit determinations, that changes in the Company's credit standards did not cause credit losses, and that the adjustments Conn's did make to its underwriting standards did not have a statistically significant impact on Conn's overall credit portfolio. Class Representatives also faced meaningful challenges in proving that Defendants acted with the required intent to defraud necessary to establish Defendants' scienter. Defendants argued, among other things, that Conn's credit problems were the result of computer systems issues, personnel problems, and macro-economic factors beyond their control. Defendants also maintained that the Class Period could not extend past February 20, 2014, on the basis that the truth regarding each of the statements upheld by the Court had already been disclosed to the market as of that date.

On May 5, 2016, the Court entered an Order granting in part and denying in part Defendants' motion to dismiss the Fourth Consolidated Amended Complaint. The Court sustained only thirteen of the allegedly false and misleading statements. *See* ECF No. 125. The fact that a

portion of Class Representatives' claims survived the difficult pleadings hurdles imposed by the PSLRA was a significant and hard-fought victory.

Despite this, there remained substantial risks to establishing liability and damages. While Class Representatives and Plaintiffs' Counsel believe that the claims asserted against Defendants have merit, there were very significant risks as to whether Class Representatives would ultimately be able to prove liability and establish damages on their claims and obtain any recovery in the Action. *See generally* ¶¶ 70-88. From the outset of the case, Class Representatives faced risks and uncertainty as to whether they would be able to achieve any recovery. Indeed, the Court's decision on the motion to dismiss the Fourth Consolidated Amended Complaint dismissed all of the alleged false statements in the second half of the Class Period. Moreover, with respect to the alleged false statements remaining in the Action, there were still substantial challenges to establishing their falsity at trial. ¶¶ 74-79.

Defendants would have continued to challenge both the falsity of the statements and that they were made with scienter, arguing in particular that Conn's disclosed the various factors it took into account in making credit determinations and further disclosed that it changed these criteria periodically. Defendants also argued that changes in the Company's credit standards did not cause its credit losses and that the adjustments Conn's did make to its underwriting standards did not have a statistically significant impact on Conn's overall credit portfolio. Although Plaintiffs had evidence that Conn's underwriting changes and the dramatic increase of low FICO loans fundamentally altered the risk profile of Conn's credit portfolio, quantifying these changes and increased risk could prove difficult.

Plaintiffs' Counsel also faced meaningful challenges in proving that Defendants acted with the required intent to defraud necessary to establish Defendants' scienter. Defendants argued that

Conn's credit problems were the result of computer systems issues, personnel problems, and macro-economic factors beyond their control. Plaintiffs' Counsel also had to address the fact that the Company's outside auditors approved Conn's credit reserves.

In addition to these challenges in establishing liability, Class Representatives also faced additional risks to establishing loss causation and damages. Defendants argued that Class Representatives would not be able to connect the alleged misstatements in 2013 to the full drop in Conn's stock price on the corrective disclosure dates and that evidence existed that would show that the deterioration in Conn's credit segment occurred across all segments of Conn's customer base, not only in the segments resulting from the alleged loosened underwriting standards. There was also a risk that the Fifth Circuit would shorten the Class Period by changing the end date from December 9, 2014 to February 19, 2014, thereby reducing the Class-wide damages significantly. For example, the maximum potential damages, before taking into account negative loss causation, disaggregation and similar issues, would be approximately $800 million if the Class Period ends on December 9, 2014, but only approximately $300 million if it ends on February 9, 2014.[3] In addition, Defendants argued that the declines in Conn's stock price were not caused by Defendants' alleged fraud, but were caused by the disclosure of other, non-actionable or confounding factors, and that Class Representatives would be required to disaggregate the alleged artificial inflation in Conn's stock based solely on those losses that flowed from the loans that were the subject of misrepresentations, thus further reducing Class-wide damages. ¶¶ 84-88.

[3] If the Fifth Circuit accepted Defendants' arguments regarding price impact ***and*** shortening the Class Period, Class Representatives' maximum potential damages, before taking into account negative loss causation, disaggregation and similar issues, would be further reduced to approximately $230 million.

In light of these significant risks, the $22.5 million cash recovery is a favorable result and demonstrates the high quality of Plaintiffs' Counsel's representation. As compensation for their significant efforts and achievements on behalf of the Class, Class Counsel, on behalf of all Plaintiffs' Counsel, request a fee award in the amount of 20% of the Settlement. As discussed below, the requested fee is not only well within the range of fees awarded in comparable class action settlements—whether considered as a percentage of the settlement or on a lodestar/multiplier basis—but is in fact far below what courts in both this and other Circuits have awarded in settlements of this size. Moreover, the requested fee represents a negative multiplier of approximately 0.26 of Plaintiffs' Counsel's total lodestar, meaning that counsel is seeking only approximately 26% of the value of their time.[4]

Class Representatives, all sophisticated institutional investors, have endorsed the requested fees and expenses as fair and reasonable. *See* Decl. of Derek Watkins, Esq., attached to the Joint Decl. as Ex. 2; Decl. of Richard S. Monarca, attached to the Joint Decl. as Ex. 3; Decl. of Jill E. Schurtz, attached to the Joint Decl. as Ex. 4; Decl. of Frank Schröder and Michael Eyben, attached to the Joint Decl. as Ex. 5.

The reaction of the Class to date further supports the request for attorneys' fees. Pursuant to the Court's Preliminary Approval Order (ECF No. 183), more than 66,000 copies of the Notice have been mailed to potential Class Members and nominees, and the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire*. In addition, the Notice

[4] Moreover, as explained in the Joint Declaration, ¶¶ 35 n.8, 121, Plaintiffs' Counsel have excluded from their lodestar all time incurred after July 31, 2018. Plaintiffs' Counsel have therefore not submitted time for a number of hours expended since that date. Indeed, Plaintiffs' Counsel will expend additional hours in service of the proposed Settlement for many months by responding to shareholder inquiries, administering the Settlement, and distributing the Settlement proceeds, but will not seek any additional compensation for those services.

and Claim Form were made available for viewing and downloading on the settlement website. The manner of providing notice, i.e., individual notice by mail supplemented by additional publication and internet notice, represents the best notice practicable under the circumstances, and satisfies the requirement of Rule 23, the PSLRA, and due process. *See, e.g.*, *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *11 (N.D. Tex. Nov. 8, 2005) (finding notice by publication and mail sufficient). The Notice advises potential Class Members that Class Counsel would seek fees of up to 20% of the Settlement Fund and litigation expenses in the amount not to exceed $1,500,000. *See* ¶ 94. While the deadline for Class Members to object to the requested attorneys' fees and expenses, including the reimbursement of Class Representatives' costs and expenses, has not yet passed, to date, no objections to any of the requests set forth in the Notice have been received. *See* ¶ 134.[5]

For all the reasons set forth below, Class Counsel respectfully request that, on behalf of all Plaintiffs' Counsel, the Court approve their application for an award of attorneys' fees and reimbursement of expenses, including an award to Class Representatives for their costs and expenses.

ARGUMENT

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO AN AWARD OF ATTORNEYS' FEES FROM THE COMMON FUND

The Supreme Court and the Fifth Circuit have long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Barton v. Drummond Co.*, 636 F.2d 978, 982 (5th Cir. 1981). Courts

[5] Class Counsel will address any objections raised after the filing of this motion in their reply memorandum of law due on October 4, 2018.

recognize that awards of fair attorneys' fees from a common fund serve the "'twin goals of removing a potential financial obstacle to a plaintiff's pursuit of a claim on behalf of a class and of equitably distributing the fees and costs of successful litigation among all who gained from the named plaintiff's efforts.'" *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 306 (S.D. Miss. 2014) (citation omitted); *see also In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-CV-3400 (CM)(PED), 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010) ("[A]wards of attorneys' fees from a common fund 'serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature.'").

The Supreme Court also has emphasized that private securities actions, such as the instant Action, are "an essential supplement to criminal prosecutions and civil enforcement actions" brought by the SEC. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007); *accord Bateman Eichler, Hill Richards, Inc. v. Berner*, 472 U.S. 299, 310 (1985) (noting private securities actions "provide 'a most effective weapon in the enforcement' of the securities laws and are 'a necessary supplement to [SEC] action'"). Compensating plaintiffs' counsel for the risks they take in bringing these actions is essential, because "[s]uch actions could not be sustained if plaintiffs' counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Hicks v. Morgan Stanley*, No. 01 Civ. 10071(RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005). Accordingly, Plaintiffs' Counsel are entitled to an award of attorneys' fees from the Settlement Fund created by the Settlement.

II. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-THE-FUND METHOD OR THE LODESTAR METHOD

Fees awarded to counsel from a common fund can be determined under either the percentage-of-the-fund method or the lodestar method. *See Union Asset Mgmt. Holding A.G. v.*

Dell, Inc., 669 F.3d 632, 644 (5th Cir. 2012) (noting district courts have "the flexibility to choose between the percentage and lodestar methods in common fund cases"). Under either the percentage or the lodestar method, the requested fee in this Action is fair and reasonable.

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-the-Fund Method

The Supreme Court has endorsed the percentage method, stating that "under the 'common fund doctrine,'. . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The Fifth Circuit also has approved the percentage method, noting that it "brings certain advantages . . . because it allows for easy computation, [and] it aligns the interests of class counsel with those of the class members." *Dell*, 669 F.3d at 643 ("[D]istrict courts in this Circuit regularly use the percentage method."); *see also Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("[T]he percentage method . . . 'directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'").

The requested fee of 20% is well within the range of percentage fees awarded in the Fifth Circuit in comparable cases, and is in fact much lower than in many comparable cases. *See Schwartz*, 2005 WL 3148350, at *27 ("[C]ourts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method."); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("[B]ased on the opinions of other courts and the available studies of class action attorneys' fees awards . . . , this Court concludes that attorneys' fees in the range from twenty-five percent (25%) to [33%] have been routinely awarded in class actions."); *see also Jenkins*, 300 F.R.D. at 307 ("'[I]t is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third.'"); *In re OCA, Inc. Sec. & Derivative Litig.*, No. 05-2165, 2009 WL 512081, at *19 (E.D.

La. Mar. 2, 2009) ("In securities suits, common fee awards generally fall within the 20 to 33 per cent range."); *Manual for Complex Litigation (Fourth)* § 14.121 (2004) ("Attorney fees awarded under the percentage method are often between 25% and 30% of the fund.").

A review of attorneys' fees awarded in class actions with comparably sized settlements in this Circuit strongly supports the reasonableness of the 20% fee request. *See, e.g.*, *Burford v. Cargill, Inc.*, No. 05-0283, 2012 WL 5471985, at *6 & n.1 (W.D. La. Nov. 8, 2012) (awarding 33.3% of $27.5 million settlement fund with 1.78 multiplier); *Di Giacomo v. Plains All Am. Pipeline*, No. Civ.A.H-99-4137, 2001 WL 34633373, at *8-11 (S.D. Tex. Dec. 19, 2001) (awarding 30% of $24.1 million common fund with a 5.3 multiplier). Indeed, fee awards far in excess of the 20% requested here are often made in considerably larger settlements as well. *See, e.g.*, *Billitteri v. Sec. Am., Inc.*, No. 3:09-cv-01568-F, 2011 WL 3585983, at *4, *9 (N.D. Tex. Aug. 4, 2011) (awarding 25% of a $80 million settlement fund with a 1.97 multiplier); *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 678-81 (N.D. Tex. 2010) (awarding 30% of a settlement between $90 and $110 million with a multiplier of approximately 2.5).

The requested fee also is well within the range of percentage fee awards that have been granted in comparable securities class actions in other Circuits. *See, e.g.*, *In re Sadia S.A. Sec. Litig.*, No. 08 Civ. 9528(SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (awarding 30% of $27 million settlement fund with a 1.04 multiplier); *Atlas v. Accredited Home Lenders Holding Co.*, No. 07-CV-00488-H (CAB), 2009 WL 3698393, at *4-5 (S.D. Cal. Nov. 4, 2009) (awarding 25% of $22 million settlement fund with a 1.1 multiplier).

In sum, when considered on a percentage basis, the requested fee is at least in line with—and in many cases below—the fees commonly awarded in securities class actions involving

comparable settlements. The percentage method thus demonstrates the reasonableness of the requested fee.

B. The Requested Attorneys' Fees Are Reasonable Under the Lodestar Method

Under Fifth Circuit law, if the Court determines the attorneys' fees based on the percentage method, the Court must "cross-check" the proposed fee for reasonableness by considering counsel's lodestar and the other considerations set out in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). *See Dell*, 669 F.3d at 643-44. The Court also may determine the reasonable attorneys' fees in the first instance by using the lodestar method, as long as the *Johnson* factors are considered. *See id.* at 644. In this case, the lodestar method—whether used directly or as a "cross-check" on the percentage method—strongly demonstrates the reasonableness of the requested fee.

Under the lodestar method, "the court computes fees by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate and, in its discretion, applying an upward or downward multiplier." *Id.* at 642-43. In securities class actions, fees representing multiples above the lodestar are typically awarded to reflect contingency fee risks and other relevant factors.

Here, Plaintiffs' Counsel spent over 31,000 hours of attorney and other professional support time prosecuting this Action from its inception through July 31, 2018. *See* ¶ 121. Based on the Plaintiffs' Counsel's current rates, their combined lodestar for this period is $17,446,898.50.[6] *See id*. The requested 20% fee, which amounts to $4,500,000 (without interest),

[6] The Supreme Court and courts in this Circuit 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, 283-84 (1989); *Leroy v. City of Houston*, 831 F.2d 576, 584 (5th Cir. 1987) ("[C]urrent rates may be used to compensate for inflation and delays in

therefore represents a multiplier of approximately 0.26 of Plaintiffs' Counsel's lodestar—that is a significant loss on the lodestar despite the enormous risks of this litigation and the long delay between filing the Action and any payment being received by Plaintiffs' Counsel.

The negative multiplier in this Action is well below the range of multipliers commonly awarded in securities class actions and other comparable litigation. Indeed, in class actions with significant contingency risks, lodestar multipliers between 2 and 4.5 are commonly awarded. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 333 (W.D. Tex. 2007) ("The average range of multipliers applied to other class actions has been from 1.0 to 4.5. The range of multipliers on large and complicated class actions have ranged from at least 2.26 to 4.5." (citation omitted)); *Billitteri*, 2011 WL 3585983, at *9 (awarding fee representing a 1.97 multiplier); *Klein*, 705 F. Supp. 2d at 680 (awarding fee representing 2.5 multiplier, noting "[m]ultipliers in this range are not uncommon in class action settlements," and finding 2.5 multiplier "warranted due to the risks entailed in this lawsuit and the zealous efforts of the attorneys that resulted in a significant recovery for the class"); *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 869 (E.D. La. 2007) ("[T]he Court finds that a lodestar multiplier range of 2.5 to 3.5 would be appropriate and reasonable in this case."); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee representing "a multiplier of 4.65 multiplier, well within the range awarded by courts in this Circuit and courts throughout the country").

Moreover, the lodestar presented here is conservative because it is based only on work of Plaintiffs' Counsel through July 31, 2018, and thus excludes additional work that Plaintiffs' Counsel have engaged in for the benefit of the Class since that date, including supervising the

payment."); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 586 F. Supp. 2d 732, 763 (S.D. Tex. 2008) ("One accepted method of compensating for a long delay in paying for attorneys' services is to use their current billing rates in calculating the lodestar.").

Claims Administrator and responding to inquiries from Class Members. If this time had been included in Plaintiffs' Counsel's fee request, the lodestar multiplier would be reduced even further. Moreover, Plaintiffs' Counsel will continue to expend additional hours following the approval of the Settlement, including overseeing the Claims Administrator's processing of claims received and the distribution to eligible claimants, but will not seek any further fees.

The hourly rates, which are Plaintiffs' Counsel's current rates and have been accepted in other securities litigation, are reasonable in light of prevailing market rates for lawyers with comparably high levels of experience and expertise in securities litigation and other complex class action litigation. *See In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1087-88 (S.D. Tex. 2012) (noting attorneys' hourly rates should be judged in relation to "'prevailing market rates for lawyers with comparable experience and expertise' in complex class-action litigation" and finding "[a]n attorney's requested hourly rate is prima facie reasonable when he requests that the lodestar be computed at his or her customary billing rate, the rate is within the range of prevailing market rates[,] and the rate is not contested") (second alteration in original). Plaintiffs' Counsel's average rates here are $573.44 for attorneys, and $368.54 for professional support staff, which are reasonable given the complex nature of the litigation. *See, e.g., Klein*, 705 F. Supp. 2d at 680 (approving use of $500 average hourly rate for calculating lodestar). Counsel's rates overall range from $250 to $550 for professional support staff and from $360 to $1,050 for attorneys. Plaintiffs' Counsel submit that they are comparable or less than those used by peer defense-side law firms litigating matters of similar magnitude. Sample defense firm rates in 2017, gathered by Labaton Sucharow from bankruptcy court filings nationwide, often exceed these rates. *See* Joint Decl. ¶ 120; Ex. 11.

In sum, whether calculated as a percentage of the fund or under the lodestar method, the requested fee is within the range of fees routinely awarded by courts in securities class actions. Additionally, as set forth below, a review of the factors established by the Fifth Circuit in *Johnson* further demonstrates that the requested fee is fair and reasonable, and should be approved.

C. The *Johnson* Factors Considered by Courts in the Fifth Circuit Confirm that the Requested Fee as Fair and Reasonable

The Fifth Circuit has set forth the following criteria that courts should consider when reviewing a request for attorneys' fees in a common fund case:

> (1) the time and labor required; (2) the novelty and difficulty of the issues; (3) the skill required to perform the legal service adequately; (4) the preclusion of other employment by the attorney because he accepted this case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.[7]

Dell, 669 F.3d at 642 n.25 (citing *Johnson*, 488 F.2d at 717-19); *see also Billitteri*, 2011 WL 3585983, at *3 (same). In addition, courts may consider additional factors, such as (1) public policy considerations, (2) the Class Representatives' approval of the fee, and (3) the reaction of the Class. Consideration of all of these factors provides further confirmation that the fee requested here is reasonable.[8]

Under either the percentage or lodestar method, the *Johnson* factors confirm that the requested fee awarded is reasonable. *See Dell*, 669 F.3d at 643-44.

[7] Plaintiffs' Counsel respectfully submit that factors (7) and (11) are not implicated here. Factor (12) is discussed at pages 9-10.

[8] The Court is respectfully directed to pages 6-8 for a discussion of these three additional factors.

1. The Time and Labor Required

The time and effort expended by Plaintiffs' Counsel in prosecuting this Action and achieving the Settlement establishes that the requested fee is justified. The Joint Declaration details the substantial efforts of Plaintiffs' Counsel to prosecute Class Representatives' claims over the three-and-a-half-year litigation. As set forth in greater detail in the Joint Declaration, Plaintiffs' Counsel, among other things:

- conducted an extensive investigation, which included interviews with numerous former employees of Conn's and an extensive review of SEC filings, news reports, analyst reports and consultation with experts (¶ 9);
- drafted four consolidated complaints (*id.*);
- conducted four rounds of detailed briefing on Defendants' motions to dismiss (*id.*);
- prepared for and conducted a two-day oral argument on Defendants' motions to dismiss the operative complaint and a one-day hearing on Defendants' motion to dismiss a prior version of the complaint (*id.*; ¶¶ 35-37);
- interviewed and obtained declarations from all five confidential witnesses cited in the operative complaint (¶¶ 9, 50);
- worked with experts in accounting, damages, and retail credit and underwriting regarding the underlying allegations and the damages suffered by the Class (¶¶ 9, 64);
- briefed and argued Plaintiffs' motion for class certification and fully briefed Defendants' Rule 23(f) appeal of class certification order (¶ 9);
- undertook extensive fact and expert discovery, including taking 10 fact depositions (*id.*);
- searched for, collected and produced documents and defended the depositions of the four class representatives (*id.*);
- reviewed SEC testimony and exhibits of Conn's current and former employees (*id.*); and
- drafted mediation statements and engaged in a mediation process overseen by Mr. Meyer (*id.*).

As noted above, Plaintiffs' Counsel expended more than 31,000 hours investigating, prosecuting, and resolving this Action through July 31, 2018, with a total lodestar value of over $17 million. ¶ 121. The substantial time and effort devoted to this case by Plaintiffs' Counsel, and their efficient and effective management of the litigation, was critical in obtaining the favorable result achieved by the Settlement, and confirms that the fee request here is reasonable.

2. The Novelty and Difficulty of the Issues

Throughout the Action, Plaintiffs' Counsel faced several novel and difficult issues. For example, even though the Court upheld certain statements alleged in the Fourth Amended Complaint, Plaintiffs' Counsel faced significant hurdles in proving that those statements and omissions about Conn's underwriting standards were materially false and misleading in light of Defendants' argument that Conn's disclosed the various factors it took into account in making its credit determinations and further disclosed that it periodically changed those criteria. Defendants argued that changes in the Company's credit standards did not cause its credit losses. Further, Defendants also argued that the adjustments Conn's did make to its underwriting standards did not have a statistically significant impact on Conn's overall credit portfolio.

Plaintiffs' Counsel also faced meaningful challenges in proving that Defendants acted with the required intent to defraud necessary to establish Defendants' scienter. Specifically, Plaintiffs' Counsel have worked to rebut Defendants' arguments that Conn's credit problems were the result of computer systems issues, personnel problems, and macro-economic factors beyond their control. Plaintiffs' Counsel also had to address the fact that the Company's outside auditors approved Conn's credit reserves.

In addition, while the Court certified the Class, that ruling was on appeal at the time of Settlement. One of the key issues in Defendants' appeal is whether the Class Period was overbroad, an issue that could impact the extent of the Class's damages. Plaintiffs' Counsel fought

hard to ensure that the Class Period extended through December 9, 2014 in response to Defendants' attempts to end the Class Period on February 20, 2014.

3. The Skill Required to Perform the Legal Services Properly, and the Experience, Reputation, and Ability of the Attorneys

Under these two *Johnson* factors, the Court should consider the skills required to litigate the Action and "the experience, reputation and ability of the attorneys" involved. The first of these factors 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). "The trial judge's expertise gained from past experience as a lawyer and his observation from the bench of lawyers at work [are] highly important in this consideration." *Enron*, 586 F. Supp. 2d at 789 (quoting *Johnson*, 488 F.2d at 718).

Considerable litigation skills were required for Plaintiffs' Counsel to achieve the Settlement in this Action. As noted above, this is a complex case involving difficult factual and legal issues on the merits, and it was subjected to the extremely rigorous pleading hurdles of the PSLRA. Given the many contested issues, it took highly skilled counsel to represent the Class and bring about the substantial recovery that has been obtained.

As demonstrated by their firm resumes (attached as Exhibits 7-D, 8-C, 9-C & 10-C to the Joint Declaration), each of Motley Rice, Scott+Scott, Labaton Sucharow, and Ajamie LLP are leading securities class action firms. Plaintiffs' Counsel submit that the skill of their attorneys, the quality of their efforts in the litigation, their substantial experience in securities class actions, and their commitment to the litigation were key elements in enabling Plaintiffs' Counsel to negotiate this Settlement.

Courts have also recognized that the quality of the opposition faced by plaintiffs' counsel should also be taken into consideration in assessing the quality of counsel's performance. Here, Defendants were represented by Vinson & Elkins L.L.P., one of the country's most prestigious and experienced defense firms, which vigorously and ably defended the Action for more than three-and-a-half years. *See* ¶ 125. Notwithstanding this formidable opposition, Plaintiffs' Counsel's ability to present a strong case enabled them to achieve a favorable settlement. *See, e.g.*, *DeHoyos*, 240 F.R.D. at 326 ("The quality of class counsel's work on this case was excellent and is ultimately reflected in the result which was obtained with a formidable opponent."); *Schwartz*, 2005 WL 3148350, at *30 ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation.").

4. The Preclusion of Other Employment

The considerable amount of time that Plaintiffs' Counsel spent prosecuting the Action—31,240.60 hours since the inception of the Action through July 31, 2018 (¶ 121)—was time that Plaintiffs' Counsel's attorneys could not spend pursuing other matters. Plaintiffs' Counsel dedicated this substantial time to the prosecution of the Action despite the very significant risks of no recovery and while deferring any payment of their fees and expenses until a recovery was reached. Accordingly, this factor also supports the requested fee. *See, e.g.*, *Burford*, 2012 WL 5471985, at *3; *Shaw*, 91 F. Supp. 2d at 970.

5. The Customary Fee

As noted above, Plaintiffs' Counsel's requested fee is well within (in fact, is below) the range awarded in similar cases. *See* Section II. A&B. Moreover, if this were not a class action, the customary fee would be a contingency fee arrangement that would typically provide for 30 to 40 percent of the recovery. *See Blum*, 465 U.S. at 903 (Brennan, J., concurring in part and

dissenting in part) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers."); *Burford*, 2012 WL 5471985, at *6. Accordingly, this factor also supports the requested fee.

6. The Contingent Nature of the Fee

The fully contingent nature of Plaintiffs' Counsel's fee and the substantial risks posed by the litigation are important factors supporting the requested fee. "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974).

As noted above and in the Joint Declaration, Plaintiffs' Counsel faced very significant challenges to establishing liability and damages in this Action. Defendants vigorously contested whether the alleged misstatements were actionably false and misleading and made with scienter at the motion to dismiss stage and they would have continue to pursue these defenses as well as additional potentially powerful arguments concerning loss causation and damages if the Action proceeded to summary judgment or trial. *See* ¶¶ 74-88.

7. The Amount Involved and the Results Achieved

Another *Johnson* factor is the "overall degree of success achieved." *Roussel v. Brinker Int'l, Inc.*, No. H-05-3733, 2010 WL 1881898, at *3 (S.D. Tex. Jan. 13, 2010). Here, Plaintiffs' Counsel have achieved a substantial recovery of $22.5 million for the benefit of the Class. The Settlement is all cash and members of the Class will now receive compensation that was otherwise uncertain when the case began. The result achieved, in light of the substantial risks posed in the Action (*see* ¶¶ 74-88), is significant and supports the requested fee.

8. The Undesirability of the Case

Finally, the undesirability of the case also supports the requested fee. As described above, Plaintiffs' Counsel undertook the prosecution of a highly complex action on a fully contingent basis without the benefit of factors that typically support allegations of securities fraud, such a restatement of financial results or admissions of guilt. *See Druskin v. Answerthink, Inc.*, 299 F. Supp. 2d 1307, 1323-24 (S.D. Fla. 2004) (finding "significant lack of indicia of fraud" when, among other things, there were "no restatements or auditor resignations"). While the SEC investigated Conn's related to the matters alleged in this Action, that investigation remained open throughout the duration of the litigation.

III. PLAINTIFFS' COUNSEL HAVE CORRECTED AN INADVERTENT ERROR IN THE NOTICE REGARDING A REFERRAL OBLIGATION

Item 16 on page 10 of the Notice discusses a referral obligation of Labaton Sucharow, and a fee-sharing obligation of Motley Rice. It also states that Scott+Scott has no similar obligations. That latter statement was an inadvertent error. Accordingly, the Notice now states that Scott+Scott has a referral obligation to Sachs Waldman PC, and that Detroit Laborers (the client that Sachs Waldman PC referred to Scott+Scott) consented to that referral obligation. The corrected Notice was displayed on the Settlement website promptly after the error was identified.

The additional referral obligation does not alter the amount of attorneys' fees that Plaintiffs' Counsel may seek or receive. As the Notice stated (also at Item 16 on page 10), no referral or fee sharing obligations will increase the overall attorneys' fees deducted from the Settlement Fund, if a fee award is approved by the Court. Thus, any request for an award of attorneys' fees in this Action will be no more than 20% of the Settlement Fund, as the Notice sets forth (on pages 3 and 10), and that continues to be the case.

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

Class Counsel's fee application includes a request for payment of Plaintiffs' Counsel's litigation expenses that were reasonably incurred and necessary to the prosecution of this Action. These expenses are properly recovered by counsel. *See Billitteri*, 2011 WL 3585983, at *10 ("Expenses and administrative costs expended by class counsel are recoverable from a common fund in a class action settlement."). As set forth in the Joint Declaration, Plaintiffs' Counsel incurred $1,171,092.41 in litigation expenses on behalf of the Class in the prosecution of the Action. ¶¶ 126-33.

The largest component of expenses related to experts. Specifically, $725,967.46, or approximately 62%, was expended on experts and consultants. ¶ 129. Class Counsel retained accounting and damages experts to assist in the prosecution and resolution of the Action. Class Counsel's experts assisted them during: (i) during the mediation and settlement negotiations with the Defendants; (ii) during the expert phase of discovery during which the experts (an accounting expert, a damages/loss causation expert, and an expert in retail credit granting and underwriting) began preparation of expert reports; and (iii) with the development of the proposed Plan of Allocation.

Another component of the litigation expenses was the retention of Mr. Meyer as mediator. These charges amounted to approximately $37,642.94. The Class's portion of mediation costs totaled $18,821.47. ¶ 131.

The other expenses for which Plaintiffs' Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, electronic research, court reporting fees, work-related

transportation, out-of-town travel, and copying costs. *See generally* Exs. 7-B&C, 8-B, 9-B & 10-B. The foregoing expense items are not duplicated in the firms' hourly rates.

The Notice informed potential Class Members that Class Counsel would apply for payment of litigation expenses in an amount not to exceed $1,500,000. The total amount of expenses requested, $1,171,092.41, is below the amount listed in the Notice and, to date, there has been no objection to the request for expenses.

V. CLASS REPRESENTATIVES' REQUEST FOR PSLRA REIMBURSEMENT

The PSLRA limits a lead plaintiff or class representative's recovery to an amount "equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class," but also provides that "[n]othing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. § 78u-4(a)(4). Here, as detailed in their declarations, attached as Exhibits 2-5 to the Joint Declaration, Class Representatives are seeking the amount of $29.924.06 in total in reimbursement of time and expenses related to their active participation in the Action. In addition to overseeing the prosecution of the Action for three-and-a-half years, Class Representatives assisted with discovery efforts, produced documents, and traveled to and sat for depositions.

Many cases have approved reasonable payments to compensate lead plaintiffs/class representatives for the time, effort, and expenses devoted by them on behalf of a class. *See, e.g.*, *In re BP p.l.c. Sec. Litig.*, No. 4:10-MD-02185, at ¶ 15 (S.D. Tex. Feb. 13, 2017) (Ellison, J.), ECF No. 1512 (awarding $9,587.34 and $1,627.32 to lead plaintiffs) (attached as Ex. 12 to the Joint Decl.); *McPhail v. First Command Fin. Planning, Inc.*, No. 05cv179-IEG-JMA, 2009 WL 839841, at *8 (S.D. Cal. Mar. 30, 2009) (approving awards, ranging from $923.20 to $10,422.30, to six class representatives and noting "the requested reimbursement is consistent with payments in

similar securities cases"). As explained in one decision, 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." *Hicks*, 2005 WL 2757792, at *10.

CONCLUSION

For all the foregoing reasons, Class Counsel, on behalf of all Plaintiffs' Counsel, respectfully request that the Court award attorneys' fees of 20% of the Settlement Fund (plus accrued interest), litigation expenses in the amount of $1,171,092.41, and total reimbursement to the Class Representatives in the amount of $29,924.06.

Dated: September 6, 2018

/s/ Thomas R. Ajamie

Thomas R. Ajamie
Texas Bar No. 00952400
AJAMIE LLP
Pennzoil Place - South Tower
711 Louisiana, Suite 2150
Houston, Texas 77002
Telephone: (713) 860-1600
Facsimile: (713) 860-1699
tajamie@ajamie.com

Liaison Counsel

James M. Hughes (*pro hac vice*)
Christopher F. Moriarty (*pro hac vice*)
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: (843) 216-9000
Facsimile: (843) 216-9450
jhughes@motleyrice.com
cmoriarty@motleyrice.com

Class Counsel for Class Representatives and the Class

Deborah Clark-Weintraub (*pro hac vice*)
Beth Kaswan (*pro hac vice*)
SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
The Helmsley Building
230 Park Avenue, 17th Floor
New York, New York 10169
Telephone: (212) 223-6444
Facsimile: (212) 223-6334
dweintraub@scott-scott.com
bkaswan@scott-scott.com

Class Counsel for Class Representatives and the Class

Jonathan Gardner (*pro hac vice*)
Christine M. Fox (*pro hac vice*)
LABATON SUCHAROW LLP
140 Broadway
New York, New York 10005
Telephone: (212) 907-0700
Facsimile: (212) 818-0477
jgardner@labaton.com
cfox@labaton.com

Additional Counsel for Class Representatives

CERTIFICATE OF SERVICE

I certify that on the 6th day of September, 2018, a true and correct copy of the foregoing document was filed with the Clerk of Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record.

/s/ Thomas R. Ajamie
Thomas R. Ajamie