UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

MONROE COUNTY EMPLOYEES' RETIREMENT SYSTEM and ROOFERS LOCAL NO. 149 PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiffs, vs. THE SOUTHERN COMPANY, THOMAS A. FANNING, ART P. BEATTIE, EDWARD DAY, VI, G. EDISON HOLLAND, JR., JOHN C. HUGGINS and THOMAS O. ANDERSON, Defendants.	Civil Action No. 1:17-cv-00241-WMR CLASS ACTION DECLARATION OF DARRYL J. ALVARADO IN SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION, AND (2) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

TABLE OF CONTENTS

Page

Page

I, DARRYL J. ALVARADO, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California, and I have been admitted *pro hac vice* to appear before this Court in the above-captioned action ("Action" or "Litigation").[1] I am a member of the firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), counsel for Plaintiffs and Class Representatives Roofers Local No. 149 Pension Fund ("Roofers Local No. 149") and Monroe County Employees' Retirement System ("Monroe County"), and the Class.[2] I have been actively involved in the prosecution and resolution of this Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based on my active participation and supervision of all material aspects of the Action.

2. I submit this declaration in support of Plaintiffs' motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of the Settlement, which provides for a cash payment of $87,500,000 (the "Settlement Amount"), and

[1] All capitalized terms that are not defined herein have the same meanings as set forth in the Stipulation of Settlement (ECF No. 219-3) (the "Stipulation" or the "Settlement Agreement").

[2] The Class is defined as: All Persons who purchased or otherwise acquired The Southern Company ("Southern Company" or the "Company") common stock between April 25, 2012 and October 30, 2013, inclusive (the "Class Period"), and were allegedly damaged thereby. Excluded from the Class are Defendants, the Officers and directors of Southern Company during the Class Period, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which any Defendant has or had a controlling interest. Also excluded from the Class are those Persons who timely and validly exclude themselves therefrom.

for approval of the proposed Plan of Allocation. I also submit this declaration in support of Lead Counsel's application for an award of attorneys' fees and expenses.

I. PRELIMINARY STATEMENT

3. The $87,500,000 proposed Settlement is the culmination of years of tireless, hard-fought litigation. As detailed below, Plaintiffs, through Lead Counsel, zealously prosecuted their claims at every stage of this Action, successfully defending their claims against Defendants' repeated dismissal attempts. The Settlement, which represents between 16% and 28% of the estimated recoverable damages (as calculated by Plaintiffs' expert) is truly a remarkable result for the Class.

4. Indeed, the Settlement was only achieved after Lead Counsel, *inter alia*:

- conducted a thorough and wide ranging investigation concerning the alleged fraudulent misrepresentations made by Defendants,[3] which included an extensive review and analysis of publicly available information concerning Southern Company, Mississippi Power Company ("Mississippi Power"), and information from a whistleblower and other confidential witnesses;
- prepared and filed the comprehensive Consolidated Complaint for Violation of the Federal Securities Laws ("Complaint") (ECF No. 28);
- defeated Defendants' motion to dismiss;

[3] The Defendants are: Southern Company and Individual Defendants Thomas A. Fanning, Art P. Beattie, Edward Day, VI, G. Edison Holland, Jr., John C. Huggins, and Thomas O. Anderson.

- defeated Defendants' motion for reconsideration of the Court's March 29, 2018 Order on Defendants' motion to dismiss;

- defeated Defendants' motion pursuant to 28 U.S.C. §1292(b) seeking immediate interlocutory appeal of the Court's March 29, 2018 Order on Defendants' motion to dismiss;

- prepared for and defended, or participated in, multiple depositions during class certification discovery, including, the depositions of Roofers Local No. 149 and Monroe County's representatives, Roofers Local No. 149 and Monroe County's investment advisors, Plaintiffs' market efficiency and price impact expert, and Defendants' market efficiency and price impact expert;

- prepared for and conducted the examination and cross-examination of Plaintiffs and Defendants' expert witnesses during a two-day evidentiary hearing in connection with class certification;

- defeated Defendants' motion to exclude Plaintiffs' expert in connection with class certification;

- achieved certification of a class of all persons who purchased or otherwise acquired Southern Company common stock between April 25, 2012 and October 30, 2013, inclusive;

- opposed Defendants' Rule 23(f) petition to appeal the Court's class certification order;

- conducted extensive party and third-party document discovery for nearly two years, involving the exchange, careful review, and analysis of 2,108,146 pages of documents;

- responded to Defendants' various discovery requests and interrogatories;

- engaged in multiple lengthy and contentious discovery-related disputes concerning the scope of fact discovery, Defendants' privilege logs and assertions of privilege over various materials, and several other issues discussed below;

- retained and consulted with a mechanical engineering expert;

- attended an in-person mediation session with a reputable mediator and engaged in extensive post-mediation negotiation efforts; and
- prepared for and conducted three fact witness depositions of current and former employees of Southern Company.

5. As further detailed herein, given Lead Counsel's comprehensive prosecution of this Action, Plaintiffs fully understood the strengths of their case as well as the substantial risks they faced in proceeding with the Litigation at the time that the Settlement was reached. And, while Plaintiffs are confident that their claims are supported by both the documentary evidence and deposition testimony produced and developed throughout fact discovery, Plaintiffs understood the real risks in proving their claims at summary judgment and trial.

6. Plaintiffs allege that in violation of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 promulgated thereunder, Defendants engaged in a fraudulent scheme to artificially inflate the price of Southern Company's common stock by making materially false and misleading statements and/or omissions regarding the construction of a clean coal power plant in Kemper County, Mississippi (the "Kemper Plant"). ¶¶112-158.[4] Defendants, on the other hand, have consistently argued that they did not make any materially false or misleading statements or omissions during the Class Period. *See, e.g.*, ECF No 37-1 at 18-25. Moreover, Defendants have argued that even if they had made false

[4] All "¶_" or "¶¶_" references are to the Complaint, unless otherwise stated.

or misleading statements, Plaintiffs would be unable to prove scienter because Defendants had a good faith belief in the truth of their statements. *Id.* at 28. Indeed, Defendants have consistently maintained that they lacked any motive to deceive the public regarding their ability to meet the May 2014 Commercial Operation Date ("COD"). *Id.* at 25-27.

7. The Parties have also battled over the issues of loss causation and damages throughout the Litigation. For example, Defendants have argued, and would have continued to argue, that (1) the first three alleged corrective disclosures were not related to the schedule or May 2014 COD; (2) any false or misleading statements and omissions were already disclosed to the market and, thus, Defendants' alleged fraud could not have impacted the Company's stock price; (3) Plaintiffs failed to account for confounding information; and (4) Plaintiffs' expert could not establish at trial or summary judgment that there was a statistically significant stock drop after four of the five alleged corrective disclosure dates. *See, e.g.*, ECF No. 106. There is no doubt that Defendants and their numerous experts would have continued to dispute loss causation and damages at trial.

8. Accordingly, the proposed Settlement avoids the substantial additional costs and risks of further litigating liability and damages if this case were to continue. Indeed, Plaintiffs faced the risk that the Eleventh Circuit might reverse the order certifying the class or that the Court might effectively end the case by granting

Defendants' summary judgment or *Daubert* motions on any one or more of the elements required to prove Plaintiffs' securities fraud claims. Given the significant risks in continuing to litigate this Action, Plaintiffs and Lead Counsel concluded that the outstanding $87,500,000 Settlement was in the best interest of the Class.

9. Lead Counsel has prosecuted this Action on a wholly contingent basis and, thus, has advanced or incurred all the litigation expenses, charges, and costs to date. Lead Counsel shouldered substantial risk in doing so and, to date, has not received any compensation for its efforts. Accordingly, in consideration of Lead Counsel's extensive efforts on behalf of the Class, Lead Counsel is applying for an award of attorneys' fees in the amount of thirty percent of the Settlement Amount, plus interest accrued thereon. Such a fee award is fair and reasonable and is within the range of fee percentages frequently awarded in this type of case. Further, it is more than justified by the particular facts of this case, including the substantial benefits conferred on the Class, the risks undertaken, the quality of representation, the nature and extent of the legal services performed, and the fact that the Parties settled after a protracted mediation process near the close of fact discovery.

10. Both the Settlement and Lead Counsel's fee request have been approved by Plaintiffs and Class Representatives Roofers Local No. 149 and Monroe County, both institutional investors with significant financial interests in the outcome of the case, and which remained actively engaged in its progress. *See*

Declaration of Darris Garoufalis in Support of Application for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses, attached as Exhibit 1 hereto; Declaration of Michael Grodi in Support of Application for Final Approval of Class Action Settlement and Award of Attorneys' Fees and Expenses, attached as Exhibit 2 hereto. Because this is the type of involvement envisioned by Congress in enacting the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §78u-4, *et seq*. (the "PSLRA"), Plaintiffs' approval of the relief sought here is entitled to significant weight by the Court in awarding fees to Lead Counsel.

11. Lead Counsel also seeks payment of $853,866.45 in expenses, costs, and charges that were reasonably and necessarily incurred by Lead Counsel in its prosecution of this Action. These expenses, charges, and costs include: (i) the costs associated with taking or defending fact and expert witness depositions, such as travel expenses, court reporter, and videographer fees; (ii) hosting and managing the database of 2,108,146 pages of documents produced in the course of discovery; (iii) online factual and legal research; (iv) the fees and expenses of Plaintiffs' experts whose services were necessary for the successful prosecution of this Action; and (v) mediation fees. As will be evident from the discussion below regarding the efforts required by Lead Counsel in order to achieve this extraordinary result, these expenses were reasonable and necessary.

12. The following section summarizes the primary events that occurred during the course of the Litigation and the extensive legal services provided by Lead Counsel.

II. THE LITIGATION

A. Roofers Local No. 149 Is Appointed Lead Plaintiff and Plaintiffs Defeat Defendants' Motion to Dismiss, Motion for Reconsideration, and Motion for Certification for Immediate Appellate Review

13. On January 20, 2017, Plaintiff Monroe County filed the initial complaint in this Action against Southern Company and the Individual Defendants alleging that Defendants violated §§10(b) and 20(a) of the Exchange Act by issuing materially false and misleading statements and omissions during the Class Period. ECF No. 1.

14. On March 24, 2017, Roofers Local No. 149 moved to be appointed as Lead Plaintiff and for approval of its selection of Robbins Geller as Lead Counsel. ECF No. 20. The Court granted the motion, appointed Roofers Local No. 149 Lead Plaintiff, and appointed Robbins Geller as Lead Counsel on April 11, 2017. ECF No. 22 at 1.

15. Thereafter, Lead Counsel conducted an extensive factual investigation prior to filing the Complaint, analyzing years of Southern Company's and Mississippi Power's public filings with the Securities and Exchange Commission ("SEC"), Mississippi Power's public filings (including those with the Mississippi Public Service Commission), media reports, analyst reports, and trading data. As

part of its investigation, Lead Counsel, with the assistance of investigators, also located and spoke with several witnesses with first-hand knowledge of the alleged fraud, including various confidential witnesses whose allegations were detailed in the Complaint. Following their thorough investigation, Plaintiffs filed the Complaint on June 12, 2017. ECF No. 28.

16. The 145-page Complaint alleges violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder on behalf of all persons who purchased or otherwise acquired Southern Company common stock during the Class Period. *Id.* at 1. More specifically, the Complaint alleges that during the Class Period, Defendants stated repeatedly that construction of the Kemper Plant was "on track," "on schedule," "exceedingly well-built and well organized," "more than 70 percent" and "75 percent" complete, that critical components of the plant had been installed, and that the plant would be completed by May 1, 2014 COD. ¶¶112-158. The Complaint asserts that Defendants knew or recklessly disregarded that construction of the Kemper Plant was woefully off track and that a May 2014 COD was impossible to achieve. ¶¶115(a)-(d), 124(a)-(d), 131(a)-(e). The Complaint further alleges that when the true facts regarding the alleged misstatements were revealed thorough a series of partial disclosures in 2013, artificial inflation escaped the Southern Company's share price, causing the Class to suffer damages.

17. Defendants moved to dismiss the Complaint on July 27, 2017, raising various challenges under Federal Rule of Civil Procedure 9(a) and the PSLRA. ECF No. 37. Among other things, Defendants asserted that Plaintiffs' claims were time-barred by the two-year statute of limitations pursuant to the 28 U.S.C §1658(b) of the PSLRA. ECF No. 37-1 at 1-2. In addition, Defendants vehemently challenged whether the Complaint adequately alleged falsity and scienter. *Id.* at 2-4. Plaintiffs opposed Defendants' motion on September 11, 2017, asserting that their claims were timely and the Complaint adequately pled falsity and a strong inference of scienter. ECF No. 38 at 5-33. Defendants replied on October 11, 2017. ECF No. 39.

18. On December 12, 2017, the Defendants notified the Court that the SEC had informed Southern Company that it had concluded its investigation regarding the Kemper Plant and was not recommending an enforcement action. ECF No. 40 at 1. Plaintiffs responded to Defendants' notice on December 14, 2017, noting that the SEC's actions did not "exonerate[] defendants of wrongdoing nor" undermine Plaintiffs' scienter allegations. ECF No. 41 at 1. Defendants replied on December 20, 2017. ECF No. 42.

19. On March 29, 2018, the Court granted in part, and denied in part, Defendants' motion to dismiss. ECF No. 43. The Court found that Plaintiffs' claims were not barred by the statute of limitations. *Id.* at 10-14. Further, the Court found that while some of the alleged misstatements were accompanied by cautionary

language and were thus protected by the PSLRA "safe harbor" provision, twenty-six statements remained actionably false. *Id.* at 14-57. With regard to the §10(b) claims, the Court found that Plaintiffs adequately pled a strong inference of scienter as to Defendants Huggins, Day, and Anderson, but not as to Defendants Holland, Fanning, and Beattie. *Id.* at 60-69, 72-76, 79-85. Lastly, the Court denied in its entirety Defendants' motion to dismiss Plaintiffs' §20(a) claim. *Id.* at 85-86.

20. On April 4, 2018, Defendants filed a motion for clarification of the March 29, 2018 Order. ECF No. 45. Defendants asserted that Individual Defendants Holland, Fanning, and Beattie had been dismissed from the case entirely because the Court's motion to dismiss order found that Plaintiffs failed to adequately plead a strong inference of scienter as to these individuals on their §10(b) claim. *Id.* at 2. The following day, Plaintiffs responded asserting that because the Court denied the Defendants' motion to dismiss the §20(a) claim in its entirety, Individual Defendants Fanning, Beattie, and Holland remain defendants on the §20(a) claim. ECF No. 46. The Court agreed with Plaintiffs in its Order on April, 6, 2018. ECF No. 47 at 7.

21. On April 26, 2018, Defendants filed a motion for reconsideration, arguing that the Court's scienter analysis in its March 29, 2018 Order was inconsistent with Eleventh Circuit precedent. ECF No. 51 at 1-2. Shortly thereafter, on May 1, 2018, Defendants sought to stay the case and suspend all pretrial deadlines pending the Court's ruling on their motion for reconsideration. ECF No. 52. One

day later, the Court stayed the pretrial deadlines and discovery pending its ruling on Defendants' motion for reconsideration. ECF No. 53. On May 10, 2018, Plaintiffs opposed the reconsideration motion, arguing that the Court's painstaking scienter analysis was correct and consistent with Eleventh Circuit precedent. ECF No. 54 at 1-4. Defendants replied on May 23, 2018. ECF No. 56.

22. In addition, on May 23, 2018, Defendants filed a motion for certification and stay pending appeal pursuant to 28 U.S.C. §1292(b) and Federal Rule of Appellate Procedure 5(a)(3) to include a certification for interlocutory appeal to the United States Court of Appeals for the Eleventh Circuit. ECF No. 57. Defendants' motion for certification similarly concerned the adequacy of Plaintiffs' pleading of scienter under Eleventh Circuit precedent. *Id.* at 2. On June 6, 2018, Plaintiffs opposed Defendants' motion, asserting that it was a transparent delay tactic as the manufactured questions presented were not appropriate for interlocutory review. ECF No. 62 at 1-3.

23. Upon Defendants' request for oral argument on the motions (ECF No. 58), the Court held a nearly two-hour hearing on July 31, 2018, during which Plaintiffs vigorously defended the appropriateness of the March 29, 2018 Order and reiterated the myriad reasons why the Complaint adequately pleaded falsity and scienter. ECF No. 59 at 1; ECF No. 67.

24. Shortly thereafter, on August 10, 2018, the Court denied Defendants' motions, paving the way for the Litigation to proceed. ECF No. 68.

B. Defendants' Answer to the Complaint

25. Defendants answered the Complaint on August 24, 2018. ECF No. 69. Defendants' answer denied all of Plaintiffs' material allegations and raised 18 separate affirmative defenses. *Id.*

C. Plaintiffs Obtain Certification of the Class

26. Shortly after the Court denied Defendants' attacks on the March 29, 2018 Order, the Parties met-and-conferred in Atlanta, Georgia, regarding a pre-trial schedule, and subsequently filed a joint preliminary report and discovery plan on September 10, 2018. ECF No. 71. Because the Parties could not agree to a pre-trial schedule, the Parties submitted opposing schedules in their joint report. *Id.* at 5-11. That same day, the Parties also filed their respective initial disclosures with the Court. ECF Nos. 72-73. On September 13, 2018, the Court entered Plaintiffs' proposed scheduling order concerning fact discovery, class certification briefing, and expert discovery. ECF No. 74 at 2-3.

27. Consistent with the Scheduling Order, on September 24, 2018, Plaintiffs filed a motion for class certification, which requested that the Court certify the putative Class, appoint Roofers Local No. 149 and Monroe County as the class representatives, and appoint Robbins Geller as class counsel. ECF No. 77. Plaintiffs argued that the Action was appropriate for class action treatment and that all the

requirements of Federal Rule of Civil Procedure 23 were satisfied. *Id.* In support of their motion, Plaintiffs submitted an expert report from Professor Steven P. Feinstein, Ph.D., CFA. In his report, among other things, Professor Feinstein explained why all five of the *Cammer v. Bloom*, 711 F. Supp. 1264 (D.N.J. 1989) and all three of the *Krogman v. Sterritt*, 202 F.R.D. 467 (N.D. Tex. 2001) factors – factors that courts routinely consider in addressing class certification – were met; detailed the event study he undertook concerning Southern Company's stock price movement; and concluded that Southern Company common stock traded in an efficient market throughout the Class Period. ECF No. 77-2. Professor Feinstein also opined that damages pursuant to Plaintiffs' theory of the case could be proven on a class-wide basis.

28. Defendants deposed Professor Feinstein on December 5, 2018 in connection with his expert report submitted in support of Plaintiffs' class certification motion. ECF No. 106-3.

29. In addition, the Parties conducted other depositions in connection with Plaintiffs' motion for class certification. For instance, Lead Counsel prepared for and defended the Rule 30(b)(6) depositions of Monroe County (Michael Grodi) and Roofers Local No. 149 (Darris Garoufalis) on November 28, 2018 and December 19, 2018, respectively. Moreover, Lead Counsel participated in Defendants' deposition of the Plaintiffs' outside investment managers, Bahl & Gaynor and

Federated Investment Counseling, on December 17, 2018 and March 14, 2019, respectively.

30. On January 11, 2019, Defendants filed their opposition to Plaintiffs' motion for class certification, consisting of 492 pages of briefing and exhibits. ECF No. 106. Defendants argued that Plaintiffs had failed to provide sufficient evidence of market efficiency, and consequently, could not rely on the fraud-on-the market presumption of reliance under *Basic Inc. v. Levinson*, 485 U.S. 224 (1988). *Id.* at 8. Defendants also argued that the Class could not be certified because Defendants had successfully rebutted the fraud-on-the market presumption of reliance for all but one of the five corrective disclosures. *Id.* at 17-19. Lastly, Defendants asserted that Plaintiffs failed to proffer a damages model that accounted for their purported "materialization of the risk" theory of liability. *Id.* at 21-25. Defendants attached seven different exhibits to their opposition brief, one of which was the 75-page expert report of Paul A. Gompers, Ph.D. that purported to support their arguments and rebut Professor Feinstein's opening expert report. ECF No. 106-2.

31. On January 25, 2019, Defendants moved for leave to file a notice of supplemental authority. ECF No. 107. Defendants' motion asserted that the recent decision denying class certification in *Grae v. Corr. Corp. of Am.*, No. 3:16-cv-2267, 2019 WL 266674 (M.D. Tenn. Jan. 18, 2019), supported their arguments that Plaintiffs' class certification motion should be denied. *Id.* at 1-4. Plaintiffs

responded to Defendants' motion in their reply in support of class certification asserting that the *Grae* court reversed itself, granted the plaintiff's motion for reconsideration, and certified the class. ECF No. 113 at 7-8 n.7.

32. On February 4, 2019, relying heavily on the opinions of Professor Gompers, Defendants moved to exclude the expert opinions of Professor Feinstein under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and Federal Rule of Evidence 702. ECF No. 109. In their motion, Defendants argued that Professor Feinstein selected variables for his event study that rendered his event study unreliable. ECF No. 109-1 at 2. More specifically, Defendants asserted Professor Feinstein's use of two-day event windows violated the scientific method and was inconsistent with an efficient market. *Id.* at 1-4. They further asserted that his industry index selection was inconsistent with his prior practice and inferior to the industry index utilized by Professor Gompers. *Id.* On February 19, 2019, Plaintiffs opposed Defendants' motion to exclude the expert opinions of Professor Feinstein. ECF No. 110. Plaintiffs argued that Defendants' criticisms of Professor Feinstein were factually incorrect and based on a market efficiency standard that has been rejected by the Supreme Court. *Id.* at 1-3. Defendants replied on March 5, 2019. ECF No. 111.

33. Shortly thereafter, on March 15, 2019, Lead Counsel deposed Defendants' expert, Professor Gompers. Lead Counsel prepared extensively for the

deposition of Professor Gompers, dissecting his 75-page report, unpacking his analyses, scrutinizing his evidence and conclusions, and working closely with Professor Feinstein on the various matters covered in the two experts' opening reports.

34. Plaintiffs filed a reply in further support of their motion for class certification on March 29, 2019, which addressed and disputed each of Defendants' arguments against class certification. ECF No. 113. In support of their reply, Plaintiffs also submitted a rebuttal report from Professor Feinstein that refuted Professor Gompers' criticisms of his event study and responded to Professor Gompers' opinions on price impact. ECF No. 113-2.

35. That same day, Plaintiffs also filed a motion to exclude the expert opinions of Professor Gompers under *Daubert* and Federal Rule of Evidence 702. ECF No. 114. Specifically, Plaintiffs alleged that Professor Gompers' opinions concerning market efficiency and price impact were inconsistent with legal standards and based on a biased event study. *Id.* at 1-3. Further, Plaintiffs argued that Professor Gompers' damages opinion was inconsistent with legal standards and relied on a fundamental misunderstanding of Plaintiffs' theory of liability. *Id.* at 3-4. Defendants opposed the motion on April 15, 2019, asserting that Professor Gompers' opinions were founded on the scientific method and consistent with applicable legal authority. ECF No. 117. Defendants' response also included a 26-

page rebuttal declaration from Professor Gompers. ECF No. 117-2. Plaintiffs filed a reply brief 11 days later, which addressed and disputed each of Defendants' and Professor Gompers' arguments. ECF No. 118.

36. Thereafter, on May 21-22, 2019, the Court held a two-day evidentiary hearing on Plaintiffs' class certification motion and the Parties' respective *Daubert* motions. Lead Counsel prepared extensively for the evidentiary hearing, studying Defendants' multiple class certification briefings, dissecting Professor Gompers' multiple reports in this case, scrutinizing his event study and conclusions, and working closely with Professor Feinstein on the issues to be heard at the evidentiary hearing. At the conclusion of the hearing, the Court announced that it was "unlikely to grant either *[D]aubert* motion," and "direct[ed] [the] parties to each prepare substantive proposed [class certification] orders in their favor and remit to the Court." ECF No. 126 at 1. Plaintiffs and Defendants drafted and submitted proposed orders to the Court on June 17, 2019.

37. On June 12, 2019, the Court denied Defendants' motion to exclude the opinions of Professor Feinstein and Plaintiffs' motion to exclude the expert opinions of Professor Gompers, finding the "parties have met their burdens under *Daubert* as to their own experts [and] . . . that these matters are more properly handled with cross examination at trial." ECF No. 138 at 17.

38. On August 22, 2019, the Court granted Plaintiffs' motion for class certification, appointed Roofers Local No. 149 and Monroe County as class representatives, appointed Robbins Geller as class counsel, and certified the following Class:

> All persons who purchased or otherwise acquired The Southern Company common stock between April 25, 2012 and October 30, 2013, inclusive, and were damaged thereby. Excluded from the Class are Defendants, the officers and directors of Southern Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

ECF No. 151.

D. Defendants' Petition for Permission to Appeal the Class Certification Decision

39. On September 5, 2019, Defendants petitioned the Court of Appeals for the Eleventh Circuit for permission to appeal the Court's August 22, 2019 Order granting class certification, pursuant to Rule 23(f). *See Monroe Cty. Emples. Ret. Sys. v. S. Co.*, Petition for Permission to Appeal Class Certification Order Pursuant to Federal Rule of Civil Procedure 23(f), No. 19-90015 (11th Cir. Sept. 5, 2019). In their petition, Defendants argued that the district court ignored *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014), by refusing to consider Defendants' event study that purportedly proved a lack of price impact. *Id.* at 1-2. Further, Defendants argued that the Court failed to find that Plaintiffs' proffered damages model established that damages could be calculated on a class-wide basis, pursuant to *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013). *Id.* at 9.

40. On September 16, 2019, Plaintiffs responded to Defendants' petition, arguing that class certification was proper and that Defendants failed to satisfy the requirements for immediate interlocutory review pursuant to Fed. R. Civ. P. 23(f). *Monroe Cty. Emples. Ret. Sys. v. S. Co.*, Answer to Petition for Permission to Appeal Class Certification Order Pursuant to Federal Rule of Civil Procedure 23(f), No. 19-90015 (11th Cir. Sept. 16, 2019).

41. At the time that the Parties came to an agreement to settle this Action, Defendants' 23(f) petition was pending before the Eleventh Circuit. While Plaintiffs are confident that Defendants' petition would have been denied, there remained a possibility that the Court would grant the petition, which would have required additional briefing and possibly oral argument. Further, if the Eleventh Circuit granted the petition and entertained full merits briefing, it could have decertified the Class. And even if the Eleventh Circuit ultimately rejected Defendants' petition, Plaintiffs faced considerable risks, expenses, and delays in litigating this Action further. In light of these risks, the excellent Settlement is in the best interests of the Class.

E. Fact Discovery

42. As set forth herein, Plaintiffs were relentless in their discovery efforts throughout this Litigation. These efforts included requesting, negotiating for, obtaining, and reviewing millions of pages of documents; engaging in an exhaustive meet and confer process related to electronic discovery; engaging in a contentious

and lengthy meet-and-confer process regarding Defendants' privilege logs and privilege assertions over thousands of party and non-party documents; taking and defending three fact depositions and preparing to take 17 additional noticed fact depositions; and seeking discovery from 70 non-parties.

1. Requests for Documents

a. Document Requests Directed at Defendants

43. On August 22, 2018, the Parties engaged in an in-person meet-and confer in Atlanta, Georgia, and began negotiating the sources to be searched, relevant time period, custodians, and search terms.

44. Thereafter, on September 24, 2018, Plaintiffs served their First Set of Requests for Production of Documents on Defendants ("Plaintiffs' First RPDs"). Defendants served their Responses and Objections to Plaintiffs' First RPDs on October 29, 2018.

45. Subsequently, the Parties continued negotiating the relevant topics for discovery, sources to be searched, relevant time period, custodians, and search terms. For five months, the Parties conducted numerous meet-and-confers and exchanged counterproposals through detailed written correspondence and telephonic conferences. As will be discussed in more detail below, following a December 11, 2018 discovery hearing regarding the scope of discovery, Defendants began producing documents and corresponding privilege logs to Plaintiffs on a rolling basis.

46. The careful examination and analysis of the documents produced by Defendants required a massive undertaking by a large team of attorneys. For example, the attorneys organized and analyzed the documents, selected those that proved the Complaint's allegations or could be used in Defendants' defense, identified relevant witnesses and issues, and established procedures to identify additional documents and information that had not been produced. Lead Counsel then reviewed and analyzed the documents to determine what information the documents conveyed and how they were relevant to Plaintiffs' claims. Lead Counsel also applied that understanding to other documents that had been produced. Further, because the documents produced to Plaintiffs included complex, technical documents regarding Southern Company and Mississippi Power's construction and scheduling processes, Lead Counsel and its industry expert had to perform a painstaking review and specialized analysis of dense construction drawings, PowerPoint presentations, and Excel spreadsheets.

47. After Plaintiffs had received and assessed Defendants' production of documents in response to Plaintiffs' First RPDs, Plaintiffs made additional document requests to compel the production of further documentary evidence supporting their claims. For example, on July 1, 2020, Plaintiffs served their Second Set of Requests for the Production of Documents.

48. As a result of Plaintiffs' discovery efforts noted above, Defendants made 20 productions comprised of more than 147,399 documents, totaling 937,140 pages of documents.

b. Document Requests Directed at Plaintiffs

49. On September 24, 2018, Defendants served their First Set of Requests for Production of Documents on Plaintiffs. On October 29, 2018, Plaintiffs served their Responses and Objections to Defendants' First Set of Requests for Production of Documents. On October 1, 2018, Defendants served their Second Set of Requests for Production of Documents on Plaintiffs. Plaintiffs served their Responses and Objections to Defendants' Second Set of Requests for Production of Documents on November 5, 2018. In response to Defendants' discovery requests, Plaintiffs produced responsive, non-privileged documents on November 13, 2018, December 26, 2018, and January 4, 2019.

2. Interrogatories and Requests for Admissions

a. Interrogatories and Requests for Admissions Directed at Defendants

50. On July 1, 2020, Roofers Local No. 149 and Monroe County both served their First Sets of Interrogatories on Southern Company. In addition, on July 1, 2020, Plaintiffs served their First Set of Interrogatories on Defendant Day, First Set of Interrogatories on Defendant Anderson, First Set of Interrogatories on Defendant Beattie, First Set of Interrogatories on Defendant Huggins, First Set of Interrogatories on Defendant Holland, and First Set of Interrogatories on Defendant

Fanning. In addition, on July 1, 2020, Plaintiffs served their First Set of Requests for Admission on Defendants. Shortly thereafter, Defendants sought an extension to file their Responses and Objections to the interrogatories directed to the Individual Defenses, to which Plaintiffs consented. Rather than respond to the requests for admission and interrogatories directed at Southern Company, however, Defendants sought permission from the Court to file a motion for a protective order. *See* §II.E.3.c.

b. Interrogatories Directed at Plaintiffs

51. On September 24, 2018, Defendants served their First Set of Interrogatories on Plaintiffs. Plaintiffs, through Lead Counsel, served their Responses and Objections to Defendants' First Set of Interrogatories on October 29, 2018. Plaintiffs also produced Supplemental Responses and Objection to Defendants' First Set of Interrogatories on November 29, 2018.

3. Discovery Disputes with Defendants

52. The Parties litigated several complex discovery disputes during the Litigation. Prior to formally filing or responding to the discovery disputes, the details of which are outlined further below, Lead Counsel spent numerous hours refining their claims, analyzing the Defendants' document production, and scrutinizing Defendants' privilege logs in an effort to narrow the scope of the discovery disputes while still aggressively pursuing the discovery rights of the Class. Lead Counsel also spent many hours preparing for and participating in meet-and-

confer conferences with counsel for Defendants and relevant third parties, and preparing correspondence memorializing those negotiations.

a. Dispute Concerning the Scope of Discovery and Plaintiffs' First RPDs

53. Following extensive meet-and-confer efforts regarding Plaintiffs' First RPDs, the Parties remained at an impasse regarding the relevance of documents concerning Kemper Plant costs, Defendants' restatement of previous financial statements, and the relevant time period. In addition, the Parties could not agree as to the scope of Defendants' production in response to seven of Plaintiffs' RPDs. Pursuant to the Standing Order, the Parties notified the Court of the dispute, and on December 7, 2018, submitted their respective position statements to the Court.

54. On December 11, 2018, the Parties participated in a telephonic hearing, during which the Court heard arguments from the Parties. At the conclusion of the hearing, the Court made certain oral rulings, "directed Defendants to file a proposed order for review," and indicated that the "parties may stipulate a letter briefing schedule to resolve further issues if a compromise [could] not [be] reached." ECF No. 103. Rather than submit a proposed order, the Parties continued to meet-and-confer and reached an agreement on the scope of discovery and the seven RPDs without further Court assistance.

b. Disputes at the June 15, 2020 Hearing Following the Expiration of the Stay

55. Following the Parties' failed in-person mediation and the expiration of the stay on March 31, 2020, the Parties engaged in numerous meet-and-confers regarding a revised schedule and a protocol governing remote depositions in light of the ongoing COVID-19 pandemic. In addition, the Parties met-and-conferred regarding a number of other discovery matters, including, (1) Plaintiffs' objections to Defendants' redaction of documents produced by non-party Deloitte Touche Tohmatsu Limited ("Deloitte"); (2) Plaintiffs' objections to Defendants' clawback of numerous documents previously produced; and (3) Plaintiffs' request that Defendants produce a hit report concerning the custodial documents for Defendants Fanning, Holland, Beattie, and Day. Because the Parties could not come to an agreement with regard to the above issues, on June 11, 2020, the Parties simultaneously submitted their position statements, and accompanying exhibits, to the Court.

56. The Court held a two-hour telephonic hearing on June 15, 2020. With regard to the schedule dispute, the Court held that *Daubert* motions concerning loss causation and damages would be considered contemporaneously with any summary judgment motions. ECF No. 180 at 1-2. With regard to the remote deposition protocol, the Court held that "depositions should be done remotely unless everyone

consents to do them in-person," and that "[c]ounsel should be prepared to email a complete version of any document referenced during the deposition." *Id.* at 2-3.

57. Regarding Defendants' clawback request, the Court held that while Defendants could clawback one document, Plaintiffs could utilize the information within it to impeach a witness at deposition or trial. 6/15/20 Tr. at 18:13-19:10.

58. With regard to Defendants' redaction of Deloitte documents, the Court held that it would take the dispute under advisement and ordered the Parties to submit competing proposed orders. ECF No. 180 at 2. Shortly thereafter, the Parties submitted their competing proposed orders to the Court. At the time that the Parties agreed to settle the case, the Court had not yet entered an order regarding the Deloitte issue.

59. Lastly, with regard to Plaintiffs' request concerning custodial documents for certain custodians, the Court requested that the Parties continue to meet-and-confer and indicated that if the Parties could not come to an agreement on the issue it would send the withheld custodial documents to a special master for his or her review. 6/15/20 Tr. at 79:20-81:7. Thereafter, the Parties resolved this issue as Defendants agreed to re-review the custodial documents for certain custodians.

c. Disputes Regarding Plaintiffs' First Set of RFAs and Interrogatories to Defendants

60. On July 14, 2020, Defendants informed Plaintiffs that they objected to their RFAs and Interrogatories and intended to seek a protective order. On July 15,

2020, the Parties submitted position statements regarding Defendants' request for a protective order. Defendants argued that the RFAs were improper and inconsistent with the purpose of Federal Rule of Civil Procedure 36, and that Plaintiffs violated Federal Rule of Civil Procedure 33 by each serving a set of interrogatories on Southern Company. Plaintiffs argued, on the other hand, that Defendants should serve their objections to the discovery and then meet-and-confer with Plaintiffs regarding such objections prior to seeking judicial intervention.

61. On July 16, 2020, the Court held a teleconference regarding this issue, among others, and held that the Defendants could file a motion for a protective order if the Parties could not resolve their dispute within two weeks. ECF No. 196 at 2. The Parties were unable to resolve their disagreements regarding this written discovery. Therefore, on July 31, 2020, Defendants filed a motion for a protective order seeking relief from their obligation to respond to Plaintiffs' First Set of RFAs and Interrogatories on the grounds that they were inconsistent with Federal Rules of Civil Procedure 33 and 36. ECF No. 205 at 3.

62. At the time that the Parties were finalizing their agreement to settle this Litigation, Plaintiffs had already begun drafting their opposition to Defendants' motion for a protective order. On August 12, 2020, the Parties jointly filed a motion for a 7-day extension for Plaintiffs to file their opposition as their recent settlement discussions may obviate the need for Defendants' motion and any opposition thereto.

ECF No. 213 at 1. The following day the Court granted the Parties' joint request. ECF No. 214. Although Plaintiffs are confident that Defendants' motion for a protective order would have been denied, Plaintiffs would have incurred additional time and expenses in opposing the motion and re-drafting the extensive written discovery if ordered to do so by the Court.

d. Disputes Regarding Defendants' Privilege Logs and Work-Product and Privilege Assertions

63. On August 8, 2019, Defendants produced their second privilege log, which included more than 7,790 entries. Plaintiffs objected to several categories of withheld documents, including the nearly 1,000 documents related to internal investigations. Following several meet-and-confers, Defendants agreed to re-review the documents encompassed in each of the categories except for the internal investigation documents. Accordingly, the Parties notified the Court of their dispute with regard the internal investigation documents.

64. On August 26, 2019, the Parties submitted their respective position statements regarding the withheld internal investigation documents to the Court. In their statement, Plaintiffs argued that the internal investigation documents were not *per se* privileged and, in any event, any privilege was waived as Defendants refused to confirm that they would not rely on the investigation in their defense. Further, Plaintiffs argued that the internal investigation was not protected by the work-product doctrine because the investigation was not conducted in anticipation of

litigation, but rather to comply with Southern Company's Ethics & Compliance Corporate Framework. Lastly, Plaintiffs noted that a sample of inadvertently produced documents revealed that Defendants were in fact withholding documents that did not reveal legal advice or attorneys' mental impressions. Defendants, on the other hand, argued that the documents were privileged, irrelevant to the Parties' claims and defenses, and protected by the work-product doctrine because the investigation was conducted at the direction of the Company's general counsel in anticipation of litigation.

65. On September 19, 2019, the Court held an in-person hearing, during which it stated that it was inclined to send the internal investigation documents to a special master. ECF No. 156 at 1-2. Plaintiffs were agreeable to the proposal, but Defendants offered to re-review the internal investigation documents in addition to the other categories of documents they previously agreed to re-review. ECF No. 157 at 46-47. Thereafter, Defendants produced thousands of previously withheld documents and produced multiple revised logs. Following each production of a revised log and previously withheld documents, the Parties continued their meet-and-confers and negotiations regarding their remaining disputes.

66. Following the expiration of the stay on March 31, 2020, the Parties resumed their meet-and-confers regarding their outstanding privilege and work-

product disputes concerning Defendants' revised privilege log. On June 13, 2020, Defendants produced their "final" revised privilege log.

67. After nearly a year of re-review, multiple revised privilege logs, and countless meet-and-confers, Plaintiffs continued to challenge 636 of the nearly 8,000 documents originally withheld. Accordingly, the Parties notified the Court of the dispute and requested a discovery hearing on the matter. On July 15, 2020, the Parties submitted their respective position statements on the 636 documents in anticipation of the hearing.

68. On July 16, 2020, the Court held a telephonic hearing during which Plaintiffs asserted that the small set of challenged documents were ripe for review by a neutral Special Master. ECF No. 197 at 6. Defendants, on the other hand, argued that the Parties should continue to meet-and-confer further regarding the documents. *Id.* at 7-8. The Court agreed with Plaintiffs and ordered the Parties to submit proposed special master candidates to the Court. ECF No. 196 at 2.

69. Following the July 16, 2020 Conference, the Parties could not agree upon a proposed special master. Accordingly, on July 23, 2020, the Parties submitted letters to the Court concerning their proposed special masters. On August 4, 2020, the Court appointed Mr. John P. Jett of Kilpatrick Townsend as Special Master to "to review certain [withheld] records" and "to advise the Court, after his in camera inspection, as to whether some or all of the documents" are properly

withheld or "should be produced to Plaintiffs over the Defendants' objections." ECF No. 208 at 1-2.

70. When the Parties agreed to settle this Litigation, Mr. Jett had not yet begun his in camera inspection of the disputed documents. And, while Plaintiffs are confident that Mr. Jett would have advised the Court that many, if not all, of the disputed documents should be produced, Plaintiffs risked receiving none of the challenged documents and having to pay all of the costs of the Special Master if he did not rule in Plaintiffs' favor.

4. Fact Depositions

71. In preparation for summary judgment and trial, Lead Counsel took the depositions of three Southern Company current and former employees. Lead Counsel expended significant time and effort in preparation for these depositions by conferring with its consultants, locating exhibits for these depositions among the millions of pages of documents produced in discovery, and preparing outlines.

72. The three depositions that Lead Counsel took in connection with fact discovery are set forth below:

Deponent	Date	Location	Relationship
David Empfield	August 7, 2020	Remote	Kemper Plant Construction Manager during the Class Period (former Southern Company employee)
Landon Lunsford	July 23, 2020	Remote	Kemper Plant Process Engineering Manager for Gasification Technology

			during the Class Period (current Southern Company employee)
Brett Wingard	July 31, 2020	Remote	Kemper Plant Engineering and Procurement Manager during the Class Period (current Southern Company Services employee)

73. The depositions identified above were essential to establishing evidence concerning the complex issues Southern Company faced in timely constructing the Kemper Plant, as well as Defendants' knowledge of material, undisclosed facts. In addition, these depositions were critical in providing the foundational admissibility of documentary evidence. Further, at the time that the Parties agreed to settle the Action, 17 remote depositions had been noticed and Lead Counsel had already begun preparing for many of them.

74. In total, Plaintiffs, through Lead Counsel, marked 88 exhibits in connection with their development of the facts supporting the allegations in the Complaint.

5. Discovery Directed at Non-Parties

75. Commencing on September 28, 2018, Plaintiffs began issuing subpoenas for documents to numerous relevant non-parties, including Southern Company's former employees, manufacturers, suppliers, fabricators, consultants, monitors, industry analysts, and securities analysts.

76. Set forth below is a list of the 70 non-parties that Plaintiffs subpoenaed in this Action:

Person/Entity	Subpoena Date	Relationship
Aaron Abramovitz	November 21, 2019	Kemper Project Manager during the Class Period
AECOM (formerly URS)	July 26, 2019	Independent Monitor for the Mississippi Public Service Commission
Amec Foster Wheeler Kamtech, Inc.	June 29, 2020	Engineer
B. Riley, Inc. (formerly Caris & Company)	October 15, 2018	Analyst
Barclays Capital, Inc.	October 15, 2018	Analyst
BMO Capital Markets	October 15, 2018	Analyst
Brad Delcambre	July 9, 2020	Kemper Plant Project Controls Manager during the Class Period
Brett Wingard	November 21, 2019	Kemper Plant Engineering and Procurement Project Manager during the Class Period
Brett Wingo	October 15, 2018	Kemper Gasifier Island Project Manager during the Class Period
CB&A Project Management	October 15, 2018	Contractor
Charles A. Powell	July 9, 2020	Kemper Plant Startup Site Gasifier Manager during the Class Period
Cindy Shaw	July 9, 2020	Mississippi Power Comptroller during the Class Period
Citigroup Global Markets, Inc.	July 26, 2019	Analyst
Contract Fabricators Inc.	July 26, 2019	Gasifier fabricator
Credit Suisse (USA), LLC	July 26, 2019	Analyst

Person/Entity	Subpoena Date	Relationship
Credit Suisse Group AG	October 15, 2018	Analyst
Curtis A. Baker	July 9, 2020	Southern Company Vice President of Environmental Project & Construction during the Class Period
David Empfield	June 23, 2020	Kemper Plant Construction Manager during the Class Period
Deloitte & Touche.	September 28, 2018	Auditor
Deutsche Bank Securities Inc.	October 25, 2018	Analyst
Doyle LLP	October 15, 2018	Attorney of whistleblower, Brett Wingo
George Boyer	July 26, 2019	Kemper Plant Chief Pipeline Inspector during the Class Period
Gleeds USA, Inc.	June 23, 2020	Kemper Plant Schedule Consultant
Globaldata, Plc	October 14, 2018	Analyst
Gregory Zoll	July 9, 2020	Employee of Kemper Plant Independent Monitor, Burns & Roe Enterprises, Inc.
J.J.B. Hilliard, W.L. Lyons Inc.	October 15, 2018	Analyst
J.P. Morgan Chase & Co.	October 15, 2018	Analyst
J.T. Thorpe & Son, Inc.	July 29, 2019	Fabricator
James B. Porter, Jr.	July 26, 2019	Consultant
Jefferies LLC	October 15, 2018	Analyst
Joe Miller	November 21, 2019	Kemper Plant Startup Manager during the Class Period
KBR, Inc.	October 15, 2018	Contractor

Person/Entity	Subpoena Date	Relationship
Kelli Williams	October 15, 2018	Kemper Plant Construction Manager during the Class Period
Kellogg, Brown & Root LLC	July 19, 2019	Contractor
Keybac Capital Markets	October 15, 2018	Analyst
Kimberly Flowers	July 9, 2020	Mississippi Power Company, Vice President and Senior Production Officer during the Class Period
Landon Lunsford	June 23, 2020	Kemper Plant Process Engineering Manager of Gasification Technology during the Class Period
Lightfoot, Franklin & White, LLC	October 15, 2018	External Counsel for Southern Company
M.G. Dyess, Inc.	June 29, 2020	Contractor
Macquarie Capital (USA) LLC	July 26, 2019	Analyst
Macquarie Research	October 15, 2018	Analyst
McAbee Construction, Inc.	July 26, 2019	Pipe fabricator
Mississippi Public Service Commission	October 15, 2018	Government entity responsible for approving the Kemper Plant and its associated costs on ratepayers
Mississippi Public Utilities Staff	October 15, 2018	Government entity assisting the Mississippi Public Service Commission
Morgan Stanley & Co. LLC	January 16, 2017	Analyst
Morningstar Thematic Research	October 15, 2018	Analyst
Pegasus Global Holdings, Inc.	October 15, 2018	Consultant

Person/Entity	Subpoena Date	Relationship
Penny Manuel	October 15, 2018	Southern Company Executive Vice President of Engineering and Construction Services during the Class Period
Performance Contactors Inc.	July 26, 2019	Pipe fabricator
Phillip Zicarelli	July 26, 2019	Employee of KBR, Inc.
PMAlliance Inc.	July 26, 2019	Consultant
Power Engineers Inc. (formerly Burns and Roe Enterprises, Inc.)	October 15, 2018	Independent Monitor for the Mississippi Public Utilities Staff
PriceWaterhouseCoopers, LLP	September 28, 2018	Consultant
Progressive Pipeline Construction, LLC	June 29, 2020	Contractor
RBC Capital Markets	October 15, 2018	Analyst
Richard S. Troell	July 26, 2019	Consultant
Robins & Morton	October 15, 2018	Contractor
S&P Global Inc. (formerly S&P Capital IQ)	October 15, 2018	Analyst
Securities and Exchange Commission	December 3, 2018	Government entity that conducted an investigation of the Kemper Plant
Sharon Kelly	October 15, 2018	Reporter on Kemper Plant
Siemens Corporation	July 26, 2019	Contractor/Supplier
Sierra Club	October 15, 2018	Objector to the Kemper Plant before the Mississippi Public Service Commission
Steve Owen	November 21, 2019	Kemper Plant Project Director during the Class Period

Person/Entity	Subpoena Date	Relationship
Teresa Magnus	July 9, 2020	Southern Company Manager of Construction Services during the Class Period
The Williams Capital Group.	October 15, 2018	Analyst
Treetop Midstream Services LLC	October 15, 2018	Contracted purchaser of the Kemper Plant's Carbon Dioxide
UBS Americas, Inc.	October 15, 2018	Analyst
Wells Fargo Securities LLC	October 15, 2018	Analyst
William R. Boyd	June 23, 2020	Kemper Plant General Manager Project Planning and Support Services
Yates Construction	October 15, 2018	Contractor

77. Lead Counsel engaged in numerous meet-and-confers with most of the subpoenaed parties to discuss their objections to the subpoenas, negotiate the scope of the document requests, and arrange for the production of responsive documents. In total, Plaintiffs' third-party document subpoenas and subsequent negotiations resulted in the production of over 95,600 pages of documents. Lead Counsel expended significant resources obtaining, reviewing, and analyzing these documents.

F. Expert Witnesses and Consultants

78. As set forth below, to assist Lead Counsel in investigating and proving Plaintiffs' claims, as well as navigating the complex issues involved in this matter, the services of certain experts were required.

1. Plaintiffs' Expert Witnesses

a. Steven P. Feinstein, Ph.D., CFA

79. A critical element of Plaintiffs' claims involves establishing market efficiency and rebutting Defendants' claims that the alleged false statements had no impact on the price of Southern Company common stock. To establish market efficiency, provide evidence on class-wide damages, and rebut Defendants' price impact arguments at class certification, Plaintiffs retained and designated Professor Feinstein. Professor Feinstein is the founder and president of Crowninshield Financial Research, Inc. and an Associate Professor of Finance at Babson College. Professor Feinstein has had academic research published in peer-reviewed journals and presented research at professional and academic conferences. In addition, he has provided numerous expert reports and testimony in class action securities litigations, such as this one, as well as in litigation concerning business solvency and valuation.

80. In order to address the issues of market efficiency, price impact and damages at class certification, Professor Feinstein expended a significant amount of time reviewing the record, all publicly-available information concerning Southern Company, and certain documents produced by Defendants and non-parties. Professor Feinstein then conducted an economic analysis to show that each of the relevant factors supported a finding that Southern Company's common stock traded in an efficient market. In addition, he conducted an additional economic analysis,

which included an event study, that demonstrated that Defendants had not proven the absence of price impact. Finally, Professor Feinstein brought to bear his extensive financial expertise to opine on the ability to calculate class-wide damages consistent with and pursuant to Plaintiffs' allegations.

81. As mentioned previously, Defendants unsuccessfully sought to exclude Professor Feinstein's opinions in connections with class certification. ECF No. 138. Further, Professor Feinstein was deposed on December 5, 2018, and cross-examined at the May 21, 2019 evidentiary hearing in connection with class certification. Professor Feinstein's extensive participation in this Action was essential to achieving the certification of the Class and the excellent Settlement.

b. Frank C. Owen

82. An essential element of Plaintiffs' claims involves establishing falsity and scienter, and rebutting Defendants' position that they had a reasonable belief during the Class Period that the Kemper Plant was "on track" and "more than 70 percent" complete. To assist Plaintiffs in understanding the highly technical engineering processes involved in constructing the Kemper Plant, Lead Counsel retained Frank C. Owen, Ph.D., as an expert in the field of mechanical engineering. Dr. Owen received his Ph.D. in mechanical engineering from the University of Texas at Austin, and has been a professor of Mechanical Engineering at California Polytechnic State University for over twenty years.

83. Dr. Owen and staff under his supervision spent hundreds of hours reviewing testimony, reports, and other documents filed by the Independent Monitors and Mississippi Power regarding the construction of the Kemper Plant. In addition, Dr. Owen spent numerous hours scrutinizing Defendants' internal documents to perform analyses on the Company's conclusions regarding the Kemper Plant's equipment and schedule needs prior to and throughout the Class Period, as well as the actual status of construction throughout the Class Period. Lastly, Dr. Owen worked side-by-side with Lead Counsel throughout discovery by assisting with document discovery, review, and depositions.

84. In sum, absent these experts' advice, reports, and critical deposition testimony, Plaintiffs would have lacked substantial evidence regarding key, hotly-disputed factual elements of their case, and would not have been able to adequately address Defendants' opposition to Plaintiffs' class certification motion.

2. Defendants' Expert Witness

85. As discussed above, given the highly technical nature of securities litigation, Defendants retained Professor Gompers to support their arguments at the class certification stage. Lead Counsel spent substantial time preparing for and taking the deposition of Professor Gompers, as well as cross-examining Professor Gompers during the class certification evidentiary hearing.

86. Lead Counsel's preparation included an extensive review of documents produced in discovery, an analysis of the Parties' respective positions on issues that

were the subject of expert testimony, consultation with Professor Feinstein on appropriate topics to raise with Professor Gompers, and the creation of examination and cross-examination outlines.

87. If the Parties did not settle, Lead Counsel would likely have to depose and/or cross examine Professor Gompers – or another expert – on the issues of loss causation and damages at summary judgment and trial. Further, it is highly likely that Defendants would have hired additional experts that Plaintiffs would have to spend countless hours and potentially millions of dollars challenging. As the Settlement avoided these real and impending risks, Lead Counsel believes the Settlement is in the best interests of the Class.

III. MEDIATION AND SETTLEMENT EFFORTS

88. The Settlement Agreement is the product of hard-fought, arm's-length negotiations. Lead Counsel participated in an in-person mediation session before David M. Murphy, Esq. of Phillips ADR on February 20, 2020. In addition, the Parties participated in multiple separate teleconferences with Mr. Murphy following the in-person session. Lead Counsel believes that its continued and diligent work following the mediation strengthened Plaintiffs' negotiating position and eventually led to the settlement of the Action.

89. In December 2019, the Parties requested that the Court stay the case through March 2020 to permit mediation efforts. On December 19, 2019, mere days before fact depositions were set to begin, the Court granted the Parties' requests and

stayed all deadlines. ECF No. 164. On January 30, 2020, the Parties submitted to Mr. Murphy and exchanged mediation statements with detailed descriptions of the evidence and law supporting their claims and defenses. Plaintiffs' opening mediation statement included 44 exhibits totaling 728 pages. Defendants' mediation statement included 1,336 pages of exhibits. On February 13, 2020, the Parties provided Mr. Murphy and exchanged reply mediation statements in support of their respective positions. Plaintiffs' reply identified the substantial evidence and law contradicting each one of Defendants' arguments in their opening statement.

90. On February 20, 2020, the Parties participated in a full-day in-person mediation session with Mr. Murphy in New York, New York. The case, however, did not settle at the mediation. Accordingly, Lead Counsel continued to vigorously prosecute the Action. In fact, over the next six months, Plaintiffs took three fact depositions, served additional written discovery, raised and briefed multiple discovery disputes, including the Parties' extensive privilege issues, with the Defendants and the Court, and challenged Defendants' arguments regarding written discovery before the Court. *See supra* §§II.E.3.b-d, II.E.4.

91. The Parties continued post-mediation negotiations through Mr. Murphy while the litigation was ongoing. In addition, immediately before depositions began Mr. Murphy provided a mediator's proposal to the Parties, but it was not accepted. Nevertheless, the Parties continued their post-mediation negotiations, and on August

15, 2020, the Parties reached an agreement-in-principle to resolve the Litigation for a cash payment of $87,500,000, subject to Court approval. On August 17, 2020, the Parties jointly filed a motion to stay all deadlines pending finalization of the Settlement, which the Court granted. ECF Nos. 215-216. Thereafter, Lead Counsel worked diligently to negotiate the terms of the Settlement Agreement with Defendants' counsel and prepare preliminary approval papers.

92. On September 8, 2020, Plaintiffs filed an unopposed motion seeking preliminary approval of the proposed Settlement. ECF No. 219. The Court granted Plaintiffs' motion for preliminary approval on October 1, 2020 and set the final settlement hearing for January 14, 2021, at 9:30 a.m. ECF No. 223.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

93. The Settlement of $87,500,000 was the result of extensive, arm's-length negotiations among the Parties that reflects the strengths and weaknesses of the case, and would not have been achieved without Lead Counsel's extensive efforts described herein.

94. We further believe that Lead Counsel's reputation as attorneys who will zealously prosecute a case through the trial and appellate levels, as well as our aggressive litigation of this Action, put the Class in a strong position with the Defendants and Defendants' insurance carriers and led to the superior result achieved here.

95. As set forth below and in the Motion for Final Approval, the Settlement is a favorable result for the Class when evaluated in light of the risks of continued litigation and all of the other circumstances that courts consider when determining whether to grant final approval of a proposed class action settlement under Rule 23(e) of the Federal Rules of Civil Procedure.

96. At the time the Settlement was reached, Lead Counsel had a comprehensive understanding of the strengths and weakness of Plaintiffs' claims as well as the risks of further litigation. While Plaintiffs and Lead Counsel believe that the claims asserted against Defendants are meritorious, they also recognize that there were considerable challenges to continuing to pursue the Action against Defendants, including, but not limited to, proving that Defendants made allegedly false statements and omissions, that these alleged misrepresentations were made with scienter, and that when the truth was revealed, the Class suffered compensable damages. Thus, the Settlement results from a realistic assessment by both sides of the strengths and weaknesses of their respective claims and defenses as well as the risks of further litigation, and is a fair, reasonable, and adequate resolution of the Action for the Class.

97. Courts within the Eleventh Circuit generally apply the following criteria when evaluating the fairness of a proposed class action settlement: (i) the plaintiffs' likelihood of success at trial; (ii) the range of possible recovery; (iii) the

point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; (iv) the complexity, expense, and duration of litigation; (v) the substance and amount of opposition to the settlement; and (vi) the stage of proceedings at which the settlement was achieved. *See Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). Under the foregoing factors, the Settlement is fair, reasonable, and adequate and warrants the Court's final approval.

A. The Strengths and Weaknesses of The Case Favor Settlement

98. As noted above, the Settlement was the product of contentious negotiations between the Parties that reflects the strengths and weaknesses of the case. The extraordinary Settlement would not have been achieved absent Lead Counsel's tireless efforts described above to plead and obtain the evidence necessary to prove Plaintiffs' claims of securities fraud. Nor would the Settlement have been achieved without the substantial participation and assistance of Mr. Murphy, a neutral mediator with experience in negotiating resolution of complex actions of this type.

99. There is no doubt that Plaintiffs and Lead Counsel had sufficient knowledge and information to evaluate the strengths and weaknesses of their claims and the propriety of Settlement. While Plaintiffs and Lead Counsel believe their case against Defendants had merit and were prepared to proceed to summary judgment and trial, they also realize that they faced considerable challenges and

defenses on every element of their claims. As discussed below, there were a number of factors that made the outcome of continued litigation, and ultimately a trial in the Action (and the inevitable appeals that would follow), uncertain. In addition, at the time of the Settlement, the Parties were awaiting a ruling from the Eleventh Circuit on Defendants' 23(f) petition – the outcome of which could have resulted in significant additional briefing regarding class certification and/or decertification of the Class.

100. Some of the risks Plaintiffs faced are discussed in the following paragraphs. Plaintiffs and Lead Counsel carefully considered each of these risks. Given these risks, which were thoroughly vetted during the Parties' settlement discussions, Plaintiffs and Lead Counsel believe the Settlement is in the best interests of the Class, as well as fair, reasonable and adequate.

1. Risks to Establishing Liability for the Alleged False Statements

101. Plaintiffs faced significant risks in proving that Defendants' alleged statements and omissions were materially false and misleading. For example, Plaintiffs faced risks in proving that Defendants omitted material information with regard to their statements concerning the progress of construction at the Kemper Plant. Defendants have argued that before and during the Class Period, Defendants warned investors of potential delays that could impact their ability to maintain the

schedule and achieve the May 2014 COD, and thus, their statements were not misleading.

102. Plaintiffs also faced risks in establishing that Defendants did not have a reasonable basis for their statements when made. For example, Defendants have argued that at the time that the alleged misstatements were made, proposed workarounds confirmed that schedule delays could be addressed, and thus, the May 2014 COD was still achievable. Further, Defendants argued that a majority of the alleged misstatements are opinions, protected from liability under the securities laws.

103. While Plaintiffs are confident that the documentary evidence and testimony would readily contradict Defendants' claims, there was a real risk that the Court at summary judgment or a jury at trial could find otherwise for some or all of the alleged misstatements and omissions.

2. Risks to Proving Scienter

104. In addition to the risks that Plaintiffs faced in establishing that Defendants' statements were materially false and misleading, Plaintiffs faced considerable challenges in demonstrating Defendants' scienter with respect to each statement.

105. As demonstrated in their motion to dismiss, Defendants have argued, and would continue to argue, that Defendants had no motive to lie to their investors about the achievability of the May 2014 COD as they gained nothing by making

such a misrepresentation. In fact, Defendants asserted that Plaintiffs' alleged motives were actually incentives for management to do everything possible to achieve the May 2014 COD.

106. As discussed above, Defendants also argued that scienter could not be established because they had a reasonable basis for believing that the May 2014 COD was achievable based on workarounds designed to offset any schedule delays. In addition, Defendants argued they had a reasonable basis to believe the May 2014 COD was achievable based on feedback from their "independent" monitors and consultants, such as Pegasus Global Holdings, Inc. and PricewaterhouseCoopers.

107. While Plaintiffs are confident that they would have been able to support their claims regarding scienter with persuasive evidence and expert testimony, it is impossible to predict the Court's or jury's reactions, interpretations, and inferences gleaned from the evidence and testimony concerning the Defendants' state of mind. This was a significant risk as a finding for Defendants on scienter would eliminate any liability on Plaintiffs' §§10(b) and 20(a) claims.

3. Defendants' Challenges to Loss Causation and Damages

108. Plaintiffs also faced significant barriers to establishing loss causation and damages. On these issues, Plaintiffs would ultimately have to prove through expert testimony that the revelation of the alleged fraud in a series of corrective disclosures made on April 24, 2013, July 1, 2013, July 31, 2013, October 2, 2013,

October 29, 2013, and October 30, 2013 proximately caused the substantial decline in the price of Southern Company common stock on April 24, 2013, July 2, 2013, July 31, 2013, August 1, 2013, October 3, 2013, October 30, 2013, and October 31, 2013.

109. Defendants repeatedly argued that any losses suffered by Class Members on their Southern Company investments were not attributable to the alleged corrective disclosures because the disclosures were not corrective of any prior alleged misstatement. Defendants also claimed that Southern Company's alleged disclosures contained information unrelated to the alleged fraud that would have to be "disaggregated" from the impact of the information at issue, which Defendants and their expert claimed would significantly reduce or entirely eliminate any damages. Lastly, Defendants asserted that there were no statistically significant price drops in response to nearly all of the corrective disclosures, which would have significantly reduced Plaintiffs' damages.

110. At the time the Settlement was reached, Defendants had already moved to exclude Plaintiffs' market efficiency and damages expert at the class certification stage. Although the motion was denied, at the summary judgment stage Defendants would have likely filed an additional *Daubert* motion with respect to Plaintiffs' experts' opinions on loss causation and damages. While Plaintiffs believe that any such motion would be without basis, there is a risk that the Court would grant (in

whole or in part) Defendants' motion. Even assuming a ruling in Plaintiffs' favor, the damages assessments of the Parties' respective experts at trial would vary substantially, reducing this element of Plaintiffs' claims to a "battle of the experts," the outcome of which is inherently unpredictable.

111. Given the challenges of continuing to pursue the claims against Defendants and the guaranteed recovery the Settlement provides for the Class now, Lead Counsel respectfully submits that the Settlement is fair, reasonable, and adequate and should be approved.

B. Considering the Range of Possible Recovery, the Settlement Is Within the Range of Reasonableness

112. The Settlement provides for an all cash payment of $87,500,000. This Settlement Amount represents between 16% and 28% of the estimated recoverable damages, as calculated by Plaintiffs' damages expert, assuming that Plaintiffs prevailed on all issues at summary judgment and trial. Given that the median ratio of settlement amount to investor losses in securities litigation was 2.1% in NERA Economic Consulting's most recent study, the Settlement Amount represents an outstanding recovery. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at 20, Fig. 13, available at: https://www.nera.com/content/dam/nera/publications/2020/PUB_Year_End_Trends_012120_Final.pdf. This is particularly true here, where Defendants put forth

arguments that Plaintiffs would not be able to collect any damages. Indeed, based on its research, Lead Counsel believes that the Settlement is the third largest federal securities class action settlement ever achieved in this District and the seventh largest federal securities class action settlement ever achieved in the Eleventh Circuit.

113. Given this range of possible recovery, including the possibility that the class certification order could have been reversed or that Defendants could have succeeded at summary judgment or trial resulting in no recovery whatsoever, the $87,500,000 Settlement is an excellent result. Accordingly, this factor highlights that the Settlement is fair, reasonable, and adequate and should be approved.

G. The Complexity, Expense, and Likely Duration of Continued Litigation Support Approving the Settlement

114. The continuation of this Action would be long, complex, and costly to all Parties involved. Were the litigation to proceed, the further merits discovery, expert discovery, summary judgment motions, trial, and possible appeals would be lengthy and would entail significant additional costs. Indeed, the case schedule contemplated that summary judgment would not be fully briefed until August 2021, followed by lengthy motions *in limine* and a pretrial conference. Realistically, this case would not be tried until late 2021 or sometime in 2022, with inevitable appeals thereafter.

115. In contrast, the proposed Settlement at this juncture will result in a present and certain recovery for the Class. As such, this factor supports final approval of the Settlement.

H. The Stage of Proceedings at Which the Settlement Was Reached Supports Approving the Settlement

116. As detailed above, the Parties have been actively litigating this case since 2017. During the course of the Action, Lead Counsel has engaged in extensive investigation, research, and analysis of the Class's claims, including a review of the Company's SEC filings, analyst reports, news media, conference calls, and investigative interviews of former employees.

117. In addition to the foregoing, Lead Counsel, among other things: (i) drafted and filed the Complaint; (ii) defeated Defendants' motion to dismiss, which required extensive legal research and additional factual research; (iii) defeated Defendants' motion for reconsideration and motion for §1292(b) certification; (iv) conducted significant discovery, including reviewing and analyzing more than two million pages of documents produced by Defendants and non-parties that Lead Counsel only obtained after conducting countless contentious meet-and-confer discussions; (v) filed extensive class certification briefing; (vi) prepared extensively for and participated in a two-day evidentiary hearing concerning class certification; (vii) successfully opposed Defendants' related *Daubert* motion in connection with class certification; (viii) achieved certification of the Class; and (ix) conducted,

defended, and attended nine depositions. Further, the Parties participated in an extensive and contentious mediation process.

118. The knowledge and insight gained during the years of investigating, developing, and refining their claims through various stages of litigation provided Plaintiffs and Lead Counsel with sufficient information to make an informed assessment of the strengths and weaknesses of the case. Based upon these efforts, we respectfully submit that this factor weighs in favor of finding the Settlement is fair, reasonable, and adequate.

I. The Reaction of the Class to the Proposed Settlement to Date Warrants Approval of the Settlement

119. As of December 8, 2020, a total of 650,961 copies of the Notice and Proof of Claim (together, the "Notice Packet") have been mailed to potential Class Members and nominees. *See* Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ¶11, attached as Exhibit 3 hereto. Pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 223) and as set forth in the Notice, the deadline for Class Members to object to any aspect of the Settlement, including the Plan of Allocation and request for fees, costs, and expenses, or to request exclusion from the Class, is December 24, 2020. ECF No. 223, ¶¶11, 13. To date,

there has only been one[5] objection to the Settlement and 56 requests for exclusion from the Class. ECF No. 224.

V. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

120. The Plan of Allocation is set forth in the Notice of Pendency and Proposed Settlement of Class Action (ECF No. 219-2) ("Notice"), and provides that the Net Settlement Fund will be distributed to Class Members who submit timely, valid Proofs of Claim and whose claims for recovery have been permitted under the terms of the Settlement Agreement, including the Plan of Allocation ("Authorized Claimants"). The Plan of Allocation provides that Class Members will only be eligible to participate in the distribution of the Net Settlement Fund if they purchased or otherwise acquired Southern Company common stock during the Class Period and were damaged thereby.

121. The Plan of Allocation reflects the estimated amount of alleged artificial inflation in the per share price of Southern Company publicly traded common stock that was allegedly proximately caused by Defendants' alleged scheme and fraudulent course of conduct and material omissions.

[5] The objector, Emery Lapinski, failed to either state or establish that he is a Class Member. Thus, it is not clear that Mr. Lapinski has standing to object to the Settlement. In any event, the objection makes no substantive argument regarding the fairness or adequacy of the Settlement.

122. Lead Counsel conferred with Plaintiffs' damages expert Professor Feinstein to determine the amount an Authorized Claimant may recover under the Plan of Allocation.

123. In calculating the estimated artificial inflation allegedly caused by Defendants' alleged misrepresentations and omissions, Plaintiffs' damages expert considered price changes in Southern Company common stock in reaction to public disclosures that allegedly corrected the respective alleged misrepresentations and omissions, adjusting the price changes for factors that were attributable to market or industry forces, and for non-fraud related Company-specific information.

124. Under the Plan of Allocation, for each Class Period purchase of Southern Company common stock that is properly documented, a "Recognized Loss" will be calculated according to the formulas described in the Notice (ECF No. 219-2 at 21-25).[6] As set forth in greater detail in the Notice, the calculation of a Claimant's Recognized Loss is based upon a formula that takes into account such information as: (a) when a Claimant's share was purchased and whether they sold their stock, or retained their stock beyond the end of the Class Period; (b) the amount of the alleged artificial inflation per share; (c) the purchase price of the share; and

[6] If, however, as expected, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each claimant, then each claimant shall be paid the percentage of the Net Settlement Fund that each claimant's Recognized Loss bears to the total of the Recognized Loss of all claimants – *i.e.*, the claimant's *pro rata* share of the Net Settlement Fund.

(d) the purchase price minus the average closing price for Southern Company common stock during the 90-day look-back period described in Section 21(D)(e)(1) of the Exchange Act.

125. In sum, the Plan of Allocation, which is similar to hundreds of plans approved by courts over decades, represents a reliable method by which to weigh, in a fair and equitable manner, the claims of Authorized Claimants. To date, not a single Class Member has objected to the proposed Plan of Allocation.

VI. LEAD COUNSEL'S APPLICATION FOR ATTORNEYS' FEES AND EXPENSES IS REASONABLE

126. Lead Counsel has zealously and diligently litigated this Action on behalf of the Class for more than three years. Lead Counsel undertook this effort on a contingency basis, and expended 18,966.45 hours of professional and paraprofessional time litigating this Action. In addition, Lead Counsel incurred $853,866.45 in litigation expenses, costs, and charges. Accordingly, Lead Counsel respectfully requests an award of thirty percent of the Settlement Amount and $853,866.45 in expenses. Lead Counsel has submitted a declaration that provides additional support for the requested fees and expenses. *See* Declaration of Darryl J. Alvarado Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("RGRD Decl."), attached as Exhibit 4 hereto.

127. In the Eleventh Circuit, attorneys' fees are calculated as a reasonable percentage of the recovery received by the class. *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 773 (11th Cir. 1991). The Eleventh Circuit further held that district courts should begin with a 20-30% benchmark, and adjust the percentage up or down based on "the individual circumstances of each case . . ." *Id.* at 775. In determining whether a fee request is reasonable, courts in the Eleventh Circuit look to the following factors:

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

Faught v. Am. Home Shield Corp., 668 F.3d 1233, 1242-43 (11th Cir. 2011) (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974)).

128. As demonstrated below, an analysis of the applicable factors supports the reasonableness of Lead Counsel's requested fee in this case.

A. Lead Counsel's Fee Request Is Reasonable

1. The Time and Labor Required Supports the Reasonableness of Lead Counsel's Request

129. Lead Counsel has dedicated a substantial amount of time and energy to advocate on behalf of the Plaintiffs and the Class. Throughout the entirety of this

Litigation, Defendants have adamantly denied all of the Complaint's material allegations and sought to have the case dismissed and/or narrowed at every juncture. In response, Lead Counsel has aggressively rebutted each of the Defendants' attacks while simultaneously strengthening the merits of Plaintiffs' allegations.

130. The substantial amount of time and effort Lead Counsel expended to litigate this Action to a successful resolution for Plaintiffs and the Class is demonstrated by the 18,966.45 hours of professional and paraprofessional time spent working on this case over the past nearly four years. As such, this factor readily supports the reasonableness of Lead Counsel's requested fee.

2. The Novelty and Difficulty of the Issues Warrants Approval of Lead Counsel's Request

131. As demonstrated above in §IV.A, this Action presented a number of multi-faceted, complex issues of both fact and law, and the Class faced formidable defenses to liability and damages. For instance, the issues surrounding the elements of market efficiency, price impact, and damages required repeated rounds of briefing, expensive work with expert witnesses, depositions of fact and expert witnesses, and other extensive discovery efforts. §§II.C-D. Demonstrating the highly complex issues in dispute is the fact that the Parties both moved to exclude each other's respective experts and participated in a two-day evidentiary hearing at the class certification stage. §II.C.

132. In sum, given the novelty and difficulty of the issues presented in this Litigation, the Settlement is an extremely favorable recovery for the Class that reflects the sophistication and diligence of Lead Counsel's work. As such, this factor supports the reasonableness and fairness of Lead Counsel's requested fee.

3. The Skill Required to Perform the Legal Service Adequately Supports the Reasonableness of the Requested Fee

133. As noted above, given the complexity of the issues involved and the existence of numerous hotly contested issues, highly skilled counsel with extensive expertise in securities litigation was essential to the successful representation of the Class. Further, Lead Counsel had to be particularly zealous and skilled in this case because Defendants' counsel are highly experienced, diligent attorneys well-versed in complex securities litigation. Lead Counsel's experienced and skilled work secured a highly favorable recovery for the Class. Accordingly, this factor provides further support for the Court's approval of Lead Counsel's requested fee.

4. The Preclusion of Other Employment Favors Lead Counsel's Fee Request

134. Lead Counsel expended 18,966.45 hours over more than three years prosecuting this Action on behalf of Plaintiffs and the Class. Because these substantial hours could have been devoted to other cases, this factor further demonstrates the reasonableness of Lead Counsel's fee award request.

5. The Contingent Nature of this Action Supports the Reasonableness of Lead Counsel's Fee Request

135. Lead Counsel undertook this Litigation on a wholly contingent basis. Accordingly, to date, Lead Counsel has borne all of the expenses and risks of this complex, costly litigation with no guarantee that its investment would ever be recovered. Nevertheless, Lead Counsel undertook this significant responsibility and, as a result, was required to ensure that sufficient attorney, expert, and paraprofessional resources were allocated to effectively prosecute this Action. Further, because of the nature of a contingency fee practice where cases often last for several years, Robbins Geller, like other contingent-fee litigation firms, has had to pay regular overhead as well as advance the expenses of this Litigation. In addition to advancing litigation expenses and paying overhead, Lead Counsel faced the very real possibility of receiving no attorneys' fees or expenses in this case.

136. Given the real and substantial risk that Lead Counsel's significant investment of time, effort, and money would have resulted in $0 in fees or expenses, this factor also weighs in favor of approving Lead Counsel's requested fee.

6. The Amount Involved and the Excellent Results Obtained Supports Lead Counsel's Request

137. The $87,500,000 Settlement obtained for the benefit of the Class represents between 16% and 28% of the estimated recoverable damages (as calculated by Plaintiffs' expert). This is between seven and fourteen times the median recovery as a ratio of investor losses in similar securities actions settled in

2019. *See* Janeen McIntosh and Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at 20, Fig. 13, available at: https://www.nera.com/content/dam/nera/publications/2020/PUB_Year_End_Trends_012120_Final.pdf.

138. Given the risks of continued litigation, the Settlement Amount is a tremendous recovery for the Class and warrants approval of Lead Counsel's requested fee.

7. The Experience, Reputation, and Ability of the Attorneys Supports Lead Counsel's Fee Request

139. Lead Counsel is among the most knowledgeable and capable practitioners in the field of securities class actions. The experience and skill of Robbins Geller attorneys has resulted in an incredibly successful record in securities class actions in both federal and state courts throughout the United States. *See* ECF No. 20-6 (Robbins Geller Firm Resume). Accordingly, the experience, ability and reputation of Lead Counsel further supports the requested attorneys' fees.

8. The Undesirability of the Case Supports the Reasonableness of the Requested Fee

140. As noted above, Lead Counsel undertook this complicated case on a wholly-contingent basis, and pursued the Class's claims against a large, sophisticated corporation with endless resources to fight such allegations. Notably, no other party moved for lead plaintiff and no other counsel sought to be appointed

lead counsel. As such, the "undesirability" of this case supports the requested fee percentage.

9. Awards in Similar Cases Supports Lead Counsel's Request

141. Lead Counsel's request is in line with fee awards approved in similar class action cases. For example, this year in a similar case in the Northern District of Georgia, a court awarded counsel attorneys' fees amounting to 33% of the settlement. *Invesco Holding Co. (US), Inc., et al.*, No. 1:18-cv-02551-AT, slip op. at 2 (N.D. Ga. Aug. 13, 2020); *see also In re Netbank, Inc. Sec. Litig.*, No. l:07- cv-02298-TCB, slip op. at 5 (N.D. Ga. Nov. 9, 2011) (awarding 34% of settlement); *In re Theragenics Corp. Sec. Litig.*, No. 1:99-cv-0141-TWT, slip op. at 12 (N.D. Ga. Sept. 29, 2004) (awarding 33-1/3% of settlement). Given that Lead Counsel's request is consistent with – and in many instances lower than – the awards provided in similar cases, this factor warrants approval of the requested fee.

B. Lead Counsel's Request for an Award of Expenses

142. Lead Counsel also requests an award of $853,866.45 in expenses incurred in prosecuting this Action on behalf of Plaintiffs and the Class. For example, these expenses include: (i) the costs of Plaintiffs' experts and consultants; (ii) the costs associated with attending court hearings and status conferences; (iii) the costs associated with taking and defending depositions remotely and throughout the United States; (iv) the costs necessary to provide document management and review;

and (v) the costs associated with the Parties' mediation. The following paragraphs provide a more detailed description of certain of Lead Counsel's expenses.

143. Lead Counsel retained two experts to provide expert consultation to assist Lead Counsel's understanding and development of the facts supporting the Complaint's allegations. Lead Counsel also retained these experts to provide expert reports and expert testimony that would address both the complex factual issues in the case, and challenge Defendants' experts' own assertions regarding such matters.

144. In order to effectively litigate this Action, Lead Counsel also retained an outside investigative firm to locate witnesses and to conduct interviews of such witnesses to further assist Lead Counsel in developing the facts and issues supporting Plaintiffs' claims.

145. Lastly, additional expenses arose from photocopying documents, database maintenance for the 2,108,146 pages of documents, online factual and legal research, messenger services, postage, express mail and next day delivery, transportation, meals, domestic travel, and other incidental expenses directly related to the prosecution of this Action. In sum, these expenses were necessary to Lead Counsel's success in achieving the tremendous result for Plaintiffs and the Class.

VII. CONCLUSION

146. In light of the outstanding $87,500,000 Settlement obtained, the substantial risks Lead Counsel faced, the exceptional quality of Lead Counsel's work, the contingent nature of the requested fee, and the substantial complexity of

the case, as described above and in the accompanying memoranda in support of their motions, Plaintiffs and their counsel respectfully submit that the Court should approve the Settlement and Plan of Allocation as fair, reasonable, and adequate, and approve Lead Counsel's application for an award of attorneys' fees and expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 10th day of December, 2020, at San Diego, California.

s/ DARRYL J. ALVARADO
DARRYL J. ALVARADO

CERTIFICATE OF SERVICE

I hereby certify on December 10, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel.

s/ DARRYL J. ALVARADO

DARRYL J. ALVARADO
ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)
dalvarado@rgrdlaw.com