UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,

Plaintiffs,

vs.

CITY OF CINCINNATI, *et al*,

Defendants.

(City of Cincinnati Pension Litigation)

Case Nos.: 1:11-cv-445 and 1:12-cv-329

Judge Michael R. Barrett

CURRENT EMPLOYEES CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES

Counsel for Current Employees Plaintiffs Nick Sunyak, Jeffrey Harmon, Jill Allgeyer, Kim Kappel, Waleia Jackson, Finley Jones and the Current Employees Class ("Current Employees Class Counsel" or "Class Counsel") respectfully move the Court pursuant to Paragraph 34 of Collaborative Settlement Agreement [Doc. 59-1] and Rules 23(f) and 54(d)(2) of the Federal Rules of Civil Procedure for an order approving the payment of $5 million for attorneys' fees and $26,723 as reimbursement for costs incurred to date as well as reimbursement for reasonable future expenses incurred through the September 24, 2015 Fairness Hearing. The legal and factual bases supporting this Motion are fully set forth in the attached Memorandum, Declarations and Exhibits, as well as the Joint Motion for Preliminary Approval of Proposed Settlement [Doc. 59], incorporated herein by reference. A proposed Order granting this Motion will be provided as an attachment to Class Counsel's Motion for Final Approval to be filed on or about September 10, 2015.

Respectfully submitted,

/s/Jeffrey S. Goldenberg
Jeffrey S. Goldenberg, Esq. (0063771)
Todd B. Naylor, Esq. (0068388)
GOLDENBERG SCHNEIDER, L.P.A.

One West Fourth Street, 18th Floor
Cincinnati, Ohio 45202
Telephone: (513) 345-8291
Facsimile: (513) 345-8294
jgoldenberg@gs-legal.com
tnaylor@gs-legal.com

/s/ Christian A. Jenkins
Christian A. Jenkins (0070674)
Minnillo & Jenkins Co., LPA
2712 Observatory Avenue
Cincinnati, Ohio 45208
Tel: (513) 723-1600
Fax: (513) 723-1620
cjenkins@minnillojenkins.com
niro@minnillojenkins.com

/s/ Robert D. Klausner
Robert D. Klausner (244082)
Klausner, Kaufman, Jensen & Levinson
10059 NW 1st Court
Plantation, Florida 33324
Tel: (954) 916-1202
Fax: (954) 916-1232
bob@robertdklausner.com

/s/ Marc Mezibov
Marc Mezibov (0019316)
The Law Office of Marc Mezibov, Inc.
401 East Court Street, Suite 600
Cincinnati, Ohio 45202
Tel: (513) 621-8800
Fax: (513) 621-8833
mmezibove@mezibov.com

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system to send notification of such filing to all counsel of record.

/s/ Jeffrey S. Goldenberg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	Case Nos.: 1:11-cv-445 and 1:12-cv-329
Plaintiffs,	:	
vs.	:	Judge Michael R. Barrett
CITY OF CINCINNATI, *et al,*	:	
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

MEMORANDUM IN SUPPORT OF CURRENT EMPLOYEES CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES

TABLE OF CONTENTS AND SUMMARY OF THE ARGUMENT

Page

I. **INTRODUCTION** 1

II. **FACTS** 1

A. Background 2

B. The Proposed Settlement 7

III. **ATTORNEYS' FEES** 14

A. Percentage of the Fund is the "Preferred Method" for Awarding Fees in Common Fund Cases 15

In this district, the preferred method for awarding attorneys' fees in common fund/common benefit settlements is to award a reasonable percentage of the fund, with reference to the lodestar and the resulting multiplier. This is consistent with the Settlement Agreement, which contemplates that Current Employees Class Counsel's fees will be advanced by the CRS Fund but will be ultimately paid back by members of that class from their pension benefits over time. *See Bowles v. Washington Dep't of Ret. Sys.*, 121 Wash.2d 52, 73-74 (Wash. 1993) (affirming award of class counsel's fees from public employees' retirement plan subject to reimbursement from benefited plan members based on "common fund/common benefit" theory).

B. Class Counsel's Attorneys' Fee Request is Fair and Reasonable Under a Common Fund Analysis 17

According to CRS' actuary, Cavanaugh MacDonald, the Settlement Agreement's (a) 3% COLA, (b) retirement eligibility changes, and (c) increased benefit multiplier provisions alone have a net present value to Current Employees Class members of at least $48.1 million. When $1.23 million is added for the "catch up" payments certain Class members will receive under the Settlement, the figure rises to $49.33 million. This figure does not capture other important benefits conferred on the Current Employees Class by the Settlement Agreement.

Placing even a conservative total value of $50 million on the Settlement, Current Employees Class Counsel's fee request represents 10% of the benefits conferred, which is well below the percentage of recovery approved in similar cases. *See Kifafi v. Hilton Hotels Retirement Plan*, 999 F.Supp.2d 88, 100 (D. D.C. 2013) (awarding attorneys' fees equivalent to 15% of increase in benefits each retirement plan member will experience as a result of suit based on common fund theory); *Ashley v. Reg'l Transp Dist. & Amalgamated Transit Union Div. 1001 Pension Fund Trust*, 2008 WL 384579, at *9 (D. Colo. Feb. 11, 2008) (fee request equivalent to

Page

17% of combined value of "true up" payments to retirees and increase in pension payments to be made in the future reasonable under either percentage of the fund or lodestar approach); *Lowther v. AK Steel Corp.*, 2012 WL 6676131, at *2-3 (S.D. Ohio Dec. 21, 2012) (surveying Sixth Circuit fee awards ranging from 10% to 34% and finding requested fee of 12% to be "well within the accepted range").

C. *Ramey* Factors Support Current Employees Class Counsel's Request ... 22

1. The Value of the Benefits is Substantial ... 22
2. The Fee Requested Provides Adequate Incentive to Undertake this Representation for the Benefit of Others ... 23
3. Class Counsel Undertook this Representation on a Contingent Basis.. 24
4. The Value of the Services on an Hourly Basis Supports the Fee Requested ... 25
5. The Complexity of the Litigation Supports the Requested Fee ... 26
6. The Professional Skill of Counsel on Both Sides Supports the Requested Fee ... 27

D. Class Counsel's Attorneys' Fee Request is Fair and Reasonable Under a Lodestar Cross-Check ... 28

Although optional, courts sometimes perform a lodestar cross-check to ensure counsel does not receive a "windfall." *See In re Cardinal Health Inc. Sec. Litig.*, 528 F.Supp.2d 752, 764 (S.D. Ohio 2007). To date, Current Employees Class Counsel has spent approximately 2,843 hours on this case, with a corresponding lodestar total of $1,376,676. Courts typically adjust such fees upward using a multiplier "within a normal range of between two and five to account for factors such as the complexity of the case, the risks involved, the size of the recovery, counsel's continuing obligations to the class, and the range of multipliers awarded in similar cases." *Bailey v. AK Steel Corp.*, 2008 WL 553764, at *2 (S.D. Ohio Feb. 28, 2008). When Class Counsel's current lodestar is compared to the requested fee of $5 million, the resulting multiplier is 3.6, which is fully consistent with other risk multipliers approved by courts in class actions. *See, e.g., In re Cardinal Health, Inc. Sec. Litig.*, 528 F.Supp.2d at 768 (5.9 multiplier).

However, Class Counsel will be required to spend considerable amounts of additional time over the next 30 years performing various important functions under the Settlement and the Consent Decree. When the cumulative estimated lodestar for the anticipated future time is added to Current Employees Class Counsel's current lodestar, the resulting figure ($2,625,426), compared to the requested fee, yields a multiplier of 1.90, which is significantly lower than other risk multipliers approved in complex class actions in this Circuit. *See, e.g., Swigart v. Fifth Third Bank*, 2014 WL 3447947, at *6 (S.D. Ohio July 11, 2014) (2.57 multiplier is "consistent with other risk multipliers approved in this Circuit"); *Enterprise Energy Corp. v. Columbia Gas Trans. Corp.*, 137

Page

F.R.D. 240, 250 (S.D. Ohio 1991) ($5 million fee request reflecting multiplier of 2.4-2.6 is "reasonable and conservative").

IV. EXPENSES 34

Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket expenses and costs in the prosecution of claims and in obtaining settlement, including but not limited to expenses incurred in connection with document productions, consulting with and deposing experts, travel and other litigation-related expenses. Current Employees Class Counsel request reimbursement for $26,723 for costs incurred to date as well as reimbursement for reasonable future expenses incurred through the September 24, 2015 Fairness Hearing.

V. CONCLUSION 35

Class Counsel respectfully requests this Court approve the payment of the following amounts from the CRS: (1) $5 million as fair and reasonable for attorneys' fees; (2) $26,723 as reimbursement for costs incurred to date; and (3) reimbursement for reasonable future expenses incurred through the September 24, 2015 Fairness Hearing.

I. INTRODUCTION

On May 12, 2015, the Court entered an Order granting the joint motion of Plaintiffs[1] and Defendants[2] to preliminarily approve the Collaborative Settlement Agreement ("Settlement Agreement" or "Settlement") and conditionally certify two classes for settlement purposes: the Current Employees Class and the Retires Class. [Doc. 62] The Settlement Agreement resulted from extensive, adversarial, Court-supervised, arms-length negotiations, and represents a hard-fought compromise that will restore enormously valuable pension benefits for active employees with a minimum present value of $48.1 million plus immediate cash payments totaling approximately $1.2 million. Adding other valuable rights achieved through this litigation, such as access to heavily subsidized retiree health care for the 30 year duration of the Consent Decree, brings the total value of the Settlement for the Current Employees Class to more than $50 million.

Current Employees Class Counsel requests an award of attorneys' fees equaling 10% of the conservative valuation of the benefits conferred on the Current Employees Class which is well within the range typically approved by courts in the Sixth Circuit as fair and reasonable. The requested $5 million fee is also fair and reasonable when evaluated pursuant to the optional lodestar cross-check analysis (resulting in the application of a 1.90 multiplier to Class Counsel's total anticipated lodestar). Additionally, Current Employees Class Counsel request reimbursement for the $26,723 in expenses incurred to date as well as reimbursement for their reasonable future expenses to be incurred prior the September 24, 2015 Fairness Hearing.

II. FACTS

[1] "Plaintiffs" include Current Employees Plaintiffs (Nick Sunyak, Jeffrey Harmon, Jill Allgeyer, Kim Kappel, Waleia Jackson, and Findlay Jones), and Retiree Plaintiffs (Thomas A. Gamel, Sr., Paul Smith, Mark K. Jones, Dennis Davis, Ely Rider, and Ann DeGroot).
[2] Defendants are the City of Cincinnati, Mayor John Cranley, City Manager Harry Black, Vice-Mayor David Mann, Cincinnati City Council Members, the Cincinnati Retirement System, and the Board of Trustees of the Cincinnati Retirement System.

A. Background

The City of Cincinnati Retirement System ("CRS") was established on August 1, 1931, for City employees. The CRS is a defined benefit pension plan in which most employees of the City are required to participate. As of December 31, 2013, the CRS had assets of $2.1 billion with liabilities of $3.1 billion to approximately 3,000 active employees and 4,500 retirees.[3] The CRS is established and governed by Chapter 203 of the municipal ordinances of the City of Cincinnati which vest general administrative authority over the CRS in a Board of Trustees. *See* Cincinnati Municipal Code ("CMC") Sec. 203-65. However, overall policy for the CRS is determined by Cincinnati City Council.

Over the years Cincinnati City Council has approved several measures to increase the pension benefits payable to particular retirees. *See e.g.* CMC Secs. 203-50 and 203-52 (increasing benefits payable to individuals retiring before 1981 and 1983 respectively). However, in November 1998, City Council implemented "generous benefit enhancements,"[4] including a three percent annual compound Cost of Living Allowance ("COLA"). *See* Cincinnati Mun. Ord. No. 389-1998 (effective November 20, 1998). The result of the compound COLA was much more rapid growth in the amount of individual pension benefits.[5] Prior to 1998, the CRS did not include a compound COLA in its projections for computing employer and employee contributions. Nevertheless, the compound

---

[3] "Retirement System for the City of Cincinnati December 31, 2013 Actuarial Valuation, Executive Summary Combined Reports," prepared by Cavanaugh Macdonald Consulting, LLC available at: http://www.cincinnati-oh.gov/retirement/financial-information/2013-valuation-reports/2013-executive-summary/.

[4] *See* Report to Budget & Finance Committee, "Cincinnati Retirement System State of Affairs," dated January 21, 2014, p. 4; available at: http://city-egov.cincinnati-oh.gov/Webtop/ws/council/public/child/Blob/39256.pdf;jsessionid=EFB4D2DB5F03DC2870C3624F1C1FAB2B?m=38073.

[5] By way of example, an annual pension benefit starting at $30,000 subject to a simple three percent COLA would rise to $39,000 after ten years, $48,000 after 20 years, and $57,000 after 30 years. Whereas the same $30,000 annual benefit subject to a compound three percent COLA such as that implemented by City Council in 1998 would rise to $40,317 after ten years, $54,183 after 20 years and $72,817 after 30 years. This results in a difference in total pension benefits received over 30 years (which is not an unusual duration under the CRS because participants can retire with 30 years of service regardless of age) of more than $150,000 for a single retiree solely due to the implementation of the compound COLA.

COLA was applied and paid to then current retirees.

Beginning in 2004 and continuing every year thereafter except 2006, the City failed to make the Annual Required Contribution ("ARC") to the CRS as determined by the fund actuary.[6] The combination of overgenerous benefits that had never been part of the CRS funding model and underfunding by the City began to affect the CRS's pension funding level, which has gradually but consistently declined since 1999, and which fell below 90 percent in 2006.[7] In 2007, the City offered an Early Retirement Incentive Program ("ERIP") that reduced the City's active payroll, but effectively shifted much of that cost to the CRS by granting pension benefits for eligible employees earlier than accounted for by the plan's funding model.[8] Then, in 2008, the CRS suffered investment losses of 27.5 percent and its funding level slipped to 70 percent. The resulting ARC's were unattainable from the City budget (*i.e.*, $54.9 million – approximately 35% of payroll – for fiscal 2011), and the funding level slid to 61 percent in 2012.[9]

In 2011 the City responded to the CRS underfunding crisis with Ordinance No. 84-2011 (the "Ordinance"), which enacted sweeping changes to the pension benefits available to active employees designed to reduce the CRS's liability by more than $100 million.[10] Ordinance 84-2011 reduced pension liabilities by making five basic changes applicable to active employees:

---

[6] *See* Report to Cincinnati City Council Finance Committee from the Cincinnati Retirement System Board of Trustees, "Cincinnati Retirement System Funding Requirements for Fiscal Year 2012," dated May 16, 2011, p. 12, available at: http://www.cincinnati-oh.gov/retirement/financial-information/funding-report-to-council-2012/.

[7] *See* historical performance and funding levels of CRS at: http://www.cincinnati-oh.gov/retirement/financial-information/.

[8] *See generally Bates, et al. v. City of Cincinnati*, 2013-Ohio-5893 (Ohio App. 1st Dist. December 24, 2013).

[9] *See* "Cincinnati Retirement System Funding Requirements for Fiscal 2012," dated May 16, 2011, p. 5 available at http://www.cincinnati-oh.gov/retirement/financial-information/funding-report-to-council-2012/.

[10] Report to Cincinnati City Council Finance Committee from the Cincinnati Retirement System Board of Trustees, "Cincinnati Retirement System Funding Requirements for Fiscal Year 2012," dated May 16, 2011 p.2 ("Ordinance 84-2011 lowered Pension accrued liabilities by $111 million."). *See also* Report to City Council from the Cincinnati Retirement Board of Trustees, "Recommendations for a Sustainable Retirement System," dated February 22, 2011 p. 29 (adjusting 12/31/2009 pension valuation results to reflect ordinance 84-2011 changes and reducing pension liabilities by $106.3 million).

1. COLA reduction: From approximately 1999 through 2011, all CRS retirees received a compound COLA. The Ordinance did not change the compound COLA received by individuals who retired prior to July 1, 2011, and they have continued to receive compound COLA's to this day. But Ordinance 84-2011 eliminated the compound COLA for then active City employees other than subgroup C (*i.e.*, employees who were eligible to retire with unreduced pension benefits as of July 1, 2011), and replaced it with a simple COLA tied to the annual inflation rate and capped at two percent. This affected the more than 2,000 members of subgroups D, E, and F by reducing the rate at which their future pensions would increase. The CRS actuary determined that this change reduced CRS pension liability by **$35.9 million.**[11]

2. Final Average Salary Change: CRS pension benefits are computed with a basic formula: (Years of creditable City service) x (Final Average Salary) x (Multiplier) = Annual Pension Benefit. Prior to July 1, 2011, The Final Average Salary ("FAS") element was computed by averaging an employee's *three* highest paid years of City service. Ordinance 84-2011 changed the FAS for active employees to the average of their *five* highest paid years of City Service.[12] This change had the effect of marginally reducing the FAS and generated a reduction in CRS pension liability of **$4.9 million.**[13]

3. Benefit Accrual Change: The Ordinance also changed the "Multiplier" component of the basic pension benefit formula with respect to years of service after 2011 from

[11] Report to City Council from the Cincinnati Retirement Board of Trustees, "Recommendations for a Sustainable Retirement System," dated February 22, 2011 p. 36 Appendix D.
[12] Ordinance 84-2011 provides that the FAS as to years prior to the 2011 changes would continue to be based on three years and that years of service after 2011 would be based on five years. Thus, since the effective date of the Ordinance, the calculation of pension benefits for active employees in subgroups D, E, and F has involved two separate components – one for years prior to the effective date utilizing the three-year FAS, and one for the years after the effective date utilizing the five-year FAS.
[13] Report to City Council from the Cincinnati Retirement Board of Trustees, "Recommendations for a Sustainable Retirement System," dated February 22, 2011 p. 36 Appendix D.

2.5 to 2.2.[14] The Ordinance also reduced the Multiplier to 2.0 on years of service over 30 years. This change had the effect of reducing the amount of future pension benefits and generated a reduction in CRS pension liability of **$18.8 million.**[15]

4. Retirement Eligibility Change: Prior to the Ordinance, CRS participants could retire with "full" or "unreduced" pension benefits (*i.e.,* computed according to the formula without an age reduction factor) if they retired with at least 30 years of creditable service, or at or after age 60 with at least five years of creditable service. After the Ordinance's effective date, unreduced pension benefits could only be received by those retiring with at least 30 years of creditable City service who were also age 60 or older at the time of retirement. The Ordinance provides for earlier retirements at age 55 with at least 25 years of service and age 57 with at least 15 years of service, but with a significantly reduced pension benefit due to a reduction factor. For many active employees, this was the most significant change to the CRS because it created a choice between retiring with a significantly reduced pension benefit or working more years than they had planned to receive a "full" pension benefit, thereby significantly reducing the total value of the pension benefits they were likely to receive during their lives. The **$35.5 million** reduction in CRS pension liability due to this change reflects its significance.[16]

5. Elimination of Death Benefits: Prior to 2011, CRS participants were eligible for both pre- and post-retirement death benefits payable to their survivors. The Ordinance eliminated all death benefits for active employees and reduced the death benefits for current retirees from $7,500 to

[14] The CRS previously offered City employees an opportunity to elect a multiplier of 2.22 in order to include overtime pay and other extra earnings in the number used when computing their FAS. The Ordinance subjected these employees to a 2.2 multiplier on years of service after July 1, 2011.
[15] Report to City Council from the Cincinnati Retirement Board of Trustees, "Recommendations for a Sustainable Retirement System," dated February 22, 2011 p. 36 Appendix D.
[16] *Id.*

$5,000.[17] This was the only change to *pension* benefits that applied to individuals who were retired when the Ordinance went into effect. This change reduced CRS pension liability by **$7.4 million**.[18]

At the same time the Ordinance slashed their future pension benefits, active employees were required to begin contributing more of their pay to the CRS. In 2009, active employees contributed 7.0 percent of their pay to the CRS. This amount was increased to 7.5 percent in 2010, 8.0 percent in 2011, 8.5 percent in 2012, and then 9.0 percent in 2013. CMC sec. 203-73. Thus, the net result of the CRS reforms requires active employees to pay 28 percent more of their bi-weekly wages for pension benefits de-valued by more than $100 million. The Current Employees Class initiated this litigation in July, 2011 to challenge the Ordinance and the major pension benefit reductions.

Although it gutted the pension benefits of active employees, the Ordinance left the benefits received by retirees largely untouched with the sole exception being a reduction in death benefit from $7,500 to $5,000. However, even before it passed the Ordinance, the City began reforming the retirees' healthcare benefits by, among other things, adding co-pays and deductibles that previously had been essentially free to retirees. A group of retirees, represented by the same individuals representing the Retirees Class in this matter, challenged the changes to retiree health care in state court. The retirees were unsuccessful.[19] The result of the retirees' litigation was unfortunate for active employees and retirees alike because the court effectively held that that the City could modify, or even revoke, retiree healthcare at any time.

By 2013 it was becoming clear that the 2011 pension benefit changes and increased employee contributions, without a massive influx of City contributions, would not stabilize the CRS.

---

[17] Report to Cincinnati City Council Budget & Finance Committee, "Cincinnati Retirement System State of Affairs," dated January 21, 2014 p.13.
[18] Report to City Council from the Cincinnati Retirement Board of Trustees, "Recommendations for a Sustainable Retirement System," dated February 22, 2011 p. 36 Appendix D.
[19] *Gamel v. City of Cincinnati*, 2012-Ohio-5152, 983 N.E.2d 375 (Ohio App. 1st Dist. November 7, 2012), *petition for review denied*, 134 Ohio St.3d 1487 (2013).

Accordingly, the CRS Board began to evaluate options for reducing the unfunded liability including various levels of City contributions, eliminating the compound COLA for retirees and replacing it with a two percent or three percent simple COLA, ceasing all COLA's until an acceptable funding level was achieved, and ceasing all COLA's (*i.e.*, a "COLA holiday") for up to five years.[20] On September 5, 2013, the CRS Board recommended to City Council that it amend the CRS ordinance to provide for a two percent simple COLA for all retirees and actives, plus a three year "COLA holiday" for all retirees and future retirees, as well as requiring the City to make a lump sum contribution of $30 million in addition to its annual contribution, and setting City contributions at 20% of payroll in 2013, 24% in 2014 and 2015, 25% in 2016, 26% in 2017, 27% in 2018, 28% in 2019 and thereafter until a 90% funding ratio was achieved.[21] The measure further recommended that the City consider merging the CRS with the Ohio Public Employees Retirement System. *Id.*

City Council did not adopt the recommendation of the CRS Board. Rather on March 19, 2014, City Council enacted Emergency Ordinance No. 2014-00313, which authorized the City Manager to enter into a settlement in this litigation that would include benefit modifications.

B. The Proposed Settlement

The proposed settlement significantly or entirely reverses three of the five pension changes implemented in 2011 for active employees at a net present value cost to the CRS of **$48.1 million.**[22] Although there are other very significant benefits of the settlement, the following three elements alone account for the $48.1 million value:

---

[20] *See* City of Cincinnati Retirement System Benefits Committee Minutes, August 1, 2013 ("Four funding options were applied to 9 scenarios using 2% and 3% simple COLA's with and without COLA holidays. Each scenario provided a 30-year projection of the actuarial value of assets, unfunded accrued liability, funding ratio, and employer contribution rates."), available at http://www.cincinnati-oh.gov/retirement/crs-board-and-committee-meetings/benefits-committee/august-1-2013/.
[21] CRS Board of Trustees Meeting Minutes, September 5, 2013, available at: http://www.cincinnati-oh.gov/retirement/crs-board-and-committee-meetings/board-of-trustees-2015/board-of-trustees-september-5-2013/.
[22] *Declaration of Edward J. Koebel*, ¶4, attached hereto as Exhibit 1.

1. COLA Increase To Three Percent Simple. The 2011 Ordinance saved the CRS $35.9 million by eliminating the compound COLA for active employees (while allowing retirees to continue to receive it), and replacing it with a simple COLA tied to inflation and capped at two percent per year. The proposed settlement increases the COLA by 50 percent to three percent simple, regardless of inflation. The CRS actuary values this 1% COLA increase at **$25.2 million**.[23] Note, however, that when computing this amount, the CRS actuary conservatively assumed that under the Ordinance the CRS would always pay a two percent COLA. However, this proved incorrect because inflation has been relatively low for several years such that the CRS paid COLA's of 1.5 percent in 2014 and 1.7 for 2015.[24] One half of one percent may seem to be a small number, but the impact of this fact on the actual value of the proposed settlement is very significant when one considers that an increase of one percent has a value of $25.2 million. This significant additional value is not captured in the CRS actuary's valuation.

2. Elimination of Retirement Age Requirement (*i.e.*, "30 and Out"). Perhaps the most onerous of the 2011 changes was the requirement that active employees could no longer retire with unreduced pension benefits at 30 years of service unless they were also at least 60 years old at the time of retirement. For decades, many City employees remained in City service, foregoing other opportunities, because of the pension that would be available upon reaching 30 years of service. Many of these employees started working for the City in their 20's and would have been eligible to retire in their 50's. Thus, the 2011 changes greatly devalued their pensions by dictating that they either work several more years than they had planned to receive an unreduced benefit, or retire "early" under the Ordinance and accept a reduced pension benefit.

---

[23] Doc. 59-2 (PAGEID # 730).

[24] *See* Email of Pension Director Paula Tilsley dated July 14, 2015, attached as Ex. B to *Declaration of Christian A. Jenkins In Support Of Class Counsel's Motion for Approval of Attorneys' Fees and Expenses* ("*Jenkins Decl.*"). The *Jenkins Decl.* is attached hereto as Ex. 2.

The Settlement reverses this provision and makes unreduced pension benefits available once again at 30 years of service without any age requirement. As a result, many members of the Current Employees Class are eligible to retire years earlier than they would have been under the Ordinance, adding years of additional pension benefits. In addition, the Settlement restores the previous right to retire at any time after five years of service if age 60 or older with an unreduced pension benefit.[25] The CRS actuary values this change at **$43.9 million**.[26]

3. Restoration of 2.5 Multiplier. The Ordinance reduced the multiplier applicable to years of service after 2011 from 2.5 to 2.2 for active employees. The Ordinance also reduced the 2.2 multiplier on years of service over 30 years to 2.0. This had the effect of lowering the monthly pension benefit and created a disincentive for employees with more than 30 years of service to continue working because the additional years contributed less to the value of their pension benefits. The Settlement restores the 2.2 multiplier on years of service over 30 years, and provides a compromise under which the 2.5 multiplier applies to the greater of 20 years or the number of years of service an employee had as of July 1, 2011. This will provide many employees with an increase of up to 15 years of service at the higher 2.5 multiplier.[27] The CRS actuary values this change at **5.3 million**.[28]

The aggregate total value of the three changes outlined above is $74.4 million. However, this amount is reduced by $20 million to reflect the three year "COLA holiday" applicable to all future retirees, despite the fact that, in the absence of the Settlement, the CRS had already

[25] This is not meant to imply that a 60 year old retiree with five years of service receives the same pension benefit as a 30 year employee, but rather that such an individual can receive a pension computed by the same formula as a 30 year employee (*i.e.*, years of service x final average salary x multiplier) without being subjected to an age reduction factor.
[26] Doc. 59-2 (PAGEID #730).
[27] Because the settlement only applies to "vested" employees (*i.e.*, those with at least five years of service as of July 1, 2011), the maximum number of additional years of service to which the 2.5 multiplier will be applied is 15 years.
[28] Doc. 59-2 (PAGEID #730).

recommended that City Council implement a "COLA holiday" of at least this duration.[29] This reduces the aggregate value of these three changes to $54.4 million, which is actuarially reduced due to the interaction of the various components to a net present value of **$48.1 million**.[30]

In addition to the $48.1 million in benefit changes, at least 515 members of the Current Employees Class will receive lump sum payments when the Settlement goes into effect on January 1, 2016. These individuals consist of the 275 members of subgroup C who are entitled to cash payments according to the schedule set forth in section 18 of the Settlement Agreement, and *at least* 240 members of subgroups D, E, and F who have retired since July 1, 2011[31] who are entitled to "catch up" payments under section 16 of the Settlement Agreement to reflect the amount they would have received between the date of their retirement and January 1, 2016 had the Settlement been in effect at the time of their retirement.[32] A conservative estimate of the total amount of these payments is approximately **$1.23 million**.[33] When added to the $48.1 million net present value discussed above, the resulting Settlement valuation for these components is **$49.33 million**.

Importantly, the $49.33 million figure does not capture the following additional benefits of the Settlement that provide tremendous value for the Current Employees Class but cannot be readily quantified:

1. Access to Subsidized Retiree Healthcare.[34] The most significant in terms of potential dollar value is the right to retiree health care during the 30 year duration of the Consent Decree. Absent the Settlement, the City would be free to modify or even eliminate retiree health

[29] CRS Board of Trustees Meeting Minutes, September 5, 2013, available at: http://www.cincinnati-oh.gov/retirement/crs-board-and-committee-meetings/board-of-trustees-2015/board-of-trustees-september-5-2013/.
[30] Doc. 59-2 (PAGEID #730).
[31] The number of individuals entitled to "catch up" payments will likely be more than 240 because it will include those who retire before January 1, 2016, who have not yet retired.
[32] *See* Email of Pension Director Paula Tilsley dated July 7, 2015, attached to *Jenkins Decl.* as Ex. B.
[33] *Jenkins Decl.*, ¶¶ 15-16.
[34] Doc. 59-1 (PAGEID #518).

care under the court's ruling in *Gamel v. City of Cincinnati*. For members of the Current Employees Class (other than subgroup C) who retire with at least 20 years of creditable service, section 23 of the Settlement secures access to individual and family coverage under the "most favorable plan available to active employees." The cost of this coverage will vary depending on individual hire date, with those hired before January 9, 1997 paying no more than ten percent of the premium, and those hired on or after January 9, 1997 paying as little as five percent and as much as 75 percent of the premium depending on their individual circumstances under the "point system" established by the City and incorporated as Exhibit 8 to the Settlement Agreement.[35]

The value of this benefit is illustrated by an individual example. City Employee A, hired in 1990 at age 24, can retire in 2020 at age 54 with an unreduced pension according to the Settlement. At age 54, City Employee A would not be eligible for Medicare. As a result of the Settlement, however, this person would be eligible for individual or family coverage upon retirement, paying ten percent of the applicable premium. Currently, ten percent of the premium for an individual non-medicare eligible retiree is approximately $94 per month.[36] Thus, the CRS would pay an estimated $800 per month, or $9,600 per year, on behalf of this individual until he or she becomes Medicare eligible, at which point the CRS provided health coverage becomes secondary, and the cost declines accordingly. With eleven years or more to go until becoming Medicare eligible, this benefit represents a value of over $100,000 to City Employee A - a single member of the Current Employees Class with more than 2,400 members.[37] The individual value of this benefit will vary depending on the timing of retirement, whether individual or family

[35] Doc. 59-2 (PAGEID #755)

[36] CRS Retiree Healthcare "Matrix" attached to Settlement Agreement as Exhibit 8 stating that 5% of premium is $47.05 for non-Medicare eligible individual. *See* Doc. 59-2 (PAGEID #754).

[37] The 275 members of subgroup C receive an even more valuable benefit because they are provided with the same coverage as members of the Retirees Class, who only pay five percent of the applicable premium. *See* Doc. 59-1 (PAGEID # 515-16, 518).

coverage is elected, and whether the retiree obtains coverage elsewhere. But even assuming modest participation and duration of coverage, the value of the right to subsidized health care for the duration of the Consent Decree has a potential value to the Current Employees Class in the ***tens of millions of dollars***. Indeed, if only one fourth of the 2,400 members of the Current Employees Class (*i.e.,* 600 participants) utilize individual coverage at the rate available to pre-1997 hires for just one year, the total premium subsidy would exceed $5,000,000. And, since many of these Class members will utilize spousal or family coverage for extended periods of time following their retirement, the value of this benefit likely will be substantially higher.

2. Deferred Retirement Option Plan ("DROP").[38] The DROP, as it has come to be known, is a tax deferral program that will allow members of the Current Employees Class with 30 years of service to effectively retire with respect to the CRS but continue working in their City jobs for up to five years. During this time, participating individuals' monthly CRS pension benefits accrue in an individual account held by the CRS which they can cash out or roll over when they actually leave City employment. While this provision is intended to be cost neutral to the CRS, it is widely regarded by many members of the Current Employees Class as an attractive alternative to either delaying the commencement of their pension by continuing to work or retiring to begin collecting their pensions. The CRS benefits from the retained use of each participant's funds and the cessation of any additional accrual of service credit.

3. Early Retirement Options.[39] Prior to the Ordinance, CRS participants could retire "early" with 25 years of service at age 55 or older. The Ordinance eliminated this right and replaced it with a less attractive early retirement option subject to a reduction factor. The

[38] *See* Doc. 59-1 (PAGEID #517-18).
[39] Doc. 59-1 (PAGEID #514).

proposed settlement restores the previous early retirement option as well as the right to retire without being subject to a reduction factor at age 60 with at least five years of service.

4. Consistent City Funding and Stabilization of CRS. As noted above, except for 2006, the City has not made its "Annual Required Contribution" since 2003. Under the Settlement, the City will infuse in excess of $200 million into the CRS by closing the overfunded health plan and opening a new, properly-funded and more efficient plan under section 115 of the Internal Revenue Code.[40] The City will also contribute $39.1 million to offset the CRS liability created by the ERIP implemented in 2007.[41] In addition, the City has agreed to contribute a minimum of 16.25 percent of payroll to the CRS for the duration of the 30 year Consent Decree.[42] Under the Settlement Agreement, this Court is empowered to enforce the City's mandatory funding obligation.[43] Actuarial projections incorporating these contributions and the other changes to the CRS benefit structure provided for in the Settlement indicate that the CRS should approach a 100 percent funding level during the 30-year term.[44] Because this Settlement provides for the long term stability of the CRS, participants have gained a reasonable degree of confidence that the CRS will continue to function and be able to pay expected benefits.

5. De-Politicization of CRS Benefits. The Settlement Agreement also provides for extensive reforms of the CRS Board of Trustees; however, regardless of those changes, neither the CRS Board nor City Council can vary any of the CRS benefit provisions from the terms of the Settlement Agreement.[45] Accordingly, during the 30 year Consent Decree, the basic terms of benefits available to CRS participants cannot be unilaterally altered by political bodies as they have

[40] Doc. 59-1 (PAGEID #509).
[41] Doc. 59-2 (PAGEID #730).
[42] Doc. 59-1 (PAGEID #516).
[43] Doc. 59-1 (PAGEID #539).
[44] Doc. 59-2 (PAGEID #731).
[45] Doc. 59-1 (PAGEID #521-23).

been in the past. For the next 30 years, such changes can only be made through the reopener process with Court approval.[46] The result is a reliable and predictable CRS benefit structure that redounds to the benefit of the City, its current and retired employees, and the general taxpaying public.

III. ATTORNEYS' FEES

Paragraph 34 of the Settlement Agreement authorizes Current Employees Class Counsel to request an award of reasonable attorneys' fees for their work in this case.[47] Pursuant to that provision, Defendants and Current Employees Class Counsel agreed that Current Employees Class Counsel's fees "shall be based upon the value of the pension and healthcare benefits conferred upon the Current Employees Class as determined by the Court,"[48] a value Current Employees Class Counsel estimates to be in excess of $50 million.[49] The Settlement Agreement contemplates that Current Employees Class Counsel's fees will be advanced by the CRS Fund but "will be ultimately paid back by members of that class from their pension benefits over time in a fair manner consistent with the terms of the Class Notice."[50] Similar attorney fee arrangements have been approved by other courts in comparable circumstances. *See, e.g., Bowles v. Washington Dep't of Ret. Sys.*, 121 Wash.2d 52, 73-74, 847 P.2d 440, 451-52 (Wash. 1993) (affirming award of class counsel's attorneys' fees from public employees' retirement plan subject to reimbursement from benefited plan members based on "common fund/common benefit" theory).

As explained in the Class Notice, the CRS Fund will recoup the attorneys' fees it advances from a small portion of the increased future benefits Class members will receive over a 20-year period when they retire (approximately $5 to $10 per month), with a higher share coming from those Current Employees Class members who, as a result of this Settlement, have the opportunity to retire

---

[46] Doc. 59-1 (PAGEID #525).
[47] Doc. 59-1 (PAGEID #524-25).
[48] *Id.*
[49] *Jenkins Decl.*, ¶17.
[50] Doc. 59-1 (PAGEID #524-25).

with full pension benefits prior to age 60 or at age 60 with at least 5 years of service.[51]

As demonstrated herein, the requested fee is appropriate under the "percentage of the fund" method, which is the preferred approach for determining a reasonable fee in a common fund case such as this one. According to CRS's own actuary – who prepared the very figures upon which the parties' negotiations and the entire Settlement Agreement rest – the three percent Cost of Living Adjustment, retirement eligibility changes, and increased benefit multiplier provisions *alone* create **$48.1 million** in benefits for the Current Employees Class.[52] When $1.23 million is added for the "catch up" payments certain Class members will receive,[53] the resulting figure is **$49.33 million**. This $49.33 million figure does not capture other valuable benefits conferred on the Current Employees Class by the Settlement, as discussed above.

Placing a conservative value of $50 million on the benefits conferred on the Class,[54] Class Counsel's fee request constitutes 10% of the value of the benefits conferred. This falls well within the range typically approved in the Sixth Circuit.[55] Further, the requested fee is supported by a lodestar cross-check analysis.

A. Percentage of the Fund is the "Preferred Method" for Awarding Fees in Common Fund Cases

District courts may award reasonable attorneys' fees and expenses from the settlement of a class action upon motion under Fed.R.Civ.P. 54(d)(2) and 23(h). *See Lowther v. AK Steel Corp.*, 2012 WL 6676131, at *1 (S.D. Ohio Dec. 21, 2012). "In the Sixth Circuit, district courts

[51] Doc. 59-4 (PAGEID #775). *See also* https://secure.ntcsol.com/softniche/easyclaim/Content2011/COC/Documents/Notice.pdf (last accessed July 22, 2015).
[52] Doc. 59-2 (PAGEID #730); *see also Shaffer v. Continental Cas. Co.*, 362 F.App'x 627, 631-32 (9th Cir. 2009) (affirming award of $4.4 million in attorneys' fees based on expert actuary's estimated value of class benefits to be $24-33 million (*i.e.*, 13%-18%)).
[53] *Jenkins Decl.*, ¶¶15-16.
[54] *Id.* at ¶17.
[55] *See Chesher v. Neyer,* 2007 WL 4553908, at *2 (S.D. Ohio Dec. 19, 2007) ("The preferred method [for calculating attorneys' fees] in common fund cases has been to award a reasonable percentage of the fund, with the percentage awarded typically ranging from 20 to 50 percent of the common fund.").

have the discretion to determine the appropriate method for calculating attorneys' fees in light of the unique characteristics of class actions in general, and the particular circumstances of the actual cases pending before the Court using either the percentage or lodestar approach." *Swigart v. Fifth Third Bank*, 2014 WL 3447947, at *5 (S.D. Ohio July 11, 2014) (internal quotes omitted). The district court's award of attorneys' fees in common fund cases need only be "reasonable under the circumstances." *Bowling v. Pfizer*, 102 F.3d 777, 779 (6th Cir. 1996).

When assessing the reasonableness of a fee petition in the Sixth Circuit, district courts engage in a two-part analysis. *See In re Cardinal Health Inc. Sec. Litig.*, 528 F.Supp.2d 752, 760 (S.D. Ohio 2007). First, the district court determines the method for calculating the attorneys' fees: either the percentage of the fund approach or the lodestar approach. *Id.* (citing *In re DPL, Inc., Sec. Litig.*, 307 F.Supp.2d 947, 949–51 (S.D. Ohio 2004)). Second, the district court must analyze and weigh the six factors described by the Sixth Circuit in *Ramey v. Cincinnati Enquirer, Inc.*, 508 F.2d 1188 (6th Cir. 1974). *Id.*

This is a common fund/common benefit case.[56] For common fund/common benefit settlements in the Southern District of Ohio, "'the preferred method is to award a reasonable percentage of the fund, with reference to the lodestar and the resulting multiplier.'" *Swigart*, 2014 WL 3447947, at *5 (quoting *Connectivity Sys. Inc. v. Nat'l City Bank*, 2011 WL 292008, at *13 (S.D. Ohio Jan.26, 2011)).[57] This preference is consistent with decisions of the United

[56] The predominant feature of a common fund/common benefit case is that attorneys' fees will be paid from the class members' recovery. Indeed, the "principal rationale" underlying common fund awards is the class would be unjustly enriched if it did not compensate counsel for the benefits received. *See Petruzzi's Inc. v. Darling Delaware Co., Inc.*, 983 F.Supp. 595, 603-04 (M.D. Pa. 1997).

[57] "In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation" *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn. May 17, 2013). "The lodestar method has been rightly criticized for generating avoidable hours, discouraging early settlement, and burdening district judges with the tedious task of auditing time records." *In re Cardinal Health Inc. Sec. Litigations*, 528 F. Supp. 2d 752, 761 (S.D. Ohio 2007) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000)). In contrast, "the percentage approach encourages efficiency, judicial economy, and aligns the interests of the lawyers with the class...." *Id.* at 762.

States Supreme Court.[58] Indeed, "[a]t least two circuits have mandated, and seven circuits, including the Sixth, have explicitly approved the percentage approach in common fund cases." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d at 762 (compiling cases).

B. Class Counsel's Attorneys' Fee Request is Fair and Reasonable Under a Common Fund Analysis

Courts have "the historic power of equity" to permit a party recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund itself or from the other parties enjoying the benefit. *Alyeska Pipeline SVC Co. v. Wilderness Soc'y*, 421 U.S. 240, 257 (1975). "[A] litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This is known as the "common fund doctrine" and is premised upon the principal "'that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense.'" *Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1277 (S.D. Ohio 1996) (quoting *Boeing*, 444 U.S. at 478). Accordingly, the attorneys who created the common fund are entitled to a reasonable fee therefrom. *Id.* And the preferred method for awarding attorneys' fees in the Sixth Circuit when a common fund or benefit is created is to award a reasonable percentage of the fund. *Swigart*, 2014 WL 3447947, at *5.

Even if a settlement does not result in a formal fund (*i.e.*, an identified sum of money deposited into an account and made available to beneficiaries) – which is often the case with claims-based settlements and settlements involving future benefits – use of the percentage of the fund methodology is nevertheless appropriate as long as the court can reasonably determine the

[58] *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (noting that fees in common fund cases are based on a percentage of the benefit as opposed to fee-shifting cases where fees are intended to reflect the attorneys' time); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991) ("every Supreme Court case addressing the computation of a common fund fee award has determined such fees on a percentage of the fund basis").

value of the settlement. *See, e.g., In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333-34 (3d Cir. 1998) ("We agree with the district court that this [uncapped, claims-based future fund] is more appropriately viewed under the common fund paradigm .... Consequently, the district court was required to make a 'reasonable estimate' of the settlement's value in order to calculate attorney's fees using the percentage-of-recovery method."); *Enterprise Energy Corp. v. Columbia Gas Trans. Corp.*, 137 F.R.D. 240, 249-50 (S.D. Ohio 1991) (awarding percentage of $56 million estimated value of settlement, which included approximately $25 million in future benefits for class).[59]

It is not uncommon for courts to rely on the expert testimony of actuaries in determining the value of settlements for purposes of awarding attorneys' fees. *See, e.g., Shaffer v. Continental Cas. Co.*, 362 F.App'x 627, 631-32 (9th Cir. 2009) (affirming $4.4 million attorneys' fee award (13%-18%) based on expert actuary's estimated value of class benefits of $24-33 million); *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 223 (D. N.J. 2005) (awarding attorneys' fees as percentage of settlement's estimated value ("not less than $698.7 million") provided by actuary).[60]

Pursuant to the terms of the Settlement Agreement, Defendants and Current Employees Class agreed that Current Employees Class Counsel's fee should be based "upon the value of the

---

[59] *See also College Retirement Equities Fund, Corp. v. Rink*, 2015 WL 226112, at* 6 (Ky. Ct. App. Jan. 16, 2015) (affirming $7.5 million attorneys' fee award (25%) and agreeing with plaintiff that "courts *do* recognize the use of percentage of the fund methodology in awarding attorneys' fees in a class action *even if no formal fund is created*, so long as the court can reasonably determine the settlement value") (emphasis in original); *Physicians of Winter Haven LLC v. Steris Corp.*, 2012 WL 406966, at*3-6 (N.D. Ohio Feb. 6, 2012) (although full value of claims-based settlement is "not now precisely knowable," court awarded fees as percentage (10%) of estimated fund because it is "easiest approach and is consistent with the Manual for Complex Litigation"); *Shames v. Hertz Corp.*, 2012 WL 5392159, at *10 (S.D. Cal. Nov. 2, 2012).

[60] *See also Guschausky v. Am. Family Life Assur. Co. of Columbus*, 851 F. Supp. 2d 1252, 1258 (D. Mont. 2012) (awarding 25% of $6.6 million actuarial estimated value of settlement), *vacated on other grounds*, 2012 WL 4849688 (D. Mont. Oct. 11, 2012); *Frederick v. Range Resources-Appalachia, LLC*, 2011 WL 1045665, at *8 (W.D. Pa. Mar. 17, 2011) (accepting expert's estimated value of "future class savings" for gas purchasers and awarding 20.58% of the estimated total value of the settlement to class counsel, which was to paid in part from class members' future gas payments for 5 years from date of settlement); *O'Keefe v. Mercedes-Benz USA, LLC*, 214 F.R.D. 266, 310 (E.D. Pa. 2003) (awarding 15% of expert's estimated settlement value).

pension and healthcare benefits" conferred upon the Current Employees Class and that value is *at least* $40 million.[61] In negotiating the Settlement Agreement, the Parties relied exclusively on projected cost impact analyses performed by CRS' actuary, Cavanaugh MacDonald.[62] Those figures – which serve as the bedrock upon which the entire Settlement rests – demonstrate that the Settlement Agreement's (a) 3% COLA, (b) retirement eligibility changes, and (c) increased benefit multiplier provisions alone have a net present value to Current Employees Class members of at least **$48.1 million**.[63] This Actuarial Accrued Liability figure reflects the amount Defendants have agreed to pay for the benefit of the Current Employees Class and serves as the proper basis for awarding attorneys' fees. *See Wyatt v. United States*, 783 F.2d 45, 47 (6th Cir. 1986) (awarding attorneys' fees equivalent to 25% of present value of "***cost*** of [the structured] settlement, namely, what it took in money to produce the agreed settlement payments over the entire period involved") (emphasis in original). *See also Kifafi v. Hilton Hotels Retirement Plan*, 999 F.Supp.2d 88, 100 (D. D.C. 2013) (awarding attorneys' fees equivalent to 15% of increase in benefits each retirement plan member will experience as a result of suit based on common fund theory).

When $1.23 million is added for the "catch up" payments certain Class members will receive under the Settlement, the figure rises to **$49.33 million**. *See Ashley v. Reg'l Transp Dist.*

---

[61] Doc. 59-1 (PAGEID #525). As the Court is aware from having supervised the negotiations, this was a conservative figure agreed upon before final actuarial calculations were available. It should be noted that the Memorandum of Understanding executed by all Parties on December 30, 2014 also recognizes that Class Counsels' attorneys' fees would be based upon "the value of the benefits conferred on the class subject to approval by the Court..." *See* Doc. 59-7 (PAGEID #813).

[62] *See* Doc. 59-2. As a precondition to settlement, Plaintiffs required Defendants to provide supporting documentation regarding the projected costs and savings associated with the Settlement. This condition has been satisfied.

[63] *See* Doc. 59-2 (PAGEID #730). That alternative methodologies may exist for valuating a settlement is not grounds for abandoning the percentage-of-the-fund approach. *See In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at*6-7 (D. D.C. July 16, 2001) (awarding percentage of fund because "a primary reason for application of the lodestar is the difficulty of assigning a value to the common fund. In the instant action, Petitioners have proposed various formulae for ascertaining the amount of the common fund. Under each of these proposed methods, the value of the fund is readily calculable. The difficulty lies in choosing which formulation to use....").

& Amalgamated Transit Union Div. 1001 Pension Fund Trust, 2008 WL 384579, at *9 (D. Colo. Feb. 11, 2008) (fee request equivalent to 17% of combined value of "true up" payments to retirees and increase in pension payments to be made in the future reasonable under either percentage of the fund or lodestar approach).

Importantly, the $49.33 million does not capture other important benefits conferred on the Current Employees Class by the Settlement Agreement detailed above. These include subsidized retiree healthcare for the duration of the Settlement estimated to be worth tens of millions of dollars, the DROP program, early retirement options, guaranteed City funding of the CRS, and a solvent fund with a benefit structure that cannot be modified without Court approval.

These constitute valuable benefits to the Current Employees Class that the Court should consider when determining an appropriate attorneys' fee award. *See, e.g., Vizcaino v. Microsoft Corp*, 290 F.3d 1043, 1049 (9th Cir. 2002) ("incidental" and "non-monetary benefits" are relevant considerations when awarding attorneys' fees); *Enterprise Energy Corp.,* 137 F.R.D. at 246 (considering "substantial" value of "future benefits" to gas producers in awarding attorneys' fees even though such benefits are "necessarily to some extent speculative"); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013) (recognizing value of "structural changes" achieved by settlement in awarding attorneys' fees, even though the "dollar value … cannot be reasonably estimated"); *Lowther*, 2012 WL 6676131, at *2 (finding fee award of 12% of common fund reasonable, especially since counsel did not seek compensation for "additional benefit[s]" conferred which could be valued as high as $5.2 million).

Percentages usually awarded in common fund cases "typically range from 20 to 50 percent of the common fund created." *Enterprise Energy Corp.*, 137 F.R.D. at 249-50; *Shane v. Blue Cross Blue Shield of Mich.*, 2015 WL 1498888, at *15 (E.D. Mich. Mar. 31, 2015) (same).

See also 4 Newberg on Class Actions § 14:6 (4th ed.) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); Manual for Complex Litigation, Third § 24.121 (1995) (noting most district courts select a percentage in the range of 24% to 30% of the fund).

Here, placing even a *conservative* total value of $50 million on the Settlement, Current Employees Class Counsel's fee request represents 10% of the benefits conferred, and is on par with or "well below the percentage of recovery approved in similar cases." *Rankin v. Rots*, 2006 WL 1791377, at *2 (E.D. Mich. June 27, 2006)(awarding 10% of $11.75 million recovery in attorneys' fees). *See also Physicians of Winter Haven LLC,* 2012 WL 406966, at *9 (10% award "demonstrably … 'well within' the range of acceptable fee awards"); *In re Delphi Corp. Sec., Derivative & "ERISA" Litig.*, 248 FRD 483, 503 (E.D. Mich. 2008) ("18% and 20% fees requests appear more than reasonable" considering that "fees of 20%-30% are generally awarded in this Circuit"). Courts in this Circuit have found fee requests seeking much higher percentages to be reasonable. *See, e.g., Lowther*, 2012 WL 6676131, at *2-3 (surveying Sixth Circuit fee awards ranging from 10% to 34% and finding requested fee of 12% to be "well within the accepted range").[64]

Accordingly, Current Employees Class Counsel's $5 million fee request is fair and reasonable and should be approved. *See Kifafi*, 999 F.Supp.2d at 100 (awarding attorneys' fees equivalent to 15% of increased benefits retirement plan members will experience); *Ashley*, 2008 WL 384579, at *9 (awarding attorneys' fees equal to 17% of combined value of increased future pension payments plus "true up" payments for current retirees); *Desantis v. Snap-On Tools Co.,*

[64] *See also Swigart*, 2014 WL 3447947, at *7 (awarding fees equivalent to 33% of settlement fund); *Johnson v. Midwest Logistics Sys., Ltd.*, 2013 WL 2295880, at *6 (S.D. Ohio May 24, 2013) (awarding fees and expenses equivalent to 33% of settlement fund); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *3 (awarding 33% of common fund as attorneys' fees); *Shane.*, 2015 WL 1498888, at *16 (awarding 33% of common fund as attorneys' fees).

LLC, 2006 WL 3068584, at*9 (D. N.J. Oct. 27, 2006) (finding class counsel's request for 10.4% of $125 million estimated settlement value – comprised of approximately $61 million worth of debt forgiveness for class members and $60 million in "modifications and enhancements" to business practices – reasonable and "well below the norm").

C. *Ramey* Factors Support Current Employees Class Counsel's Request

In reviewing the reasonableness of a requested award, the Sixth Circuit instructs district courts to consider six factors, known as the *Ramey* factors:

1) the value of the benefit rendered to the class;
2) society's stake in rewarding attorneys who produce such benefits in order to maintain an incentive to others;
3) whether the services were undertaken on a contingent fee basis;
4) the value of the services on an hourly basis [*i.e.*, the lodestar cross-check];
5) the complexity of the litigation; and
6) the professional skill and standing of counsel involved on both sides.

Swigart, 2014 WL 3447947, at *6 (citing *Ramey*, 508 F.2d at 1194-97). Each factor supports Current Employees Class Counsel's fee request in this case.

1. The Value of the Benefits is Substantial

The first *Ramey* factor requires the Court to evaluate the benefit of the settlement to the class and is often cited as the most important factor. *Bowling*, 922 F.Supp. at 1280. As previously discussed, Defendants and Current Employees Class Counsel agree that these fees "shall be based upon the value of the pension and healthcare benefits conferred upon the Current Employees Class as determined by the Court" and that such value is "at least $40 million."[65] Moreover, according to the CRS's own actuary, the Settlement Agreement's 3% COLA,

[65] Doc. 59-1 (PAGEID #525).

retirement eligibility changes, and increased benefit multiplier provisions alone create benefits to the Current Employees Class valued at $48.1 million. The value of the Lump Sum Payments to be paid to those Class members who retired after July 1, 2011 and prior to January 1, 2016 is estimated to be $1.23 million. When combined, these total $49.33 million and do not even include the multitude of other important benefits for which it is more difficult to attach a precise dollar figure. *See supra* at 15-19.

Viewing the entire body of work and results obtained in this litigation which created a common benefit to the Class in excess of $50 million, Current Employees Class Counsel's $5 million fee request is reasonable.

2. The Fee Requested Provides Adequate Incentive to Undertake this Representation for the Benefit of Others.

As district courts in this Circuit have previously recognized, "there is a significant public interest in rewarding attorneys who represent employees and retirees ... in order to protect their retirement funds." *Bailey v. AK Steel Corp.*, 2008 WL 553764, at *2 (S.D. Ohio Feb. 28, 2008).[66] Rewarding attorneys in employee pension benefit cases is important because absent class actions, individual class members would lack the resources to litigate the case and individual recoveries would be too small to justify the burden and expense of litigation. *See Wess v. Storey*, 2011 WL 1463609, at *11 (S.D. Ohio April 14, 2011) ("Absent adequate compensation, counsel will not be willing to undertake the risk of contingent fee class action litigation."); Richard Posner, Economic Analysis of Law, 21.9, at 534-35 (3d ed. 1986).

Because "[p]rotecting retirement funds of workers is of genuine public interest and ... supports a fully compensatory fee award," *Rankin*, 2006 WL 1791377, at *2, this factor weighs in favor of granting Class Counsel's request.

[66] *See also Lowther*, 2012 WL 6676131, at *3 ("Private lawsuits ... are essential to effectuate the federal pension laws' remedial purpose of protecting retirees").

3. Class Counsel Undertook this Representation on a Contingent Basis

The third *Ramey* factor "stands as a proxy for the risk that attorneys will not recover compensation for the work they put into a case." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d at 765 (citing *Bowling*, 922 F.Supp. at 1282). Some courts consider the risk of non-recovery to be the most important factor in the fee determination. *Id.* (citing cases).

Here, Current Employees Class Counsel took this case almost entirely on a contingency basis.[67] Current Employees Class Counsel initially received a small, start-up fund equivalent to approximately *2.5%* of counsel's ***current*** lodestar (or 1.3% of counsels' total lodestar when anticipated future work is included)[68] to investigate potential claims and bring suit, but that fund has long since been exhausted. Current Employees Class Counsel has received no compensation for the other 97%+ percent of the work performed thus far, let alone for work counsel would otherwise have had to perform had a settlement not be reached, and the work counsel will have to perform in the future pursuant to the terms of the Settlement Agreement and the Consent Decree. Had there been no recovery, Class Counsel would have been paid nothing for the thousands of hours they spent on this litigation. In other words, Current Employees Class Counsel accepted the risk of investing substantial time and expenses without any assurance of being compensated. Additionally, should the Court approve Current Employees Class Counsel's fee request, Current Employees Class Counsel will refund the start-up funds.[69] *See In re Unisys*

---

[67] *Declaration of Jeffrey S. Goldenberg In Support of Class Counsel's Motion For Approval Of Attorneys' Fees And Expenses* ("*Goldenberg Decl.*") ¶6, attached hereto as Exhibit 3; *Jenkins Decl.*, ¶6; *Declaration of Marc D. Mezibov, Esq. In Support of Class Counsel's Motion For Approval Of Attorneys' Fees And Expenses* ("*Mezibov Decl.*"), ¶6, attached hereto as Exhibit 4; *Declaration of Robert D. Klausner In Support Of Class Counsel's Motion For Approval Of Attorneys' Fees and Expenses* ("*Klausner Decl.*"), ¶6, attached hereto as Exhibit 5.
[68] *Goldenberg Decl.*, ¶6. Notably, the start-up funds were subject to deeply discounted hourly rates and a low monthly cap regardless of the amount of time actually spent on the case. *See also Bailey*, 2008 WL 553764, at *2 (fact that "class counsel charged hourly fees throughout this case at the deeply discounted rate of $180 per hour for all attorney time, thereby risking substantial underpayment if the case were unsuccessful," "heavily favors" class counsel's requested $3 million award);
[69] *Goldenberg Decl.*, ¶6; *Jenkins Decl.*, ¶6.

Corp. Retiree Med. Benefits ERISA Litig., 886 F. Supp. 445, 484 n.79 (E.D. Pa. 1995) ("[B]ecause the size of the [$60,750 advanced by one group of retirees to counsel] is small and counsel have represented that this money will be refunded once fees are awarded, this fact will not affect an overall contingency enhancement for class counsel."); *Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 640 F. Supp. 697, 702 n.5 (S.D. Ohio 1986) (recognizing contingent nature of suit supported fee request where counsel received $65,000 at outset of suit, proceeded on a contingent basis, and indicated that the $65,000 would be refunded once court awards attorneys' fees). Therefore, this factor heavily supports Class Counsel's fee request.[70]

4. The Value of the Services on an Hourly Basis Supports the Fee Requested

Pursuant to the fourth *Ramey* factor, the Court must examine the value of the attorney's services on an hourly basis. This analysis is largely duplicative of the lodestar cross-check discussed in greater detail below in Section D. However, for the convenience of the Court, Current Employees Class Counsel summarizes its lodestar analysis as follows.

Current Employees Class Counsel has spent 2,970 hours through July 27, 2015 prosecuting this litigation.[71] Current Employees Class Counsel's cumulative lodestar for these hours totals $1,376,676.[72] Counsel anticipates spending an additional 250 hours on this litigation between the filing of this motion and the September 24, 2015 Fairness Hearing.[73] In addition, Class Counsel will be required to spend considerable amounts of additional time over the next ***30 years*** performing the various important functions required by the Settlement and the Consent Decree.[74] *See, e.g.*, Proposed Consent Decree [Doc. 59-3] at ¶11 (requiring counsel to regularly

[70] The utilization of the common fund doctrine as a basis for the payment of attorneys' fees and expenses is employed in addition to, and independent of, the contingent fee contract between lawyer and client.
[71] *Goldenberg Decl.*, ¶15.
[72] *Id.*
[73] *Goldenberg Decl.*, ¶12; *Jenkins Decl.*, ¶12; *Mezibov Decl.*, ¶12; *Klausner Decl.*, ¶12.
[74] *Id.* at ¶13; *Id.* at ¶13; *Id.* at ¶--; *Id.* at ¶13.

conduct Compliance Reviews); at ¶12 (requiring counsel to prepare and file biannual status reports). Current Employees Class Counsel conservatively estimate the additional time they will need to spend overseeing and implementing this Settlement over the next 30 years is approximately 2,200 hours (or 73 hours per year, or about 6 hours per month).[75] When the cumulative estimated lodestar for this anticipated future time ($1,248,750) is added to Current Employees Class Counsel's current lodestar ($1,376,676.50), the resulting figure is $2,625,426.[76] This figure, compared to Current Employees Class Counsel's requested fee of $5 million, yields a multiplier of 1.90, which is lower than other risk multipliers approved in complex class actions in this Circuit. *See, e.g., Swigart*, 2014 WL 3447947, at *6 (2.57 multiplier); *Lowther*, 2012 WL 6676131, at *5-6 (3.06 multiplier).

5. The Complexity of the Litigation Supports the Requested Fee

The fifth *Ramey* factor requires the Court to consider the complexity of the case in awarding attorneys' fees. This case involved complex legal issues regarding the vesting of employee and retiree pension and medical benefits, and complex factual questions regarding the CRS's current and future financial status (including long-term actuarial projections), among other legal and factual issues. Current Employees Class Counsel's prosecution of this case was further complicated by intervention of the Retirees Class, whose interests often diverged from those of the Current Employees Class. Throughout this litigation, Defendants vehemently denied Plaintiffs' claims in their entirety and had potentially strong legal and factual defenses. Accordingly, a zero recovery for the Current Employee Class was certainly possible.[77] Current Employees Class Counsel accepted these risks, diligently prosecuted the case, and negotiated a meaningful and substantial recovery for the Current Employees Class. Accordingly, this factor

[75] *Id.* at ¶14; *Id.* at ¶14; *Id.* at ¶--; *Id.* at ¶14.
[76] *Goldenberg Decl.*, ¶15.
[77] *Goldenberg Decl.*, ¶5; *Jenkins Decl.*, ¶5; *Mezibov Decl.*, ¶5; *Klausner Decl.*, ¶5.

also supports Current Employees Class Counsel's fee request.

6. The Professional Skill of Counsel on Both Sides Supports the Requested Fee

The last *Ramey* factor assesses the professional skill of counsel. Here, Current Employees Class Counsel has substantial experience representing plaintiffs in employment and class action litigation, which was central to the success achieved through settlement negotiations in this litigation. For instance, Robert D. Klausner has spent most of his 38 year legal career specializing exclusively in the representation of retirement and benefit systems and related labor and employment matters.[78] He has authored the only general treatise on the law relating to public employee retirement systems, and frequently lectures on state and local retirement law issues at universities and pension associations.[79] Marc D. Mezibov has over 40 years of experience in employment and class action litigation.[80] And both Chris Jenkins and Jeffrey Goldenberg have over 20 years of experience serving as lead or co-lead counsel in numerous class actions, including those involving labor and employment law.[81]

Current Employees Class Counsel also expended significant resources of both time and money to resolve this matter. Only after more than a year of negotiations and multiple mediation sessions with the Court was the Settlement achieved.

From the beginning, Current Employees Class Counsel aggressively prosecuted Plaintiffs' claims, displaying skill, tenacity, and professionalism. Additionally, it bears noting that the Retirees Class and Defendants were also represented by highly regarded and talented counsel. Therefore, the record before the Court establishes Class Counsel's professionalism and skill and supports the requested fee.

---

[78] Doc. 60-4 (PAGEID #833, 836).
[79] Doc. 60-3 (PAGEID #830-36).
[80] Doc. 60-8 (PAGEID #841-44).
[81] Doc. 60-5 (PAGEID #837-40); Doc. 60-2 (PAGEID #820-29).

D. Class Counsel's Attorneys' Fee Request
is Fair and Reasonable Under a Lodestar Cross-Check

Although performing a cross-check on the percentage method using class counsel's lodestar is ***optional***, *Swigart*, 2014 WL 3447947 at *6, courts sometimes nevertheless perform a lodestar cross-check to ensure counsel does not receive a "windfall." *In re Cardinal Health Inc. Sec. Litig.*, 528 F. Supp. 2d at 764. The purpose of the exercise is "not to supplant the court's detailed inquiry into the attorney's skill and efficiency in recovering the settlement" using the percentage of the fund and *Ramey* factors, but instead merely to ensure that the fee award is still "roughly aligned with the amount of work the attorneys contributed." *Id.*

In performing the lodestar cross-check, the Court begins with the number of hours reasonably expended on the litigation multiplied by reasonable hourly rates. However, "[i]n contrast to employing the lodestar method in full, when using a lodestar cross-check, 'the hours documented by counsel need not be exhaustively scrutinized by the district court.'" *In re Cardinal Health Inc. Sec. Litig.,* 528 F. Supp. 2d. at 767 (citing *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005)). This is because "the lodestar cross-check is 'not a full-blown lodestar inquiry' and a court 'should be satisfied with a summary of the hours expended by all counsel at various stages with less detailed breakdown than would be required in a lodestar jurisdiction.'" *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 n.16 (3d Cir. 2005) (quoting Report of the Third Circuit Task Force, Selection of Class Counsel, 208 F.R.D. 340, 423 (2002)).[82]

[82] *Accord* The Manual For Complex Litigation (Fourth) § 14.122 (2004) ("the lodestar is at least useful as a cross-check . . . using affidavits and other information provided by the fee applicant").

Here, through July 27, 2015, Current Employees Class Counsel has spent approximately 2,970 hours prosecuting this litigation, and the corresponding lodestar total is $1,376,676.[83] Based on his review of the case, experienced class action litigator Bill Markovits attests that the "time spent, the nature of the work performed, and the costs expended by Current Employees Class Counsel are reasonable and appropriate...."[84] Moreover, Mr. Markovits agrees that the hourly rates that form the basis of these lodestar calculations are reasonable and reflect the expertise and experience of Current Employees Class Counsel.[85] For example, Mr. Jenkins and Mr. Goldenberg – whose hard work encompasses a substantial percentage of Current Employees Class Counsel's lodestar – have each been practicing over 20 years and billed at a reasonable $495 per hour in this case. *See Lowther*, 2012 WL 6676131, at *5 (finding $500 rate for experienced ERISA class action attorneys with 20+ years of experience reasonable). Mr. Mezibov has more than 35 years of experience successfully litigating matters at all levels of state and federal courts, including the United States and Ohio Supreme Courts,[86] which more than justifies his $600 per hour billing rate.[87]

Mr. Klausner's $700 hourly rate is commensurate with his status as one of the nation's foremost experts in the field of public employee retirement systems,[88] an area of law for which there is no local Cincinnati market. *See Louisville Black Police Officers Org. v. City of Louisville*, 700 F.2d 268, 278 (6th Cir. 1983) ("District courts are free to look to a national

---

[83] *Goldenberg Decl.*, ¶15. Importantly, outside counsel representing the Defendants have spent a similar number of hours on this litigation when compared to Current Employees Class Counsel's total hours. *Goldenberg Decl.*, ¶16.
[84] *Declaration of Bill Markovits* ("*Markovits Decl.*"), ¶11, attached hereto as Ex. 6.
[85] *Id.* at ¶¶12-15.
[86] *See City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) (successfully arguing to Supreme Court to strike down city ordinance banning commercial handbill newsracks); *State ex rel. Miami Student v. Miami University*, 79 Ohio St.3d 168 (1997) (successfully arguing to Ohio Supreme Court to compel release of student disciplinary records to track campus crime).
[87] *Markovits Decl.*, ¶12.
[88] Mr. Klausner was approved at an hourly rate of $650 two years ago in the *In re Citigroup Bond Litigation*, Case No. 08-cv-9522 (S.D N.Y. 2013). *See Klausner Decl.*, ¶12.

market, an area of specialization market or any other market they believe appropriate to fairly compensate particular attorneys in individual cases.").[89]

The billing rates of Class Counsel's other attorneys are similarly commensurate with their experience.[90] Courts within the Sixth Circuit have approved rates consistent with those sought by Class Counsel here.[91] And, these rates are consistent with the Laffey Matrix[92] and are within the range paid in this region for attorneys of comparable expertise and experience.

Any lingering doubt as to the reasonableness of Current Employees Class Counsel's hourly rates is extinguished by the fact that Retirees Class Counsel was engaged on an hourly basis using similar rates for performing substantially similar work for their Retiree clients. *See* Motion of Retiree Plaintiffs and Retiree Class For Award of Attorneys' Fees (Doc. 65), PAGEID #863 (reflecting "standard hourly rates" charged to Retirees ranging from $645 to $300, with the majority of work performed at the rate of $500 per hour). *See also Gallo v. Moen, Inc.*, 2014 WL 4472630, at *4 (N.D. Ohio Sept. 11, 2014) (rates charged by opposing counsel "quite relevant" to reasonableness of plaintiff's rates).

---

[89] *See also Harmon v. McGinnis, Inc.*, 263 F. App'x 465, 468 (6th Cir. 2008) ("[W]hen fees are sought by an out-of-town specialist, courts must determine (1) whether hiring the out-of-town specialist was reasonable in the first instance, and (2) whether the rates sought by the out-of-town specialist are reasonable for an attorney of his or her degree of skill, experience, and reputation."); *Markovits Decl.* at ¶13.

[90] *See Markovits Decl.* at ¶14. For example, attorney Todd Naylor has 18 years of experience, Mr. Sherwood has 13 years of experience, Mr. Wijesooriya has 10 years of experience, and Ms. Butler has 8 years of experience.

[91] *See, e.g., Weitz v. Sulzer Orthopedics, Inc.*, 398 F.3d 778 (6th Cir. 2005) (affirming district court's adoption of the following maximum hourly rates based upon experience: 1-5 years, $200/hour; 6-9 years, $300/hour; 10-14 years, $400/hour; and 15 years and over, $500/hour); *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 2010 WL 1751995, at *4 (N.D. Ohio Apr. 30, 2010) (approving $250 for an associate, $300 for a senior associate, $350 for a junior partner, $400 for a senior partner, and $450 for lead counsel); *In re Oral Sodium Phosphate Solution-Based Products Liab. Action*, 2010 WL 5058454, at *4 (N.D. Ohio Dec. 6, 2010); (approving rates of "$500 for partner-level attorneys; $300 for associate attorneys; and $150 for paralegals").

[92] *See* http://www.justice.gov/sites/default/files/usao-dc/legacy/2014/07/14/Laffey%20Matrix_2014-2015.pdf ($520 for attorneys with 20+ years of experience, $460 for those with 11-19 years of experience, $370 for those with 8-10 years of experience); *Gallo v. Moen, Inc.*, 2014 WL 4472630, at *4 (N.D. Ohio Sept. 11, 2014) ("And although the *Laffey* matrix might suggest a slightly lower rate, the Court concludes that the specialized nature of the[ERISA class action] litigation justifies the higher hourly rate."); *Lowther*, 2012 WL 6676131, at *5 (finding $500 rate reasonable, noting that the rates would be higher under the *Laffey* Matrix).

Thus, Class Counsel reasonably estimates its current lodestar to be approximately $1,376,676. However, courts typically adjust fees upward using a multiplier "within a normal range of between ***two and five*** to account for factors such as the complexity of the case, the risks involved, the size of the recovery, counsel's continuing obligations to the class, and the range of multipliers awarded in similar cases." *Bailey*, 2008 WL 553764, at *2 (emphasis added). *See also* Newberg on Class Action § 14.6 (4th ed. 2009) ("Multiples ranging from one to four frequently are awarded in common fund cases when the lodestar is applied"). As discussed above, the particular legal issues involved in this case created the very real risk that counsel would not be compensated for their work. *See Connectivity Sys.*, 2011 WL 292008, at *14 ("[P]erhaps the foremost of these factors [justifying a multiplier] is ... the fact that, despite the most vigorous and competent efforts, success is never guaranteed.") (internal quotes omitted).

When compared to the requested fee of $5 million, Current Employees Class Counsel's current lodestar ($1,376,676) yields a multiplier of 3.6, which is fully consistent with other risk multipliers approved by courts in class actions. *See, e. g., In re Cardinal Health, Inc. Sec. Litig.*, 528 F.Supp.2d at 768 (5.9 multiplier is "above average" but nevertheless reasonable); *Lowther*, 2012 WL 6676131, at *5 (surveying out-of-circuit decisions applying multipliers from 4.3 to 8.75 before finding 3.06 "very acceptable"); *College Retirement Equities Fund*, 2015 WL 226112, at *7 (affirming trial court's fee award of $7.5 million, reflecting multiplier of 4.45); *Manners v. American General Life Ins. Co.*, 1999 WL 33581944, at *31 (M.D. Tenn. Aug 11, 1999) (3.8 multiplier). Thus, based solely on the work already performed by Current Employees Class Counsel, the lodestar cross-check is satisfied. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (affirming fee award of 28% of common fund where cross-check resulted in multiplier of 3.65).

However, Current Employees Class Counsel will necessarily spend substantial additional time representing the Class in the future. When this future work is taken into consideration, the resulting multiplier drops further. For example, Class Counsel reasonably anticipates spending an additional 250 hours preparing for the September 24, 2015 Fairness Hearing.[93] Moreover, the Settlement Agreement and related Consent Decree place significant ongoing responsibilities on Current Employees Class Counsel – including mandatory compliance reviews and periodic reporting requirements – for ***thirty years*** from the effective date, for which Current Employees Class Counsel will not be compensated. *See, e.g.*, Proposed Consent Decree (Doc. 59-3) at ¶11 (requiring counsel to regularly conduct Compliance Reviews); at ¶12 (requiring counsel to prepare and file biannual status reports "track[ing] the Parties' attainment of the requirements and goals contained in the Settlement Agreement, identif[ying] any areas of alleged non-compliance, instruct[ing] the Court as to how the Parties intend to remedy any areas of alleged non-compliance and, if necessary, request[ing] that the Court issue orders on compliance); Settlement Agreement (Doc. 59-1) at ¶21 (requiring counsel to negotiate details of DROP program and submit disputes to the Court); ¶24 (requiring counsel to negotiate point system for employees hired after Jan. 9, 1997); ¶26 (requiring City to present counsel with proposed funding policy for 115 Trust no later than 30 days before Fairness Hearing); ¶30 (requiring counsel to negotiate Pension Board reforms and submit disputes to the Court). *See also Bailey*, 2008 WL 553764, at *3 (acknowledging that anticipated future work of counsel justifies a larger multiplier).

[93] *Goldenberg Decl.*, ¶12; *Jenkins Decl.*, ¶12; *Mezibov Decl.*, ¶12; *Klausner Decl.*, ¶12.

Current Employees Class Counsel ***conservatively***[94] estimates the additional time needed to oversee and implement this Settlement over the next 30 years to be approximately 2,200 hours (or 73 hours per year, or 6 hours per month). When the cumulative estimated lodestar for this anticipated future time ($1,248,750) is added to Current Employees Class Counsel's current lodestar ($1,376,676), the resulting figure is $2,625,426. This figure, compared to Current Employees Class Counsel's requested fee of $5 million, yields a multiplier of ***1.90***, which is significantly lower than other risk multipliers approved in complex class actions in this Circuit. *See, e.g., Swigart*, 2014 WL 3447947, at *6 (2.57 multiplier is "consistent with other risk multipliers approved in this Circuit"); *Enterprise Energy Corp.*, 137 F.R.D. at 250 ($5 million fee request reflecting multiplier of 2.4-2.6 is "reasonable and conservative"); *Connectivity Sys. Inc.*, 2011 WL 292008, at *13 (2.39 multiplier reasonable); *Lowther*, 2012 WL 6676131, at *5-6 (3.06 multiplier); *Bailey*, 2008 WL 553764, at *3 (multiplier of 3.04 is "fully warranted given the complexity of the case, the attendant risks, the size of the settlement recovered, and class counsels' continuing obligations to the class, and it is well within the range of multipliers awarded in similar litigation"); *In re Prandin Direct Purchaser Antitrust Litig.*, 2015 WL 1396473, at *4 (E.D. Mich. Jan. 20, 2015) (lodestar cross-check multiplier of 3.01 reasonable).[95]

Accordingly, Current Employees Class Counsel's fee request is reasonable based on a percentage of the common fund with lodestar cross-check.

---

[94] *See Frederick*, 2011 WL 1045665, at *13 (recognizing that "vagaries" attendant to estimating future hours counsel will need to devote in future "undermine" the "utility somewhat" of the lodestar/multiplier cross-check, but nevertheless finding counsel's request for 20.58% of the estimated total value of the settlement to be reasonable); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 307 (3d Cir. 2005) (holding that "the lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

[95] *Cf. City of Plantation Police Officers' Employees' Ret. Sys. v. Jeffries*, 2014 WL 7404000, at *19 (S.D. Ohio Dec. 30, 2014) (awarding fees using lodestar analysis and finding multiplier of 3 to be appropriate); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052–54 (9th Cir. 2002) (listing 24 percentage-based fee awards and multipliers for each, in which the average multiplier is 3.2); *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, 268 F. Supp. 2d 907, 938 n.45 (N.D. Ohio 2003) (citing "highly instructive" study analyzing attorney fee awards in 1,120 class actions that showed effective multipliers averaged 3.89 across all 1,120 cases, and 4.50 across the 64 cases where the recovery exceeded $100 million).

IV. EXPENSES

"Under the common fund doctrine, class counsel is entitled to reimbursement of all reasonable out-of-pocket expenses and costs in the prosecution of claims, and in obtaining settlement, including but not limited to expenses incurred in connection with document productions, consulting with and deposing experts, travel and other litigation-related expenses." *In re: Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 534-535 (E.D. Mich. 2003). "[T]he categories of expenses for which Plaintiffs' counsel seek reimbursement are the type routinely charged to hourly fee-paying clients and thus should be reimbursed out of the settlement fund ... [including] the cost of experts and consultants ... computerized research; travel and lodging expenses; photocopying cost; filing and witness fees; postage and overnight delivery; and the cost of court reporters and depositions." *New Eng. Health Care Emples. Pension Fund v. Fruit of the Loom, Inc.*, 234 F.R.D. 627, 635 (W.D. Ky. 2006) (approving expenses submitted pursuant to these categories).

Class Counsel has incurred, to date, $26,723 in costs and expenses.[96] As set forth in their Declarations, each expense for which Current Employees Class Counsel seeks reimbursement was necessary and directly related to this litigation.[97] Accordingly, Class Counsel is entitled to this expense reimbursement. Further, an independent actuarial consultant, The Segal Company, has been retained in preparation for the Fairness Hearing to confirm the assumptions and projections of the CRS actuary on which the Settlement is premised. Current Employees Class Counsel and Defendants are actively working with The Segal Company to facilitate its analysis. While responsibility for The Segal Company's fee has not yet been formally agreed upon, Current Employees Class Counsel are prepared to bear this expense (expected to be up to

[96] *Goldenberg Decl.*, ¶15.
[97] *Goldenberg Decl.*, ¶11; *Jenkins Decl.*, ¶11; *Mezibov Decl.*, ¶9; *Klausner Decl.*, ¶11.

$100,000) and respectfully request reimbursement if they indeed incur this expense.

V. CONCLUSION

Based upon the foregoing, Class Counsel respectfully requests this Court approve the payment of the following amounts from the CRS: (1) $5 million as fair and reasonable for attorneys' fees; (2) $26,723 as reimbursement for costs incurred to date; and (3) reimbursement for reasonable future expenses incurred through the September 24, 2015 Fairness Hearing.[98]

Dated: July 30, 2015.

Respectfully submitted,

/s/Jeffrey S. Goldenberg
Jeffrey S. Goldenberg, Esq. (0063771)
Todd B. Naylor, Esq. (0068388)
GOLDENBERG SCHNEIDER, L.P.A.
One West Fourth Street, 18th Floor
Cincinnati, Ohio 45202
Telephone: (513) 345-8291
Facsimile: (513) 345-8294
jgoldenberg@gs-legl.com
tnaylor@gs-legal.com

/s/ Christian A. Jenkins
Christian A. Jenkins (0070674)
Minnillo & Jenkins Co., LPA
2712 Observatory Avenue
Cincinnati, Ohio 45208
Tel: (513) 723-1600
Fax: (513) 723-1620
cjenkins@minnillojenkins.com
niro@minnillojenkins.com

/s/ Robert D. Klausner
Robert D. Klausner (244082)
Klausner, Kaufman, Jensen & Levinson
10059 NW 1st Court
Plantation, Florida 33324
Tel: (954) 916-1202
Fax: (954) 916-1232

[98] Current Employees Class Counsel will present an itemized list of additional expenses to the Court prior to the Fairness Hearing.

bob@robertdklausner.com

/s/ Marc Mezibov
Marc Mezibov (0019316)
The Law Office of Marc Mezibov, Inc.
401 East Court Street, Suite 600
Cincinnati, Ohio 45202
Tel: (513) 621-8800
Fax: (513) 621-8833
mmezibove@mezibov.com

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system to send notification of such filing to all counsel of record.

/s/Jeffrey S. Goldenberg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*, Plaintiffs, vs. CITY OF CINCINNATI, *et al*, Defendants. (City of Cincinnati Pension Litigation)	:	Case Nos.: 1:11-cv-445 and 1:12-cv-329 Judge Michael R. Barrett DECLARATION OF **[Edward J. Koebel]**

I, **[Edward J. Koebel]**, hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746, as follows:

1. I am a Principal and Consulting Actuary with the firm of Cavanaugh Macdonald Consulting, LLC. A copy of my curriculum vitae is attached as Exhibit A. I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein.

2. My firm has been retained by the Board of Trustees of the Cincinnati Retirement System ("CRS") to advise, provide analysis and prepare projections throughout the negotiations in this litigation, including the report titled "Projected Cost Impact of Items Included in the Settlement Agreement" attached as Exhibit B (the "Report"). The Report was based on the terms of the Collaborative Settlement Agreement as of May 7, 2015, signed by the City of Cincinnati, CRS, and the Plaintiffs and provided to us by CRS.

EXHIBIT
1

3. The Report was prepared in accordance with accepted industry standards established by Actuarial Standards Board and set forth in the Actuarial Standards of Practice ("ASOPs") regarding pensions. These standards are available for review at http://host.actuarialstandardsboard.org/standards-of-practice/#filter=.Pension. The Report was prepared utilizing actual population and demographic data of the CRS provided by staff of CRS and reasonable assumptions consistent with the ASOPs. The assumptions were adopted by the Board of Trustees in 2011. I participated directly in the analysis by which the results set forth in the Report were derived. The Report has been approved by my firm through its established peer review process.

4. As reflected in the Report, the net present value of certain changes to pension benefits provided by the proposed settlement for active employees of the City of Cincinnati that is associated with prior service is $48.1 million. This is the amount by which the CRS's actuarial accrued liability as of the calculation date of December 31, 2013 will increase due to the changes in these pension benefits for active employees if the proposed settlement is approved and goes into effect. The changes in pension benefits for active employees analyzed for the Report which increase the CRS's actuarial accrued liability are: (a) the cost of living adjustment ("COLA") changes, (b) the retirement eligibility changes, and (c) the pension calculation changes.

5. The $48.1 million amount also includes a downward adjustment to reflect the three year COLA suspension provided for in the proposed settlement which will decrease the CRS's actuarial accrued liability as of the calculation date of December 31, 2013. However, the $48.1 million amount does not account for two potential costs to the CRS associated with payments to be made to certain active employees under the sections 16 (Annuity Adjustments)

and 18 (Group C Settlement Payment and Retirement Healthcare Benefits) of the settlement agreement. Nor does the $48.1 million figure reflect any of the costs associated with the health care guarantees for current employees when they retire in the future as set forth in the settlement agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 2015.

[Edward J. Koebel

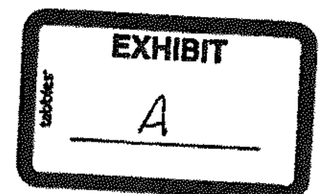
Edward Koebel (Ed) is a Principal and Consulting Actuary with Cavanaugh Macdonald Consulting in Kennesaw, Georgia. He received a bachelor's degree in Actuarial Science from Utica College of Syracuse University. He is an enrolled Actuary under ERISA, a Fellow of the Conference of Consulting Actuaries and a Member of the American Academy of Actuaries.

Ed has a broad range of experience in annual valuation production, proposed legislation pricing, compliance testing, actuarial audits, experience studies, retiree medical valuations and the design, administration and funding of public retirement plans. He has also testified numerous times in front of legislative bodies regarding pension legislation.

Ed has consulting experience providing services to many public clients since 1994, including Colorado PERA, Connecticut SERS, Kentucky Teachers, Mississippi PERS, District of Columbia Retirement Board (DCRB), City of Cincinnati (OH), City of Chattanooga and Shelby County (TN).

Ed's most recent presentations include the following:

- Speaker at the Connecticut CPA Society Conference, "Implementing GASB 68", May 2015
- Speaker at the Georgia Association of Public Pension Trustees Workshop, "Getting to Know your Actuary", September 2014
- Speaker at the National Association of Public Pension Attorneys, "New GASB Standards", June 2012
- Speaker at the Southern Conference for Teachers Retirement, "So You Really Think you'll be Fully Funded in 30 Years?", May 2011
- Speaker at the 1st Annual Georgia Association of Public Pension Trustees, "Understanding an Actuarial Valuation Report", September 2010.



Projected Cost Impact of Items Included in the Settlement Agreement

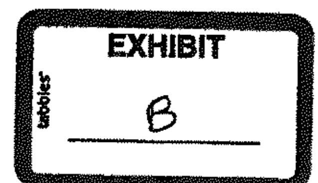
The City of Cincinnati and various plaintiff groups representing certain active and retired members of the Cincinnati Retirement System (CRS) have agreed on a list of items that would affect the provision of retiree health care and pension benefits. These items are listed below along with the effect of each item on the actuarial accrued liabilities of the Retiree Health Care and Pension Trusts. The impact on the funding ratios are also shown and reflect projected results as of the 12/31/2013 valuation.

Present Value of Future Benefits (PVFB): Value on a given date of the future payments expected to be paid to current retirees and current active members who are expected to become eligible for future retiree health care or pension benefits discounted to reflect the expected effects of the time value of money and probabilities of payment.

Actuarial Accrued Liability (AAL): The portion of the present value of future benefits that is expected to be paid in the future for current retirees, and a portion for current active members that is attributable to past service. The AAL does not include liabilities for projected future accruals.

Actuarial Value of Assets (AVA): The actuarial value of assets recognizes a portion of the difference between the market value of assets and the expected market value of assets, based on the assumed valuation rate of return. The amount recognized each year is 20% of the difference between market value and expected market value. Under this method, all investment gains and losses associated with a given year are recognized after five years. In addition, the actuarial value of assets cannot be less than 80% or more than 120% of the market value of assets.

Funding Ratio: The funding ratio is simply the AVA divided by either the AAL or the PVFB. The difference between the AAL and PVFB is the portion of liabilities allocated to the future service of active members funded via future normal cost contributions.



Retiree Health Care ($ in millions)			
	Increase/(Decrease) in AAL		
	Actives	**Retirees**	**Total**
EGWP	($19.5)	($58.3)	($77.8)
MERP	($3.5)	($2.9)	($6.4)
New Eligibility	($15.2)	$0	($15.2)
Medical Plan/New Retirees	($11.2)	$0	($11.2)
Total*	**($45.9)**	**($61.2)**	**($107.1)**

* Value of Plan changes <u>are not</u> additive of individual plan changes.
** Assumes no change to any underlying assumptions from the 12/31/2013 valuation, including, but not limited to, discount rate, retiree health care benefit utilization, and pension benefit eligibility.

Retiree Health Care		
	Funding Ratio as of 12/31/13	
	PVFB	**AVA**
Baseline as of 12/31/13	100.1%	109.1%
EGWP	114.5%	124.8%
MERP	101.3%	110.2%
New Eligibility	103.8%	111.8%
Medical Plan/New Retirees	102.3%	111.1%
Combined Changes w/No Asset Transfer*	**122.8%**	**131.9%**
Combined Changes w/Asset Transfer Out of $215 Million 7/2016	**90.0%**	**96.6%**

* Value of Plan changes <u>are not</u> additive of individual plan changes.
** Assumes no change to any underlying assumptions from the 12/31/2013 valuation, including, but not limited to, discount rate, retiree health care benefit utilization, and pension benefit eligibility.

If all actuarial assumptions were realized, the projection results estimate a PVFB funding ratio of 86% in 2043 with an asset reduction of $215 million in mid-2016 and if the plan was closed to new hires effective 1/1/2016. The future funding projections for Retiree Health Care will be highly sensitive to deviations from the actuarial assumptions such as medical inflation trends and investment returns. This sensitivity can be addressed through the development of a Retiree Health Care Funding & Benefits Policy.

Pension ($ in millions)			
	Increase/(Decrease) in AAL		
	Actives	**Retirees**	**Total**
Change to 3% Simple COLA	$25.2	($55.6)	($30.4)
3 Year COLA Suspension with one-time payment for Retiree Class in 2018 of 3% capped at $1,000	($20.0)	($100.3)	($120.3)
Retirement Eligibility Changes	$43.9	$0	$43.9
Increased Benefit Multiplier	$5.3	$0	$5.3
Total*	**$48.1**	**($135.9)**	**($87.8)**

* Value of Plan changes <u>are not</u> additive of individual plan changes.

Pension	
	<u>AAL Funding Ratio as of 12/31/13</u>
Baseline as of 12/31/13	63.2%
Change to 3% Simple COLA	64.1%
3 Year COLA Suspension with one-time payment for Retiree Class in 2018 of 3% capped at $1,000	66.8%
Retirement Eligibility Changes	62.0%
Increased Benefit Multiplier	63.1%
Combined Changes Before Asset Transfer*	**65.8%**
Combined Changes With Asset Transfer of $215 Million 7/1/2016 and Lump Sum ERIP Payment of $39.1 Million**	**77.5%**

* Value of Plan changes <u>are not</u> additive of individual plan changes.

** Though the figures show the impact of the asset transfers (ERIP payment & $215 million) as of the 12/31/2013 valuation, the true impact would be reflected on the 2015 and 2016 valuation results.

On a forward looking basis, and assuming all of the assumptions occur as expected, the Pension funding ratio is projected to reach 100% by 2043. This is due to the following three reasons:

1. As of the 12/31/2013 valuation, there are investment gains for actuarial smoothing still to be recognized.
2. The lower cost benefit structure of newer members will allow a greater portion of the fixed employer contribution rate to be applied towards paying down the unfunded actuarial liability in future years
3. The fixed employer contribution rate of 16.25% is higher than the projected annual required contribution in later years.

It is important to recognize that these figures and projections are based on many actuarial assumptions. They are likely to vary in future years to the extent that CRS actual experience varies from the expected actuarial assumptions.

The figures above were developed by the actuarial firm, Cavanaugh Macdonald. The firm is retained by the Cincinnati Board of Trustees.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	**Case Nos.: 1:11-cv-445 and 1:12-cv-329**
Plaintiffs,	:	
vs.	:	**Judge Michael R. Barrett**
CITY OF CINCINNATI, *et al*,	:	
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

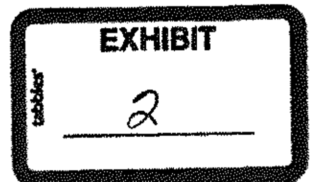
DECLARATION OF CHRISTIAN A. JENKINS IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEY FEES AND EXPENSES

I, Christian A. Jenkins, hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 as follows:

1. I am a founding partner in the law firm of Minnillo & Jenkins Co., LPA, one of the law firms representing the Current Employees Class in this action.

2. I graduated with distinction from the Pennsylvania State University in 1991 and received my law degree from the University of Wisconsin with high honors in 1995.

3. I am admitted to the practice of law in the State of Wisconsin (1995), the State of Ohio (1999), the United States Court of Appeals for the Sixth Circuit, and the United States District Courts for the Eastern and Western Districts of Wisconsin, the Northern District of Illinois, and the Southern Districts of Ohio. I also have been admitted pro hac to various federal



district courts throughout the United States. I am a member in good standing of the Ohio Bar and have never been the subject of any disciplinary proceeding.

4. As Class Counsel for the Current Employees Class, I have been centrally involved in all aspects of this litigation and the descriptions set forth in this Declaration are based upon my personal knowledge.

5. This litigation was adversarial and hard fought from its inception. Defendants retained counsel skilled in defending class actions, mounted substantial defenses, and advanced arguments that ultimately could have resulted in a zero recovery for the Plaintiffs and the Current Employees Class.

6. Class Counsel undertook a significant risk of non-payment throughout this litigation. While my firm and Goldenberg Schneider LPA were paid a combined total of approximately $35,000 subject to a cap and at a substantially discounted hourly rate during the investigative and early stage of this litigation, we prosecuted this litigation on a wholly contingent basis after the cap was exceeded. From the outset, Class Counsel understood and accepted the risk that they were embarking on an open-ended campaign with no guarantee of payment resulting from their investment of time, money, and effort. All amounts received as start-up funding for this litigation will be refunded from any fees approved by the Court.

7. My firm devoted and expended significant attorney time to prosecute this action, at the opportunity cost of working on other matters.

8. Throughout this litigation, my firm endeavored to prosecute this case in an efficient manner with an eye towards collaborating effectively to marshal resources and to devise strategies to prosecute this case to a successful conclusion. Duplication of effort was avoided by Class Counsel's division of responsibilities among themselves.

9. In undertaking to represent the Current Employees Class, Class Counsel insured that sufficient resources and funds were available to prosecute the action, including advancing expenses as necessary for travel and experts.

10. Minnillo & Jenkins Co., LPA kept contemporaneous time and expense records throughout this litigation. These time records demonstrate that my firm spent 1,033.6 hours on this litigation through July 27, 2015. At the current customary billing rates Minnillo & Jenkins Co., LPA charges for litigation of this nature, its lodestar is $466,427. Attached as Exhibit A to this Declaration is a chart summarizing the hours spent by each attorney and staff member and their corresponding hourly rate. I reviewed my firm's time records for this litigation, and I believe that the amount of time spent was necessary, reasonable, and non-duplicative.

11. Minnillo & Jenkins Co., LPA incurred out-of-pocket expenses on behalf of the Class. The expense records collected through July 27, 2015 demonstrate Minnillo & Jenkins Co., LPA spent $2,948.77 on expenses. I anticipate that my firm may spend an additional approximately $25,000 for the professional services of independent actuarial experts expected to testify at the Fairness Hearing. Attached as Exhibit A to this Declaration is a chart summarizing the expenses incurred by my firm, broken down by category, as well as the anticipated actuarial expert expenses. I reviewed my firm's expense records for this litigation, and I believe that these expenses were necessary, reasonable, and directly related to this litigation. The expenses include those items for which the firm ordinarily bills its clients, including computer research.

12. I anticipate that my firm will spend approximately 50 additional hours preparing for and attending the September 24-25, 2015 Fairness Hearing. Also, because the Settlement Agreement and the Consent Decree require Class Counsel to perform certain tasks on behalf of and for the benefit of the Current Employees Class in the near future and over the entire 30 year

period of the Consent Decree, and because I have agreed to be the "liaison" representative for the Current Employees Class pursuant to Paragraph 11 of the Consent Decree, I estimate that my firm will spend approximately 650 additional hours on this Settlement performing these future obligations. My firm will not seek additional compensation for this future time.

13. The total estimated future time I expect my firm to spend related to this action is 700 hours (50 hours preparing for and attending the Fairness Hearing plus 650 additional hours performing future obligations over the 30 year term of the Consent Decree). The lodestar resulting from this additional estimated time is $346,500 (700 hours * $495/hour).

14. My firm's total lodestar resulting from the addition of the time spent through July 27, 2015 (1033.6 hours) and the estimated future time (700 hours) is $812,927.

15. In preparation for the submission of Class Counsels' Motion for Approval of Attorney Fees and Expenses, I requested data from the City of Cincinnati Retirement System and its director regarding members of subgroup C and other individuals who have retired since July 1, 2011 (Exhibit B). These individuals will be entitled to certain payments if the settlement is approved and goes into effect. According to the information I received, subgroup C has 275 members, 158 of whom have retired since July 1, 2011. In addition, there are 240 individuals who are members of subgroups D, E and F who have retired since July 1, 2011. The City's pension director was unable to provide requested data on the years in which these individuals retired in the time available. Based on the limited information available I estimate the total amount of payments to subgroup C members under section 18 of the Settlement Agreement to be approximately $133,000. I estimated this amount by multiplying the number of unretired subgroup C members by the payment provided for in section 18.v. of the Settlement Agreement,

and then assuming that equal numbers of the retired subgroup C members retired in each of the other years listed in that section of the Settlement Agreement.

16. I also estimated the total amount to be paid to members of the Current Employees Class who have retired since July 1, 2011 under section 16 of the Settlement Agreement based on the limited data provided by the City. Had the settlement been in effect when these individuals retired, they would have been entitled to an annual COLA starting with the second year of their retirement of three percent. According to the City's pension director, the CRS actually paid COLA's of two percent in 2012, and 2013, but only 1.5 percent and 1.7 percent in 2014 and 2015. Accounting for these differences, and assuming an average annual pension benefit of $40,000, I estimate that the aggregate amount due to these retired members of the Current Employees Class is up to approximately $1.1 million. Estimating this amount was complicated by the lack of any information about when during the preceding four years these individuals retired. This amount does not account for upward adjustments to the underlying pension benefit calculation due to eligibility for additional years of service at a higher 2.5 percent multiplier or years of service over 30 years at a 2.2 percent multiplier, both of which would increase the payments due to some of these individuals.

17. Based on the foregoing, the analysis of the CRS actuary, and my understanding of the value of the additional benefits that will be conferred by the proposed settlement, I estimate the total value of the proposed settlement to be clearly in excess of $50 million.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2015.

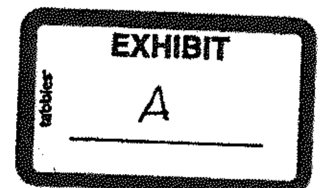
/s/ Christian A. Jenkins
CHRISTIAN A. JENKINS

	Hourly Rate	Total Hours	Minnillo & Jenkins
Christian A. Jenkins (A)	$495	781.1	$386,644.50
Niroshan M. Wijesooriya (A)	$375	162.2	$60,825.00
Amy E. Gullifer (A)	$375	14	$5,250.00
Valerie O'Brien (A)	$200	53.5	$10,700.00
Andrew Haman (LC)	$150	8.9	$1,335.00
Leah Jordan (PL)	$125	12.6	$1,575.00
Legal Assistants	$75	1.3	$97.50
TOTAL		**1033.6**	**$466,427.00**

EXPENSE DETAILS:

Mileage/Parking	$366.00
Copies	$469.00
Electronic Research	$1,946.00
Conference calling service	$167.77
Total Expenses	**$2,948.77**

ANTICIPATED ACTUARIAL EXPENSE $25,000.00



Christian Jenkins

From: Tilsley, Paula [Paula.Tilsley@cincinnati-oh.gov]
Sent: Thursday, July 16, 2015 12:50 PM
To: Christian Jenkins
Cc: Jeff Goldenberg; Goodin, Steven P.
Subject: RE: Counts by Class by Group

Chris,

Below are the counts by Group of the members in the Current Employee Class that retired after 7/1/2011 to 6/1/15 (through 5/31/15). The members who retired during the month of June with an effective retirement date of 7/1/2015 have not yet been set up in the pension system and additional data will not be available for a few weeks. Staff is currently gathering certain additional data and it should be available by Friday or Monday .

C	158
D	148
E	12
F	80
Total	398

Paula Tilsley
Executive Director
Cincinnati Retirement System
(P) 513-352-6296
Paula.Tilsley@Cincinnati-oh.gov

From: Christian Jenkins [mailto:cjenkins@minnillojenkins.com]
Sent: Thursday, July 16, 2015 12:04 PM
To: Tilsley, Paula
Cc: Jeff Goldenberg; Goodin, Steven P.
Subject: RE: Counts by Class by Group

Hi Paula,

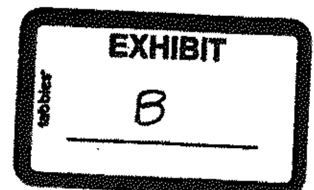
Thanks very much for your time the other day. I am wondering if we could at least get the number of people by subgroup who retired each year for 2011, 2012, 2013, 2014 and through 6/30/15. The more info we could have about them the better, but if we could have at least those numbers I think we could do some decent estimating. Thanks for all you help.

Chris

From: Tilsley, Paula [mailto:Paula.Tilsley@cincinnati-oh.gov]
Sent: Tuesday, July 14, 2015 2:09 PM
To: Christian Jenkins
Cc: Jeff Goldenberg; Goodin, Steven P.
Subject: RE: Counts by Class by Group

That timing is fine. Please call my cell at 446-2855.

Paula Tilsley



Executive Director
Cincinnati Retirement System
(P) 513-352-6296
Paula.Tilsley@Cincinnati-oh.gov

From: Christian Jenkins [mailto:cjenkins@minnillojenkins.com]
Sent: Tuesday, July 14, 2015 2:07 PM
To: Tilsley, Paula
Cc: Jeff Goldenberg; Goodin, Steven P.
Subject: Re: Counts by Class by Group

I should be in the car by 4 and can talk then. I will call you around that time if it's OK.

Sent from my iPhone

On Jul 14, 2015, at 1:45 PM, Tilsley, Paula <Paula.Tilsley@cincinnati-oh.gov> wrote:

Below are the headcounts by Groups who are covered under the Settlement. These counts are larger than the actual number of covered members. For example, some pensioners are receiving two retirement benefits, their own and a spouse who passed away. Or an active employee may be receiving a retirement benefit from a spouse who passed away. In other words, the counts represent the number of each actively accruing or payable pension benefit. These counts are also larger than the number of notices sent by the settlement administrator since we scrubbed the data so any covered member would only receive one notice.

Subject to Settlement

Retiree Class (Group A & B):	**3770**
Current Employee Class	
Group C:	**275**
Group D:	**148**
Group E:	**85**
Group F	**1818**

The simple COLA rates were as follows. Though the COLA change became effective 7/1/2011 for new retirees (except for Group C), the first COLA's were payable on the 1-year retirement anniversary date.
7/1/2012-12/31/2012 = 2.0%
1/1/2013-12/31/2013 = 2.0%
1/1/2014-12/31/2014 = 1.5%
1/1/2015-12/31/2015 = 1.7%

Chris, is there a time I could call you today between 2:00 – 5:00 or Wednesday between 8:30 - 10:00 to discuss your other requests?

Paula Tilsley
Executive Director
Cincinnati Retirement System
(P) 513-352-6296
Paula.Tilsley@Cincinnati-oh.gov

From: Christian Jenkins [mailto:cjenkins@minnillojenkins.com]
Sent: Friday, July 10, 2015 4:28 PM
To: Tilsley, Paula

Cc: Jeff Goldenberg; Goodin, Steven P.
Subject: FW: Counts by Class by Group
Importance: High

Hi Paula,

When we last spoke you referred to a spreadsheet that Christine had prepared that would give us more detail on the numbers and demographics of the subgroup members. Could we get our hands on that please?

Also, it would be extremely helpful if we could get some solid data on members of groups D, E and F who have retired since July 1, 2011, such as the number of individuals who retired during each year since then, average annual pension amount, and the rate of COLA that has been used for each year if any of them were under 2.0%.

Thanks for your help. If it would be helpful to discuss, please just give me a call.

Chris

Christian A. Jenkins
Minnillo & Jenkins, Co. LPA
2712 Observatory Avenue
Cincinnati, Ohio 45208
Tel: (513) 723-1600
Fax: (513) 723-1620
cjenkins@minnillojenkins.com
www.minnillojenkins.com

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender. Thank you.

-------- Original message --------
From: "Tilsley, Paula" <Paula.Tilsley@cincinnati-oh.gov>
Date: 06/04/2015 10:00 AM (GMT-05:00)
To: "Goodin, Steven P." <SGoodin@Graydon.com>
Subject: Counts by Class by Group

Below are the total class figures for each Class and the subgroups under the Active Class.

Note: There are 6 members who are technically in both classes. They are or were actively employed on 7/1/2011 and they are receiving a spousal retirement benefit.

Paula Tilsley
Executive Director
Cincinnati Retirement System
(P) 513-352-6296
Paula.Tilsley@Cincinnati-oh.gov

From: Roberts, Christine
Sent: Wednesday, June 03, 2015 6:45 PM
To: Tilsley, Paula
Cc: Dietz, John
Subject: Counts by Class by Group

Retiree Class (Group A & B) Total:	**3770**
Current Employee Class Total:	**2326**
Group C:	275
Group D:	148
Group E:	85
Group F	1818

Christine Roberts
System Analyst
Cincinnati Retirement System
513.352.6277

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	**Case Nos.: 1:11-cv-445 and 1:12-cv-329**
Plaintiffs,	:	
vs.	:	**Judge Michael R. Barrett**
CITY OF CINCINNATI, *et al*,	:	
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

DECLARATION OF JEFFREY S. GOLDENBERG IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEY FEES AND EXPENSES

I, Jeffrey S. Goldenberg, hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 as follows:

1. I am a founding partner in the law firm of Goldenberg Schneider, L.P.A., one of the law firms representing the Current Employees Class in this action, and I have been practicing law for 21 years. The other firms representing the Current Employees Class are Minnillo & Jenkins, Co., L.P.A., The Law Office of Marc Mezibov, and Klausner, Kaufman, Jensen & Levinson (collectively "Class Counsel").

2. I graduated Phi Beta Kappa from Indiana University, Bloomington, Indiana in 1988 (B.A. Biology) and received my law degree from Indiana University in 1994. I also received a master degree in environmental science from Indiana University in 1994.

EXHIBIT
3

3. I am admitted to the practice of law in the State of Ohio (1994), the United States Court of Appeals for the Sixth Circuit, and the United States District Court for the Southern and Northern Districts of Ohio. I also have been admitted pro hac to various federal district courts throughout the United States. I am a member in good standing of the Ohio Bar and have never been the subject of any disciplinary proceeding.

4. As Class Counsel for the Current Employees Class, I have been centrally involved in all aspects of this litigation and the descriptions set forth in this Declaration are based upon my personal knowledge.

5. This litigation was adversarial and hard fought from its inception. Defendants retained counsel skilled in defending class actions, mounted substantial defenses, and advanced arguments that ultimately could have resulted in a zero recovery for the Plaintiffs and the Current Employees Class.

6. Class Counsel undertook a significant risk of non-payment throughout this litigation. While my firm and Minnillo & Jenkins, Co., L.P.A. were paid a substantially discounted hourly rate during the investigative and early stage of this litigation (collectively receiving approximately $35,000), Class Counsel prosecuted this litigation on a wholly contingent basis thereafter. And, should the Court approve Current Employees Class Counsel's fee request, my firm will refund to the client the start-up funds it previously received. From the outset, Class Counsel understood and accepted the risk that they were embarking on an open-ended campaign with no guarantee of payment resulting from their investment of time, money, and effort.

7. My firm devoted and expended significant attorney time to prosecute this action, at the opportunity cost of working on other matters. The primary attorneys at my firm who

worked on this litigation aside from me are Todd Naylor who has practiced law for 18 years and Robert Sherwood who has practice law for 13 years.

8. Throughout this litigation, my firm endeavored to prosecute this case in an efficient manner with an eye towards collaborating effectively to marshal resources and to devise strategies to prosecute this case to a successful conclusion. Duplication of effort was avoided by Class Counsel's division of responsibilities among themselves.

9. In undertaking to represent the Current Employees Class, Class Counsel insured that sufficient resources and funds were available to prosecute the action, including advancing expenses as necessary for travel and experts.

10. Goldenberg Schneider, L.P.A. kept contemporaneous time and expense records throughout this litigation. As of July 27, 2015, these time records demonstrate that my firm spent 1,038 hours on this litigation. At the current customary billing rates Goldenberg Schneider, L.P.A. charges for litigation of this nature, its lodestar is $478,200. Attached as Exhibit A to this Declaration is a chart summarizing the hours spent by each attorney and staff member and their corresponding hourly rate through July 27, 2015. I reviewed my firm's time records for this litigation, and I believe that the amount of time spent was necessary, reasonable, and non-duplicative.

11. Goldenberg Schneider, L.P.A. incurred out-of-pocket expenses on behalf of the Class. My firm's expense records collected through July 27, 2015 demonstrate Goldenberg Schneider, L.P.A. spent $2,187.47 on expenses. Further, an independent actuarial consultant, The Segal Company, has been retained in preparation for the Fairness Hearing to evaluate the assumptions and projections of the CRS actuary on which the Settlement is premised. Current Employees Class Counsel and Defendants are actively working with The Segal Company to

facilitate its analysis. Responsibility for The Segal Company's fee has not yet been formally agreed upon, so Current Employees Class Counsel are prepared to bear this expense of $25,000 per firm for a total of $100,000 with the expectation that, if the Settlement is approved, reimbursement will be requested. Attached as Exhibit A to this Declaration is a chart summarizing the expenses incurred by my firm, broken down by category, as well as the anticipated actuarial expert expenses discussed above. I reviewed my firm's expense records for this litigation, and I believe that these expenses were necessary, reasonable, and directly related to this litigation. The expenses include those items for which the firm ordinarily bills its clients, including computer research.

12. I anticipate that my firm will spend approximately 50 additional hours preparing for and attending the September 24, 2015 Fairness Hearing. Also, because the Settlement Agreement and the Consent Decree require Class Counsel to perform certain tasks on behalf of and for the benefit of the Current Employees Class in the near future and over the entire 30 year period of the Consent Decree, I estimate that my firm will spend approximately 500 additional hours on this Settlement performing these future obligations. My firm will not seek additional compensation for this future time.

13. The total estimated future time I expect to spend related to this action is 550 hours (50 hours preparing for and attending the Fairness Hearing plus 500 additional hours performing future obligations over the 30 year term of the Consent Decree). The lodestar resulting from this additional estimated time is $272,250 (550 hours * $495/hour).

14. My firm's total lodestar resulting from the addition of the time spent through July 27, 2015 (1,038 hours) and the estimated future time (550 hours) is $750,450 ($478,200 + $272,250).

15. I have reviewed my Co-Counsels' Declarations filed concurrently with this Declaration. Based upon my review of these Declarations, Class Counsels' collective hours through July 27, 2015 on this litigation total 2,970 hours with a corresponding lodestar of $1,376,676.50, and Class Counsels' collective lodestar for estimated future time is $1,248,750. Based upon my review of these Declarations, Class Counsels' total lodestar resulting from the addition of time spent through July 27, 2015 plus estimated future time is $2,625,426. And, based upon my review of these Declarations, Class Counsels' total expenses through July 27, 2015 are $26,723.

16. It is my understanding that Class Counsels' 2,970 hours spent on this litigation through July 27, 2015 is generally equivalent to the collective number of hours spent by outside counsel representing the Defendants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2015.

/s/ Jeffrey S. Goldenberg, Esq.
JEFFREY S. GOLDENBERG, ESQ.

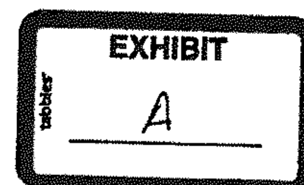
	Hourly Rate	Total Hours	Goldenberg Schneider
Jeffrey S. Goldenberg (A)	$495	756.8	$374,616.00
Todd B. Naylor (A)	$450	60.4	$27,180.00
Robert B. Sherwood (A)	$395	182.7	$72,166.50
Stephanie Vaaler (PL)	$125	17.9	$2,237.50
Legal Assistants	$100	20	$2,000.00
TOTAL		**1037.8**	**$478,200.00**

EXPENSE DETAILS:

Court Filing Fees	$350.00
Copies	$394.15
Electronic Research	$1,142.94
Conference calling service	$95.94
Mail/UPS	$9.30
Meeting Exp. (Meals)	$195.14
Total Expenses	**$2,187.47**

ANTICIPATED EXPENSES

Actuarial Experts	**$25,000**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	Case Nos. 1:11-cv-445 and 1:12-cv-329
Plaintiffs,	:	
	:	Judge Michael R. Barrett
vs.	:	
	:	
CITY OF CINCINNATI, *et al.*,	:	DECLARATION OF MARC D. MEZIBOV, ESQ. IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEYS' FEES AND EXPENSES
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

I, Marc D. Mezibov, Esq., hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746, as follows:

1. I am the principal attorney at The Law Office of Marc Mezibov and counsel for the Current Employees Class in this case. I make this Declaration of my own personal knowledge, and if called to do so, I could testify competently to the matters stated herein.

2. I received my law degree from Boston University in 1970. I was admitted to the bar of the states of New Jersey (1971) and Ohio (1974). I am also admitted in the Southern and Northern Districts of Ohio, the Sixth Circuit Court of Appeals, and the Supreme Court of the United States. I am a member in good standing of the Ohio Bar and have never been the subject of any disciplinary proceeding.

3. I have served as lead or co-counsel on numerous class actions and have substantial experience litigating civil cases in federal court. Among my significant cases are *City of Cincinnati v. Contemporary Arts Center, et al.* (Ohio Mun. 1990), 556 N.E.2d 214 (successfully defended arts center director criminally charged for displaying Mapplethorpe

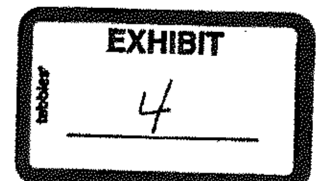


exhibit); *City of Cincinnati v. Discovery Network, Inc.* (1993), 507 U.S. 410 (successfully argued to United States Supreme Court to strike city ordinance banning commercial handbill newsracks); *State ex rel. Miami Student v. Miami University* (1997), 680 N.E.2d 956 Ohio St.3d (successfully argued to Ohio Supreme Court to compel release of student disciplinary records to track campus crime); and *Estep v. J. Kenneth Blackwell, Secretary of State* (2006), U.S. Dist. Ct. No. 06-106 (settled class action against Ohio Secretary of State for internet disclosure of thousands of individuals' Social Security numbers).

4. As Class Counsel for the Current Employees Class, I have been centrally involved in all aspects of this litigation and the descriptions set forth in this Declaration are based upon my personal knowledge.

5. This litigation was adversarial and hard fought from its inception. Defendants retained counsel skilled in defending class actions, mounted substantial defenses, and advanced arguments that ultimately could have resulted in a zero recovery for the Plaintiffs and the Current Employees Class.

6. Class Counsel undertook a significant risk of non-payment throughout this litigation. My firm prosecuted this litigation on a wholly contingent basis, as my firm has not received any compensation to date for the hundreds of hours spent on this litigation. From the outset, Class Counsel understood and accepted the risk that they were embarking on an open-ended campaign with no guarantee of payment resulting from their investment of time, money, and effort.

7. My firm devoted and expended significant attorney time to prosecute this action at that opportunity cost of working on other matters. The primary attorney at my firm who worked on this litigation aside from me is Susan Butler, who has practiced law for 8 years.

8. Throughout this litigation, my firm endeavored to prosecute this case in an efficient manner with an eye towards collaborating effectively to marshal resources and to devise strategies to prosecute this case to a successful conclusion. Duplication of effort was avoided by Class Counsel's division of responsibilities among themselves.

9. The Law Office of Marc Mezibov, Inc. kept contemporaneous time and expense records throughout this litigation. As of July 27, 2015, these time records demonstrate that my firm spent 590.2 hours on this litigation. At my firm's current customary billing rates for litigation of this nature, its lodestar is $220,889.50. Attached as Exhibit A to this Declaration is a chart summarizing the hours spent by each attorney and staff member and their corresponding hourly rate. I reviewed my firm's time records for this litigation, and I believe that the amount of time spent was necessary, reasonable, and non-duplicative.

10. I anticipate that my firm may spend approximately $25,000 for the professional services of independent actuarial experts expected to testify at the Fairness hearing.

11. I anticipate that my firm will spend approximately 50 additional hours preparing for and attending the September 24, 2015, Fairness Hearing. Also, because the Settlement Agreement and the Consent Decree require Class Counsel to perform certain tasks on behalf of and for the benefit of the Current Employees Class in the near future and over the entire 30 year period of the Consent Decree, I estimate that my firm will spend approximately 300 additional hours on this Settlement performing these future obligations. My firm will not seek additional compensation for this future time.

12. The total estimated future time I expect to spend related to this action is 350 hours (50 hours preparing for and attending the Fairness Hearing plus 300 additional hours performing

future obligations. The lodestar resulting from this additional estimated time is $210,000 (350 hours * $600/hour).

13. My firm's total lodestar resulting from the addition of the time spent through July 27, 2015 (590.2 hours) and the estimated future time (350 hours) is $430,889.50 ($220,889.50 + $210,000).

I declare under penalty of perjury that the foregoing is true and correct.

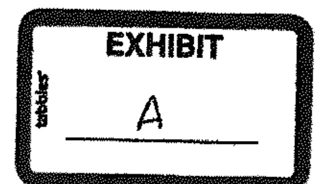
Executed on July 30, 2015.

/s/Marc D. Mezibov
MARC D. MEZIBOV, ESQ.

	Hourly Rate	Total Hours	Lodestar
Marc D. Mezibov (A)	$600	202.0	$121,200.00
Susan Lawrence Butler (A)	$395	212.3	$83,858.50
Law Clerk	$90	175.9	$15,831.00
TOTAL		**590.2**	**$220,889.50**

ANTICIPATED EXPENSES:

Actuarial Experts **$25,000**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	**Case Nos.: 1:11-cv-445 and 1:12-cv-329**
Plaintiffs,	:	**Judge Michael R. Barrett**
vs.	:	
CITY OF CINCINNATI, *et al,*	:	
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

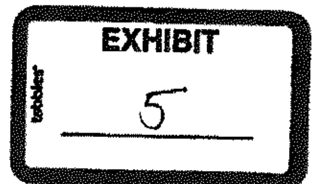
DECLARATION OF ROBERT D. KLAUSNER IN SUPPORT OF CLASS COUNSEL'S MOTION FOR APPROVAL OF ATTORNEY FEES AND EXPENSES

I, Robert D. Klausner, hereby declare under penalty of perjury and pursuant to 28 U.S.C. 1746 as follows:

1. I am the principal in the law firm of Klausner, Kaufman, Jensen & Levinson, a partnership of professional associations, one of the law firms representing the Current Employees Class in this action.

2. I graduated Phi Beta Kappa from the University of Florida, in 1974 (B.A. Political Science) and received my law degree from the University of Florida College of Law in 1977.

3. I am admitted to the practice of law in the State of Florida (1977), the United States Supreme Court, the United States Courts of Appeals for the Second, Fourth, Fifth, Sixth, Eighth, Tenth, and Eleventh Circuits, the United States Court of Claims, and the United States District Courts for the Southern and Middle Districts of Florida and the Northern District of



Texas. I also have been admitted *pro hac vice* to various state courts and federal district courts throughout the United States. I am a member in good standing of the Florida Bar and have never been the subject of any disciplinary proceeding.

4. As Class Counsel for the Current Employees Class, I have been centrally involved in all aspects of this litigation and the descriptions set forth in this Declaration are based upon my personal knowledge.

5. This litigation was adversarial and hard fought from its inception. Defendants retained counsel skilled in defending class actions, mounted substantial defenses, and advanced arguments that ultimately could have resulted in a zero recovery for the Plaintiffs and the Current Employees Class.

6. Class Counsel undertook a significant risk of non-payment throughout this litigation. My firm prosecuted this litigation on a wholly contingent basis, including advancement of costs. From the outset, Class Counsel understood and accepted the risk that they were embarking on an open-ended campaign with no guarantee of payment resulting from their investment of time, money, and effort.

7. My firm devoted and expended significant attorney time to prosecute this action, at the opportunity cost of working on other matters.

8. Throughout this litigation, my firm endeavored to prosecute this case in an efficient manner with an eye towards collaborating effectively to marshal resources and to devise strategies to prosecute this case to a successful conclusion. Duplication of effort was avoided by Class Counsel's division of responsibilities among themselves.

9. In undertaking to represent the Current Employees Class, Class Counsel insured that sufficient resources and funds were available to prosecute the action, including advancing

expenses as necessary for travel and experts, including the retention of an internationally recognized actuarial and benefits firm, The Segal Company, to provide testimony and actuarial analysis for the Fairness Hearing.

10. Klausner, Kaufman, Jensen & Levinson kept contemporaneous time and expense records throughout this litigation. As of July 27, 2015, the time records demonstrate that my firm spent 308.4 hours on this litigation. At its current customary billing rates for litigation of this nature, my firm's lodestar is $211,160. Attached as Exhibit A to this Declaration is a chart summarizing the hours spent by each attorney and staff member and their corresponding hourly rate. I reviewed my firm's time records for this litigation, and I believe that the amount of time spent was necessary, reasonable, and non-duplicative. Klausner, Kaufman, Jensen & Levinson is among the few law firms in the United States specializing exclusively in legal issues relating to state and local government retirement law. I am the author of two law books for Thompson Reuters – West Publishing on the law of state and local government retirement and have taught retirement and related labor topics at numerous universities and law schools, including Harvard, Stanford, UMass, Nova-Southeastern, Florida State University and the University of Florida. The firm provides services to more than 100 public employee retirement systems and health care trusts, public employers, and public employee associations. The firm has litigated complex class actions on behalf of public employee retirement systems and has been approved at the hourly rate of $650 in numerous class action settlements, primarily related to representation of institutional investors in actions brought pursuant the Private Securities Litigation Reform Act. See, e.g., *In re Citigroup Bond Litigation*, 08 Civ. 9522 (S.D.N.Y. 2013) (representing the Louisiana Sheriffs' Pension and Relief Fund).

11. Klausner, Kaufman, Jensen & Levinson incurred out-of-pocket expenses on behalf of the Class. The expense records collected through July 10, 2015 demonstrate Klausner, Kaufman, Jensen & Levinson spent $21,586.79 on expenses. I anticipate that my firm may spend an additional approximately $25,000 for the professional services of independent actuarial experts expected to testify at the Fairness Hearing. Attached as Exhibit A to this Declaration is a chart summarizing the expenses incurred by my firm, broken down by category, as well as the anticipated actuarial expert's expenses. Additional expenses for travel related to the Fairness Hearing will be required. I reviewed my firm's expense records for this litigation, and I believe that these expenses were necessary, reasonable, and directly related to this litigation. The expenses include those items for which the firm ordinarily bills its clients.

12. I anticipate that my firm will spend approximately 100 additional hours preparing for and attending the September 24, 2015 Fairness Hearing. Also, because the Settlement Agreement and the Consent Decree require Class Counsel to perform certain tasks on behalf of and for the benefit of the Current Employees Class in the near future and over the entire 30 year period of the Consent Decree, I estimate that my firm will spend approximately 500 additional hours on this Settlement performing these future obligations. In my experience, the most labor intensive activities with be within the first 10 years following entry of the Decree. I remain involved as a lead counsel in a federal Consent Decree that has been in effect in its current form since the later 1970s (*U.S. v. City of Miami*, 75-3096, S.D. Fla.) and a state court Consent Decree that has been in effect since 1985 (*Gates v. City of Miami*, 77-9491, Fla. 11th Jud. Cir. Ct.). I reached this conclusion concerning post-decree entry labor from the enforcement proceedings which have occurred in the above two cases. The *Gates* case required two post decree amendments and one enforcement proceeding which reached the appellate level. See *City*

of Miami v. Gates, 592 So.2d 749 (Fla. 3d DCA 1992). In the *U.S. v. City of Miami* case, there has been substantial post decree activity resulting in four appellate level proceedings which were the result of proceedings at the District Court level. See, e.g., *U.S. v. City of Miami*, 664 F.2d 435 (5th Cir. en banc 1981); *U.S. v. City of Miami,* 2 F.3d 1497 (11th Cir. 1993); *U.S. v. City of Miami*, 195 F.3d. 1292 (11th Cir. 1999); *U.S. v. City of Miami*, 278 F.3d 1174 (11th Cir. 2002). My firm has sufficient trained lawyers who will be available, based upon their ages, for the duration of this Decree. In my experience, institutional knowledge within a firm necessary to cover a 30 year time span can be passed along to new partners and associates over the passage of time with no interruption in the quality of client service. My firm will not seek additional compensation for this future time.

13. The total estimated future time I expect my firm to spend related to this action is 600 hours (100 hours preparing for and attending the Fairness Hearing plus 500 additional hours performing future obligations over the 30 year term of the Consent Decree). The lodestar resulting from this additional estimated time is $420,000 (600 hours * $700/hour).

14. My firm's total lodestar resulting from the addition of the time spent through July 27, 2015 (308.6 hours) and the estimated future time (600 hours) is $631,160 ($211,160 + $420,000).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 30, 2015.

/s/ Robert D. Klausner, Esq.
ROBERT D. KLAUSNER, ESQ.

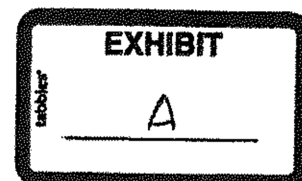
	Hourly Rate	Total Hours	Klausner, Kaufman, Jensen & Levinson
Robert D. Klausner (A)	$700	296.6	$207,620
Shaun Malvin (A)	$300	9.4	$2,820
Adam P. Levinson (A)	$300	.5	$150
Stuart A. Kaufman(A)	$300	1.9	$570
TOTAL		**308.4**	**$211,160**

EXPENSE DETAILS:

Copies	$282.25
Travel	$21,213.90
FedEx	$44.22
Teleconference Charges	$46.42
Total Expenses	**$21,586.79**

ANTICIPATED EXPENSES:

Actuarial Experts	**$25,000**
Travel	**To be provided**



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*,	:	
Plaintiffs,	:	**Case Nos.: 1:11-cv-445 and 1:12-cv-329**
vs.	:	**Judge Michael R. Barrett**
CITY OF CINCINNATI, *et al*,	:	
Defendants.	:	
(City of Cincinnati Pension Litigation)	:	

DECLARATION OF BILL MARKOVITS

I, Bill Markovits, under penalty of perjury pursuant to 28 U.S.C. 1746, declare as true the following:

1. This Declaration is provided in support of Current Employees Class Counsel's Motion for Approval of Attorney Fees and Expenses in the above-captioned action.

2. I have been practicing law since 1981 following my graduation from Harvard Law School.

3. I am admitted to and a member in good standing of the Bar of the State of Ohio and am admitted to practice before the United States District Courts for the Southern and Northern Districts of Ohio, the District of Columbia, the U.S. Sixth Circuit Court of Appeals, the U.S. Ninth Circuit Court of Appeals, and the U.S. Supreme Court.

4. I am a member of the Ohio State Bar Association and the Cincinnati Bar Association.

EXHIBIT 6

5. I am a founding member with the law firm of Markovits, Stock & DeMarco, LLC and my practice primarily consists of litigation in federal and state court with a focus upon class action and complex multi-district litigation.

6. I have been actively involved as lead or co-lead class counsel or on lead counsel committees in the following recent cases, among others:

a) *In re Federal National Mortgage Association Securities, Derivative, and "ERISA" Litigation,* United States District Court, District of Columbia

b) *Ohio Public Employees Retirement System v. Federal Home Loan Mortgage, aka Freddie Mac, et al.,* United States District Court, Northern District of Ohio, Eastern Division

c) *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation,* United States District Court, Central District of California

7. I am rated AV by the Martindale-Hubbell Law Directory.

8. I have represented both plaintiffs and defendants in dozens of cases, including class actions, in state courts and federal courts nationwide over the past 34 years. Based upon my experience, I believe that class litigation requires a high level of skill and analytical ability.

9. As such, I am familiar with the time typically expended, and the fees typically charged by attorneys in the Southern District of Ohio, in this region, and throughout the country for representing clients in complex and class action litigation.

10. I have reviewed the following information related to the above captioned litigation:

a. The docket

b. The operative Complaint

c. The Settlement Agreement

d. The Consent Decree

e. The Class Notice and Settlement Website (www.crspensionsettlement.com)

f. The Court's Order granting preliminary approval to this settlement

g. Current Employees Class Counsel's time and expense entries

h. Current Employees Class Counsel's CVs and firm overviews

11. Based upon my review of this information as well as my experience litigating complex and class litigation, I believe that the time spent, the nature of the work performed, and the costs expended by Current Employees Class Counsel are reasonable and appropriate in this case.

12. I have also reviewed the relevant experience and firm profiles of Current Employees Class Counsel as well as the attorney hourly rates applicable to this litigation as contained in their time records (Robert Klausner: $700; Marc Mezibov: $600; Christian Jenkins: $495; Jeffrey Goldenberg: $495; Todd Naylor: $450; Robert Sherwood: $395; Niroshan M. Wijesooriya: $375; Amy Gullifer: $375; Valerie O'Brien: $200; Susan Lawrence Butler: $395). I have also reviewed the hourly rates assigned to the time expended by paralegals and legal assistants who performed work on this case.

13. I believe that the hourly rate charged by Robert Klausner, who has over 38 years of experience and who is recognized as a national expert in the area of public employee retirement systems, is within the prevailing range for attorneys with his unique specialization, expertise and qualifications in this area of the law. It is also my understanding based upon discussions with Current Employees Class counsel that Mr. Klausner has been approved at $650 per hour by several federal district courts in class actions on behalf of state and local government retirement systems dating back to 2013.

14. I also believe that hourly rates charged by attorneys Marc Mezibov, Christian Jenkins, Jeffrey Goldenberg, Todd Naylor, Robert Sherwood, Niroshan M. Wijesooriya, Amy

Gullifer, Valerie O'Brien, and Susan Lawrence Butler are within the prevailing range in the Southern District of Ohio for attorneys with equivalent experience and qualifications, especially in large and complex cases such as this.

15. Based upon my experience representing clients in class actions and complex multi-district litigation as well as my review of the relevant materials listed above in Paragraph 10, it is my opinion that, given the nature of the work performed in this action, the rates billed and the time and costs expended are reasonable and appropriate.

So declared this 29th day of July, 2015, Cincinnati, Ohio.

Bill Markovits