UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

PLAINTIFFS'UNOPPOSED MOTION FOR PRELIMINARY SETTLEMENT APPROVAL

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thousands of pages (broader than even the documentary record secured by the DOJ before it entered into a Deferred Prosecution Agreement with FirstEnergy) and responses to written discovery from all Defendants and FirstEnergy. *See Castillo v. Morales, Inc.*, Case No. 12-cv-650, 2015 WL 13022263, at *1 (S.D. Ohio Aug. 12, 2015) (granting preliminary approval where settlement was "result of arms-length negotiations conducted after Class Counsel [had] adequately investigated the claims and became familiar with the strengths and weaknesses of those claims"). Further, the Proposed Settlement results from serious, non-collusive negotiations facilitated by retired United States District Judge Layn R. Phillips. "The participation of an independent mediator in settlement negotiations *virtually [e]nsures* that the negotiations were conducted at arm's length and without collusion between the parties." *In re Wendy's Co. S'holder Deriv. Action*, Case No. 16-cv-1153 (S.D. Ohio Jan. 24, 2020), Preliminary Approval Order (Ex. 10 hereto) at 14 (emphasis in original) (quoting *Bert v. AK Steel Corp.*, No. 02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008)). Retired Judge Phillips's involvement has been specifically noted as a factor weighing in favor of settlement approval. *See, e.g.*, *Voulgaris v. Array Biopharma Inc.*, C.A. No. 17-cv-02789, 2021 WL 6331178, at *6 (D. Colo. Dec. 3, 2021).

The Proposed Settlement also "has no obvious deficiencies, does not improperly grant preferential treatment" to any constituency and easily "falls with the range of possible approval." *Telectronics*, 137 F. Supp. 2d at 1015–16. Indeed, it is one of the most significant settlements of a shareholder derivative action ever achieved.

The $180 million monetary component of the Proposed Settlement is an extraordinary result: three times the size of any prior derivative recovery in the history of the Sixth Circuit; among the largest derivative recoveries ever achieved, in any forum, in the history of the United States; and the third-largest insurer-funded derivative recovery on record. Though Plaintiffs had confidence in their ability to prevail on the merits at trial, Plaintiffs also identified certain risks including with respect to recoverability, given that the Individual Defendants' personal assets and D&O insurance represented the only possible sources of recovery and further litigation would "waste" or erode the relevant insurance policies, risking that a comparable future judgment would be unrecoverable and a quintessential pyrrhic victory. Further, derivative litigation is "notoriously difficult and unpredictable," *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d at 1205, including due to Ohio's requirement to establish by "clear and convincing evidence" that the directors or officers acted or failed to act with "deliberate intent to cause injury" to FirstEnergy or with "reckless disregard" for FirstEnergy's best interests. Ohio Rev. Code §§ 1701.59(E) and 1701.641(D). Despite these risks, Plaintiffs recovered a full 78.26% of the $230 million penalty imposed on FirstEnergy pursuant to the DPA--a recovery that compares favorably even with other significant settlements of derivative actions involving unusually large monetary recoveries. *See, e.g.*, *In re Pfizer Inc. S'holder Deriv. Litig.*, 780 F. Supp. 2d 336, 338 (S.D.N.Y. 2011) (approving settlement representing 3.26% of $2.3 billion in penalties connected to the relevant misconduct).

The Proposed Settlement also includes extremely significant corporate governance reforms including the departures of *six* Defendants from FirstEnergy's board of directors (an unprecedented turnover); a comprehensive review by the newly refreshed Board of the current C-Suite executives, to be completed by no later than 90 days following the commencement of the review; and additional enhancements to oversight, disclosures, and alignment of incentives for executive compensation. These reforms will remain in effect for at least five years and were designed with the assistance of an experienced, outside corporate governance expert, Columbia Law School's Jeffrey N. Gordon. Plaintiffs anticipate the reforms may ultimately prove just as valuable to FirstEnergy as the monetary component of the Proposed Settlement or any financial recovery that could have been achieved through trial. *Maher v. Zapata Corp.*, 714 F.2d 436, 461 (5th Cir. 1983) (the "effects of [a derivative] suit on the functioning of the corporation may have a substantially greater economic impact on it, both long- and short-term, than the dollar amount of any likely judgment"). Further, these reforms constitute "a form of relief that [plaintiffs] could not have obtained at trial" and so were only achievable through a negotiated resolution. *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1067 (Del. Ch. 2015).

The derivative nature of this litigation compelled Plaintiffs to act in the best interests of FirstEnergy at all times, including affording weight to FirstEnergy's interests in avoiding the uncertainty, trouble, and distraction of further litigation arising from the bribery scandal and potential collateral harm that could befall the Company as a result of further adversarial litigation between the parties to this Action. *See Wells Fargo*, Case No. 16-cv-05541, ECF No. 274, Preliminary Approval Order at 9 (N.D. Cal. May 14, 2019) (Ex. 11 hereto) (granting preliminary approval for derivative settlement, recognizing that the proposed settlement would benefit the nominal defendant company by avoiding "lingering uncertainty" and facilitating "Wells Fargo's efforts to move past this series of scandals").

Plaintiffs' Counsel and the SLC, on behalf of itself and the Company, will attempt in good faith to negotiate an appropriate award of attorneys' fees and litigation expenses for all Plaintiffs' Counsel based upon the substantial benefits conferred upon the Company by the Proposed Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis. Any such agreement would be subject to Court approval. If Plaintiffs' Counsel and the SLC are unable to reach agreement, Plaintiffs will submit an application to the Court. Any fee request submitted to this

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Court-appointed Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis ("St. Louis") and Electrical Workers Pension Fund, Local 103, I.B.E.W ("Local 103"), together with additional Plaintiff Massachusetts Laborers Pension Fund ("MLPF," and collectively with "Co-Lead Plaintiffs," "Plaintiffs"), respectfully submit this Unopposed Motion for Preliminary Settlement Approval.

I. PRELIMINARY STATEMENT

Plaintiffs bring shareholder derivative claims for breach of fiduciary duty and violations of the federal securities laws against numerous current and former directors and officers of nominal defendant FirstEnergy Corp. ("FirstEnergy" or the "Company"), alleging their involvement in an illicit scheme to bribe Ohio public officials to take favorable legislative and regulatory action on behalf of the Company. Plaintiffs are now pleased to report that, following 18 months of fiercely-contested litigation across two District Courts and the Sixth Circuit Court of Appeals, Plaintiffs have secured a historic global settlement (the "Proposed Settlement") on behalf of FirstEnergy which, if approved, will resolve this Action and parallel derivative actions pending in the Northern District of Ohio and in the Ohio Court of Common Pleas (all together, the "Derivative Actions"). Significantly, all parties in all pending Derivative Actions, as well as the special litigation committee of FirstEnergy's board of directors (the "SLC"), fully support the Proposed Settlement. This Motion is unopposed as to the relief sought.

Plaintiffs brought this Action to achieve twin goals: (i) to remediate the financial harm to FirstEnergy as a result of the bribery scheme (including, most notably, a $230 million penalty paid by FirstEnergy pursuant to a Deferred Prosecution Agreement (the "DPA") with the Department of Justice (the "DOJ")); and (ii) to achieve internal governance reforms at the Company to deter and prevent the recurrence of misconduct in the future. The Proposed Settlement achieves these aims. Under the terms of the Proposed Settlement, FirstEnergy will receive *$180 million*. This

recovery is three times greater than any prior derivative recovery in the history of the Sixth Circuit[1] and among the largest derivative recoveries ever achieved, in any forum, in the history of the United States.[2] Under the terms of the Proposed Settlement, FirstEnergy will also benefit from significant non-monetary relief, including the departures of *six* legacy directors who oversaw the misconduct from FirstEnergy's board of directors (the "Board"), a prompt review of FirstEnergy's remaining C-Suite executives by the newly-refreshed Board, and the Board's formal undertaking of active oversight over FirstEnergy's political spending and lobbying activities—no longer leaving that to management. These reforms—designed by Plaintiffs with the assistance of an experienced outside corporate governance expert, Columbia Law School Professor Jeffrey N. Gordon—are tailored to ensure that the newly-refreshed Board is properly empowered and takes full accountability for FirstEnergy's lobbying, political contributions, and political activities, and that the Company's future political activities remain aboveboard.

Plaintiffs achieved this result by vigorously prosecuting their claims on behalf of the Company for 18 months with a team of more than 30 attorneys. Plaintiffs prevailed on myriad contested motions and secured extensive discovery over the strenuous efforts and objections of all Defendants and the SLC, including a document production *broader* than that obtained by the DOJ prior to its entry into the DPA with FirstEnergy. Through those efforts, Plaintiffs developed considerable confidence in their ability to ultimately prevail at trial, but also identified significant risks associated with further litigation—including as to the recoverability of damages. Having

[1] *See In re Community Health Sys., Inc. S'holder Deriv. Litig.*, No. 11-cv-00489 (M.D. Tenn. Jan. 17, 2017) (Transcript) (Ex. 1 hereto) (approving settlement comprised of $60 million payment and reforms, described as "the biggest derivative settlement in the Sixth Circuit").

[2] *See* Kevin LaCroix, "*Largest Derivative Lawsuit Settlements*," THE D&O DIARY (updated Feb. 12, 2022) (available at: https://www.dandodiary.com/2014/12/articles/shareholders-derivative-litigation/largest-derivative-lawsuit-settlements/) (collecting largest derivative settlements).

weighed the strengths and weaknesses of their litigation position and the benefits to the Company available through a negotiated resolution, Plaintiffs engaged with Defendants and the SLC in extensive, arm's-length, and hard-fought negotiations facilitated by a highly-experienced mediator, retired United States District Judge Layn R. Phillips. Those negotiations culminated in the Proposed Settlement. As explained below, the Proposed Settlement is an extraordinary result for FirstEnergy—likely superior to any result that could have been achieved through trial—and meets all of the requirements for preliminary approval under Rule 23.1 and relevant precedent. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Proposed Settlement, approve the form and manner of the parties' proposed Notice, and schedule a Settlement Hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

A. FirstEnergy's Bribery Scandal and the Ensuing Derivative Actions

In July 2020, the DOJ filed an 80-page criminal complaint against former Ohio Speaker of the House Larry Householder and two FirstEnergy lobbyists, detailing a "sophisticated criminal conspiracy" in which FirstEnergy executives funneled more than $60 million in illicit payments to public officials, including Householder, in exchange for favorable official action. In announcing the complaint, the DOJ made unmistakably clear that FirstEnergy and its leaders remained the subject of investigation. The fallout from that revelation was catastrophic for FirstEnergy, leading to the firing of numerous senior executives and an onslaught of litigation and investigatory proceedings. *See FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-0375, 2021 WL 2414763 at *2 (S.D. Ohio June 14, 2021) (Marbley, J.) (detailing the "host of criminal and civil investigations, lawsuits, regulatory reviews and other proceedings" involving FirstEnergy). A year later, FirstEnergy would concede its criminal liability in connection with the scheme. Specifically, on July 20, 2021, the Board authorized FirstEnergy's entry into the DPA, pursuant to which the Board

agreed to use *$230 million* of FirstEnergy's money to pay a criminal penalty and admitted that FirstEnergy executives had "*conspired … to pay millions of dollars to and for the benefit of public officials in exchange for specific official action*."[3]

In the meantime, between August and November of 2020, FirstEnergy shareholders commenced numerous derivative suits seeking to hold FirstEnergy officers and directors accountable for the harm incurred by the Company as a result of their involvement in the bribery scheme. Nine such actions were filed in this Court, which the Court subsequently consolidated into this Action, with St. Louis and Local 103 appointed to serve as Co-Lead Plaintiffs and their counsel appointed to serve as Co-Lead Counsel. *See* ECF No. 44; reported at *Bloom v. Anderson*, Case Nos. 20-cv-04534, 20-cv-04813, 20-cv-05128, 20-cv-05237, 20-cv-05529, 20-cv-05610, 2020 WL 6710429 (S.D. Ohio Nov. 16, 2020); ECF No. 45; reported at *Bloom v. Anderson*, Case Nos. 20-cv-04534, 20-cv-04813, 20-cv-05128, 20-cv-05237, 20-cv-05529, 20-cv-05610, 20-cv-05876, 2020 WL 6737655, at *1 (S.D. Ohio Nov. 17, 2020) (consolidating subsequently filed derivative suit into this Action). One additional action was filed in the Northern District of Ohio (the "Northern District Action" or "NDA");[4] and two additional actions were filed and subsequently consolidated in the Court of Common Pleas for Summit County (the "State Court Action").[5]

[3] *See USA v. FirstEnergy Corp.*, Case No.:21-cr-00086, ECF No. 3 (Deferred Prosecution Agreement) at 17 (S.D. Ohio July 22, 2021) (emphasis added).

[4] The Northern District Action is captioned *Miller v. Anderson et al.*, Case No. 5:20-cv-01743 (N.D. Ohio).

[5] The State Court Action is captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (Ohio Ct. of Common Pleas, Summit Cnty.).

B. Plaintiffs' Allegations Against the Defendants

The allegations of Plaintiffs' Consolidated Verified Shareholder Derivative Complaint in this Action (the "Complaint," ECF No. 75) and their legal underpinnings are detailed exhaustively in this Court's 44-page Opinion & Order denying Defendants' motions to dismiss. *See generally* ECF No. 93; reported at *Emps. Ret. Sys. of City of St. Louis v. Jones*, Case No. 20-cv-04813, 2021 WL 1890490 (S.D. Ohio May 11, 2021) (the "MTD Opinion").[6] In sum, Plaintiffs alleged that: (i) certain current and former executive officers (the "Officer Defendants") breached their fiduciary duties to FirstEnergy and committed other state law violations in connection with their perpetration of the bribery scheme;[7] and (ii) certain current and former directors (the "Director Defendants") breached their fiduciary duties to FirstEnergy by actively participating in the scheme when they allowed it to occur without intervention and by issuing false and misleading proxy statements concealing the scheme to secure their reelection in violation of Section 14(a) the Securities Exchange Act of 1934.[8]

C. Plaintiffs Defeat Defendants' and the SLC's Efforts to Dismiss or Stay FirstEnergy's Claims

In October 2020, Plaintiffs moved to intervene in the Northern District Action, seeking to transfer it to the Southern District for consolidation with this Action. *See* NDA ECF No. 17. While the plaintiff in the Northern District Action did not oppose that motion, Defendants did.

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[6] The other Derivative Actions pending in the Northern District and in State Court include certain additional defendants not named in this Action and, in the case of the State Court Action, certain additional causes of action (while omitting the federal claims asserted herein). The gravamen of each case is, however, the same, and all parties in all of the Derivative Actions have agreed to the Proposed Settlement as a global resolution of all of the pending Derivative Actions.

[7] The Officer Defendants in this Action are Defendants Jones, Dowling, Pearson, Reffner, Strah, Taylor, and Yeboah-Amankwah.

[8] The Director Defendants in this Action are Defendants Jones, Anderson, Demetriou, Johnson, Misheff, Mitchell, O'Neill, Pappas, Pianalto, Reyes, and Turner.

Defendants also sought to stay this Action pending resolution of their motions to dismiss the Northern District Action. But this Court denied that motion, finding that the threat of "duplicative litigation," the basis on which Defendants sought a stay, was of "Defendants own doing." ECF No. 59 at 8; reported at *Emps. Ret. Sys. of City of St. Louis v. Jones*, 2020 WL 7487839, at *3 (S.D. Ohio Dec. 21, 2020).

Plaintiffs thereafter filed their operative Complaint in this Action, Defendants moved to dismiss, and the parties engaged in extensive briefing thereon. ECF Nos. 75, 80, 86, 87. On May 11, 2021, the Court issued its comprehensive MTD Opinion sustaining all of Plaintiffs' claims against all Defendants in their entirety.[9] Two days later, the Northern District of Ohio issued a decision on Plaintiffs' long-pending transfer motion: that Court declined to transfer its action, but allowed Plaintiffs to intervene and have their complaint deemed operative there. NDA ECF No. 72; reported at *Miller v. Anderson*, Case No. 20CV1743, 2021 WL 2255516 (N.D. Ohio May 13, 2021). Plaintiffs did so, filing in the Northern District Action a complaint substantively identical to the Complaint in this Action. NDA ECF No. 75. Defendants moved again to dismiss, but, following further briefing, the Northern District adopted this Court's reasoning and likewise denied Defendants' motions to dismiss. NDA ECF No. 117; reported at *Miller v. Anderson*, Case No. 20CV1743, 2021 WL 4220780 (N.D. Ohio Sept. 16, 2021).

In July 2021, the FirstEnergy Board announced the formation of the SLC. By then, the Derivative Actions had been pending for nearly a year and this Court's MTD Opinion already had been issued. Nevertheless, the SLC moved on July 20, 2021 to stay all of the Derivative Actions,

[9] Defendants subsequently moved to certify an interlocutory appeal of the Court's decision denying their motions to dismiss but the Court, on November 12, 2021, likewise denied that motion in its entirety. ECF No. 151; reported at *Emps. Ret. Sys. of City of St. Louis v. Jones*, 20-cv-4813, 2021 WL 5275827 (S.D Ohio Nov. 12, 2021).

arguing it needed six months to investigate FirstEnergy's claims. ECF No. 120. Plaintiffs opposed the requested stay, arguing that the belated formation of the SLC and its requests for a stay were a mere artifice to achieve delay and avoid discovery. ECF No. 127. Both this Court and the Northern District agreed. In a September 16, 2021 order denying the SLC's motion to stay, the Northern District observed that "[b]y all appearances, FirstEnergy was willing to go without an SLC up until it realized these matters would not be dismissed at the pleadings stage." NDA ECF No. 117 at 2; reported at *Miller*, 2021 WL 4220780, at *1. On October 20, 2021, this Court likewise denied the SLC's requested stay, finding "the SLC offer[ed] no genuine justification for the delay in its creation" and that "indications of delay" in the formation of the SLC warranted a rejection of the motion. ECF No. 142; reported at *Emps. Ret. Sys. of City of St. Louis v. Jones*, Case No. 20-cv-4813, 2021 WL 4894833, at *3 (S.D. Ohio Oct. 20, 2021).

The SLC initiated a flurry of appeals of this Court's and the Northern District's denials of the stay motion and petitioned to mandamus this Court and the Northern District in the Sixth Circuit Court of Appeals. Plaintiffs moved to dismiss the appeals for lack of jurisdiction and opposed the mandamus petitions as improper. The Court of Appeals agreed, conclusively resolving that discovery in the federal Derivative Actions would proceed unimpeded. *Emps. Ret. Sys. of City of St. Louis v. Jones*, Nos. 21-3993/4041, 2021 WL 6067034 (6th Cir. Dec. 16, 2021).

When the parties entered into the Term Sheet on February 9, 2022, the SLC had still not concluded its investigation or issued a report.

D. Plaintiffs Take Extensive Written and Document Discovery, Building a Strong Evidentiary Record to Support Their Claims

On May 28, 2021, shortly after this Court issued its MTD Opinion, Plaintiffs served document requests on FirstEnergy and all Defendants. Responses were served on June 28, 2021. The parties thereafter engaged in negotiations concerning the scope of appropriate discovery, but

those negotiations were short lived: after the SLC filed its motions to stay on July 20, 2021, FirstEnergy and all Defendants refused to engage in any discovery until the SLC's stay motions were resolved. Plaintiffs, however, continued to press for discovery. Because FirstEnergy had already made significant productions to the DOJ likely to encompass much of the record relevant to Plaintiffs' claims, Plaintiffs saw no basis for FirstEnergy to refuse to produce at least those documents immediately. When Defendants refused to provide even these materials, Plaintiffs sought relief from this Court. Specifically, at Plaintiffs' request, Magistrate Judge Jolson held discovery conferences on October 7, 2021 and October 27, 2021 (ECF Nos. 138, 144), ultimately resulting in FirstEnergy's production of all documents previously produced to the DOJ as well as to the SEC.[10] In the meantime, on November 8, 2021, the Northern District held a case management conference and ordered a discovery schedule that contemplated the completion of all paper discovery by January 17, 2022, with depositions to commence on February 1, 2022 and to be completed by May 1, 2022. NDA ECF No. 160.

Over the ensuing months, Plaintiffs continued engaging in significant additional document and written discovery (including serving additional document requests, interrogatories and requests for admission), seeking material beyond that previously produced to the DOJ and SEC to further bolster the record in support of Plaintiffs' claims. For months Plaintiffs fought vigorously to achieve the widest possible breadth of discovery. For example, FirstEnergy and the Defendants initially refused to produce documents dated before January 1, 2017 or after Householder's arrest in July 2020. Through persistent efforts, however, Plaintiffs ultimately obtained FirstEnergy's and

[10] On November 23, 2021, FirstEnergy confirmed to Plaintiffs that it had "produced [to Plaintiffs] all documents that it produced in response to document requests from the DOJ and SEC." *See* November 23, 2021 Letter from A. MacDonald to A. Zayenchik (Ex. 2 hereto). Those documents, 288,164 pages in all, were produced to Plaintiffs in three tranches between November 5 and 19, 2021. *See id.*

all Defendants' agreement to include in their productions all relevant information dated or created over a span of more than five years, commencing January 1, 2016 and extending until at least mid-June 2021. Following contentious negotiations, Plaintiffs also successfully convinced FirstEnergy to produce every single set of Board and Board committee meeting minutes and materials, without any culling for responsiveness, for that entire five-year period and through to the present. As to other categories of documents, Plaintiffs secured FirstEnergy's agreement to search its custodial ESI using approximately 200 search terms and the Defendants' agreement to search their custodial ESI using approximately 260 search terms. Plaintiffs further incessantly fought for and secured the Company's and Defendants' agreement to review and produce relevant text messages exchanged between each Defendant and 30 counterparties, without the application of search terms. Additionally, Plaintiffs secured FirstEnergy's agreement to produce flight logs for the years 2016–2021, without the application of search terms or culling, as well as any phone logs for Defendants within FirstEnergy's possession, custody, or control.

Through the dogged efforts of a team of over 30 attorneys working on their behalf, Plaintiffs ultimately obtained and reviewed over 500,000 pages of documents produced by Defendants and third parties, including FirstEnergy's auditors, PwC and Clearsulting LLC, FirstEnergy shareholders, Nathan Cummings Foundation and Green Century, illicitly funded 501(c)(4) entities, Partners for Progress and Generation Now, multiple non-defendant former members of the Company's board of directors, and Defendant Jones' cellular service provider, Verizon. Plaintiffs also expended considerable effort in preparing for depositions, which were set to commence on February 10, 2022.[11]

[11] Although discovery proceeded apace in the federal Derivative Actions, the State Court Action remained at the pleading stage. There, Defendants' motion to dismiss and the SLC's motion to stay remained *sub judice* at the time of the Proposed Settlement.

Through these efforts, Plaintiffs developed a comprehensive and nuanced understanding of the events giving rise to this Action and of the strengths and weaknesses of their litigation position. Plaintiffs also determined that Defendants' insurance coverage was the primary source of any recovery on the scale of the damages incurred by FirstEnergy as a result of the bribery scheme, and that those insurance policies were "wasting" and subject to erosion in connection with defense costs and settlements both in the Derivative Actions and in other related actions arising from the scheme.

E. The Parties Engage in Mediation Before Judge Phillips, Ultimately Resulting in the Proposed Settlement

In late December 2021, the parties collectively agreed to schedule a mediation before retired United States District Judge Layn R. Phillips for purposes of exploring the possibility of a negotiated resolution. Following preliminary negotiations between the parties and an exchange of two rounds of detailed mediation statements, a mediation was held before Judge Phillips on February 1, 2022, with all parties in all of the Derivative Actions and the SLC participating. No agreement was reached at the 13-hour long mediation. Following the mediation, however, the parties continued to engage in several days (and nights) of intense negotiations facilitated by retired Judge Phillips.

On February 9, 2022, the parties reached an agreement in principle for resolution of the Derivative Actions and executed a Term Sheet. The parties thereafter proceeded to negotiate the terms of the final Settlement Stipulation, which was executed on March 11, 2022, and is attached hereto as Exhibit 3. The Joint Declaration of Jeroen van Kwawegen and Thomas Curry, attached hereto as Exhibit 4, further details the litigation and settlement process. The Declaration of Professor Jeffrey N. Gordon, attached hereto as Exhibit 5, details his involvement in crafting the corporate governance reforms that are part of the Proposed Settlement.

Additionally, a declaration by Judge Phillips concerning the mediation process is attached hereto as Exhibit 6. As Judge Phillips explains therein, "[t]he mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith" and "the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial, and they reflected a detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses at issue in this case." *Id.* at ¶12.

F. Subsequent Developments

On February 10, 2022, all parties to all three Derivative Actions filed joint motions to stay those Actions pending settlement proceedings in this Court. This Court and the Court of Common Pleas granted the requested stay. The Northern District did not. Instead, on February 11, 2022, the Northern District issued an Order and Decision that denied the requested stay without prejudice, expressed the Northern District's view that Plaintiffs had taken insufficient discovery before entering the Proposed Settlement,[12] requested 11 categories of information concerning the Proposed Settlement, and set a hearing to be held on March 9, 2022. NDA ECF No. 274. The parties to the Northern District Action and the SLC submitted responses to the Northern District's information requests on February 22, 2022. Those responses are attached hereto as Exhibits 7-9.

[12] The Court in the Northern District Action had previously, at a pair of January 2022 status conferences, indicated its view that mediation before deposition discovery would be premature. Plaintiffs, of course, considered the Northern District's views before agreeing to the Proposed Settlement. However, Plaintiffs ultimately determined based on their intimate knowledge of the record and other circumstances relating to recoverability and the time value of proposed governance reforms that could only be obtained through a negotiated resolution, that pressing further litigation in lieu of the Proposed Settlement would only delay implementation of the reforms achieved by the Proposed Settlement while jeopardizing Plaintiffs' ability to secure a monetary recovery for FirstEnergy on the scale of the $180 million ultimately achieved.

At the March 9, 2022 hearing in the Northern District Action, the Northern District reiterated its previously-expressed views concerning the Proposed Settlement and requested additional information from Plaintiffs' counsel concerning the facts giving rise to the Derivative Actions and the Proposed Settlement. Thereafter, on March 11, 2022, the Northern District issued an order requesting briefing on the applicability of the mediation privilege to certain information requested by the Northern District at the March 9, 2022 hearing. NDA ECF No. 286. Responses to that order are due on March 16, 2022. *Id.* at 3.

III. THE TERMS OF THE PROPOSED SETTLEMENT

The terms of the Proposed Settlement, which is fully supported by all parties in all of the Derivative Actions and by the SLC, are summarized below:

Consideration: The Proposed Settlement contains two components. *First*, Defendants' insurers will pay $180 million to FirstEnergy. Ex. 3, Settlement Stipulation ¶2(a). *Second*, FirstEnergy will adopt the significant corporate governance reforms detailed in Exhibit A to the parties' Settlement Stipulation. *Id.* at ¶2(b). Specifically, as part of the Proposed Settlement: (i) six defendant directors have agreed to leave FirstEnergy's Board; (ii) the Board—which will thereafter consist of a supermajority of independent, non-defendant directors—will be required to assume responsibility to actively oversee FirstEnergy's political spending and lobbying activities, implement a process to review the most senior executives of FirstEnergy who were not terminated in the wake of the bribery scandal, and ensure the Company's compensation system, including claw-back policies, align executives' financial incentives with legal compliance; and (iii) FirstEnergy will be required to make specific disclosures concerning its political activities in the Company's annual proxy statements, thereby facilitating shareholders' oversight and ability to remove directors who do not take their relevant oversight responsibilities seriously. *Id.* at Exhibit

A. The import of these governance improvements is discussed in Professor Gordon's declaration, attached hereto as Exhibit 5.

Release: In exchange for the consideration described above, the Proposed Settlement provides that all plaintiffs in all Derivative Actions will provide a customary global release, on behalf of the Company, of all derivative claims arising from facts alleged in any of the Derivative Actions. Notably, however, the Proposed Settlement *does not* release the Company's existing claims for recoupment of compensation from three executives who were terminated by the Company in the wake of the scandal and are Defendants in the Derivative Actions: Jones, Dowling, and Chack. *See* Ex. 3 ¶1(z). Nor does the Proposed Settlement release any direct claims or other non-derivative claims against the Company or any third parties arising in any way from the bribery scheme (including those direct claims being prosecuted in the related action before this Court captioned *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785 (S.D. Ohio)).

Attorneys' Fees and Costs: In accordance with the Proposed Settlement, Plaintiffs intend to seek a Court-approved award of attorneys' fees and expenses and to seek the Court's permission to pay, from any awarded attorneys' fees and expenses, service awards to each of the Plaintiffs in the Derivative Actions. *See id.* ¶¶16–21.

IV. ARGUMENT

A. The Standards Governing Preliminary Approval

Pursuant to Federal Rule of Civil Procedure Rule 23.1(c), "[a] derivative action may be settled . . . only with the court's approval." The Sixth Circuit has recognized, however, that "settlements are welcome" in shareholder derivative actions and that, "[a]bsent evidence of fraud or collusion, such settlements are not to be trifled with." *Granada Invs., Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992). In considering whether to approve a derivative action settlement, courts typically follow a two-step process: (1) preliminary approval; and (2) notice followed by a

fairness hearing. *See In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1015–16 (S.D. Ohio 2001). If the Court grants preliminary approval, it will direct the parties to disseminate notice of the Proposed Settlement and the Settlement Hearing to other Company stockholders. *Brent v. Midland Funding, LLC*, No. 11 CV 1332, 2011 WL 3862363, at *12 (N.D. Ohio Sept. 1, 2011) (citing *Williams v. Vukovich*, 720 F.3d 909, 920–21 (6th Cir. 1983)). At the Settlement Hearing, the Court will then consider and make a final determination as to whether the Proposed Settlement is "fair, reasonable, and adequate." *Id.*

The preliminary approval stage requires the Court to conduct a "threshold inquiry" that serves as "only the first step in an extensive and searching judicial process" leading to potential final approval of the Proposed Settlement. *In re Inter-Op Hip Prothesis Liab. Litig.*, 204 F.R.D. 330, 337–38 (N.D. Ohio 2001). At this stage, the Court "is not obligated to, nor could it reasonably, undertake a full and complete fairness review." *Id.* at 350; *see also In re Regions Morgan Keegan Sec.,*, No. 08-2260, 2015 WL 11145134, at *4 (W.D. Tenn. Nov. 30, 2015) (at preliminary approval stage, the court "decides whether notice of the proposed settlement would be appropriate, but makes no final determination about the settlement's fairness"). Instead, the Court considers whether "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval…." *Telectronics*, 137 F. Supp. 2d at 1015–16 (quoting Manual for Complex Litigation § 30.44 (2d ed. 1985)); *see also Bowling v. Pfizer*, 144 F. Supp. 3d 945, 952 (S.D. Ohio 2015)

(preliminary approval is warranted if settlement falls "within the range of what ultimately could be considered fair, reasonable, and adequate").[13]

B. The Court Should Grant Preliminary Approval of the Proposed Settlement

Where a "proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval," preliminary approval is appropriate. *Telectronics*, 137 F. Supp. 2d at 1015–16. The Proposed Settlement here meets this standard and should, accordingly, be preliminarily approved.

1. The Proposed Settlement is the Product of Serious, Informed, Non-Collusive Negotiations

The Proposed Settlement is the product of "serious, informed, non-collusive negotiations[.]" *Id.* Plaintiffs were unquestionably adequately informed concerning the facts giving rise to this litigation, and the strengths and weaknesses of their case, prior to negotiating the Proposed Settlement. Indeed, as detailed above, Plaintiffs secured and reviewed an extensive documentary record that amounted to hundreds of thousands of pages and was broader than even

[13] Recent amendments to Rule 23(e), which governs class actions rather than derivative suits, but are nonetheless relevant by analogy, now explicitly set forth factors to consider in determining whether a proposed settlement is "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2). Specifically, the Rule now requires courts to consider whether: (i) class representatives and class counsel have adequately represented the class; (ii) the proposal was negotiated at arm's length; (iii) the relief provided for the class is adequate; and (iv) the proposal treats class members equitably. *Id.* These amendments to the Rule were not intended to "displace" the factors developed by the Circuit Courts. *See* Fed. R. Civ. P. 23(e)(2) 2018 Advisory Comm. Notes. "Therefore, in considering whether to approve the parties' proposed settlement, a District Court in the Sixth Circuit should look to both the factors found in Rule 23 as well as the Sixth Circuit's traditional factors." *Doe v. Ohio*, Case No. 91-cv-00464, 2020 WL 728276, at *3 (S.D. Ohio Feb. 12, 2020). Consistent with case law governing derivative settlements, these factors reflect both procedural concerns (*e.g.*, the conduct of the litigation and of negotiations leading to the proposed settlement) and substantive concerns (*e.g.*, the relief provided). *See* Fed. R. Civ. P. 23(e)(2) 2018 Advisory Comm. Notes.

the documentary record secured by the DOJ before it entered into the DPA with FirstEnergy. Plaintiffs also received responses to written discovery from all Defendants and from FirstEnergy. This substantial discovery armed Plaintiffs with the factual record necessary to negotiate the terms of the historic Proposed Settlement. *See Castillo v. Morales, Inc.*, Case No. 12-cv-650, 2015 WL 13022263, at *1 (S.D. Ohio Aug. 12, 2015) (granting preliminary approval where settlement was "result of arms-length negotiations conducted after Class Counsel [had] adequately investigated the claims and became familiar with the strengths and weaknesses of those claims").

There also can be no question that the Proposed Settlement results from extensive negotiations that were serious and non-collusive. Indeed, it results from intense negotiations facilitated by retired United States District Judge Layn R. Phillips, who is a preeminent mediator. As Judge Phillips explains in his attached declaration, "[t]he mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith." Ex. 6 at ¶12.

As this Court has aptly explained, "[t]he participation of an independent mediator in settlement negotiations *virtually [e]nsures* that the negotiations were conducted at arm's length and without collusion between the parties." *In re Wendy's Co. S'holder Deriv. Action*, Case No. No. 16-cv-1153 (S.D. Ohio Jan. 24, 2020), Preliminary Approval Order (Ex. 10 hereto) at 14 (emphasis in original) (quoting *Bert v. AK Steel Corp.*, No. 02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008)). And numerous courts throughout the country have acknowledged the involvement of retired Judge Phillips in particular as a factor weighing in favor of settlement approval. *See, e.g.*, *Voulgaris v. Array Biopharma Inc.*, Civil Action No. 17-cv-02789, 2021 WL 6331178, at *6 (D. Colo. Dec. 3, 2021) ("The arm's-length nature of the parties' negotiations and

the active involvement of an independent mediator, such as Judge Phillips in particular, provide strong support for approval of the Settlement."); *IBEW Local 697 Pension Fund v. Int'l Game Tech., Inc.,* No. 09-cv-00419, 2012 WL 5199742, at *2 (D. Nev. Oct. 19, 2012) (finding settlement fair when it was reached with "the assistance of an experienced and reputable private mediator, retired Judge Phillips").

2. The Proposed Settlement Is Fair, Reasonable, and Adequate, and Falls Within the Range of Possible Approval

The Proposed Settlement also "has no obvious deficiencies, does not improperly grant preferential treatment" to any constituency and easily "falls within the range of possible approval." *Telectronics*, 137 F. Supp. 2d at 1015–16. Indeed, it is one of the most significant settlements of a shareholder derivative action ever achieved, including both a significant monetary recovery *and* unprecedented internal governance reforms tailored to improve FirstEnergy's corporate governance disclosure obligations and prevent the recurrence of misconduct going forward.

a. The $180 Million Monetary Component of the Proposed Settlement Represents a Highly-Favorable Recovery

The $180 million monetary component of the Proposed Settlement is, as noted, three times the size of any prior derivative recovery in the history of the Sixth Circuit[14] and among the largest derivative recoveries ever achieved, in any forum, in the history of the United States.[15] Indeed, it is the third-largest insurer-funded derivative recovery on record.[16] It also represents an

[14] *See* note 1, *supra*.

[15] *See* note 2, *supra*.

[16] The only larger such recoveries known to Plaintiffs were achieved in *In re Wells Fargo & Company Shareholder Derivative Litigation*, C.A. No. 3:16-cv-05541 (N.D. Cal. 2020) ($240 million insurer-funded cash recovery in action alleging breaches of fiduciary duty in connection with an illicit scheme to create millions of customer accounts without customers' knowledge) and *In re the Boeing Company Derivative Litigation*, C.A. No. 219-0907 (Del. Ch. 2022) ($237.5

extraordinary result for FirstEnergy in this case, comparing favorably with any recovery that Plaintiffs could reasonably have hoped to recover following trial, an inevitable appeal, and the entry of a final judgement. Though Plaintiffs believed their claims were strong and had confidence in their ability to prevail on the merits at trial, Plaintiffs also identified certain risks inherent in pressing further litigation in lieu of the Proposed Settlement.

In particular, Plaintiffs harbored serious concerns regarding recoverability, given that the Individual Defendants' personal assets and D&O insurance represented the only possible sources of recovery for Plaintiffs' claims asserted on behalf of FirstEnergy. The Proposed Settlement, significantly, captures the vast majority of Defendants' available D&O insurance, which Plaintiffs reasonably determined represented the primary source of any recovery on the scale of the damages alleged. Defendants' relevant policies are "wasting" policies, subject to erosion to pay defense costs and settlements in this Action as well as defense costs and any settlements in other related actions. Pressing further litigation in lieu of settlement therefore created a serious risk of substantial erosion of the policies, rendering any future judgment on the scale of $180 million unrecoverable and a quintessential pyrrhic victory.[17]

Further, given the nature of the alleged misconduct in this Action, Plaintiffs also harbored concerns that, if a negotiated resolution could not be reached at this time, they would ultimately face additional or collateral litigation with Defendants' insurers regarding their obligation to cover Defendants in connection with the wrongful acts alleged. *See, e.g.*, *In re Galena Biopharma, Inc.*

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million insurer-funded cash recovery in action alleging breaches of fiduciary duty in connection with oversight failures leading to mass-fatality aircraft disasters).

[17] At the time of Proposed Settlement, Defendants possessed approximately $220 million in remaining insurance coverage, subject to potential erosion in connection with defense costs or settlements of the Derivative Actions, as well as multiple other related actions including, for instance, the pending related consolidated federal securities class action.

Deriv. Litig., Case No. 14-cv-00516, 2016 WL 10840600, at *2 (D. Or. June 24, 2016) (noting the individual defendants' "insurers dispute coverage and if the Action does not settle and continues to be litigated, there is a risk that insurance coverage will be denied and an additional insurance coverage lawsuit may ensue").

Moreover, though Plaintiffs were highly confident in the merits of their claims, derivative litigation is "notoriously difficult and unpredictable," *Granada Invs.* 962 F.2d at 1205, and besides the time-value of money, litigating this Action through trial and possible appeals was not a risk-free proposition. Notably, to recover damages for alleged breaches of fiduciary duty under Ohio law, Plaintiffs would have been required to prove by "clear and convincing evidence" that the directors or officers acted or failed to act with "deliberate intent to cause injury" to FirstEnergy or with "reckless disregard" for FirstEnergy's best interests. Ohio Rev. Code §§ 1701.59(E) and 1701.641(D). Satisfying this standard, particularly as to the Director Defendants, would have presented challenges. It is widely-recognized that fiduciary breach claims premised on oversight failures, even in jurisdictions such as Delaware with standards of proof lower than Ohio's "clear and convincing" evidence standard, are "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *See In re Caremark Int'l Inc. Deriv. Litig.,* 698 A.2d 959, 967 (Del. Ch. 1996).

Similarly, Plaintiffs faced potential appellate issues with respect to Plaintiffs' theory of liability for the Director Defendants under Section 14(a) of the Exchange Act. As this Court recognized when denying Defendants' motions to dismiss, "the Sixth Circuit has yet to define 'transaction causation' for purposes of a Section 14(a) claim under circumstances analogous to those presented here." MTD Opinion at 30. Although this Court correctly denied Defendants' motion for interlocutory appeal regarding this issue (ECF No. 151), the lack of clear controlling

precedent by the Sixth Circuit created risk and could have resulted in a prolonged appellate process even after a successful trial, which militates in favor of approving the Propose Settlement. *See Thacker v. Chesapeake Appalachia, L.L.C.*, 695 F. Supp. 2d 521, 531 (E.D. Ky. 2010), *aff'd sub nom., Poplar Creek Dev. Co. v. Chesapeake Appalachia, L.L.C.*, 636 F.3d 235 (6th Cir. 2011) (approving settlement "[g]iven the unsettled nature of the law with respect to certain claims").

Given these practical limitations and risks, among others, the $180 million monetary component of the Proposed Settlement is an extraordinary result. Plaintiffs' damages case has centered on the $230 million penalty imposed on FirstEnergy pursuant to the DPA, a full 78.26% of which is recovered by the Proposed Settlement.[18] This recovery, even assuming significant additional damages, compares favorably with other significant settlements of derivative actions involving unusually large monetary recoveries. *See, e.g.*, *In re Pfizer Inc. S'holder Deriv. Litig.*, 780 F. Supp. 2d 336, 338 (S.D.N.Y. 2011) (granting final approval of derivative settlement with $75 million monetary component, which represented 3.26% of $2.3 billion in penalties paid to the federal government in connection with the relevant misconduct). All things considered, the $180 million recovery here is a striking result as compared both to precedent and to what Plaintiffs could reasonably have hoped to recover following trial.

[18] At the time of the Proposed Settlement, it was not possible to determine the total damages incurred by FirstEnergy with precision, as much of those damages remained speculative. For instance, damages associated with the amorphous reputational harm inflicted upon the Company as a result of the bribery scandal are very difficult to quantify. The same is true regarding estimates of the potential liabilities facing FirstEnergy in the related consolidated federal securities class action and consolidated consumer class action, as well as potential liabilities flowing from ongoing regulatory proceedings. The sources of readily identifiable damages to FirstEnergy included principally the $230 million penalty imposed by the DPA, the approximately $60 million in corporate funds misappropriated for use in the bribery scheme, the more than $100 million in compensation FirstEnergy paid to the Individual Defendants while the scheme was on going, and the Company's defense costs incurred in connection with the various related actions and regulatory investigations, which FirstEnergy regularly discloses in its filings with the SEC.

b. The Proposed Settlement's Governance Reforms Constitute Important Additional Relief That Was Only Achievable Through a Negotiated Resolution

The Proposed Settlement, moreover, pairs its historic monetary recovery with extremely significant corporate governance reforms. These reforms were designed by Plaintiffs with the assistance of an experienced, outside corporate governance expert, Columbia Law School's Jeffrey N. Gordon, and are tailored to prevent recurrence of similar misconduct in the future while restoring FirstEnergy's reputation with regulators, shareholders, customers, and the public. As Professor Gordon explains in his attached declaration, the achieved reforms "will significantly improve shareholder welfare at FirstEnergy and also help establish an improved template for board responsibility-taking and accountability-enabling in the challenging area of the Company's political activity." Ex. 5 ¶22.

Here, the Proposed Settlement ensures that the Board will be refreshed at FirstEnergy's annual meeting in Spring 2022, rather than at some indeterminate time in the future, or not at all. Further, within 30 days of that annual meeting, the refreshed Board will engage in a comprehensive review of the Company's current C-Suite executives, to be completed by no later than 90 days following the commencement of the review. Accordingly, FirstEnergy stockholders will be able to take comfort that the senior-most members of the Company have been reviewed by a refreshed Board no later than 120 days after the Company's annual meeting. The other corporate governance reforms will take effect immediately upon final approval of the Proposed Settlement, and will ensure significantly enhanced oversight, disclosures, and alignment of incentives for executive compensation.

Plaintiffs believe that the achieved reforms ultimately may prove even more valuable to FirstEnergy than the monetary component of the Proposed Settlement. *Cf. Maher v. Zapata*, 714 F.2d 436, 461 (5th Cir. 1983) (recognizing that the "effects of [a derivative] suit on the functioning

of the corporation may have a substantially greater economic impact on it, both long- and short-term, than the dollar amount of any likely judgment"); *see also Pfizer*, 780 F. Supp. 2d at 342 (recognizing reforms aspects of settlement to "provide considerable corporate benefits … in the form of a significantly improved institutional structure for detecting and rectifying the types of wrongdoing that have … caused extensive harm to the company").[19] Notably these reforms constitute "a form of relief that [plaintiffs] could not have obtained at trial" and that was, therefore, only achievable through a negotiated resolution. *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1067 (Del. Ch. 2015) (commenting favorably on non-monetary aspects of a shareholder derivative settlement).

c. The Proposed Settlement Provides FirstEnergy with Immediate Relief and Avoids the Trouble and Uncertainty of Further Litigation for the Company

Finally, the derivative nature of this litigation compelled Plaintiffs to act in the best interests of FirstEnergy at all times. This required Plaintiffs to weigh FirstEnergy's interests in avoiding the uncertainty and distraction of further litigation arising from the bribery scandal and potential collateral harm that could befall the Company as a result of further adversarial litigation between the parties to this Action. *See Wells Fargo*, C.A. No. 16-cv-05541, ECF No. 274, Preliminary Approval Order at 9 (Ex. 11 hereto) (granting preliminary approval for derivative settlement, recognizing that the proposed settlement would benefit the nominal defendant company by avoiding "lingering uncertainty" and facilitating "Wells Fargo's efforts to move past this series of scandals") (N.D. Cal. May 14, 2019) (citing *In re Apple Computer, Inc. Deriv. Litig.*,

[19] *See also Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 395 (1970) (recognizing that "a corporation may receive a 'substantial benefit' from a derivative suit … regardless of whether the benefit is pecuniary in nature"); *AOL Time Warner S'holder Deriv. Litig.*, No. 02 Civ. 6302, 2006 WL 2572114, at *4 (S.D.N.Y. Sept. 6, 2006) (non-monetary benefits alone can be "substantial enough to merit [settlement] approval").

No. C 06-4128, 2008 WL 4820784, at *2 (N.D. Cal. Nov. 5, 2008) ("The principal factor to be considered in determining the fairness of a settlement concluding a shareholders' derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest.")).

The Proposed Settlement here provides FirstEnergy with meaningful financial compensation for the financial harm caused by the bribery scandal, implements reforms to deter and prevent the recurrence of misconduct, *and* provides certainty and finality to the Company, facilitating its efforts to move past the scandal. Plaintiffs submit that it is an extraordinary result for the Company and one easily meeting the requirements for preliminary approval.

C. Attorneys' Fees and Expenses

Plaintiffs' counsel and the SLC, on behalf of itself and the Company, will attempt in good faith to negotiate an appropriate award of attorneys' fees and litigation expenses for Plaintiffs' counsel in all Derivative Actions based upon the substantial benefits conferred upon the Company by the Proposed Settlement and the risks of undertaking the prosecution of those Actions on a contingent basis. Any such agreement would be subject to Court approval. Any fee request submitted to this Court, whether agreed to by the SLC or not, will be based upon the substantial benefits conferred upon the Company by the Proposed Settlement and the risks of undertaking the prosecution of the Derivative Actions on a contingent basis, and will not exceed 27% of the Settlement Fund. Additionally, Co-Lead Counsel in this Action intend to apply to the Court for service awards for each of the Plaintiffs ("Service Awards") in an amount not to exceed $10,000 for each Plaintiff, to be paid out of the Court-awarded attorneys' fees and litigation expenses.

Assuming the Court preliminarily approves the Proposed Settlement, Plaintiffs' requested Fee and Expense Award will be fully addressed in connection with briefing on Plaintiffs' motion for final approval of the Proposed Settlement. At that time, Plaintiffs will submit additional

detailed information in support of their requested award and the Court will have the opportunity to evaluate the reasonableness of the request in full. Plaintiffs respectfully submit that, for present purposes, the contemplated Fee and Expense Award is within the range of possible approval. Plaintiffs have committed to seek no more than 27% of the total monetary recovery achieved by the Proposed Settlement, without ascribing any valuation to the significant governance reforms achieved by the Proposed Settlement. "It is not abnormal for negotiated attorneys' fee awards to comprise between 20% to 30% of the total award." *Does 1-2 v. Déjà vu Services, Inc.*, 925 F.3d 886, 898 (6th Cir. 2019); *see also Schuh v. HCA Holdings, Inc.*, Civil Action No. 11-cv-01033, 2016 WL 10570957, at *1 (M.D. Tenn. April 14, 2016) (awarding "attorneys' fees of 30% of the [$215 million total] Settlement Amount," holding "the awarded fee is in accord with Sixth Circuit authority and consistent with other fee awards in cases of this size").[20]

D. The Proposed Notice is Adequate and Reasonable

No later than five business days after the Court grants preliminary approval, the Company will notify current FirstEnergy stockholders by (a) filing a copy of the Stipulation and the Notice (in the form attached as Exhibit D to the Settlement Stipulation) as an exhibit to a Form 8-K with the United States Securities and Exchange Commission, (b) posting a copy of the Settlement Stipulation and the Notice on the Company's corporate website, which documents shall remain there through the Effective Date of the Settlement, and (c) publishing a Summary Notice (in the form attached as Exhibit E to the Settlement Stipulation) in *Investor's Business Daily* or similar

[20] Indeed, numerous federal District Courts nationwide have awarded comparable or higher fees in large complex actions such as this one. *See, e.g.*, *Kritzer v. Safelite Solutions, LLC*, 2012 WL 1945144, at *9 (S.D. Ohio May 30, 2012) (fee award of nearly 52%); *Peace Officers' Annuity & Ben. Fund of Ga. v. Davita Inc.*, 2021 WL 2981970, at *5 (D. Colo. July 15, 2021) (fee award of 30%).

publication. The Company will assume administrative responsibility for and will pay any and all costs and expenses related to disseminating the Notice.

The proposed Notice will advise the Company's stockholders of the essential terms of the Proposed Settlement, and of information regarding Plaintiffs' counsel's intended application for Court approval of a Fee and Expense Award and Service Awards to be paid therefrom. It also will set forth the procedure for objecting to the Proposed Settlement and/or the Fee and Expense Award and Service Awards, and will provide specifics on the date, time and place of the Settlement Hearing, thereby satisfying the requirements of Rule 23.1. *See, e.g., Bailey v. White*, 320 F. App'x 364, 367 (6th Cir. 2009) ("notice must 'be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections'") (quoting *UAW v. Gen. Motors Corp*., 497 F.3d 615, 629 (6th Cir. 2007)). The same type of notice proposed here has been approved by other courts in this District as fully satisfying the requirements of Rule 23.1 and the requirements of due process. *See In re Big Lots, Inc. S'holder Litig.*, Case No. 12-cv-445 (S.D. Ohio Apr. 6, 2018), ECF No. 120, Preliminary Approval Order at 4 (Ex. 12 hereto) (providing for similar notice program to stockholders); *Booth Fam. Tr. v. Jeffries*, No. 05-cv-0860 (S.D. Ohio Nov. 01, 2011), ECF No. 254, Preliminary Approval Order at 3 (Ex. 13 hereto) (same).

V. THE PARTES' PROPOSED SCHEDULE OF EVENTS

Pursuant to the proposed Preliminary Approval Order, the parties propose the following schedule of events leading to the Settlement Hearing:

Event	Date
Filing of Notice via Form 8-K with the SEC	Within 5 business days after entry of the Preliminary Approval Order

Event	Date
Posting of Notice on FirstEnergy's website	Within 5 business days after entry of the Preliminary Approval Order
Last day for counsel for FirstEnergy to file appropriate proof of compliance with respect to dissemination of Notice	At least 21 calendar days prior to the Settlement Hearing
Filing of all papers in support of the Proposed Settlement, including the Fee and Expense Award and Service Awards	At least 28 calendar days prior to the Settlement Hearing
Last day for Current FirstEnergy Stockholders to comment on the Proposed Settlement	At least 14 calendar days prior to the Settlement Hearing
Filing of all reply papers in support of the Proposed Settlement, including responses to Current Shareholder comments, if any	At least 7 calendar days prior to the Settlement Hearing
Settlement Hearing	At least 65 calendar days after entry of the Preliminary Approval Order

The parties' proposed preliminary approval order also includes a customary prosecution bar enjoining Plaintiffs, FirstEnergy, or anyone else from commencing or prosecuting any other action asserting any of the claims alleged in this Action—including the Northern District Action and the State Court Action—pending this Court's determination as to whether final approval should be granted. *See* Ex. C to Settlement Stipulation at ¶16. All parties in all of the Derivative Actions support the Proposed Settlement. Absent a prosecution bar, Plaintiffs in another court may nevertheless be forced to prosecute (1) the same claims; (2) on behalf of the same party (FirstEnergy); (3) against the same Defendants, that this Court will release if it approves the Proposed Settlement. This would undermine the Proposed Settlement and could deprive FirstEnergy of the benefits of the Proposed Settlement before it has been considered following notice and a final approval hearing in this Court. FirstEnergy only has the right to recover once against its Officers and Directors for the misconduct alleged here.

Plaintiffs further note that because the Proposed Settlement is supported by all parties to all of the Derivative Actions and this motion for preliminary approval is unopposed as to the relief sought, no responses or reply briefs are expected. Accordingly, this Motion is now fully briefed.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary approval of the Proposed Settlement, approve the form and manner of the parties' proposed Notice approve and direct the implementation of the Notice plan, and schedule a Settlement Hearing.

Dated: March 11, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys on record.

/s/ John C. Camillus

John C. Camillus

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE: COMMUNITY HEALTH SYSTEMS, INC., SHAREHOLDER DERIVATIVE LITIGATION	)	
Plaintiffs,	)	
vs.	)	3:11-CV-00489 Nashville, TN
THIS DOCUMENT RELATES TO: ALL ACTIONS Defendants.	)	Consolidated with 3:11-CV-0059 and 3:11-CV-00952

TRANSCRIPT OF SETTLEMENT PROCEEDINGS
BEFORE THE HONORABLE KEVIN H. SHARP,
UNITED STATES CHIEF DISTRICT JUDGE
JANUARY 17, 2017

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UNITED STATES DISTRICT COURT

The above-styled cause came on to be heard on January 17, 2017, at 10:44 a.m., before the Honorable Kevin H. Sharp, when the following proceedings were had, to-wit:

COURTROOM DEPUTY: All rise, please.

THE COURT: All right. Thanks. Y'all can be seated.

All right. There's a lot of laughing going on out here.

So, tell me, I've read through all of your papers, but maybe Mr. Robbins or whoever with the plaintiff wants to just give me a thumbnail of what their deal is and explain to me a little more about what your government -- your governance proposal is.

MR. GOODMAN: Sure, Your Honor.

Your Honor, my name's Benny Goodman. I'm with Robbins Geller. I'm here on behalf of plaintiffs. I'm here with my colleagues, Darren Robbins, Eric Luedeke, and our local counsel, Wade Cohen [sic], Kevin Seely.

At the end of --

THE COURT: Or Cowan, either way. [Laughter.]

MR. GOODMAN: Oh. I get other people's names in my head sometimes.

Your Honor, this -- we're -- we're -- we're happy to be here to put this approval before your Court, before Your Honor, to be finally approved. It has two elements that are important. We have the $60 million cash payment, which stands

on its own two feet as a reason to settle this -- this case, Your Honor. It accounts for approximately 60 percent of the damages that we allege the company suffered.

But to get directly to your question, Your Honor, what was the corporate governance elements here and why are they important? I think that the value of the settlement brings to the company -- really the $60 million pales in comparison to the value we bring to the company from the corporate governance. The corporate governance contains numerous, important, and unique, I think, issues -- terms, Your Honor. For example, we allege that there was health care compliance problems with Medicare and Medicaid regulations in this action. So one of the corporate governance terms is a health care law compliance coordinator. Now, the devil's in the details with these kinds of terms, Your Honor. It's not just an aspirational position at the company. We have requirements for this health care law compliance coordinator that include at least a law degree or a master's degree in health care administration, a requirement that the person reports directly to the board of directors and the CEO of the company.

The health care law compliance coordinator has to visit at least 10 percent of the company's hospitals or facilities each year and write detailed reports about the compliance at each of those facilities, and those reports need to be kept at the company for 10 years.

We have enhanced whistle-blower protections, Your Honor, making it a lot easier I think for individuals at the company who are aware of compliance issues to come forward, either in person, anonymously, or otherwise to a third party to bring up these compliance failures and get that information, Your Honor, directly to the people who have the authority, the wherewithal, and the experience to make a chance to stop whatever the compliance issue is if it's a failure, or enhance the compliance issue if -- if it's something good.

Now, Your Honor, we have two new directors coming on the board, two shareholder-nominated directors. One on its own is pretty significant, but here we have two. They have to have a background in accounting and compliance or compliance or both. So we're bringing what I think is a new level of depth and independence to the board with regards to ensuring the company is looking directly at compliance issues, addressing those compliance issues, and preventing future problems with compliance.

We have a lead independent director. I like to call that filling a void of leadership. Sometimes you have a board of directors, Your Honor, with a lot of independent directors and some management directors, and none of the independent directors step up to take leadership of the independent directors as a balance against management. Here we have a new lead independent director who will do just that, again,

providing continuity for the board in terms of focusing on independence and standing against potential violations of compliance like we alleged here, that the company had implemented at some of its facilities.

I think another factor in the corporate governance is very important and very unique is the clawback provision. Your Honor, a lot of companies in the United States have clawback provisions. In fact, most of the companies have clawback provisions, and I'm not aware of one that's an automatic clawback like this. Usually, what happens is the company has to do a restatement, and the board of directors has to make a decision about whether the incentive compensation earned under the previous pre-restatement financials is kept. For example, Your Honor, the Pfizer settlement, which is similar to this case, the shareholder derivative settlement. In that case, there's a committee that has to go to the board, the comp committee, and recommend whether or not they should get the money back from an incentive compensation that was later restated to be a lower amount. Here, there is no discretion. It's automatic. If there is a restatement and the incentive compensation would have been less under the now restated financial results, then that compensation comes back for the previous two years.

And, Your Honor, we have another factor here that I -- or another revision here that I think is very important, which

is -- I like to call it the citizens' united political contribution disclosures. Here we -- we have a system set up now where the company is going to unify the disclosure of all of its political contributions. Now, I -- I'm summarizing here, Your Honor. It's a multi-page portion of the corporate governance reforms but at the end of the day, everything's in one place. Investors and shareholders can look and see what the company is doing in terms of political contributions, and there are requirements that the company only do political contributions, for example, that benefit the company and not any of the individuals in management personally. And those are just some of the corporate governance reforms, Your Honor. And I'm -- I'm happy to answer any more direct questions, if you have any about them, but --

THE COURT: No. You've hit the high points. I appreciate that. That's helpful.

MR. GOODMAN: Thank you, Your Honor.

So I think what I want to say that's important here is the settlement does two things: It sort of fills a hole at the company for past behavior. And that hole we -- I call it the $98 million hole from the Department of Health and Human Services settlement where the company paid $98 million. We have $60 million going into that. And then going forward, we have a robust set of corporate governance that will stop the company from -- ideally from being able to overlook or miss any

compliance issues and actively participate in addressing compliance issues related to Medicare compliance. Now, I -- I don't think you think it's surprising I'm up here telling you this is a great settlement, Your Honor. It is a good settlement. This is the biggest derivative settlement in the Sixth Circuit and in Tennessee, but shareholders are the ones who matter. We issued notice pursuant to Your Honor's preliminary approval order and, as of today, not a single shareholder has objected. Now, the reason that I think that's particularly notable is in this age of shareholder activism, when things are awry and publicly revealed and they are awry, people show up and object. And here we have 94 -- the company has over 100 million shares in the market. 94 percent or more are owned by institutional investors and mutual funds. Now, those entities in particular have the expertise, they have the wherewithal, and they have the ability to file objections where they're appropriate. And I -- personally, Your Honor, I don't find it surprising there's no objections here. The -- the benefits the company will reap from this settlement are significant, and I don't think can really be disputed. So the fact that no shareholders have objected I think also supports the fact that this settlement should be approved, Your Honor. And after we negotiated the settlement terms, the principal terms, the governance and the cash payment, we negotiated the fee and expense amount. Those negotiations, similar to all the

negotiations, were overseen by Judge Phillips, who was our mediator, nationally recognized mediator. And he worked at arm's length with all of us to negotiate the fee and expense amount. And based on the substantial benefit that this brings to the company, benefits that CHS will reap for years to come, we agree that the fee and expense amount should be 33 percent of the cash payment or $20 million. Now, Your Honor, that doesn't reflect the full value, I want to be clear, of this settlement because I think that the corporate governance is extremely valuable, but it's a straight-forward and simple way to reach the end point that we did, and it includes expenses, Your Honor.

THE COURT: Right.

MR. GOODMAN: It's expenses and fees.

So given this benefit, given the fact that there's no objections, we respectfully request that the Court enter the final approval order and approve the settlement on each of its terms.

Of course, I'm happy to address any other questions you may have, Your Honor.

THE COURT: No, I've got it. I appreciate it.

Mr. Riley, is there anything that you want to add to Mr. Goodman's presentation?

MR. RILEY: No, Your Honor.

I -- I think that -- first, I'm here with my

colleague, Matt Madden, and Mr. Fardon represents the individual defendants who represent the company.

We had stipulated that we think that this settlement is fair and reasonable to the company, and I think that's all I need to say about it.

THE COURT: Yes. I -- I think -- there is no need for us to spend a bunch of time going through this so y'all can hear me talk. I think y'all have done a great job pulling this thing together. It was complicated, it was drawn out, and a lot of work clearly went into this. There is no sense in holding this up. I was surprised. I went through it, waiting for the objections to come in, and I was surprised not to see them, even if they were for other reasons and -- and didn't get them.

Now, you did confuse me by filing a reply to your own motion. [Laughter.] I go, wait a minute. Where's the response? [Laughter.] What's going on here? But it was helpful, so all that was good. I'll -- I'll approve this settlement. I appreciate the work you all did on this. I think this is one where -- I can't always say this, where it's not just the lawyers who are making money on this. I think there is some benefit to the shareholders that are above and beyond money, a benefit to the company above and beyond money that changed hands. So I -- I appreciate y'all's work on this, and Judge Phillips, too, who obviously did a great job and put

in a lot of work to bring it all together.

So I will get these -- your settlement approved and your judgment entered.

Anything else you all want to talk about?

MR. GOODMAN: No, Your Honor. We appreciate your time. And we know these cases take a lot of the Court's resources. And I -- I do want to note, just for the record, Your Honor, that Judge Brown was highly responsive in this case. We do these cases all over the country, and Judge Brown was beyond responsive.

THE COURT: He's good, yeah.

MR. GOODMAN: And we really appreciate that.

THE COURT: Uh-huh.

MR. GOODMAN: We know it takes a lot of the Court's time.

THE COURT: Judge Brown is really good, and he is not afraid to say what he's thinking. And to get those entertaining orders sometimes that come in. As he's -- as he's typing direct text orders in, and I wait to see what's happened. So, hopefully, we can keep him around. He's -- he's a recall, so he goes year to year. And I don't know -- you all probably know this, we're down to three judges. We have no more seniors and we have a vacancy. So, anyone interested? Let the Senators know.

All right. Okay. Thanks, guys.

MR. GOODMAN: Thank you, Your Honor.

COURTROOM DEPUTY: All rise, please.

[Proceedings concluded at 10:56.]

REPORTER'S CERTIFICATE

I, Traci D. Walker, Official Court Reporter for the United States District Court for the Middle District of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the Stenograph machine the proceedings held in open court on January 17, 2017 in the matter of Community Health Systems, Inc., Shareholder Derivative Litigation vs. This document relates to all actions, CASE NUMBER: 3:11-CV-00489; that said proceedings in connection with the hearing were reduced to typewritten form by me; and that the foregoing transcript (Pages 1-12) is a true and accurate record of the proceedings.

This 4th day of FEBRUARY, 2017.

/s/ Traci D. Walker, RMR-CRR
Official Court Reporter

UNITED STATES DISTRICT COURT

EXHIBIT 2

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November 23, 2021

VIA ELECTRONIC MAIL
Alla Zayenchik, Esq.
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Re: ***Miller v. Anderson et al*, No. 5:20-cv-01743 (S.D. Ohio); *Employees Retirement System of The City of St. Louis V. Jones et al*, No. 2:20-cv-04813 (S.D. Ohio)**

Dear Alla:

I am writing to follow up on a few items from our recent discussions, including our meet and confer call on Friday, November 19.

1. Documents Produced to DOJ and SEC

You asked for clarification on the status of our production to you of documents that were produced to the DOJ and SEC. As of Friday, FirstEnergy has produced to you all documents that it produced in response to document requests from the DOJ and SEC. These documents were provided to you in the following productions:

Production Date	Bates Range	Pages Produced
November 5, 2021	FE_DERIV_0000001-FE_DERIV_0175728	175,728
November 12, 2021	FE_DERIV_0175729-FE_DERIV_0257363	81,635
November 19, 2021	FE_DERIV_0257364-FE_DERIV_0288164	30,801
Total Pages:		288,164

2. Platform Used by the Board

We can confirm that Board Materials were shared with members of the Board using the Boardvantage platform. We are working to confirm for you the extent to which various features within the Boardvantage platform were available or disabled.

Schiff Hardin

3. Officer Defendants' Data

We can confirm that the following data has been collected, to the extent it existed, for each of the following Officer Defendants:

Defendant	FirstEnergy Email Collected?	FirstEnergy Mobile Device(s) Collected?	FirstEnergy Laptop(s) Collected?
Jones	Yes	Yes	Yes
Dowling	Yes	Yes	Yes
Pearson	Yes	Yes	Yes
Reffner	Yes	Yes	Yes
Strah	Yes	Yes	Yes
Taylor	Yes	Yes	Yes
Yeboah-Amankwah	Yes	Yes	Yes

4. Proposed Custodians and Search Terms

Please see the attached spreadsheet containing FirstEnergy's initial set of proposed custodians and search terms. As we discussed, FirstEnergy is still evaluating the availability of non-custodial sources for certain of Plaintiffs' requests and we reserve the right to supplement these custodians and search terms as our work continues. Consistent with our discussion yesterday, we understand that Plaintiffs will also be providing further information on additional questions they have about FirstEnergy's Objections and Responses to Plaintiffs' Amended First Request for Production of Documents.

Consistent with our discussion on Friday, we are continuing to work on the other issues we discussed, including gathering information from our client regarding how records are kept and working through review and production questions related to Board materials, internal investigations, communications with the government, personnel files, and indemnification.

We look forward to our further discussion on Monday at 4:00 ET and continuing to work productively with you on this case.

Best regards,

/s/ Ann H. MacDonald
Ann H. MacDonald

Schiff Hardin

CC: John C. Camillus (Jcamillus@camilluslaw.com)
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EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, dated as of March 11, 2022 (the "Stipulation") is entered into, by, and among:

(i) Plaintiffs in the above-captioned stockholder derivative action (*Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ) (the "Southern District Action") pending in the United States District Court for the Southern District of Ohio (the "Southern District of Ohio," the "Southern District Court," or the "Court"): Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs");

(ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States District Court for the Northern District of Ohio (the "Northern District of Ohio" or the "Northern

District Court"): Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs," and together with the Southern District Plaintiffs, "Federal Plaintiffs");

(iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs");

(iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, K. Jon Taylor, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants" or the "Individual Defendants");

(v) Nominal Defendant FirstEnergy Corp. and all of its affiliates ("FirstEnergy" or the "Company"); and

(vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and the Company, the "Settling Parties").

Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice the Actions and all claims asserted therein.

WHEREAS:

On July 21, 2020, the Ohio Speaker of the House Larry Householder ("Householder") and four other individuals not parties to the Actions were arrested as part of an investigation of an alleged $60 million racketeering and bribery scheme.

On July 30, 2020, a federal grand jury indicted Householder, the four other individuals, and 501(c)(4) entity Generation Now in an alleged federal racketeering conspiracy involving approximately $60 million in bribes to pass and uphold a billion-dollar nuclear plant bailout.

On July 22, 2021, FirstEnergy entered into a deferred prosecution agreement ("DPA") with the United States Department of Justice ("DOJ") to resolve allegations that the Company participated in an alleged bribery scheme. In conjunction with the DPA, FirstEnergy agreed to pay a $230 million fine for its role in the alleged bribery scheme.

The Southern District Action:

On September 9, 2020, Plaintiff Employees Retirement System of the City of St. Louis ("ERS") commenced a stockholder derivative action captioned as *Employees Retirement System of the City of St. Louis v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, and Ebony Yeboah-Amankwah

asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On September 30, 2020, Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") commenced a stockholder derivative action captioned as *Electrical Workers Pension Fund, Local 103, I.B.E.W. v. Anderson, et al.*, Case No. 2:20-cv-05128-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, James F. Pearson, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 5, 2020, Plaintiff Massachusetts Laborers Pension Fund ("MLPF") commenced a stockholder derivative action captioned as *Massachusetts Laborers Pension Fund v. Jones, et al.*, Case No. 2:20-cv-05237-SDM-CMV (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, Ebony Yeboah-Amankwah, and John Does 1-50 asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 2, 2020, Plaintiffs ERS and Local 103 filed a Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On October 23, 2020, Interested Party City of Philadelphia Board of Pensions and Retirement ("City of Philadelphia") filed a cross-motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel, in opposition to the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On November 3, 2020, Plaintiffs ERS and Local 103 filed a Memorandum of Law in Further Support of the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel, and in Opposition to the Competing Motion.

On November 6, 2020, Plaintiff MLPF filed a Motion for Joinder in Support of Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

On November 6, 2020, City of Philadelphia filed a Reply in Further Support of Its Motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel.

On November 16, 2020, the Southern District Court issued an Opinion and Order appointing Plaintiffs ERS and Local 103 Co-Lead Plaintiffs, and appointing Saxena White P.A. and Bernstein Litowitz Berger & Grossmann LLP Co-Lead Counsel. Further, Massachusetts Laborers Pension Fund served as Additional Plaintiff, represented by Cohen Milstein Sellers & Toll PLLC.

On November 19, 2020, Defendants filed a Motion to Stay the Southern District Action (the "November 19, 2020 Motion to Stay"). Southern District Plaintiffs filed a Brief in Opposition to Defendants' November 19, 2020 Motion to Stay on December 4, 2020. Defendants filed a Reply in Support of their November 19, 2020 Motion to Stay on December 11, 2020. The Southern

District Court issued an Opinion and Order denying Defendants' Motion to Stay on December 21, 2020.

On January 19, 2021, Defendants filed a Motion to Enforce Stay of Discovery pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Southern District Plaintiffs filed a Notice of Non-Opposition to Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on January 29, 2021, in light of the Motion to Dismiss briefing schedule. The Southern District Court granted Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on February 4, 2021.

On January 25, 2021, Southern District Plaintiffs filed the Consolidated Verified Shareholder Derivative Complaint on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Ebony Yeboah-Amankwah, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On February 24, 2021, Defendants filed their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. On March 24, 2021, Southern District Plaintiffs filed their Opposition to Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. Defendants filed Replies in Support of their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on April 14, 2021. The Southern District Court denied Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on May 11, 2021.

On May 28, 2021, Defendants filed a Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b). Southern District Plaintiffs filed their Opposition to Defendants' Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on June 21, 2021. Defendants filed a Reply in Support of their Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on July 6, 2021.

On June 14, 2021, the Southern District Court issued an order lifting the PSLRA stay and noted that discovery may commence.

On June 24, 2021, Defendants filed their Answers to the Consolidated Verified Shareholder Derivative Complaint.

On June 30, 2021, Nominal Defendant FirstEnergy Corp. announced the formation of the SLC, effective July 1, 2021.

On July 1, 2021, Magistrate Judge Kimberly A. Jolson issued a notation order directing the SLC to file any motion to stay by July 21, 2021.

On July 20, 2021, the SLC filed its Motion to Stay.

On August 9, 2021, the SLC withdrew the Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) as to Nominal Defendant First Energy.

On August 10, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay.

On August 24, 2021, the SLC filed its Reply in Support of its Motion to Stay.

On October 5, 2021, the parties entered into a Joint Protocol for Production of Documents and Electronically Stored Information.

On October 5, 2021, Southern District Plaintiffs contacted the Southern District Court to request a status conference to obtain documents previously produced to the DOJ.

On October 7, 2021, a status conference was held before Magistrate Judge Kimberly A. Jolson. Judge Jolson entered an order staying discovery for fourteen days to allow the Southern District Court to rule on the SLC's then-pending Motion to Stay.

On October 20, 2021, the Southern District Court issued an Opinion and Order denying the SLC's Motion to Stay, and noting that "[d]iscovery shall commence without further delay."

On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine.

On October 25, 2021, Southern District Plaintiffs again requested a status conference before Magistrate Judge Jolson concerning discovery issues.

On October 27, 2021, another status conference was held before Magistrate Judge Kimberly A. Jolson at the Southern District Plaintiffs' request. During that status conference, the Court noted that discovery is open and instructed Defendants to produce documents previously produced to the DOJ.

On October 29, 2021, the SLC filed a Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 9, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 12, 2021, the SLC filed its Reply in Support of the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

On November 12, 2021, the Southern District Court issued an Opinion and Order denying the Individual Defendants' Motion to Certify Order for Interlocutory Appeal pursuant to 28 U.S.C. §1292(b).

As described in greater detail below (under "Sixth Circuit Proceedings"), the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings was mooted by the Sixth Circuit's December 16, 2021 order granting Southern District Plaintiffs' Motions to Dismiss the Northern District Appeal and the Southern District Appeal, and dismissing the mandamus petitions.

The Northern District Action:

On August 7, 2020 Jennifer Miller ("Miller") commenced a stockholder derivative action captioned as *Miller, et al., v. Anderson et al.*, Case No. 5:20-cv-01743-JRA (N.D. Ohio) on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, and Ebony Yeboah-Amankwah asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

On October 5, 2020, Plaintiffs ERS and Local 103 ("Intervenor Plaintiffs") filed a Motion to Intervene and Transfer the Northern District Action to the United States District Court for the Southern District of Ohio. Defendants filed their Opposition to Plaintiffs ERS and Local 103's Motion to Intervene and Transfer on October 9, 2020. Plaintiffs ERS and Local 103 filed a Reply in Further Support of their Motion to Intervene and Transfer the Northern District Action to the Southern District Court on October 16, 2020. The Northern District Court granted the Intervenor

Plaintiffs' Motion as to intervention but denied the Motion as to transfer to the Southern District of Ohio on May 13, 2021.

Plaintiffs ERS and Local 103 and additional Plaintiff MLPF filed their Intervenors' Verified Shareholder Derivative Complaint on June 3, 2021. Defendants filed their Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on June 17, 2021. Intervenor Plaintiffs filed their Opposition to Defendants' Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on July 19, 2021.

On July 20, 2021, the SLC filed its Motion to Stay in the Northern District Action. Intervenor Plaintiffs filed their opposition to the SLC's Motion to Stay on August 10, 2021. The SLC filed its reply in further support of its Motion to Stay on August 24, 2021. On September 16, 2021, the Northern District Court issued an Order and Decision denying Defendants' Motions to Dismiss and the SLC's Motion to Stay. On September 30, 2021, the Northern District Court designated the Intervenor Plaintiffs' Verified Shareholder Derivative Complaint as the Operative Complaint, but held in abeyance Intervenor Plaintiffs' Motion for Appointment as Lead Plaintiffs and Appointment of their Counsel as Lead Counsel.

On October 25, 2021, Intervenor Plaintiffs served a Settlement Demand on Defendants pursuant to the Northern District Court's September 16, 2021, Case Management Conference Scheduling Order ("the Case Management Conference Scheduling Order"). On November 1, 2021, Defendants responded to Intervenor Plaintiffs' Settlement Demand pursuant to the Case Management Conference Scheduling Order. On December 15-17, 2021, the parties filed their Settlement Demands and Responses on the Northern District Docket, under seal.

On November 8, 2021, a Case Management Conference was held in Akron, Ohio. A Case Management Plan was entered on November 9, 2021.

On November 22, 2021, Federal Plaintiffs, Defendants, and the Nominal Defendant submitted a Joint Proposed Stipulated Discovery Order stipulating that all written discovery (including discovery served prior to the filing of the Stipulated Discovery Order), depositions, expert disclosures and reports, and documents produced would be coordinated between the Southern District Action and the Northern District Action to avoid duplication and waste of the resources of the parties, the courts, and third parties.

Pursuant to the Case Management Plan, Federal Plaintiffs, Defendants, and the Nominal Defendant filed a deposition schedule on December 3, 2021. Subsequently, two telephonic status conferences were held on January 10, 2022 and January 28, 2022.

The Sixth Circuit Proceedings:

On September 16, 2021, the SLC filed a Notice of Appeal of the Northern District Court's Order and Decision denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Northern District Appeal").

On September 23, 2021, Northern District Plaintiffs filed their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

On October 4, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Northern District Appeal.

On October 12, 2021, Northern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Southern District Appeal").

On November 2, 2021, Southern District Plaintiffs filed their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

On November 8, 2021, the SLC filed Writs of Mandamus against Chief Judge Algenon L. Marbley of the Southern District of Ohio and Judge John R. Adams of the Northern District of Ohio.

On November 12, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Southern District Appeal.

On November 16, 2021, the SLC filed a motion to consolidate the Southern District Appeal and the Northern District Appeal, to expedite the appellate briefing schedule, and to stay district court proceedings pending the outcome of the appeals.

On November 19, 2021, Southern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

On November 26, 2021, Southern District Plaintiffs filed their Opposition to the SLC's motion to consolidate, expedite briefing schedule, and stay district court proceedings pending the outcome of the appeals.

On December 3, 2021, the SLC filed a Reply in Support of its Motion to Expedite, Consolidate, and Stay.

On December 16, 2021, the United States District Court of Appeals for the Sixth Circuit granted Federal Plaintiffs' Motions to Dismiss for lack of jurisdiction the Southern District and Northern District Appeals, and denied the SLC's petitions for a writ of mandamus.

The State Court Action:

On July 26, 2020 and July 31, 2020, Ohio State Court Plaintiffs separately initiated stockholder derivative actions on behalf of Nominal Defendant FirstEnergy in the Ohio State Court, captioned *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107 (Summit Cnty. Court of

Common Pleas) ("*Gendrich* Action"), and *Sloan v. Anderson, et al.*, No. CV-2020-08-2161 (Summit Cnty. Court of Common Pleas) ("*Sloan* Action"), respectively.

On September 8, 2020, the Gendrich Action and the Sloan Action were consolidated by court Order under the caption *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107, and thereafter, on September 23, 2020, Johnson Fistel, LLP and Connick Law, LLC, were appointed Co-Lead Counsel in the State Court Action.

On September 22, 2020, Ohio State Court Plaintiffs sent a stockholder inspection demand for books and records under Ohio Statute § 1701.37(C) to the board of directors of the Company. By letter dated October 14, 2020, that inspection demand was declined.

On September 22, 2020, Ohio State Court Plaintiffs issued a public records request to the Ohio Attorney General's Office and a request for records under the Freedom of Information Act to the U.S. Department of Justice. Thereafter, Ohio State Court Plaintiffs' counsel continued to engage in written correspondence in furtherance of the public records request with the Ohio Attorney General's Office.

On November 9, 2020, Ohio State Court Plaintiffs filed a consolidated complaint alleging derivative claims against Defendants for breach of fiduciary duties based on, *inter alia*, participation in the alleged criminal bribery scheme, unjust enrichment, and insider selling, as well as claims for civil conspiracy, contribution and indemnification, and civil liability for criminal acts.

On January 8, 2021, certain Defendants moved to dismiss the Ohio State Court Plaintiffs' consolidated complaint. On March 9, 2021, the Ohio State Court Plaintiffs filed their opposition to the motion to dismiss. On April 8, 2021, defendants filed their reply in further support of their motion to dismiss.

On June 21, 2021, Ohio State Court Plaintiffs served Plaintiffs' First Request for Production of Documents on Defendants, to which Defendants served their various responses and objections on July 19, 2021, with the exception of defendants Eileen Mikkelsen and Justin Biltz, whose responses and objections were served on August 2, 2021 and August, 9, 2021, respectively.

On July 20, 2021, the SLC filed a motion to stay the State Court Action.

On August 9, 2021, the SLC withdrew the previously filed motion to dismiss as to Nominal Defendant FirstEnergy while the SLC investigated and evaluated Ohio State Court Plaintiffs' claims. Ohio State Court Plaintiffs filed their opposition to the SLC's motion to stay on August 19, 2021, and the SLC filed its reply on August 26, 2021.

On November 12, 2021, Ohio State Court Plaintiffs served on Defendants a confidential settlement demand.

The Parties Litigate The Actions in Federal Court:

On May 28, 2021, Southern District Plaintiffs propounded their First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy.

On June 28, 2021, the Individual Defendants and Nominal Defendant FirstEnergy served their Responses and Objections to Plaintiffs' First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy, with the exception of Defendant Yeboah-Amankwah, who served her Responses and Objections to Plaintiffs' First Request for Production of Documents on July 1, 2021.

On September 29, 2021, Southern District Plaintiffs issued a subpoena to non-party PricewaterhouseCoopers ("PwC") in the Southern District Action (the "Southern District PwC Subpoena"). PwC served its Responses and Objections to the Southern District PwC Subpoena on October 20, 2021. On November 17, 2021, Federal Plaintiffs issued a subpoena to non-party

PwC in the Northern District Action (the "Northern District PwC Subpoena"). PwC served its Responses and Objections to the Northern District PwC Subpoena on December 1, 2021.

On December 2, 2021, Federal Plaintiffs propounded their First Request for Production of Documents to Defendant Chack. Chack served his Responses and Objections to Plaintiffs' First Request for Production of Documents on January 3, 2022.

Federal Plaintiffs propounded their Second Request for Production of Documents to FirstEnergy on December 10, 2021. FirstEnergy served its Objections and Responses to Plaintiffs' Second Request for Production of Documents on January 10, 2022.

Federal Plaintiffs propounded their Second Request for Production of Documents to the Individual Defendants on December 15, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 14, 2022.

Federal Plaintiffs propounded their First Set of Interrogatories Directed to FirstEnergy on December 15, 2021. FirstEnergy served its Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to FirstEnergy on January 14, 2022.

Federal Plaintiffs propounded their First Set of Interrogatories Directed to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to the Individual Defendants on January 18, 2022.

Federal Plaintiffs propounded their Third Request for Production of Documents to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 18, 2022.

Federal Plaintiffs propounded their First Requests for Admission to FirstEnergy, Charles E. Jones, and Michael J. Dowling on December 17, 2021. FirstEnergy, Jones, and Dowling served their Responses and Objections to Plaintiffs' First Requests for Admission on January 18, 2022.

On December 6, 2021, Federal Plaintiffs issued a subpoena to non-party Clearsulting. Clearsulting served its Responses and Objections to Plaintiffs' subpoena on December 17, 2021.

On December 7, 2021, Federal Plaintiffs issued a subpoena to non-party Nathan Cummings Foundation. Nathan Cummings Foundation served its Responses and Objections to Plaintiffs' subpoena on December 23, 2021.

On December 17, 2021, Federal Plaintiffs issued a subpoena to non-party Green Century Capital Management.

On January 13, 2022, Federal Plaintiffs issued a subpoena to non-party Verizon.

On December 6, 9, and 23, 2021, Federal Plaintiffs subpoenaed certain former directors of FirstEnergy. The former directors of FirstEnergy responded to Plaintiffs' subpoenas on December 20 and 23, 2021 and January 6, 2022.

Federal Plaintiffs negotiated discovery protocols with eighteen different defendants, represented by eight different sets of counsel. FirstEnergy and the Individual Defendants initially objected to the production of documents dated before January 1, 2017 or after Householder's arrest in July 2020. Ultimately, Federal Plaintiffs obtained agreement of FirstEnergy and the Individual Defendants to produce relevant information dated or created on January 1, 2016 through at least mid-June 2021. Federal Plaintiffs also obtained FirstEnergy's agreement to search the Company's custodial ESI for nearly 200 search terms and the Individual Defendants' agreement to search their custodial ESI for 260 search terms pursuant to the operative search term protocols. Federal

Plaintiffs also obtained Defendants' agreement to review and produce relevant text messages between each Defendant and 30 counterparties, without the application of search terms.

Ultimately, Defendants and non-parties collectively produced, and Federal Plaintiffs reviewed, over 500,000 pages of documents, including all the documents produced to the DOJ in connection with its investigation.

In addition to serving offensive discovery, Federal Plaintiffs responded to discovery directed toward Plaintiffs. On December 10, 2021, the Director & Officer Defendants served their First Request for Production, First Set of Interrogatories, and First Request for Admission directed to Plaintiffs. On January 10, 2022, Federal Plaintiffs served their Responses and Objections to the Director & Officer Defendants First Request for Production. On January 18, 2022, Plaintiffs served their Responses and Objections to the Director & Officer Defendants' First Set of Interrogatories and First Request for Admission directed to Plaintiffs.

On December 14, 2021, Defendant Pearson served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 13, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Request for Production of Documents directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Set of Interrogatories directed to Plaintiffs.

On December 17, 2021, Defendants Chack, Reffner, and Yeboah-Amankwah served their First Requests for Production of Documents and First Sets of Interrogatories directed to Plaintiffs, and Defendant Reffner served his First Requests for Admission directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Defendants Chack, Reffner and Yeboah-Amankwah's First Requests for Production of Documents and First Set of

Interrogatories directed to Plaintiffs. Also on January 18, 2022, Federal Plaintiffs served their Responses and Objections to Reffner's First Requests for Admission directed to Plaintiffs.

On December 23, 2021, Defendant Dowling served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 24, 2022, Federal Plaintiffs served their Responses and Objections to Dowling's First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs.

The Parties Conduct Arm's-Length Negotiations To Resolve The Actions:

Beginning on December 14, 2021, the Settling Parties engaged in numerous telephonic conversations, including conversations among the Settling Parties and conversations between certain of the Settling Parties and former United States District Court Judge Layn R. Phillips (the "Mediator").

On February 1, 2022, the Settling Parties participated in a full day mediation session before the Mediator. In advance of that session, the Settling Parties exchanged mediation statements, reply statements, and exhibits with the Mediator and among the Settling Parties, which addressed the issues of both liability and damages. In advance of the mediation, the Federal Plaintiffs and the SLC also discussed governance improvements as part of a potential settlement. The session ended without any agreement being reached.

Following the mediation, the Settling Parties engaged in additional negotiations under the supervision and guidance of the Mediator.

As a result of extensive, arm's-length negotiations, before, during, and after the mediation session, the Settling Parties reached an agreement in principle to settle the Actions that was memorialized in a Settlement Term Sheet executed on February 9, 2022 (the "Term Sheet").

The Term Sheet set forth, among other things, the Settling Parties' agreement to resolve the Actions in exchange for (i) a cash payment of $180,000,000.00 (United States Dollars), which,

together with any and all interest earned thereon, and less any Court-approved attorneys' fees and expenses awarded to Plaintiffs' Counsel, any service awards awarded to Plaintiffs, and any Taxes, will be paid to the Company and (ii) the corporate governance reforms set forth in Exhibit A thereto ("Reforms"), subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers. The Settlement does not release the Company's claims for recoupment of compensation from Defendants Jones, Dowling, or Chack, including such claims that the Company is pursuing or may pursue (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims).

This Stipulation (together with the exhibits hereto) reflects the final and binding agreement among the Settling Parties and supersedes the Term Sheet.

In connection with settlement discussions and negotiations leading to the proposed Settlement set forth in this Stipulation, counsel for the Settling Parties did not discuss the amount of any application by Plaintiffs' Counsel for an award of attorneys' fees and expenses until the substantive terms of the Settlement were negotiated at arm's-length and agreed upon.

Plaintiffs brought their claims in good faith and continue to believe that their claims have merit, but based upon Plaintiffs' and Plaintiffs' Counsel's investigation, prosecution, and mediation of the Actions, Plaintiffs and Plaintiffs' Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable, and adequate to the Company and its stockholders. Based on Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel and outside experts, Plaintiffs have agreed to settle the claims asserted in the Actions pursuant to the terms and provisions of this Stipulation, after considering (a) the significant monetary payment to be made to the Company by insurance policies that were eroding;

(b) the corporate governance reforms provided under the proposed Settlement that could not have been obtained through a verdict; (c) the uncertain outcome, inherent delays, significant cost to the Company and its insurers, and significant risks of continued litigation; and (d) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

Defendants have denied, and continue to deny, that they committed, or aided and abetted in the commission of, any violation of law or duty or engaged in any wrongful acts whatsoever, including specifically those alleged in the Actions, and expressly maintain that they have complied with their statutory, fiduciary, and other legal duties, and are entering into this Stipulation and the Settlement to eliminate the burden, expense, and uncertainties inherent in further litigation.

Each of the Settling Parties recognizes and acknowledges that the Actions have been initiated, filed, and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith, that the Actions are being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, reasonable, and adequate.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Settlings Parties through their respective undersigned attorneys and subject to the approval of the Court, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Released Defendants' Persons and all Released Defendants' Claims as against the Released Plaintiffs' Persons shall be settled and released, upon and subject to the terms and conditions set forth below.

CERTAIN DEFINITIONS

1. As used in this Stipulation and all exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Actions" means the Southern District Action, the Northern District Action, and the Ohio State Court Action.

(b) "Complaints" means the Northern District Complaint, the Ohio State Court Complaint, and the Southern District Complaint.

(c) "Court" means the United States District Court for the Southern District of Ohio.

(d) "Defendants' Counsel" means: (i) Jones Day, counsel for Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Steven E. Strah, K. Jon Taylor, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason J. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, and George M. Smart; (ii) Baker & Hostetler LLP and Gibson, Dunn & Crutcher LLP, counsel for Defendant Charles E. Jones; (iii) Tucker Ellis LLP, counsel for Defendant Michael J. Dowling; (iv) Skadden, Arps, Slate, Meagher & Flom, LLP, counsel for Defendant Ebony Yeboah-Amankwah; (v) McDermott, Will, & Emery, LLP and Brouse McDowell, counsel for Defendant Robert P. Reffner; (vi) Ballard Spahr LLP, counsel for Defendant James F. Pearson; (vii) Morgan, Lewis & Bockius LLP and Lape Mansfield Nakasian & Gibson LLC, counsel for Defendant Dennis M. Chack (viii) Boies Schiller Flexner LLP, counsel for Eileen Mikkelsen; and (ix) Walter Haverfield LLP, counsel for Justin Biltz.

(e) "Effective Date" with respect to the Settlement means the first date by which all of the events and conditions specified in paragraph 22 of this Stipulation have been met and have occurred or have been waived.

(f) "Escrow Account" means an account maintained at Citibank, N.A. wherein the Settlement Amount shall be deposited and held in escrow under the control of Co-Lead Counsel in the Southern District Action.

(g) "Escrow Agent" means Citibank, N.A.

(h) "Federal Plaintiffs" means Southern District Plaintiffs and Northern District Plaintiffs, collectively.

(i) "Final" with respect to the Judgment or any other court order means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal of the Judgment or order; or (ii) if there is an appeal from the Judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the Judgment or order is finally affirmed on appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to attorneys' fees or expenses shall not in any way delay or preclude the Judgment from becoming Final.

(j) "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit F, to be entered by the Court approving the Settlement.

(k) "Notice" means the Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit D.

(l) "Northern District Court" means the United States District Court for the Northern District of Ohio.

(m) "Northern District Action" means the stockholder derivative action captioned *Miller, et al. v. Anderson et al.*, Case No. 5:20-cv-1743-JRA, pending in the Northern District of Ohio.

(n) "Northern District Complaint" means the Intervenors' Verified Shareholder Derivative Complaint filed in the Northern District Action on June 3, 2021.

(o) "Northern District Plaintiffs" means plaintiff-intervenors Employees Retirement System of the City of St. Louis, Electrical Workers Pension Fund, Local 103, I.B.E.W., and Massachusetts Laborers Pension Fund, and individual plaintiff Jennifer L. Miller.

(p) "Ohio State Court" means the Summit County Court of Common Pleas.

(q) "Ohio State Court Action" means the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107, pending in the Ohio State Court.

(r) "Ohio State Court Complaint" means the Verified Consolidated Shareholder Derivative Complaint filed in the Ohio State Court Action on November 9, 2020.

(s) "Ohio State Court Plaintiffs" means plaintiffs John Gendrich and Robert Sloan.

(t) "Notice Costs" means all costs, fees, and expenses related to providing notice of the Settlement.

(u) "Plaintiffs" means the Federal Plaintiffs and the Ohio State Court Plaintiffs.

(v) "Plaintiffs' Counsel" means Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Saxena White P.A., Co-Lead Counsel for the Southern District Plaintiffs and

counsel for Plaintiff-Intervenors in the Northern District Action; Cohen Milstein Sellers & Toll PLLC, counsel for Additional Plaintiff Massachusetts Laborers Pension Fund in the Southern District Action and in the Northern District Action; Law Offices of John C. Camillus, liaison counsel for Co-Lead Plaintiffs in the Southern District Action and counsel for Plaintiff-Intervenors in the Northern District Action; Edelson Lechtzin LLP and Rosca Scarlato, LLC, counsel for Plaintiff Jennifer L. Miller in the Northern District Action; Johnson Fistel, LLP, Connick Law, LLC, and Law Office of George W. Cochran, counsel for the Ohio State Court Plaintiffs; and all other firms listed in the Complaints.

(w) "Released Claims" means each and any of the Released Defendants' Claims and each and any of the Released Plaintiffs' Claims.

(x) "Released Defendants' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Actions, except for claims relating to the enforcement of the Settlement. For avoidance of doubt, Released Defendants' Claims does not include any claims that Charles Jones, Michael Dowling, and Dennis Chack have or may assert against FirstEnergy, including but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto.

(y) "Released Defendants' Persons" means Defendants, any other individual named as a defendant in any complaint filed in any of the Actions, the Company, the SLC, and any entity in which the Company has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), and consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys are only "Released Defendants' Persons" insofar as they were engaged by Defendants and are not released under this Stipulation if and to the extent that they were engaged by the Company).

(z) "Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, statutory, regulatory, common, foreign or other law or rule, that Plaintiffs, the Company, or the SLC (i) asserted in the Complaints or (ii) could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints, including but not limited to the conduct, actions, inactions, deliberations, votes, statements or representations of any Released Defendants' Person. For the avoidance of doubt, this release will not cover, include, or release (i) any direct claims of Plaintiffs or any other FirstEnergy stockholder, including without limitation any direct claims asserted under the federal securities laws, including without limitation claims asserted in *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases), or direct claims of Plaintiffs or any other FirstEnergy stockholder asserted in any of the related actions or proceedings identified in Exhibit B hereto; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of the Company to recoup compensation

from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto).

(aa) "Released Plaintiffs' Persons" means Plaintiffs, Plaintiffs' Counsel, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys.

(bb) "Released Persons" means each and any of the Released Defendants' Persons and each and any of the Released Plaintiffs' Persons.

(cc) "Releases" means the releases set forth in paragraphs 8-9 of this Stipulation.

(dd) "Preliminary Approval Order" means the order, substantially in the form attached hereto as Exhibit C, to be entered by the Court preliminarily approving the Settlement and directing notice of the Settlement.

(ee) "Settlement" means the resolution of the Actions on the terms and conditions set forth in this Stipulation.

(ff) "Settlement Fairness Hearing" means the hearing set by the Court to, among other things, consider final approval of the Settlement.

(gg) "Settling Parties" means Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company.

(hh) "SLC Counsel" means Debevoise & Plimpton, counsel for the SLC of Nominal Defendant FirstEnergy.

(ii) "Southern District Action" means the stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ, pending in the Southern District of Ohio.

(jj) "Southern District Court" means the United States District Court for the Southern District of Ohio.

(kk) "Southern District Complaint" means the Consolidated Verified Shareholder Derivative Complaint filed in the Southern District Action on January 25, 2021.

(ll) "Southern District Plaintiffs" means co-lead plaintiffs Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and additional plaintiff Massachusetts Laborers Pension Fund.

(mm) "Summary Notice" means the Summary Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses, substantially in the form attached hereto as Exhibit E.

(nn) "Taxes" means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; and (ii) the expenses and costs incurred by Co-Lead Counsel in connection with determining the amount of,

and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants).

(oo) "Term Sheet" means the Settlement Term Sheet executed by the Settling Parties on February 9, 2022.

(pp) "Unknown Claims" means any Released Plaintiffs' Claims which any Plaintiff, the Company, the SLC, or any other FirstEnergy stockholder does not know or suspect to exist in its favor at the time of the release of such claims, and any Released Defendants' Claims which any Defendant or the Company does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Plaintiffs' Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs, Defendants, the Company, and the SLC shall expressly waive, and each of the other FirstEnergy stockholders shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge, and each of the other FirstEnergy stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

SETTLEMENT CONSIDERATION

2. In consideration for the full settlement and release of all Released Plaintiffs' Claims against the Released Defendants' Persons and the dismissal with prejudice of the Actions on the terms and conditions set forth in this Stipulation, Defendants, the Company, and the SLC, on behalf of itself and the Company, agree to the following:

(a) **Monetary Consideration:** No later than twenty (20) business days after the later of: (i) entry of an order preliminarily approving the Settlement or (ii) Defendants' Counsel's receipt of wiring instructions that include the bank name and ABA routing number, account name and number, and a signed W-9 for the Escrow Account, Defendants shall cause their insurers to pay $180,000,000.00 (United States Dollars) in cash (the "Settlement Amount") into the Escrow Account. The Settlement Amount plus any and all interest earned thereon (the "Settlement Fund"), less (i) any Court-awarded attorneys' fees and litigation expenses paid or payable to Plaintiffs' Counsel, including any service awards paid or payable to Plaintiffs, and/or any reserve to account for any potential future awards to Plaintiffs' Counsel or Plaintiffs; and (ii) any Taxes with respect to any interest earned on the Settlement Fund while on deposit in the Escrow Account (the "Net Settlement Fund"), shall be paid from the Escrow Account to the Company no later than ten (10) business days after the Effective Date.

(b) **Corporate Governance Reforms:** The Company, acting through its Board of Directors ("Board"), shall implement the corporate governance reforms set forth in Exhibit A hereto ("Reforms") not later than ten (10) business days following final approval of the Settlement by the Court, unless otherwise specified in Exhibit A hereto. Any agreement to acquire the Company reached within twelve (12) months of the approval of

the Settlement shall be conditioned on the acquirer's written agreement to maintain the Reforms set forth in the Exhibit A hereto, or functionally equivalent measures, for not less than twenty-four (24) months following the announcement of the acquisition. Unless otherwise specified, each of the provisions of Exhibit A shall remain binding on the Company for no less than five (5) years following the Effective Date.

3. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

4. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Co-Lead Counsel in the Southern District Action, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without

limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Co-Lead Counsel in the Southern District Action shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Released Defendants' Persons shall not have any liability or responsibility for any such Taxes. Upon written request, Defendants will provide to Co-Lead Counsel in the Southern District Action the statement described in Treasury Regulation § 1.468B-3(e). Co-Lead Counsel in the Southern District Action, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a "relation back election," as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

5. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, or caused to be paid, by Co-Lead Counsel in the Southern District Action and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

BOARD RESOLUTION

6. FirstEnergy hereby acknowledges that the Company's Board, including all of the non-defendant, independent directors, has approved a resolution reflecting their determination, in a good faith exercise of their business judgment that: (a) Plaintiffs' litigation and settlement efforts in the Actions are a primary factor in the Board's agreement to adopt, implement, and maintain

the Reforms; (b) the Reforms confer substantial corporate benefits under Ohio law on the Company and its stockholders; and (c) the Settlement is fair, adequate, reasonable, and in the best interests of the Company and its stockholders.

RELEASE OF CLAIMS

7. The obligations incurred pursuant to this Stipulation are in consideration of the full and final disposition of the Actions and the Releases provided for herein.

8. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Plaintiffs, the Company, and the SLC, on behalf of itself and the Company, and the Company's stockholders shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Plaintiffs' Claims against each and all of the Released Defendants' Persons, and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Defendants' Persons.

9. Pursuant to the Judgment, without further action by anyone, upon the Effective Date of the Settlement, Defendants, the Company, and the SLC, on behalf of itself and the Company, shall be deemed to have, and by operation of law and of the Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Defendants' Claims against each and all of the Released Plaintiffs' Persons, and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Defendants' Claims against any of the

Released Plaintiffs' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Plaintiffs' Persons.

10. Notwithstanding Paragraphs 8-9 above, nothing in the Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of this Stipulation or the Judgment.

PRELIMINARY APPROVAL ORDER AND NOTICE

11. Within three (3) business days of execution of this Stipulation, the Southern District Plaintiffs will move the Southern District of Ohio for preliminary approval of the Settlement, authorization to provide notice of the Settlement, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants, the Company, and the SLC, on behalf of itself and the Company. Concurrently with the motion for preliminary approval, the Southern District Plaintiffs will apply to the Southern District of Ohio for, and Defendants, the Company, and the SLC, on behalf of itself and the Company, will agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit C.

12. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, no later than five (5) business days after the date of entry of the Preliminary Approval Order, the Company (or its successor-in-interest) shall cause: (a) the filing with the SEC of a Current Report on Form 8-K, attaching the Notice, substantially in the form attached hereto as Exhibit D, and this Stipulation (including copies of Exhibits A and E hereto); (b) the publication of the Summary Notice, substantially in the form attached hereto as Exhibit E, once in the *Investor's Business Daily* or similar publication; and (c) the posting of the Notice, substantially in the form attached hereto as Exhibit D, and this Stipulation on the "Investor Relations" portion of

the Company's website, which documents shall remain posted thereto through the Effective Date of the Settlement. The Company shall pay or cause to be paid any and all Notice Costs regardless of the form or manner of notice ordered by the Court and regardless of whether the Court approves the Settlement or the Effective Date of the Settlement otherwise fails to occur, and in no event shall Defendants, Plaintiffs, or their respective attorneys be responsible for any such costs or expenses.

DISMISSAL OF THE ACTIONS

13. If the Settlement contemplated by this Stipulation is approved by the Court, the parties to the Southern District Action shall request that the Southern District Court enter the proposed Judgment, substantially in the form attached hereto as Exhibit F, which will, among other things, finally approve the proposed Settlement and dismiss the Southern District Action with prejudice. The proposed Judgment will also contain a statement to reflect compliance with Rule 11 of the Federal Rules of Civil Procedure by the parties to the Southern District Action.

14. Within five (5) business days of final approval of the Settlement by the Southern District of Ohio, the parties to the Northern District Action and the parties to the Ohio State Court Action will jointly move to dismiss the Northern District Action and Ohio State Court Action, respectively. The dismissal papers to be filed in the Northern District Action will contain a statement reflecting compliance with Rule 11 of the Federal Rules of Civil Procedure by the parties to the Northern District Action, and the dismissal papers to be filed in the Ohio State Court Action will contain a statement reflecting compliance with Ohio Civ.R. 11 by the parties to the Ohio State Court Action.

15. The Settling Parties agree to work collaboratively and in good faith in jointly seeking the dismissals, including in seeking appellate relief if a joint motion for dismissal is denied.

A denial of the joint dismissal motion by the Northern District of Ohio or the Ohio State Court does not impact the Effective Date.

ATTORNEYS' FEES AND LITIGATION EXPENSES

16. Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge that Plaintiffs' Counsel are entitled to an award of reasonable attorneys' fees and expenses in connection with the Actions and the Settlement.

17. Plaintiffs' Counsel and the SLC, on behalf of itself and the Company, will attempt in good faith to negotiate an appropriate award of attorneys' fees and litigation expenses for all Plaintiffs' Counsel based upon the substantial benefits conferred upon the Company by the Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis. If Plaintiffs' Counsel and the SLC are unable to reach agreement on an appropriate award of attorneys' fee and litigation expenses for Plaintiffs' Counsel, Co-Lead Counsel in the Southern District Action intend to apply, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees and litigation expenses in the Southern District of Ohio in an amount not to exceed 27% of the Settlement Fund based upon the substantial benefits conferred upon the Company by the Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis. Additionally, Co-Lead Counsel in the Southern District Action intend to apply to the Court for service awards for each of the Plaintiffs ("Service Awards") in an amount not to exceed $10,000 for each Plaintiff, to be paid out of the Court-awarded attorneys' fees and litigation expenses.

18. The full amount of any attorneys' fees and litigation expenses awarded by the Court to Plaintiffs' Counsel, including any Service Awards to Plaintiffs ("Fee and Expense Award") shall be paid to Co-Lead Counsel in the Southern District Action from the Escrow Account immediately upon award, notwithstanding the existence of any timely filed objections thereto, or

potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Co-Lead Counsel in the Southern District Action's obligation to make appropriate refunds or repayments if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the Fee and Expense Award is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing Fees and Expenses Award has become Final. In the event that the final determination of the amount of attorneys' fees and expenses payable to Plaintiffs' Counsel does not occur prior to the Effective Date, Co-Lead Counsel in the Southern District Action may withhold up to the full amount of the requested fee and expense award from the amount transferred from the Escrow Account to the Company under paragraph 2(a) above.

19. Plaintiffs' Counsel shall allocate the Fee and Expense Award among themselves. Plaintiffs' Counsel agree that any disputes regarding the allocation of the Fee and Expense Award among them shall be presented to and be mediated by the Mediator, and if mediation is unsuccessful, decided on a final, binding, non-appealable basis by the Mediator, on the terms and subject to the processes and procedures set forth by the Mediator in his sole discretion. The Mediator's fees and costs for any such mediation and/or arbitration shall be borne solely by Plaintiffs' Counsel and split evenly among Plaintiffs' Counsel. In no event shall such allocation matters affect or delay the enforceability of the Settlement, provide any Settling Party with the right to terminate the Settlement, impose any obligation on any Defendant or the Company, subject Defendants in any way to an increase in the amount paid by them or on their behalf in connection

with the Settlement, or affect or delay the binding effect or finality of the Settlement and the releases by any Settling Party against Released Defendants' Persons.

20. The Released Defendants' Persons shall have no responsibility for or liability whatsoever with respect to the allocation or award of the Fee and Expense Award amongst Plaintiffs' Counsel. Any dispute regarding any allocation of fees or expenses among Plaintiffs' Counsel shall have no effect on the Settlement.

21. An award of attorneys' fees and/or litigation expenses to Plaintiffs' Counsel is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. The Court may consider and rule upon the fairness, reasonableness, and adequacy of the Settlement independently of the consideration of any award of attorneys' fees and litigation expenses, and the failure of the Court to approve any requested award of attorneys' fees and litigation expenses, in whole or in part, shall have no effect on the Settlement. Neither Plaintiffs nor Plaintiffs' Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or litigation expenses.

CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION

22. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Southern District Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit C attached hereto;

(b) Plaintiffs have not exercised their option to terminate the Settlement pursuant to paragraph 24 below;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to paragraph 24 below;

(d) the Southern District Court has approved the Settlement as described herein, following notice to Company stockholders and a hearing, and entered the Judgment, substantially in the form set forth in Exhibit F attached hereto, and the Judgment has become Final; and

(e) the full Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of paragraph 2(a) above.

23. The Settlement shall not be conditioned upon the obtaining of, or judicial approval of, any releases between or among any settling Defendants and/or any third parties. The Settlement shall also not be conditioned upon the settlement, or the approval of the settlement, of any other lawsuits or claims.

24. Plaintiffs (provided they unanimously agree amongst themselves) and Defendants (provided they unanimously agree amongst themselves) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Settling Parties within thirty (30) calendar days of: (a) the Court's final refusal to enter the Preliminary Approval Order in any material respect; (b) the Court's final refusal to approve the Settlement or any material part thereof; (c) the Court's final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the date upon which an order vacating, modifying, revising, or reversing the Judgment becomes Final, and the provisions of paragraph 25 below shall apply. In addition, Plaintiffs (provided they unanimously agree amongst themselves) shall have the right to terminate the Settlement if the Settlement Amount is not deposited into the Escrow Account in accordance with the provisions of paragraph 2(a) above. However, any decision or proceeding, whether in this Court or any appellate court, solely with respect to an application for an award of attorneys' fees or litigation expenses shall not be considered material

to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination of the Settlement.

25. In the event the Settlement is terminated pursuant to paragraph 24 above, then: (a) the Settlement and the relevant portions of this Stipulation shall be canceled; (b) the Settling Parties shall each revert to their respective litigation positions in their respective Actions as of immediately prior to the execution of the Term Sheet on February 9, 2022; (c) the terms and provisions of the Term Sheet and this Stipulation, with the exception of this paragraph 25 and paragraphs 12, 18, 27, and 52 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and the Settling Parties shall proceed in all respects as if the Term Settlement and this Stipulation had not been entered; (d) the Judgment and any other order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*; and (e) all amounts in the Escrow Account, less any Taxes paid, due, or owing on any interest earned on the Settlement Amount while on deposit in the Escrow Account, shall be promptly returned to the insurers who funded the Escrow Account in proportion to their respective payments to the Escrow Account.

NO ADMISSION OF WRONGDOING

26. Defendants deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever in the Actions.

27. Neither the Term Sheet, this Stipulation (whether or not consummated), including the exhibits hereto, the negotiations leading to the execution of the Term Sheet and this Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, this Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Released Defendants' Persons or the Released Plaintiffs' Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the Settling Parties and the Released Defendants' Persons, the Released Plaintiffs' Persons, and their respective counsel

may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

MISCELLANEOUS PROVISIONS

28. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

29. Defendants warrant that, as to the payments made or to be made on behalf of them, at the time of entering into this Stipulation and at the time of such payment they, or to the best of their knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of them render them insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by each of the Defendants and not by their counsel.

30. In the event any proceedings by or on behalf of Defendants or the Company, whether voluntary or involuntary, are initiated under any chapter of the United States Bankruptcy Code, including any act of receivership, asset seizure, or similar federal or state law action ("Bankruptcy Proceedings"), the Settling Parties agree to use their commercially reasonable best efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of the Stipulation and Court approval of the Settlement in a timely and expeditious manner. By way of example only, the Settling Parties agree to cooperate in making applications and motions to the bankruptcy court, including, for relief from any stay, approval of the Settlement, authority to release funds, authority to release claims and indemnify officers and directors, and authority for

the Court to enter all necessary orders and judgments, and any other actions reasonably necessary to effectuate the terms of the Settlement.

31. If any Bankruptcy Proceedings by or on behalf of Defendants or the Company are initiated prior to the payment of the Settlement Amount, the Settling Parties agree to seek an order from the bankruptcy court presiding over such Bankruptcy Proceedings: (i) either lifting the automatic stay for the limited purpose of authorizing such payment(s), or finding that the payment of the Settlement Amount by Defendants and/or their insurance carriers does not violate the automatic stay; and (ii) finding that the payment of the Settlement Amount by Defendants and/or their insurance carriers does not constitute utilization of estate proceeds and/or a preference, voidable transfer, fraudulent transfer, or similar transaction. In addition, in the event of any Bankruptcy Proceedings by or on behalf of Defendants or the Company, the Settling Parties agree that all dates and deadlines in the Actions, if any, or any dates and deadlines associated with any appeals, will be extended for such periods of time as necessary to obtain necessary orders, consents, releases, and approvals from the bankruptcy court to carry out the terms and conditions of the Settlement.

32. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, the parties to the Southern District Action shall jointly move the Court to vacate and set aside the Releases given and the Judgment entered in favor of Defendants and the Released Defendants' Persons or the Released Plaintiffs' Persons pursuant to this Stipulation, in which event the Releases and Judgment shall be null and

void, and the Parties shall be restored to their respective positions in the litigation as provided in paragraph 25 above and any cash amounts in the Escrow Account (less any Taxes paid, due, or owing with respect to any interest earned on the Settlement Amount while on deposit in the Escrow Account) shall be returned as provided in paragraph 25 above.

33. The Settling Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs against the Released Defendants' Persons with respect to the Released Plaintiffs' Claims. Each of the Settling Parties agree that, throughout the course of the Actions, all parties and their counsel each complied fully with the strictures of Rule 11 of the Federal Rules of Civil Procedure, and all similar state law provisions, including without limitation Ohio Civ.R. 11, and no Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure, or any similar state law provisions, including without limitation Ohio Civ.R. 11, relating to the institution, prosecution, defense, or settlement of the Actions.

34. The Settling Parties agree that the Settlement consideration and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, including through a mediation process supervised and conducted by the Mediator, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

35. Defendants, the Company, the SLC, and their respective counsel, shall not make any public statement (whether or not for attribution) that the Actions were commenced or prosecuted in bad faith, nor will they deny that the Actions were commenced and prosecuted in good faith and are being settled voluntarily after consultation with competent legal counsel.

Plaintiffs, Defendants, the Company, and the SLC and their respective counsel shall not suggest that the Settlement constitutes an admission of any claim or defense alleged.

36. The Settling Parties and their respective counsel shall not issue any press release regarding the proposed Settlement until agreed to by all Settling Parties. Any description of the proposed Settlement by any Party or their counsel on any public website shall be consistent with the Stipulation and Exhibit A.

37. Nothing in this Agreement shall be construed to limit the Company's ability to make such disclosures regarding the Settlement as it believes are required or advisable under the securities laws and disclosure requirements applicable to the Company.

38. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of each of the Settling Parties (or their successors-in-interest).

39. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of: (a) entering orders providing for awards of attorneys' fees and litigation expenses to Plaintiffs' Counsel and (b) enforcing the terms of this Stipulation.

41. The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

42. This Stipulation and its exhibits constitute the entire agreement among the Settling Parties concerning the Settlement and this Stipulation and its exhibits. All Settling Parties

acknowledge that no other agreements, representations, warranties, or inducements have been made by any Settling Party concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

43. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

44. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Settling Parties, including any and all Released Persons and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate, or reorganize.

45. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it shall be governed by the internal laws of the State of Ohio without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

46. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

47. This Stipulation shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

48. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority

to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

49. The Settling Parties agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement. The Settling Parties further agree that, pending final approval of the Settlement, they shall not prosecute any of the Actions and agree to oppose any such prosecution by any non-Settling Party. The Settling Parties agree to work collaboratively and in good faith if any joint motion for a stay is denied while any other deadline is approaching or coming due, including but not limited to an agreement to continue or reschedule depositions unless expressly prohibited by judicial order and to seek appellate relief as needed.

50. If any Settling Party is required to give notice to another Settling Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs or Plaintiffs' Counsel: Bernstein Litowitz Berger & Grossmann LLP
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1251 Avenue of the Americas
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Facsimile: (212) 554-1444
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	Saxena White P.A. Attn: Thomas Curry 1000 N. West Street, Suite 1200 Wilmington, DE 19801 Telephone: (302) 485-0480 tcurry@saxenawhite.com Cohen Milstein Sellers & Toll PLLC Attn: Steven J. Toll 1100 New York Ave. NW, Fifth Floor Washington, D.C. 20005 Telephone: (202) 408-4600 stoll@cohenmilstein.com Johnson Fistel, LLP Attn: Michael I. Fistel, Jr., Esq. 40 Powder Springs Street Marietta, GA 30064 Telephone: (470) 632-6000 Facsimile: (770) 200-3101 Email: MichaelF@johnsonfistel.com Connick Law, LLC Attn: Thomas J. Connick, Esq. 25550 Chagrin Blvd., Suite 101 Beachwood, OH 364-0512 Telephone: (216) 364-0512 Facsimile: (216) 609-3446 Email: tconnick@connicklawllc.com
If to the SLC or the Company:	Maeve O'Connor John Gleeson 919 Third Avenue New York, NY 10022 Telephone: 212-909-6000 mloconnor@debevoise.com jgleeson@debevoise.com
If to Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A.	JONES DAY Attn: Geoffrey J. Ritts North Point 901 Lakeside Avenue Cleveland, OH 44114-1190 Telephone: (216) 586-3939

Reyes, Leslie M. Turner, Steven E. Strah, K. Jon Taylor, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason J. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, and George M. Smart	Facsimile: (216) 579-0212 Email: gjritts@jonesday.com
If to Defendant Charles E. Jones	BAKER & HOSTETLER LLP Attn: Daniel R. Warren Key Tower 127 Public Square, Suite 2000 Cleveland, OH 44114-1214 Telephone: (216) 621-0200 Facsimile: (216) 696-0740 Email: dwarren@bakerlaw.com GIBSON, DUNN & CRUTCHER LLP Attn: William S. Scherman 1050 Connecticut Avenue, N.W. Washington, D.C. 20036-5306 Telephone: (202) 955-8500 Facsimile: (202) 467-0539 Email: wscherman@gibsondunn.com
If to Defendant Michael J. Dowling	TUCKER ELLIS LLP Attn: John F. McCaffrey John A. Favret 950 Main Avenue, Suite 1100 Cleveland, OH 44113 Telephone: (216) 592-5000 Facsimile: (216) 592-5009 Email: john.mccaffrey@tuckerellis.com
If to Defendant Ebony Yeboah-Amankwah	SKADDEN, ARPS, SLATE, MEAGHER, FLOM, LLP Attn: Marcella L. Lape 155 N. Upper Wacker Drive Chicago, IL 60606-1720 Telephone: (312) 407-0700 Facsimile: (312) 407-0411

	Email: marcie.lape@skadden.com
If to Defendant Robert P. Reffner	MCDERMOTT, WILL, & EMERY, LLP Attn: Steven S. Scholes 444 West Lake Street Chicago, IL 60606-0029 Telephone: (312) 372-2000 Facsimile: (312) 984-7700 Email: sscholes@mwe.com
If to Defendant James F. Pearson	BALLARD SPAHR LLP Attn: Timothy D. Katsiff 1735 Market Street, 51st Floor Philadelphia, PA 19103-7599 Telephone: (215) 665-8500 Facsimile: (215) 864-8999 Email: katsifft@ballardspahr.com
If to Defendant Dennis M. Chack	MORGAN, LEWIS & BOCKIUS Attn: Michael L. Kichline 1701 Market Street Philadelphia, PA 19103 Telephone: (215) 963-5000 Facsimile: (215) 963-5001 Email: michael.kichline@morganlewis.com
If to Defendant Eileen Mikkelsen	BOIES SCHILLER FLEXNER LLP Attn: Lauren Bell 1401 New York Avenue, NW 11th Floor Washington, DC 20005 Telephone: (202) 237-2727 Facsimile: (202) 237-6131 Email: lbell@bsfllp.com
If to Defendant Justin Biltz	WALTER | HAVERFIELD LLP Attn: Ralph E. Cascarilla 1301 E. Ninth Street, Suite 3500 Cleveland, OH 44114 Telephone: (216) 781-1212 Facsimile: (216) 575-0911

Email: rcascarilla@walterhav.com

51. Except as otherwise provided herein, each Settling Party shall bear its own costs.

52. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed, and proceedings in connection with the Stipulation confidential.

53. Subject to applicable Court rules, all agreements made and orders entered during the course of the Actions relating to the confidentiality of information shall survive this Settlement.

IN WITNESS WHEREOF, the Settling Parties have caused this Stipulation to be executed, by their duly authorized attorneys, as of March 11, 2022.

[Signatures on Next Page]

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DEBEVOISE & PLIMPTON LLP

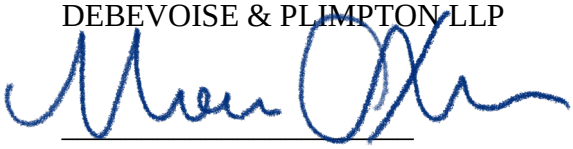

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EXHIBIT A

Exhibit A: Corporate Governance Reforms

1. Six directors who have been on the Board a minimum of five years will not stand for re-election in 2022. On February 11, 2022, the Company issued a Form 8-K announcing the Board changes.

2. The Board shall implement a process to review the current c-suite executives. This process shall be commenced within 30 days after the next annual meeting by the newly constituted Board. The review must be completed no more than 90 days after the commencement date. The review shall be conducted by a special committee consisting of independent directors who joined the Board on or after 2019 and will include at least three members. The special committee will have the power to retain, at the Company's expense, outside advisors if the special committee deems outside advisors necessary. After conducting its review, the special committee will make a recommendation to the full Board, which retains the authority to make the final determinations in executive session, outside the presence of any Company officers.

3. The full Board shall take responsibility for actively overseeing FirstEnergy's lobbying, political contributions, and political activities as a critical aspect of FirstEnergy's business.

- On an annual basis, management shall prepare a political and lobbying action plan, covering all such activities on behalf of FirstEnergy on a state and federal level ("Political and Lobbying Action Plan").

- The Company shall, consistent with the process set forth in Ohio Revised Code Section 1701.11, make the following amendments to FirstEnergy's Code of Regulations:

    - The "Directors" section of FirstEnergy's Code of Regulations shall be amended to add the following language: "<u>All directors and the full Board have responsibility to actively oversee FirstEnergy's lobbying, political contributions, and political activities.</u>"

    - The "Directors" section of the FirstEnergy's Code of Regulations shall be amended to add the following language, "<u>The full Board shall review and approve a political and lobbying action plan prepared annually by management, covering all such activities on behalf of FirstEnergy on a state and federal level ("Political and Lobbying Action Plan").</u>"

- Within 10 business days after the May 2022 annual meeting the Corporate Governance and Corporate Responsibility Committee of the Board shall be reconstituted to consist of a majority of independent directors who joined the Board in 2019 or later. The

reconstituted Corporate Governance and Corporate Responsibility Committee shall oversee management's implementation of the Political and Lobbying Action Plan.

- The reconstituted Corporate Governance and Corporate Responsibility Committee agrees to change its name to include "Political Oversight."

- The Corporate Governance and Corporate Responsibility Committee shall amend its charter to add the following language:

    - The "Purpose" section of the Corporate Governance and Corporate Responsibility Committee's charter shall be amended to add the underlined language: The purpose of the Corporate Governance and Corporate Responsibility Committee (the "Committee") of the Board of Directors (the "Board") of FirstEnergy Corp. (the "Company") is to carry out the responsibilities delegated by the Board relating to the Company's director nominations process, the Company's corporate governance policies and oversight of the Company's policies and practices relating to corporate responsibility, including a particularized focus on enhancing oversight of lobbying, political contributions, and political activities, among other issues. <u>While certain aspects of oversight have been delegated to the Committee (including oversight over management's implementation of</u> the Political and Lobbying Action Plan)<u>, the full Board has responsibility to actively oversee FirstEnergy's lobbying, political contributions, and political activities.</u>

- The Charter of the Corporate Governance and Corporate Responsibility Committee shall be further amended to include the following:

    - The Chief Legal Officer and Chief Ethics & Compliance Officer shall have direct access to the Corporate Governance and Corporate Responsibility Committee.

    - The Chief Legal Officer and Chief Ethics & Compliance Officer, together with senior executives directly responsible for implementing the Political and Lobbying Action Plan, shall report to the Corporate Governance and Corporate Responsibility Committee on a quarterly basis.

    - The Corporate Governance and Corporate Responsibility Committee shall report its findings to the full Board on a quarterly basis.

    - The Corporate Governance and Corporate Responsibility Committee shall retain (and the Company shall pay for) an independent third party to audit the implementation of the Board-approved Political and Lobbying Action Plan.

The independent third party shall continue to conduct annual audits of management's implementation of the Board-approved Political and Lobbying Action Plan to ensure compliance. Violation or instances of non-compliance with the Board-approved Political and Lobbying Action Plan will immediately be reported to the full Board for immediate investigation/remediation overseen by the Political Oversight Committee. The independent third party engaged to perform this audit shall not simultaneously be serving as the Company's financial auditor or as a consultant to the Compensation Committee.

4. The Board shall provide enhanced disclosure to shareholders of FirstEnergy's lobbying, political contributions, and political activities. These enhanced disclosures shall include:

- The proxy statement for each year of the duration of this Settlement shall include a section titled "Transparency in Corporate Contributions" that shall list all payments, if any, made in the previous year to entities incorporated under 26 U.S.C. § 501(c)(4) ("501(c)(4)" entities) and (2) all payments, if any, made in the previous year to entities known by FirstEnergy to be operating for the benefit of a public official, either directly or indirectly. The list shall include the following information: the entity's name and address, date of contribution, amount of contribution, and purpose of contribution.

- The annual proxy statement shall also include a report from the third-party auditor of the Board-approved Political and Lobbying Action Plan disclosing the number of violations and issues of non-compliance with the law or the Board-approved Political and Lobbying Action Plan, if any, and the date(s) each issue was reported to the full Board.

5. The Board shall further align financial incentives of senior executives with proactively complying with legal and ethical obligations.

- A majority of the Compensation Committee shall consist of directors who joined the Board in 2019 or later. The Company agrees to reconstitute the Compensation Committee to meet these requirements within 10 business days of the May 2022 annual meeting .

- The Compensation Committee shall review its clawback policy for senior executive compensation and implement any enhancements necessary to ensure the below requirements are met. The clawback policy, and any enhancements, will be described in the Company's proxy.

    - The Compensation Committee shall be authorized to review alleged misconduct and determine whether a clawback of compensation is

appropriate.

- The clawback policy shall be incorporated into all agreements with senior executives concerning the senior executives' compensation.

- The clawback system shall apply to stock-based compensation and bonuses, and shall not apply to an employee's base salary.

- The clawback system shall include an arbitration provision in case of a dispute.

6. Unless otherwise specified, each of the provisions of this exhibit shall remain binding on the Company for no less than five (5) years following the Settlement's Effective Date. If the Company is acquired during the five-year period, then all terms will remain in effect for at least twenty-four (24) months after the Company's acquisition.

EXHIBIT B

Exhibit B: Related Actions & Proceedings

- *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases)
- *Buldas v. FirstEnergy Corp.*, Case No. 2:20-cv-03987 (S.D. Ohio) (and all consolidated cases)
- *USA v. Householder*, Case No. 1:20-cr-00077 (S.D. Ohio)
- *USA v. FirstEnergy Corp.*, Case No. 1:21-cr-00086 (S.D. Ohio)
- *In the Matter of FirstEnergy Corp.*, C-08716, SEC
- In the Matter of an Audit of the Affiliated Transactions between Jersey Central Power and Light Company, First Energy Corp. and its Affiliates Pursuant to N.J.S.A. 48:3-49, 48:3 55, 48:3-56, 48:3-58 and N.J.A.C. 14:4-3.7(e) and (f), Docket No. EA20110733
- *State of Ohio ex rel. Dave Yost v. FirstEnergy Corp., et al.*, Case No. 20-CV-006281 (Franklin County Ct. Com. Pl.) (and all consolidated cases)
- *Emmons, et al. v. FirstEnergy Corp., et al.*, Case No. CV-20-935557 (Cuyahoga County Ct. Com. Pl.)
- *Smith, et al. v. FirstEnergy Corp., et al.*, Case No. 2:20-cv-03755-EAS-KAJ (S.D. Ohio) (and all consolidated cases)

EXHIBIT C

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

[PROPOSED] ORDER PRELIMINARILY APPROVING
SETTLEMENT AND SETTING SETTLEMENT FAIRNESS HEARING

WHEREAS, a stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (the "Southern District Action") is pending in the United States District Court for the Southern District of Ohio (the "Southern District Court," or the "Court");

WHEREAS, (i) Co-Lead Plaintiffs in the Southern District Action: Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs"); (ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States District Court for the Northern District of Ohio (the "Northern District Court"): Plaintiff-

Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs"); (iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs"); (iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, K. Jon Taylor, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants"); (v) Nominal Defendant FirstEnergy Corp. ("FirstEnergy" or the "Company"); and (vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and FirstEnergy, the "Settling Parties"), have entered into the Stipulation and Agreement of Settlement dated March 11, 2022 (the "Stipulation"), which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the Actions, subject to review and approval by this Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

WHEREAS, the Southern District Plaintiffs filed an unopposed motion for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and providing for notice of the Settlement to Current FirstEnergy Stockholders (defined below).

WHEREAS, the Court has read and considered the Stipulation and its exhibits, including (i) the proposed Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Notice"); (ii) the proposed Summary Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses ("Summary Notice"); and (iii) the proposed Final Judgment Approving Settlement and Order of Dismissal (the "Judgment").

NOW, THEREFORE, having found that sufficient grounds exist for entering this Order, the Court hereby ORDERS as follows:

1. This Order incorporates by reference the definitions in the Stipulation and, unless otherwise defined in this Order, all capitalized terms used in this Order shall have the same meaning as set forth in the Stipulation.

2. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation, subject to further consideration at a hearing to be held before the Court on _____, 2022, at __:__ _.m., either in person at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus,Ohio 43215 or by telephone or videoconference (in the discretion of the Court) (the "Settlement Fairness Hearing"), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether the Judgment, substantially in the form attached as Exhibit F to the

Stipulation, should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting, any and all Released Plaintiffs' Claims against the Released Defendants' Persons, as set forth in the Stipulation; (iii) determine whether the application for a Fee and Expense Award to Plaintiffs' Counsel should be approved; and (iv) rule on such other matters as the Court may deem appropriate.

3. The Court expressly reserves the right to adjourn the Settlement Fairness Hearing, or any adjournment thereof, without any further notice other than an announcement at the Settlement Fairness Hearing or at any adjournment of the Settlement Fairness Hearing. The Court may decide to hold the Settlement Fairness Hearing by telephone or video conference without notice to the FirstEnergy stockholders. If the Court orders that the Settlement Fairness Hearing be conducted telephonically or by video conference, that decision will be posted on the "Investor Relations" portion of FirstEnergy's website. Any Current FirstEnergy Stockholder (or his, her, or its counsel) who wishes to appear at the Settlement Fairness Hearing should consult the Court's docket and/or "Investor Relations" portion of FirstEnergy's website for any change in date, time, or format of the Settlement Fairness Hearing.

4. The Court expressly reserves the right to approve the Settlement with such modification(s) as may be consented to by the Settling Parties, or without modification, and with or without further notice of any kind to FirstEnergy stockholders. The Court reserves the right to enter its Judgment approving the Settlement and dismissing the Released Plaintiffs' Claims as against the Released Defendants' Persons regardless of whether the Court has awarded the Fee and Expense Award.

5. The Court approves the form, content, and requirements of the Notice, attached to the Stipulation as Exhibit D, and the Summary Notice, attached to the Stipulation as Exhibit E, and finds that the dissemination of the Notice and publication of the Summary Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules, and constitutes due and sufficient notice of all matters relating to the Settlement.

6. By no later than five (5) business days after the date of entry of this Preliminary Approval Order, the Company (or its successor-in-interest) shall cause: (a) the filing with the SEC of a Current Report on Form 8-K, attaching the Notice, substantially in the form attached as Exhibit D to the Stipulation, and the Stipulation; (b) the publication of the Summary Notice, substantially in the form attached as Exhibit E to the Stipulation, once in the *Wall Street Journal*, *Investor's Business Daily*, or similar publication; and (c) the posting of the Notice and the Stipulation on the "Investor Relations" portion of the Company's website, which documents shall remain posted thereto through the Effective Date of the Settlement. The Company shall pay or cause to be paid any and all Notice Costs regardless of the form or manner of notice ordered by the Court and regardless of whether the Court approves the Settlement or the Effective Date of the Settlement otherwise fails to occur, and in no event shall Defendants, Plaintiffs, or their respective attorneys be responsible for any such costs or expenses.

7. By no later than twenty-one (21) calendar days before the Settlement Fairness Hearing, counsel for the SLC on behalf of the Company shall file with the Court an appropriate proof of compliance with the notice procedures set forth in this Order.

8. Any person or entity who owns shares of FirstEnergy common stock as of the close of business on the date of the Stipulation ("Current FirstEnergy Stockholder") and who continues

to own shares of FirstEnergy common stock through the date of the Settlement Fairness Hearing may appear at the Settlement Fairness Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs should not be granted; provided, however, that no such person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Judgment to be entered approving the same, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, unless such person has filed with the Clerk of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, and delivered (by hand, first-class mail, or express service) to counsel at the addresses stated below, a written, signed objection that: (i) identifies the case name and case number for the Southern District Action, *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case Number 2:20-cv-04813-ALM-KAJ; (ii) states the objector's name, address, and telephone number, and if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (iii) contains a representation as to whether the objector and/or his, her, or its counsel intends to appear at the Settlement Fairness Hearing; (iv) contains a statement of the objection(s) to any matters before the Court, the grounds for the objection(s) or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; (v) if the objector has indicated that he, she, or it intends to appear at the Settlement Fairness Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Fairness Hearing; and (vi) includes documentation sufficient to prove that the objector owned shares of FirstEnergy common stock as of the close of business on the date

of the Stipulation, together with a statement that the objector continues to hold shares of FirstEnergy common stock on the date of filing of the objection and will continue to hold shares of FirstEnergy common stock as of the date of the Settlement Fairness Hearing. Any such objection must be filed with the Court no later than fourteen (14) calendar days prior to the Settlement Fairness Hearing and delivered to each of the below-noted counsel such that it is received no later than fourteen (14) calendar days prior to the Settlement Fairness Hearing.

Co-Lead Counsel for the Southern District Plaintiffs

Jeroen van Kwawegen
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

Thomas Curry
Saxena White P.A.
1000 N. West Street, Suite 1200
Wilmington, DE 19801

Representative Counsel for Defendants

Geoffrey J. Ritts
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114

Counsel for the SLC and FirstEnergy

Maeve O'Connor
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

9. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, the Judgment to be entered approving the Settlement, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards

to Plaintiffs, in the Southern District Action or in any other action or proceeding in any court or tribunal.

10. The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be transferred or disbursed from the Settlement Fund pursuant to the Stipulation and/or further order(s) of the Court.

11. Co-Lead Counsel for the Southern District Plaintiffs is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

12. Plaintiffs shall file and serve papers in support of final approval of the proposed Settlement and in support of their application for the Fee and Expense Award by no later than twenty-eight (28) calendar days prior to the Settlement Fairness Hearing. If reply papers are necessary, they are to be filed and served by no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

13. In the event the Settlement is terminated or the Effective Date does not occur for any reason, then (i) the Settlement and the relevant portions of the Stipulation shall be canceled; (ii) the Settling Parties shall revert to their respective litigation positions in the Actions as of immediately prior to the execution of the Term Sheet on February 9, 2022; and (iii) the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling

Parties and shall not be used in the Actions or in any other proceeding for any purpose, and the Settling Parties shall proceed in all respects as if the Stipulation had not been entered.

14. Pursuant to the Court's Order dated February 11, 2022, all pleading deadlines, discovery, and other proceedings in the Southern District Action (except as may be necessary to carry out the terms and conditions of the proposed Settlement) have been stayed and suspended until further order of the Court.

15. The Court retains exclusive jurisdiction over the Southern District Action to consider all further matters arising out of or related to the Settlement.

16. Pending the Court's determination as to final approval of the Settlement, Plaintiffs, FirstEnergy, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy are hereby barred and enjoined from commencing or prosecuting any action asserting any of the claims alleged in the Southern District Action against any of the Defendants in any court or tribunal.

IT IS SO ORDERED.

DATED _____, 2022

_____
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

EXHIBIT D

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

NOTICE OF (I) PENDENCY AND PROPOSED SETTLEMENT OF STOCKHOLDER DERIVATIVE ACTIONS; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

TO: All persons and entities who own shares of FirstEnergy Corp. ("FirstEnergy" or the "Company") common stock as of the close of business on March 11, 2022 ("Current FirstEnergy Stockholders").

The purpose of this Notice is to inform you of: (i) the stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ, pending in the United States District Court for the Southern District of Ohio (the "Southern District Action"); the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA, pending in the United States District Court for the Northern District of Ohio (the "Northern District Action"); and the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107, pending in the Summit County Court of Common Pleas (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"); (ii) a proposed settlement of the Actions (the "Settlement"), subject to the approval of the United States

District Court for the Southern District of Ohio (the "Southern District Court" or the "Court"), as provided in the Stipulation and Agreement of Settlement dated March 11, 2022 (the "Stipulation"); (iii) the hearing that the Southern District Court will hold on [_____], 2022 at [__:__] [_].m. to determine whether to finally approve the proposed Settlement and to consider the application by Co-Lead Counsel in the Southern District Action, on behalf of all Plaintiffs' Counsel,[1] for an award of attorneys' fees and litigation expenses; and (iv) Current FirstEnergy Stockholders' rights with respect to the proposed Settlement and the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel.[2]

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION AND THE PROPOSED SETTLEMENT OF THE ACTIONS.

The Stipulation was entered into as of March 11, 2022, by and among the Settling Parties,[3] subject to the approval of the Southern District Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

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[1] "Plaintiffs' Counsel" consist of Bernstein Litowitz Berger & Grossmann LLP and Saxena White P.A., Co-Lead Counsel for the Southern District Plaintiffs and counsel for Plaintiff-Intervenors in the Northern District Action; Cohen Milstein Sellers & Toll PLLC, counsel for Additional Plaintiff Massachusetts Laborers Pension Fund in the Southern District Action and in the Northern District Action; Law Offices of John C. Camillus, liaison counsel for Co-Lead Plaintiffs in the Southern District Action and counsel for Plaintiff-Intervenors in the Northern District Action; Edelson Lechtzin LLP and Rosca Scarlato, LLC, counsel for Plaintiff Jennifer L. Miller in the Northern District Action; Johnson Fistel, LLP, Connick Law, LLC, and Law Office of George W. Cochran, counsel for the Ohio State Court Plaintiffs; and all other firms listed in the Complaints.

[2] All capitalized terms not otherwise defined in this Notice shall have the meaning provided in the Stipulation, a copy which is being filed with this Notice as an attachment to the Company's 8-K dated [_____], 2022. A copy of the Stipulation is also available in the "Investor Relations" portion of FirstEnergy's website, www.[_____].com.

[3] The "Settling Parties" are: (i) Plaintiffs in the Southern District Action, Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs"); (ii) Plaintiffs in the Northern District Action, Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs"); (iii) Plaintiffs in the Ohio State Court Action, John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District of Ohio Plaintiffs and the Northern District of Ohio Plaintiffs, "Plaintiffs"); (iv) Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner,

As described in paragraph 100 below, the Settlement provides for: (i) a cash payment of $180,000,000, which, together with any and all interest earned thereon, and after deductions for any Fee and Expense Award to Plaintiffs' Counsel (including any Incentive Awards for Plaintiffs) and any Taxes, will be paid to the Company; and (ii) corporate governance reforms that FirstEnergy will implement.

Because the Actions were brought as derivative actions, which means that the Actions were brought by Plaintiffs on behalf of and for the benefit of FirstEnergy, the cash recovery from the Settlement will go to the Company. Individual FirstEnergy stockholders will not receive any direct payment from the Settlement.

PLEASE NOTE: THERE IS NO PROOF OF CLAIM FORM FOR STOCKHOLDERS TO SUBMIT IN CONNECTION WITH THIS SETTLEMENT, AND STOCKHOLDERS ARE NOT REQUIRED TO TAKE ANY ACTION IN RESPONSE TO THIS NOTICE.

WHAT IS THE PURPOSE OF THIS NOTICE?

1. The purpose of this Notice is to explain the Actions, the terms of the proposed Settlement, and how the proposed Settlement affects FirstEnergy stockholders' legal rights.

2. In a derivative action, one or more persons or entities who are current stockholders of a corporation sue on behalf of and for the benefit of the corporation, seeking to enforce the corporation's legal rights. In the Actions, Plaintiffs have filed suit against Defendants on behalf of and for the benefit of FirstEnergy.

3. The Southern District Court has scheduled a hearing to consider the fairness, reasonableness, and adequacy of the Settlement and the application by Co-Lead Counsel in the Southern District Action, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees and expenses (the "Settlement Fairness Hearing"). See paragraphs 109-110 below for details about the Settlement Fairness Hearing, including the location, date, and time of the hearing.

WHAT ARE THESE CASES ABOUT? WHAT HAS HAPPENED SO FAR?

THE FOLLOWING DESCRIPTION OF THE ACTIONS AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE SETTLING PARTIES. THE COURTS PRESIDING OVER THE ACTIONS HAVE MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY ANY COURT OF FINDINGS OF FACT.

Steven E. Strah, K. Jon Taylor, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants"); (v) Nominal Defendant FirstEnergy Corp. and all of its affiliates ("FirstEnergy" or the "Company"); and (vi) the Special Litigation Committee ("SLC") of the Board of Directors ("Board") of FirstEnergy.

4. On July 21, 2020, the Ohio Speaker of the House Larry Householder ("Householder") and four other individuals not parties to the Actions were arrested as part of an investigation of an alleged $60 million racketeering and bribery scheme.

5. On July 30, 2020, a federal grand jury indicted Householder, the four other individuals, and 501(c)(4) entity Generation Now in an alleged federal racketeering conspiracy involving approximately $60 million in bribes to pass and uphold a billion-dollar nuclear plant bailout.

6. On July 22, 2021, FirstEnergy entered into a deferred prosecution agreement ("DPA") with the United States Department of Justice ("DOJ") to resolve allegations that the Company participated in an alleged bribery scheme. In conjunction with the DPA, FirstEnergy agreed to pay a $230 million fine for its role in the alleged bribery scheme.

The Southern District Action:

7. On September 9, 2020, Plaintiff Employees Retirement System of the City of St. Louis ("ERS") commenced a stockholder derivative action captioned as *Employees Retirement System of the City of St. Louis v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, and Ebony Yeboah-Amankwah asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

8. On September 30, 2020, Plaintiff Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103") commenced a stockholder derivative action captioned as *Electrical Workers Pension Fund, Local 103, I.B.E.W. v. Anderson, et al.*, Case No. 2:20-cv-05128-ALM-KAJ (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, James F. Pearson, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

9. On October 5, 2020, Plaintiff Massachusetts Laborers Pension Fund ("MLPF") commenced a stockholder derivative action captioned as *Massachusetts Laborers Pension Fund v. Jones, et al.*, Case No. 2:20-cv-05237-SDM-CMV (S.D. Ohio), on behalf of FirstEnergy as Nominal Defendant against Defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Justin Biltz, Michael J. Dowling, James F. Pearson, Steven E. Strah, K. Jon Taylor, Robert Reffner, Ebony Yeboah-Amankwah, and John Does 1-50 asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

10. On October 2, 2020, Plaintiffs ERS and Local 103 filed a Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

11. On October 23, 2020, Interested Party City of Philadelphia Board of Pensions and Retirement ("City of Philadelphia") filed a cross-motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel, in opposition to the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

12. On November 3, 2020, Plaintiffs ERS and Local 103 filed a Memorandum of Law in Further Support of the Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel, and in Opposition to the Competing Motion.

13. On November 6, 2020, Plaintiff MLPF filed a Motion for Joinder in Support of Motion of the Institutional Investors to Consolidate Related Derivative Actions, Appoint Co-Lead Plaintiffs, and Appoint Co-Lead Counsel.

14. On November 6, 2020, City of Philadelphia filed a Reply in Further Support of Its Motion for Consolidation, Appointment of Lead Plaintiff, and Appointment of Lead Counsel.

15. On November 16, 2020, the Southern District Court issued an Opinion and Order appointing Plaintiffs ERS and Local 103 Co-Lead Plaintiffs, and appointing Saxena White P.A. and Bernstein Litowitz Berger & Grossmann LLP Co-Lead Counsel. Further, Massachusetts Laborers Pension Fund served as Additional Plaintiff, represented by Cohen Milstein Sellers & Toll PLLC.

16. On November 19, 2020, Defendants filed a Motion to Stay the Southern District Action (the "November 19, 2020 Motion to Stay"). Southern District Plaintiffs filed a Brief in Opposition to Defendants' November 19, 2020 Motion to Stay on December 4, 2020. Defendants filed a Reply in Support of their November 19, 2020 Motion to Stay on December 11, 2020. The Southern District Court issued an Opinion and Order denying Defendants' Motion to Stay on December 21, 2020.

17. On January 19, 2021, Defendants filed a Motion to Enforce Stay of Discovery pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"). Southern District Plaintiffs filed a Notice of Non-Opposition to Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on January 29, 2021, in light of the Motion to Dismiss briefing schedule. The Southern District Court granted Defendants' Motion to Enforce Stay of Discovery pursuant to the PSLRA on February 4, 2021.

18. On January 25, 2021, Southern District Plaintiffs filed the Consolidated Verified Shareholder Derivative Complaint on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Ebony

Yeboah-Amankwah, Steven E. Strah, and K. Jon Taylor asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

19. On February 24, 2021, Defendants filed their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. On March 24, 2021, Southern District Plaintiffs filed their Opposition to Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint. Defendants filed Replies in Support of their Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on April 14, 2021. The Southern District Court denied Defendants' Motions to Dismiss the Consolidated Verified Shareholder Derivative Complaint on May 11, 2021.

20. On May 28, 2021, Defendants filed a Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b). Southern District Plaintiffs filed their Opposition to Defendants' Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on June 21, 2021. Defendants filed a Reply in Support of their Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) on July 6, 2021.

21. On June 14, 2021, the Southern District Court issued an order lifting the PSLRA stay and noted that discovery may commence.

22. On June 24, 2021, Defendants filed their Answers to the Consolidated Verified Shareholder Derivative Complaint.

23. On June 30, 2021, Nominal Defendant FirstEnergy Corp. announced the formation of the SLC, effective July 1, 2021.

24. On July 1, 2021, Magistrate Judge Kimberly A. Jolson issued a notation order directing the SLC to file any motion to stay by July 21, 2021.

25. On July 20, 2021, the SLC filed its Motion to Stay.

26. On August 9, 2021, the SLC withdrew the Motion to Certify the Southern District Court's Order denying Defendants' Motion to Dismiss for Interlocutory Appeal Pursuant to 28 U.S.C. § 1292(b) as to Nominal Defendant First Energy.

27. On August 10, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay.

28. On August 24, 2021, the SLC filed its Reply in Support of its Motion to Stay.

29. On October 5, 2021, the parties entered into a Joint Protocol for Production of Documents and Electronically Stored Information.

30. On October 5, 2021, Southern District Plaintiffs contacted the Southern District Court to request a status conference to obtain documents previously produced to the DOJ.

31. On October 7, 2021, a status conference was held before Magistrate Judge Kimberly A. Jolson. Judge Jolson entered an order staying discovery for fourteen days to allow the Southern District Court to rule on the SLC's then-pending Motion to Stay.

32. On October 20, 2021, the Southern District Court issued an Opinion and Order denying the SLC's Motion to Stay, and noting that "[d]iscovery shall commence without further delay."

33. On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine.

34. On October 25, 2021, Southern District Plaintiffs again requested a status conference before Magistrate Judge Jolson concerning discovery issues.

35. On October 27, 2021, another status conference was held before Magistrate Judge Kimberly A. Jolson at the Southern District Plaintiffs' request. During that status conference, the Court noted that discovery is open and instructed Defendants to produce documents previously produced to the DOJ.

36. On October 29, 2021, the SLC filed a Motion to Stay Pending the Outcome of Appellate Proceedings.

37. On November 9, 2021, Southern District Plaintiffs filed their Opposition to the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

38. On November 12, 2021, the SLC filed its Reply in Support of the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings.

39. On November 12, 2021, the Southern District Court issued an Opinion and Order denying the Individual Defendants' Motion to Certify Order for Interlocutory Appeal pursuant to 28 U.S.C. §1292(b).

40. As described in greater detail below (under "Sixth Circuit Proceedings"), the SLC's Motion to Stay Pending the Outcome of Appellate Proceedings was mooted by the Sixth Circuit's December 16, 2021 order granting Southern District Plaintiffs' Motions to Dismiss the Northern District Appeal and the Southern District Appeal, and dismissing the mandamus petitions.

The Northern District Action:

41. On August 7, 2020 Jennifer Miller ("Miller") commenced a stockholder derivative action captioned as *Miller, et al., v. Anderson et al.*, Case No. 5:20-cv-01743-JRA (N.D. Ohio) on behalf of FirstEnergy as Nominal Defendant against Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Charles E. Jones, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, and Ebony Yeboah-Amankwah asserting, among other things, claims for breaches of fiduciary duty and violation of Section 14(a) of the Securities Exchange Act.

42. On October 5, 2020, Plaintiffs ERS and Local 103 ("Intervenor Plaintiffs") filed a Motion to Intervene and Transfer the Northern District Action to the United States District Court for the Southern District of Ohio. Defendants filed their Opposition to Plaintiffs ERS and Local 103's Motion to Intervene and Transfer on October 9, 2020. Plaintiffs ERS and Local 103 filed a Reply in Further Support of their Motion to Intervene and Transfer the Northern District Action to the Southern District Court on October 16, 2020. The Northern District Court granted the Intervenor Plaintiffs' Motion as to intervention but denied the Motion as to transfer to the Southern District of Ohio on May 13, 2021.

43. Plaintiffs ERS and Local 103 and additional Plaintiff MLPF filed their Intervenors' Verified Shareholder Derivative Complaint on June 3, 2021. Defendants filed their Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on June 17, 2021. Intervenor Plaintiffs filed their Opposition to Defendants' Motions to Dismiss Intervenors' Verified Shareholder Derivative Complaint on July 19, 2021.

44. On July 20, 2021, the SLC filed its Motion to Stay in the Northern District Action. Intervenor Plaintiffs filed their opposition to the SLC's Motion to Stay on August 10, 2021. The SLC filed its reply in further support of its Motion to Stay on August 24, 2021. On September 16, 2021, the Northern District Court issued an Order and Decision denying Defendants' Motions to Dismiss and the SLC's Motion to Stay. On September 30, 2021, the Northern District Court designated the Intervenor Plaintiffs' Verified Shareholder Derivative Complaint as the Operative Complaint, but held in abeyance Intervenor Plaintiffs' Motion for Appointment as Lead Plaintiffs and Appointment of their Counsel as Lead Counsel.

45. On October 25, 2021, Intervenor Plaintiffs served a Settlement Demand on Defendants pursuant to the Northern District Court's September 16, 2021, Case Management Conference Scheduling Order ("the Case Management Conference Scheduling Order"). On November 1, 2021, Defendants responded to Intervenor Plaintiffs' Settlement Demand pursuant to the Case Management Conference Scheduling Order. On December 15-17, 2021, the parties filed their Settlement Demands and Responses on the Northern District Docket, under seal.

46. On November 8, 2021, a Case Management Conference was held in Akron, Ohio. A Case Management Plan was entered on November 9, 2021.

47. On November 22, 2021, Federal Plaintiffs, Defendants, and the Nominal Defendant submitted a Joint Proposed Stipulated Discovery Order stipulating that all written discovery (including discovery served prior to the filing of the Stipulated Discovery Order), depositions, expert disclosures and reports, and documents produced would be coordinated between the Southern District Action and the Northern District Action to avoid duplication and waste of the resources of the parties, the courts, and third parties.

48. Pursuant to the Case Management Plan, Federal Plaintiffs, Defendants, and the Nominal Defendant filed a deposition schedule on December 3, 2021. Subsequently, two telephonic status conferences were held on January 10, 2022 and January 28, 2022.

The Sixth Circuit Proceedings:

49. On September 16, 2021, the SLC filed a Notice of Appeal of the Northern District Court's Order and Decision denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Northern District Appeal").

50. On September 23, 2021, Northern District Plaintiffs filed their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

51. On October 4, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Northern District Appeal.

52. On October 12, 2021, Northern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Northern District Appeal for Lack of Jurisdiction.

53. On October 22, 2021, the SLC filed a Notice of Appeal of the Southern District Court's Opinion and Order denying the SLC's Motion to Stay pursuant to 28 U.S.C. § 1291 under the collateral order doctrine (the "Southern District Appeal").

54. On November 2, 2021, Southern District Plaintiffs filed their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

55. On November 8, 2021, the SLC filed Writs of Mandamus against Chief Judge Algenon L. Marbley of the Southern District of Ohio and Judge John R. Adams of the Northern District of Ohio.

56. On November 12, 2021, the SLC filed its Response to Plaintiffs-Appellants' Motion to Dismiss the Southern District Appeal.

57. On November 16, 2021, the SLC filed a motion to consolidate the Southern District Appeal and the Northern District Appeal, to expedite the appellate briefing schedule, and to stay district court proceedings pending the outcome of the appeals.

58. On November 19, 2021, Southern District Plaintiffs filed their Reply in Support of their Motion to Dismiss the Southern District Appeal for Lack of Jurisdiction.

59. On November 26, 2021, Southern District Plaintiffs filed their Opposition to the SLC's motion to consolidate, expedite briefing schedule, and stay district court proceedings pending the outcome of the appeals.

60. On December 3, 2021, the SLC filed a Reply in Support of its Motion to Expedite, Consolidate, and Stay.

61. On December 16, 2021, the United States District Court of Appeals for the Sixth Circuit granted Federal Plaintiffs' Motions to Dismiss for lack of jurisdiction the Southern District and Northern District Appeals, and denied the SLC's petitions for a writ of mandamus.

The State Court Action:

62. On July 26, 2020 and July 31, 2020, Ohio State Court Plaintiffs separately initiated stockholder derivative actions on behalf of Nominal Defendant FirstEnergy in the Ohio State Court, captioned *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107 (Summit Cnty. Court of Common Pleas) ("*Gendrich* Action"), and *Sloan v. Anderson, et al.*, No. CV-2020-08-2161 (Summit Cnty. Court of Common Pleas) ("*Sloan* Action"), respectively.

63. On September 8, 2020, the Gendrich Action and the Sloan Action were consolidated by court Order under the caption *Gendrich v. Anderson, et al.*, No. CV-2020-07-2107, and thereafter, on September 23, 2020, Johnson Fistel, LLP and Connick Law, LLC, were appointed Co-Lead Counsel in the State Court Action.

64. On September 22, 2020, Ohio State Court Plaintiffs sent a stockholder inspection demand for books and records under Ohio Statute § 1701.37(C) to the board of directors of the Company. By letter dated October 14, 2020, that inspection demand was declined.

65. On September 22, 2020, Ohio State Court Plaintiffs issued a public records request to the Ohio Attorney General's Office and a request for records under the Freedom of Information Act to the U.S. Department of Justice. Thereafter, Ohio State Court Plaintiffs' counsel continued to engage in written correspondence in furtherance of the public records request with the Ohio Attorney General's Office.

66. On November 9, 2020, Ohio State Court Plaintiffs filed a consolidated complaint alleging derivative claims against Defendants for breach of fiduciary duties based on, *inter alia*, participation in the alleged criminal bribery scheme, unjust enrichment, and insider selling, as well as claims for civil conspiracy, contribution and indemnification, and civil liability for criminal acts.

67. On January 8, 2021, certain Defendants moved to dismiss the Ohio State Court Plaintiffs' consolidated complaint. On March 9, 2021, the Ohio State Court Plaintiffs filed their opposition to the motion to dismiss. On April 8, 2021, defendants filed their reply in further support of their motion to dismiss.

68. On June 21, 2021, Ohio State Court Plaintiffs served Plaintiffs' First Request for Production of Documents on Defendants, to which Defendants served their various responses and objections on July 19, 2021, with the exception of defendants Eileen Mikkelsen and Justin Biltz, whose responses and objections were served on August 2, 2021 and August, 9, 2021, respectively.

69. On July 20, 2021, the SLC filed a motion to stay the State Court Action.

70. On August 9, 2021, the SLC withdrew the previously filed motion to dismiss as to Nominal Defendant FirstEnergy while the SLC investigated and evaluated Ohio State Court Plaintiffs' claims. Ohio State Court Plaintiffs filed their opposition to the SLC's motion to stay on August 19, 2021, and the SLC filed its reply on August 26, 2021.

71. On November 12, 2021, Ohio State Court Plaintiffs served on Defendants a confidential settlement demand.

The Parties Litigate The Actions in Federal Court:

72. On May 28, 2021, Southern District Plaintiffs propounded their First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy.

73. On June 28, 2021, the Individual Defendants and Nominal Defendant FirstEnergy served their Responses and Objections to Plaintiffs' First Request for Production of Documents directed to the Individual Defendants and Nominal Defendant FirstEnergy, with the exception of Defendant Yeboah-Amankwah, who served her Responses and Objections to Plaintiffs' First Request for Production of Documents on July 1, 2021.

74. On September 29, 2021, Southern District Plaintiffs issued a subpoena to non-party PricewaterhouseCoopers ("PwC") in the Southern District Action (the "Southern District PwC Subpoena"). PwC served its Responses and Objections to the Southern District PwC Subpoena on October 20, 2021. On November 17, 2021, Federal Plaintiffs issued a subpoena to non-party PwC in the Northern District Action (the "Northern District PwC Subpoena"). PwC served its Responses and Objections to the Northern District PwC Subpoena on December 1, 2021.

75. On December 2, 2021, Federal Plaintiffs propounded their First Request for Production of Documents to Defendant Chack. Chack served his Responses and Objections to Plaintiffs' First Request for Production of Documents on January 3, 2022.

76. Federal Plaintiffs propounded their Second Request for Production of Documents to FirstEnergy on December 10, 2021. FirstEnergy served its Objections and Responses to Plaintiffs' Second Request for Production of Documents on January 10, 2022.

77. Federal Plaintiffs propounded their Second Request for Production of Documents to the Individual Defendants on December 15, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 14, 2022.

78. Federal Plaintiffs propounded their First Set of Interrogatories Directed to FirstEnergy on December 15, 2021. FirstEnergy served its Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to FirstEnergy on January 14, 2022.

79. Federal Plaintiffs propounded their First Set of Interrogatories Directed to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' First Set of Interrogatories Directed to the Individual Defendants on January 18, 2022.

80. Federal Plaintiffs propounded their Third Request for Production of Documents to the Individual Defendants on December 17, 2021. The Individual Defendants served their Responses and Objections to Plaintiffs' Second Request for Production of Documents on January 18, 2022.

81. Federal Plaintiffs propounded their First Requests for Admission to FirstEnergy, Charles E. Jones, and Michael J. Dowling on December 17, 2021. FirstEnergy, Jones, and

Dowling served their Responses and Objections to Plaintiffs' First Requests for Admission on January 18, 2022.

82. On December 6, 2021, Federal Plaintiffs issued a subpoena to non-party Clearsulting. Clearsulting served its Responses and Objections to Plaintiffs' subpoena on December 17, 2021.

83. On December 7, 2021, Federal Plaintiffs issued a subpoena to non-party Nathan Cummings Foundation. Nathan Cummings Foundation served its Responses and Objections to Plaintiffs' subpoena on December 23, 2021.

84. On December 17, 2021, Federal Plaintiffs issued a subpoena to non-party Green Century Capital Management.

85. On January 13, 2022, Federal Plaintiffs issued a subpoena to non-party Verizon.

86. On December 6, 9, and 23, 2021, Federal Plaintiffs subpoenaed certain former directors of FirstEnergy. The former directors of FirstEnergy responded to Plaintiffs' subpoenas on December 20 and 23, 2021 and January 6, 2022.

87. Federal Plaintiffs negotiated discovery protocols with eighteen different defendants, represented by eight different sets of counsel. FirstEnergy and the Individual Defendants initially objected to the production of documents dated before January 1, 2017 or after Householder's arrest in July 2020. Ultimately, Federal Plaintiffs obtained agreement of FirstEnergy and the Individual Defendants to produce relevant information dated or created on January 1, 2016 through at least mid-June 2021. Federal Plaintiffs also obtained FirstEnergy's agreement to search the Company's custodial ESI for nearly 200 search terms and the Individual Defendants' agreement to search their custodial ESI for 260 search terms pursuant to the operative search term protocols. Federal Plaintiffs also obtained Defendants' agreement to review and produce relevant text messages between each Defendant and 30 counterparties, without the application of search terms.

88. Ultimately, Defendants and non-parties collectively produced, and Federal Plaintiffs reviewed, over 500,000 pages of documents, including all the documents produced to the DOJ in connection with its investigation.

89. In addition to serving offensive discovery, Federal Plaintiffs responded to discovery directed toward Plaintiffs. On December 10, 2021, the Director & Officer Defendants served their First Request for Production, First Set of Interrogatories, and First Request for Admission directed to Plaintiffs. On January 10, 2022, Federal Plaintiffs served their Responses and Objections to the Director & Officer Defendants First Request for Production. On January 18, 2022, Plaintiffs served their Responses and Objections to the Director & Officer Defendants' First Set of Interrogatories and First Request for Admission directed to Plaintiffs.

90. On December 14, 2021, Defendant Pearson served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 13, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Request for Production of

Documents directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Pearson's First Set of Interrogatories directed to Plaintiffs.

91. On December 17, 2021, Defendants Chack, Reffner, and Yeboah-Amankwah served their First Requests for Production of Documents and First Sets of Interrogatories directed to Plaintiffs, and Defendant Reffner served his First Requests for Admission directed to Plaintiffs. On January 18, 2022, Federal Plaintiffs served their Responses and Objections to Defendants Chack, Reffner and Yeboah-Amankwah's First Requests for Production of Documents and First Set of Interrogatories directed to Plaintiffs. Also on January 18, 2022, Federal Plaintiffs served their Responses and Objections to Reffner's First Requests for Admission directed to Plaintiffs.

92. On December 23, 2021, Defendant Dowling served his First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs. On January 24, 2022, Federal Plaintiffs served their Responses and Objections to Dowling's First Request for Production of Documents and First Set of Interrogatories directed to Plaintiffs.

The Parties Conduct Arm's-Length Negotiations To Resolve The Actions:

93. Beginning on December 14, 2021, the Settling Parties engaged in numerous telephonic conversations, including conversations among the Settling Parties and conversations between certain of the Settling Parties and former United States District Court Judge Layn R. Phillips (the "Mediator").

94. On February 1, 2022, the Settling Parties participated in a full day mediation session before the Mediator. In advance of that session, the Settling Parties exchanged mediation statements, reply statements, and exhibits with the Mediator and among the Settling Parties, which addressed the issues of both liability and damages. In advance of the mediation, the Federal Plaintiffs and the SLC also discussed possible governance improvements as part of a potential settlement. The session ended without any agreement being reached.

95. Following the mediation, the Settling Parties engaged in additional negotiations under the supervision and guidance of the Mediator.

96. As a result of extensive, arm's-length negotiations, before, during, and after the mediation session, the Settling Parties reached an agreement in principle to settle the Actions that was memorialized in a Settlement Term Sheet executed on February 9, 2022 (the "Term Sheet").

97. The Term Sheet set forth, among other things, the Settling Parties' agreement to resolve the Actions in exchange for (i) a cash payment of $180,000,000, which, together with any and all interest earned thereon, and after deductions for any Fee and Expense Award to Plaintiffs' Counsel and any Taxes, will be paid to the Company; and (ii) corporate governance reforms that FirstEnergy will implement, subject to certain terms and conditions and the execution of a customary "long form" stipulation and agreement of settlement and related papers. The Settlement does not release any claims by the Company for recoupment of compensation from Defendants Jones, Dowling, or Chack, including such claims that the Company is pursuing or may pursue (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their

right to oppose and defend against on any and all grounds available and to assert any related claims).

98. After additional negotiations regarding the specific terms of their agreement, the Settling Parties entered into the Stipulation on March 11, 2022. The Stipulation reflects the final and binding agreement among the Settling Parties on the terms and conditions of the Settlement and supersedes and replaces the Term Sheet. The Stipulation can be viewed at the "Investor Relations" portion of FirstEnergy's website, www.[_____].com.

99. On [_____], 2022, the Southern District Court preliminarily approved the Settlement, authorized this Notice to be provided to Current FirstEnergy Stockholders, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval of the Settlement.

WHAT ARE THE TERMS OF THE SETTLEMENT?

100. In consideration of the full settlement and release of the Released Plaintiffs' Claims (defined in paragraph 103 below) against the Released Defendants' Persons (defined in paragraph 104 below) and the settlement and dismissal with prejudice of the Actions, Defendants, the SLC, and FirstEnergy have agreed to the following:

(i) **Monetary Consideration:** In accordance with the terms of the Stipulation, Defendants will cause their insurers to pay $180,000,000.00 (United States Dollars) in cash (the "Settlement Amount") into an escrow account controlled by Co-Lead Counsel in the Southern District Action (the "Account"). The Settlement Amount plus any and all interest earned thereon (the "Settlement Fund"), less (i) any Court-awarded attorneys' fees and litigation expenses paid or payable to Plaintiffs' Counsel, including any service awards paid or payable to Plaintiffs, and/or any reserve to account for any potential future awards to Plaintiffs' Counsel or Plaintiffs; and (ii) any Taxes with respect to any interest earned on the Settlement Fund while on deposit in the Escrow Account (the "Net Settlement Fund"), shall be paid from the Escrow Account to the Company no later than ten (10) business days after the Effective Date.

(ii) **Corporate Governance Reforms:** The Company, acting through its Board, shall implement the corporate governance reforms set forth in Exhibit A to the Stipulation ("Reforms") not later than ten (10) business days following final approval of the Settlement by the Court, unless otherwise specified in Exhibit A to the Stipulation. Any agreement to acquire the Company reached within twelve (12) months of the approval of the Settlement shall be conditioned on the acquirer's written agreement to maintain the Reforms set forth in the Exhibit A to the Stipulation, or functionally equivalent measures, for not less than twenty-four (24) months following the announcement of the acquisition. Unless otherwise specified, each of the provisions of Exhibit A to the Stipulation shall remain binding on the Company for no less than five (5) years following the Effective Date.

WHAT ARE THE SETTLING PARTIES' REASONS FOR THE SETTLEMENT?

101. Plaintiffs and Plaintiffs' Counsel believe that the claims raised in the Actions have merit and that their investigations support the claims asserted in the Actions. Without conceding the merit of any of the Defendants' defenses, and in light of the benefits of the Settlement as well as to avoid the potentially protracted time, expense, and uncertainty associated with continued litigation, including potential trial(s) and appeal(s), Plaintiffs and Plaintiffs' Counsel have concluded that it is desirable that the Actions be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. Plaintiffs and Plaintiffs' Counsel recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Actions against Defendants through trial(s) and through possible appeal(s). Plaintiffs and Plaintiffs' Counsel have also taken into account the uncertain outcome and the risk of any litigation, especially complex litigation such as would be entailed by the Actions, the difficulties and delays inherent in such litigation, the cost to the Company – on behalf of which Plaintiffs filed the Actions – and distraction to the management of FirstEnergy that would result from extended litigation. Based on their evaluation, and in light of what Plaintiffs and Plaintiffs' Counsel believe to be the significant benefits conferred upon the Company as a result of the Settlement, Plaintiffs and Plaintiffs' Counsel have determined that the Settlement is in the best interests of Plaintiffs and the Company and have agreed to settle the Actions upon the terms and subject to the conditions set forth in the Stipulation.

102. The SLC has concluded that it is desirable that the Actions—which assert claims on the Company's behalf and for the Company's benefit—be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The SLC believes that the Settlement is in the best interests of the Company.

103. Defendants deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever in the Actions. Defendants, to avoid the costs, disruption, and distraction of further litigation, and without admitting the validity of any allegations made in the Actions, or any liability with respect thereto, have concluded that it is desirable that the claims against them be settled on the terms reflected in the Stipulation. Defendants have denied, and continue to deny, that they committed, or aided and abetted in the commission of, any violation of law or duty or engaged in any wrongful acts whatsoever, including specifically those alleged in the Actions, and expressly maintain that they have complied with their statutory, fiduciary, and other legal duties, and are entering into the Stipulation and the Settlement to eliminate the burden, expense, and uncertainties inherent in further litigation.

WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED? WHAT CLAIMS WILL THE SETTLEMENT RELEASE?

104. If the Settlement is approved, the Settling Parties will request that the Court enter a Final Judgment Approving Settlement and Order of Dismissal (the "Judgment"). Pursuant to the Judgment, upon the Effective Date of the Settlement, the following releases will occur:

Release of Claims by Plaintiffs, the Company, the SLC, and Company Stockholders: Plaintiffs, the Company, the SLC, on behalf of itself and the Company, and the Company's stockholders will be deemed to have, and by operation of law and of the Judgment, will have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Plaintiffs' Claims (defined below) against each and all of the Released Defendants' Persons (defined below), and will forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons. This Release will have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Defendants' Persons.

"Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims (defined below), whether arising under federal, state, local, statutory, regulatory, common, foreign or other law or rule, that Plaintiffs, the Company, or the SLC (i) asserted in the Complaints or (ii) could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints, including but not limited to the conduct, actions, inactions, deliberations, votes, statements or representations of any Released Defendants' Person. For the avoidance of doubt, this release will not cover, include, or release (i) any direct claims of Plaintiffs or any other FirstEnergy stockholder, including without limitation any direct claims asserted under the federal securities laws, including without limitation claims asserted in *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases), or direct claims of Plaintiffs or any other FirstEnergy stockholder asserted in any of the related actions or proceedings identified in Exhibit B to the Stipulation; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of the Company to recoup compensation from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto).

"Released Defendants' Persons" means Defendants, any other individual named as a defendant in any complaint filed in any of the Actions, the Company, the SLC, and any entity in which the Company has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), and consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys are only "Released Defendants' Persons" insofar as they were engaged by Defendants and are not released under this Stipulation if and to the extent that they were engaged by the Company).

"Unknown Claims" means any Released Plaintiffs' Claims which any Plaintiff, the Company, the SLC, or any other FirstEnergy stockholder does not know or suspect to exist in its favor at the time

of the release of such claims, and any Released Defendants' Claims which any Defendant or the Company does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Plaintiffs' Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs, Defendants, the Company, and the SLC shall expressly waive, and each of the other FirstEnergy stockholders shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge, and each of the other FirstEnergy stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

Release of Claims by Defendants, the Company, and the SLC: Defendants, the Company, and the SLC, on behalf of itself and the Company, will be deemed to have, and by operation of law and of the Judgment, will have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Defendants' Claims (defined below) against each and all of the Released Plaintiffs' Persons (defined below), and will forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Defendants' Claims against any of the Released Plaintiffs' Persons. This Release will have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Plaintiffs' Persons.

"Released Defendants' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Actions, except for claims relating to the enforcement of the Settlement. For avoidance of doubt, Released Defendants' Claims does not include any claims that Charles Jones, Michael Dowling, and Dennis Chack have or may assert against FirstEnergy, including but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto.

"Released Plaintiffs' Persons" means Plaintiffs, Plaintiffs' Counsel, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships,

partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys.

105. By Order of the Court, all proceedings in the Southern District Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation, have been stayed until otherwise ordered by the Court. Also, pending final determination of whether the Settlement should be approved, the Court has barred and enjoined Plaintiffs, FirstEnergy, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy, from commencing or prosecuting any action asserting any of the claims alleged in the Southern District Action against any of the Defendants in any other court or tribunal.

HOW WILL THE ATTORNEYS BE PAID?

106. Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge that Plaintiffs' Counsel are entitled to an award of reasonable attorneys' fees and expenses in connection with the Actions and the Settlement. Based upon the substantial benefits conferred upon the Company by the Settlement and the risks of undertaking the prosecution of the Actions on a contingent basis, Co-Lead Counsel in the Southern District Action intend to apply, on behalf of all Plaintiffs' Counsel, for an award of attorneys' fees and litigation expenses ("Fee and Expense Award") in the Southern District of Ohio, in an amount not to exceed 27% of the Settlement Fund. The SLC and Co-Lead Counsel are currently negotiating the Fee and Expense Award, and refer stockholders to the website, www.FirstEnergyDerivativeSettlement.com, for additional information, including the application for a Fee and Expense Award, which will be filed by _____ [28 days before the Final Fairness Hearing]. To the extent the parties cannot reach agreement on an appropriate fee award, the SLC reserves its right to object to Plaintiffs' application.

107. The Southern District Court will determine the amount of any Fee and Expense Award (including any Service Awards for Plaintiffs). Any Court-approved Fee and Expense Award will be paid from the Settlement Fund. FirstEnergy stockholders are not personally liable for any such fees or expenses.

WHEN AND WHERE WILL THE SETTLEMENT FAIRNESS HEARING BE HELD? DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT FAIRNESS HEARING? MAY I OBJECT TO THE SETTLEMENT AND SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?

108. You do not need to attend the Settlement Fairness Hearing. The Southern District Court will consider any submission made in accordance with the provisions below even you do not attend the Settlement Fairness Hearing.

109. Please Note: The date and time of the Settlement Fairness Hearing may change without further written notice to FirstEnergy stockholders. In addition, the ongoing COVID-19 health emergency is a fluid situation that creates the possibility that the Southern District Court may decide to conduct the Settlement Fairness Hearing by video or telephonic conference, or

otherwise allow Current FirstEnergy Stockholders to appear at the hearing by phone or video, without further written notice to Current FirstEnergy Stockholders. **In order to determine whether the date and time of the Settlement Fairness Hearing have changed, or whether Current FirstEnergy Stockholders must or may participate by phone or video, it is important that you monitor the Court's docket and the "Investor Relations" section of FirstEnergy's website, www.[_____].com, before making any plans to attend the Settlement Fairness Hearing. Any updates regarding the Settlement Fairness Hearing, including any changes to the date or time of the hearing or updates regarding in-person or telephonic appearances at the hearing, will be posted to the "Investor Relations" section of FirstEnergy's website, www.[_____].com. Also, if the Court requires or allows Current FirstEnergy Stockholders to participate in the Settlement Fairness Hearing by telephone or video conference, the information needed to access the conference will be posted to the "Investor Relations" section of FirstEnergy's website, www.[_____].com**.

110. The Settlement Fairness Hearing will be held on **[_____], 2022 at [__:__] [_].m.**, before The Honorable Algenon L. Marbley, either in person at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, or by telephone or video conference (in the discretion of the Court), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether the Judgment, substantially in the form attached as Exhibit F to the Stipulation, should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting any Released Plaintiffs' Claims as against the Released Defendants' Persons, as set forth in the Stipulation; (iii) determine whether the application for a Fee and Expense Award to Plaintiffs' Counsel and Service Awards to Plaintiffs should be approved; and (iv) rule on such other matters as the Court may deem appropriate.

111. Any Current FirstEnergy Stockholder who continues to own shares of FirstEnergy common stock through the date of the Settlement Fairness Hearing may object to the Settlement or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of Ohio at the address set forth below **no later than [_____], 2022.** Copies of the objection must also be delivered (by hand, first-class mail, or express service) to Co-Lead Counsel for the Southern District Plaintiffs, Representative Counsel for Defendants, and counsel for the SLC and FirstEnergy at the addresses set forth below such the objection is ***received*** **on or before [_____], 2022.**

Clerk's Office	**Co-Lead Counsel for the Southern District Plaintiffs**	**Representative Counsel for Defendants**
United States District Court Southern District of Ohio 85 Marconi Boulevard, Columbus, Ohio 43215	Bernstein Litowitz Berger & Grossmann LLP Jeroen van Kwawegen, Esq. 1251 Avenue of the Americas New York, NY 10020	Jones Day Geoffrey J. Ritts, Esq. North Point 901 Lakeside Avenue Cleveland, OH 44114

Saxena White P.A.
Thomas Curry
1000 N. West Street, Suite 1200
Wilmington, DE 19801

Counsel for the SLC and FirstEnergy

Debevoise & Plimpton, LLP
Maeve O'Connor, Esq.
919 Third Avenue
New York, NY 10022

112. Any objections must: (i) identify the case name and case number for the Southern District Action, *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case Number 2:20-cv-04813-ALM-KAJ; (ii) state the objector's name, address, and telephone number, and if represented by counsel, the name, address, and telephone number of the objector's counsel, and must be signed by the objector; (iii) contain a representation as to whether the objector and/or his, her, or its counsel intends to appear at the Settlement Fairness Hearing; (iv) contain a statement of the objection(s) to any matters before the Court, the grounds for the objection(s) or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; (iv) if the objector has indicated that he, she, or it intends to appear at the Settlement Fairness Hearing, state the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Fairness Hearing; and (v) include documentation sufficient to prove that the objector owned shares of FirstEnergy common stock as of the close of business on March 11, 2022, together with a statement that the objector continues to hold shares of FirstEnergy common stock on the date of filing of the objection and will continue to hold shares of FirstEnergy common stock as of the date of the Settlement Fairness Hearing. Documentation establishing ownership of FirstEnergy common stock must consist of copies of a brokerage account statement or an authorized statement from the objector's broker containing the information found in an account statement.

113. You may not object to the Settlement or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs if you are not a Current FirstEnergy Stockholder.

114. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless you first file and serve a written objection in accordance with the procedures described above, unless the Southern District Court orders otherwise.

115. If you wish to be heard orally at the Settlement Fairness Hearing in opposition to the approval of the Settlement or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, assuming you timely file and serve a written objection as described above, you must also file a notice of appearance with the Clerk's Office and serve it on Co-Lead Counsel for the Southern District Plaintiffs, Representative Defendants' Counsel, and counsel for the SLC and FirstEnergy at the addresses set forth in paragraph 111 above so that it is ***received*** **on or before [_____], 2022**. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must include in their written

objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Objectors who intend to appear at the Settlement Fairness Hearing through counsel must also identify that counsel by name, address, and telephone number. Objectors and/or their counsel may be heard orally at the discretion of the Southern District Court.

116. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Southern District Court and serve it on Co-Lead Counsel for the Southern District Plaintiffs, Representative Defendants' Counsel, and counsel for the SLC and FirstEnergy at the addresses set forth in paragraph 111 above so that the notice is ***received*** **on or before [_____], 2022**.

117. The Settlement Fairness Hearing may be adjourned by the Southern District Court without further written notice to FirstEnergy stockholders. If you intend to attend the Settlement Fairness Hearing, you should confirm the date and time of the hearing as stated in paragraph 109 above.

118. **Unless the Southern District Court orders otherwise, any person or entity who does not object in the manner described above will be deemed to have waived any objection and will be forever foreclosed from making any objection to the proposed Settlement or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs. Current FirstEnergy Stockholders do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval**.

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

119. This Notice contains only a summary of the terms of the Settlement. For the full terms and conditions of the Settlement, please see the Stipulation available at "Investor Relations" portion of FirstEnergy's website, www.[_____].com. More detailed information about the matters involved in the Actions can be obtained by accessing the Southern District Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at https://ecf.ohsd.uscourts.gov, or by visiting, during regular office hours, the Office of the Clerk, United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215. If you have questions regarding the Settlement, you may write, call, or email Co-Lead Counsel for the Southern District Plaintiffs:

Jeroen van Kwawegen
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020
1-800-380-8496
settlements@blbglaw.com

Thomas Curry
Saxena White P.A.

1000 N. West Street, Suite 1200
Wilmington, DE 19801
1-302-485-0480
tcurry@saxenawhite.com

PLEASE DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS, THE SLC, THE COMPANY, OR THEIR COUNSEL REGARDING THIS NOTICE OR THE SETTLEMENT.

Dated: [_____], 2022

By Order of the Court
United States District Court for the
Southern District of Ohio

EXHIBIT E

EXHIBIT E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

SUMMARY NOTICE OF (I) PENDENCY AND PROPOSED SETTLEMENT OF STOCKHOLDER DERIVATIVE ACTIONS; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

TO: ALL PERSONS AND ENTITIES WHO OWN SHARES OF FIRSTENERGY CORP. ("FIRSTENERGY" OR THE "COMPANY") COMMON STOCK AS OF THE CLOSE OF BUSINESS ON MARCH 11, 2022 ("CURRENT FIRSTENERGY STOCKHOLDERS").

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THIS LITIGATION AND THE PROPOSED SETTLEMENT OF THE ACTIONS.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23.1 of the Federal Rules of Civil Procedures and an Order of the United States District Court for the Southern District of Ohio (the "Southern District Court" or the "Court"), of: (i) the pendency of the stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ, pending in the Southern District Court (the "Southern District Action"); (ii) the pendency of the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA, pending in the United States District Court for the Northern District of Ohio (the "Northern District Action"); and (iii) the pendency of the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative*

Litigation, Case No. CV-2020-07-2107, pending in the Summit County Court of Common Pleas (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions").

YOU ARE ALSO NOTIFIED that the Settling Parties have reached a proposed settlement of the Actions (the "Settlement"), subject to the approval of the Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure, as provided in the Stipulation and Agreement of Settlement entered into by the Settling Parties on March 11, 2022 (the "Stipulation"). If the Southern District Court approves the proposed Settlement, FirstEnergy stockholders will be forever barred from contesting the fairness, adequacy, and reasonableness of the proposed Settlement and from pursuing the Released Plaintiffs' Claims against the Released Defendants' Persons.

A more detailed description of the Actions and the Settlement is set forth in the Stipulation as well as the full Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Notice"). Copies of the Stipulation and the Notice will be posted to the "Investor Relations" portion of FirstEnergy's website, www.[_____].com. All capitalized terms used in this Summary Notice that are not otherwise defined herein have the meanings provided in the Stipulation and/or the Notice.

In consideration of the Settlement and the releases provided thereunder, and subject to the terms and conditions of the Stipulation, Defendants have agreed: (1) to a monetary payment of $180 million in cash to be paid by the Company's insurance carriers, which, together with any interest earned on the cash payment and less any deductions for attorneys' fees and expenses for Plaintiffs' Counsel, service awards for Plaintiffs, and any applicable taxes and tax expenses, will be paid to FirstEnergy; and (2) to implement and maintain certain corporate governance reforms (the "Reforms") as set forth in Exhibit A to the Stipulation, including, among other things: (a) that six FirstEnergy Directors who have been on the Board of Directors for a minimum of five years will not stand for re-election; (b) the review of FirstEnergy's current c-suite executives by a special committee consisting of at least three independent directors who were appointed on or after 2019, who will make recommendations to the full Board of Directors regarding the c-suite executives' continued service to FirstEnergy; (c) the acceptance of responsibility by the Board of Directors to oversee FirstEnergy's lobbying and political activities by: (i) supplementing and amending the Board and committee charters to reflect oversight and responsibility over lobbying and political activities, (ii) requiring management to prepare a political and lobbying action plan, and (iii) approving the political and lobbying action plan; (d) the delegation to a committee of the Board of Directors consisting of independent directors to oversee the execution of the Board-approved political and lobbying action plan and who will report to the full-Board on a quarterly basis; (e) the commitment to new and enhanced disclosures to shareholders regarding political and lobbying activities, including reports from a third-party audit of the implementation of the political and lobbying action plan; (f) the reformation of the composition of the Compensation Committee to only include directors who joined the Board of Directors in 2019 or after; and (g) the creation of a compensation clawback system for senior executives which will provide the Compensation Committee the ability to review and determine whether a clawback of stock-based compensation and/or bonuses is appropriate for alleged ethical and legal misconduct.

A hearing will be held on [_____], 2022 at [__:__] [_].m., before The Honorable Algenon L. Marbley, either in person at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, or by telephone or video conference (in the discretion of the Court), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether the Judgment, substantially in the form attached as Exhibit F to the Stipulation, should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting any Released Plaintiffs' Claims as against the Released Defendants' Persons, as set forth in the Stipulation; (iii) determine whether the application for a Fee and Expense Award to Plaintiffs' Counsel and Service Awards to Plaintiffs should be approved; and (iv) rule on such other matters as the Court may deem appropriate. Any updates regarding the Settlement Fairness Hearing, including any changes to the date or time of the hearing or updates regarding in-person or remote appearances at the hearing, will be posted to the "Investor Relations" portion of FirstEnergy's website, www.[_____].com.

If you owned FirstEnergy common stock as of the close of business on March 11, 2022 and continue to own shares of FirstEnergy common stock through the date of the Settlement Fairness Hearing, you may, if you wish, appear at the Settlement Hearing to show cause why the proposed Settlement and the application for a Fee and Expense Award and Service Awards should not be approved and entered. Any such objections **must** be filed with the Clerk's Office at the United States District Court for the Southern District of Ohio at the address set forth in the Notice **on or before [_____], 2022**, with copies delivered to Co-Lead Counsel for the Southern District Plaintiffs, Representative Counsel for Defendants, and counsel for the SLC and FirstEnergy at the addresses set forth in the Notice such that the objection is ***received*** **on or before [_____], 2022**. Please see paragraphs 110-117 of the Notice for the specific instructions for submitting a timely and valid objection to the proposed Settlement.

PLEASE NOTE: Because the Settlement involves the resolution of stockholder derivative actions, which were brought on behalf of and for the benefit of the Company, the benefits from the Settlement will go to FirstEnergy. Individual FirstEnergy Stockholders will not receive any direct payment from the Settlement. **ACCORDINGLY, THERE IS NO PROOF OF CLAIM FORM FOR STOCKHOLDERS TO SUBMIT IN CONNECTION WITH THIS SETTLEMENT. STOCKHOLDERS ARE NOT REQUIRED TO TAKE ANY ACTION IN RESPONSE TO THIS SUMMARY NOTICE.** If you have questions regarding this Summary Notice, the Actions, or the Settlement, you may write, call, or email the following counsel for Plaintiffs:

Jeroen van Kwawegen
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020
1-800-380-8496
settlements@blbglaw.com

Thomas Curry
Saxena White P.A.
1000 N. West Street, Suite 1200
Wilmington, DE 19801
(302) 485-0480
tcurry@saxenawhite.com

Dated: [_____], 2022

By Order of the Court
United States District Court for the
Southern District of Ohio

EXHIBIT F

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

[PROPOSED] FINAL JUDGMENT
APPROVING SETTLEMENT AND ORDER OF DISMISSAL

WHEREAS, a stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (the "Southern District Action") is pending in the United States District Court for the Southern District of Ohio (the "Southern District Court" or the "Court");

WHEREAS, (i) Co-Lead Plaintiffs in the Southern District Action: Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs"); (ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson, et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States

District Court for the Northern District of Ohio (the "Northern District Court"): Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs"); (iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs"); (iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, K. Jon Taylor, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants"); (v) Nominal Defendant FirstEnergy Corp. ("FirstEnergy" or the "Company"); and (vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and FirstEnergy, the "Settling Parties"), have entered into the Stipulation and Agreement of Settlement dated March 11, 2022 (the "Stipulation"), which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the Actions, subject to review and approval by this Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

WHEREAS, by Order dated _____ __, 2022 (the "Preliminary Approval Order"), this Court: (i) preliminarily approved the proposed Settlement, as embodied in the Stipulation, subject to further consideration at the Settlement Fairness Hearing to be conducted before the Court; (ii) ordered that notice of the proposed Settlement in the manner and form approved by the Court be provided to persons and entities who own shares of FirstEnergy common stock as of the close of business on the date of the Stipulation ("Current FirstEnergy Stockholders"); (iii) provided Current FirstEnergy Stockholders with the opportunity to object to the proposed Settlement and the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel; and (iv) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice in the form and manner ordered by the Court has been given to Current FirstEnergy Stockholders;

WHEREAS, the Court conducted a hearing on _____ __, 2022 (the "Settlement Fairness Hearing"), to consider, among other things: (i) whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) whether a judgment should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting, any and all Released Plaintiffs' Claims against the Released Defendants' Persons, as set forth in the Stipulation; and (iii) whether the application by for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards for Plaintiffs should be approved; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received

regarding the Settlement, and the record in the Southern District Action, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED this ___ day of _____, 2022, that

1. This Final Judgment Approving Settlement and Order of Dismissal (the "Judgment") incorporates by reference the definitions in the Stipulation, and all capitalized terms used in this Judgment shall have the same meaning as set forth in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Southern District Action, including all matters necessary to effectuate the Settlement and this Judgment, and over all parties to the Southern District Action.

3. This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on _____, 2022; and (b) the Notice and Summary Notice, which were filed with the Court on _____, 2022.

4. Notice has been given Current FirstEnergy Stockholders pursuant to and in the manner directed by the Preliminary Approval Order; proof of compliance with the notice procedure required under the Preliminary Approval Order was filed with the Court; and a full and fair opportunity to be heard has been afforded to all Current FirstEnergy Stockholders. The form and manner of the notice provided is hereby confirmed to have been given in full compliance with each of the requirements of Federal Rule of Civil Procedure Rule 23.1, due process, and all other applicable law and rules, and it is further determined that all FirstEnergy stockholders are bound by the Judgment herein.

5. The Court reconfirms that the Southern District Action is properly maintained as a stockholder derivative action on behalf of FirstEnergy, and that the Southern District Plaintiffs

and their counsel fairly and adequately represented the interests of FirstEnergy and its stockholders. Co-Lead Counsel for the Southern District Plaintiffs are authorized to act on behalf of FirstEnergy stockholders with respect to all acts required by the Stipulation or such other acts which are reasonably necessary to consummate the Settlement set forth in the Stipulation.

6. The Settlement is found to be fair, reasonable, and adequate to the Company and its stockholders, and is hereby finally approved in all respects pursuant to Rule 23.1 of the Federal Rules of Civil Procedure. The parties to the Southern District Action are hereby authorized and directed to comply with and to consummate the Settlement in accordance with its terms and provisions, and the Clerk is directed to enter and docket this Judgment in the Southern District Action. The Court finds that this Judgment is a final judgment and should be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

7. All claims asserted in the Southern District Action are hereby dismissed with prejudice. The Court further orders, adjudges, and decrees that all other relief be and is hereby denied, and that this Judgment disposes of all the claims asserted in the Southern District Action and ends the Southern District Action.

8. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

9. Without further action by anyone, and subject to Paragraph 16 below, upon the Effective Date of the Settlement, Plaintiffs, the Company, and the SLC, on behalf of itself and the Company, and the Company's stockholders shall be deemed to have, and by operation of law and of this Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Plaintiffs' Claims (defined below) against each and all of the Released Defendants' Persons (defined below), and shall forever be barred and enjoined from

commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Plaintiffs' Claims against any of the Released Defendants' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Defendants' Persons.

10. Without further action by anyone, and subject to Paragraph 16 below, upon the Effective Date of the Settlement, Defendants, the Company, and the SLC, on behalf of itself and the Company, shall be deemed to have, and by operation of law and of this Judgment, shall have, fully, finally, and forever discharged, relinquished, settled, and released any and all of the Released Defendants' Claims (defined below) against each and all of the Released Plaintiffs' Persons (defined below), and shall forever be barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any of the Released Defendants' Claims against any of the Released Plaintiffs' Persons. This Release shall have res judicata, collateral estoppel, and all other preclusive effects in all pending and future lawsuits, arbitrations, or other suits, actions, or proceedings involving any of the Released Plaintiffs' Persons.

11. "Released Plaintiffs' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, local, statutory, regulatory, common, foreign or other law or rule, that Plaintiffs, the Company, or the SLC (i) asserted in the Complaints or (ii) could have asserted on behalf of the Company that in any way are based on, arise from or relate to the allegations, transactions, facts, matters, disclosures or nondisclosures set forth in the Complaints, including but not limited to the conduct, actions, inactions, deliberations, votes, statements or representations of any

Released Defendants' Person. For the avoidance of doubt, this release will not cover, include, or release (i) any direct claims of Plaintiffs or any other FirstEnergy stockholder, including without limitation any direct claims asserted under the federal securities laws, including without limitation claims asserted in *In re FirstEnergy Corp. Sec. Litig.*, Case No. 20-cv-03785-ALM-KAJ (S.D. Ohio) (and all consolidated cases), or direct claims of Plaintiffs or any other FirstEnergy stockholder asserted in any of the related actions or proceedings identified in Exhibit B to the Stipulation; (ii) any claims relating to the enforcement of the Settlement; or (iii) any claims of the Company to recoup compensation from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto).

12. "Released Defendants' Persons" means Defendants, any other individual named as a defendant in any complaint filed in any of the Actions, the Company, the SLC, and any entity in which the Company has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), and consultants, experts, and attorneys (provided, however, that consultants, experts and attorneys

are only "Released Defendants' Persons" insofar as they were engaged by Defendants and are not released under the Stipulation if and to the extent that they were engaged by the Company).

13. "Released Defendants' Claims" means any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common, or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Actions, except for claims relating to the enforcement of the Settlement. For avoidance of doubt, Released Defendants' Claims does not include any claims that Charles Jones, Michael Dowling, and Dennis Chack have or may assert against FirstEnergy, including but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity, and any and all benefits under any plan, program, arrangement, or other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto.

14. "Released Plaintiffs' Persons" means Plaintiffs, Plaintiffs' Counsel, and any entity in which any Plaintiff has a controlling interest, as well as their respective current and former parents, affiliates, subsidiaries, officers, directors, agents, successors, predecessors, assigns, assignees, partnerships, partners, committees, joint ventures, trustees, trusts, employees, immediate family members, heirs, insurers and reinsurers (in their capacities as such), consultants, experts, and attorneys).

15. "Unknown Claims" means any Released Plaintiffs' Claims which any Plaintiff, the Company, the SLC, or any other FirstEnergy stockholder does not know or suspect to exist in its favor at the time of the release of such claims, and any Released Defendants' Claims which

any Defendant or the Company does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision(s) with respect to this Settlement. With respect to any and all Released Plaintiffs' Claims and Released Defendants' Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs, Defendants, the Company, and the SLC shall expressly waive, and each of the other FirstEnergy stockholders shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

> A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Plaintiffs, Defendants, the Company, and the SLC, on behalf of itself and the Company, acknowledge, and each of the other FirstEnergy stockholders shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the Settlement.

16. Notwithstanding Paragraphs 9-15 above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

17. Neither this Judgment, the Term Sheet, the Stipulation (whether or not consummated), including the exhibits thereto, the negotiations leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments

proffered in connection therewith):

(a) shall be offered against any of the Released Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in the Actions or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Defendants' Persons or in any way referred to for any other reason as against any of the Released Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaints would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(c) shall be construed against any of the Released Defendants' Persons or the Released Plaintiffs' Persons as an admission, concession, or presumption that the consideration to be given hereunder represents the consideration which could be or would have been recovered

after trial; *provided, however*, that the Settling Parties, the Released Defendants' Persons, the Released Plaintiffs' Persons, and their respective counsel may refer to the Stipulation and this Judgment to effectuate the protections from liability granted thereunder or hereunder or otherwise to enforce the terms of the Settlement.

18. The application for an award of attorneys' fees and reimbursement of expenses by Co-Lead Counsel for the Southern District Plaintiffs, on behalf of all Plaintiffs' Counsel, is granted. Plaintiffs' Counsel are hereby awarded attorneys' fees and expenses in the amount of ___% of the Settlement Fund (the "Fee and Expense Award"), which amount the Court finds to be fair and reasonable, and which shall be paid to Plaintiffs' Counsel from the Settlement Fund in accordance with the terms of the Stipulation.

19. The application for an award of service awards to Plaintiffs is also granted. Each Plaintiff is hereby awarded a service award in the amount of $_____ ("Service Award"). Each Service Award shall be paid to Plaintiffs from the Fee and Expense Award awarded under Paragraph 18 above.

20. The effectiveness of this Judgment and the obligations of the Settling Parties under the Settlement shall not be conditioned upon or subject to the resolution of any appeal or other matter that relates solely to the Fee and Expense Award or any Service Award.

21. The Court finds that the Southern District Action was filed, prosecuted, defended, and settled in good faith, and that during the course of the Southern District Action, the parties to the Southern District Action and their respective counsel at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure and all similar rules and laws.

22. Without affecting the finality of this Judgment in any way, the Court hereby retains continuing jurisdiction over: (i) implementation of the Settlement; and (ii) the parties to the

Southern District Action and all FirstEnergy stockholders for the purpose of construing, enforcing, and administering the Stipulation and the Settlement, including, if necessary, setting aside and vacating this Judgment, on motion of a Settling Party, to the extent consistent with and in accordance with the Stipulation if the Effective Date fails to occur in accordance with the Stipulation.

23. Upon the Effective Date, Plaintiffs, FirstEnergy, the SLC, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy are hereby forever barred and enjoined from commencing, instituting, or prosecuting any action or proceeding in any court, tribunal, or forum asserting any and all Released Plaintiffs' Claims against any of the Released Defendants' Persons.

24. In the event that the Settlement is terminated in accordance with the terms of the Stipulation or the Effective Date of the Settlement otherwise fails to occur, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated, and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided for in accordance with the Stipulation.

IT IS SO ORDERED.

DATED _____, ___, 2022

_____
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

JOINT DECLARATION OF
JEROEN VAN KWAWEGEN AND THOMAS CURRY

JEROEN VAN KWAWEGEN and THOMAS CURRY declare as follows:

1. We are attorneys at the law firms of Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") and Saxena White P.A. ("Saxena White"), Co-Lead Counsel for Co-Lead Plaintiffs Employees Retirement System of the City of St. Louis ("St. Louis") and Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103," and together with St. Louis, "Co-Lead Plaintiffs"). We have personal knowledge of the matters set forth herein. One or both of us was directly involved in, and responsible for, every key aspect of prosecuting the above-captioned action (the "Action").

2. We submit this declaration in support of Plaintiffs' Unopposed Motion for Preliminary Settlement Approval (the "Motion"), requesting preliminary approval of the Proposed Settlement resolving all claims in this derivative action and the parallel related shareholder

derivative actions pending in the Northern District of Ohio (the "Northern District Action") and the Summit County Court of Common Pleas (the "State Court Action") (together, the "Derivative Actions"), all brought on behalf of FirstEnergy Corp. (the "Company" or "FirstEnergy") against, collectively, defendants Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, K. Jon Taylor, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz ("Defendants").

I. Introduction

3. Plaintiffs initiated this litigation on behalf of FirstEnergy to seek compensation for harm suffered by FirstEnergy as a result of Defendants' fiduciary misconduct and false disclosures in the Company's proxy statements in connection with an illicit scheme to bribe Ohio public officials, and to implement changes to FirstEnergy's corporate governance to deter and prevent the recurrence of similar misconduct in the future. We believed that, if achieved, these goals would benefit FirstEnergy and its shareholders.

4. We respectfully submit that the Proposed Settlement secured by Plaintiffs achieves exactly what we set out to achieve, and that it constitutes an extraordinary result for the Company, including: (i) a $180 million monetary recovery for FirstEnergy that is *three times* greater than any prior derivative recovery in the history of the Sixth Circuit[1] and among the largest derivative

[1] *See In re Community Health Sys., Inc. S'holder Deriv. Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 17, 2017) (Transcript) (Ex. 1 to the Motion) (approving settlement comprised of $60 million payment and reforms, described as "the biggest derivative settlement in the Sixth Circuit").

recoveries ever achieved, in any forum, in the history of the United States;[2] *and* (ii) governance reforms tailored to deter and prevent the recurrence of misconduct and restore FirstEnergy's reputation with regulators, shareholders, customers, and the public. For the reasons set forth herein and in the Motion filed simultaneously herewith, we respectfully submit that preliminary approval of the Proposed Settlement is in the best interests of FirstEnergy and the Court therefore should grant the Motion.

II. Plaintiffs' Vigorous Prosecution of this Litigation

5. Plaintiffs have vigorously prosecuted this Action from its commencement through the present. From the moment Co-Lead Plaintiffs first filed their complaints in September 2020 until the day Defendants agreed to the terms of the Proposed Settlement, Plaintiffs, and their counsels' team of lawyers working entirely on a contingency basis, devoted themselves to achieving the best possible outcome for FirstEnergy and its shareholders.

6. Plaintiffs thoroughly investigated the instant claims and filed comprehensive complaints, including the operative Consolidated Verified Shareholder Derivative Complaint in this case. Plaintiffs made significant efforts to organize this litigation and ensure that it proceeded in an orderly fashion. Plaintiffs successfully moved for appointment of Co-Lead Plaintiffs and Co-Lead Counsel in this Court, and also moved to intervene and to transfer the parallel related Northern District Action to this Court. The Northern District granted Plaintiffs' motion for intervention and designated Plaintiffs' complaint as the operative complaint in the Northern District Action but declined to transfer the virtually identical Northern District Action to this Court. Thereafter, Plaintiffs have simultaneously prosecuted their claims in both District Courts.

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[2] *See* Kevin LaCroix, "*Largest Derivative Lawsuit Settlements*," THE D&O DIARY (updated Feb. 12, 2022) (available at: https://www.dandodiary.com/2014/12/articles/shareholders-derivative-litigation/largest-derivative-lawsuit-settlements/).

7. Over the course of this litigation, Plaintiffs prevailed on numerous contested motions filed in this Court, the Northern District, and the Sixth Circuit Court of Appeals. Specifically, Plaintiffs: (i) defeated each of Defendants' motions to dismiss filed in this Court and in the Northern District, as well as Defendants' subsequent motion to certify an interlocutory appeal in this Court; (ii) defeated Defendants' motion to stay this Action in deference to the Northern District Action; (iii) defeated the serial motions of the Special Litigation Committee of FirstEnergy's board of directors (the "SLC") to stay this Action and the Northern District Action pending its investigation of Plaintiffs' claims; and (iv) successfully moved to dismiss the SLC's appeals and mandamus petitions seeking to overturn this Court's and the Northern District Court's denials of the SLC's stay motions.

8. Plaintiffs also engaged in extensive discovery negotiations with eighteen different Defendants and FirstEnergy, represented by eight separate sets of counsel. Plaintiffs served two sets of requests for production of documents on FirstEnergy and three sets of requests for production of documents on Defendants. Plaintiffs also served interrogatories on FirstEnergy and the Defendants, as well as requests for admissions on FirstEnergy and Defendants Jones and Dowling. Plaintiffs further subpoenaed eleven third parties, including FirstEnergy's auditors, PricewaterhouseCoopers ("PwC") and Clearsulting LLC, FirstEnergy shareholders, Nathan Cummings Foundation and Green Century, multiple non-defendant former members of the Company's board of directors, and Defendant Jones' cellular service provider, Verizon. Plaintiffs further responded to fourteen unique sets of discovery requests served upon them by Defendants in this litigation, including six sets of requests for production of documents, six sets of interrogatories, and two sets of requests for admissions.

9. Seeking to develop a comprehensive discovery record, Plaintiffs engaged in extensive negotiations with all Defendants and FirstEnergy concerning discovery protocols for their document productions. For example, FirstEnergy and the Defendants initially objected to the production of documents dated before January 1, 2017 or after Larry Householder's arrest in July 2020. Ultimately, Plaintiffs obtained the agreement of FirstEnergy and all Defendants to produce relevant information dated or created on January 1, 2016 through at least mid-June 2021. Plaintiffs also obtained FirstEnergy's agreement to search the Company's custodial ESI for nearly 200 search terms and Defendants' agreement to search their custodial ESI for 260 search terms pursuant to the operative search term protocols. Plaintiffs further obtained Defendants' agreement to review and produce relevant text messages exchanged between each Defendant and 30 counterparties, without the application of search terms.

10. Plaintiffs also successfully invoked this Court's supervision to ensure timely document productions. Specifically, in October 2021, Plaintiffs requested a series of status conferences with the Hon. Kimberly A. Jolson, Magistrate Judge in this Court, seeking to compel FirstEnergy to produce documents that it had previously produced to the Government. On October 7, 2021, a status conference was held before Judge Jolson. After that hearing, Judge Jolson entered an order staying discovery for 14 days to allow this Court to rule on the SLC's then-pending stay motion. Judge Jolson indicated that unless this Court issued a decision staying discovery in the interim, Defendants should produce the requested documents when the stay expired.

11. Subsequently, on October 20, 2021, this Court issued an Opinion and Order denying the SLC's motion to stay, and ordering that "[d]iscovery shall commence without further delay." When FirstEnergy still delayed in producing the documents previously-produced to the Government, another status conference was held before Judge Jolson on October 27, 2021 at

Plaintiffs' request. During that conference, Judge Jolson instructed Defendants to promptly produce those documents previously produced to the Government. This resulted in FirstEnergy producing the fulsome documentary record previously provided to the Department of Justice and Securities and Exchange Commission in connection with their investigations concerning the bribery scheme giving rise to this Action, 288,164 pages in all, in three tranches between November 5 and 19, 2021.

12. Ultimately, Defendants and non-parties collectively produced, and Plaintiffs reviewed, over 500,000 pages of documents, including: (i) over 7,000 text messages between and among Defendants and key relevant parties; (ii) over 32,000 emails between and among Defendants and/or key relevant third parties; (iii) full sets of FirstEnergy Board and Committee meeting minutes and materials; (iv) all of the documents referenced in the Company's July 20, 2021 Deferred Prosecution Agreement with the DOJ; and (v) all of the documents previously produced to the DOJ and SEC.

13. In November 2021, the parties in the Northern District Action submitted a discovery coordination stipulation, ensuring all written discovery (including discovery served prior to the filing of the Stipulated Discovery Order), depositions, expert disclosures and reports, and documents produced would be coordinated between this Action and the Northern District Action. On December 3, 2021, pursuant to an order issued by the Northern District, the parties submitted a deposition schedule in the Northern District Action, which depositions would be coordinated with the Southern District Action, pursuant to the Stipulated Discovery Order. That schedule contemplated at least 22 depositions occurring between February and April of 2022. Plaintiffs were actively preparing for these depositions when the initial Settlement Term Sheet was executed on February 9, 2022.

III. Settlement Negotiations

14. Beginning on December 14, 2021, the parties and the SLC engaged in numerous telephonic conversations, including conversations among the parties and conversations between certain of the parties and the SLC on one hand, and former United States District Court Judge Layn R. Phillips (the "Mediator") on the other hand.

15. The parties agreed to participate in a formal full day mediation session before the Mediator on February 1, 2022.

16. In advance of that session, the parties exchanged mediation statements, reply statements, and exhibits with the Mediator and among the parties, which addressed the issues of both liability and damages. Plaintiffs and the SLC also discussed governance improvements as part of a potential settlement in advance of the mediation.

17. During the mediation, the parties engaged in intense, arms'-length negotiations with the assistance of the Mediator for approximately 13 hours. The parties did not, however, reach agreement at this time. Rather, intense and highly-contentious negotiations continued for several days and nights thereafter.

18. The parties subsequently reached an agreement in principle on the monetary and governance terms of the settlement and documented their agreement in the Settlement Term Sheet executed on February 9, 2022. *See* ECF No. 166-1. This Term Sheet was subsequently filed publicly as an attachment to FirstEnergy's Form 8-K, dated February 10, 2022.

IV. The Terms of the Settlement

19. We respectfully submit that the prosecution of Plaintiffs' derivative claims and the arms'-length and very well-informed negotiation of the resulting Proposed Settlement before the well-respected Mediator, featuring both a substantial monetary recovery and highly significant

corporate governance reforms, accomplished the goals that Plaintiffs set out to achieve through this litigation.

20. To our knowledge, the $180 million monetary recovery is the largest recovery ever achieved in a shareholder derivative action in the Sixth Circuit. Further, it is one of the largest such monetary recoveries ever achieved in any forum. Moreover, the $180 million monetary recovery notably captures a very significant percentage of the Defendants' relevant insurance policies. Specifically, at the time the Term Sheet was executed, approximately $220 million in insurance coverage was available to cover claims against the Company's officers and directors, subject to the terms and conditions of the applicable policies. Accordingly, the Proposed Settlement represents a recovery of more than 80% of all available insurance remaining—insurance which was likely to further erode significantly if the litigation continued.

21. The Proposed Settlement also features highly significant governance reforms—reforms we believe to be unprecedented—which are specifically tailored to prevent a recurrence of misconduct and protect the Company and its shareholders going forward. In crafting Plaintiffs' specific corporate governance demands, we called upon corporate governance expert and Columbia Law School Professor Jeffrey N. Gordon to ensure that we obtained the most meaningful achievable protections for FirstEnergy and its shareholders.

22. Professor Gordon explains his involvement in designing the reforms, their impact on changing the "tone at the top" at FirstEnergy, and their expected impact on the Company's reputation and relationships with key stakeholders moving forward in the declaration filed as an exhibit in support of the Motion. The wide-ranging governance reforms set forth in Exhibit A to the Stipulation of Settlement, include, among other things:

- *First*, as part of the Proposed Settlement, six defendant directors will not stand for reelection. We are not aware of any comparable derivative settlement resulting in such a substantial change in the composition of a company's board of directors.

- *Second*, the Proposed Settlement requires FirstEnergy's newly refreshed Board to promptly perform a comprehensive review of FirstEnergy's current C-Suite executives to determine whether their tenures with the Company should continue.

- *Third*, the Proposed Settlement requires FirstEnergy to adopt reforms mandating that the full Board take responsibility for actively overseeing all of the Company's lobbying, political contributions, and political activities by annually approving the Company's political and lobbying action plan, including retention of an independent third-party to audit implementation of the Board's political and lobbying action plan, and that a committee of the Board consisting of a majority of non-defendant, independent directors oversee the implementation of the plan by management.

- *Fourth*, the Proposed Settlement requires FirstEnergy to significantly enhance its disclosures to shareholders concerning the Company's political spending and lobbying activities, including a report from the third party that audits the implementation of the Board-approved political and lobbying action plan, in connection with the election of directors to the Board.

- *Fifth*, the Proposed Settlement requires FirstEnergy to further align the financial incentives of senior executives with proactively complying with legal and ethical obligations, including by requiring the compensation committee of the board (consisting of a majority of non-defendant, independent directors) to ensure the Company's compensation system, including claw-back policies, align executives' financial incentives with legal compliance.

Each of these governance reforms is specifically tailored to address the root causes of the issues that led to the bribery scheme and resulting harm to the Company. As a result of the Proposed Settlement, the FirstEnergy Board will consist of a supermajority of independent directors who joined the Board in 2019 or later. All of the directors who served on the Board's Corporate Governance Committee at the time of the bribery scandal and who therefore had specific responsibility for overseeing FirstEnergy's political activities and who claimed to have "maintained an informed status with respect to the Company's practices relating to corporate political participation, and dues and/or contributions to industry groups and trade associations" will have stepped down from the Board.

23. The newly-refreshed Board's undertaking of a comprehensive review of FirstEnergy's senior-most executive officers will further ensure that all legacy executives who served at the time of the bribery scandal have been carefully scrutinized by an independent Board.

24. FirstEnergy stakeholder confidence will be further bolstered by the Board's public undertaking of active oversight of all of the Company's lobbying, political contributions, and political activities. The Board will do so by, *inter alia*: (i) approving the Company's newly-required political and lobbying action plan; (ii) retaining an independent third-party to audit implementation of the Board's political and lobbying action plan; (iii) assigning a committee of the Board consisting of a majority of non-defendant, independent directors to oversee the implementation of the plan by management, with mandatory reporting obligations to the full Board; and (iv) requiring the compensation committee of the board (consisting of a majority of non-defendant, independent directors) to review the Company's claw back system for senior executive compensation to properly align incentives and deter potential future executive misconduct.

25. Finally, Plaintiffs achieved significantly enhanced public disclosure requirements to ensure that shareholders and the public can monitor the newly constituted Board's performance in overseeing the Company's political spending and lobbying activities. FirstEnergy will, for example, be required to disclose the report of the third-party auditor in connection with the implementation of the Board-approved political and lobbying action plan in the Company's proxy statements.

26. These reforms, most of which will go into immediate effect following final approval of the Proposed Settlement, were *only* possible through a negotiated resolution and could

not have been achieved through further litigation. Pursuant to the terms of the Proposed Settlement, these reforms will remain in effect for at least five full years.

27. While Plaintiffs were confident in the merits of our case and the discovery record, we were also cognizant of the risks of proceeding with further litigation. For example, FirstEnergy's insurance policies, which were the most significant available source for a monetary recovery for FirstEnergy in this litigation, were being actively eroded by defense costs in this and other related litigations, and were at risk of further erosion by other potential settlements.

28. In sum, we believe Plaintiffs achieved an excellent result for FirstEnergy and its shareholders—superior to any result that could have been achieved through trial—through this hard-fought litigation and negotiation.

Dated: March 11, 2022

Respectfully submitted,

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Co-Lead Counsel for Lead Plaintiffs

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813-ALM-KAJ Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

DECLARATION OF PROFESSOR JEFFREY N. GORDON

INTRODUCTION

1. This declaration sets forth my summary analysis of the Corporate Governance Reforms (the "Reforms") in connection with a prospective settlement of the above-captioned litigation (the "Settlement"). My opinion is that the Reforms, which principally strengthen the Board's responsibility and accountability for political engagement by FirstEnergy, will significantly reduce the likelihood of a recurrence of the corrupt conduct identified in the criminal proceedings that preceded this litigation. That conduct severely damaged FirstEnergy, its shareholders, and the public. Thus, the Reforms, which directly address the areas of misconduct and lack of Board oversight underlying the allegations of the Complaint in this case, provide significant value for the Company and its shareholders as well as the public.

2. I was retained by Plaintiffs early in the litigation to evaluate FirstEnergy's corporate governance structure and recommend specific areas for remediation. This declaration presents my assessment of the Reforms for use by the Court in its oversight of this litigation and, specifically, the Court's review of the Settlement. When the Settlement is presented to the Court for final approval, I expect to submit a more detailed declaration.

QUALIFICATIONS

3. I am the Richard Paul Richman Professor of Law at Columbia University Law School, Co-Director of the Millstein Center for Global Markets and Corporate Ownership, Co-Director of the Richman Center for Business, Law, and Public Policy, and Co-Director of the Columbia Center for Law and Economic Studies. I am also a Fellow of the European Corporate Governance Institute. I have been a law professor for forty years, starting at NYU Law School in 1982 and moving to Columbia in 1988. In the fall of 2002, I was the Bruce W. Nichols Visiting Professor of Law at Harvard Law School. Most of my teaching and scholarship have been in the corporate and securities areas, broadly defined. I have become a specialist in corporate law (including the fiduciary duties of boards and directors), corporate governance, corporate finance, and mergers and acquisitions. I have taught Corporations or Advanced Corporate Law: Mergers and Acquisitions on a yearly basis throughout my career. Recently, I have regularly taught courses that focus on various aspects of corporate governance. I also regularly participate in continuing legal education panels on corporate law and governance and mergers and acquisitions topics. Further professional background is provided by my c.v., attached as Exhibit 1 hereto.

4. Of particular relevance to the opinions I express in this declaration, I have written extensively on the board's role in corporate governance. My article on the role of boards and independent directors in corporate governance, *The Rise of Independent Directors in the United*

States: 1950-2005, 59 Stan. L. Rev. 1465 (2007), was selected by a vote of business law academics as one of the ten (10) best articles on business law published in the United States during 2007 and was awarded the European Corporate Governance Institute's Egon Zehnder International Prize for the best working paper in 2007 on company boards and their role in corporate governance. Another much-discussed article directly addressed the responsibility of the Enron board in that company's collapse, *Governance Failures of the Enron Board and the New Information Order of Sarbanes-Oxley*, 35 U. Conn. L. Rev. 1125 (2003) (symposium issue). A more recent article, *Board 3.0: An Introduction*, 74 The Business Lawyer 351 (2019) (with Ronald Gilson), was selected as one the best articles published in The Business Lawyer (the flagship journal of the ABA's Business Law Section) over its first 75 years.

5. My article calling for board responsibility in reviewing and approving disclosures relating to executive compensation was cited by the Securities and Exchange Commission ("SEC") in connection with its own similar rule, *Executive Compensation: If There is a Problem, What's the Remedy? The Case for "Compensation Discussion and Analysis,"* 30 J. Corp. Law 675 (2005). An article on the governance role of controlling shareholders, *Controlling Controlling Shareholders*, 152 U. Penn. L. Rev. 785 (2003) (with Ronald J. Gilson), also selected as a "top ten" article, has been cited and relied upon several times by the Delaware Chancery Court. Other articles addressing other corporate law issues have also been cited by the Delaware Chancery Court. I am the co-editor of the OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (2018) (with Georg Ringe) that provides an overview of the entire field. I am also a co-author of THE LAW AND FINANCE OF CORPORATE ACQUISITIONS, 3d edition (in preparation) (with Ronald J. Gilson, Bernard S. Black, and Charles Whitehead), a leading casebook in the mergers and

acquisitions field, which extensively describes the standards of board behavior in business decision-making.

6. More recently I have addressed more specifically the role of the board in assuring compliance by a company with its legal obligation, including the possible role of a "compliance committee" of the board, in two articles, *Taking Compliance Seriously*, 37 Yale J. Regulation 1 (2020) (with John Armour and Geeyoung Min), and *Board Compliance*, 104 Minn. L. Rev 1191 (2020) (with John Armour, Brandon Garrett, and Geeyoung Min).

7. On a number of occasions I have been retained by agencies of the United States government (namely, the office of the U.S. Attorney for the Southern District of New York, the office of the U.S. Attorney for the Eastern District of New York, the SEC, the Board of Governors of the Federal Reserve System and the Internal Revenue Service) to serve as an expert witness in pending criminal and civil litigation, involving various matters of corporate and securities law, including but not limited to various questions of corporate governance, board behavior, controlling shareholder responsibilities, corporate structure, and finance. In all cases where I was called upon to testify or submit an affidavit, and where the court permitted expert testimony, I have been accepted as an expert.

8. I have also submitted affidavits as a corporate governance expert in recent settlements of shareholder derivative suits in connection with stock option backdating, disclosure issues, and alleged fiduciary duty issues.

UNDERLYING LITIGATION

9. This derivative litigation follows a federal criminal prosecution of FirstEnergy for bribery and political corruption in connection with FirstEnergy funds directed by FirstEnergy officers to conduit political organizations run by an Ohio legislator and as a direct bribe to the

chairman of the Ohio Public Utilities Commission. The conduct led to a federal criminal investigation and indictment, a Deferred Prosecution Agreement with the U.S. Department of Justice, and the payment of a $230 million fine. The case herein represents the consolidation of several shareholder derivative actions alleging breach of fiduciary duties and violations of the federal securities laws by current and former officers and directors of FirstEnergy. Also pending is a separate class action litigation alleging violation of the antifraud protections of the federal securities law as well as a class action alleging violations of federal and state anti-racketeering laws.

TARGETING THE FIRSTENERGY BOARD FOR GOVERNANCE REFORMS

10. One distinctive feature in the FirstEnergy case is the extent to which governance failures at the Board level played a role in the ability of senior managers to carry out their scheme of bribery and political corruption (the "Violations"). The increasingly close relationship between FirstEnergy and Ohio House Speaker Larry Householder was a matter of public record and concern, featured in newspaper reporting. The Board also surely knew of the Company's officers' efforts to obtain passage of a legislative bailout of the Company's failed nuclear power plant investment and also the Company's efforts to obtain rate relief from the Ohio Public Utilities Commission. The legal and economic consequences for the Company from both the proposed legislation and the potential regulatory rate relief were too important for the Board not to have been keenly interested in overseeing and monitoring the progress of these efforts and preventing criminal misconduct.

11. It was therefore "mission critical" for the Board to oversee the Company's legislative and regulatory engagements to safeguard compliance with the legal rules pertaining to corporate political contributions and lobbying activities and to protect the Company's reputation

with the public, the legislature, and regulators. The Complaint alleges many red flags that the Board ignored despite its fiduciary duties of compliance oversight and its general monitoring responsibilities. And notably, in response to repeat shareholder proposals requesting additional disclosures, transparency, and accountability for FirstEnergy's political and lobbying activities, the Board stated in its 2018 proxy statement that the Corporate Governance Committee "maintain[ed] an informed status with respect to the Company's practices relating to corporate political participation" – a claim that the subsequent events clearly disprove. Thus, it is fitting that, in addition to substantial monetary relief for the shareholders, this litigation also produces significant governance reforms suitable for a public utility, which both has ongoing special relationships with government authorities and is constantly in the public eye.

THE CORPORATE GOVERNANCE REFORMS

12. As indicated above, I have been teaching and writing about corporate law and governance for decades. Plaintiffs' counsel sought my advice at an early stage in the litigation to help them fashion corporate governance reforms that would be an integral part of any demand for governance improvements at First Energy. The Reforms, embodied in Exhibit A to the Settlement Agreement, reflect quite meaningful changes to the corporate governance structure at FirstEnergy. As I shall explain below, the Reforms work in a number of different ways to reduce significantly the risk of a recurrence of unlawful political contributions and an ensuing bribery scandal at First Energy and thus will produce significant improvement in shareholder welfare and protection for the Company.

13. The corporate governance terms of the Settlement are designed to remedy three general deficiencies in FirstEnergy's governance structure as alleged by Plaintiffs in this action: 1) establishing Board responsibility and accountability for approving and monitoring the

Company's political engagement; 2) establishing new and improved processes for overseeing the Company's compliance with political spending and lobbying laws and regulations; and 3) improving disclosure and transparency on the Company's future political contributions and lobbying activities.

14. In my view the focus on the Board's responsibility and accountability is quite significant. Commonly, boards want to avoid direct knowledge of and engagement with the corporation's political activity. These Reforms go in a different direction. First, a majority of the directors who served during the period of the Violations are made not to stand for reelection. Second, the Reforms shape specifically identified oversight duties, decisional rights and information flows that will heighten responsibility and accountability for the directors. The potential exposure for directors includes reputational risk, which is not insurable or indemnifiable.

Here, in summary form, are the Reforms as more fully specified in Exhibit A to the Settlement Agreement.

15. *First*, the Reforms call for both a major refreshment of the FirstEnergy Board and a review of the current senior executive team. Six directors who served during the period of the Violations will not stand for re-election. Once those directors step down, one of the first tasks of the newly reconstituted Board will be a thorough review of the performance, prior knowledge, and possible involvement of the Company's current C-suite executives with respect to the Violations. This inquiry may be supported by outside advisors if deemed necessary and will be funded by the Company. These immediate and possible future changes in personnel will distance the Company from the mindset that produced the Violations, serve as a deterrent to potential backsliding, and deliver a potent public signal of the Company's determination to restore its reputation with its shareholders and its regulators.

16. *Second*, the Reforms call for the FirstEnergy Board to take ownership of the Company's political and lobbying activities rather than to leave this to management. This consists of three different measures. First, the Board is to receive a plan from management for the Company's political and lobbying activity on state and federal levels annually, a "Political and Lobbying Action Plan" (the "Plan"). The Board is responsible for review and approval of the Plan. Second, a Board committee is tasked with responsibility for oversight of management's implementation of the Plan. To facilitate that oversight and create a direct line of communication that cannot be obstructed by other executives or directors, the Chief Legal Officer and the Chief Ethics and Compliance Officer will have a protected channel to the designated Board committee and will report quarterly on implementation of the Plan. This committee will provide a report of its findings to the full Board on a quarterly basis. Third, an independent outside auditor (not the Company's financial auditor nor the Compensation Committee consultant) will conduct an annual audit of implementation of the Plan, funded by the Company, and report directly to the Board to check for appropriate compliance.

17. *Third*, the Reforms also call for "enhanced disclosure" to the shareholders of the Company's political and lobbying activities. Specifically, FirstEnergy's annual proxy statement will provide itemized disclosures of FirstEnergy's payments to (i) so-called 501(c)(4) public welfare organizations, which can serve as conduits to political activities; and (ii) all entities "known by FirstEnergy to be operating for the benefit of a public official, either directly or indirectly." The Company is also required to disclose in the annual proxy statement a report from the outside auditor on implementation of the Political and Lobbying Action Plan, including violations and issues of non-compliance and the date that each issue was reported to the Board.

18. Disclosure of the Company's political activity (the Third Reform) interacts with the Board's explicit undertaking (the Second Reform) to approve and oversee implementation of the Company's Political and Lobbying Action Plan. Shareholders gain new knowledge of the Company's political activities, and the proxy machinery brings a new level of Board accountability to shareholders for these activities.

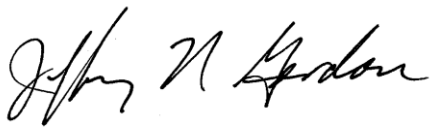
19. *Fourth*, the Reforms seek to build and reinforce a compliance culture through compensation arrangements with senior executives, in two distinct ways. First, the Board is charged with devising pay and performance metrics that align with and provide incentives for the Company's legal and ethical obligations. Second, the Compensation Committee is charged with reviewing and as appropriate enhancing the clawback system for senior executives so that the Committee can "review alleged misconduct and determine" whether a clawback of incentive-based compensation is appropriate. This is a double-barreled approach: incentives at the front end; potential penalties for wrongful behavior at the backend.

20. Investor-owned public utilities will inevitably be entangled with the legislative and regulatory process. It seems inherent in the business model. But pursuing these relationships in a lawful and ethical way is of first order importance. More than most enterprises, a public utility depends upon its "social license" for continuous and profitable operation. It's easy for a Board to leave sometimes ticklish matters to management and adopt a "don't ask; don't tell" attitude. The Reforms break from this approach. They require the Board to say, "It's on us to approve the Company's Political and Lobbying Action Plan and then to monitor its implementation and adherence to the Plan." Moreover, the Reforms require third-party vetting and significant new disclosure all in the Company's proxy statement. The shareholders and other parties can respond on the basis of the disclosure.

21. The combination is both responsibility-taking by the Board and accountability-enabling.

22. In short, the Reforms entail not only a makeover of the Board and further review of C-suite executives, but many innovations in the Board's role in shaping and overseeing the Company's political and lobbying activities beneficial to the Company and shareholders. Accordingly, the Reforms should deliver significant assurance to FirstEnergy shareholders and regulators against a recurrence of the conduct that led to a criminal investigation, a Deferred Prosecution Agreement, the payment of a $230 million fine, numerous civil suits and class actions, and the loss of an estimated over $1 billion in shareholder value when the federal indictment was announced. In that way the Reforms will significantly improve shareholder welfare at FirstEnergy and also help establish an improved template for Board responsibility-taking and accountability-enabling in the challenging area of the Company's political activity.

23. I declare under penalty of perjury that the foregoing is a true and correct statement of my opinion and the facts as I know them and that this declaration was executed this 8th day of March, 2022.



Dated: March 8, 2022

Jeffrey N. Gordon

EXHIBIT 1

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ACADEMIC APPOINTMENTS

Richard Paul Richman Professor of Law, Columbia University Law School, 2011-current

Co-Director, Columbia Center for Law and Economic Studies, 1988- current

Co-Director, Millstein Center for Global Markets and Corporate Ownership, 2012-current

Co-Director, Richman Center for Business, Law and Public Policy, 2012-current

Visiting Professor, Faculty of Law, Oxford University, 2014-current

Fellow, European Corporate Governance Institute, 2004-current

Alfred W. Bressler Professor of Law, Columbia University Law School, 1998-2011

Exchange Faculty Member, Columbia-Oxford Alliance, spring 2010

Albert E. Cinelli Enterprise Professor of Law, Columbia University Law School, 2006-07

Bruce W. Nichols Visiting Professor of Law, Harvard Law School, fall 2002

Professor of Law, Columbia University, 1988-current

Professor of Law, New York University Law School, 1982-1988
(starting as assistant professor of law)

COLUMBIA UNIVERSITY APPOINTMENTS

Chair, Advisory Committee on Socially Responsible Investment, 2014-2017

COURSES

Mergers and Acquisitions; Financial Crises and Regulatory Responses; Regulation of Financial Institutions; Foundations of the Regulatory State; Corporations; Corporate Governance; Comparative Corporate Governance; Regulation of Institutional Investors; Corporate Law and Political Economy

PUBLICATIONS

BOOKS

CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE, co-editor with Mark J. Roe (Cambridge Univ. Press 2004) (translated into Chinese)

PRINCIPLES OF FINANCIAL REGULATION, co-authored with John Armour, Dan Awrey, Paul Davies, Luca Enriques, Colin Mayer, and Jennifer Payne (Oxford Univ. Press 2016) (translated into Japanese)

OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE, co-editor with W. Georg Ringe (Oxford Univ. Press 2018)

ARTICLES

[Many articles are posted at http://ssrn.com/author=39401]

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Institutions as Relational Investors: A New Look at Cumulative Voting, 94 Colum. L. Rev. 124 (1994), reprinted in 1994-1995 Corp. Practice Commentator 455.

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Employees, Pensions, and the New Economic Order, 97 Colum. L. Rev. 1519 (1997).

"Just Say Never?" Poison Pills, Deadhand Pills, and Shareholder-Approved Bylaw Amendments," 19 Cardozo L. Rev. 511 (1997), reprinted in 1998 Corp. Practice Commentator 1 and 20 Bank & Corp. Gov. Reporter 702 (July 1998).

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> CORPORATE GOVERNANCE: THE STATE OF THE ART AND EMERGING RESEARCH (Klaus Hopt, Mark Roe & Eddy Wymeersch, eds.) (1998).

EMPLOYEES' ROLE IN CORPORATE GOVERNANCE (Margaret Blair & Mark Roe, eds.) (Brookings Inst. 1999), translated into Chinese and published in the Aordo Investment Review, Vol. 4, 2006.

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The Micro, Macro and International Design of Financial Regulation, with Colin Mayer (Draft of April 2012), available at http://ssrn.com/abstract=2047436.

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The Contestable Claims of Shareholder Wealth Maximization: Evidence from the Airline Industry (working paper, 2009) (under revision) (Yair Listokin, co-author)

THE LAW AND FINANCE OF CORPORATE ACQUISITIONS (with Ronald Gilson, Bernard Black, and Charles Whitehead; 3d edition, expected completion 2022)

Activist Investors in an Era of Ownership Reconcentration: Solving the Agency Costs of Equity Intermediation (2015 Pileggi Lecture)

Systematic Stewardship, draft of February 14, 2021, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3782814.

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2013), available at http://clsbluesky.law.columbia.edu/2013/03/04/money-market-fund-reform-endorsement-of-the-minimum-balance-at-risk-proposal/.

Activist Investors and the Revaluation of Governance Rights, (with Ronald J. Gilson) (May 6, 2013), available at http://clsbluesky.law.columbia.edu/2013/05/06/activist-investors-and-the-revaluation-of-governance-rights/.

Proposals to "Reform" the Section 13D Rules: Getting it Precisely Backwards, (with Ronald J. Gilson) (August 7, 2013), available at http://clsbluesky.law.columbia.edu/2013/08/07/proposals-to-reform-the-section-13d-rules-getting-it-precisely-backwards/.

How to Save Bank Resolution in the European Banking Union, (with Wolf-Georg Ringe) (April 24, 2014), available at http://clsbluesky.law.columbia.edu/2014/04/24/how-to-save-bank-resolution-in-the-european-banking-union/.

The Sotheby's Poison Pill Case: The Plate Tectonics of Delaware Corporate Governance (with Ronald J. Gilson) (May 15, 2014), available at http://clsbluesky.law.columbia.edu/2014/05/15/the-sothebys-poison-pill-case-the-plate-tectonics-of-delaware-corporate-governance/.

The FSOC's Off-Ramp for the Systemically Important Financial Firm (May 10, 2017), available at http://clsbluesky.law.columbia.edu/2017/05/10/the-fsocs-off-ramp-for-the-systemically-important-financial-firm/.

Financial Scholars Oppose Eliminating "Orderly Liquidation Authority" As Crisis-Avoidance Restructuring Backstop (with Mark Roe) (May 26, 2017), available at https://corpgov.law.harvard.edu/2017/05/26/financial-scholars-oppose-eliminating-orderly-liquidation-authority-as-crisis-avoidance-restructuring-backstop/.

Appraisal Apprisal: *Dell v. Magnetar* (with Eric Talley) (Dec. 19, 2017), available at http://clsbluesky.law.columbia.edu/2017/12/19/appraisal-apprisal-dell-v-magnetar/.

Short-Changing Compliance (with John Armour and Geeyoung Min) (Sept. 27, 2018), available at https://corpgov.law.harvard.edu/2018/09/27/short-changing-compliance/.

Dual Class Common Stock: An Issue of Public and Private Law (Jan. 1, 2019), available at http://clsbluesky.law.columbia.edu/2019/01/02/dual-class-common-stock-an-issue-of-public-and-private-law/.

Board 3.0: An Introduction (with Ronald Gilson) (March 26, 2019), available at https://corpgov.law.harvard.edu/2019/03/26/board-3-0-an-introduction/

Addressing Economic Insecurity: Why Social Insurance Is Better than Corporate Governance Reform (Aug. 20, 2019), available at http://clsbluesky.law.columbia.edu/2019/08/21/addressing-economic-insecurity-why-social-insurance-is-better-than-corporate-governance-reform/

Board Compliance (with John Armour, Brandon Garrett, and Geeyoung Min) (Sept. 12, 2019), available at https://corpgov.law.harvard.edu/2019/09/12/board-compliance/

The Valuation and Governance Bubbles of Silicon Valley, (Oct. 10, 2019) (with Jesse Fried), available at http://clsbluesky.law.columbia.edu/2019/10/10/the-valuation-and-governance-bubbles-of-silicon-valley/.

Corporate Governance, the Depth of Altruism, and the Polyphony of Voice (July 27, 2001), available at https://clsbluesky.law.columbia.edu/2021/07/27/corporate-governance-the-depth-of-altruism-and-the-polyphony-of-voice/ .

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PUBLISHED COMMENTARY

"Why Investors Should Worry About Money Funds," Wall. St. J., June 4, 2011, p. C7.

"How To Save Bank Resolution in the European Banking Union" (with Georg Ringe), VoxEU April 30, 2014, available at http://www.voxeu.org/article/saving-bank-resolution-eurozone. Translated and published in Danish (Børsen, 5/9/2014) and German (Franfurter Allgemeine Zeitung, 7/9/2014).

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FOUNDATION GRANTS

Sloan Foundation, 2000-2006 (individual investigator grant in support of empirical project on shareholder wealth maximization)

British Academy (2018-2019) (Group project on The Future of the Corporation)

ACADEMIC PRIZES

Egon Zehnder prize, European Corporate Governance Institute, 2007 (for the best paper "on company boards and their role in corporate governance," awarded for *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 Stan. L. Rev. 1465 (2007)).

Designations by Corporate Practice Commentator as "top ten" article for the year:

Shareholder Initiative: A Social Choice and Game Theoretic Approach to Corporate Law, U. Cincinnati Law Review Corporate Law Symposium issue, 60 U. Cin. L. Rev. 347 (1991)

Institutions as Relational Investors: A New Look at Cumulative Voting, 94 Colum. L. Rev. 124 (1994)

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SELECTED ACADEMIC CONFERENCES AND SEMINARS

1980-1989

Conference on Commercial Banks and the Securities Industry—Is the Glass-Steagall Act an Anachronism in the 1980's? (Salomon Brothers Center for the Study of Financial Institutions Nov. 1984) ("Conflicts of Interest: The Need for a Broader View").

Univ. of Pennsylvania Law and Economics Institute (February1985) (draft of "Efficient Markets" paper).

Conference on Modern Investment Theory and the Prudent Man Rule (Salomon Brothers Center for the Study of Financial Institutions November 1986) ("Points of Restraint and Conflict in the Application of the Prudent Man Rule to Contemporary Investment Problems").

Conference on the Economics of Corporate and Capital Markets Law (Harvard Law School Nov. 1986) (draft of "Dual Class Common Stock" paper).

Harvard Law School Law and Economics Workshop (April 1988) (early draft of "Mandatory Structure of Corporate Law" paper).

Conference on Contractual Freedom in Corporate Law (Columbia Univ. Law School Dec. 1988) (organizer of conference; also presented revised draft of "Mandatory Structure" paper; symposium based on conference was published as November 1989 issue of Columbia Law Review).

Univ. of Michigan Law and Economics Workshop (February 1989) (further revised draft of "Mandatory Structure" paper).

Univ. of Chicago Law and Economics Workshop (April 1989) (same).

Tel Aviv Univ. Conference on Legal Theory (May 1989) (draft of "Duties and Markets" paper).

American Association of Law Schools Annual Meeting, Section on Business Associations (January 1990) (draft of "Toward a Theory of Corporate Recapitalizations") (with Lewis A. Kornhauser).

1990-1999

Georgetown Univ. Law and Economics Workshop (October 1990) (draft of "Corporations, Markets, and Courts").

Univ. of Cincinnati Corporate Law Symposium (March 1991) (draft of "Shareholder Initiative" paper).

Conference on "The Future of Corporate Governance," (Columbia Univ. Law School, May 1991) (organizer of conference, also presented comments on "Are There Limits for the Institution as Shareholder?").

Conference on "Relational Investing," (Columbia Institutional Investor Project, May 1993) (draft of "Cumulative Voting Paper").

"Delaware Goes to the Movies -- Recent Legal Developments in Mergers and Acquisitions" (Columbia Law and Economics Center, March 1994) (conference organizer and presenter).

Univ. of Toronto Law and Economics Workshop (March 1994) ("Corporate Governance and the Transition Costs of Capitalism" working paper).

Univ. of Pennsylvania Law and Economics Institute (April 1995) (draft of "Employee Stock Ownership as a Transitional Device").

Boston Univ. Law School Faculty Workshop (November 1995) (draft of "Employee Stock Ownership as a Transitional Device").

Conference on "Employees in Corporate Governance" (Columbia Law School Sloan Project, November 1996) (draft of "Employee Stock Ownership in Economic Transitions: The Case of United Air Lines").

Conference on "Cross Border Views of Corporate Governance" (Columbia Law School Sloan Project/L'Ecole Polytechnique Federale, March 1997) (draft of "Deutsche Telekom, German Corporate Governance, and the Transition Costs of Capitalism").

Conference on Comparative Corporate Governance (Max Planck Institute/Columbia Law School Sloan Project) (May 1997) (draft of Employee Ownership/United Air Lines paper).

Conference on New Trends in Labor Law (NYU Law School) (May 1997) (draft of Employee Ownership/United Air Lines paper).

Conference on Warren Buffet (Cardozo Law School, October 1997) ("'Just Say Never?' Poison Pills, Deadhand Pills, and Shareholder-Approved Bylaw Amendments").

Conference on "Is Corporate Law Converging? (Columbia Law School Sloan Project, December 1997) (co-organizer).

Allen Chair Lecture, T.C. Williams Law School, Univ. Of Richmond (April 1997) ("The Shaping Force of Corporate Law in the New Economic Order").

Conference on Comparative Corporate Law (University of Frankfurt/Columbia Law School, May 1998) (draft of "Two Steps on the Road to Shareholder Capitalism in Germany").

Univ. of Michigan Law and Economics Workshop (December 1998) (draft of "Two Steps on the Road to Shareholder Capitalism in Germany").

Bressler Chair Inaugural Lecture, Columbia Univ. Law School (December 1998) ("Corporate Law in the New Political Economy").

Univ. of San Diego Law School Political Economy Workship (November 1999) (draft of "The Contestable Claims of Shareholder Wealth Maximization: Evidence from the Airline Industry").

2000-2009

Univ. of Southern California Law and Economics Workshop (February 2000) (draft of "The Contestable Claims of Shareholder Wealth Maximization: Evidence from the Airline Industry").

Columbia-NYU Law and Economics Workshop (November 2000) (same).

University of Virginia Law and Economics Workshop (February 2001) (same).

Vanderbilt Univ. Law and Economics Workshop (February 2001) (same).

University of Pennsylvania Law and Economics Workshop (March 2001) (same).

University of California at Berkeley Law and Economics Workshop (April 2001) (same).

Conference on "Corporations as Producers and Distributors of Rents" (Georgetown-Sloan Project on Business Institutions, October 2001) (Shareholder wealth maximization paper).

Conference on "Global Markets, Domestic Institutions" (Columbia & Center for International Political Economy, October 2001, April 2002) ("Corporate Governance and Transnational Integration: The Evolution of German Shareholder Capitalism in the 1990s").

Univ. of Chicago Conference on "Management and Control of the Modern Business Corporation" (February 2002) ("What Enron Means for the Management and Control of the Modern Business Corporation: Some Initial Reflections").

Boston Univ. Law and Economics Workshop (April 2002) (German shareholder capitalism paper).

German Investor Relations Conference (April 2002) (Frankfurt) ("The Intended And Unintended Consequences of Germany's New Antitakeover Law") (keynote speech).

Annual meeting of American Law and Economics Association (May 2002) (refereed selection process) (Shareholder wealth maximization paper, German shareholder capitalism paper).

Harvard Law School Faculy Workshop (November 2002) ("An International Relations Perspective on Corporate Governance: German Shareholder Capitalism and the European Union:1990-2000").

Univ. of Connecticut Conference on "Crisis in Confidence: Corporate Governance and Professional Ethics Post-Enron" (November 2002) ("Governance Failures of the Enron Board and the New Information Order of Sarbanes-Oxley").

American Ass'n of Law Schools Annual Meeting, section on Pensions and Employment Benefits (January 2003) ("Has Employee Ownership failed at United Airlines?").

Columbia Law School Faculty Workshop (January 2003) ("Economic Nationalism and Corporate Governance: German Shareholder Capitalism and the European Union, 1990-2000").

Univ. of Pennsylvania Symposium on Corporate Control Transactions (February 2003) ("Controlling Controlling Shareholders: New Limits On the Operate, Sale of Control and Freeze-Out Alternatives").

Cornell Law School Conference on "Enron and the Future of U.S. Corporate Law and Policy" (February 2003) (Blame Delaware?: The Delaware Law Roots of the Corporate Governance Crisis).

Univ. of Toronto Law and Economics Workshop (March 2003) ("Economic Nationalism and Corporate Governance: German Shareholder Capitalism and the European Union, 1990-2000").

Univ. of Pennsylvania Law School Roundtable on "Mergers of Equals" (April 2003).

Yale Law School Roundtable on "Recent Legally Induced Changes in Corporate Governance: Necessity and Effectiveness" (May 2003).

Conference on "A Modern Regulatory Framework for Company and Takeover Law in Europe – The Corporate Governance and Takeover Recommendations of the High Level Group of Company Law Experts to the European Commission". (Syracuse, Sicily, May 2003) ("An American Perspective on Anti-Takeover Laws in the EU: A German Example").

Annual meeting of American Law and Economics Association (September 2003) (refereed selection process) (Comparative US/European Anti-Takeover Laws paper)

Fordham Law School Corporate Law Conference (November 2003) ("Boards").

Korea Development Institute Conference on Corporate Governance and Capital Markets in Korea (December 2003) (Seoul, Korea) ("Boards: How a Korean Comparison Clarifies Understanding")

Univ. California Berkeley Law and Economics Workshop (April 2004) ("The Mechanisms of Board Independence").

Columbia Law School Conference on Law, Finance, and Political Economy (April 2004) (co-organizer, with Katharina Pistor).

Columbia Law School Conference on Executive Compensation (October 2004) (co-organizer) ("Executive Compensation: Puzzles, Questions and the Search for the Appropriate Remedy").

Harvard Law School Conference on EU Corporate Law-Making (October 2004) ("Economic Nationalism and Corporate Governance: German Shareholder Capitalism in the European Union").

Stanford Law and Economics Workshop (April 2005) ("Boards").

Yale Law School Conference on Reassessing Director Elections (October 2005) ("Rethinking Cumulative Voting").

Washington Univ. Law School Conference on Corporate Governance (September 2005) ("Executive Compensation: The Case for 'Compensation Discussion and Analysis').

Georgetown Law School Conference on Corporate Governance (October 2005) ("The Rise of Independent Directors").

Columbia Law School Faculty Workshop (February 2006) ("The Rise of Independent Directors").

University of Lisbon Faculty of Law Securities Law Institute (March 2006) ("The Case of Strengthening the Role of Independent Directors in Portuguese Corporate Governance").

Columbia Law School Conference on the Law and Economics of Contracts (April 2006) (co-organizer).

York Univ. Business School, Toronto (April 2006) ("Executive Compensation"; "Rise of Independent Directors").

Lewis and Clark Law School Conference on "Baby-Boomer" Retirement (September 2006) ("Is Retirement Security Possible?"

Columbia Law School Conference on "The Structure of the Corporation" (Nov. 2006) (organizer and paper presenter).

Rivisti Delle Societa 50th Anniversary Celebration (Nov. 2006) ("What Accounts for the Rise of Independent Directors in the United States?").

AALS Section on Business Law (January 2007) ("Stock Market Prices and Independent Directors," paper selected in refereed process).

Columbia Law School conference on Hedge Funds (February 2007) ("The Effect of Informative Stock Prices on the Role of the Board").

Univ. of Virginia Law and Finance conference ("Stock Market Prices and Independent Directors").

American Law and Economic Association Annual Meeting (area organizer) (May 2007).

Stanford-Yale Junior Faculty Forum (area organizer and commentator) (May 2007).

Yale School of Organization and Management conference on "Short-Termism" (June 2007).

Columbia Law School conference marking the 75th Anniversary of the Publication of Adolph A. Berle's and Gardiner Means' *The Modern Corporation and Private Property* (co-organizer, co-author of "The Berle-Means Corporation of the 21st Century").

Vanderbilt Law School workshop (February 2008) ("Issuer Proxy Access and E-Proxy Alternatives").

Fordham Law School workshop (February 2008) ("Berle-Means Corporation of the 21st Century").

American Law and Economic Association Annual Meeting (program co-chair) (May 2008).

Univ. of Pennsylvania Corporate Law and Economics Workshop (November 2008) ("Berle-Means Corporation of the 21st Century").

Georgetown Univ. Law School Faculty Workshop (Nov. 2008) ("Berle-Means Corporation of the 21st Century").

Cambridge Univ. Center for Corporate and Commercial Law, Conference on Ownership and Control (January 2008) ("Berle-Means Corporation of the 21st Century").

Vanderbilt Law School, Conference on the Future of Federal Regulation of Financial Markets, Shareholder Litigation and Corporate Governance (March 2009) ("Cautionary Lessons from the Financial Crisis about Executive Compensation and Corporate Governance").

IMBEC & St. Gallen Univ. (Sz) Foundation for Law and Economics, Conference on Capital Market Regulation and International Standards in Brazil, the US, the EU and Switzerland (Sao Paulo, April 2009) (Current Developments on the US Mergers Landscape).

Transatlantic Corporate Governance Dialogue (under the auspices of the SEC and the EU) (Washington, DC September 2009) (The Government as Owner/Investor in the United States).

NYU Law School Conference on Executive Compensation (October 2009) ("'Say on Pay' in Executive Compensation").

George Washington Univ. Law School, Conference on Regulatory Response to the Financial Crisis (October 2009) ("An International Perspective on Regulatory Initiatives for Executive Compensation").

Univ. of Virginia Law School workshop (November 2009) ("Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management").

Harvard Law School workshop (November 2009) ("Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management").

2010-2014

AALS Annual Meeting, Section on Business Associations (January 2010) ("Corporate Governance Reform in Financial Firms").

AALS Annual Meeting, Section on Financial Institutions (January 2010) ("Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management") (refereed selection).

Columbia Law School Faculty Workshop (February 2010) ("Avoiding Eight-Alarm Fires in the Political Economy of Systemic Risk Management").

Vanderbilt Conference on Executive Compensation (February 2010) (Comment on "The European Response to Bankers' Pay").

Co-organizer, Columbia Law School Conference on The Financial Crisis: Can We Prevent a Recurrence? (March 2010).

Univ. of Connecticut Conference on Regulating Risk (April 2010) ("Confronting Financial Crisis: the Case for a Systemic Emergency Insurance Fund").

Univ. of Delaware Roundtable on the Government as Shareholder (April 2010) ("Government and Governance").

Univ. of Oxford Law Faculty Workshop (May 2010) ("Confronting Financial Crisis").

Columbia-Univ. of Tokyo Symposium on Mergers and Acquisitions and the Law (June 2010) ("Legal and Structural Barriers to M&A around the World: An Empirical Assessment").

Vanderbilt Conference on Shareholder Litigation (October 2010) (Comment on "Is Delaware Losing Its Cases?").

Univ. of Pennsylvania Law School Faculty Workshop (October 2010) ("Confronting Financial Crisis").

Transatlantic Corporate Governance Dialogue (under the auspices of the SEC and the EU) (Brussels, October 2010) ("Resolution of Failing Financial Firms: Alternative Approaches").

Conference on Empirical Legal Studies (November, 2010) (Comment on "Corporate Financial and Investment Policies in the Presence of a Blockholder on the Board").

Columbia Law School Faculty Workshop (November 2010) ("Executive Compensation and Corporate Governance in Financial Firms").

Brooklyn Law School Symposium on Comparative Approaches to Systemic Risk and Resolution (February 2011) ("Resolution of Financial Firms – Why Dodd-Frank Falls Short")

Columbia-Oxford Pre-Conference on "Corporate Governance After the Financial Crisis" (to prepare for large conference at Oxford in January 2012) (March 2011) (pre-conference co-organizer and discussion co-leader for session on "Are Banks Different?")

Yale Roundtable on Financial Regulation (April 2011) (presenter in session on "'Too Big to Fail and the New Resolution Authority")

European Univ. Inst./Hague Inst. for Int'ntl'zn of Law Conference on "Banking and Finance (April 2011) ("Corporate Governance and Executive Compensation in Financial Firms")

American Law and Economics Annual Meeting (May 2011) ("Corporate Governance and Executive Compensation in Financial Firms: The Case for Convertible Equity-Based Pay")

Columbia Conference on the Delaware Chancery Court (November 2011) ("The Delaware Roots of Executive Compensation Excesses")

Transatlantic Corporate Governance Dialogue (December 2011) (co-organizer; "What is 'Appropriate' Shareholder Engagement – Framing the Issues?")

Federalist Society (December 2011) (The Affirmative Case for the Consumer Financial Protection Bureau)

CLS-Oxford Conference on Corporate Governance After the Financial Crisis (January 2012) (co-organizer; co-author of three presented papers, with John Armour, Ronald Gilson, Colin Mayer)

Pace Law School Faculty Workshop ("Capital Markets, Efficient Risk Bearing and Corporate Governance: The Agency Costs of Agency Capitalism," with Ronald Gilson) (February 2012)

Univ of Texas Law School Conference on Financial Regulation (February 2012) (commentator; presented work-in-progress on Money Market Mutual Funds)

Univ. of Colorado Law School Faculty Workshop (February 2012) ("Capital Markets, Efficient Risk Bearing and Corporate Governance: The Agency Costs of Agency Capitalism," with Ronald Gilson)

Notre Dame Law School Faculty Workshop (April 2012) ("Capital Markets, Efficient Risk Bearing and Corporate Governance: The Agency Costs of Agency Capitalism," with Ronald Gilson)

ETH-NYU Conference on Banking Regulation (April 2012) ("The Micro, Macro and International Design of Financial Regulation," with Colin Mayer)

CLS Project on Investment, Ownership and Control in the Modern Firm (May 2012) (co-organizer) ("The Agency Costs of Agency Capitalism: Activist Investors and the Re-valuation of Governance Rights," with Ronald Gilson)

CLS-Ono Conference (June 2012, Tel Aviv) ("The Agency Costs of Agency Capitalism: Activist Investors and the Re-valuation of Governance Rights," with Ronald Gilson)

American Enterprise Institute (June 2012, Washington), Money Market Reform (panelist)

Conference on Empirical Legal Studies (November 2012) ("Money Market Funds Run Risk: Will Floating Net Asset Value Fix the Problem?" (with Christopher M. Gandia).

Transatlantic Corporate Governance Dialogue (December 2012, Brussels) ("The Corporate Governance of Banks and Other Systemically Important Financial Institutions") (also co-organizer of conference, on theme of "Corporate Governance and Banking Union in Transatlantic Perspective").

Harvard Law and Economics Workshop (January 2013, Cambridge) ("Systemic Harms and the Limits of Shareholder Value" (with John Armour).

Columbia Law School Faculty Workshop (January 2013) ("Systemic Harms and the Limits of Shareholder Value" (with John Armour).

Oxford Conference on Eurozone Banking Union (April 2013, Oxford) ("Banking Union Resolution Without Deposit Insurance: An American Perspective on What It Would Take" (with Georg Ringe))

Columbia Law School/Millstein Center for Global Markets and Corporate Ownership Conference on "Changes in Ownership: Beyond the Berle-Means Paradigm" (April 2013) (co-organizer) ("Dual Class Common Stock: From 'Banker-Control' to Protection of Entrepreneurial Vision")

American Law and Economics Ass'n 2013 Annual Meeting (May 2013) ("Systemic Harms and the Limits of Shareholder Value" (with John Armour)); ("Money Market Funds Run Risk: Will Floating Net Asset Value Fix the Problem?" (with Christopher M. Gandia))

ETH-NYU Conference on Banking Regulation (June 2013, Zurich) ("Banking Union Resolution Without Deposit Insurance: An American Perspective on What It Would Take" (with Georg Ringe))

Toulouse Institute for Advanced Study Conference on Law and Economics (June 2013, Toulouse) ("Agent-Focused Strategies in the Control of Systemic Risk: Resolving the Bank Corporate Governance Paradox") (with Patrick Bolton)

Fordham Law School Faculty Workshop (Oct 2013) ("Systemic Harms and the Limits of Shareholder Value" (with John Armour)

Univ. Pennsylvania-Wharton joint Faculty Workshop (Oct. 2013, Philadelphia) ("Money Market Funds Run Risk: Will Floating Net Asset Value Fix the Problem?" (with Christopher M. Gandia))

Global Justice Forum, Columbia Law School (Oct. 2013) ("FIRREA as a Tool in Redressing Sub-Prime Fraud").

Univ. Chicago Conference on Benefit-Cost Analysis for Financial Regulation (Oct. 2013, Chicago) ("The Empty Promise of Benefit-Cost Analysis in Financial Regulation").

Transatlantic Corporate Governance Dialogue (Dec. 2013, Washington) (Co-organizer)

Univ. of Europe at Rome Conference on Corporate Governance (Dec. 2013, Rome) ("Activist Investors in an Era of Ownership Reconcentration: Solving the Agency Costs of Equity Intermediation")

NYU-ETH Conference on Banking Regulation (May 2014) ("Agent-Focused Strategies in the Control of Systemic Risk: Resolving the Bank Corporate Governance Paradox") (with Patrick Bolton)

Copenhagen Business School Conference on Ownership, Regulation and Creative Destruction (June 2014, Copenhagen) ("Cost-Benefit Analysis in Financial Regulation")

European Banking Union Conference (June 2014, Amsterdam) ("A US Perspective on Resolution in the European Banking Union")

European Summer Symposium in Economic Theory (July 2014, Gerzensee, Sz) ("Bank Resolution," with Patrick Bolton)

World Bank, Law, Justice & Development Symposium (October 2014, Washington) ("Resolution in the European Banking Union: An Unfinished Agenda")

Columbia Center on European Legal Studies; Richman Center on Business, Law and Public Policy -- A Global Agenda for Financial Stability: Have We Tamed the Too-Big-To-Fail Financial Institution (November 2014) (Co-organizer and Co-Moderator)

Columbia Center for Corporate Governance Conference on Current Issues in Securities Regulation (November 2014) ("Pessimism from SEC Money Market Fund Reform")

2015

Co-organizer, Richman Center Conference on Inversions in M&A: Implications for Tax Planning, Tax Policy, and Corporate Governance (February 2015) (Discussant – "A Social Responsibility Perspective")

Keynote Speaker, CEPR-IMFS conference on Global Banking and Bank Resolution (March 2015, Frankfurt) ("The Necessary Structural Reform for Successful Bank Resolution in the EU")

Vanderbilt Law and Business Conference (March 2015, Nashville) "Money Market Funds Reform Shortfalls as Predicting Regulatory Failure in Addressing Newly Emerging Systemic Risk")

NYU Law School Conference on Conference on Corporate Crime and Financial Misdealing (April 2015) (Discussant on "Modeling Compliance")

LSE-Oxford Law and Finance Conference (May 2015, London) (Discussant on Tax Inversions and Corporate Governance)

Global Corporate Governance Colloquium (June 2015, Stanford) (Discussant on Boards of Directors)

Univ. Toronto-Rotman/ ICPM Conference on Long-Horizon Investing (June 2015, Toronto) ("Activist Shareholders as Potentiating Institutional Voice")

Widener Univ/Delaware Law School – Pileggi Lecture (October 2015, Wilmington) ("Shareholder Activism: the Triumph of Delaware's Board-Centric Model and the New Role for Boards of Directors")

Columbia Center on Corporate Governance Conference on M&A and Hedge Fund Activism (November 2015) (Dialogue with Chief Justice Strine, Del Sup Ct.)

Richman Center Conference on Reviving Economic Growth (November 2015) ("After the Financial Crisis: the Need for Dynamic Precaution")

Goethe Univ./House of Finance, Frankfurt, Conference on Finance between Liquidity and Insolvency (December 2015, Frankfurt) (Discussant on Bank Resolution)

2016

Columbia Law School Roundtable on Financial Regulation (March 2016) (Co-organizer) (co-sponsored by Richman Center and Law and Economics Center)

Goethe Univ/Institute of Law & Finance Conference on Shareholder and Hedge Activism (April 2016, Frankfurt) (Experience of Activism in US, governance and empirics)

Paris Law and Finance Seminar (May 2016, Paris) (co-sponsored by ESCP Paris and ETH Zurich with ENA and CNMA) ("Empty Call of Cost Benefit Analysis in Financial Regulation')

Oxford-LSE Law and Finance Conference (May 2016, Oxford) (Discussant)

Global Corporate Governance Colloquium (June 2016, Stockholm) (Discussant)

Columbia-Ono Conference (June 2016, Tel Aviv) (Implications of Hedge Fund Activism for Boards)

Conference on the New Pedagogy of Financial Regulation (Oct. 2016) (lead organizer and presenter)

U Penn Institute for Law and Economics Roundtable (Dec. 2016) ("Medium Form Mergers: Fiduciary Duties and Appraisal")

2017

CLS-Oxford-ECGI Conference on Capital Markets Union for the EU (January 2017) (Discussant)

U Delaware Weinberg Corporate Governance Center Conference (March 2017) (Discussant, new directions for corporate boards)

Wharton Conference on Financial Regulation and Rule of Law (April 2017) (Discussant)

NYU LS Corporate Governance Conference (April 2017) ("Activist Pills and the Costs of Governance Adaptation")

Global Corporate Governance Colloquium (Univ of Tokyo) (June 2017) (Discussant)

ETH-Goethe-NYU Law and Banking Conference (June 2017) (Discussant on "Say on Pay" in Germany)

Columbia SIPA/Imperial College Conference on The Future of Global Finance (October 2017) ("First Some History")

Shanghai Univ. of Finance and Economics Conference on The Corporation in a Changing World (October 2017) ("Convergence and Persistence in Corporate Law and Governance")

Emory Law School Faculty Colloquium (November 2017) ("Boards 3.0")

Columbia SIPA Conference on "Ten Years After the Financial Crisis" (December 2017) ("FSOC's Off-Ramp for the Systemically Important Financial Firm")

2018

Imperial College-Goethe Conference on Capital Market Union for the EU (January 2018) ("The Origins of Capital Market Union in the US")

SEC-NYU Stern School Dialogue on Shareholder Engagement (January 2018) ("Reflections on Long Termism (and Short-Termism) for the Long Run")

Wharton Financial Regulation Conference (April 2018) ("The Origins of Capital Market Union in the US")

Columbia Law School-Oxford Law and Finance Program "Book Launch" for the Oxford Handbook on Corporate Law and Governance (May 2018) (commentator) (organizer)

Global Corporate Governance Colloquium (June 2018) ("Is Corporate Governance First Order in Economic Outcomes?")

ETH-NYU-SAFE Law and Banking Conference (June 2018) ("The Origins of Capital Market Union in the US")

UCLA Conference on Boards (September 2018) ("Board 3.0")

Berkeley Conference on Sustainability (October 2018) ("Is Corporate Governance a First Order Cause of the Current Malaise?"

Conference on Empirical Legal Studies (October 2018) ("Compliance Committees") (refereed submission)

2019

AALS Conference, Financial Regulation Section (invited speaker) (January 2019) ("Dynamic Precaution in Financial Regulation")

Millstein Center Conference on "Corporate Governance Counter-narratives (March 2019) (organizer and speaker) ("Corporate Governance's Limited Role in the Current Malaise")

Bocconi Conference on Institutional Investors and Corporate Governance (March 2019) ("Convergence and Persistence in Corporate Governance: Implications from the Rise of International Institutional Ownership in Open Capital Markets")

NYU Labor Center Conference on The German Model of Co-determination (April 2019) ("Challenges for Co-determination in the American Setting")

Wharton Financial Regulation Conference (April 2019) (discussant)

American Law and Economics Association (May 2019) ("Board Compliance") (refereed submission)

CONSOB (Italy) Conference on Stewardship (June 2019) ("Stewardship by Institutional Investors: What Possible? What Is Desirable?")

Labex ReFi-NYU-SAFE Law and Banking/Finance Conference (June 2019) (discussant)

2020

Hitotsubashi Univ. (Tokyo) Seminar on Shareholder Activism in Japan and the Role of Independent Directors, January 2020 (keynote) ("Shareholder Activism in Japan: Why Its Future May be Different from Its Past") available at https://ssrn.com/abstract=3752246

European Banking Institute Global Annual Conference on Banking Regulation (February 2020, Frankfurt) ("Stress Testing in the US: the Debate over Transparency")

Global Corporate Governance Colloquium & ECGI Conference on post-Covid19 Corporate Governance and Financial Regulation Policy Implications (April 2020) ("Shareholder Value, Systematic Stewardship, and the Missing Government")

Millstein Center/ECGI Conference on Rethinking Stewardship (October 2020) (organizer) ("Systematic Stewardship")

2021

Bocconi Faculty Workshop (February 2021) ("Systematic Stewardship")

Columbia Law School Faculty Workshop (February 2021) ("Systematic Stewardship")

University of Amsterdam Center for Law and Economics (April 2021) ("Systematic Stewardship")

Columbia Law School Faculty Workshop (April 2021) ("Neo-liberalism and Corporate Governance")

Millstein Center/ECGI Conference on "Board 3.0" (May 2021) (organizer) ("Board 3.0") (proceedings published in 33(3) Journal of Applied Corporate Finance (Summer 2021) (pp 59-94).

Oxford et al Conference on Business Law and the Transition to a Net Zero Carbon Economy (October) (May 2021) ("Corporate Governance, the Depth of Altruism, and the Polyphony of Voice")

Global Corporate Governance Colloquium (June 2021) ("Systematic Stewardship")

Bocconi et al Conference on "New Frontiers in Shareholder Engagement (October 2021) ("Systematic Stewardship")

NYU Institute for Corporate Governance and Finance Roundtable on Systematic Stewardship (December 2021) ("Systematic Stewardship")

SELECTED PRACTITIONER PRESENTATIONS

Univ. of Miami Mergers & Acquisition Institute (February 2000).

Fried, Frank, Harris, Shriver & Jacobsen (April 2001).

On-Line Moderator, Law.com seminars on mergers and acquisitions (spring 2001).

Columbia Law School London CLE program (June 2001).

Cleary Gottlieb Steen & Hamilton CLE program (November 2004).

ALI-ABA CLE program (December 2004).

NY Society of Securities Analysts (February 2007).

Brazilian Institute on Business Law (February 2007).

Conference Board annual conference on Executive Compensation (June 2007).

Baruch College seminar series on Corporate Governance (June 2007).

Institutional Investor Education Foundation conference on Institutional Activism (December 2008).

NYU Center for Labor & Employment Law, conference on New Initiatives in Regulating Executive Compensation (October 2009).

TIAA-CREF and National Association of Corporate Directors (NY Chapter) conference on "Say on Pay" (October 2009).

NY State Bar Ass'n-Canadian Bar Ass'n Joint Meeting, Panel on US-Canada Approaches to M&A (March 2012)

NYSE Board-Shareholder Forum (June 2013)

Institute for Law and Economic Policy (April 2014) (discussion of benefit-cost analysis in SEC and other financial regulation)

Responsible Investor Conference on Long-term, Sustainable Capitalism (December 2014) (discussion of shareholder activism)

CLS Post-Election CLE (Nov. 2016) ("What to Expect After the Election: Financial Regulation")

NYC Bar Association Committee on Futures and Derivatives Regulation (Dec. 2016) ("What to Expect After the Election: Financial Regulation")

NYS Bar Association Committee on Securities Regulation (March 2017) (Dual Class Common Stock)

ALI Conference on Law and Corporate Finance (April 2017) (M&A auction practice as applied in bankruptcy)

Shareholder Commons Conference on Universal Ownership, January 2021 (Fiduciary duty of asset managers)

SELECTED SHORT PRACTITIONER-ORIENTED ARTICLES

Reviewing The New Merger Accounting Regime, New York Law Journal, 7/19/2001, p.1.

GOVERNMENT TESTIMONY

Securities Exchange Commission, Hearings on Dual Class Common Stock, December 1986.

Senate Committee on Banking, Housing, and Urban Affairs, Hearings on Money Market Funds, June, 2012 (invited written submission).

US Treasury Roundtable on FSOC Designation, July 2017 (invited written submission and participation)

LETTERS TO CONGRESSIONAL LEADERS

Financial Scholars Oppose Eliminating "Orderly Liquidation Authority" As Crisis-Avoidance Restructuring Backstop (with Mark Roe) (May 23, 2017) (signed by 120 law professors and economists), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2979546.

SEC COMMENT LETTERS

Comment Letter filed on SEC Money Market Fund Proposal, September 2009.

Comment filed on SEC Money Market Fund Proposal, August 2011.

Comment filed on Federal Stability Oversight Council Money Market Fund Reform Proposals, February 2013.

Comment filed on SEC Money Market Fund Proposal, November 2013.

Comment filed on SEC Request for Comment on Proposed Money Market Reform Measures, February 2021

OTHER PROFESSIONAL ACTIVITIES

Chair, Columbia Univ. Advisory Committee on Socially Responsible Investing (2014-17)

Member, American Law Institute.

Advisor to ALI Restatement of Corporate Governance, 2019-

Advisor to ALI Restatement (Third) of Trusts: Prudent Investor Rule

Vice-Chair, Global Corporate Governance Colloquium, 2018-2020

Director, American Law and Economics Association, 2008-2011.

Member, Securities Law Committee, Association of the Bar of the City of New York, 2001-04.

Member, Columbia Univ. Advisory Committee on Socially Responsible Investing, 2002- 2004 (Chair, Spring 2004).

Member, Corporate Law Committee, Association of the Bar of the City of New York, 1986-89.

Secretary, Ad Hoc Committee on Corporate Takeover Legislation, Association of the Bar of the City of New York, 1988-90.

Chair, Section on Business Associations, American Association of Law Schools, 1989.

Chair, Section on Law and Economics, American Association of Law Schools, 2000.

Program Co-Chair, American Law and Economics Association 2008 Annual Meeting, 2008.

PRIOR EMPLOYMENT

1982-1988, Assistant Professor through Professor of Law, New York University.

l979-1981, attorney in U.S. Treasury Department, Washington, D.C. Attorney-advisor in office of Assistant General Counsel (Domestic Finance); Special Assistant to the General Counsel. Exceptional Service Award, Dep't of Energy. Major project areas: Chrysler, synfuels, and NYC loan guarantee programs; drafting of financial institutions deregulation legislation; oversight of CFTC regulation of financial futures trading.

1976-l979, associate at Cleary, Gottlieb, Steen & Hamilton, New York, New York. Corporate and securities litigation and negotiation; general appellate practice.

l975-l976, law clerk to the Hon. William E. Doyle, U.S. Court of Appeals, 10th Cir., Denver, Co.

Summer, l974, summer associate at Wilmer, Cutler & Pickering, Washington, D.C.

Summer l973 and 1971-1972, newspaper reporter, Rocky Mountain News, Denver, Co.

EDUCATION

Harvard Law School, Cambridge, Mass., J.D. magna cum laude l975.
Senior articles editor, Harvard Civil Rights-Civil Liberties Law Review (Vol. 10).
Tutor in Law, Adams House in Harvard College.

Yale University, New Haven, Conn., B.A. magna cum laude l97l.
Phi Beta Kappa; Managing Board, Yale Daily NEWS; John Spangler Nicholas Prize

PERSONAL

Born in Richmond, Va.

Bar Admissions: New York, November, l977; District of Columbia, January 1981

Member, NYC Bar Ass'n; Am. Bar Ass'n; Am. Law & Econ. Ass'n, Society of Empirical Legal Studies

Listed in Who's Who in America

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EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS and ELECTRICAL WORKERS PENSION FUND, LOCAL 103, I.B.E.W., et al., Plaintiffs, v. CHARLES E. JONES, et al., Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson JURY TRIAL DEMANDED

DECLARATION OF LAYN R. PHILLIPS

I, LAYN R. PHILLIPS, declare:

1. I submit this declaration in my capacity as the independent mediator in the above-captioned shareholder derivative ("Action") and in connection with the proposed settlement of claims asserted in the Action (the "Settlement"), as well as the related shareholder derivative actions pending in the Northern District of Ohio ("Northern District Action") and Summit County Court of Common Pleas (the "State Court Action"). I make this declaration based on personal knowledge and am competent to so testify.

2. While the mediation process is confidential, the parties to the Settlement (the "Parties") have authorized me to inform the Court of the matters set forth. The confidentiality of the mediation process is critical, as it encourages full candor in disclosures to the mediator, including in written submissions. My statements and those of the Parties during the mediation

process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is no intention on either my part or the Parties' part to waive the agreement or the protections of Rule 408.

I. BACKGROUND AND QUALIFICATIONS

3. I am a former United States District Judge, a former United States Attorney, and a former litigation partner with the firm of Irell & Manella LLP. I currently serve as a mediator and arbitrator with my own alternative dispute resolution company, Phillips ADR Enterprises ("Phillips ADR"), which is based in Corona Del Mar, California. I am a member of the bars of Oklahoma, Texas, California, and the District of Columbia, as well as the United States Courts of Appeals for the Ninth and Tenth Circuits and the Federal Circuit.

4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years. Thereafter, I was nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

5. I left the federal bench in 1991 and joined Irell & Manella LLP where, for 23 years, I specialized in alternative dispute resolution, complex civil litigation, and internal investigations. In 2014, I left Irell & Manella LLP to found my own company, Phillips ADR, which provides mediation and other alternative dispute resolution services.

6. Over the past 26 years, I have served as a mediator and arbitrator in connection with numerous large, complex cases, including securities cases such as this one.

II. THE PARTIES' ARM'S-LENGTH SETTLEMENT NEGOTIATIONS

7. On February 1, 2022, counsel for Plaintiffs, Defendants, and other interested parties participated in a full-day mediation session before me using the Zoom videoconferencing platform. The participants included: (i) attorneys from Bernstein Litowitz Berger & Grossmann LLP; Saxena White P.A.; Cohen Milstein Sellers & Toll PLLC; Edelson Lechtzin LLP; Rosca Scarlato LLC; Johnson Fistel, LLP; Connick Law, LLC; and Law office of George W. Cochran (ii) attorneys from Debevoise & Plimpton LLP, counsel for the Special Litigation Committee and Nominal Defendant FirstEnergy; (iii) the members of the Special Litigation Committee ("SLC") of the board of directors of FirstEnergy; (iv) attorneys from Jones Day, Baker & Hostetler LLP, Tucker Ellis LLP, Skadden, Arps, Slate, Meagher & Flom, McDermott, Will & Emery, LLP, Ballard Spahr LLP, Morgan, Lewis & Bockius, Boies Schiller Flexner LLP, and Walter Haverfield, counsel for the Individual Defendants; and (v) representatives of Defendants' insurance carriers.

8. In advance of this mediation session, the Parties exchanged and submitted detailed submissions, including thorough opening and reply mediation statements. Prior to the mediation, I engaged in telephonic discussions with Plaintiffs, Defendants, and the Company's insurers. It is my understanding that the Parties also engaged in discussions among themselves, including negotiations between the Plaintiffs and the SLC. The Parties further responded to detailed, hard-hitting questions from my team. The work that went into the mediation submissions and the discussions preceding the mediation was substantial.

9. During the mediation session, I engaged in extensive discussions with counsel on

both sides in an effort to find common ground between the Parties' respective positions. During these discussions, I challenged each side separately to address the weaknesses in each of their positions and arguments. In addition to vigorously arguing their respective positions, the Parties exchanged multiple rounds of settlement demands and offers.

10. During the mediation session, the Parties were not able to reach any agreement despite multiple rounds of settlement demands and offers having been exchanged, and extensive negotiations concerning the corporate governance reforms, including negotiations directly between a representative of the SLC and counsel for Plaintiffs.

11. Several days of intense negotiations followed. These negotiations concerned both the monetary component of the settlement, as well as the corporate governance reforms. The Parties subsequently reached an agreement in principle on the monetary and governance reforms terms of the settlement, and the Parties documented their agreement in a term sheet that was executed on February 9, 2022 (the "Term Sheet"). This Term Sheet was subsequently filed publicly as an attachment to FirstEnergy's Form 8-K dated February 10, 2022.

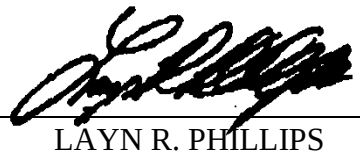
12. The mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith. Because the Parties made their mediation submissions and arguments in the context of a confidential mediation process pursuant to Federal Rule of Evidence 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial, and they reflected a detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses at issue in this case.

III. CONCLUSION

13. Based on my experience as a litigator, a former United States District Judge, and a mediator, I believe that the Settlement represents a recovery and outcome that is reasonable and fair for all parties involved. I further believe it was in the best interests of the Parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial.

14. Lastly, the advocacy on both sides of the case was excellent. All counsel displayed the highest level of professionalism in zealously and capably representing their respective clients.

15. I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 8th day of March, 2022.



LAYN R. PHILLIPS
Former U.S. District Judge

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

JENNIFER L. MILLER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MICHAEL J. ANDERSON, *et al.*,	)	Judge John R. Adams
	)	
Defendants,	)	Case No. 5:20-cv-01743-JRA
	)	
and	)	
	)	
FIRSTENERGY CORP.,	)	
	)	
Nominal Defendant.	)	

PLAINTIFF AND INTERVENOR-PLAINTIFFS' RESPONSE
TO THE COURT'S FEBRUARY 11, 2022 ORDER AND DECISION

Plaintiff Jennifer L. Miller ("Miller") and Intervenor-Plaintiffs Employees' Retirement System of the City of St. Louis ("St. Louis"), Electrical Workers Pension Fund, Local 103, I.B.E.W. ("Local 103"), and Massachusetts Laborers Pension Fund ("MLPF") (collectively, "Plaintiffs") hereby respond to the Court's Order and Decision of February 11, 2022 (ECF No. 274, the "Order"), wherein the Court denied without prejudice the parties' joint motion to stay this action pending settlement proceedings in the related Southern District Action (ECF No. 273) and requested additional information concerning the proposed settlement ("Settlement").

PRELIMINARY STATEMENT

The Settlement achieved by Plaintiffs constitutes an extraordinary result for FirstEnergy Corp. ("FirstEnergy" or the "Company"), including both: (i) a $180 million monetary recovery for FirstEnergy that is *three times* greater than any prior derivative recovery in the history of the Sixth

Circuit[1] and among the largest derivative recoveries ever achieved, in any forum, in the history of the United States;[2] *and* (ii) significant governance reforms tailored to prevent the recurrence of misconduct and restore FirstEnergy's reputation with regulators, shareholders, and the public.

Plaintiffs achieved this result by aggressively prosecuting this derivative action on behalf of FirstEnergy for 18 months across two District Courts and the Court of Appeals for the Sixth Circuit, with a team that included more than 30 attorneys.[3] Plaintiffs prevailed on myriad contested motions and secured and reviewed more than 400,000 pages of documentary evidence—a production notably broader than even that received by the Department of Justice before it entered into its own Deferred Prosecution Agreement with FirstEnergy (the "DPA").[4] There can be no question that Plaintiffs here developed a sufficient discovery record to make an informed evaluation of the merits of the Settlement.[5] Plaintiffs marshalled that record in the mediation before the Hon. Layn R. Phillips (ret.) held on February 1, 2022[6] and thereafter secured the

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[1] *See In re Community Health Sys., Inc. S'holder Deriv. Litig.*, No. 3:11-cv-00489 (M.D. Tenn. Jan. 17, 2017) (Transcript) (ECF No. 273-2) (approving settlement comprised of $60 million payment and reforms, described as "the biggest derivative settlement in the Sixth Circuit").

[2] *See* Kevin LaCroix, "*Largest Derivative Lawsuit Settlements*," THE D&O DIARY (updated Feb. 12, 2021) (available at: https://www.dandodiary.com/2014/12/articles/shareholders-derivative-litigation/largest-derivative-lawsuit-settlements/).

[3] Plaintiffs described their extensive discovery efforts in Plaintiffs' Status Reports filed with the Court on December 23, 2021 and January 27, 2022. (ECF Nos. 228, 248).

[4] Indeed, at Intervenor-Plaintiffs' request, FirstEnergy confirmed in writing that it had re-produced all documents that it produced in response to document requests from the DOJ and SEC—a production containing more than 57,000 documents spanning more than 288,000 pages—as of November 19, 2021.

[5] Plaintiffs note that there is no requirement that plaintiffs take depositions before negotiating a settlement. Rather, a plaintiff need only take "sufficient discovery to permit the plaintiffs to make an informed evaluation of the merits of a possible settlement." *In re Big Lots, Inc. S'holder Litig.*, 2018 WL 11356561, at *3–4 (S.D. Ohio Aug. 28, 2018) (granting final approval of derivative settlement) (further citation omitted).

[6] An affidavit by Judge Phillips concerning the mediation process is attached hereto as Exhibit A.

agreement of the special litigation committee of nominal defendant FirstEnergy's board of directors (the "SLC") and the Individual Defendants to the highly-favorable terms of Settlement.

As reflected in the parties' Term Sheet, all parties have agreed to submit the Settlement for approval proceedings in the United States District Court for the Southern District of Ohio. (*See* ECF No. 273-1 at 2). Plaintiffs respectfully submit that the Court should stay this action, refrain from further rulings, and defer to the ongoing Settlement proceedings in the Southern District.

INFORMATION RE UESTED BY THE COURT

1 The Total Amount of Available Insurance Funds at the Time Settlement was Reached

The SLC and the Individual Defendants shared information with Plaintiffs concerning the available insurance in connection with the parties' mediation before the Hon. Layn R. Phillips (ret.), subject to a strict confidentiality agreement. As explained in Judge Phillips' affidavit (Ex. A hereto), the mediation privilege is critically important to ensure the free exchange of confidential information in connection with mediation. *See also Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 983 (6th Cir. 2003) ("[t]his Court has always recognized the need for, and the constitutionality of, secrecy in settlement proceedings"). Plaintiffs respectfully refer the Court to the SLC's response to this request.

2 The Allocation of Damages Amongst the Defendants and the Factual Basis Used to Establish such Allocation

The $180 million financial component of the Settlement is to be paid on behalf of all Individual Defendants collectively by their insurers. Plaintiffs determined that payment of $180 million would, in combination with the significant non-monetary relief achieved by the Settlement, provide a fair, reasonable, and adequate benefit to FirstEnergy and its shareholders sufficient to warrant release of FirstEnergy's claims asserted in the pending derivative actions. Plaintiffs have not endeavored to specifically allocate responsibility for the $180 million financial component of

the Settlement among the various Defendants. Nor was there a requirement for Plaintiffs to do so. *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 385 (S.D.N.Y. 2013) ("The adequacy of the settlement does not depend upon the allocation of that amount among the Defendants.").

The Names of the Directors Chosen Not to Run for Re-Election and the Factual Basis Used to Choose those Persons

As part of the Settlement, the parties agreed that six Director Defendants who have been on the Board a minimum of five years will not stand for re-election in 2022. At the time of the Settlement, Director Defendants Michael Anderson, Julia Johnson, Donald Misheff, Thomas Mitchell, Christopher Pappas, and Luis Reyes each had served on the Board for a minimum of five years. As stated in FirstEnergy's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 10, 2022, these directors will not stand for re-election. To Plaintiffs' knowledge, the change in Board composition of six sitting directors is unprecedented in any prior settlement of a derivative action.

The Extent of Information Withheld from Discovery Based upon Claims of Privilege and whether Full Privilege Logs Have Been Provided

All Individual Defendants—except for Chack, who has represented he has no privilege log to produce—have produced privilege logs represented to be complete. Collectively, and without de-duplication, those privilege logs reflect that approximately 1,596 documents were withheld from discovery or redacted by Defendants based on claims of privilege. In addition, FirstEnergy's privilege log reflects that it withheld or redacted approximately 24,993 documents.

The Precise Nature and Extent of the Governance Reforms, including Who Will Oversee and Monitor Implementation of the Reforms

Exhibit A to the parties' Term Sheet (ECF No. 273-1) outlines the reforms that FirstEnergy will implement as part of the Settlement. As noted therein, the newly constituted board of directors—consisting of a supermajority of independent, non-defendant directors following the

departure of six legacy directors—will undertake and oversee the implementation of the agreed reforms. This is consistent with Ohio law providing that "[e]xcept where this chapter or an association's articles of incorporation or bylaws require that action be otherwise authorized or taken, *r r d r d r d r rd*." Ohio Rev. Code §1792.22(A) (emphasis added). Further, the agreed reforms include requirements for enhanced disclosures in the annual proxy statements issued to FirstEnergy shareholders allowing them to monitor the implementation of reforms and elect new directors if they are dissatisfied.

Whether Prior to the Mediation, Plaintiffs Were Able to Identify any Individuals that Gave and or Received Bribes and or the Payments Detailed in the Deferred Prosecution Agreement

Yes, Plaintiffs were able to identify individuals and entities who Plaintiffs believe gave and/or received bribes and the payments detailed in the DPA.

Whether the Parties' Agreement Includes Any Provisions to Claw Back Profits from Alleged Wrongdoers Identified Through Discovery, and If Not, Why Not

The Settlement does not specifically require "claw backs" of past compensation or profits from any Officer Defendant, nor does it release FirstEnergy's existing claims for recoupment against Defendants Jones, Dowling, and Chack. Those claims are specifically carved out of the release as part of the Settlement. (*See* ECF No. 273-1 at 3-4 (the claims being released will not include, among other things, "any claims of the Company to recoup compensation from Charles Jones, Michael Dowling, and Dennis Chack[.]")).

8 Whether the Forensic Examination of Defendant Charles Jones' Personal Electronic Devices Has Been Completed, and if so, What It Revealed

Plaintiffs provided the Court with a detailed update on this topic in their January 27, 2022 Status Report. (*See* ECF No. 248). Defendant Jones provided the Court with a further update on the status of this examination in Mr. Jones' February 7, 2022 Status Report (*see* ECF No. 270 at

2), and the representations made by Mr. Jones therein are consistent with any update Plaintiffs would have provided to the Court on this topic as of that time. Plaintiffs understand from representations made by counsel for Defendant Jones that his forensic examination now is effectively complete. Plaintiffs independently have confirmed that no other Defendant nor the Company has produced in discovery any text message sent to or received from Defendant Jones post-dating Mr. Jones' termination from FirstEnergy (other than the four text messages identified in Mr. Jones' February Status Report), rendering it significantly less likely that any post-termination text messages which have not been recovered had any relevance to Plaintiffs' derivative claims.

The Extent and Details of Any Conclusions Reached by the Special Litigation Committee Pursuant to Its Independent Review of the Facts Surrounding this Litigation

The SLC participated in the mediation and agreed to the terms of the Settlement. Plaintiffs' understanding, if any, of conclusions reached by the SLC is subject to the mediation privilege.

10 The Legal Basis for Seeking Approval of the Proposed Settlement in a Later-Filed Action Rather than this First-Filed Action

Following this Court's denial of Plaintiffs' motion to transfer this action for consolidation with the Southern District Action, the parties have faced an unusual situation in which two federal District Courts are simultaneously overseeing litigation involving identical claims brought by Plaintiffs on behalf of FirstEnergy. (*See* ECF No. 72 at 5 (denying transfer despite recognition that simultaneous litigation in both courts was "not ideal" and created a possibility of "conflicting decisions")). To avoid unnecessary duplication and the risk of inconsistent judgments, however, there can ultimately be only one determination as to whether the parties' Settlement should be approved.

All plaintiffs and all defendants in all related derivative actions, the Company, and the SLC agreed to present the Settlement for review and approval in the Southern District. As Court-appointed Co-Lead Plaintiffs and Co-Lead Counsel in the Southern District Action, Intervenor-Plaintiffs and their counsel undertook certain additional obligations to the Southern District, while this Court declined to appoint lead plaintiffs and lead counsel. (*See* ECF No. 124). Furthermore, all parties were aware that: (i) nine of the ten related federal shareholder derivative suits were filed in the Southern District;[7] (ii) the Southern District implemented a clear organization and leadership structure, appointing St. Louis and Local 103 as Co-Lead Plaintiffs and their counsel as Co-Lead Counsel (SDA ECF No. 44); (iii) the Southern District expended considerable time and resources overseeing this matter, including in issuing a 21-page leadership opinion (SDA ECF No. 44), issuing a 44-page motion to dismiss opinion (SDA ECF No. 93), issuing a 9-page opinion denying the SLC's motion to stay (SDA ECF No. 142), issuing an 8-page opinion denying Defendants' motion to certify an interlocutory appeal (SDA ECF No. 151), and holding hearings that led to the production of the core documentary record that provided the factual basis for the Settlement (SDA ECF Nos. 138, 144); and (iv) the Southern District was the locus of the underlying misconduct, which involved bribery targeted at officials and institutions situated largely in the Southern District, and is overseeing all related federal actions, including the related criminal

[7] The derivative actions filed in the Southern District were: *Stavely v. Anderson*, Case No. 2:20-cv-04598 (S.D. Ohio); *Emps. Ret. Sys. of the City of St. Louis v. Jones*, Case No. 2:20-cv-04813 (S.D. Ohio); *Beck v. Anderson*, Case No. 2:20-cv-05020 (S.D. Ohio); *Elec. Workers Pension Fund, Local 103, I.B.E.W. v. Anderson*, Case No. 2:20-cv-05128 (S.D. Ohio); *Sarnelli v. Anderson*, Case No. 2:20-cv-05192 (S.D. Ohio); *Mass. Laborers Pension Fund v. Jones*, Case No. 2:20-cv-05237 (S.D. Ohio); *The City of Philadelphia Board of Pensions and Ret. v. Anderson*, Case No. 2:20-cv-05529 (S.D. Ohio); *Atherton v. Dowling*, Case No. 2:20-cv-05610 (S.D. Ohio); and *Behar v. Anderson*, Case No. 2:20-cv-05876 (S.D. Ohio).

proceedings and securities fraud class action.[8] Thus, the Southern District is fully familiar with the facts underlying Plaintiffs' derivative claims and capable of assessing whether the Settlement is fair, reasonable, adequate, and in the best interests of FirstEnergy. *See Granada Investments, Inc. v. DWG Corp.*, 962 F.2d 1203, 1205 (6th Cir. 1992).

Given these circumstances, including agreement by all parties that the Southern District is the appropriate forum, the "first-to-file" rule has no application in determining the appropriate District Court for the parties to seek settlement approval. Rather, the "first-to-file" rule is a doctrine of abstention governing a court's decision whether to defer to a related action, and the Southern District has already considered whether to defer to this action and exercised its discretion not to do so. (*See* SDA ECF No. 59 at 4; reported at *Emps. Ret. Sys. of the City of St. Louis v. Jones*, 2020 WL 7487839, at *2 (S.D. Ohio Dec. 21, 2020)).

11 Any and All Contacts with the Southern District, Formal or Informal, in which the Parties Discussed Their Chosen Methodology for Seeking Settlement Approval

Plaintiffs are unaware of any contacts with the Southern District, formal or informal, in which the parties discussed their chosen methodology for seeking settlement approval.

[8] The Department of Justice filed FirstEnergy's criminal action and entered the DPA in the Southern District. *USA v. FirstEnergy Corp.*, Case No. 1:21-cr-00086 (S.D. Ohio). The Department of Justice also filed the Householder criminal action in the Southern District. *USA v. Householder, et al.*, Case No. 1:20-cr-00077 (S.D. Ohio). Ohio consumers filed three subsequently consolidated class action suits against FirstEnergy in the Southern District. *Smith v. FirstEnergy Corp., et al.*, Case No. 2:20-cv-03755 (S.D. Ohio); *Hudock, et al. v. FirstEnergy Corp., et al.*, Case No. 2:20-cv-03954 (S.D. Ohio); and *Buldas v. FirstEnergy Corp., et al.*, Case No. 2:20-cv-03987 (S.D. Ohio). Shareholder plaintiffs likewise filed two subsequently consolidated securities class action suits against FirstEnergy in the Southern District. *Owens v. FirstEnergy Corp.*, Case No. 2:20-cv-03785 (S.D. Ohio); *Frand v. FirstEnergy Corp.*, Case No. 2:20-cv-04287 (S.D. Ohio). And, as noted, of the ten derivative suits filed in federal district court, *nine* were filed in the Southern District.

Dated: February 22, 2022

Respectfully submitted,

/s/ John C. Camillus
John C. Camillus

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Counsel for Plaintiff Jennifer Miller

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys on record.

/s/ John C. Camillus
John C. Camillus

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

JENNIFER L. MILLER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MICHAEL J. ANDERSON, *et al.*,	)	Judge John R. Adams
	)	
Defendants,	)	Case No. 5:20-cv-01743-JRA
	)	
and	)	
	)	
FIRSTENERGY CORP.,	)	
	)	
Nominal Defendant.	)	

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waive the agreement or the protections of Rule 408.

I. BACKGROUND AND QUALIFICATIONS

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4. I earned my Bachelor of Science in Economics as well as my J.D. from the University of Tulsa. I also completed two years of L.L.M. work at Georgetown University Law Center in the area of economic regulation of industry. After serving as an antitrust prosecutor and an Assistant United States Attorney in Los Angeles, California, I was nominated by President Reagan to serve as a United States Attorney in Oklahoma, where I served for approximately four years. Thereafter, I was nominated by President Reagan to serve as a United States District Judge for the Western District of Oklahoma. While on the bench, I presided over more than 140 federal trials and sat by designation in the United States Court of Appeals for the Tenth Circuit. I also presided over cases in Texas, New Mexico, and Colorado.

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8. In advance of this mediation session, the Parties exchanged and submitted detailed submissions, including thorough opening and reply mediation statements. Prior to the mediation, I engaged in telephonic discussions with Plaintiffs, Defendants, the SLC, and the Company's insurers. It is my understanding that the Parties also engaged in discussions among themselves, including negotiations between Plaintiffs and the SLC. The Parties further responded to detailed questions from me and my team, which were submitted to the Parties in advance of the mediation and designed to press the Parties on the potential weaknesses and soft spots in their respective cases. The work that went into the mediation submissions and the discussions preceding the mediation was substantial.

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10. During the mediation session, the Parties were not able to reach any agreement despite multiple rounds of settlement demands and offers having been exchanged, and extensive negotiations concerning the corporate governance reforms, including negotiations between the SLC and Plaintiffs.

11. Several days of intense negotiations followed. These negotiations concerned both the monetary component of the settlement, as well as corporate governance reforms. The Parties subsequently reached an agreement in principle on the monetary and governance reforms terms of the settlement, and the Parties documented their agreement in a term sheet that was executed on February 9, 2022 (the "Term Sheet"). This Term Sheet was subsequently filed publicly as an attachment to FirstEnergy's Form 8-K dated February 10, 2022.

12. The mediation process was an extremely hard-fought negotiation from beginning to end and was conducted by experienced and able counsel on both sides. Throughout the mediation process, the negotiations between the Parties were vigorous and conducted at arm's-length and in good faith. Because the Parties made their mediation submissions and arguments in the context of a confidential mediation process pursuant to Rule 408, I cannot reveal their content. I can say, however, that the arguments and positions asserted by all involved were the product of substantial work, they were complex and highly adversarial, and they reflected a

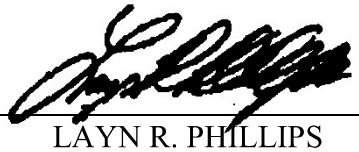
detailed and in-depth understanding of the strengths and weaknesses of the claims and defenses at issue in this case.

III. CONCLUSION

13. Based on my experience as a litigator, a former United States District Judge, and a mediator, I believe that the Settlement represents a recovery and outcome that is reasonable and fair for all parties involved. I further believe it was in the best interests of the Parties that they avoid the burdens and risks associated with taking a case of this size and complexity to trial.

14. Lastly, the advocacy on both sides of the case was excellent. All counsel displayed the highest level of professionalism in zealously and capably representing their respective clients.

15. I declare under penalty of perjury that the foregoing facts are true and correct and that this declaration was executed this 22nd day of February, 2022.



LAYN R. PHILLIPS
Former U.S. District Judge

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

JENNIFER L. MILLER, *et. al.*, *Plaintiffs*, v. MICHAEL J. ANDERSON, *et. al.*, *Defendants*, and FIRSTENERGY CORP., *Nominal Defendant.*	No. 5:20-cv-1743-JRA Judge John R. Adams

RESPONSE OF THE SPECIAL LITIGATION COMMITTEE OF THE BOARD OF DIRECTORS OF NOMINAL DEFENDANT FIRSTENERGY CORP. TO THE COURT'S ORDER OF FEBRUARY 11, 2022

The Special Litigation Committee ("SLC") of the Board of Directors of FirstEnergy Corp. ("FirstEnergy" or the "Company"), by and through their undersigned counsel, submit this response to the Court's February 11, 2022 order seeking additional information regarding the proposed settlement reached to resolve this action.[1]

[1] The SLC provides this response without waiver of attorney-client privilege, work product protection or the privilege for statements made by any party in furtherance of settlement. *See Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976 (6th Cir. 2003).

1. *The total amount of the available insurance funds at the time settlement was reached:* At the time the settlement was reached, approximately $220 million in insurance coverage was available to cover claims against the Company's officers and directors, subject to the terms and conditions of the applicable policies.

2. *The allocation of damages amongst the Defendants and the factual basis used to establish such allocation*: No allocation of damages was determined in connection with the proposed settlement.

3. *The names of the Directors chosen to not run for re-election and the factual basis used to choose those persons*: As described in the parties' joint motion to stay filed February 10, 2022 (the "Motion to Stay") and attached term sheet (ECF Dkt. 273-1), six directors who have been on the Board a minimum of five years will not stand for re-election. The individuals who will not stand for reelection were disclosed in a Form 8-K filed by the Company with the SEC on February 11, 2022, which states that: "the Company anticipates that the following current members of the Board will not stand for re-election at the 2022 Annual Meeting: Messers. Michael J. Anderson, Donald T. Misheff's, Thomas N. Mitchell, Christopher D. Pappas and Luis A. Reyes, and Ms. Julia L. Johnson." All other details regarding the parties' negotiations on this and other aspects of the settlement are protected by meditation and settlement privileges, and are further protected under the confidentiality agreement entered into by the parties in connection with the mediation.

4. *The extent of information withheld from discovery based upon claims of privilege and whether full privilege logs have been provided*: The Company, in its role as nominal defendant, has completed production of privilege logs.

5. *The precise nature and extent of the governance reforms, including who will oversee and monitor the implementation of the reforms*: The governance reforms agreed upon and the method in which they will be monitored are described in the term sheet attached to the Motion to Stay filed with this Court (ECF Dkt. 273-1).

6. *Whether prior to the mediation, Plaintiffs were able to identify any individuals that gave and/or received bribes and/or the payments detailed in the Deferred Prosecution Agreement*: N/A

7. *Whether the parties' agreement includes any provisions to "claw back" profits from alleged wrongdoers identified through discovery, and if not, why not*: As specified in the term sheet attached to the Motion to Stay (ECF Dkt. 273-1), the proposed settlement does not release any claims by the Company to recoup compensation from Defendants Jones, Chack and Dowling.

8. *Whether the forensic examination of Defendant Charles Jones' personal electronic devices has been completed, and if so, what it revealed*: N/A

9. *The extent and details of any conclusions reached by the Special Litigation Committee pursuant to its independent review of the facts surrounding this litigation*: The details of the SLC's review are protected by the attorney-client privilege. All other details

regarding the settlement, its negotiation, and the SLC's participation therein are protected by meditation and settlement privileges, and are further protected under the confidentiality agreement entered into by the parties in connection with the mediation.

10. *The legal basis for seeking approval of the proposed settlement in a later-filed action rather than this first-filed action*: The SLC agreed that the motion for approval of the proposed settlement will be submitted in the Southern District of Ohio action because Plaintiffs' counsel were previously appointed lead counsel in that action.

11. *Any and all contacts with the Southern District, formal or informal, in which the parties discussed their chosen methodology for seeking settlement approval*: None.

Dated: February 22, 2022

Respectfully Submitted

/s/ Susan Gittes

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Attorneys for the Special Litigation Committee of the Board of Directors of Nominal Defendant FirstEnergy Corp.

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2022, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing, which will notify all counsel of record.

/s/ Susan Gittes
Susan Gittes *Admitted Pro Hac Vice*

Attorney for the Special Litigation Committee of the Board of Directors of Nominal Defendant FirstEnergy Corp

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JENNIFER L. MILLER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
MICHAEL J. ANDERSON, *et al.*,	)	Judge John R. Adams
	)	
Defendants,	)	Case No. 5:20-cv-01743-JRA
	)	
and	)	
	)	
FIRSTENERGY CORP.,	)	
	)	
Nominal Defendant.	)	

DEFENDANTS' RESPONSE TO ORDER (DOC. #274)

In response to the Court's order (Doc. #274), Defendants respectfully submit the following information, subject to and without waiving the privilege for statements made by any party in furtherance of settlement. *See Goodyear Tire & Rubber Co. v. Chiles Power Supply, Inc.*, 332 F.3d 976, 980, 983 (6th Cir. 2003) (holding that "any communications made in furtherance of settlement are privileged" and noting that "[t]his Court has always recognized the need for, and the constitutionality of, secrecy in settlement proceedings").

1. The total amount of the available insurance funds at the time settlement was reached

Defendants respectfully refer to the information supplied by the SLC in its submission.

2. The allocation of damages amongst the Defendants and the factual basis used to establish such allocation

There is no such allocation, *see* Doc. #166-1 ("Term Sheet"), ¶ 16.

3. The names of the Directors chosen to not run for re-election and the factual basis used to choose those persons

As set forth in Exhibit A to the Term Sheet, "six directors who have been on the Board a minimum of five years will not stand for re-election." (Doc. #166-1, Ex. A, ¶ 1.)

FirstEnergy disclosed in a Form 8-K filed with the SEC that "the Company anticipates that the following current members of the Board will not stand for re-election at the 2022 Annual Meeting: Messrs. Michael J. Anderson, Donald T. Misheff, Thomas N. Mitchell, Christopher D. Pappas and Luis A. Reyes, and Ms. Julia L. Johnson."

4. The extent of information withheld from discovery based upon claims of privilege and whether full privilege logs have been provided

Counsel for each of the Defendants states, on behalf of their respective client(s), that each Defendant complied with the privilege log supplement to the ESI protocol, as entered by the Court (Doc. #232), and, consistent with that privilege log supplement and to the extent privilege logs were required, did serve privilege logs.

5. The precise nature and extent of the governance reforms, including who will oversee and monitor the implementation of the reforms

Defendants respectfully refer to paragraph 3 of the Term Sheet, which provides that the Board, the members of the SLC, and the Company will implement the corporate governance reforms set forth in Exhibit A to the Term Sheet not later than ten business days after final approval of the proposed settlement, except where Exhibit A specifies a different time period (such as with the item set forth in paragraph 2 of Exhibit A). (Doc. #166-1, ¶ 3; Doc. #166-1, Ex. A, ¶ 2.)

Defendants further respectfully refer to Exhibit A to the Term Sheet, which sets forth the six reforms that are part of the proposed settlement.

6. Whether prior to the mediation, Plaintiffs were able to identify any individuals that gave and/or received bribes and/or the payments detailed in the Deferred Prosecution Agreement

N/A; this question is not directed to Defendants.

7. Whether the parties' agreement includes any provisions to "claw back" profits from alleged wrongdoers identified through discovery, and if not, why not

As set forth in paragraph 9 of the Term Sheet, the release of the Plaintiffs, the Company, the Special Litigation Committee, and the Company's stockholders does not include "any claims of the Company to recoup compensation from Charles Jones, Michael Dowling, and Dennis Chack (which for avoidance of doubt Jones, Dowling, and Chack deny have any basis and reserve their right to oppose and defend against on any and all grounds available and to assert any related claims including, but not limited to, claims for compensation, pensions, deferred compensation, incentive compensation, equity and any and all benefits under any plan, program, arrangement or

other vehicle, in which any of them participated, accrued benefits, or any other claim for benefits or compensation that is otherwise related to their employment with the Company, and further including any claims for wrongful termination and/or any and all claims relating thereto)." (Doc. #166-1, ¶ 9.)

Counsel for defendants Charles E. Jones, Michael J. Dowling, and Dennis Chack further state that FirstEnergy Corp. has in existence an Executive Compensation Recoupment Policy (originally adopted in Jan. 2014 and amended and restated in Sept. 2019) that sets forth the policies and procedures for the recoupment of compensation from executive officers of the company. Messrs. Jones, Dowling, and Chack were executive officers of FirstEnergy at the time of their termination in October 2020. The Executive Compensation Recoupment Policy requires that any dispute, controversy or claim arising out of or relating to the policy shall be settled by binding arbitration.

8. Whether the forensic examination of Defendant Charles Jones' personal electronic devices has been completed, and if so, what it revealed

Counsel for defendant Charles E. Jones responds as follows:

> Mr. Jones respectfully refers to the information provided to the Court on January 10, 2022 (Doc. #235, 15:12-20:2), January 28, 2022 (Doc #255, 14:25-19:16), and February 7, 2022 (Doc. #270 at 2) concerning data loss issues stemming from an auto-deletion function that, unbeknownst to Mr. Jones, affected his post-termination text messages prior to approximately November 10, 2021.
>
> Mr. Jones's vendor, Interhack, has since completed its forensic extraction of data from twelve of Mr. Jones's personal devices, and it has searched these devices for text message data and backups. Of the thousands of identified text interactions, this review identified only the four post-termination text message interactions between Mr. Jones and two people on Plaintiffs' text message protocol that were previously reported to the Court. As previously reported, none of these text interactions appear to have been relevant to the issues in this litigation. This is consistent with the documents produced by other Defendants who were asked to produce text messages and other communications with Mr. Jones. These productions do not appear to contain any additional post-termination text messages between Mr. Jones and any other party.

The other Defendants joining in this response lack knowledge or information responsive to this point.

9. The extent and details of any conclusions reached by the Special Litigation Committee pursuant to its independent review of the facts surrounding this litigation

N/A; this question is not directed to Defendants.

10. The legal basis for seeking approval of the proposed settlement in a later-filed action rather than this first-filed action

Defendants respectfully refer to plaintiffs' submission.

11. Any and all contacts with the Southern District, formal or informal, in which the parties discussed their chosen methodology for seeking settlement approval

Defendants have had no such contacts.

[*signatures begin on next page*]

Dated: February 22, 2022

Respectfully submitted,

/s/ Daniel R. Warren (with permission)

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically on February 22, 2022. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Marjorie P. Duffy
Marjorie P. Duffy (0083452)

One of the Attorneys for Defendants Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Steven E. Strah, and K. Jon Taylor

EXHIBIT 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE THE WENDY'S COMPANY SHAREHOLDER DERIVATIVE ACTION	:	Case No. 1:16-cv-1153
	:	
	:	Judge Timothy S. Black

ORDER GRANTING PLAINTIFF JAMES GRAHAM'S MOTION FOR PRELIMINARY APPROVAL OF DERIVATIVE LITIGATION SETTLEMENT (Doc. 51)

This civil action is before the Court on Plaintiff James Graham's Motion for Preliminary Approval of Derivative Litigation Settlement (Doc. 51), as well as the parties' responsive memoranda (Docs. 55, 60, 61).

I. BACKGROUND

A. Underlying Case

In 2016, The Wendy's Company ("Wendy's" or the "Company") disclosed that certain of its franchises had fallen victim to cyber-attacks. (Doc. 50 at ¶¶ 3–4). After Wendy's disclosure, two shareholders—Plaintiffs James Graham ("Graham") and Thomas Caracci ("Caracci")—filed derivative actions on behalf of the Company.

Graham filed suit in late 2016 (*Graham* Action, Doc. 1); Caracci filed suit in early 2017 (*Caracci* Action, Doc. 3).[1] In their complaints, Graham and Caracci alleged that certain of Wendy's officers/directors ("Defendants") had breached their fiduciary duties

[1] The "*Graham* Action" refers to *Graham v. Peltz, et al.*, No. 1:16-cv-1153 (S.D. Ohio). The "*Caracci* Action" refers to *Caracci v. Brolick, et al.*, No. 1:17-cv-192 (S.D. Ohio). After their filing, the Court consolidated both actions under *In re The Wendy's Company Shareholder Derivative Action*, No. 1:16-cv-1153 (S.D. Ohio) (the "Consolidated Action"). All docket citations are to the Consolidated Action unless otherwise noted.

to the Company by failing to oversee the Company's cybersecurity processes. (*See id.*; Doc. 1).

While similar in many respects, Graham's and Caracci's complaints differed in one notable way (for the purposes of this Order): Caracci's complaint cited to documents containing Wendy's internal discussions about cyber risks (the "Section 220 Documents"), while Graham's complaint did not.[2] (*See Caracci* Action, Doc. 3; Doc. 1).

In March 2017, Defendants filed a motion to dismiss Graham's complaint. (Doc. 9). Thereafter, Defendants readied a motion to dismiss Caracci's complaint. (*See* Doc. 61 at 10). Defendants claimed that neither Graham nor Caracci had adequately alleged demand futility/proper claims. (*See id.* at 9–10; *see also* Doc. 61-1 at ¶ 16).

B. Leadership Dispute

In May 2017, Graham and Caracci (or, more precisely, their counsel) engaged in a protracted leadership dispute. Both wanted to consolidate their actions; but neither could agree on a leadership structure. (Doc. 55-2 at ¶¶ 3, 9). Graham's counsel wanted to share the case equally; Caracci's counsel wanted to take the lead role. (*Id.*)

Graham's counsel claimed that it was entitled to an equal role, because it had the experience/relationship necessary to "deliver a settlement." (*Id.* at ¶ 3). Graham's counsel noted that it had just resolved a large cybersecurity action (the *Home Depot* Action),[3] opposite the same counsel retained by Defendants. (*Id.*; Doc. 60-1 at ¶ 19).

[2] The Section 220 Documents are named after 8 Del. C. § 220, authorizing their request/receipt.

[3] The "*Home Depot* Action" refers to *In re The Home Depot, Inc. S'holder Derivative Litig.*, No. 1:15-cv-2999 (N.D. Ga.).

Caracci's counsel claimed that it was entitled to the lead role, because Caracci's complaint was superior to Graham's. (Doc. 55-2 at ¶ 4). Caracci's counsel noted that Caracci's complaint (unlike Graham's) contained citations to the Section 220 Documents. (*Id.* (asserting that Caracci's complaint had "a stronger chance of surviving" dismissal)).

Discussions between counsel failed to result in a compromise. (Doc. 60-1 at ¶ 20). Accordingly, in May 2017, the parties filed competing motions to consolidate the cases/appoint lead counsel. (Docs. 17, 18). The Court consolidated the cases forthwith but took the lead counsel issue under advisement. (*See Caracci* Action, Not. Order, June 12, 2017).

C. Settlement Discussions

1. *The 2017 Mediation*

In May/June 2017, Graham, Caracci, and Defendants agreed to participate in a mediation. (Doc. 60-1 at ¶ 26). All parties agreed that the mediation should occur in a two-part format, similar to that employed in the *Home Depot* Action: (1) an information session; followed by (2) a negotiation session. (*Id.*; Doc. 61-1 at ¶ 6). The parties selected Jed Melnick ("Melnick") as mediator. (Doc. 60-1 at ¶ 26). And the parties invited Michael Coahn ("Coahn"), another Wendy's shareholder, to participate. (*Id.*)

Prior to the information session, Defendants informed the other parties that they "expected to reach a comprehensive settlement." (Doc. 61-1 at ¶ 16). That is, Defendants informed the other parties that "any settlement agreement must include an agreement both as to governance reforms and as to [attorney] fees." (*Id.*) Moreover, Defendants stated that, given the posture of the instant case, they "should work towards a

settlement in keeping with the settlement reached in [t]he *Home Depot* [Action]." (*Id.* (italics removed)). Caracci voiced no objections. (*Id.* at ¶ 17).

The information session took place in July 2017. (Doc. 60-1 at ¶ 26). As part of the information session, Defendants provided Graham, Caracci, and Coahn with certain confidential documents—including the Section 220 Documents—subject to certain confidentiality restrictions.[4] (*Id.* at ¶ 27; *see also* Doc. 55-2 at ¶ 11).

The negotiation session never followed. (Doc. 55-2 at ¶ 16). Prior to its occurrence, Defendants received Caracci's attorney fee disclosure (pursuant to Local Rules). (Doc. 61-1 at Ex. F). Caracci's disclosure estimated that, as of July 2017, his counsel had already incurred over $525,000 in attorney fees.[5] (*Id.* at ¶ 23, Ex. F).

Upon receipt of Caracci's disclosure, Defendants reiterated their position "that—while [Defendants] intended to first negotiate and reach an agreement in principal as to potential governance reforms before discussing attorney[] fees—Defendants and their insurance carriers would not finalize a settlement without an agreement as to [attorney] fee amount." (Doc. 61-1 at ¶ 26). Defendants explained that their "settlement position was informed in part by the settlement reached in [t]he *Home Depot* [Action], including with respect to the amount of attorney[] fees." (*Id.* (italics removed)). Thus, Defendants

[4] The parties signed two confidentiality agreements; both prevented them from using the confidential documents outside the context of the mediation. (Doc. 61-1 at Exs. A–B).

[5] To be precise, Caracci's disclosure included both attorney fees and costs. (Doc. 61-1 at Ex. F). In this Order, for simplicity, the Court uses "attorney fees" as a catchall term that includes costs.

informed Caracci that they were "troubled by the [attorney] fees . . . amassing in the matter." (*Id.*; *accord* Doc. 55-2 at ¶ 12).

Following these disclosures, Caracci's counsel expressed, for the first time, misgivings about proceeding with Defendants' "comprehensive settlement."[6] (Doc. 55-2 at ¶ 13). Caracci's counsel stated that Caracci would only proceed with mediation if the parties could negotiate an "appropriate" attorney fee award after the substantive terms of the settlement agreement were finalized. (*Id.*) In that regard, Caracci's counsel subsequently offered to cap attorney fees at <u>$3 million</u>. (Doc. 61-1 at ¶ 30). After this exchange, negotiations stalled. (*See* Doc. 61-1 at ¶¶ 32–33).

2. *The Settlement Demand*

In August 2017, Coahn's counsel reached out to Graham's counsel and Caracci's counsel to see whether either would be interested in working together as equals "to explore the potential for, and possibly reach, a settlement of the Company's derivative claims." (Doc. 40-2 at ¶¶ 6–7). Graham's counsel agreed; Caracci's counsel did not. (*Id.*)

Thereafter, in December 2017, Graham and Coahn sent a settlement demand to Defendants (without Caracci). (Doc. 61-1 at ¶ 35). Defendants were receptive to the settlement demand. (*Id.*) As a result, Graham, Coahn, and Defendants scheduled a second mediation. (*Id.* at ¶¶ 35–36).

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[6] Caracci's counsel explained that Defendants' "comprehensive settlement" would place counsel's interests adverse to those of Wendy's shareholders—Caracci's counsel might be tempted to walk away from a settlement that properly benefitted Wendy's shareholders, if the settlement did not adequately provide for attorney fees. (Doc. 55-2 at ¶ 13).

In January 2018, Defendants informed Caracci that they were engaged in negotiations with Graham and Coahn. (*Id.* at ¶ 35). Caracci did not seek to participate in the negotiations. (*See id.*; *see also* Doc. 32). Instead, Caracci filed a motion for a status conference. (Doc. 32).

In his motion, Caracci notified the Court that Graham, Coahn, and Defendants were working together to resolve this case without him. (Doc. 32-1 at 4). Additionally, in his motion, Caracci asked the Court to provide him with a status update on the pending motions to appoint. (*Id.*)

Upon its receipt of Caracci's motion, the Court did not immediately schedule a status conference. (Not. Order, Feb. 20, 2018). Instead, the Court first allowed Graham, Coahn, and Defendants to proceed with negotiations. (*Id.* (setting the status conference for late February)).

3. *The 2018 Mediation*

In February 2018, Graham, Coahn, and Defendants (the "Settling Parties") mediated their case. (Doc. 61-1 at ¶ 38). A new mediator, Ralph Levy ("Levy"), oversaw the negotiations. (*Id.*) Levy was the same mediator that Graham's counsel and Defendants' counsel had used when they had resolved the *Home Depot* Action. (Doc. 60-2 at ¶ 6).

The mediation lasted over eight hours. (*Id.* at ¶ 10). During the course of the mediation, the Settling Parties negotiated Wendy's corporate governance reforms. (*Id.*) At the conclusion of the mediation, the Settling Parties reached a material agreement as to the same, subject to the approval of Wendy's board. (*Id.*)

Among other things, the Settling Parties agreed that:

- (1) Wendy's board of directors would maintain a technology committee, which will oversee Wendy's cybersecurity-related matters.
- (2) Wendy's managers would report to the technology committee, on a regular basis, regarding the Company's cybersecurity programs/risks.
- (3) Wendy's would maintain (and/or continue to maintain) various cybersecurity systems, teams, and measures, to protect against future cyberattacks.

(*See* Doc. 51-1 at 17–20, 42–44).

After the Settling Parties reached a material agreement as to the corporate governance reforms, Graham/Coahn made an initial attorney fee demand. (Doc. 60-2 at ¶ 10). Defendants did not respond to Graham/Coahn's initial attorney fee demand that day. (*Id.*)

Instead, the Settling Parties negotiated attorney fees over the next six weeks—through Levy. (*Id.* at ¶ 11). Negotiations concluded when, in March 2018, Levy made a mediator's proposal (of $950,000 to Graham/Coahn's counsel, and up to $200,000 to other counsel) which all the Settling Parties accepted. (*Id.* at ¶ 12; Doc. 51-1 at 22–23).

D. Leadership Order

In April 2018, the Settling Parties informed the Court that they had reached an agreement to resolve the case. (Doc. 38 at 1). Thereafter, in December 2018, the Court issued a decision on the parties' motions to appoint (the "Leadership Order"). (*See* Doc. 49; *see also* Min. Entry, Dec. 12, 2018).

In the Leadership Order, the Court appointed Graham's counsel as lead counsel. (Doc. 49). The Court noted that, while both Graham's counsel and Caracci's counsel

were highly qualified, the circumstances narrowly favored Graham's counsel, for three reasons. (*Id.* at 5–6).

First, Graham's counsel had made an effort to cooperate with the other parties' counsel (*i.e.*, both Caracci's counsel and Coahn's counsel). (*Id.* at 5). Second, Graham's counsel had acquired "relevant and helpful" experience by litigating the *Home Depot* Action. (*Id.* at 5–6). And third, Graham's counsel had retained an impressive cyber-security expert. (*Id.* at 6).

Moreover, the Court rejected Caracci's argument that his counsel should be appointed as lead counsel simply because his complaint referenced the Section 220 Documents (while Graham's complaint did not). (*Id.* at 7 (refusing to put "great weight in any differences between" the parties' complaints)).

At the conclusion of the Leadership Order, the Court granted Graham leave to file a consolidated complaint on behalf of all Wendy's shareholders. (*Id.* at 9). And the Court established a procedure by which Graham could file a motion for preliminary approval and Caracci could file an opposition to the same. (*Id.* at 10).

E. Instant Motion

On February 14, 2019, Graham filed a motion for preliminary approval. (Doc. 51). In his motion, Graham asks the Court to approve—from a preliminary standpoint—the settlement agreement drafted by the Settling Parties after the conclusion of the 2018 mediation (the "Settlement Agreement"). (*Id.*; *see also* Doc. 55-1).

On March 15, 2019, Caracci filed an opposition to the motion for preliminary approval. (Doc. 55). In his opposition, Caracci claims that the Court should deny the

motion for preliminary approval, because the Settlement Agreement is the product of collusion. (*Id.* at 2).

On April 12, 2019, both Graham and Defendants filed replies in support of the motion for preliminary approval. (Docs. 60, 61). In their replies, Graham and Defendants vigorously dispute Caracci's claim that the Settlement Agreement is the product of collusion. (Doc. 60 at 1; Doc. 61 at 7).

Graham, Caracci, and Defendants have submitted sworn declarations in support of their competing positions, detailing the manner in which the negotiations at-issue here played out. (Docs. 55-1, 55-2, 60-1, 61-1). Notably, Levy has also submitted a sworn declaration, detailing the same. (Doc. 60-2).

In his sworn declaration, Levy avers as follows:

> From what I witnessed and in my opinion as a mediator with approximately two years of such experience in private practice and approximately seven years of mediation experience at JAMS, the parties at all times engaged at arms-length. Throughout the negotiations on the terms of the underlying settlement and on the attorney[] fees, I did not witness or perceive anything that would lead me to believe that the parties, their counsel, or Wendy's D&O insurer were engaging in collusive or inappropriate conduct. I declare under penalty of perjury that the foregoing is true and correct.

(*Id.* at ¶ 13).

II. STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 23.1, the settlement of a derivative action requires court approval. Fed. R. Civ. P. 23.1(c); *see generally* 7C Mary Kane, *Fed. Prac. & Proc. Civ.*, at § 1839 (3d ed. 2019).

"In evaluating derivative action settlements, courts have borrowed from the law governing class actions under Rule 23." *City of Plantation Police Officers' Employees' Ret. Sys. v. Jeffries*, No. 2:14-CV-1380, 2014 WL 7404000, at *5 (S.D. Ohio Dec. 30, 2014); *accord In re: Regions Morgan Keegan Sec.*, No. 2:08-CV-2260, 2015 WL 11145134, at *2 (W.D. Tenn. Nov. 30, 2015) ("The procedure for approving settlements in derivative actions is the same as class actions.").

Thus, obtaining court approval is a three-step process: first "the court must preliminarily approve the proposed settlement"; second "members of the class must be given notice of the proposed settlement"; and third, "after holding a hearing, the court must give its final approval of the settlement." *Robinson v. Ford Motor Co.*, No. 1:04-CV-844, 2005 WL 5253339, at *3 (S.D. Ohio June 15, 2005) (citing *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983)).

At the preliminary approval stage—the stage at issue here—the Court must make a preliminary assessment of whether the proposed settlement is fair, reasonable, and adequate. *Regions*, 2015 WL 11145134, at *3. In making this preliminary assessment, the court should not act as a "rubber stamp"; but neither should the court substitute its opinion for the parties' opinion. *City of Plantation Police Officers' Employees' Ret. Sys. v. Jeffries*, No. 2:14-CV-1380, 2014 WL 12780342, at *3 (S.D. Ohio Sept. 26, 2014).

Instead, the court should consider whether the proposed settlement is sufficiently fair, from both a substantive standpoint and a procedural standpoint, to warrant the issuance of notice. *See Milburn v. PetSmart, Inc.*, No. 1:18-CV-535, 2019 WL 1746056, at *8 (E.D. Cal. Apr. 18, 2019); *Ortega v. Uber Techs. Inc.*, No. 1:15-CV-7387, 2018 WL

4190799, at *4 (E.D.N.Y. May 4, 2018); *see also* 4 William Rubenstein, *Newberg on Class Actions*, at § 13:13 (5th ed. 2019).

As is often stated by courts considering motions for preliminary approval:

> "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with[in] the range of possible approval, then the [c]ourt should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement."

Jeffries, 2014 WL 12780342, at *3 (quoting *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1015–16 (S.D. Ohio 2001)).

Ultimately, whether to grant a motion for preliminary approval is within the sound discretion of the trial court. *Bowling v. Pfizer*, 144 F. Supp. 3d 945, 952 (S.D. Ohio 2015); *accord McDannold v. Star Bank, N.A.*, 261 F.3d 478, 488 (6th Cir. 2001).

III. ANALYSIS

In this case, the Court concludes that the Settlement Agreement meets the standard for preliminary approval. This is because the Settlement Agreement is sufficiently fair, from both (A) a substantive standpoint and (B) a procedural standpoint, to warrant the issuance of notice. Accordingly, the Court concludes that (C) notice to Wendy's shareholders is proper as set forth *infra*.

A. Substantive Fairness

As an initial matter, the Settlement Agreement is sufficiently fair, from a substantive standpoint, to warrant the issuance of notice.

At the preliminary approval stage, the Court is not required to undertake a full fairness review. *Regions*, 2015 WL 11145134, at *3. The Court is merely required to determine whether the proposed settlement falls within the "range of what a fair negotiation . . . would produce." *Jeffries*, 2014 WL 12780342, at *3.

In making this determination, the Court should consider whether the proposed settlement contains any obvious defects, and whether the proposed settlement contains any preferential treatment. *See id.*; *accord* Fed. R. Civ. P. 23(e). However, the Court should not "substitut[e] its own opinion" for that of the parties. *Jeffries*, 2014 WL 12780342, at *3.

Moreover, "a preliminary fairness assessment 'is not to be turned into a trial or rehearsal for trial on the merits,' for 'it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.'" *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350 (N.D. Ohio 2001) (quoting *Officers for Justice v. Civil Serv. Comm'n of the City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)).

Here, the Settlement Agreement provides Wendy's shareholders with some significant benefits. It requires the Company to implement a series of cybersecurity reforms, designed to target the very issues giving rise to this derivative litigation. (*See* Doc. 51-1 at 17–20, 42–44 (requiring Wendy's to, *inter alia*: maintain a technology committee which will oversee cybersecurity matters; report to the technology committee on all cybersecurity-related programs/risks; and maintain (and/or continue to maintain) various other cybersecurity systems, teams, and measures)). Moreover here, the attorney

fees proposed do not exceed the bounds of reason. To the contrary, they resemble those approved in the *Home Depot* Action (an analogous case). (Doc. 55-2 at Ex. H).

The Court does not see any obvious defects/preferential treatment in the Settlement Agreement's terms. And, notably, Caracci does not identify any in his opposition. (*See* Doc. 55). Caracci merely suggests, in passing, that the Settlement Agreement's terms could be better. (*Id.* at 18 (claiming that the Settlement Agreement "requires almost no improvements to Wendy's existing practices"). However, it is not the Court's job, at this juncture, to engage in such speculation.[7] *Officers*, 688 F.2d at 625 (stating that a "proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators"). Caracci is free to raise any substance-related concerns he has at the settlement hearing.

In light of the foregoing, the Settlement Agreement is sufficiently fair, from a substantive standpoint, to warrant the issuance of notice to Wendy's shareholders.

[7] This is especially true, as it appears that plaintiffs in data breach derivative litigation matters face an uphill battle. *See, e.g.*, *In re The Home Depot, Inc. S'holder Derivative Litig.*, 223 F. Supp. 3d 1317 (N.D. Ga. 2016) (dismissing a data breach derivative litigation matter); *Palkon v. Holmes*, No. 2:14-CV-1234, 2014 WL 5341880 (D.N.J. Oct. 20, 2014) (dismissing a data breach derivative litigation matter); *accord* 1 Gerald Peake, *Data Sec. & Privacy Law*, at § 8:55 (2019) (stating that "data breach derivative litigation matters are challenging for shareholders to pursue"); Neil Popović, *Cloud Computing Legal Deskbook*, at § 20:14 (2019) (noting that "early efforts to pursue [data breach] derivative [litigation] claims have foundered"). It is hard to say how, under such circumstances, such plaintiffs should weigh the risks of continued litigation against the benefits of existing concessions. *Jeffries*, 2014 WL 12780342, at *3 (stating that the court should not substitute its opinion for the parties' in the context of a motion for preliminary approval).

B. Procedural Fairness

1. *Preliminary Analysis*

Moreover, the Settlement Agreement is sufficiently fair, from a procedural standpoint, to warrant the issuance of notice.

At the preliminary approval stage, the court must evaluate whether the proposed settlement "'appears to be the product of serious, informed, non-collusive negotiation.'" *In re Polyurethane Foam Antitrust Litig.*, No. 1:10-MD-2196, 2012 WL 12868246, at *4 (N.D. Ohio Jan. 23, 2012) (quoting *In re Nasdaq Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997)).

Absent evidence to the contrary, courts presume the absence of fraud or collusion. *See id.*; *Merkner v. AK Steel Corp.*, No. 1:09-CV-423, 2011 WL 13202401, at *2 (S.D. Ohio Jan. 10, 2011); *see also In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1016 (S.D. Ohio 2001) ("[C]ourts respect the integrity of counsel and presume the absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is offered." (citation omitted)).

In fact, "[t]he participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm's length and without collusion between the parties." *Bert v. AK Steel Corp.*, No. 1:02-CV-467, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (emphasis added); *see also Arledge v. Domino's Pizza, Inc.*, No. 3:16-CV-386, 2018 WL 5023950, at *2 (S.D. Ohio Oct. 17, 2018) (same); *Swigart v. Fifth Third Bank*, No. 1:11-CV-88, 2014 WL 3447947, at *2 (S.D. Ohio July 11, 2014) (same).

Here, according to the declarations submitted, the Settling Parties engaged in hard-fought negotiations through highly experienced counsel. (*See generally* Docs. 60-1, 60-2, 61-1). These negotiations occurred over the course of several weeks (between February 2018 and March 2018). (Doc. 60-2 at ¶¶ 10–13). And these negotiations occurred after the parties had engaged in an information session. (*See* Doc. 60-1 at ¶ 27 (confirming that Defendants provided Graham, Caracci, and Coahn with confidential documents regarding Wendy's cybersecurity/the data breach—including the Section 220 Documents—as part of an information session)).

Moreover here, according to the declarations submitted, the Settling Parties conducted all negotiations through an independent mediator, who has sworn that the Settling Parties engaged at arms-length at all times. (Doc. 60-2 at ¶ 13 (confirming that Levy "did not witness or perceive anything that would lead [him] to believe that the [Settling] [P]arties, their counsel, or Wendy's D&O insurer were engaging in collusive or inappropriate conduct")). Under such circumstances, a strong presumption arises that the Settlement Agreement is the product of serious, informed, and non-collusive negotiations. *Bert*, 2008 WL 4693747, at *2; *Telectronics*, 137 F. Supp. 2d at 1016.

In light of the foregoing, the Settlement Agreement is sufficiently fair, from a procedural standpoint, to warrant the issuance of notice to Wendy's shareholders.

2. *Caracci's Counterarguments*

Notwithstanding the foregoing, Caracci claims that the Settling Parties have engaged in "collusion." (*See* Doc. 55 at 8–16). However, as set forth *infra*, the Court does not find any of Caracci's arguments in support of this claim persuasive.

a. Reverse auction

First, Caracci argues that the Settling Parties colluded, because they engaged in a "reverse auction." (Doc. 55 at 9–10). As Caracci correctly notes, a reverse auction is the practice whereby "'the defendant in a series of class actions picks the most ineffectual class lawyers to negotiate a settlement with in the hope that the district court will approve a weak settlement that will preclude other claims against the defendant.'" (*Id.* at 9 (quoting *Reynolds v. Beneficial Nat. Bank*, 288 F.3d 277, 282 (7th Cir. 2002)); *see also Negrete v. Allianz Life Ins. Co. of N. Am.*, 523 F.3d 1091, 1099 (9th Cir. 2008) (discussing the reverse auction concept).

Courts are, rightfully, wary of reverse auctions, because they allow "ineffectual lawyers" to "sell out" their clients "for generous attorney[] fees." *Reynolds*, 288 F.3d at 282. However, an objector cannot simply say the words "reverse auction" and expect to invalidate a proposed settlement. *Negrete*, 523 F.3d at 1099. Instead, an objector must point to some evidence of "underhanded activity." *Id.* Otherwise, the "reverse auction argument would lead to the conclusion that no settlement could ever occur in the circumstances of parallel or multiple class actions . . . ." *Id.* at 1100 (citation omitted).

Here, Caracci's argument fails for at least two reasons.

As an initial matter, this case does not bear the hallmarks of a normal reverse auction. Defendants did not negotiate with Graham/Coahn because Graham/Coahn were willing to accept weak settlement terms in exchange for generous attorney fees. To the contrary, Defendants negotiated with Graham/Coahn because Caracci's counsel was only willing to negotiate with Defendants under conditions that allowed for generous attorney

fees. (Doc. 55-2 at ¶¶ 12, 16; Doc. 61-1 at ¶¶ 30–32). Indeed, the parties' 2017 mediation stalled because Caracci's counsel refused to engage in negotiations unless the negotiations ensured Caracci's counsel the ability to seek up to $3 million in attorney fees. (Doc. 61-1 at ¶¶ 30–32). In effect, Caracci asks the Court to hold that a reverse auction exists simply because the Settling Parties resolved this case without either Caracci or his counsel's exorbitant attorney fee demands. This the Court will not do.

Moreover, Caracci has not pointed to any evidence of underhanded activity. To be sure, Caracci has informed the Court that Graham's counsel and Defendants' counsel settled this case with the same mediator they used in the *Home Depot* Action. (Doc. 55 at 11, 15). And Caracci has informed the Court that the terms of the Settlement Agreement in this case resemble those of the settlement agreement in the *Home Depot* Action. (*Id.* at 10). However, neither of these points establishes collusion. The Court remembers the practice of law. Accordingly, the Court remembers that attorneys occasionally face off against each other in multiple different cases; that attorneys occasionally employ the same mediators in multiple different cases; and that attorneys occasionally use previous litigation results as precedent in present settlement discussions.

For both these reasons, Caracci's first argument is not availing.

b. Ability to litigate

Second, Caracci argues that the Settling Parties colluded, because Graham could not have litigated this case against Defendants. (Doc. 55 at 12–14). Interestingly, Caracci does not argue that Graham's complaint faced any procedural-/preclusion-related hurdles. (*See id.*). Instead, Caracci argues that, absent any reference to the Section 220

Documents, Graham's complaint "was woefully deficient" and "clearly subject to dismissal." (*Id.* at 12–13 (claiming that Graham had "zero leverage" because, absent any reference to the Section 220 Documents, Graham's complaint could not have survived Defendants' motion to dismiss)).

Of course, courts should be wary of settlement agreements reached by parties who cannot litigate—and thus have no bargaining power. *See, e.g.*, *Prezant v. De Angelis*, 636 A.2d 915, 919 (Del. 1994) (indicating that a settlement agreement, reached by a party who "could not realistically have hoped to try [a] case but only to settle it with the further hope of receiving a fee award," was worthy of suspicion).

However, on the Court's review, this case does not present such a situation (*i.e.*, one in which a party cannot litigate).

As an initial matter, Caracci's summary accusation—that Graham's complaint "was woefully deficient" because it did not reference the Section 220 Documents—is not very persuasive. The Court acknowledges that, in some instances, a complaint that references Section 220 documents is superior to one that does not. (*See* Doc. 49 at 7). However, Caracci has not cited (and the Court has not found) any cases holding that a complaint must reference Section 220 Documents in order to maintain a derivative action. To the contrary, all the cases reviewed by the Court refer to Section 220 as one of the tools a plaintiff can/should use before commencing a derivative action. *See, e.g.*, *Rales v. Blasband*, 634 A.2d 927, 934 n.10 (Del. 1993); *cf. Iron Workers Mid-S. Pension Fund on Behalf of Caterpillar Inc. v. Oberhelman*, No. 1:13-CV-1104, 2014 WL 5801508, at *3 (C.D. Ill. Nov. 7, 2014).

Moreover, Graham may well have survived Defendants' motion to dismiss. While Caracci claims that Graham's complaint was "clearly subject to dismissal," the Court did not issue a decision on Defendants' motion to dismiss. Thus, there is no assurance that the Court would have dismissed Graham's complaint—with <u>prejudice</u> or otherwise. Of course, the words "with prejudice" are of particular import. This is because, even if Defendants had prevailed on their motion to dismiss, the Court could have granted Graham leave to amend, and (thus) permitted Graham to proceed in litigation. *See, e.g.*, *Ash v. McCall*, No. 17132, 2000 WL 1370341, at *16 (Del. Ch. Sept. 15, 2000) (dismissing certain claims without prejudice, so that plaintiffs could "replead and allege additional, particularized facts that would support a demand futility determination").[8]

Notably, this case is easily distinguishable from the one cited in Caracci's opposition memorandum: *Prezant*, 636 A.2d at 915. In *Prezant*, a plaintiff filed a class action lawsuit against a corporate defendant in Delaware, notwithstanding the fact that there was a near-identical lawsuit pending against the same defendant in Illinois. *Id.* at 918. Shortly thereafter, the plaintiff settled the Delaware lawsuit, thereby ending the Illinois lawsuit as well. *Id.* On review, the Supreme Court of Delaware indicated that the plaintiff's decision to file then quickly settle the Delaware lawsuit—<u>which was plainly</u>

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[8] Caracci makes much ado about the fact that Graham could not have referenced the Section 220 Documents in any amended complaint because Graham had signed confidentiality agreements stating that he would only use the Section 220 Documents in mediation. (Doc. 55 at 13; Doc. 61-1 at Exs. A–B (containing the confidentiality agreements so stating)). But this argument is not persuasive. As stated, Caracci has not cited (and the Court has not found) any cases holding that a complaint <u>must</u> reference Section 220 Documents in order to maintain a derivative action. And the Court will not speculate (as Caracci asks it to speculate) that Graham could not have produced an amended complaint, that would have survived a motion to dismiss, without the Section 220 Documents.

deficient under Delaware law—raised collusion-related concerns.[9] *Id.* at 919–20. This case simply does not involve either the egregious misconduct or the plain preclusion present in *Prezant*.

For all these reasons, Caracci's second argument is not availing.

c. Negotiation of fees

Third, Caracci argues that the Settling Parties colluded, because the Settling Parties negotiated substantive relief and attorney fees contemporaneously. (Doc. 55 at 14–15). Notably, Caracci does not claim that the Settling Parties actually discussed substantive relief and attorney fees together in the 2018 mediation. (*See id.*). Instead, Caracci claims that, by questioning the amount of attorney fees his counsel incurred, and by referencing the *Home Depot* Action as precedent, in 2017, Defendants "conditioned" further negotiations on an agreement to *Home Depot*-style attorney fees.[10] (*Id.* at 13).

To be sure, courts have noted that ethical problems can arise when parties negotiate substantive relief and attorney fees contemporaneously. *See Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 302 (6th Cir. 2016) (Clay, J., dissenting); *but see Ayers v. Thompson*, 358 F.3d 356, 375 (5th Cir. 2004) (stating, while considering the

[9] As explained in *Prezant*, Delaware courts "normally stay after-filed suits when previously-filed suits stating similar claims are pending in another court." *Prezant*, 636 A.2d at 919 (noting further that, under this rule, the plaintiff "could not realistically have hoped to try [his] case [in Delaware] but only to settle it with the further hope of receiving a fee award").

[10] As Caracci puts it: "Defendants specifically conditioned continued negotiation of the settlement on an agreement on the amount of [attorney] fees. After [their] receipt of [Caracci's attorney fee disclosure] . . . , Defendants indicated, in no uncertain terms, that future negotiations were contingent upon [Caracci's] agreeing to [attorney] fees akin to what was awarded in the *Home Depot* [Action] . . . ." (Doc. 55 at 13).

propriety of an attorney fees provision in a class action settlement agreement, that the United States Supreme Court has "declined to prohibit [the] simultaneous negotiation of liability and fees" (citing *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 453 n.15 (1982))); *Shlensky v. Dorsey*, 574 F.2d 131, 150 (3d Cir. 1978) (allowing the simultaneous negotiation of substantive relief and attorney fees in the context of derivative actions).

However, on the Court's review, "simultaneous negotiations" did not occurr in this case.

As an initial mater, the Settling Parties have filed declarations asserting that they did not engage in simultaneous negotiations. Graham's counsel, Defendants' counsel, and Levy have all sworn, under penalty of perjury, that the Settling Parties negotiated attorney fees after they reached a material agreement as to substantive relief. (Doc. 60-1 at ¶¶ 30–31; Doc. 60-2 at ¶¶ 10–12; Doc. 61-1 at ¶¶ 38–39); *Gascho v. Glob. Fitness Holdings, LLC*, No. 2:11-CV-436, 2014 WL 1350509, at *25 (S.D. Ohio Apr. 4, 2014) ("The risk of collusion is also lessened in this action because the parties negotiated the payment of attorney[] fees and costs after having reached agreement on the relief to the Class and Subclasses."), *report and recommendation adopted*, No. 2:11-CV-436, 2014 WL 3543819 (S.D. Ohio July 16, 2014), *aff'd*, 822 F.3d 269 (6th Cir. 2016).

Moreover, Caracci's argument, that Defendants "conditioned" further settlement negotiations on an agreement to *Home Depot*-style attorney fees, is a little disingenuous. True, Defendants questioned Caracci's attorney fees and referenced the *Home Depot* Action in 2017. (Doc. 61-1 at ¶ 26). However, on the Court's review, Defendants did

not do so to secure a specific amount of attorney fees. Defendants did so because, at the time—*i.e.*, after largely: (1) filing a derivative complaint; (2) litigating a leadership dispute; and (3) prepping for a mediation—Caracci's counsel had already incurred over half a million dollars in attorney fees. (*Id.* at ¶ 23). Defendants' distress about these attorney fees does not evidence collusion; it evidences a desire to engage in good faith negotiations in line with analogous precedent (for *e.g.*, the *Home Depot* Action).[11]

Notably, this case does not present the ethical concern typically associated with simultaneous negotiation cases. In the typical simultaneous negotiation case, the ethical concern is that the plaintiff will trade exorbitant attorney fees (on the part of its counsel) for minimal substantive relief (on the part of its corporation). *See Weissman v. All. Capital Mgmt. Corp.*, 650 F. Supp. 101, 104 (S.D.N.Y. 1986). But here, Caracci does not argue that the Settling Parties traded exorbitant attorney fees (on the part of Graham/Coahn) for minimal substantive relief (on the part of Wendy's); Caracci argues that the Settling Parties refused to negotiate with his counsel because his counsel's

[11] The Court does not take issue with the Settling Parties' reference to the *Home Depot* Action as one of the means by which to gauge the "parameters" of an appropriate settlement. As stated, the Court remembers the practice of law; thus, the Court remembers that counsel occasionally use past litigation results as precedent for present settlement discussions. *Cf. Regions*, 2015 WL 11145134, at *4 (granting a motion for preliminary approval after stating as follows: "The Derivative Settlement Agreement falls within the range of possible approval. This Court approved a comparable settlement for the Closed-End Funds in this litigation."); 3 John L. Warden, *et al.*, *Bus. & Com. Litig. Fed. Cts.*, at § 20:30 (4th ed. 2019) ("As a practical matter, counsel [in derivative actions] frequently discuss the 'parameters' of the [attorney] fee issue before concluding settlement terms, but counsel should be able to establish . . . that the settlement terms were agreed to prior to bargaining over the details of the [attorney] fee issue and reaching any agreement on [attorney] fees.").

attorney fee expectations were too high. The Court will not find evidence of collusion under such circumstances.

For all these reasons, Caracci's third argument is not availing.

d. Exclusion of Caracci

Fourth (and finally), Caracci argues that the Settling Parties colluded, because they "excluded" him from negotiations. (Doc. 55 at 16). According to Caracci, the Settling Parties' decision to proceed with the 2018 mediation, with Graham (the "favored adversary") instead of Caracci, "points to collusion." (*Id.*)

Certainly, courts have held that the exclusion of a significant party from a settlement negotiation can indicate collusion. *See, e.g.*, *In re MAXXAM, Inc.*, 659 A.2d 760, 776–77 (Del. Ch. 1995) ("Although the exclusion of a significant party litigant from the settlement negotiations will not, in and of itself, invalidate a proposed settlement, that approach, because of its inherent potential for abuse, will cause the settlement to be carefully scrutinized.").

But here, there is one big problem with Caracci's argument: the Settling Parties did not exclude him.

The Settling Parties repeatedly asked Caracci to proceed in a cooperative fashion. (*See* Doc. 49 at 5). For example, in March 2017, Graham's counsel asked Caracci's counsel to work together collectively to resolve this case (Doc. 60-1 at ¶¶ 17–18); and, in August 2017, Coahn's counsel asked Caracci's counsel the same question (Doc. 40-2 at ¶¶ 6–7). But Caracci's counsel repeatedly turned down these offers—because Caracci's counsel did not want to share this case equally. (Doc. 60-1 at ¶ 19; Doc. 55-2 at ¶ 17). In

light of this fact, the Settling Parties did not exclude Caracci from the 2018 mediation; Caracci (through counsel) excluded himself.[12]

For all these reasons, Caracci's fourth (and final) argument is not availing.

C. Notice Issuance

As the Settlement Agreement meets the standard for preliminary approval, notice to Wendy's shareholders is proper as set forth *infra*.

"Notice of a proposed settlement, voluntary dismissal, or compromise must be given to shareholders or members in the manner that the court orders." Fed. R. Civ. P. 23.1(c); *see also In re Gen. Tire and Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984); *Regions*, 2015 WL 11145134, at *5; *accord* Kane, *supra*, at § 1839.

The notice need not be exhaustive/comprehensive; rather, it must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Gen. Tire*, 726 F.2d at 1086 (citation omitted). In other words, the notice should simply "provide the shareholders with enough information to permit them to make a rational decision [about] whether to intervene in the settlement-approval process." Kane, *supra*, at § 1839.

Here, Graham has submitted a proposed notice to the Court (the "Proposed Notice"). (Doc. 51-1 at Ex. B). The Proposed Notice: summarizes this case and the terms of the Settlement Agreement; sets forth the procedures necessary to review the

[12] Notably, Caracci raises one additional argument. Caracci argues that the Settling Parties colluded, because they engaged in pre-appointment negotiations. (Doc. 55 at 10–11). But the Court has already rejected this argument by appointing Graham's counsel as lead counsel with full knowledge that pre-appointment negotiations occurred. (*See generally* Doc. 49).

Section 220 Documents and object to the Settlement Agreement; and provides specific information regarding the date, time, and place of the settlement hearing. (*See id.*).

Moreover, under the terms of the Settlement Agreement/Proposed Notice, Wendy's will: post the Settlement Agreement and Proposed Notice on the Investor Relations portion of Wendy's website; file a Form 8-K with the SEC with a link to the website posting; and publish a summary notice in *IBD Weekly Print*. (*See id.*).

The Court has carefully reviewed the Proposed Notice. And the Court concludes that the Proposed Notice complies, in both form and substance, with the Sixth Circuit standard regarding the provision of notice. That is, the Court concludes that the Proposed Notice provides Wendy's shareholders with enough information to permit them to make a rational decision about whether to intervene in the settlement-approval process. *Accord Gen. Tire*, 726 F.2d at 1086; Kane, *supra*, at § 1839.[13]

[13] Caracci raises several arguments to the contrary. The Court has considered all of them. But the Court does not find any of them persuasive. As one example, Caracci claims that the Proposed Notice should reference the claims in Caracci's original complaint. (Doc. 55 at 17). But Caracci's original complaint is no longer the operative pleading. (Doc. 50). Thus, the claims therein are no longer relevant. As another example, Caracci claims that the Proposed Notice should detail the Settlement Agreement's provisions regarding third-party attorney fees. (Doc. 55 at 17). But the Proposed Notice directs Wendy's shareholders to the actual Settlement Agreement (which will be available on Wendy's website). (Doc. 51-1 at 42). If Wendy's shareholders want to review the actual Settlement Agreement, on a provision-by-provision basis, they will be free to do so. As yet another example, Caracci claims that the Proposed Notice "fail[s] to inform [Wendy's] stockholders about" the Section 220 Documents. (Doc. 55 at 17). But the Proposed Notice both references the Section 220 Documents and affords Wendy's shareholders the opportunity to review them. (Doc. 51-1 at 46–47). The Court concludes that this is sufficient. The Proposed Notice does not need "to set forth every ground on which [Wendy's shareholders] might object to [the Settlement Agreement] . . . . All that the [Proposed] [N]otice must do is fairly apprise [them] of the terms of the [Settlement Agreement] so that [they] may come to their own conclusions about whether the [S]ettlement [Agreement] serves their interests." *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Gen. Motors Corp.*, 497 F.3d 615, 630 (6th Cir. 2007) (quotation marks and citation omitted).

While the Proposed Notice is proper, notice should not yet issue. On June 28, 2019, the Court held a discovery conference by telephone at which Caracci informed the Court that, if the Court granted Graham's motion for preliminary approval, Caracci intended to file a motion seeking leave to conduct certain discovery. (*See* Min. Entry and Not. Order, June 28, 2019). After the discovery conference by telephone, the Court issued a Minute Entry and Notation Order, allowing Caracci to "seek the Court's leave to conduct discovery, by way of an appropriate motion, after the Court issues a decision on [Graham's motion for preliminary approval]." (*Id.*)

The Court concludes that the Proposed Notice should not issue until after: Caracci has had the opportunity to file a motion for leave to conduct discovery; the Settling Parties have had the opportunity to respond to such a motion; and the Court has had the opportunity to issue an order on such a motion. This will ensure that the parties do not end up in a position where they are forced to object to the Settlement Agreement in a rushed manner in advance of the settlement hearing.

In light of the foregoing, the Court establishes the following briefing schedule for any motion for leave to conduct discovery.

Motion for leave to conduct discovery:	**February 14, 2020**
Response in opposition to motion for leave to conduct discovery:	**March 6, 2020**
Reply in support of motion for leave to conduct discovery:	**March 20, 2020**

The Court will establish a schedule regarding the issuance of the Proposed Notice to Wendy's shareholders (as well as the other events referenced on page 16 of Graham's motion for preliminary approval) after the Court issues a decision on any motion for leave to conduct discovery.[14] (Doc. 51 at 16). Should Caracci determine that a motion for leave to conduct discovery is no longer necessary, Caracci shall so inform the Court on or before **February 14, 2020**.[15]

IV. CONCLUSION

Based upon the foregoing, Graham's Motion for Preliminary Approval of Derivative Litigation Settlement (Doc. 51) is **GRANTED** as follows:

1. The Settlement Agreement (Doc. 51-1 at Ex. 1) is **PRELIMINARILY APPROVED**, subject to further consideration at the settlement hearing;

2. The Proposed Notice (Doc. 55-1 at Ex. B) is **APPROVED** as to its form and substance, however, the Proposed Notice shall not yet issue;

3. The parties are **DIRECTED** to file any motions/memoranda regarding leave to conduct discovery in accordance with the schedule established in Section III.C *supra*; and

4. The Court will establish by way of a further order a schedule, regarding the issuance of the Proposed Notice, the date/time of the settlement hearing, and the occurrence of all other related deadlines, after it issues a decision on any motion/memoranda regarding leave to conduct discovery filed in accordance with the schedule established in Section III.C *supra*.

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[14] In establishing this schedule, the Court can address Caracci's stated concerns about Graham's proposed schedule if and as appropriate. (Doc. 55 at 18–19; *see also* Doc. 51 at 16).

[15] The Court will note that Caracci is entitled to file a motion seeking pre-hearing discovery. And Caracci is entitled to file an objection to the final settlement agreement. However, Caracci is not entitled to pursue a frivolous end. The Court understands that Caracci's counsel is angry about the way the other parties settled this case. But, if anger—rather than fact—is the driving force behind any further allegations of "collusion," the Court will be extraordinarily displeased. *N.B.* Fed. R. Civ. P. 11(c)(3).

IT IS SO ORDERED.

Date: 1/24/2020

Timothy S. Black
United States District Judge

EXHIBIT 11

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE WELLS FARGO & COMPANY SHAREHOLD DERIVATIVE LITIGATION

This Document Relates To:

ALL ACTIONS

Lead Case No. 16-cv-05541-JST

ORDER GRANTING PRELIMINARY APPROVAL OF DERIVATIVE ACTION SETTLEMENT

Re: ECF No. 270

Before the Court is Plaintiffs' unopposed motion for preliminary approval of a derivative action settlement. ECF No. 270. The Court will grant the motion.[1]

I. BACKGROUND

A. Parties and Claims

This is a shareholder derivative action on behalf of nominal Defendant Wells Fargo & Co. against the company's officers, directors, and senior management ("Individual Defendants"). Consolidated Amended Verified Stockholder Derivative Complaint ("Compl."), ECF No. 83 ¶ 64. The substance of Plaintiffs' claims is set forth in greater detail in the Court's prior orders on Defendants' motions to dismiss. *See* ECF No. 129 at 1-9; ECF No. 174 at 2-4. In short, Plaintiffs allege that, "[f]rom at least January 1, 2011 to the present ('the Relevant Period'), Defendants knew or consciously disregarded that Wells Fargo employees were illicitly creating millions of deposit and credit card accounts for their customers, without those customers' knowledge or consent." Compl. ¶ 1. Plaintiffs seek to hold Individual Defendants accountable for these failures under various securities laws and common-law duties.

[1] Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument.

B. Procedural History

Based on these Improper Sales Practices[2] and alleged oversight failures, several entities filed shareholder derivative complaints in this district, which have since been consolidated into a single action. ECF Nos. 39, 70, 219. The Court appointed Fire & Police Pension Association of Colorado and City of Birmingham Retirement & Relief System as Co-Lead Plaintiffs and Lieff Cabraser Heimann & Bernstein and Saxena White as Co-Lead Counsel. ECF No. 70. Plaintiffs then filed a consolidated amended complaint on February 24, 2017. ECF No. 83.

On March 17, 2017, Wells Fargo filed a motion to dismiss for failure to plead demand futility, in which the Individual Defendants joined. ECF Nos. 99, 100, 101, 102, 107, 108, 110. The Court largely denied the motion. ECF No. 129.

Various Individual Defendants proceeded to file a series of motions to dismiss for failure to state a claim. ECF Nos. 139, 140, 141, 143, 144, 145. On October 4, 2017, the Court denied the motions in large part. ECF No. 174.

After an initial unsuccessful round of three mediation sessions, the parties resumed intensive negotiations in September 2018. ECF No. 270 at 16. The parties engaged in four day-long sessions under the supervision of Judge Daniel Weinstein (Ret.) and Jed Melnick. ECF No. 270-3 ¶ 7. On December 12, 2018, the parties accepted Judge Weinstein's mediator's proposal, which forms the basis for the proposed settlement agreement. *Id.* ¶ 12.

On February 28, 2019, Plaintiffs filed this motion for preliminary approval. ECF No. 270. At the Court's request, Plaintiffs provided supplemental briefing on the value of their claims on April 2, 2019. ECF No. 272.

C. Terms of the Settlement

The proposed settlement agreement ("Settlement") resolves the claims Plaintiffs have asserted on behalf of Wells Fargo in this action. Settlement, ECF No. 270-1 at 1-36.

Pursuant to the Settlement, the Individual Defendants' insurers will pay $240 million to Wells Fargo. Settlement ¶ V(33). The Settlement also identifies additional Wells Fargo reform

[2] Consistent with Plaintiffs' motion and the parties' settlement agreement, the Court refers to Wells Fargo's illicit account creation as the "Improper Sales Practices."

actions that are purportedly attributable in part to Plaintiffs' pursuit of this action. First, after this suit was filed, Wells Fargo's board clawed back $122.5 million from certain Individual Defendants through "stock grant forfeitures, reduced compensation, and return of incentive compensation." *Id.* ¶ V(1); *see also* ECF No. 270-1 at 47-48. The parties agree that Plaintiffs' suit was a "significant factor in the determination to undertake [these] actions, and that these remedial actions conferred a value to Wells Fargo of $60 million." ECF No. 270-1 at 48. Second, the Settlement points to "Corporate Governance Reforms," meaning "the corporate actions undertaken by Wells Fargo to address Improper Sales Practices including, but not limited to, amending certain corporate charters and bylaws, increasing oversight and monitoring of business units, leadership changes, the creation of positions, and the increased reporting from business units." Settlement ¶ V(5); *see also* ECF No. 270-1 at 40-44. The parties note that Plaintiffs proposed "certain of these corporate governance reforms" and "agree and acknowledge that these reforms have conferred significant benefits to Wells Fargo," of which $20 million can be attributed to Plaintiffs. ECF No. 270-1 at 44.

In exchange, Plaintiffs agree to release the following claims on behalf of themselves, Wells Fargo, and its shareholders:

> [A]ny and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims, whether based on state, local, foreign, federal, statutory, regulatory, common or other law or rule, brought or that could be brought derivatively or otherwise by or on behalf of Wells Fargo against any of the Released Parties, which now or hereafter are based upon, arise out of, relate in any way to, or involve, directly or indirectly, any of the actions, transactions, occurrences, statements, representations, misrepresentations, omissions, allegations, facts, practices, events, claims or any other matters, things or causes whatsoever, or any series thereof, that are, were, could have been, or in the future can or might be alleged, asserted, set forth, claimed, embraced, involved or referred to in the Derivative Action and relate to, directly or indirectly, the subject matter of the Derivative Action in any court, tribunal, forum or proceeding, including, without limitation, any and all claims by or on behalf of Wells Fargo which

> are based upon, arise out of, relate in any way to, or involve, directly or indirectly: (i) Improper Sales Practices; or (ii) any of the allegations in any complaint or amendment(s) thereto filed in (x) the Derivative Action or (y) any Action described above in Section II.C, with the exception, as described above, of the CPI Allegations in the *Connecticut Laborers* Action.

Settlement ¶ V(26).[3] The "Released Parties" consist of the Individual Defendants, Wells Fargo, American Express, and various other "Related Parties." *Id.* ¶¶ V(25), (27). The Settlement does not, however, release (1) claims to enforce the agreement, (2) direct claims asserted on behalf of present or former Wells Fargo shareholders at issue in *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST (N.D. Cal.),[4] or (3) certain claims that "the Individual Defendants or Wells Fargo may have against any of the Insurers." *Id.* ¶ V(26).

In addition, the parties separately negotiated Wells Fargo's payment of attorney's fees to Co-Lead Counsel. *Id.* ¶ (V)(44). Wells Fargo has agreed not to oppose Plaintiffs' request for attorney's fees and costs of up to $68 million. *Id.* Plaintiffs also intend to seek $25,000 service awards for each Co-Lead Plaintiff, to be paid from the fee award. *Id.*

The parties propose the following notice plan to inform shareholders of the proposed settlement. Wells Fargo will (1) publish the Summary Notice in the *Wall Street Journal*, *New York Times*, *Los Angeles Times*, and *Investor Business Daily*; (2) publish a Current Report on Form 8-K with the Securities and Exchange Commission ("SEC"); and (3) make the Settlement and Notice available on the "Investor Relations" page of its website, http://www.wellsfargo.com. *Id.* ¶ V(35). The Summary Notice will identify the specific address for that portion of Wells Fargo's website, as well as a hotline number that persons may call to request a copy of the full Notice by mail. *Id.* In addition, Co-Lead Counsel will publish the Summary Notice via a national wire service and create an additional website (to be identified in the Summary Notice) where the Settlement and Notice will be made available. *Id.*

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[3] As explained in the Settlement, the *Connecticut Laborers* Action includes additional allegations regarding Wells Fargo's implementation of certain collateral protection insurance ("CPI") programs. Settlement ¶ II(5).

[4] The Court previously approved a Rule 23 class action settlement in the *Hefler* case. *See Hefler*, ECF Nos. 252-255. An objector has appealed the settlement. *Id.*, ECF No. 260.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 23.1, "[a] derivative action may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23.1(c). Rule 23, in turn, "governs a district court's analysis of the fairness of a settlement of a shareholder derivative action." *In re Hewlett-Packard Co. S'holder Derivative Litig.*, No. 3:12-CV-06003-CRB, 2015 WL 1153864, at *3 (N.D. Cal. Mar. 13, 2015); *see also In re Cadence Design Sys., Inc. Sec. Litig.*, No. 08-4966 SC, 2011 WL 13156644, at *2 (N.D. Cal. Aug. 26, 2011) ("Within the Ninth Circuit, Rule 23's requirements for approval of class action settlements apply to proposed settlements of derivative actions." (citing *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 377 (9th Cir. 1995)). Accordingly, "[c]ourts considering settlements of derivative actions have generally found '[c]ases involving dismissal or compromise under Rule 23(e) of nonderivative cases . . . relevant by analogy." *Lloyd v. Gupta*, No. 15-CV-04183-MEJ, 2016 WL 3951652, at *4 (N.D. Cal. July 22, 2016) (second and third alterations in original) (quoting 7C Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1839 (3d ed. 2007)). The Ninth Circuit maintains a "strong judicial policy" that favors the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

Rule 23 requires courts to employ a two-step process in evaluating a class action or derivative action settlement. First, the parties must show "that the court will likely be able to . . . (i) approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B). In other words, a court must make a preliminary determination that the settlement "is fair, reasonable, and adequate" when considering the factors set out in Rule 23(e)(2). Fed. R. Civ. P. 23(e)(2). The court's task at the preliminary approval stage is to determine whether the settlement falls "within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007) (citation omitted). "The initial decision to approve or reject a settlement proposal is committed to the sound discretion of the trial judge." *City of Seattle*, 955 F.2d at 1276 (citation omitted).

Second, if the court preliminarily approves a derivative action settlement, notice "must be given to shareholders or members in the manner that the court orders." Fed. R. Civ. P. 23.1(c). The court must then hold a hearing to make a final determination whether the settlement is "fair,

reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Within this framework, preliminary approval of a settlement is appropriate if "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval." *In re Tableware*, 484 F. Supp. 2d at 1079 (citation omitted). The proposed settlement need not be ideal, but it must be fair and free of collusion, consistent with counsel's fiduciary obligations to the class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) ("Settlement is the offspring of compromise; the question we address is not whether the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."). To assess a settlement proposal, courts must balance a number of factors:

> [T]he strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Id. at 1026 (citations omitted).[5] The proposed settlement must be "taken as a whole, rather than the individual component parts," in the examination for overall fairness. *Id.* Courts do not have the ability to "delete, modify, or substitute certain provisions"; the settlement "must stand or fall in its entirety." *Id.* (citation omitted).

III. ANALYSIS

A. Preliminary Settlement Approval

1. Procedural Concerns

In the class action context, the Court must consider whether "the class representatives and class counsel have adequately represented the class" and whether "the proposal was negotiated at

[5] These factors are substantially similar to those articulated in the 2018 amendments to Rule 23(e), which were not intended "to displace any factor [developed under existing Circuit precedent], but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." *Hefler v. Wells Fargo & Co.*, No. 16-cv-05479-JST, 2018 WL 6619983, at *4 (N.D. Cal. Dec. 18, 2018) (quoting Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment).

arm's length." Fed. R. Civ. P. 23(e)(2)(A)-(B). As the Advisory Committee notes suggest, these are "matters that might be described as 'procedural' concerns, looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23(e)(2)(A)-(B) advisory committee's note to 2018 amendment.

a. Adequate Representation

Like class representatives, "a stockholder who brings suit on a cause of action derived from the corporation . . . sues, not for himself alone, but as representative of a class comprising all who are similarly situated." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 549 (1949).

Here, Co-Lead Plaintiffs and their counsel have "prosecute[d] the action vigorously on behalf of the [shareholders]." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000). As detailed in their motion, not only did they prevail on two intensive rounds of motions to dismiss, but they also obtained stays of numerous related derivative actions pending in other courts. ECF No. 270 at 12-15; *see also* ECF No. 270-2 ¶¶ 11-14.

Prior to reaching the Settlement, the parties also engaged in extensive document discovery. Co-Lead Plaintiffs obtained hundreds of thousands of documents from Wells Fargo, the Individual Defendants, and non-parties. ECF No. 270-2 ¶ 15. Co-Lead Plaintiffs subjected over 332,000 of those documents to a multi-stage review and had begun preparing to depose over 40 fact witnesses, including all 20 Individual Defendants. *Id.* ¶¶ 16-19. Under these circumstances, the Court is satisfied that they possessed "sufficient information to make an informed decision about settlement." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (citation omitted). Accordingly, this factor also weighs in favor of approval.

b. Arm's Length Negotiation

The Settlement was the product of multiple sessions of arm's length negotiations supervised by mediators Jed Melnick and former Judge Daniel Weinstein. ECF No. 270-3 ¶ 7. That the major terms of the Settlement came from Judge Weinstein's proposal further supports the procedural fairness of the Settlement. *Id.* ¶ 12.

The Court therefore concludes that this factor weighs in favor of approval.

2. Substantive Concerns

Rule 23(e)(2)(C) and (D) set forth factors for conducting "a 'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. Most relevant to a shareholder derivative settlement, the Court examines, "the costs, risks, and delay of trial and appeal," and "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(i), (iii).

a. Strength of Plaintiffs' Case, Risk of Continuing Litigation, and Settlement Amount

Consistent with Rule 23's instruction to consider "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), courts in this circuit evaluate "the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation," *Hanlon*, 150 F.3d at 1026. In addition, though not articulated as a separate factor in Rule 23(e), "[t]he relief that the settlement is expected to provide to [the company] is a central concern." Fed. R. Civ. P. 23(e)(2)(C)-(D) advisory committee's note to 2018 amendment. To evaluate the adequacy of the settlement amount in light of the case's risks, "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware*, 484 F. Supp. 2d at 1080. But "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *Officers for Justice*, 688 F.2d at 628.

Here, the risk, expense, complexity, and likely duration of further litigation weigh in favor of preliminary approval. While Plaintiffs have survived motions to dismiss on the threshold issue of demand futility, ECF No. 129, and on their ability to state a claim, ECF No. 174, significant obstacles remain to proving their case and prevailing at trial. For instance, as Plaintiffs highlight, their breach of fiduciary duty claims based on the Director Defendants' "alleged failure adequately to oversee corporate activities is, 'possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment.'" *In re Oracle Corp. Derivative Litig.*, No. C 10-3392 RS, 2011 WL 5444262, at *3 (N.D. Cal. Nov. 9, 2011) (quoting *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996)). More generally, courts have recognized

that it is often difficult for plaintiffs to prevail in derivative actions and on securities fraud claims. *See, e.g.*, *Hefler*, 2018 WL 6619983, at *13 ("Courts have recognized that, in general, securities actions are highly complex and that securities class litigation is notably difficult and notoriously uncertain." (quoting *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 2018 WL 6168013, at *15)); *In re Oclaro, Inc. Derivative Litig.*, No. C-11-3176 EMC, 2014 WL 4684993, at *2 (N.D. Cal. Sept. 19, 2014) ("[A]s other courts have commented, it is generally difficult to prevail in a derivative suit.").

Moreover, not only would litigating this complex case on the merits have been a lengthy and costly process, the lingering uncertainty would have hampered Wells Fargo's efforts to move past this series of scandals. These accumulating costs could significantly mitigate the value of a judgment on the merits. *Cf. In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 WL 4820784, at *2 (N.D. Cal. Nov. 5, 2008) ("The principal factor to be considered in determining the fairness of a settlement concluding a shareholders' derivative action is the extent of the benefit to be derived from the proposed settlement by the corporation, the real party in interest." (quoting *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978)).

Finally, without a settlement, Plaintiffs faced the prospect of additional or collateral litigation with Individual Defendants' insurers, further prolonging any resolution beneficial to Wells Fargo. *See In re Galena Biopharma, Inc. Derivative Litig.*, No. 3:14-CV-00382-SI, 2016 WL 10840600, at *2 (D. Or. June 24, 2016) (noting that the individual defendants' "insurers dispute coverage and if the Action does not settle and continues to be litigated, there is a risk that insurance coverage will be denied and an additional insurance coverage lawsuit may ensue").

With those risks in mind, the Court considers the fractional recovery represented by the Settlement amount. In supplemental briefing, Plaintiffs identify two categories of potential monetary damages. ECF No. 272 at 2. First, Plaintiffs catalogue $1.1 billion in out-of-pocket costs incurred by Wells Fargo as a result of the Improper Sales Practices, including $529 million in civil and regulatory fines, penalties, and payments, as well as $443 million in related investigations and litigation. *Id.* at 3. Second, Plaintiffs estimate that Wells Fargo suffered between $1.4 billion and $2.4 billion in lost income, due to both the Federal Reserve's asset

growth restrictions and general lost business and reputational harm. *Id.* at 3-4. The Court is persuaded that $2.5 to $3.5 billion represents a reasonable estimate of the value of Plaintiffs' claims.

At a minimum, then, the Settlement's $240 million insurer-funded payment represents a 6.9 percent recovery of the maximum $3.5 billion value. At the other end of the spectrum, crediting the full $80 million value asserted for clawbacks and corporate governance reforms, measured against the low-end $2.5 billion liability estimate, the Settlement represents a 12.8 percent recovery.[6]

Pending any objection from shareholders and further information from the parties, the Court withholds a definitive conclusion on what value to assign to the remedial actions taken by Wells Fargo. The Court acknowledges that the parties agree that "facts alleged in the Derivative Action were a significant factor" in the clawback decisions, ECF No. 270-1 at 48, and that Co-Lead Plaintiffs proposed "certain of these corporate governance reforms," *id.* at 44. At the same time, these conclusory assertions by parties to the Settlement do not eliminate "[o]ther causative factors such as the [regulatory] investigation[s], the class action and public scrutiny," which were clearly present here. *In re Oracle Sec. Litig.*, 852 F. Supp. 1437, 1447 (N.D. Cal. 1994); *see also In re Oclaro*, 2014 WL 4684993, at *4 (discounting attorney's declaration representing company's acknowledgment that suit was contributing factor because "[t]his hearsay testimony of a self-interested declarant fails to prove those reforms were a proximate result of their derivative lawsuits").

Nonetheless, the Court need not decide the issue now, because even setting aside these secondary benefits, the insurer-funded payment alone puts the Settlement within the range of possible approval. As Plaintiffs point out by rough analogy,[7] their low-end recovery estimate

[6] Plaintiffs also assert that the $500 million in combined insurance policy limits for Individual Defendants represents a practical ceiling on what they could recover at trial. ECF No. 272 at 4. Given that the Court does not have a clear picture of the Individual Defendants' financial resources – which would also be available to pay a potential judgment – the Court declines to adopt the Plaintiffs' analysis. *Cf.* Compl. ¶ 476 (alleging that "while overseeing and encouraging Wells Fargo's aggressive sales culture, [Defendants] Stumpf and Tolstedt together earned nearly $300 million").

exceeds "recoveries achieved in . . . securities fraud class actions of similar size (over $1 billion in estimated damages), which settled for median recoveries of 2.5 percent between 2008 and 2016, and 3 percent in 2017." *Hefler*, 2018 WL 6619983, at *8 (citing Cornerstone Research, Securities Class Action Settlements, 2017 Review and Analysis, at 8 (2018)); *see also* Cornerstone Research, Securities Class Action Settlements, 2018 Review and Analysis, at 6 (2019) (noting average 2 percent recovery for 2018). The Court also takes into account the particular difficulties of establishing the larger category of lost income damages. *See* ECF No. 272 at 4. In light of the risks described above, the Court finds that the Settlement amount weighs in favor of preliminary approval.

b. Terms of Attorney's Fees

"For more than two decades, the Ninth Circuit has set the 'benchmark for an attorneys' fee award in a successful class action [at] twenty-five percent of the entire common fund.'" *Rodman v. Safeway Inc.*, No. 11-CV-03003-JST, 2018 WL 4030558, at *3 (N.D. Cal. Aug. 23, 2018) (quoting *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997)).

The Court agrees with Plaintiffs' implicit assumption that it is appropriate to measure Co-Lead Counsel's fee award as a percentage of the total Settlement value, because the value of the Settlement will be conferred *to* Wells Fargo, while Wells Fargo will *pay* attorney's fees. Settlement ¶¶ V(33), (44). In like circumstances, courts have recognized that the difference between those two amounts equals the actual value received by the company, much as a Rule 23 class receives the value of a settlement minus attorney's fees paid from a common fund. *See In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *12 (N.D. Cal. Mar. 31, 2010) ("The Agreement provides for a cash payment of $9.65 million to Atmel and a payment of $4.94 million in attorneys' fees and costs. Because Atmel is responsible for paying the attorneys' fees, the net payment to Atmel is $4.71 million."); *In re Apple Computer*, 2008 WL 4820784, at *2 (similar analysis).

[7] At least one other court in this district has found the comparison useful. *See In re Atmel Corp. Derivative Litig.*, No. C 06-4592 JF (HRL), 2010 WL 9525643, at *12 (N.D. Cal. Mar. 31, 2010) (comparing company's "net cash recovery" to securities class action settlements).

Here, Co-Lead Counsel intend to request $68 million in attorney's fees and costs, which represents 21.25 percent of the asserted $320 million value of the Settlement. ECF No. 270 at 28-29. Even were the Court to consider only the $240 million cash payment, the requested fee award would be approximately 28.33 percent of the Settlement. At the preliminary approval stage, this percentage range of attorney's fees does not weigh against approval.[8]

c. Preferential Treatment

The two Co-Lead Plaintiffs intend to seek a total of $50,000 in service awards, or $25,000 each. Settlement ¶ V(45). The awards, if approved, will be paid from Co-Lead Counsel's attorney's fees. *Id.*

The Ninth Circuit has recognized that service awards to named plaintiffs in a class action are permissible and do not necessarily render a settlement unfair or unreasonable. *See, e.g.*, *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Derivative plaintiffs may likewise merit compensation "for work done on behalf of the [shareholders]." *Id.*; *see also In re Galena Biopharma*, 2016 WL 3457165, at *12 (approving incentive award to derivative action lead plaintiffs). The Court notes, however, that an average award of $25,000 is five times the presumptively reasonable amount of $5,000 for such awards. *See Smith v. Am. Greetings Corp.*, No. 14-CV-02577-JST, 2016 WL 362395, at *10 (N.D. Cal. Jan. 29, 2016) ("Several courts in this District have indicated that incentive payments of $10,000 or $25,000 are quite high and /or that, as a general matter, $5,000 is a reasonable amount." (quoting *Harris v. Vector Marketing Corp.*, No. C-08-5198 EMC, 2012 WL 381202, at *7 (N.D. Cal. Feb. 6, 2012)).

The Court need not resolve the specific amount of the service award at this time as the matter will be conclusively determined at the final hearing. However, Co-Lead Plaintiffs should

[8] Plaintiffs' motion for attorney's fees is not yet before the Court. However, Co-Lead Counsel estimate that the award would represent a multiplier on counsel's lodestar of 3.32. ECF No. 270 at 29. While Plaintiffs correctly note that this multiplier falls within the upper end of the range of multipliers commonly awarded in common fund cases, *see Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 & n.6 (9th Cir. 2002), Co-Lead Counsel should ensure that the motion for attorney's fees provides appropriate detail and documentation. The parties are also invited to consider this Court's recent opinion in a class action concerning the relationship between total recovery by the class and the appropriate percentage of that recovery to be allocated to attorney's fees. *Rodman*, 2018 WL 4030558, at *4-5.

be mindful of addressing these issues and providing appropriate detail and documentation in connection with their motion for service awards.

d. Experience and Views of Counsel

As the Court has previously noted, Co-Lead Counsel have "significant experience obtaining favorable results as lead counsel in shareholder derivative litigation." ECF No. 70 at 4. That counsel advocate in favor of this Settlement weighs in favor of its approval.[9]

3. Reaction of Shareholders to Proposed Settlement

The Court will wait until the final approval hearing to determine shareholders' reaction to the Settlement.

4. Presence of Obvious Deficiencies

The Court has reviewed the Settlement and did not find any obvious deficiencies. To the extent any shareholder calls attention to any such deficiency, the Court will consider it at the final hearing.

B. Notice Plan

The Court must separately evaluate the proposed notice procedure. Rule 23.1(c) requires that notice of the Settlement "must be given to shareholders or members in the manner that the court orders." Fed. R. Civ. P. 23.1(c). In determining the appropriate notice method, "the Court considers whether such notice would be sufficient to reach the majority of interested stockholders." *Bushansky v. Armacost*, No. 12-CV-01597-JST, 2014 WL 2905143, at *6 (N.D. Cal. June 25, 2014) (citing Wright & Miller, Federal Practice & Procedure § 1839).

The parties propose to provide notice through (1) publication in several major newspapers and a national newswire service, (2) filing a Form 8-K with the SEC, and (3) publishing notice on both Wells Fargo's website and an additional website created specifically for this purpose. Settlement ¶ V(35). Courts have found that similar procedures satisfy Rule 23.1 and due process.

[9] The Court considers this factor, as it must, but gives it little weight. "[A]lthough a court might give weight to the fact that counsel for the class or the defendant favors the settlement, the court should keep in mind that the lawyers who negotiated the settlement will rarely offer anything less than a strong, favorable endorsement." *Principles of the Law of Aggregate Litigation* § 3.05 cmt. a (Am. Law. Inst. 2010).

See In re Hewlett-Packard Co. S'holder Derivative Litig., 716 F. App'x 603, 608 (9th Cir. 2017) (affirming district court's approval of "notice procedures, which included placing notice of the settlement on two consecutive days in *The New York Times*, *Investor's Business Daily*, *The Wall Street Journal*, and *The San Francisco Chronicle*, filing an 8-K with the SEC, and publishing the notice on its website")[10]; *Bushansky*, 2014 WL 2905143, at *6 (collecting cases). The Court reaches the same conclusion here.

Similarly, the Court finds that the content of the proposed notice "describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." *In re Hewlett-Packard*, 716 F. App'x at 609 (quoting *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

CONCLUSION

For the foregoing reasons, the Court preliminarily approves the proposed Settlement and Notice Plan. The fairness hearing shall be held on August 1, 2019 at 2:00 p.m. All other dates and deadlines shall be calculated pursuant to the terms of the Settlement.

IT IS SO ORDERED.

Dated: May 14, 2019

JON S. TIGAR
United States District Judge

[10] Pursuant to Ninth Circuit Rule 36-3, *Hewlett-Packard* is not binding precedent. The Court nonetheless considers it as persuasive authority.

EXHIBIT 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE BIG LOTS, INC. SHAREHOLDER LITIGATION

Case No. 2:12–cv–445

Judge Michael H. Watson

Magistrate Judge Jolson

ORDER PRELIMINARILY APPROVING SETTLEMENT AND SETTING SETTLEMENT HEARING

Louisiana Municipal Police Employees' Retirement System ("LAMPERS") and City of Atlanta Firefighters' Pension Fund ("Atlanta Firefighters," and together with LAMPERS, "Lead Plaintiffs"), plaintiff Lorene Lamb ("Lamb," and together with LAMPERS and Atlanta Firefighters, the "Consolidated Plaintiffs"), additional plaintiff Alan Brosz ("Brosz," and together with the Consolidated Plaintiffs, "Plaintiffs"), defendants Jeffrey Paul Berger, Steven S. Fishman, David T. Kollat, Brenda J. Lauderback, Philip E. Mallot, Russell Solt, Dennis B. Tishkoff, Joe R. Cooper, Charles W. Haubiel II, Timothy A. Johnson, Robert Craig Claxton, John Charles Martin, Norman J. Rankin, Paul Alan Schroeder, Robert Samuel Segal, and Steven Ray Smart (the "Individual Defendants"), and nominal defendant Big Lots, Inc. ("Big Lots" or the "Company," and together with the Individual Defendants, the

"Defendants"), acting through its Special Litigation Committee ("SLC"), have entered into the Stipulation and Agreement of Settlement (the "Stipulation") dated December 14, 2017, ECF No. 116-1, PAGEID ## 2490–2524, which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the above-captioned consolidated stockholder derivative action (the "Action"), subject to review and approval by the Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

Lead Plaintiffs filed an unopposed motion for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and providing for notice of the Settlement to Current Big Lots Stockholders (the "Notice").

The Court has read and considered the Stipulation and its exhibits, including (i) the proposed means by which Notice will be provided, and (ii) the Order and Final Judgment Approving Settlement (the "Judgment").

Finding that substantial and sufficient grounds exist for entering this Order, the Court hereby **ORDERS** as follows:

1. This Order incorporates by reference the definitions in the Stipulation and, unless otherwise defined in this Order, all capitalized terms used in this Order shall have the same meaning as set forth in the

Stipulation.

2. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation, subject to further consideration at a hearing to be held before the Court on Thursday July 26, 2018, at 10:00 a.m., at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215 (the "Settlement Hearing"), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, should be approved by the Court; (ii) determine whether the Released Claims against Defendants should be dismissed with prejudice as set forth in the Stipulation; (iii) determine whether Plaintiffs' Counsel's application for the Fee and Expense Award should be approved; and (iv) rule on such other matters as the Court may deem appropriate.

3. The Court expressly reserves the right to adjourn the Settlement Hearing, or any adjournment thereof, without any further notice other than an announcement at the Settlement Hearing or at any adjournment of the Settlement Hearing.

4. The Court expressly reserves the right to approve the settlement with such modification(s) as may be consented to by the Parties or without modification and with or without further notice of any kind. The Court reserves the right to enter its Judgment approving the Settlement and dismissing the Released Claims against the Defendants

with prejudice regardless of whether the Court has awarded the Fee and Expense Award.

5. The Court approves the form, content and requirements of the Notice attached to the Stipulation as Exhibit B, and finds that the dissemination of the Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process, and constitutes due and sufficient notice of all matters relating to the Settlement.

6. By no later than five (5) business days after the date of entry of this Order (the "Notice Date"), Big Lots shall (a) file a copy of the Stipulation and the Notice as an exhibit to a Form 8-K with the United States Securities and Exchange Commission, and (b) post a copy of the Stipulation and the Notice on the Company's corporate website, which documents shall remain posted on the Company's corporate website through the Effective Date of the Settlement. Big Lots will assume administrative responsibility for and will pay any and all costs and expenses related to disseminating the Notice, whether or not the Settlement becomes effective.

7. By no later than five (5) calendar days before the Settlement Hearing, Big Lots' counsel shall file with the Court an appropriate proof of compliance with the notice procedures set forth in this Order.

8. Any person who owns shares of Big Lots common stock as of the Notice Date through the date of the Settlement Hearing may appear at the Settlement Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why Plaintiffs' Counsel's application for the Fee and Expense Award should not be granted; *provided, however*, that no such person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Judgment to be entered approving the same, or the application for the Fee and Expense Award, unless such person has filed with the Clerk of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, and served (by hand, first-class mail or express service) on counsel for Lead Plaintiffs, counsel for Big Lots, counsel for the SLC, and counsel for the Individual Defendants, at the addresses below, a written notice of objection that includes: (i) the objector's name, address and telephone number (and if represented, that of his, her or its counsel), along with a representation as to whether the objector intends to appear at the Settlement Hearing; (ii) proof that the objector owned shares of Big Lots common stock as of the Notice Date, and continues to hold such shares; (iii) a statement of the objections to any matters before the Court, the grounds for the objections or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector

desires the Court to consider, including any legal and evidentiary support; and (iv) if the objector has indicated that he, she or it intends to appear at the Settlement Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Hearing. Any such objection must be filed with the Court and received by the below-noted counsel by no later than twenty-one (21) calendar days prior to the Settlement Hearing.

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New York, NY 10019

9. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection in the Action or any other action or proceeding to the Settlement, the Judgment to be entered approving the Settlement, or the application for Fee and Expense Award.

10. Plaintiffs shall file and serve papers in support of final approval of the proposed Settlement and in support of their application for the Fee and Expense Award by no later than twenty-eight (28) calendar days prior to the Settlement Hearing. If reply papers are necessary, they are to be filed and served by no later than fourteen (14) calendar days prior to the Settlement Hearing.

11. In the event the Settlement is terminated or the Effective Date does not occur for any reason, then (i) the Settlement and the relevant portions of the Stipulation shall be canceled, (ii) the Parties shall revert to their respective litigation positions in the Action as of immediately prior to October 31, 2017, and (iii) the terms and provisions of the Stipulation shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for

any purpose, and the Parties shall proceed in all respects as if the Stipulation had not been entered.

12. All pleading deadlines, discovery and other proceedings in the Action (except as may be necessary to carry out the terms and conditions of the proposed Settlement) are hereby stayed and suspended until further order of the Court. Pending the final determination of whether the Settlement should be approved, no Big Lots stockholder, either directly or representatively, or in any other capacity, shall institute, commence or prosecute any action that asserts any Released Claim against any of the Released Persons.

13. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or related to the Settlement.

IT IS SO ORDERED.

MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

The Booth Family Trust	:	Case No. 2:05-cv-0860
	:	Judge Sargus
vs.	:	Magistrate Judge Kemp
	:	
Michael S. Jeffries, et al.	:	
	:	
Robert Kemp	:	Case No. 2:05-cv-0964
	:	Judge Sargus
vs.	:	Magistrate Judge Kemp
	:	
Russell M. Gertmenian, et al.	:	
	:	
Alfred Freed	:	Case No. 2:05-cv-0998
	:	Judge Sargus
vs.	:	Magistrate Judge Kemp
	:	
Michael S. Jeffries, et al.	:	
	:	
Jennifer Chu	:	Case No. 2:05-cv-1084
	:	Judge Sargus
vs.	:	Magistrate Judge Kemp
	:	
Russell M. Gertmenian, et al.	:	

ORDER PRELIMINARILY APPROVING SETTLEMENT AND SETTING SETTLEMENT HEARING

Lead Derivative Plaintiffs The Booth Family Trust and Alfred Freed (collectively, the "Derivative Plaintiffs") and Defendants James B. Bachmann, Lauren J. Brisky, John W. Kessler, John A. Golden, Russell M. Gertmenian, Archie M. Griffin, Daniel J. Brestle, Edward F. Limato, Allan A. Tuttle, Michael S. Jeffries, Robert S. Singer and Samuel N. Shahid, Jr. (the "Individual Defendants") and Nominal Defendant Abercrombie & Fitch Co. ("Abercrombie" or the "Company") (collectively, "Defendants") have entered into a Stipulation and Agreement of

Settlement dated October 27, 2011 (the "Stipulation"), which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the above-captioned stockholder derivative litigation, subject to review and approval by this Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

The Derivative Plaintiffs and Abercrombie and the Individual Defendants have moved for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and providing for notice of the Settlement.

The Court has read and considered the Stipulation and its exhibits, including the proposed (i) Notice of Pendency and Proposed Settlement of Stockholder Derivative Litigation (the "Notice"); and (ii) Final Judgment.

Finding that substantial and sufficient grounds exist for entering this Order, the Court hereby ORDERS as follows:

1. This Order incorporates by reference the definitions in the Stipulation and, unless otherwise defined this Order, all capitalized terms used in this Order shall have the same meaning as set forth in the Stipulation.

2. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation, subject to further consideration at a hearing to be held before this Court on December 13, 2011, at 1:30 p.m., at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215 (the "Settlement Hearing"), to, among other things: (a) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, should be approved by the Court; (b) determine whether the Released Plaintiff Claims against the Defendants and the other Released Defendant Parties should be dismissed with prejudice as set forth in the Stipulation; (c) determine whether

Derivative Plaintiffs' Counsel's application for an award of Attorneys' Fees and Expenses should be approved; and (d) rule on such other matters as the Court may deem appropriate.

3. The Court expressly reserves the right to adjourn the Settlement Hearing, or any adjournment thereof, without any further notice to stockholders of Abercrombie other than an announcement at the Settlement Hearing or any adjournment of the Settlement Hearing.

4. The Court reserves the right to approve the Settlement with or without modification and with or without further notice of any kind. The Court further reserves the right to enter its Final Judgment approving the Settlement and dismissing the Released Plaintiff Claims against the Released Defendant Parties with prejudice regardless of whether the Court has awarded Attorneys' Fees and Expenses.

5. The Court approves the form, content and requirements of the Notice and finds that the filing and posting of the Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure and due process, and constitutes due and sufficient notice of all matters relating to the Settlement.

6. By no later than November 1, 2011, Abercrombie shall: (i) file a copy of the Notice substantially in the form attached hereto as Exhibit 1, as an exhibit to a Form 8-K with the United States Securities and Exchange Commission; and (ii) post a copy of the Notice on Abercrombie's corporate website, along with a copy of the Stipulation, which documents shall remain posted on Abercrombie's corporate website through the Settlement Effective Date.

7. By no later than November 1, 2011, Derivative Plaintiffs' Lead Counsel shall post on their firm websites a copy of the Notice, along with a copy of the Stipulation, which documents shall remain posted on Derivative Plaintiffs' Lead Counsel's websites through the Settlement Effective Date.

8. Any and all costs associated with filing of the Form 8-K and posting on the Abercrombie website shall be paid by Abercrombie, whether or not the Settlement becomes effective. Any and all other costs associated with posting on the websites of Derivative Plaintiffs' Lead Counsel shall be paid by Derivative Plaintiffs' Lead Counsel.

9. By no later than December 2, 2011, Abercrombie's counsel and Derivative Plaintiffs' Lead Counsel shall file with the Court an appropriate proof of compliance with the notice procedures set forth in this Preliminary Approval Order.

10. Any person who owns shares of Abercrombie common stock as of the date of the Settlement Hearing may appear at the Settlement Hearing to show cause why the proposed Settlement should not be approved; why the Final Judgment should not be entered thereon; or why Derivative Plaintiffs' Counsel's application for an award of Attorneys' Fees and Expenses should not be granted; *provided*, *however,* that no such person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Final Judgment to be entered approving the same, or the application for Attorneys' Fees and Expenses, unless such person has filed with the Clerk of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, and served (by hand, first-class mail or express service) on Derivative Plaintiffs' Lead Counsel and Defendants' counsel, at the addresses below, a written notice of objection that includes (i) the objector's name, address and telephone number, along with a representation as to whether the objector intends to appear at the Settlement Hearing; (ii) proof that the objector owned shares of Abercrombie common stock as of [date of issuance of notice], 2011, and continues to hold such shares; (iii) a statement of the objections to any matters before the Court, the grounds for the objections or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector

desires the Court to consider; and (iv) if the objector has indicated that he, she or it intends to appear at the Settlement Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Hearing.

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Any such objection must be filed with the Court and received by the above-noted counsel by no later than November 25, 2011.

11. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection in the 2005 Derivative Cases, or any other action or proceeding, to the Settlement, the Final Judgment to be entered approving the Settlement, or the application for Attorneys' Fees and Expenses.

12. Derivative Plaintiffs' Lead Counsel shall file and serve papers in support of final approval of the proposed Settlement and in support of their application for Attorneys' Fees and Expenses by no later than November 14, 2011. If reply papers are necessary, they are to be filed and served by no later than December 2, 2011.

13. In the event the Settlement is terminated or the Settlement Effective Date does not occur for any reason, then: the Settlement shall be null and void and without prejudice, and none of its terms shall be effective or enforceable except as specifically provided in the Stipulation; the Settling Parties shall be deemed to have reverted to their respective positions in the 2005 Derivative Cases immediately prior to the execution of the Stipulation on October 27, 2011; and, except as otherwise expressly provided, the Settling Parties shall proceed in all respects as if the Stipulation and any related orders had not been entered.

14. All discovery and other proceedings in the 2005 Derivative Cases (except as may be necessary to carry out the terms and conditions of the proposed Settlement) are hereby stayed and suspended until further order of the Court. Pending the final determination of whether the Settlement should be approved, Derivative Plaintiffs shall not institute, commence or prosecute

any action that asserts any Released Plaintiff Claim against any of the Released Defendant Parties.

15. The Court retains exclusive jurisdiction over the Federal Derivative Case to consider all further matters arising out of or related to the Settlement.

IT IS SO ORDERED.

11-1-2011

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EMPLOYEES RETIREMENT SYSTEM OF THE CITY OF ST. LOUIS, *et al.*, Plaintiffs, v. CHARLES E. JONES, *et al.*, Defendants, and FIRSTENERGY CORP., Nominal Defendant.	Case No. 2:20-cv-04813 Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

[PROPOSED] ORDER PRELIMINARILY APPROVING
SETTLEMENT AND SETTING SETTLEMENT FAIRNESS HEARING

WHEREAS, a stockholder derivative action captioned *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-04813-ALM-KAJ (the "Southern District Action") is pending in the United States District Court for the Southern District of Ohio (the "Southern District Court," or the "Court");

WHEREAS, (i) Co-Lead Plaintiffs in the Southern District Action: Employees Retirement System of the City of St. Louis and Electrical Workers Pension Fund, Local 103, I.B.E.W., and Additional Plaintiff Massachusetts Laborers Pension Fund (collectively, the "Southern District Plaintiffs"); (ii) Plaintiffs in the stockholder derivative action captioned *Miller, et al. v. Anderson et al.*, Case No. 5:20-cv-1743-JRA (the "Northern District Action"), pending in the United States District Court for the Northern District of Ohio (the "Northern District Court"): Plaintiff-Intervenors Employees Retirement System of the City of St. Louis and Electrical Workers Pension

Fund, Local 103, I.B.E.W. and Massachusetts Laborers Pension Fund, and individual Plaintiff Jennifer L. Miller (collectively, the "Northern District Plaintiffs"); (iii) Plaintiffs in the stockholder derivative action captioned *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the "Ohio State Court Action," and together with the Southern District Action and the Northern District Action, the "Actions"), pending in the Summit County Court of Common Pleas (the "Ohio State Court"): John Gendrich and Robert Sloan (the "Ohio State Court Plaintiffs," and together with the Southern District Plaintiffs and the Northern District Plaintiffs, "Plaintiffs"); (iv) Defendants in the Actions: Charles E. Jones, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil, III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Leslie M. Turner, Samuel L. Belcher, Bennett L. Gaines, K. Jon Taylor, Christine L. Walker, Gary Benz, Jason L. Lisowski, Irene M. Prezelj, Paul T. Addison, Jerry Sue Thornton, William T. Cottle, George M. Smart, Dennis M. Chack, Michael J. Dowling, James F. Pearson, Robert Reffner, Steven E. Strah, Ebony Yeboah-Amankwah, Eileen Mikkelsen, and Justin Biltz (collectively, "Defendants"); (v) Nominal Defendant FirstEnergy Corp. ("FirstEnergy" or the "Company"); and (vi) the Special Litigation Committee of the Board of Directors of FirstEnergy (the "SLC," and together with Plaintiffs, Defendants, and FirstEnergy, the "Settling Parties"), have entered into the Stipulation and Agreement of Settlement dated March 11, 2022 (the "Stipulation"), which sets forth the terms and conditions of the proposed settlement (the "Settlement") of the Actions, subject to review and approval by this Court pursuant to Rule 23.1 of the Federal Rules of Civil Procedure.

WHEREAS, the Southern District Plaintiffs filed an unopposed motion for an Order preliminarily approving the Settlement in accordance with the terms of the Stipulation and providing for notice of the Settlement to Current FirstEnergy Stockholders (defined below).

WHEREAS, the Court has read and considered the Stipulation and its exhibits, including (i) the proposed Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses (the "Notice"); (ii) the proposed Summary Notice of (I) Pendency and Proposed Settlement of Stockholder Derivative Actions; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Litigation Expenses ("Summary Notice"); and (iii) the proposed Final Judgment Approving Settlement and Order of Dismissal (the "Judgment").

NOW, THEREFORE, having found that sufficient grounds exist for entering this Order, the Court hereby ORDERS as follows:

1. This Order incorporates by reference the definitions in the Stipulation and, unless otherwise defined in this Order, all capitalized terms used in this Order shall have the same meaning as set forth in the Stipulation.

2. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation, subject to further consideration at a hearing to be held before the Court on _____, 2022, at __:__ _.m., either in person at the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus,Ohio 43215 or by telephone or videoconference (in the discretion of the Court) (the "Settlement Fairness Hearing"), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether the Judgment, substantially in the form attached as Exhibit F to the Stipulation, should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting, any and all Released Plaintiffs' Claims against the Released Defendants' Persons, as set forth in

the Stipulation; (iii) determine whether the application for a Fee and Expense Award to Plaintiffs' Counsel should be approved; and (iv) rule on such other matters as the Court may deem appropriate.

3. The Court expressly reserves the right to adjourn the Settlement Fairness Hearing, or any adjournment thereof, without any further notice other than an announcement at the Settlement Fairness Hearing or at any adjournment of the Settlement Fairness Hearing. The Court may decide to hold the Settlement Fairness Hearing by telephone or video conference without notice to the FirstEnergy stockholders. If the Court orders that the Settlement Fairness Hearing be conducted telephonically or by video conference, that decision will be posted on the "Investor Relations" portion of FirstEnergy's website. Any Current FirstEnergy Stockholder (or his, her, or its counsel) who wishes to appear at the Settlement Fairness Hearing should consult the Court's docket and/or "Investor Relations" portion of FirstEnergy's website for any change in date, time, or format of the Settlement Fairness Hearing.

4. The Court expressly reserves the right to approve the Settlement with such modification(s) as may be consented to by the Settling Parties, or without modification, and with or without further notice of any kind to FirstEnergy stockholders. The Court reserves the right to enter its Judgment approving the Settlement and dismissing the Released Plaintiffs' Claims as against the Released Defendants' Persons regardless of whether the Court has awarded the Fee and Expense Award.

5. The Court approves the form, content, and requirements of the Notice, attached to the Stipulation as Exhibit D, and the Summary Notice, attached to the Stipulation as Exhibit E, and finds that the dissemination of the Notice and publication of the Summary Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23.1 of the Federal

Rules of Civil Procedure, due process, and all other applicable law and rules, and constitutes due and sufficient notice of all matters relating to the Settlement.

6. By no later than five (5) business days after the date of entry of this Preliminary Approval Order, the Company (or its successor-in-interest) shall cause: (a) the filing with the SEC of a Current Report on Form 8-K, attaching the Notice, substantially in the form attached as Exhibit D to the Stipulation, and the Stipulation; (b) the publication of the Summary Notice, substantially in the form attached as Exhibit E to the Stipulation, once in the *Wall Street Journal*, *Investor's Business Daily*, or similar publication; and (c) the posting of the Notice and the Stipulation on the "Investor Relations" portion of the Company's website, which documents shall remain posted thereto through the Effective Date of the Settlement. The Company shall pay or cause to be paid any and all Notice Costs regardless of the form or manner of notice ordered by the Court and regardless of whether the Court approves the Settlement or the Effective Date of the Settlement otherwise fails to occur, and in no event shall Defendants, Plaintiffs, or their respective attorneys be responsible for any such costs or expenses.

7. By no later than twenty-one (21) calendar days before the Settlement Fairness Hearing, counsel for the SLC on behalf of the Company shall file with the Court an appropriate proof of compliance with the notice procedures set forth in this Order.

8. Any person or entity who owns shares of FirstEnergy common stock as of the close of business on the date of the Stipulation ("Current FirstEnergy Stockholder") and who continues to own shares of FirstEnergy common stock through the date of the Settlement Fairness Hearing may appear at the Settlement Fairness Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs should

not be granted; provided, however, that no such person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Judgment to be entered approving the same, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, unless such person has filed with the Clerk of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, and delivered (by hand, first-class mail, or express service) to counsel at the addresses stated below, a written, signed objection that: (i) identifies the case name and case number for the Southern District Action, *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case Number 2:20-cv-04813-ALM-KAJ; (ii) states the objector's name, address, and telephone number, and if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (iii) contains a representation as to whether the objector and/or his, her, or its counsel intends to appear at the Settlement Fairness Hearing; (iv) contains a statement of the objection(s) to any matters before the Court, the grounds for the objection(s) or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; (v) if the objector has indicated that he, she, or it intends to appear at the Settlement Fairness Hearing, the identities of any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Fairness Hearing; and (vi) includes documentation sufficient to prove that the objector owned shares of FirstEnergy common stock as of the close of business on the date of the Stipulation, together with a statement that the objector continues to hold shares of FirstEnergy common stock on the date of filing of the objection and will continue to hold shares of FirstEnergy common stock as of the date of the Settlement Fairness Hearing. Any such objection must be filed with the Court no later than fourteen (14) calendar days prior to the

Settlement Fairness Hearing and delivered to each of the below-noted counsel such that it is received no later than fourteen (14) calendar days prior to the Settlement Fairness Hearing.

Co-Lead Counsel for the Southern District Plaintiffs

Jeroen van Kwawegen
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New York, NY 10020

Thomas Curry
Saxena White P.A.
1000 N. West Street, Suite 1200
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Representative Counsel for Defendants

Geoffrey J. Ritts
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114

Counsel for the SLC and FirstEnergy

Maeve O'Connor
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

9. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, the Judgment to be entered approving the Settlement, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, in the Southern District Action or in any other action or proceeding in any court or tribunal.

10. The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time

as they shall be transferred or disbursed from the Settlement Fund pursuant to the Stipulation and/or further order(s) of the Court.

11. Co-Lead Counsel for the Southern District Plaintiffs is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

12. Plaintiffs shall file and serve papers in support of final approval of the proposed Settlement and in support of their application for the Fee and Expense Award by no later than twenty-eight (28) calendar days prior to the Settlement Fairness Hearing. If reply papers are necessary, they are to be filed and served by no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

13. In the event the Settlement is terminated or the Effective Date does not occur for any reason, then (i) the Settlement and the relevant portions of the Stipulation shall be canceled; (ii) the Settling Parties shall revert to their respective litigation positions in the Actions as of immediately prior to the execution of the Term Sheet on February 9, 2022; and (iii) the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in the Actions or in any other proceeding for any purpose, and the Settling Parties shall proceed in all respects as if the Stipulation had not been entered.

14. Pursuant to the Court's Order dated February 11, 2022, all pleading deadlines, discovery, and other proceedings in the Southern District Action (except as may be necessary to

carry out the terms and conditions of the proposed Settlement) have been stayed and suspended until further order of the Court.

15. The Court retains exclusive jurisdiction over the Southern District Action to consider all further matters arising out of or related to the Settlement.

16. Pending the Court's determination as to final approval of the Settlement, Plaintiffs, FirstEnergy, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy are hereby barred and enjoined from commencing or prosecuting any action asserting any of the claims alleged in the Southern District Action against any of the Defendants in any court or tribunal.

IT IS SO ORDERED.

DATED _____, 2022

_____
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE