UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF ARKANSAS

STRATHCLYDE PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. BANK OZK, et al., Defendants.	No. 4:18-cv-00793-DPM CLASS ACTION DECLARATION OF JONAH H. GOLDSTEIN IN SUPPORT OF: (1) LEAD PLAINTIFF'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AND (2) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO LEAD PLAINTIFF PURSUANT TO 15 U.S.C. §78u-4(a)(4)

JONAH H. GOLDSTEIN declares as follows:

1. I am an attorney duly licensed to practice before all courts of the State of California and am admitted to this Court *pro hac vice*, for purposes of this litigation (the "Litigation" or "Action"). I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Class Counsel"), and counsel for Lead Plaintiff Strathclyde Pension Fund ("Strathclyde").[1] I have been actively involved in the prosecution and settlement of this Action since 2019 and am closely familiar with its proceedings. I have personal knowledge of the majority of the matters set forth herein based upon my active participation in and supervision of all material aspects of this Litigation. As to the remaining matters, I have reviewed our litigation files and consulted with other attorneys and support staff who worked on this case. I could and would testify completely to the matters set forth herein if called upon to do so.

2. Due to the Court's familiarity with the Litigation, this Declaration does not seek to detail each and every event during the Action. Rather, the Declaration provides the Court with a summary of the prosecution of the Action, highlights of the events leading to the Settlement, the basis upon which Class Counsel and Lead Plaintiff recommend the Settlement's approval, why the proposed plan for allocating the net Settlement proceeds to eligible Class Members (the "Plan of Allocation" or the "Plan") is fair and reasonable and should be approved by the Court, and why the

[1] Unless otherwise noted, all defined terms have the same definitions ascribed to them in the Stipulation of Settlement (the "Stipulation"). ECF 195.

application for an award of attorneys' fees and expenses, including an award to Lead Plaintiff, is reasonable and should likewise be approved.

3. The Settlement will resolve all claims asserted in the Litigation against Defendants on behalf of the Class consisting of all persons who purchased or otherwise acquired Bank OZK (formerly known as Bank of the Ozarks, Inc.) (hereinafter, "Bank OZK" or the "Company") common stock between February 19, 2016 and October 18, 2018, inclusive (the "Class Period").[2] ECF 202. The Court preliminarily approved the Settlement in an Order entered on June 27, 2022 (the "Preliminary Approval Order"). ECF 202. Since then, the Court-approved Claims Administrator, Gilardi & Co. LLC ("Gilardi"), has notified Class Members of the Settlement by mail in accordance with the Preliminary Approval Order. A Summary Notice was also published in *The Wall Street Journal* and over *Business Wire*. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, hereafter "Gilardi Declaration" at Ex. C. In addition, a settlement-specific website and toll-free telephone number were

[2] Excluded from the Class are: (i) defendant Bank OZK, its parents, subsidiaries, and any other entity owned or controlled by Bank OZK; (ii) defendant George Gleason; (iii) all other executive officers and directors of Bank OZK, or any of its parents, subsidiaries, or other entities owned or controlled by Bank OZK; (iv) all immediate family members of the foregoing individuals, including grandparents, parents, spouses, siblings, children, grandchildren, and step relations of similar degree; and (v) all predecessors and successors in interest or assigns of any of the foregoing. Also excluded from the Class is any Person who would otherwise be a Member of the Class but who validly and timely requested exclusion in accordance with the requirements set by the Court in connection with the Settlement.

established to provide potential Class Members with additional information. *Id.*, ¶¶13-14.

I. PRELIMINARY STATEMENT

4. After over three years of hard-fought litigation, Lead Plaintiff and Class Counsel have secured an outstanding recovery of $45,000,000 for the Class. The Settlement provides a very favorable result for the Class, which faced the risk of a much smaller recovery (or no recovery at all) had the case continued through summary judgment, trial, and inevitable appeals.

5. The $45 million cash settlement is a significant recovery of potential damages. Defendants asserted that Lead Plaintiff had failed to offer any credible basis for liability beyond the direct effect of charging off the sole loan upheld by the Court, which amounted to only approximately $9 million in aggregate damages for the entire Class. Defendants further asserted that no damages resulted from reputational harm to Bank OZK and that beyond the $9 million effect of the loan charge-off, factors unrelated to the fraud had caused the entirety of the additional stock price decline on October 18, 2018, the corrective disclosure date. Moreover, the $45 million settlement amount far exceeds the median settlement amount of $14.7 million in the Eighth Circuit for cases settled between 2012 and 2021. *See* Laarni T. Bulan and Laura E. Simmons, *Securities Class Action Settlements: 2021 Review and Analysis* at 19, Appendix 3 (Cornerstone Research 2022), available at

https://www.cornerstone.com/wp-content/uploads/2022/03/Securities-Class-Action-Settlements-2021-Review-and-Analysis.pdf.

6. Before agreeing to settle this Action, Lead Plaintiff and Class Counsel undertook extensive efforts to advance the Class's claims and to ensure that Lead Plaintiff was able to maximize the Class's recovery. Lead Plaintiff's litigation efforts included, among other things, conducting a comprehensive legal and factual investigation into the events underlying the Class's claims, which culminated in the drafting of a highly detailed, 81-page Amended Complaint. Furthermore, Lead Plaintiff opposed Defendants' motion to dismiss, which meaningfully challenged every major element of Lead Plaintiff's claims. After the Court upheld most of Lead Plaintiff's allegations, Lead Plaintiff successfully opposed Defendants' motion to certify the motion to dismiss order for interlocutory appeal on the basis of its scienter ruling. Lead Plaintiff's continued investigation revealed additional facts, leading to the drafting of a further detailed, 97-page Second Amended Complaint. Lead Plaintiff opposed Defendants' renewed motion to dismiss, which again challenged the sufficiency of Lead Plaintiff's scienter claims. Thereafter, Lead Plaintiff aggressively pursued extensive discovery, including obtaining and reviewing nearly 700,000 pages of documents produced by Defendants and third parties, reviewing and producing nearly 185,000 pages of documents to Defendants, conducting 12 fact depositions and three expert depositions, defending five fact and expert depositions, and assisting in

the preparation of three different expert reports.[3] Lead Plaintiff obtained certification of the Class, had completed fact and expert discovery, and, at the time of settlement, the motions for summary judgment and to exclude expert testimony were nearly fully briefed with a trial date looming.

7. Lead Plaintiff undertook these diligent and exhaustive efforts against a background of significant risks. Indeed, at the pleading stage, the Court dismissed the allegations concerning one of the two loans at issue in Lead Plaintiff's Amended Complaint and Second Amended Complaint, leaving the South Carolina loan as the only allegedly fraudulent loan underlying the claimed false and misleading statements. ECF 50 at 5; ECF 82 at 2. Furthermore, the Court dismissed one of the allegedly corrective disclosures for lack of loss causation, significantly reducing the available damages. ECF 50 at 12. The Court also dismissed one of the individual defendants, leaving only Bank OZK and Defendant Gleason. *See* ECF 50 at 13.

8. Lead Plaintiff faced a risk that its surviving allegations would be dismissed from the case at summary judgment, that it would be unable to prove the falsity of Defendants' misstatements at trial, or that Lead Plaintiff would be unable to prove Defendant Gleason's scienter. For example, Defendants argued, supported by internal documents, that Lead Plaintiff's disagreement with Defendants' accounting

[3] Due to a scrivener's error, the page counts included in Lead Plaintiff's unopposed motion for preliminary approval (ECF 194) were improperly listed. However, the updated page counts do not change Lead Plaintiff's analysis.

could not establish securities fraud because Defendants had conducted a meaningful inquiry that supported their opinions, making them nonactionable. ECF 125 at 5-6; 11-13. Additionally, Defendants argued that no jury could find that Defendants had acted with scienter because a mere error in accounting judgment does not give rise to an intent to deceive, and furthermore, independent third parties had confirmed Defendants' inquiry supporting their statements. *Id.* at 18-19.

9. In addition, Lead Plaintiff also faced significant risks in establishing loss causation for its claims. Defendants argued that the stock price decline following Lead Plaintiff's alleged corrective disclosure was caused by factors other than the alleged fraud, and therefore the Class could not recover damages for the alleged disclosure. Moreover, Defendants sought to exclude Lead Plaintiff's loss causation and damages expert, arguing that his methodology was unreliable because it was untethered to legal and economic authority, and thus the calculation of damages should result in *de minimus*, if not zero, recovery for the Class. ECF 122 at 3-4.

10. While Lead Plaintiff believes that it has strong arguments to respond to these points, there is no question that Defendants' arguments could have been accepted by this Court on summary judgment, or by a jury at trial. And if the Court or jury ultimately concluded that Defendants' statements were not materially false or otherwise actionable, that Defendant Gleason lacked scienter, or that all (or a substantial portion) of the stock price decline following the alleged corrective disclosure was not attributable to the alleged fraud, the potential recovery would be

reduced dramatically, or eliminated altogether. Even a favorable jury verdict would have been subjected to an inevitable and uncertain appeals process. Thus, even if Lead Plaintiff had prevailed at trial, it is highly questionable as to whether Lead Plaintiff would have recovered more than (or even as much as) the substantial recovery provided in the Settlement.

11. The Settlement is also eminently fair, adequate, and reasonable given the extensive settlement negotiations between the Settling Parties, including a mediation session before Michelle Yoshida, Esq., of Phillips ADR Enterprises, a well-known and experienced mediator. In preparation for the mediation session, the Settling Parties submitted to the mediator and exchanged extensive briefing regarding key legal and factual disputes in this Action. After a full day of presentations by the Settling Parties and discussions with Ms. Yoshida, the mediation concluded without resolution of the Litigation. And although the mediation session with Ms. Yoshida did not produce a settlement, the Settling Parties continued their negotiations, and on April 21, 2022, reached an agreement-in-principle to settle the Litigation for $45 million. The Settling Parties spent the subsequent weeks negotiating the specific terms of the Settlement. The Stipulation was executed by the Settling Parties on May 23, 2022. *See* ECF 195.

12. As set forth in the accompanying Memorandum of Law in Support of Lead Plaintiff's Motion for Final Approval of Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), Lead Plaintiff respectfully submits that the

Settlement represents an outstanding recovery for the Class and satisfies each of the factors that the Eighth Circuit advises courts to consider in the settlement approval process, including the factors set forth in Federal Rule of Civil Procedure 23(e)(2) and *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988). *See also In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *6 (D. Minn. Dec. 4, 2020). This is especially true given that the Settlement provides a certain, immediate, and substantial cash recovery for the Class, while avoiding highly uncertain, risky, and costly protracted litigation.

13. Significantly, although the deadline for objections and exclusions from the Class has not passed, to date, not a single Class Member has objected to any aspect of the Settlement, the Plan of Allocation, or the attorneys' fee and expense request, nor have any Class Members sought exclusion. This reaction of the Class is particularly significant given that a large portion of the Class consists of sophisticated institutional investors with the resources and motivation to object, if warranted. Moreover, Lead Plaintiff – itself a sophisticated institutional investor who has actively overseen the prosecution of this Action and who fully understands its fiduciary obligations to act in the best interest of the Class – wholly endorses the Settlement and Class Counsel's requested fee award. *See* Declaration of Richard Keery ("Lead Plaintiff Declaration"), submitted herewith.

14. In addition to seeking the Court's final approval of the Settlement, Lead Plaintiff seeks approval of the proposed Plan of Allocation as fair and reasonable.

The Plan of Allocation was developed in consultation with Lead Plaintiff's in-house damages expert. Under the proposed Plan, Authorized Claimants shall receive their *pro rata* share of the Net Settlement Fund based upon their recognized claim compared to the total recognized claims of all Authorized Claimants. The Plan of Allocation is substantially similar to other plans approved in securities class actions across the country. *See, e.g.*, *Plymouth Cnty. Ret. Sys. v. Patterson Cos., Inc.*, 2022 WL 2111237, at *1 (D. Minn. June 10, 2022) (finding plan of allocation "fair and reasonable," "with due consideration having been given to administrative convenience and necessity"); *Campbell v. Transgenomic, Inc.*, 2020 WL 2946989, at *5 (D. Neb. June 3, 2020) (finding "formula for the calculation of the claims of the authorized claimants" was "a fair and reasonable basis upon which to allocate the proceeds of the settlement fund").

15. Lead Plaintiff's Counsel also request an award of attorneys' fees for their efforts, and for payment of their litigation costs and expenses. Specifically, Lead Plaintiff's Counsel are applying for an attorneys' fee award of one-quarter of the Settlement Fund (*i.e.*, 25% of the Settlement Amount, plus interest earned thereon), and for payment of their litigation costs and expenses of $1,694,305.45 to be paid from the Settlement Fund. Lead Plaintiff's Counsel's requested fee is well within the range of fees approved by courts in this Circuit and around the country in comparable securities or complex class actions, and is amply supported by each of the relevant factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 719-20 (5th

Cir. 1974). *See, e.g.*, *Caligiuri v Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017) (affirming a fee award of one-third of $60 million settlement); *Huyer v. Buckley*, 849 F.3d 395, 399 (8th Cir. 2017) ("Indeed, courts have frequently awarded attorneys' fees ranging up to 36% in class actions."); *Plymouth Cnty. Ret. Sys. v. Patterson Companies, Inc.*, 2022 WL 2093054, at *1 (D. Minn. June 10, 2022) (awarding one-third of settlement fund in attorneys' fees where counsel "achieved the Settlement with skill, perseverance, and diligent advocacy").

16. The reasonableness of Lead Plaintiff's Counsel's requested one-quarter fee is also confirmed by a lodestar cross-check, which yields a modest multiplier of 0.96, which is well below the range of multipliers routinely awarded in the Eighth Circuit. *See, e.g.*, *Campbell*, 2020 WL 2946989, at *4 (describing a 1.47 multiplier as "highly reasonable in light of the quality of the work and the results obtained, and the contingency basis on which representation was undertaken"); *Patterson*, 2022 WL 2093054, at *2 (approving requested fee of 33-1/3% of settlement fund representing a lodestar multiplier of 1.12); *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010) (describing a 2.26 multiplier as "modest" and "reasonable, given the risks of continued litigation, the high-quality work performed, and the substantial benefit to the Class"); *Buckley*, 849 F.3d at 400 ("approving multiplier of 2.5 and citing cases within the Eighth Circuit approving multipliers of up to 5.6") (citing *Nelson v. Wal-Mart Stores, Inc.*, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009)).

17. In accordance with the PSLRA, Lead Plaintiff Strathclyde seeks reimbursement of its reasonable costs and expenses incurred directly in connection with its representation of the Class, in the amount of $30,000. The amount of time and effort devoted to this Action by the representatives of Lead Plaintiff – which collectively expended considerable time and effort in actively supervising the Litigation over a multi-year period, including by reviewing pleadings and briefs, collecting and producing numerous documents, preparing for and attending its deposition, and participating in ongoing settlement discussions – is detailed in the accompanying Lead Plaintiff Declaration.

18. For all of the reasons discussed in this Declaration, its attached exhibits and in the accompanying memoranda, Lead Plaintiff and Class Counsel respectfully submit that the Settlement and the Plan of Allocation are fair, reasonable, and adequate and should be approved. In addition, Lead Plaintiff respectfully submits that Lead Plaintiff's Counsel's request for attorneys' fees and litigation costs and expenses, which includes an award to Lead Plaintiff, is also fair and reasonable, and should be approved.

II. THE PROSECUTION OF THE ACTION

A. The Commencement of the Action, Lead Plaintiff Appointment and Filing of the Amended Complaint

19. The Litigation was initially filed on October 26, 2018. ECF 1. On January 10, 2019, the Court appointed Strathclyde as Lead Plaintiff and approved its choice of Class Counsel. ECF 19. Lead Plaintiff continued its preliminary

investigation which included the review and analysis of publicly available information concerning the Company, including: (a) Bank OZK's public filings with the SEC; (b) press releases and other publications disseminated by Bank OZK; (c) news articles, shareholder communications, conference call transcripts, and postings on Bank OZK's website concerning the Company's public statements; (d) securities analysts' commentary on the Company; and (e) other publicly available information concerning the Company and the troubled loans. Class Counsel's investigation significantly bolstered the strength of Lead Plaintiff's claims.

20. On June 21, 2019, Lead Plaintiff filed its 81-page Amended Complaint (ECF 35) which alleged violations of the federal securities laws in connection with material misstatements and omissions. Specifically, the Amended Complaint alleged that, throughout the Class Period, Defendants made materially false and misleading statements and omissions regarding the credit quality of OZK's portfolio, including reported metrics concerning its nonperforming loans and assets. The reported metrics failed to account for two allegedly non-performing loans, identified in the Amended Complaint as the "South Carolina loan" and the "North Carolina loan." The Amended Complaint alleged that Bank OZK's stock price was artificially inflated throughout the Class Period due to Defendants' alleged materially false and misleading statements and omissions, and that shareholders were harmed when the truth about that fraud was revealed. Lead Plaintiff alleged that the truth regarding Defendants' fraud was partially revealed on July 27, 2017, when Dan Thomas, the head of the

department that oversaw the two failing loans, abruptly resigned from Bank OZK. On that news, Bank OZK's stock dropped $5.65 per share (12%). The alleged fraud was fully revealed on October 18, 2018, when Defendants announced the unexpected charge-off of the nonperforming South Carolina and North Carolina loans, which totaled just over $45 million. Bank OZK's stock dropped by $10.91 per share (29.9%) on October 18, and October 19, 2018, to close at $25.52 per share.

B. The Pleading Stage

21. On August 20, 2019, Bank OZK, George Gleason, and Gregory McKinney filed a motion to dismiss the Amended Complaint, challenging the adequacy of the Amended Complaint's allegations with respect to nearly every element of Lead Plaintiff's claims. ECF 38.

22. Defendants argued that: (i) the Amended Complaint did not sufficiently allege that the accounting statements were false because neither of the loans were impaired or a troubled debt restructuring prior to the ultimate disclosure in October 2018; (ii) the alleged public misstatements were inactionable and immaterial under well-settled law because they constituted statements of corporate optimism or puffery, or were protected by the PSLRA's safe harbor for forward-looking statements; and (iii) the Amended Complaint failed to plead loss causation related to the July 2017 announcement of Dan Thomas's departure. Defendants also argued that Lead Plaintiff did not plead particularized facts giving rise to a strong inference that Defendants acted with the requisite state of mind (scienter). Specifically, Defendants contended

that Lead Plaintiff did not plead any evidence of Mr. McKinney's scienter. Defendants also argued that the scienter allegations against Mr. Gleason were inadequate and any inference of deceit was outweighed by the inference of innocence, and therefore neither Mr. Gleason nor Bank OZK had the requisite scienter. Defendants moved to dismiss Lead Plaintiff's §20(a) claim on the ground that the Amended Complaint failed to establish an underlying primary violation.

23. Lead Plaintiff filed its opposition to Bank OZK and the individual defendants' motion to dismiss on October 21, 2019. ECF 42. In its opposition, Lead Plaintiff argued that it had alleged numerous facts establishing that, in contrast to Defendants' public statements, Bank OZK did not have pristine credit quality and Bank OZK's credit quality metrics failed to include two loans that were nonperforming since at least the start of the Class Period. Lead Plaintiff further argued that the Amended Complaint pled scienter with allegations establishing that Defendants knew both of the loans were failing and the loans' borrowers were unlikely to repay all amounts due under the loan agreements. Regarding loss causation, Lead Plaintiff argued that the Amended Complaint adequately alleged that the truth of Defendants' cover-up was slowly revealed through two partial disclosures that directly caused Bank OZK's stock price to drop.

24. Defendants filed a reply to their motion to dismiss on December 5, 2019. ECF 45. On April 3, 2020, the Court partly granted and mostly denied Defendants' motion to dismiss. ECF 50. The Court denied all claims against Mr. McKinney,

dismissed the July 2017 partial disclosure for lack of loss causation, dismissed a few misstatements as immaterial puffery, and found that there was insufficient particularity with regard to the North Carolina loan. ECF 50.

25. Defendants answered the Amended Complaint on May 1, 2020, denying all material surviving allegations of the Amended Complaint and asserting multiple defenses. ECF 56. Among other things, Defendants contended that they made no materially false or misleading statements, and that they disclosed all information required to be disclosed by the federal securities laws. Defendants also contended that Lead Plaintiff would be unable to meet its burden to prove loss causation or economic loss related to the alleged false or misleading statements.

26. Prior to filing their answer, on April 30, 2020, Defendants moved to certify the Court's April 3, 2020 motion to dismiss order for interlocutory appeal pursuant to 28 U.S.C. §1292(b). ECF 54. Defendants again argued that the allegations regarding defendant Gleason's scienter were insufficient because they amounted to only general allegations of defendant Gleason's familiarity with Bank OZK's commercial real estate loan business and provided no allegations addressing his knowledge of the South Carolina loan beyond his approval of the loan in 2007. ECF 55 at 1, 4. Lead Plaintiff filed an opposition on May 14, 2020, responding to Defendants' arguments and arguing interlocutory review was unwarranted given the standard for scienter needed no appellate review and the Amended Complaint's numerous specific allegations of Mr. Gleason's scienter. ECF 57. On May 21, 2020,

Defendants filed their reply in support of their motion. ECF 59. After review, the Court denied Defendants' motion, finding there was no substantial ground for a difference of opinion on the Court's application of settled law on scienter. ECF 60 at 2.

27. Class Counsel's continuing intensive investigation revealed additional facts about the North Carolina loan. On October 7, 2020, Lead Plaintiff requested leave to amend the Amended Complaint and file a Second Amended Complaint. ECF 65. Defendants did not oppose the motion and the Court granted Lead Plaintiff's motion for leave to amend on October 22, 2020. ECF 71. The 97-page Second Amended Complaint was filed on October 23, 2020. ECF 72.

28. On November 23, 2020, Defendants filed a motion to dismiss the Second Amended Complaint. ECF 75. Defendants' motion again challenged the allegations of scienter against Mr. Gleason, claiming the Second Amended Complaint did not sufficiently plead that Mr. Gleason knew that either the South Carolina or North Carolina loans were nonperforming throughout the Class Period. ECF 76.

29. During the pendency of Defendants' motion to dismiss the Second Amended Complaint, discovery halted. For that reason, Lead Plaintiff moved to partially lift the PSLRA discovery stay for discovery relating to the South Carolina loan, which allegations were already upheld and remained unchanged in the Second Amended Complaint. ECF 77. Defendants opposed the motion on December 15, 2020, arguing the PSLRA stay should remain in place to prevent undue prejudice.

ECF 78. On December 22, 2020, Lead Plaintiff filed its reply in support of the motion to partially lift the PSLRA stay. ECF 79.

30. Almost simultaneously, Lead Plaintiff opposed Defendants' second motion to dismiss on December 23, 2020. ECF 80. Lead Plaintiff argued that the Second Amended Complaint cogently and compellingly pleaded a strong inference of scienter for Mr. Gleason with regard to both troubled loans. *Id.* Because the allegations regarding the South Carolina loan were undisturbed, Lead Plaintiff further argued that the Court's prior orders on scienter with regard to that loan should remain unchanged. *Id.* at 10-12. Defendants filed their reply in support of their motion to dismiss the Second Amended Complaint on January 14, 2021. ECF 81. Just over two weeks later, on January 29, 2021, the Court once again upheld the allegations concerning the South Carolina loan and dismissed the allegations concerning the North Carolina loan, finding that the pre-Class Period events did not provide enough evidence of Mr. Gleason's scienter with regard to the North Carolina loan. ECF 82 at 1-2. Lead Plaintiff's motion to lift the PSLRA discovery stay was denied as moot and the parties proceeded forward to discovery. *Id.* at 2.

C. Lead Plaintiff's and Class Counsel's Extensive Discovery Efforts

31. Given the length of the Class Period, the scope of Lead Plaintiff's claims, and the complex subject matter at issue in this Action, factual discovery was an enormous undertaking. Among other things, Lead Plaintiff served document requests

on Defendants, subpoenaed documents from 29 non-parties, including Bank OZK's auditors, the borrower for the South Carolina Loan, and the eventual purchaser of the capital underlying the South Carolina loan. Lead Plaintiff also made two FOIA requests to the city of Rock Hill, South Carolina and York County, South Carolina, and sought records from the Federal Deposit Insurance Corporation ("FDIC"). Lead Plaintiff ultimately obtained and reviewed nearly 700,000 pages of documents. Lead Plaintiff and its experts also reviewed and produced nearly 185,000 pages of documents to Defendants during the course of discovery. The amount of work done by Lead Plaintiff during this time period is extraordinarily compelling evidence of Lead Plaintiff's vigorous prosecution of and commitment to this Action, as set forth below.

1. Discovery Obtained from Defendants

32. Lead Plaintiff served Defendants with its First Set of Requests for Production of Documents on September 30, 2020. These 52 requests sought, among other things, documents concerning: (i) Bank OZK's documentation of the South Carolina loan; (ii) Bank OZK's analysis of its credit quality metrics; (iii) Bank OZK's accounting policies and procedures for loan underwriting and monitoring; (iv) Defendants' communications with analysts and shareholders during the Class Period; and (v) the reaction of Bank OZK's stock price to Company-specific, industry-specific, and/or market-related information. Defendants served their responses and objections to Lead Plaintiff's first document request on October 30, 2020.

33. On October 27, 2021, Lead Plaintiff served five interrogatories accompanied by five additional requests for production. These interrogatories and requests for production sought whether Defendants intended to raise a defense based on the advice of counsel or use the results of a regulatory action as an affirmative defense in the Action. Defendants served their responses and objections to Lead Plaintiff's second set of document requests and first set of interrogatories on November 26, 2021.

34. Beginning in November 2020, the parties frequently exchanged written correspondence and held numerous meet-and-confer conferences to negotiate the appropriate scope of discovery. Those interactions involved lengthy disputes about the length of the relevant time period, the relevance of certain document requests, and the number of custodians whose e-mail accounts should be searched and what terms to use. In addition, conflicts also arose regarding the timing of production of documents from Defendants.

35. The Settling Parties ultimately briefed a few discovery disputes for resolution by the Court on August 18, 2021. *See* ECF 101. On September 8, 2021, the Court resolved each of the discovery disputes and discovery continued. ECF 104.

36. In response to Lead Plaintiff's requests, Defendants produced e-mails and attachments from the custodial files of at least nine Bank OZK employees, including Mr. Gleason. Ultimately, Defendants made multiple document productions, beginning on February 18, 2021, and concluding on December 17, 2021 (the last day

of fact discovery), which collectively contained nearly 550,000 pages of information contained in 58,460 documents—of which over 7,600 were excel documents.

2. Discovery Obtained from Third Parties

37. Between roughly November 4, 2020 and October 20, 2021, subpoenas on 29 non-party entities were served. Ultimately these parties collectively produced, and Lead Plaintiff collected and reviewed, nearly 150,000 pages spanning 16,724 documents. Some of the key non-parties included: Cypress Equities ("Cypress"), Crowe Horwath ("Crowe"), PricewaterhouseCoopers ("PwC"), and Warren Norman Company ("WNC").

38. With respect to Cypress, Class Counsel engaged in a series of meet-and-confers regarding the proper scope of discovery and appropriate search terms. Although a dispute arose regarding Cypress's delay in producing responsive documents, ultimately, Cypress produced a multitude of documents essential to the litigation.

39. With respect to Crowe and PwC, which Bank OZK had engaged as its auditors during the Class Period, Class Counsel engaged in a series of meet-and-confers regarding the proper scope of discovery and appropriate search terms. Both Crowe and PwC produced documents essential to the litigation.

40. With respect to WNC, Class Counsel engaged in a handful of meet-and-confers regarding the proper scope of discovery and appropriate search terms. WNC

produced helpful documents demonstrating WNC's valuation of the South Carolina loan collateral during the Class Period.

41. Pursuant to 12 C.F.R. §309, Class Counsel also requested documents from the FDIC regarding their examination and monitoring of Bank OZK and the South Carolina loan. The FDIC responded that they would not provide any requested documents as they contained protected confidential supervisory information under 12 CFR §309.6(a). After multiple meet and confers which included Defendants' counsel, the FDIC stood on their objections and refused to produce documents.

3. Discovery from Lead Plaintiff

42. On February 22, 2021, Defendants served their first set of document requests on Lead Plaintiff. Numbering 55 separate requests, Bank OZK sought wide-ranging information concerning this Action, Lead Plaintiff's investments, its role as Lead Plaintiff and proposed Class Representative, its business operations, and multiple other topics. On the same day, Defendants also served nine interrogatories concerning Class Counsel's investigation into the Action.

43. Lead Plaintiff served its objections and responses to both the interrogatories and the requests for production on March 24, 2021. Following service, the parties met and conferred regarding the substance and scope of Lead Plaintiff's production. By the end of June 2021, the parties reached general consensus concerning the breadth of relevance, and the methods and estimated timing of Lead Plaintiff's productions.

44. Defendants served a second set of document requests and interrogatories on Lead Plaintiff on June 25, 2021 regarding "any indirect interest" in Bank OZK's securities that Lead Plaintiff had. Lead Plaintiff served its objections and responses on July 26, 2021. Class Counsel engaged in an extended meet-and-confer process and exchange of correspondence with Defendants on these discovery requests. Unsatisfied with the Lead Plaintiff's response, Defendants moved to compel on this issue, to which Lead Plaintiff opposed in the parties' Joint Report of Discovery Disputes. ECF 101. The Court ruled that "[d]iscovery on the indirect investments is likely to uncover admissible evidence about material issues." ECF 104. Accordingly, Lead Plaintiff prepared and served supplemental responses to the Defendants' second set of document requests and interrogatories.

45. Defendants served a third set of document requests and interrogatories and the first set of requests for admissions on Lead Plaintiff on November 17, 2021 regarding Lead Plaintiff's theory of the case. Lead Plaintiff prepared and served its objections and responses to most of the discovery requests on December 17, 2021 and, pursuant to an agreement, the remaining of the discovery requests on January 7, 2022.

46. Lead Plaintiff and Class Counsel expended significant effort on collecting, culling, reviewing, and producing documents in response to Defendants' discovery requests. Because of privacy concerns surrounding the United Kingdom General Data Protection Regulation, Lead Plaintiff and Class Counsel were particularly thorough in their review and production of documents to Defendants.

Lead Plaintiff and Class Counsel also expended significant effort responding to Defendants' numerous interrogatories and requests for admissions. Ultimately, Lead Plaintiff collectively produced almost 450 documents totaling nearly 55,000 pages, with the first production occurring on May 14, 2021 and the last production on October 18, 2021. Lead Plaintiff's experts produced 39 excel documents.

4. Class Counsel's Document Review and Deposition Preparations

47. Collectively, the Defendants and third parties produced approximately 698,862 pages contained in 75,658 documents, 11,539 of which were excel documents, to Lead Plaintiff in discovery, with the first production on January 22, 2021 and the last production on December 17, 2021. Class Counsel devoted substantial time to reviewing and analyzing these documents. Class Counsel generated an effective and efficient discovery plan and took significant steps designed to quickly identify the custodians and documents most important to uncovering the facts at the heart of the Action. As a result of these efforts, Class Counsel was able to utilize this discovery when moving for class certification, preparing for witness depositions, identifying documents for the consideration of its experts, opposing Defendants' motion for summary judgment, and during the Settling Parties' settlement negotiations. Accordingly, the extensive and targeted discovery work conducted by Class Counsel was crucial to achieving the highly favorable Settlement for the Class.

48. Class Counsel's discovery plan leveraged a sophisticated electronic document hosting system, and a dedicated team of attorneys with substantial experience in electronic document discovery, deposition, and trial preparation. Attorneys on the litigation team for the Action trained document reviewers concerning detailed case information for their use in coding documents for level of responsiveness or importance to the case. Throughout document discovery, senior attorneys in the litigation team met regularly with staff attorneys to ensure their understanding of the case and discuss key facts uncovered by the review, and staff attorneys were instructed to prepare detailed memoranda on potential witnesses and subject matters of importance to assist senior attorneys in their preparations for depositions and trial.

49. Many of the documents produced to Lead Plaintiff were substantively complex and laden with banking, accounting, and commercial real estate jargon and terms of art. Additionally, many of the documents were cumbersome excel files with extensive tabs containing a vast amount of data and formulas. Throughout the course of discovery, Class Counsel consulted with D. Paul Regan CPA, CFF, who has extensive experience in providing auditing and accounting consulting services across a range of industries, including banking, financial services, and investment companies. Mr. Regan conducted independent reading and research to enhance Class Counsel's understanding of these documents. Class Counsel also developed and continuously updated a set of resources to aid members of the document review team, including chronologies of significant events, lists of key players, summaries of key documents,

and a glossary of technical terms and acronyms utilized in the banking and commercial real estate industries.

5. Deposition Discovery

50. Depositions provided a critical component of Lead Plaintiff's efforts to develop the evidentiary record, both in terms of fact-gathering and solidifying Lead Plaintiff's legal arguments. To prepare for fact witness depositions, attorneys on the review team were assigned to conduct an in-depth review of the custodial files of each potential deponent and identify key documents and issues for that deponent. During this process, attorneys met multiple times to discuss potential candidates, review samples of relevant documents for these candidates, and debate the relative merits of each.

51. From September 29, 2021 through December 17, 2021, Class Counsel deposed a total of 12 fact witnesses, including Defendant Gleason, CFO Gregory McKinney, the head of Cypress (the South Carolina loan's borrower), and numerous other individuals who were key executives or employees of Bank OZK during the Class Period, as well as representatives from PwC and Crowe.

52. In sum, Lead Plaintiff's fact witness depositions resulted in over 2,600 pages of testimony and nearly 300 exhibits.

6. Experts

53. Lead Plaintiff served substantive expert reports on September 1, 2021. Lead Plaintiff's experts were D. Paul Regan, CPA/CFF, an accounting expert, and Dr.

John M. Griffin, Ph.D., an economic expert. Defendants submitted three rebuttal expert reports on October 15, 2021. Defendants' experts were Esther Mills, CPA, an accounting expert, Constantine Korologos, a real estate valuation expert, and René M. Stulz, Ph.D., an economic expert. In reply, Lead Plaintiff served three additional reports on November 15, 2021. Dr. Griffin and Mr. Regan submitted reply reports and Lead Plaintiff also served a reply report from Nancy Terrill, a real estate valuation expert.

54. Each expert was subsequently deposed. To prepare for expert depositions, Class Counsel reviewed the reports and cited materials of Defendants' experts, consulted with Lead Plaintiff's experts on possible issues to raise when deposing Defendants' experts, and provided assistance in advance of the depositions of Lead Plaintiff's experts by discussing likely areas of questioning and providing additional documents for review. Mr. Regan was deposed on December 7, 2021. Mr. Stulz was deposed on December 9, 2021. Mr. Korologos was deposed on December 13, 2021. Ms. Terrill was deposed on December 14, 2021. Dr. Griffin was also deposed on December 14, 2021.[4] Ms. Mills was deposed on December 15, 2021.

D. Class Certification

55. On July 30, 2021, Lead Plaintiff filed its motion for class certification. *See* ECF 97. Along with its motion, and to invoke the fraud-on-the-market theory of

[4] Dr. Griffin was also deposed prior to substantive expert reports for his expert report in support of class certification on August 26, 2021.

reliance, Lead Plaintiff also submitted the Expert Report of Dr. John M. Griffin, Ph.D. (the "Griffin Class Certification Report"). ECF 99-1. After performing an extensive and thorough analysis – which included not only the *Cammer* factors but also three additional factors that courts commonly use to evaluate market efficiency – the Griffin Class Certification Report concluded that the market for Bank OZK common stock was efficient. Accordingly, Lead Plaintiff invoked the fraud-on-the-market theory on behalf of the proposed Class.

56. After a brief delay when Lead Plaintiff's representative encountered a personal emergency that forced the rescheduling of the Rule 30(b)(6) deposition, Defendants took deposition testimony from Lead Plaintiff on October 22, 2021. After a stay for good cause was granted by the Court, ECF 103, Defendants filed their non-opposing response to Lead Plaintiff's class certification motion on November 12, 2021. ECF 110. Defendants' response stated that they had not "become aware of evidence that certification is inappropriate." *See id* at 4. Instead, Defendants raised discovery disputes in an attempt to preserve a right to potentially decertify the class in the future. *See id.* at 2-4.

57. Lead Plaintiff filed its reply on November 19, 2021. ECF 113. Lead Plaintiff responded that Defendants' non-opposing response was inappropriate and replete with factual and legal inaccuracies and mischaracterizations of the record. *See id*. Nevertheless, because Defendants did not oppose class certification, Lead Plaintiff argued the class should be certified without delay. *Id.*

58. On December 30, 2021, the Court granted Lead Plaintiff's motion and certified the Class. ECF 120. The Court found that Lead Plaintiff would "fairly and adequately protect the class's interests using its experience as a fiduciary and directing its capable and experienced lawyers" and "shares the same interests with the rest of the class members." *Id.* at 2. The Court also appointed Robbins Geller as Class Counsel and Carney, Bates & Pullman, PLLC as liaison counsel. *Id*. at 3.

E. Defendants' Motion for Summary Judgment and Motion to Exclude Expert Testimony

59. On February 4, 2022, Defendants moved for summary judgment and to exclude the testimony of one of Lead Plaintiff's experts. *See* ECF 122, 125. In their motion for summary judgment, which included a 62-page statement of facts (ECF 126), Defendants argued that disagreements with Bank OZK's accounting judgments do not establish securities fraud. *See* ECF 125. Defendants argued that Lead Plaintiff could not prove that Defendants made material misrepresentations with the intent to deceive investors because the misstatements were accounting judgments. *See id*. Defendants asserted that the alleged misstatements were accounting judgments based on reasonable opinions about the likelihood of the South Carolina loan's default. *Id.* at 13-17. Defendants argued that the South Carolina loan could not have been considered a troubled debt restructuring (nor could it be impaired or nonperforming) because the borrower had not missed any payments and Defendants pointed to positive trends that provided a basis for Defendants to conclude that the borrower and

property were improving their financial situation. They further asserted that loan modifications were customary in the commercial real estate business, and did not constitute concessions. *Id.* Finally, Defendants argued that no reasonable trier of fact could conclude from Lead Plaintiff's evidence that Mr. Gleason, and therefore Bank OZK, acted with scienter. *Id.* at 17-20. Defendants asserted that Lead Plaintiff could not show that a difference in opinion about how to classify a failing loan could amount to wrongful intent, especially when the independent third-party reviews by Bank OZK's auditors and regulators did not disagree with Defendants' conclusions. *Id.* at 19.

60. Regarding Defendants' motion to exclude the testimony of Dr. John M. Griffin, Ph.D., Defendants claimed that Dr. Griffin's methodologies were unreliable and failed to meet the standards under *Daubert v. Merrell Dow Pharms., Inc*., 509 U.S. 579, 591 (1993). *See* ECF 122. Among other critiques, Defendants argued that Dr. Griffin's opinions had improperly accounted for the portion of the stock-price drop that was unrelated to the fraud – namely, the news concerning Bank OZK's slowing loan growth and decreasing net interest margins. *Id.* at 12-14. Defendants further challenged Dr. Griffin's assessment of the reputational harm caused by charging off the fraudulent loan, including how Dr. Griffin accounted for the North Carolina loan, which the Court had determined was not a part of the fraud. *Id.* at 14-20. Finally, Defendants challenged Dr. Griffin's inclusion of the stock price decrease from the trading day before the corrective disclosure. *Id.* at 9-12.

61. On March 21, 2022, Lead Plaintiff filed its oppositions to Defendants' motions, which included a 141-page response to Defendants' statement of facts and a 65-page statement of disputed material facts. *See* ECF 174-180. In the opposition to Defendants' motion for summary judgment, Lead Plaintiff argued that Defendants' misstatements were not mere accounting judgments, but accounting fraud because Defendants knew the South Carolina loan was misclassified in order to avoid financial reporting. *See* ECF 176. Specifically, Lead Plaintiff presented evidence demonstrating that the South Carolina loan was a troubled debt restructuring (and therefore nonperforming and impaired) under both Bank OZK's policies and GAAP by the start of the Class Period. *Id.* at 4-7. Citing internal documents, Lead Plaintiff showed that internally, Bank OZK executives considered the South Carolina loan to be impaired. Moreover, Defendant Gleason knew that the South Carolina loan extensions were being timed to avoid the close of Bank OZK's quarterly financial reporting periods. *Id.* at 7, 11. Therefore, according to Lead Plaintiff, Defendants had materially misstated Bank OZK's credit quality metrics on which they based their assertions of Bank OZK's "pristine" credit quality. *Id.* at 8-14. Likewise, Lead Plaintiff presented compelling evidence raising triable issues of fact concerning Gleason and Bank OZK's scienter, including Gleason's personal involvement in the modifications of the South Carolina loan. *See id.* at 14-20.

62. Lead Plaintiff's opposition to Defendants' motion to exclude Dr. Griffin argued that the motion should be denied in its entirety. *See* ECF 174. As Lead

Plaintiff pointed out: Defendants did not dispute that Dr. Griffin was highly qualified to testify on matters relating to materiality, loss causation, and damages, or that the opinions set forth in his expert report are relevant to the issues in this case. Additionally, Dr. Griffin's methodologies were widely accepted in the academic and legal community and his opinions properly accounted for confounding information. *Id.* Moreover, Dr. Griffin's methodology that accounted for the reputational losses suffered by Bank OZK as a result of the loan charge-offs were reliable and supported by academic literature and analyst commentary. *Id.* at 11-20. Finally, Dr. Griffin's inclusion of the stock price decline before the disclosure was appropriate under the academic literature and legal framework and consistent with a leak of information. *Id.* at 5-8.

63. Defendants' reply briefs were due on May 5, 2022. However, after arriving at an agreement-in-principle to settle the action, the parties jointly moved to stay the case on April 28, 2022. ECF 189. The Court granted the stay the same day. ECF 190.

F. The Parties' Mediation Session

64. After the close of fact and expert discovery and after the Class was certified, the Settling Parties agreed to participate in a private mediation. During the mediation session, the Settling Parties and Defendants' liability insurance carriers engaged in vigorous negotiations regarding a potential resolution of the Action.

65. Defendants and Lead Plaintiff engaged Michelle Yoshida, Esq., a neutral at Phillips ADR Enterprises. Ms. Yoshida has previously played an integral role in the resolution of many disputes.

66. On April 19, 2022, the Settling Parties participated in a voluntary confidential mediation. In advance of the session, Defendants and Lead Plaintiff submitted and exchanged detailed mediation statements and reply statements detailing the relevant facts and analyses concerning falsity, scienter, loss causation, and damages. Additionally, in advance of the mediation session, the parties conferred separately with Ms. Yoshida regarding their views of the case. During the session, Lead Plaintiff further engaged with Ms. Yoshida on its positions, and conveyed its understanding of the strengths and weaknesses of the claims and defenses in this Action, as well as potential sources of recovery. However, after a full day of presentations and discussions with Ms. Yoshida, the mediation concluded without resolution of the Litigation. The Settling Parties continued their negotiations through Ms. Yoshida, and ultimately reached an agreement to resolve the Litigation for $45 million, subject to Court approval following notice to the Class.

III. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

67. As set forth in the Settlement Memorandum filed contemporaneously herewith, the Settlement is fair, reasonable, and adequate in light of the exceptional recovery; the unique risks and difficulties that the Action presented to Lead Plaintiff;

the extensive litigation efforts expended by Lead Plaintiff and Class Counsel during the three-year course of the case; the complexity and expense of further litigation; the arm's-length settlement negotiations conducted by the Settling Parties; and the overwhelmingly positive reaction of the Class. As set forth below and in the Settlement Memorandum, Lead Plaintiff and Class Counsel respectfully submit that the Settlement readily meets all of the relevant factors that courts in the Eighth Circuit consider under Rule 23(e)(2) and *Van Horn v. Trickey*, 840 F.2d 604, 607 (8th Cir. 1988).

A. The Settlement Agreement and Preliminary Approval

68. Although Lead Plaintiff and Defendants engaged in arm's-length negotiations during the mediation session and were unable to reach an agreement, they continued settlement discussions. On April 21, 2022, the Settling Parties reached an agreement-in-principle to settle the Litigation for $45 million. The Settling Parties spent the subsequent weeks extensively negotiating the specific terms of the Settlement and Stipulation. The Stipulation was executed by the Settling Parties on May 23, 2022.

69. On May 23, 2022, Lead Plaintiff filed its unopposed motion for preliminary approval of the proposed Settlement, along with the Stipulation and its exhibits. ECF 193-195. On June 2, 2022, the Court requested the Settling Parties provide the supplemental agreement referenced in the preliminary approval papers (ECF 196), which was filed under seal on June 10, 2022. ECF 199.

70. On June 27, 2022, the Court preliminarily approved the Settlement, authorized the Notice to be disseminated to potential Class Members, and scheduled the Settlement Hearing to consider, among other things, whether to grant final approval to the Settlement (ECF 202).

B. Reasons for the Settlement

71. Not only does the Settlement provide the Class with an immediate and certain cash benefit of $45 million, which both eclipses the average settlement amount for cases settled in the Eighth Circuit between 2012 and 2021, and exceeds the average and median settlement amounts in securities class actions resolved during 2021, but it also represents a significant recovery considering likely recoverable damages for the Class.

72. Lead Plaintiff and Class Counsel fully endorse the Settlement. *See* Lead Plaintiff Declaration, ¶5. Court-appointed Lead Plaintiff and Class Representative is a sophisticated institutional investor which has actively overseen the prosecution of this Action for three years and understands and has executed its fiduciary duty to act in the best interest of the Class. Class Counsel, Robbins Geller, specializes in complex securities class action litigation, and is highly experienced in such litigation. *See* Declaration of Jonah H. Goldstein Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Fee Declaration") at Ex. G (Robbins Geller firm resume). Based on their experience and knowledge of the facts and applicable law in this Action, Class

Counsel and Lead Plaintiff have determined that the Settlement is in the best interest of the Class.

73. Although Lead Plaintiff and Class Counsel believe that the claims asserted in this Action are meritorious, continued litigation against Defendants posed significant risks that made recovery in any amount uncertain. For example, Lead Plaintiff was aware of the significant challenges to the key issues of falsity, scienter, loss causation, and damages that Defendants raised in their summary judgment motion and motion to exclude Lead Plaintiff's loss causation and damages expert. Indeed, although Lead Plaintiff was partially successful at the motion to dismiss stage, the Court dismissed allegations concerning one of the two loans at issue. The Court also dismissed one of the alleged partially corrective disclosures and one of the individual defendants. The motion to dismiss orders did not fully resolve the key issues listed above, and the attendant risks concerning these issues did and would have continued to resurface at every subsequent stage of the litigation – on summary judgment, at trial, and on appeal. Had any of Defendants' arguments been accepted in whole or in part, any potential recovery would have been dramatically reduced or eliminated altogether.

74. Moreover, even if Lead Plaintiff had prevailed at trial, Lead Plaintiff was further aware that Defendants' damages expert had calculated maximum possible damages far below the maximum aggregate damages that Lead Plaintiff's expert had calculated – including credible scenarios that the Class's maximum damages were no

higher than $0.24 per share (as opposed to Dr. Griffin's $9.18 per share calculation), or even that the Class had suffered no cognizable damages as a result of Lead Plaintiff's allegations – which undoubtedly would have resulted in a "battle of the experts" at trial with no certainty of which expert the jury would credit.

75. Furthermore, the proceeds of Defendants' insurance policies were rapidly wasting. Continued litigation likely could, at some point, have exhausted the remaining proceeds and left the Class with no recovery, even had the Class prevailed in full at summary judgment or trial. Thus, there were very significant risks attendant to the continued prosecution of the Action against Defendants.

76. The Settlement eliminates these substantial risks and guarantees the Class a favorable, certain cash recovery. Lead Counsel firmly believes that settling the Action with Defendants at this stage of the litigation is in the best interest of the Class.

IV. LEAD PLAINTIFF'S COMPLIANCE WITH THE COURT'S PRELIMINARY APPROVAL ORDER

77. As required by the Court's Preliminary Approval Order, beginning on July 8, 2022, Lead Plaintiff, through Gilardi, notified Class Members of the Settlement by mailing a copy of the Notice to Class Members and their nominees. *See* ECF 202, ¶9; Gilardi Declaration, ¶¶5-11.

78. The Court-approved Notice also requires brokers/nominees, within 10 calendar days, to either (i) forward copies of the Notice and claim form to their

beneficial owners of the securities, or (ii) provide to Gilardi the names and addresses of such persons.

79. In the aggregate, as of August 15, 2022, Gilardi has disseminated 146,479 copies of the Notice to potential Class Members and nominees. *See* Gilardi Declaration, ¶11.

80. In addition, on July 16, 2022, July 20, 2022, and July 25, 2022, the Summary Notice was published in *The Wall Street Journal*, and on July 18, 2022, the Summary Notice was published over *Business Wire*. *See* Gilardi Declaration, ¶12. Information regarding the Settlement, including copies of the Notice and claim form, was posted on the case-specific website established by Gilardi. This method of giving notice, previously approved by the Court, is appropriate because it directs notice in a "reasonable manner to all class members who would be bound by the [proposed] judgment." Fed. R. Civ. P. 23(e)(1).

81. The Notice advises Members of the Class of the essential terms of the Settlement, sets forth the procedure for objecting to or opting out of the Settlement, and provides specifics on the date, time, and place for the Settlement Hearing.

82. The Notice also contains information regarding Lead Plaintiff's Counsel's fee and expense application and the proposed Plan of Allocation. As explained in the Settlement Memorandum, the Notice fairly apprises Class Members of their rights with respect to the Settlement, and therefore is the best notice

practicable under the circumstances, and complies with the Court's Preliminary Approval Order, Rule 23 of the Federal Rules of Civil Procedure, and due process.

V. THE PLAN OF ALLOCATION

83. Lead Plaintiff has proposed a plan to allocate the proceeds of the Settlement Fund among Members of the Class who submit valid Proofs of Claim and Release. The objective of the proposed Plan of Allocation is to equitably distribute the Settlement proceeds, on a *pro rata* basis, to those Members of the Class who suffered economic losses as a result of Defendants' alleged misrepresentations and omissions.

84. Lead Plaintiff's in-house damages expert assisted in formulating the Plan. In developing the Plan, the expert calculated the amount of estimated artificial inflation in the per share closing price of Bank OZK common stock that was allegedly proximately caused by Defendants' false and misleading statements. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations, the expert considered price changes in Bank OZK common stock in reaction to certain public announcements regarding Bank OZK in which such misrepresentations were alleged to have been revealed to the market, adjusting for any price changes attributable to market forces, the allegations in the Second Amended Complaint, and the evidence developed in support thereof.

85. The Notice set forth and explained the proposed Plan to Class Members. It was prepared in consultation with Lead Plaintiff's expert, tracks a theory of

damages asserted by Lead Plaintiff, is substantially similar to numerous other plans that have been approved around the country, and is fair, reasonable, and adequate to the Class as a whole.

86. In response to over 146,400 Notices, there have been no objections to the proposed Plan of Allocation, further underscoring its fairness.

VI. COUNSEL'S FEE APPLICATION

87. In addition to seeking final approval of the Settlement and approval of the Plan of Allocation, Lead Plaintiff respectfully requests approval of Lead Counsel's application for an award of attorneys' fees and litigation expenses. Specifically, Class Counsel is applying for a fee of 25% of the Settlement Fund, plus interest at the same rate as that earned on the Settlement Fund, to be paid from the Settlement Fund (the "Fee Application"). Class Counsel believes such a fee is reasonable and appropriate in light of the efficacy with which it litigated this matter, the resources Class Counsel expended in prosecuting the case, the inherent risk of nonpayment from representing the Class on a contingent-fee basis, and the aggregate monetary benefit conferred on the Class in a challenging case.

88. Lead Plaintiff's Counsel further request an award of $1,694,305.45 in litigation costs and expenses. In addition, in accordance with the PSLRA, Lead Plaintiff also seeks reimbursement of its reasonable costs and expenses incurred directly in connection with its representation of the Class, in the amount of $30,000 in the aggregate – an amount that is less than the total estimated value of the time that

the Lead Plaintiff spent in overseeing and participating in the Action. The legal authorities supporting the requested fees and expenses are set forth in the accompanying Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Expenses and Award to Lead Plaintiff Pursuant to 15 U.S.C. §78u-4(a)(4) ("Fee Memorandum").

A. The Outstanding Result Achieved Supports the Requested Fee Award

89. The $45 million Settlement achieved in this Action is an outstanding result for the Class by any measure. The Settlement exceeds both the average and median settlement amounts in securities class actions resolved during 2021, and eclipses the average settlement amount for cases settled in the Eighth Circuit between 2012 and 2021.

90. As elaborated further in the Fee Memorandum, the $45 million Settlement represents a significant recovery of potential damages.

91. The Settlement is a very favorable result, particularly when considered in view of the substantial risks and obstacles to recovery if the Action were to continue through summary judgment, to trial, and through likely post-trial motions and appeals.

92. As set forth in detail above, the recovery obtained for the Class was the result of thorough and diligent prosecutorial and investigative efforts, motion practice, and extensive discovery efforts. As a result of this Settlement, thousands of Class Members will benefit and receive compensation for their losses and avoid the very

substantial risk of no recovery (or significantly less recovery) in the absence of a settlement.

B. The Risks, Magnitude, and Complexity of the Litigation

93. The risks undertaken and difficulties presented in a complex securities class action such as this one favor approval of the requested fee award. As detailed above, the Litigation – asserting violations of §§10(b) and 20(a) of the Exchange Act – involved challenging issues of law and fact that presented considerable risk to Lead Plaintiff's case. Thus, when Class Counsel undertook this representation, there was no assurance that the Litigation would survive a motion to dismiss or other challenges, and therefore no assurance Class Counsel would recover any payment for its services. Indeed, as discussed above, the Court dismissed a portion of Lead Plaintiff's case twice at the motion to dismiss stage, even after Class Counsel presented considerably more facts supporting allegations of the North Carolina loan nonperformance in the Second Amended Complaint.

94. Defendants had made credible arguments directly challenging the sufficiency of Lead Plaintiff's allegations on the basis of falsity, materiality, scienter, and loss causation. Defendants' summary judgment and *Daubert* motions were pending when the Settlement was reached. Whether at summary judgment, or trial, had Defendants' arguments prevailed, the pool of available damages would be a small fraction of what it was at the time of the Settlement. Similarly, at trial, a jury could have dramatically reduced the available damages by finding that only a part of the

stock drop after the disclosure was a result of the fraud. Accordingly, Class Counsel's ability to successfully navigate these and other complex legal and factual obstacles fully supports the requested fee award.

95. Furthermore, as with all contingency fee cases, Lead Plaintiff's Counsel faced a substantial risk that they would obtain no fee whatsoever. From the outset, Class Counsel understood that it was embarking on a complex, expensive, and lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. Had Class Counsel not willingly and vigorously undertaken the responsibility of representing the Class's interests here, the Class would almost certainly have recovered nothing for their claims.

96. Thus, with no promise of recovery, the financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. Securities class actions such as this one are not only time- and labor-intensive, but require substantial up-front cost outlays. In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient resources were dedicated to the prosecution of the Action, and that funds were available to compensate staff and to cover the considerable litigation costs that a case like this requires. Class Counsel not only had to pay for its standard overhead expenses during the entirety of the Litigation, but had to cover costs and expenses, including substantial electronic discovery costs and the fees of various experts, all without guarantee of any recovery. With an average lag time of several years for these cases to conclude, the financial burden on contingent-

fee counsel is far greater than on a firm that is paid on an ongoing basis, which heavily supports the requested fee.

97. Lead Plaintiff's Counsel received no compensation during the course of the Action but have dedicated 16,379 hours of time with a lodestar value of $11,726,923.00, and have incurred $1,694,305.45 in expenses in prosecuting the Action for the benefit of the Class. *See* Robbins Geller Fee Declaration and Declaration of Allen Carney Filed on Behalf of Carney Bates & Pulliam PLLC ("CBP Fee Declaration") (collectively, "Firm Declarations"), submitted herewith.

98. Courts have repeatedly recognized that it is in the public interest to have experienced and qualified counsel privately enforce the securities laws. However, as recognized by Congress through the passage of the PSLRA, vigorous private enforcement of the federal securities laws can only occur if private lead plaintiffs, and particularly institutional investors, take an active role in protecting the interests of investors. If this important public policy is to be carried out, Lead Plaintiff's Counsel should be adequately compensated, taking into account the substantial risks undertaken in prosecuting securities class actions.

C. The Skill Required and the Experience, Reputation, and Ability of the Attorneys

99. Class Counsel is composed of highly skilled and experienced securities litigators, who expended a substantial amount of time and effort litigating the Action – an Action that presented unique and difficult challenges that were not easy to

overcome. The attorneys who were principally responsible for leading the prosecution of this case have prosecuted securities claims throughout their careers, overseen numerous litigations, and recovered billions of dollars on behalf of investors over the course of decades.[5] Informed by this experience, they developed and implemented strategies to overcome a myriad of obstacles raised by Defendants.

100. Lead Plaintiff's Counsel's depth of skill and experience, including their experience in this Circuit and throughout the country successfully prosecuting securities class actions, allowed Lead Plaintiff and the Class to achieve a result that might not have been achieved by less skillful or experienced counsel. Despite significant pending motions that put at risk any recovery at all for the Class, Class Counsel managed to negotiate the substantial Settlement.

101. Successfully pleading securities fraud – always a challenging and complex endeavor under the PSLRA – presented special challenges here that required skilled lawyering. This Action involved complex and intricate legal and factual issues especially with regard to accounting and real estate valuation. Class Counsel, therefore, continually consulted with experts throughout the Litigation.

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[5] Recent securities class action settlements obtained by Class Counsel include *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, No. 3:15-cv-07658-MAS-LHG (D.N.J. 2020) ($1.21 billion); *In re Am. Realty Cap. Props., Inc. Litig.*, No. 1:15-mc-00040-AKH (S.D.N.Y. 2020) ($1.025 billion); *Smilovits v. First Solar, Inc.*, No. 2:12-cv-00555-PHX-DGC (D. Az. 2020) ($350 million); *City of Pontiac Gen. Emps.' Ret. Sys. v. Walmart Stores, Inc.*, No. 5:12-cv-05162-SOH (W.D. Ark. 2019) ($160 million).

102. In addition, the quality of the work performed by Class Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Here, Defendants were represented by Gibson, Dunn & Crutcher LLP and Kutak Rock LLP, both of which are highly respected, large national and multinational law firms that have been in business a combined 180 years and have substantial experience defending securities class actions and other complex litigation.[6] Class Counsel believes that all of these factors support the requested fee award.

D. The Significant Time and Labor Devoted by Lead Plaintiff's Counsel

103. As described above, Class Counsel engaged in an exhaustive and comprehensive investigation and drafted an 81-page Amended Complaint and a 97-page Second Amended Complaint, and opposed both of Defendants' motions to dismiss and overcame Defendants' attempt to appeal the first motion to dismiss order. Class Counsel engaged in extensive discovery negotiations, including multiple meet-and-confers with Defendants and third parties and exchanged substantial amounts of contentious correspondence before seeking Court intervention on certain discovery disputes. Class Counsel reviewed and analyzed almost 700,000 pages of documents, and consulted with economics and accounting experts to better understand the issues in the case.

[6] *See* https://www.gibsondunn.com/our-story/; *see also* https://www.kutakrock.com/about-us.

104. Lead Plaintiff obtained certification of the Class. Class Counsel vigorously conducted 12 fact depositions and three expert depositions, defended five fact and expert depositions, and prepared reports from three different experts. At the time of settlement, fact and expert discovery was complete, motions were pending for summary judgment and to exclude the testimony of Lead Plaintiff's loss causation and damages expert, and a trial date was looming. In total, Lead Plaintiff's Counsel expended over 16,300 hours litigating this matter.

105. Thus, the prosecution of the Action was significantly labor-intensive, and as is often the case with complex securities class actions, the attorneys involved would routinely have to spend significant stretches of time focusing exclusively or near-exclusively on litigating this Action.

106. Class Counsel invested a significant amount of time and effort. However, by negotiating a Settlement, Class Counsel also avoided the significant expenses and resources that would have been spent if the case continued to trial and subsequently on appeal. Accordingly, Class Counsel's extensive litigation efforts fully support the requested fee.

E. A 25% Fee Award Is Below the Customary Award and in Accordance with Other Similar Cases in this District and the Eighth Circuit

107. Courts in this Circuit have frequently awarded attorney fees of up to thirty-six percent of a common fund in other class actions. *See In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *12 (D. Minn. Dec. 4, 2020);

Patterson, 2022 WL 2093054, at *1 (awarding one-third of $63 million settlement fund in attorneys' fees).

108. Thus, Class Counsel's request for an award of one-quarter of the Settlement Fund is inherently reasonable given that it is well below the fees recently awarded in similar securities and other complex actions in this District and Circuit. *See, e.g.*, *Symantec Corp*., 855 F.3d at 866 (affirming a fee award of one-third of $60 million settlement); *City of Pontiac Gen. Emps.' Ret. Sys. v. Walmart Stores, Inc.*, No. 5:12-cv-05162-SOH (W.D. Ark. 2019) (30% fee awarded of $160 million); *Phillips v. Caliber Home Loans, Inc.*, 2022 WL 832085, at *7 (D. Minn. Mar. 21, 2022) ("the requested 33.33 percent award requested in this case is consistent with the customary fee for similar work"); *In re U.S. Bancorp Litig*., 291 F.3d 1035, 1038 (8th Cir. 2002) (upholding 36% fee award).

F. The Lodestar Crosscheck

109. As set forth in the Fee Memorandum, a lodestar "cross-check" also confirms the reasonableness of Class Counsel's fee request. Lead Plaintiff's Counsel expended a total of 16,379 hours in the prosecution and investigation of this Action, through the middle of 2022. The resulting lodestar is $11,726,923.00. In light of this, the requested fee of 25% of the Settlement Fund yields a slight multiplier of 0.96.

110. As set forth in the Fee Memorandum, this is a very low multiplier, which further demonstrates the reasonableness of the requested fee. Indeed, Courts in this District, Circuit and nationwide have routinely awarded a 25% or higher fee in

circumstances involving multipliers comparable to or higher than this one in cases with comparable or higher settlement amounts that settled at a stage of litigation similar to or even much earlier than this case. *See* Fee Memorandum, §III.B.5.

111. Moreover, each attorney who prosecuted this Action performed substantive work that directly benefitted the Class. The time spent by each attorney was reasonable, non-duplicative, beneficial to effective and efficient litigation, and was important to Class Counsel's and Lead Plaintiff's ability to understand the strengths and weaknesses of the case in order to negotiate intelligently and evaluate the Settlement, which ultimately led to the successful and favorable resolution of the Litigation.

112. Furthermore, Lead Plaintiff's Counsel's hourly rates are reasonable and are in fact the same as, or comparable to, the rates submitted by comparable firms for lodestar cross-checks in other complex class action fee applications and other settlements that have been granted in this Circuit, and nationwide. *See, e.g.*, *In re Centurylink Sales Pracs. & Sec. Litig*., 2021 WL 3080960, at *10 (D. Minn. July 21, 2021) (approving lead plaintiff's counsel's rates of up to $1,300 for partners; $800 for senior counsel; $625 for associates; and $450 for staff attorneys); *Knurr v. Orbital ATK, Inc*., 2019 WL 3317976, at *2 (E.D. Va. June 7, 2019) (finding rates of up to $1,250 for attorneys as "fair and reasonable and consistent with awards in similar cases").

113. Additionally, aside from drafting the motion for final approval, Class Counsel will continue to work towards effectuating the Settlement in the event the Court grants final approval. Among other things, Class Counsel will continue working with the Claims Administrator to resolve issues with Class Member claims, will respond to shareholder inquiries, and will oversee the distribution process. No additional compensation will be sought for this work.

114. In sum, based on the excellent result achieved for the Class, the quality of work performed, and the risks of prosecuting the action against Defendants, Class Counsel submits that its request for a 25% fee award is fair, reasonable, and below other similar fee awards in this District.

VII. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

115. Class Counsel seeks payment from the Settlement Fund of $1,694,305.45 in litigation costs, charges, and expenses reasonably and necessarily incurred in connection with prosecuting the claims against Defendants. The Notice informed the Class that Class Counsel will apply for payment of litigation expenses of no more than $2,000,000, plus interest earned at the same rate as earned by the Settlement Fund. *See* Gilardi Declaration, Ex. A, Notice at 3. In addition, the Notice informed the Class that Lead Plaintiff may request an award not to exceed $75,000 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class. *Id.* The amount

requested is below this cap. To date, no objection to Class Counsel's request for expenses has been raised.

116. As set forth in the expense schedules, Lead Plaintiff's Counsel have incurred a total of $1,694,305.45 in litigation expenses in connection with the prosecution of the Action. *See* Firm Declarations. These expenses are reflected on the books and records maintained in the ordinary course by Lead Plaintiff's Counsel. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. Lead Plaintiff's Counsel's declarations identify the specific category of expense – *e.g.*, expert fees, document management and storage system(s), electronic research, service of process fees, filing fees, and mailing expenses.

117. A significant component of Lead Plaintiff's Counsel's expenses is the cost of experts and consultants, which totals $1,504,632.70 or approximately 89% of total expenses. Class Counsel spent numerous hours meeting with the retained experts. These professionals were essential to the prosecution of the Action.

118. eDiscovery Database Hosting related to the Action totals $40,709.90. The amount requested reflects charges for the hosting of nearly 900,000 pages of documents produced by defendants, Lead Plaintiff, and non-parties in this Action. Robbins Geller has installed top tier database software, infrastructure, and security. The platform implemented, Relativity, is offered by over 100 vendors and is currently being used by 198 of the AmLaw200. Over 30 servers are dedicated to Robbins

Geller's Relativity hosting environment with all data stored in a secure SSAE 16 Type II data center with automatic replication to a datacenter located in a different geographic location. By hosting in-house, Robbins Geller is able to charge a reduced, all-in rate that includes many services which are often charged as extra fees when hosted by a third-party vendor. Robbins Geller's hosting fee includes user logins, ingestion, processing, OCRing, TIFFing, bates stamping, productions and archiving – all at no additional cost. Also included is unlimited structured and conceptual analytics (*i.e.*, email threading, inclusive detection, near-dupe detection, concept searching, active learning, clustering, and more), which were utilized by Lead Plaintiff's Counsel in the prosecution of this Action. Robbins Geller is able to provide all these services for a rate that is typically much lower than outsourcing to a third-party vendor. Utilizing a secure, advanced platform in-house allowed Lead Plaintiff's Counsel to prosecute this Action more efficiently and has reduced the time and expense associated with maintaining and searching electronic discovery databases.

119. Computerized electronic research totaled $19,215.94. These are the costs of computerized factual and legal research services, including PACER, Thomson Financial, Westlaw, Lexis/Nexis, Bloomberg, and CFRA. These services allowed counsel to perform media searches, obtain analysts' reports and financial data, and conduct legal research.

120. Lead Plaintiff's costs incurred in connection with the Mediation totaled $7,500.00.

121. The other expenses for which Lead Plaintiff's Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged by firms with clients who pay by the hour. These expenses include, among others, printing costs, service and filing fees, and delivery expenses.

122. All of the litigation expenses incurred, which total $1,694,305.45, were necessary to the successful prosecution and resolution of the claims against Defendants.

123. In addition, Lead Plaintiff seeks reimbursement of $30,000– an amount less than $75,000 amount included in the Notice. Lead Plaintiff, which dedicated considerable time and effort in actively supervising the Litigation over a multi-year period, including by collecting and producing numerous documents and responding to interrogatories; preparing for and attending its deposition; and participating in ongoing settlement discussions – is detailed in the accompanying Lead Plaintiff Declaration.

124. Lead Plaintiff respectfully submits that the reimbursement requested is fully consistent with congressional intent, as expressed in the PSLRA, of encouraging institutional and other highly experienced lead plaintiffs to take an active role in bringing and supervising actions of this type. As set forth in the Lead Plaintiff Declaration, Lead Plaintiff has, throughout the litigation of the Action, been fully committed to pursuing the interests of the Class. Lead Plaintiff has actively and effectively complied with all of the many demands that arose during the litigation and the Settlement of this Action. *See* Lead Plaintiff Declaration, ¶¶3-4. Lead Plaintiff's

efforts are precisely the type that courts have found to warrant reimbursement, and fully supports Lead Plaintiff's reimbursement request. *See In re CenturyLink Sales Pracs. & Sec. Litig.*, 2020 WL 7133805, at *13 (D. Minn. Dec. 4, 2020).

125. In view of the complex nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the Class. Accordingly, it is respectfully submitted that the expenses incurred by Lead Plaintiff and Lead Plaintiff's Counsel should be paid in full from the Settlement Fund.

VIII. THE REACTION OF THE CLASS

126. As mentioned above, consistent with the Preliminary Approval Order, to date, 146,479 Notices have been mailed to potential Class Members and nominees advising them that Class Counsel would seek an award of attorneys' fees not to exceed 25% of the Settlement Fund, *i.e.*, $11,250,000, plus any accrued interest, and payment of expenses in an amount not greater than $2,000,000, plus any accrued interest. In addition, the Notice stated that Lead Plaintiff may request an award not to exceed $75,000 pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class. *See* Gilardi Declaration, Ex. A, Notice at 3. Additionally, the Summary Notice was published in *The Wall Street Journal* and transmitted over *Business Wire*. *See* Gilardi Declaration, ¶12. The Notice has also been available on the settlement website maintained by the Claims Administrator (Gilardi Declaration, ¶14).

127. Significantly, to date, not a single Member of the Class has filed an objection to the Settlement, Plan of Allocation, or motion for attorneys' fees and expenses. *See Phillips*, 2022 WL 832085, at *4 ("That there are relatively few objections to a class-action settlement suggests that the settlement is fair and reasonable.").

128. This is particularly noteworthy given that the vast majority of the Class is comprised of sophisticated institutional investors who have the resources, professional staff, and financial motivation to object to the requested fee, if such an objection was warranted.

129. Moreover, Lead Plaintiff is itself a sophisticated institutional investor that closely supervised and monitored the prosecution and the settlement of the Action. As discussed in the declaration submitted by Lead Plaintiff, Lead Plaintiff has evaluated Class Counsel's fee and expense application and believes that Class Counsel's requested fee is fair and reasonable in light of the work counsel performed, the risks of the litigation, and the results achieved. The support and approval of court-appointed Lead Plaintiff weighs heavily in favor of approval of a fee request. *See, e.g.*, *In re Genworth Fin. Sec. Litig.*, 2016 WL 7187290, at *2 (E.D. Va. Sept. 26, 2016) ("Lead Plaintiffs are sophisticated institutional investors that have been directly and extensively involved in the prosecution and resolution of the Action and have a substantial interest in ensuring that any fees paid to the Plaintiffs' Counsel are duly earned and not excessive."); *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL

4115808, at *8 (S.D.N.Y. Nov. 7, 2007) ("[P]ublic policy considerations support the award in this case because the Lead Plaintiff . . . – a large public pension fund – conscientiously supervised the work of lead counsel and has approved the fee request[.]").

IX. CONCLUSION

130. For all the reasons discussed above and in the Settlement Memorandum, Lead Plaintiff and Class Counsel respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable, and adequate. In addition, as set forth above and in the Fee Memorandum, Lead Plaintiff and Lead Plaintiff's Counsel further submit that the requested 25% fee award should be approved as fair and reasonable; the request for litigation expenses in the total amount of $1,694,305.45 should be approved; and Lead Plaintiff's representative reimbursement of $30,000 should also be approved.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 15th day of August, 2022, at San Diego, California.

s/ Jonah H. Goldstein
JONAH H. GOLDSTEIN