IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

DARRELL EDEN; RANDY BACON; ESTATE OF CHRISTOPHER BROWN; through personal representative Paula Rhea Brown; ESTATE OF MARTIN CHOUINARD, through administrator *ad litem* April Hancock; SANDRA CULBERTSON; ESTATE OF DENISE CULPEPPER, through personal representative April Richard; LAURA FULLER; ESTATE OF BRANDON GASH, b/n/k Harry and Sheryl Gash; BENJAMIN NEWTON HANNAH; KRIS HOLDER; AMANDA LENNIE; SHELBY LONG; TERA MILLER; BRYAN WAMPLER; and SHARON WATERS, on behalf of themselves and all others similarly situated; and AVERY L. SHARP; CHELSEA COULTER; KENDRA MICKEL; and ZACHARY GUINN, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

BRADLEY COUNTY, TENNESSEE; SHERIFF STEVE LAWSON, in his official capacity; CAPTAIN JERRY JOHNSON, JR., in his official capacity; ERIC WATSON, in his individual capacity; and CAPTAIN GABRIEL THOMAS, in his individual capacity,

Defendants.

Case No.: 1:18-cv-217-CHS

CLASS ACTION

COMPLAINT PURSUANT TO 42 U.S.C. 1983

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO RULES 23(h) AND 54(d)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE

Come Named Plaintiffs / Putative Class Representatives Darrell Eden; Randy Bacon; the Estate of Christopher Brown, through personal representative Paula Rhea Brown; the Estate of

Martin Chouinard, through administrator *ad litem* April Hancock; Sandra Culbertson, the Estate of Denise Culpepper, through personal representative April Richard; Laura Fuller; the Estate of Brandon Gash, by next of kin Harry and Sheryl Gash; Benjamin Newton Hannah; Kris Holder; Amanda Lennie; Shelby Long; Tera Miller; Bryan Wampler; Sharon Waters; Avery L. Sharp; Chelsea Coulter; Kendra Mickel; and Zachary Guinn, on behalf of themselves and of all members of the Damages Class and Injunctive Relief Class ("Plaintiffs"), and submit this memorandum of law in support of their unopposed[1] motion [114] to award and order Defendants, Bradley County, Tennessee ("Bradley County"); Sheriff Steve Lawson, in his official capacity; Captain Jerry Johnson, Jr., in his official capacity; Eric Watson, in his individual capacity; and Captain Gabriel Thomas, in his individual capacity ("Defendants") to pay Class Counsel the sums of **(1) one million, one hundred forty-thousand dollars and zero cents ($1,140,000.00) in attorney's fees**, **and (2) one hundred twenty thousand and forty-six dollars and thirteen cents ($120,046.13)[2] in litigation costs and expenses, for a total of one million two hundred sixty thousand and forty-six dollars and thirteen cents ($1,260,046.13)** to be paid as specified in the Settlement Agreement.[3]

[1] The Settlement Agreement [107-1] provides, with respect to (i) attorney's fees that "Defendants take no position on the reasonableness of the Attorney's Fees Amount but will not oppose the motion seeking same and agree to pay same if approved by the Court"; and (ii) litigation costs and expenses that "Defendants take no position on the reasonableness of the Expenses Amount but will not oppose the motion seeking same and agree to pay same if approved by the Court." (*Id.* §§ 4(d)-(e), 11(a)-(b).)

[2] As discussed *infra* Part II.b, the amount requested for litigation costs and expenses has been adjusted downward following additional review of the relevant records.

[3] The terms of the Settlement Agreement provide that, subject to the Court's approval Defendant is obligated to pay Class Counsel the Attorney's Fees Amount of $1,140,000.00 the Expenses Amount of up to $124,386.43. (*See id.* §§ 2(j), (gg), 4(d)-(e), 11(a)-(b), 13(g).)

I. FACTUAL BACKGROUND

a. Litigation through the Filing of the Settlement Agreement

On September 18, 2018, plaintiff Darrell Eden filed the initial lawsuit in this Court as a proposed class action (Case No. 1:18-cv-217) against Defendants (a) Bradley County, (b) then-Sheriff Eric Watson of the Bradley County Sheriff's Office ("BCSO"), in his official and individual capacities, (c) Captain Gabriel Thomas of the BCSO, in his official and individual capacities, and (d) "John and Jane Doe" BCSO corrections deputies, in their official and individual capacities. (*See* Class Action Compl. [1] ("Compl.").) On July 23, 2021, plaintiff Darrell Eden and the additional Named Plaintiffs listed above filed the First Amended and Supplemental Class Action Complaint [92] ("Amended Complaint"), against Bradley County, Sheriff Steve Lawson (in his official capacity), Captain Jerry Johnson (in his official capacity), Eric Watson (in his individual capacity), and Captain Gabriel Thomas (in his individual capacity).

Throughout the Litigation, Defendants have denied liability and maintained that Plaintiffs' claims are without merit on various substantive and procedural grounds. Defendants' non-opposition to the instant motion does not constitute a waiver of any defenses raised nor an acknowledgement regarding the merits or validity of such claims.

Since the filing of the Complaint, putative Class Counsel and Defendants' Counsel have robustly litigated this action through (a) wide-ranging fact and expert discovery involving (i) tens of thousands of pages of documents, (ii) multiple expert reports, and (iii) dozens of depositions, including experts in correctional administration and medicine, Bradley County officials and employees (including the Bradley County Sheriff and County Mayor), CMSP physicians and personnel, and current and former inmates of the Bradley County Jail (the "Jail"); and (b) considerable motion practice featuring extensive briefing, and hearings on requests to compel the

production of documents, add additional plaintiffs, and augment the claims (and factual bases therefor) alleged against Bradley County.

On December 20, 2021, the Court ordered the Parties to mediation. (*See* Scheduling Order for Mediation & Class Certification Briefing [98].) The Parties retained the Mediator (Shelby R. Grubbs, J.D., FCIArb, of JAMS), who oversaw and guided the mediation process over the next (approximately) ten (10) months. (*See* Mediator's Report [102].) During that time, the Parties participated in two in-person mediation sessions (on February 24, 2022 and July 28, 2022) and engaged in intense negotiations through additional in-person meetings, telephonic communications, and the exchange of documents and correspondence. Putative Class Counsel and Defendants' Counsel affirmatively represent and attest that the Settlement Agreement is the result of arm's-length negotiation under the guidance and assistance of the Mediator.

In February 2022, the Parties reached a tentative agreement regarding many of the material and significant terms of the injunctive relief sought by the putative Injunctive Relief Class, and, in October 2022, reached a tentative agreement regarding many of the material and significant terms of the relief sought by the putative Damages Class. Thereafter, the Parties negotiated the precise language of the Settlement Agreement and made provision for the infrastructure necessary to conduct the Settlement Administration process, including the engagement of (1) Settlement Services, Inc. ("Settlement Services") to conduct Settlement Administration (including execution of the proposed Notice Plan and processing of Damages Class Claim Forms); and (2) Jeffrey W. Rufolo to serve as Special Master in conducting the Claims Process (as part of Settlement Administration).

On June 28, 2023, the Parties filed the Joint Motion for Order Preliminarily Approving Class Action Settlement, Preliminarily Certifying Classes for Settlement Purposes, Appointing

Class Representatives, Appointing Class Counsel, Approving and Directing Issuance of Class Notice, Appointing Special Master, and Scheduling a Final Fairness Hearing [106] ("Motion for Preliminary Approval") and accompanying memorandum of law [107] (with related exhibits).

On November 16, 2023, the Court held a hearing on the Motion for Preliminary Approval, in which it orally granted that Motion and instructed the Parties that it would enter an appropriate order and, on November 29, 2023, entered the Agreed Order Preliminarily Approving Class Action Settlement, Preliminarily Certifying Classes for Settlement Purposes, Appointing Class Representatives, Appointing Class Counsel, Approving and Directing Issuance of Class Notice, Appointing Special Master, and Scheduling a Final Fairness Hearing [113] ("Preliminary Approval Order"), in which it, *inter alia*, (i) appointed the undersigned counsel as Class Counsel; (ii) appointed the Named Plaintiffs as Class representatives; (iii) preliminarily approved the proposed settlement; (iii) approved the Damages Class Claim Form; (iv) approved the Notice Plan and directed issuance and distribution of class notice pursuant to the Settlement Agreement, (v) appointed Jeffrey W. Rufolo, Esq. as Special Master; and (vi) set the Fairness / Final Approval Hearing for Friday, April 5, 2024, at 10:00 a.m. (*See generally id.*)

b. <u>The Settlement Administration and Claims Processes</u>

The ongoing Settlement Administration and Claims Processes commenced on November 29, 2023. Class Counsel's primary functions have been to assist: (1) the Settlement Administrator in executing its obligations under the Settlement Agreement, *e.g.*, (i) execution of the Notice Plan, (ii) ensuring that Damages Class Claim Forms are being correctly received, screened, processed, (if necessary) cured, and transmitted to the Special Master in a timely and orderly fashion; and (2) the Special Master in (i) receiving, compiling, and categorizing the necessary medical (and other) evidence and (ii) correctly applying the relevant precepts set forth in the Settlement Agreement

and Damages Claim Schedule. (*See* 28 U.S.C. § 1746 Declaration of Joseph Alan Jackson II, Esq. ("Jackson Decl.") [115-1] ¶¶ 25-27.) As part of those efforts, undersigned counsel engaged in hundreds of communications (telephonic and email) with the Settlement Administrator, Special Master, and Class Members concerning numerous issues. (*See id.*)

Undersigned counsel further represent that they have endeavored to go above and beyond the letter of the Settlement Agreement and Preliminary Approval Order to contact and follow up with both known and unknown Damages Class Members to ensure (to the extent reasonably possible) that all such persons have been afforded the full opportunity to recover as part of this settlement. (*See* Jackson Decl. ¶ 27.) As part of these efforts, undersigned counsel engaged in hundreds of communications with known and (previously) unknown class members telephonically, through email, text message, and social media, to assist them in successfully submitting their claims (whether Feinberg Elections or Individual Damages Claims). (*See id.*)

Class Counsel will continue fulfilling these obligations until the Settlement Administration and Claims Processes are complete, the Court approves and/or modifies the Final Payment Amounts, and those amounts are disbursed to Class members.

II. LAW AND ANALYSIS

a. Attorney's Fees Award

Under Rule 23 of the Federal Rules of Civil Procedure, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement" pursuant to a motion "made by motion under Rule 54(d)(2)." Fed. R. Civ. P. 23(h).[4] When awarding attorney's fees in a class action case, "'a court must make sure that

[4] Rule 23(h)(2) provides that "[a] class member, or a party from whom payment is sought, may object to the motion." Here, the requested amount of attorney's fees and expenses was (i) set forth in the Settlement Agreement (which was posted on the settlement Website,

counsel is fairly compensated for the amount of work done as well as for the results achieved.'" *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 298 (6th Cir. 2016) (quoting *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)). The two principal measures of the fairness of a fee award are "work done and results achieved." *Id.*

In general, there are "'two methods for calculating attorney's fees'" in a class action: "'the lodestar and the percentage-of-the-fund.'" *Robles v. Comtrak Logistics, Inc.*, No. 15-CV-2228, 2022 WL 17672639, at *10 (W.D. Tenn. Dec. 14, 2022) (quoting *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 436 F. App'x 496, 498 (6th Cir. 2011)). "The lodestar method of calculating fees 'better accounts for the amount of work done,' whereas 'the percentage of the fund method more accurately reflects the results achieved.'" *Gascho*, 822 F.3d at 279 (quoting *Rawlings*, 9 F.3d at 516)).

In balancing those measures, district courts employ the following factors articulated in *Moulton v. U.S. Steel Corp.*:

> "(1) the value of the benefit rendered to the plaintiff class; (2) the value of the services on an hourly basis; (3) whether the services were undertaken on a contingent fee basis; (4) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others; (5) the complexity of the litigation; and (6) the professional skill and standing of counsel involved on both sides."

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www.bradleycountyjailsettlement.com, at the outset of the Settlement Administration process on or about December 11, 2023) and (ii) specifically addressed in FAQ Nos. 15 and 19-20 on the Website, which provide, in pertinent part, (i) the requested attorney's fees and expenses amounts (Website FAQ No. 15), and (ii) as follows: "If you are and choose to remain a Class Member, you can object to the Settlement if you do not like any part of it, or you may object to the request for attorneys' fees. You must give the specific reason(s) reason why you think that the Court should not approve the Settlement or the requested attorneys' fees" (*Id.* No. 19). No objections were submitted. In addition, a copy of the fee motion and this memorandum are being uploaded on the Website following their submission to the Court.

581 F.3d 344, 352 (6th Cir. 2009) (quoting *Bowling v. Pfizer, Inc.*, 102 F.3d 777, 780 (6th Cir. 1996)).

i. Percentage-of-the-Fund Method

While "[d]istrict courts have discretion in selecting the fee amount and the method used to determine the fee," the percentage-of-the-fund method is "favored over the lodestar approach" in the Sixth Circuit. *Robles*, 2022 WL 17672639, at *10; *see also In re Skelaxin (Metaxalone) Antitrust Litig.*, No. 2:12–cv–83, 2014 WL 2946459, at *1 (E.D. Tenn. June 30, 2014) ("The Court recognizes that the trend in 'common fund cases has been toward use of the percentage method.'" (quoting *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 532 (E.D. Mich. 2003)); *In re: Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2012 WL 12875983, at *2 (E.D. Tenn. July 11, 2012) ("The percentage-of-the-fund method, however, clearly appears to have become the preferred method in common fund cases.").

Courts in the Sixth Circuit routinely award fees in class actions of approximately one-third of a common fund. *See Gokare v. Fed. Express Corp.*, No. 2:11-CV-2131-JTF-CGC, 2013 WL 12094887, at *4 (W.D. Tenn. Nov. 22, 2013) (approving an attorney's fee award of 30.9% of the common fund and collecting cases for the proposition that fee awards in common-fund cases frequently equal 30-33% of the fund); *see also Cosby v. KPMG LLP*, No.: 3:16-cv-121-TAV-DCP, 2022 WL 4129703, at *2 (E.D. Tenn. July 12, 2022) (noting that class counsel's requested fee of 33.333% of the fund under the percentage-of-the-fund approach was "'certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit'" and was "appropriate given the excellent result Co-Lead Counsel achieved notwithstanding substantial risk" (quoting *In re Se. Milk Antitrust Litig.*, No. 2:07-CV-208, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013)); *Hosp. Auth. of Metro. Gov't of Nashville v. Momenta Pharms., Inc.*, No.

3:15-CV-01100, 2020 WL 3053468, at *1 (M.D. Tenn. May 29, 2020) (finding that a requested one-third (33.333%) award was "fair and reasonable under the percentage-of-the-fund approach" and "within the range often awarded in common fund cases, both nationwide and in the Sixth Circuit" (citation and internal quotation marks omitted); *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, No. 1:14- MD-2508-HSM-CHS, 2017 WL 11681193, at *1 (E.D. Tenn. May 26, 2017) (approving award of "the requested fee of one-third [of the settlement fund]" because it was "fair and reasonable and fully justified, and within the range of fees ordinarily awarded in this district and throughout the Sixth Circuit"); *In re Skelaxin (Metaxalone) Antitrust Litig.*, 2014 WL 2946459, at *1, *3 (approving a one-third percentage-of-the-fund award); *In re: Se. Milk Antitrust Litig.*, 2012 WL 12875983, at *2 (holding that 33.33% of a settlement fund was "certainly within the range of fees often awarded in common fund cases, both nationwide and in the Sixth Circuit"); *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 380 (S.D. Ohio 2006) ("Attorney[']s fees awards typically range from 20 to 50 percent of the common fund.").

Accordingly, the fee amount sought—representing 30% of the settlement fund—is "similar to or lower than percentage-of-the-fund awards" in other common-fund cases within the Sixth Circuit and in the United States District Courts throughout Tennessee, including the Eastern District of Tennessee.[5]

1. <u>Value of the Benefit to the Classes</u>

Class Counsel respectfully submits that the value of the benefits conferred upon the classes here—including a $3,800,000.00 settlement fund and (at least $580,000 in injunctive relief (composed of agreed-upon additional expenditure on medical care for Jail inmates and the cost of

[5] Moreover, Class Counsel notes that, considering the cash value of the injunctive relief obtained ($580,000 (275,00.00 x 2, plus $30,000), the total cash value of the settlement is $4,380,000.00, such that the requested fee amounts to approximately 26% of the settlement amount, not 30%.

an assessment by a correctional health expert)—is substantial. *See, e.g.*, *In re Auto. Parts Antitrust Litig.*, No. 12-MD-02311, 2022 WL 4385345, at *2 (E.D. Mich. Sept. 22, 2022) (finding that a $700,000 settlement fund constituted a "substantial benefit" on class members).

The Injunctive Relief Class Members have already begun realizing the benefits of that relief, and the Damages Class Members will realize those benefits upon completion of the Settlement Administration and Claims Processes (and Court approval), which Class Counsel, the Settlement Administrator, and the Special Master are working to complete as soon as possible.

Finally, Class Counsel respectfully submit that, apart from the above-referenced tangible benefits they have achieved, the prosecution of this lawsuit has had the salutary effect of drawing attention to the common and longstanding problems associated with inadequate health care for inmates confined in county jails, including the Jail.

2. Value of Class Counsel's Services on an Hourly Basis

As detailed in the Jackson Declaration, supported by the SMRW Time and Expense Log (*see* Ex. A [115-2]) and separate calculations/estimates of the time and expenses of J. Allen Murphy, Jr. (*see* Ex. B (J. Allen Murphy, Jr. Time & Expense Log) [115-3]), the value of Class Counsel's services is approximately **$898,339.00** (and will increase as necessary to effectuate this settlement's completion).

3. Whether the Services Were Undertaken on a Contingent Fee Basis

Class Counsel have worked extremely hard over an (approximately) six-year period on a contingency basis, expending approximately nine hundred thousand dollars' worth of attorney time without compensation—and while fronting approximately $120,000 in expenses out of pocket. That investment of time and resources—particularly in view of the risk—constituted (and

constitutes) a serious burden and risk for Class Counsel and their law firms. (*See* Jackson Decl. ¶¶ 14, 16, 28, 37-38.)

4. The Value to Society of Rewarding Attorneys Who Produce Similar Benefits in Order to Create and Maintain Incentive to Others

"Society benefits by encouraging counsel to take on difficult class actions." *Fitzgerald v. P.L. Mktg., Inc.*, No. 2:17-CV-02251-SHM-cgc, 2020 WL 3621250, at *10 (W.D. Tenn. July 2, 2020); *see also Copeland v. Wabash Cnty., Ind.*, No. 3:20-CV-154 JD, 2022 WL 19101, at *4 (N.D. Ind. Jan. 3, 2022) (holding that a settlement improving prison conditions had "an inherently positive impact on the public interest"); *Heit v. Van Ochten*, 126 F. Supp. 2d 487, 491 (W.D. Mich. 2001) (finding that a proposed settlement helping to "ensure that Michigan prisoners receive[d] due process with respect to their disciplinary hearings" was in the public interest); *In re S. Ohio Corr. Facility*, 173 F.R.D. 205, 215 (S.D. Ohio 1997) (finding that the public was served by the resolution of case in which prison conditions case led to a riot).

There are few (if any) political interests served by advocating for the rights of prisoners, and, hence, the undertaking by counsel of class actions in the federal courts is one of the only mechanisms by which prisoners' constitutional rights can be (and historically have been) vindicated. Class Counsel respectfully submits that this lawsuit was necessary and socially useful in (at least attempting) to help generally voiceless prisoners (many of whom have not even been convicted of a crime) stand up for their constitutional rights and physical health.

5. The Complexity of the Litigation

This case has been extremely complex, involving (i) potential class certification under Rules 23(b)(2), (b)(3), and (c)(4); (ii) hundreds of class members with the same theory of liability

but injuries of varying type and severity; (iii) substantial expert proof; (iv) dozens of fact witness depositions; and (v) other significant legal and procedural complexity.

Class Counsel developed complex (and novel) legal strategies to avoid the many pitfalls inherent in prisoner litigation and prosecute this matter as a class action (*see, e.g.*, Jackson Decl. ¶ 14 & n.2) so that the many affected individuals—whose cases generally would not have been economically viable on an individual basis—could be heard and recover for their very real damages.

In addition, Class Counsel worked assiduously to prosecute the case, which included years of ongoing discovery, motion practice, and negotiation to overcome numerous challenges.

6. The Professional Skill and Standing of Class Counsel and Defendants' Counsel

Class Counsel are experienced and respected litigators with extensive experience in class and complex litigation. (*See, e.g.,* Jackson Decl. ¶¶ 5-12.) They have litigated this case diligently at all phases and have obtained a successful outcome for the Classes.

Defendant's Counsel are highly competent and respected litigators with extensive experience in defending municipalities against constitutional claims—including claims by prisoners for deliberate indifference under the Eighth and Fourteenth Amendments and section 1983.[6] The substantial experience, skill, and effort of Defendant's Counsel necessitated matching skill and effort by Class Counsel.

ii. Lodestar Cross-Check

In order to buttress 30% percentage-of-the-fund fee request, Class Counsel is submitting herewith (in addition to the Jackson Declaration) detailed records of their lodestar services to date

[6] In addition, the non-party CMSPs were represented by highly respected firms with similar profiles and experience.

so that the Court may conduct a lodestar "cross-check" to ensure that the requested $1,140,000.00 fee award is reasonable. (*See* Ex. A (SMRW Time and Expense Log); Ex. B (J. Allen Murphy, Jr.'s Time & Expense Log).) *See, e.g., Cosby*, 2022 WL 4129703, at *2 ("The lodestar cross-check involves multiplying reasonable rates by reasonable hours.").

As detailed in the Jackson Declaration and SMRW Time & Expense Log (Ex. A), the total time expended by SMRW in this case, calculated by multiplying (i) the time spent by each listed timekeeper by (ii) the rate for each listed timekeeper, equals $790,541.50. As further detailed in the Jackson Declaration and J. Allen Murphy, Jr. Time & Expense Log (Ex. B), Mr. Murphy's (a) certain (or near certain) time expenditure is (approximately) $79,672.50, and (b) additional time spent (estimated very conservatively and subject to the provisos set forth in the Jackson Declaration), equals $28,125.00 (totaling $107,797.50 for Mr. Murphy) for a total lodestar calculation for all Class Counsel of **$898,339.00**. In addition, Class Counsel notes that substantial additional time on part of Class Counsel will be necessary to complete this lawsuit and effectuate the settlement's terms in full.

A lodestar sum may "be increased by a 'multiplier' to account for the costs and risks involved in the litigation, as well as the complexities of the case and the size of the recovery." *Cosby*, 2022 WL 4129703, at *2; *see also Gascho*, 822 F.3d at 279 (holding that a court may apply a lodestar multiplier to account for "'the risk an attorney assumes in undertaking a case, the quality of the attorney's work product, and the public benefit achieved'" (quoting *Rawlings*, 9 F.3d at 516); *Wells v. U.S. Steel*, 76 F.3d 731, 737 (6th Cir. 1996) (recognizing that "[t]he decision to enhance the lodestar calculation is in the discretion of the district court").[7] This Court has noted

[7] In determining whether a lodestar fee (including multiplier requests) is reasonable, courts may consider the following factors:

that typical multiplier range is between "1.3 to 4.5." *See Cosby*, 2022 WL 4129703, at *2 (citing *In re Cardinal Health Inc. Sec. Litigs.*, 528 F. Supp. 2d 752, 767-68 (S.D. Ohio 2007)).[8] Here, the multiplier enhancement requested is approximately **1.27**, ***less*** than the minimum "typical multiplier."

Accordingly, Class Counsel respectfully submits that the lodestar cross-check easily establishes the reasonableness of the requested fee award.

b. Litigation Expenses Award

Class Counsel expended $120,046.13 in furtherance of this lawsuit, (*see* Jackson Decl. ¶ 38; *see also* Exs. A-B), and it is likely that it will be necessary to expend at least some additional amounts on expenses prior to final conclusion of this matter. The Settlement Agreement authorizes payment of up to $124,386.43 as the Expenses Amount. (*See* Settlement Agreement ¶¶ 2(gg), 4(e), 11(b), 13(g).) As noted *supra* and in the Jackson Declaration, the Expenses Amount actually

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> (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (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.

Barnes v. City of Cincinnati, 401 F.3d 729, 745-46 (6th Cir. 2005) (quoting *Blanchard v. Bergeron*, 489 U.S. 87, 91 n.5 (1989)). Class Counsel respectfully submit that these factors have been materially addressed herein and weigh exclusively in favor of the reasonableness of the lodestar fee.

[8] Moreover, while courts permit attorneys to apply rates current at the time the fee is sought to their entire lodestar calculation ("to 'compensate for the delay in payment during the pendency of the litigation,'" *Cosby*, 2022 WL 4129703, at *2 (quoting *In re UnumProvident Corp. Derivative Litig.*, No. 1:02-CV-386, 2010 WL 289179, at *6 (E.D. Tenn. Jan. 20, 2010))), Class Counsel have not here done so and have calculated their lodestar fees using modest rates such that the lodestar value of the fee is understated. Had Class Counsel submitted their time at higher rates (within the range of their general rates and the reasonable range locally), the multiplier would be substantially lower—even negative.

being claimed herein has been adjusted downward following review. (*See supra* Notes 2-3; Jackson Decl. ¶ 38.)

Accordingly, the requested Expenses Amount has been reduced by $4,430.30, with the balance to the First Adjusted Damages Allocation / Damages Class Account. (*See* Settlement Agreement § 13(g) n.11.)

III. CONCLUSION

For the reasons explained above, Plaintiffs respectfully request that the Court order Defendant to pay Class Counsel $1,140,000.00 for the Attorney's Fees Amount and $120,046.13 for the Expenses Amount, for a total award of **one million two hundred sixty thousand and forty-six dollars and thirteen cents ($1,260,046.13)**, to be paid in conformity and according to the timeline set forth in Paragraph 13(g) of the Settlement Agreement.

Dated: April 3, 2024.

Respectfully submitted,

By: /s/ C. Scott Johnson

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of April 2024, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

By: /s/ Joseph Alan Jackson II