

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CAROL GLOCK, Individually and on Behalf of All Others Similarly Situated,	§	Civil Action No. 4:20-cv-03928
	§	
Plaintiff,	§	<u>CLASS ACTION</u>
	§	
vs.	§	Judge Lee H. Rosenthal
	§	
FTS INTERNATIONAL, INC., et al.,	§	
	§	
Defendants.	§	
	§	
	§	

**JOINT DECLARATION OF SCOTT H. SAHAM AND BRETT M. MIDDLETON IN
SUPPORT OF LEAD PLAINTIFF'S MOTION FOR: (1) FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; (2) APPROVAL OF PLAN OF ALLOCATION; (3) AWARD
OF ATTORNEYS' FEES AND EXPENSES; AND (4) AWARD TO LEAD PLAINTIFF
PURSUANT TO 15 U.S.C. §77z-1(a)(4)**

We, Scott H. Saham and Brett M. Middleton, hereby declare as follows:

1. I, Scott H. Saham, am an attorney duly licensed to practice law before all of the courts of the State of California, and I have been admitted to appear in this action. I am a partner of the law firm of Robbins Geller Rudman & Dowd LLP, who, along with attorneys at Johnson Fistel, LLP are counsel of record for Lead Plaintiff in the above-entitled action.¹ I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify to them.

2. I, Brett M. Middleton, am an attorney duly licensed to practice law before all of the courts of the State of California, and I have been admitted to appear in this action. I am a partner of the law firm of Johnson Fistel, LLP, who, along with attorneys at Robbins Geller Rudman & Dowd LLP, are counsel of record for Lead Plaintiff in the above-entitled action. I have personal knowledge of the matters stated herein and, if called upon, I could and would competently testify to them.

3. We jointly submit this declaration in support of Lead Plaintiff's motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for final approval of the Settlement, which provides for a cash settlement of \$9,875,000 (the "Settlement Amount"), and for approval of the proposed Plan of Allocation. We also submit this declaration in support of Lead Counsel's application for an award of attorneys' fees and expenses and for an award to Lead Plaintiff pursuant to 15 U.S.C. §77z-1(a)(4).

I. PRELIMINARY STATEMENT

4. Lead Counsel have succeeded in obtaining a very favorable recovery for the Settlement Class after nearly two years of vigorously contested litigation in both state and federal

¹ Unless otherwise noted, all capitalized terms used herein are defined in the November 20, 2020 Stipulation of Settlement ("Stipulation"). ECF No. 9.

court. Lead Counsel have thoroughly prosecuted this case at every stage of the Litigation, including through several rounds of motion practice challenging the sufficiency of Lead Plaintiff's Petition, significant document discovery, an appeal to the Texas Court of Appeals, and multiple bankruptcies. And the Settlement was only achieved after Lead Counsel, *inter alia*: (i) conducted a thorough and wide ranging investigation concerning Defendants' alleged misrepresentations and omissions, which investigation included the review and analysis of publicly available information concerning FTS International, Inc. ("FTSI" or the "Company") and the industry in which it operates; (ii) prepared and filed a comprehensive Amended Petition for Violation of the Securities Act of 1933 and Demand for Jury Trial ("Amended Petition"); (iii) successfully opposed Defendants' Special Exceptions to the Amended Petition, motion for interlocutory appeal, and petition for writ of mandamus; (iv) conducted extensive fact discovery, including the production and/or review and analysis of over 250,000 pages of documents produced by Defendants and non-parties; (v) opposed Defendants' writ of mandamus and emergency motion to the Texas Court of Appeals to stay all trial court proceedings; (vi) opposed Defendants' removal of the action to the Bankruptcy Court; (vii) opposed Defendants' motion for judgment on the pleadings; and (viii) conducted a video mediation with an experienced mediator.

5. At the time the Settlement was reached, Lead Counsel had a meaningful understanding of the issues critical to the outcome of this Litigation given the thorough prosecution of the case. Although counsel are confident that Lead Plaintiff's claims are supported by the evidence produced and developed throughout fact discovery, Lead Counsel understand the risks of potentially dispositive motions and appeals, in proving the claims at trial, and, that even if successful in obtaining and sustaining judgment, the class may ultimately be unable to obtain any recovery as a result of FTSI's and Chesapeake's bankruptcies. As discussed in more detail below, Defendants consistently argued that Lead Plaintiff's claims should be dismissed. Given those

significant risks, Lead Counsel are confident that the \$9,875,000 Settlement is a very good result for the Settlement Class.

6. Lead Plaintiff's Amended Petition alleges that in violation of §§11 and 15 of the Securities Act of 1933 ("Securities Act"), Defendants made false and misleading statements about FTSI's existing business conditions, allowing it to sell more than 22.4 million shares to investors through its Initial Public Offering ("IPO") at a highly inflated price.

7. In response, Defendants have consistently argued that they did not make any materially false or misleading statements or omit to disclose any material information related to the Company's IPO. Defendants successfully argued that Lead Plaintiff's initial petition failed to provide the requisite notice required by Texas Rules of Civil Procedure. Defendants then challenged the Amended Petition, arguing that Lead Plaintiff's allegations: (a) are defective and duplicitous, contrary to Texas Rule 91; (b) are inactionable opinions, not statements of fact, based on hindsight; (c) failed to adequately identify any omission of material fact for which there was a duty to disclose; and (d) otherwise failed to properly plead control person liability. Thereafter, after the Texas State Court sustained Lead Plaintiff's Amended Petition, Defendants first sought permission to file an interlocutory appeal from the Texas State Court, and then filed with the Texas Court of Appeals a Petition for Writ of Mandamus and Emergency Motion to Stay the Trial Court Proceedings which Lead Plaintiff successfully opposed. At the time of removal, a writ to the Texas Supreme Court was pending.

8. The proposed Settlement avoids the substantial additional costs and risks of further litigating liability and damages if the case were to continue with no assurance that a recovery could be obtained in the future. Indeed, even in the near-term Lead Plaintiff faced the risk that the Court would effectively end the case by granting Defendants' pending motion for judgment on the

pleadings and Lead Plaintiff and the Settlement Class would recover nothing. Given these risks, Lead Counsel believe that the Settlement is in the best interests of the Settlement Class.

9. Lead Counsel have prosecuted this action on a wholly contingent basis, and therefore have advanced or incurred all the litigation expenses to date. Lead Counsel have not yet received any compensation for their efforts and have assumed the significant risk of an unfavorable outcome. Lead Counsel's fee request for 33% of the Settlement Amount is fair and reasonable. The fee request is further justified by the particular facts of this case, including the substantial benefits conferred on the Settlement Class, the risks undertaken, the quality of representation, the nature and extent of legal services performed, and the fact that the case settled after nearly two years of litigation.

10. Both the Settlement and Lead Counsel's fee request have been approved by Lead Plaintiff.²

11. Lead Counsel also seek an award of litigation expenses in an amount of \$205,170.61. These expenses were reasonably and necessarily incurred by Lead Plaintiff's Counsel in the prosecution of this action over nearly two years, and include expenses for the following: mediation services, bankruptcy counsel, travel, document management via Relativity, on-line research, messenger and delivery services, copy services, and other incidental expenses directly related to the prosecution of this Litigation. As made evident in the discussion below regarding the efforts required by Lead Counsel to achieve this result, these expenses were reasonable and necessary. In addition, as allowed under the PSLRA, Lead Plaintiff seeks an award of \$2,500 pursuant to 15 U.S.C. §77-1(a)(4) for representation of the Settlement Class.

² See Declaration of Carol Glock in Support of Lead Plaintiff's Motion for: (1) Final Approval of Class Action Settlement; (2) Approval of Plan of Allocation; (3) Award of Attorneys' Fees and Expenses; and (4) Award to Lead Plaintiff Pursuant to 15 U.S.C. §77z-1(a)(4), ¶¶5-6 ("Glock Decl."), submitted herewith.

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

II. HISTORY AND BACKGROUND OF THE ACTION

A. Commencement of the Action in State Court

13. On February 22, 2019, Lead Plaintiff Carol Glock filed a Petition for Violation of the Securities Act of 1933 and Demand for Jury Trial in the District Court of Dallas County, Texas, 160th Judicial District, styled *Glock v. FTS International, Inc., et al.*, Cause No. DC-19-02668 (the “Original Petition”), alleging Defendants violated §§11 and 15 of the Securities Act of 1933 by issuing materially false and misleading statements and omissions in offering documents in connection with the Company’s February 5, 2018 initial public offering (the “IPO”).

14. On March 7, 2019, Lead Plaintiff filed a motion to appoint Robbins Geller Rudman & Dowd LLP and Johnson Fistel, LLP as interim class counsel (“Lead Counsel”), and the Kendall Law Group, PLLC as liaison counsel pursuant to Rule 42(g)(2)(A) of the Texas Rules of Civil Procedure (“Interim Class Counsel Motion”). On July 15, 2019, the Honorable Judge Aiesha Redmond entered an Order granting the Interim Class Counsel Motion and appointing Robbins Geller Rudman & Dowd LLP and Johnson Fistel, LLP as Interim Class Counsel for the putative class pursuant to Rule 42(g)(2)(A) of the Texas Rules of Civil Procedure, and the Kendall Law Group, PLLC as Liaison Counsel.

15. On May 21, 2019, Defendant FTSI and the Individual Defendants filed 284 pages of Special Exceptions (and accompanying exhibits) to the Original Petition pursuant to Rule 91 of the Texas Rules of Civil Procedure.³ Defendants Chesapeake Energy Corporation (“Chesapeake”) and CHK Energy Holdings, Inc. separately filed Special Exceptions to the Original Petition

³ The Individual Defendants are Michael J. Doss, Lance Turner, Goh Yong Siang, Boon Sim, Domenic J. Dell’Osso, Jr., Bryan J. Lemmerman, Ong Tiong Sin, and Carol J. Johnson.

pursuant to Rule 91 of the Texas Rules of Civil Procedure, as well as a joinder to FTSI and the Individual Defendants' Special Exceptions.

16. On July 19, 2019, Lead Plaintiff opposed Defendants' Special Exceptions to the Original Petition.⁴ On August 9, 2019, Defendants filed replies in further support of their Special Exceptions to the Original Petition.

17. On August 16, 2019, Judge Redmond held a hearing on Defendants' Special Exceptions to the Original Petition. Following the hearing, Judge Redmond granted the Special Exceptions, but allowed leave to amend.

18. Lead Counsel continued their extensive investigation into Lead Plaintiff's claims, which included: (a) a thorough review and analysis of Defendants' public disclosures, including: (i) transcripts of FTSI's quarterly conference calls held to discuss the Company's financial results and other presentations made by top FTSI management at investor conferences; (ii) the Company's periodic filings with the SEC, including the S-1, and Forms 10-Q, filed quarterly; and (iii) FTSI press releases and media reports; (b) a thorough review and analysis of relevant third-parties' public disclosures, such as analyst reports; (c) a thorough review and analysis of publicly available documents, announcements, commentary, and news articles concerning FTSI and the other defendants, and the industries in which they operate; and (d) a thorough review and analysis of market and Company-specific research reports prepared by securities and financial analysts regarding FTSI.

19. Following this continued extensive investigation, Lead Plaintiff filed the Amended Petition alleging violations of §§11 and 15 of the Securities Act of 1933 on September 16, 2019. The Amended Petition brought claims on behalf of all persons who purchased FTSI common stock

⁴ Defendants include the Individual Defendants, FTS International, Inc., Chesapeake Energy Corporation ("Chesapeake") and CHK Energy Holdings, Inc.

in or traceable to the Company's February 5, 2018 IPO. Among other things, the Amended Petition alleged that Defendants misrepresented FTSI's existing business conditions, allowing Defendants to sell more than 22.4 million shares in FTSI's IPO, at a highly inflated price. The Amended Petition further alleged Defendants' IPO Registration Statement was false and misleading as it misrepresented (among other things) that "we are experiencing a surge in demand for our services" when FTSI's key financial metrics were not surging but declining at the time of the IPO.

B. Defendants' Special Exceptions to the Amended Petition

20. On October 16, 2019, Defendant FTSI and the Individual Defendants again filed Special Exceptions to the Original Petition pursuant to Rule 91 of the Texas Rules of Civil Procedure. Specifically, Defendant FTSI's lengthy motion, 425 pages with eleven exhibits, asserted that the Amended Petition: (i) failed to identify any materially false or misleading statements in the Registration Statement; (ii) failed to identify false or misleading statements concerning FTSI's business with Chesapeake; (iii) failed to identify false or misleading statements concerning FTSI's reported revenue and income growth; (iv) failed to identify false or misleading statements related to surging demand for FTSI's services; (v) failed to identify false or misleading statements related to certain benefits of FTSI's strategy, manufacturing capabilities, and dedicated work contracts; and (vi) failed to plead a claim for violation of §15 of the Securities Act.

21. Lead Plaintiff filed her opposition to Defendants' Special Exceptions on November 8, 2019. Lead Plaintiff argued that (i) the Amended Petition alleged in detail the specific allegedly false or misleading statements and omissions; (ii) the Amended Petition adequately pled facts demonstrating why each alleged misstatement or omission was false or misleading; (iii) Lead Plaintiff had adequately pled facts sufficient to show that Defendants were aware of undisclosed facts that seriously undermined the accuracy of their alleged misstatements, and, in any event,

Defendants' alleged misstatements were not accompanied by meaningful cautionary language; and (iv) the Amended Petition adequately pled a §15 claim.

22. On November 19, 2019, Defendants filed replies in further support of their Special Exceptions.

23. On November 22, 2019, after full briefing and a lengthy hearing on Defendants' Special Exceptions, the Texas State Court denied Defendants' Special Exceptions.

C. Agreed Scheduling Order

24. Following entry of the Court's order denying Defendants' Special Exceptions, the parties met-and-conferred, negotiated, and submitted a proposed Agreed Scheduling Order (Level 3) regarding a pre-trial schedule. The Court adopted the proposed scheduling order on December 3, 2019.

25. On December 3, 2019, the Court entered the Agreed Scheduling Order, establishing a schedule for all pre-trial deadlines, and setting the matter for an October 19, 2020 trial.

D. Defendants' Motion for Interlocutory Appeal

26. Following Defendants' Special Exceptions being overruled by the Texas State Court, on December 13, 2019, Defendants filed a motion for interlocutory appeal.

27. Lead Plaintiff opposed Defendants' motion for interlocutory appeal on January 27, 2020, arguing that (i) Defendants failed to identify a controlling question of law as to which there was substantial ground for a difference of opinion, and (ii) Defendants failed to establish that interlocutory review would materially advance the action's conclusion.

28. Just three days later, on January 30, 2020, and after briefing and a hearing, the Texas State Court denied Defendants' motion for interlocutory appeal.

E. Defendants' Petition for Writ of Mandamus and Request for Emergency Stay of All Trial Court Proceedings

29. On February 12, 2020, Defendants filed a Petition for Writ of Mandamus in the Texas 5th District Court of Appeals. *In Re: FTS International, Inc., et al.*, Case No. 05-20-00189-CV, App. ECF No. 1. Defendants' Petition for Writ of Mandamus included over 2,000 pages of tabbed exhibits. In their Petition for Writ of Mandamus, Defendants argued that: (i) the Texas State Court abused its discretion by disregarding federal substantive law and refusing to apply Texas procedural law intended to dismiss defective claims; (ii) mandamus was required because there is no other opportunity to appeal the trial court's refusal to follow controlling federal law; and (iii) mandamus was appropriate for the additional reason that Texas trial courts will benefit from guidance regarding §11 claims.

30. On March 3, 2020, Defendants moved for an emergency stay of all proceedings in the trial court (App. ECF No. 4) and on March 6, 2020, Lead Plaintiff filed her opposition to Defendants' petition, arguing the relief sought was not appropriate for mandamus review because Defendants merely disagreed with the lower court's ruling that Lead Plaintiff's Amended Petition had met the pleading standards of the Securities Act. App. ECF No. 5.

31. On March 9, 2020, the 5th District Court of Appeals granted Defendants' motion for an emergency stay, staying the proceedings in the action styled *Glock v. FTS International, Inc., et al.*, DC-19-02668. App. ECF No. 6.

32. On April 13, 2020, Lead Plaintiff filed a brief opposing Defendants' petition for a writ of mandamus, arguing that mandamus was inappropriate to address a Court's ruling on a special exception that does not affect a substantive right, and that Lead Plaintiff had satisfied Texas pleading rules by providing the requisite fair notice of the claims.

33. On June 8, 2020, the Texas 5th District Court of Appeals denied Defendants' Petition for Writ of Mandamus (App. ECF No. 23), and on June 17, 2020, Defendants filed a Writ

of Mandamus with the Supreme Court of Texas, which had yet to be ruled upon at the time of Defendants' bankruptcy removal petition.

F. Fact Discovery

34. As set forth herein, Lead Plaintiff's discovery efforts included requesting, negotiating for, obtaining, and reviewing over 250,000 pages of documents from Defendants and third parties and engaging in an exhaustive meet and confer process related to electronic discovery.

1. Requests for Documents

a. Document Requests Directed at Defendants

35. On September 26, 2019, Lead Plaintiff served separate First Set of Requests for Production of Documents on Defendant FTSI; Defendants Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC; and Defendants CHK Energy Holdings, Inc., Chesapeake Energy Corporation, and Maju Investments (Mauritius) PTE, LTD. All of these Defendants served their Responses and Objections to Lead Plaintiff's First Set of Requests for Production of Documents on November 15, 2019.

36. Thereafter, the parties began negotiating the relevant topics for discovery and scope of production, sources to be searched, relevant time period, custodians, and search terms. For several weeks, the parties continued to have numerous meet-and-confers and exchanged counterproposals through detailed written correspondence and telephonic conferences. As the parties resolved these issues, Defendants began producing documents to Lead Plaintiff on a rolling basis.

37. The careful examination and analysis of the documents produced by Defendants required a massive undertaking by teams of attorneys. For example, the attorneys organized and analyzed the documents, selected those that proved or could undermine Lead Plaintiff's Amended Petition's allegations, identified relevant witnesses and issues, and established procedures to

identify additional documents and information that had not been produced. Lead Counsel then reviewed and analyzed documents to determine what information the documents conveyed and how they were relevant to Lead Plaintiff's claims. Lead Counsel also applied that understanding to other documents that had been produced.

38. On December 6, 2019, Lead Plaintiff served her second Set of Requests for Production of Documents on Defendant FTSI and Defendants Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC. Defendant FTSI and Defendants Credit Suisse Securities (USA) LLC and Morgan Stanley & Co. LLC served their responses and objections on January 6, 2020.

39. As a result of Lead Plaintiff's discovery requests noted above, Defendant FTSI made multiple productions comprised of over 64,000 documents, totaling more than 216,000 pages of documents. And the Chesapeake, Maju, and underwriter defendants produced approximately 33,000 pages of documents.

b. Document Requests Directed at Lead Plaintiff

40. On January 15, 2020, Defendants served their First Set of Requests for Production of Documents on Lead Plaintiff. On February 14, 2020, Lead Plaintiff served her Responses and Objections to Defendants' First Set of Requests for Production of Documents. Lead Plaintiff also produced responsive, non-privileged documents shortly thereafter.

2. Interrogatories Directed at Lead Plaintiff

41. On January 15, 2020, Defendants served their First Set of Interrogatories on Lead Plaintiff. Lead Plaintiff, through Lead Counsel, served her Responses and Objections to Defendants' First Set of Interrogatories on February 14, 2020.

3. Requests for Disclosure

42. On December 2, 2019, Lead Plaintiff issued a Request for Disclosure to all Defendants pursuant to Texas Rule of Civil Procedure 194. Defendants served Lead Plaintiff with their Rule 194 Disclosures on January 2, 2020.

4. Discovery Directed at Non-Parties

43. Commencing February 13, 2020, Lead Plaintiff began issuing subpoenas for documents to numerous other relevant non-parties, including, but not limited to, the Company's customers. Lead Plaintiff issued subpoenas on the following FTSI customers: Encana Oil & Gas (USA) Inc.; Diamondback Energy, Inc.; ConocoPhillips; Vine Oil & Gas LP; Range Resources Corporation; Murphy Oil Corporation; EQT Corporation; EP Energy Corporation; EOG Resources, Inc.; and Devon Energy Corporation.

5. Bankruptcy Court Proceedings

44. On June 18, 2020, in the wake of reports that defendants Chesapeake and/or CHK Energy Holdings, Inc. likely would be seeking bankruptcy protection, Lead Plaintiff filed a notice of dismissal without prejudice as to those defendants to permit the Texas State Court action to proceed unencumbered by any such bankruptcy proceedings, should they occur, in the interests of expediting recovery to the class.

45. On June 28, 2020, Chesapeake Energy Corporation and CHK Energy Holdings, Inc. filed a petition for bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas.

46. Thereafter, on July 6, 2020, the remaining Defendants removed the action to the United States Bankruptcy Court for the Northern District of Texas.

47. Defendants argued the Bankruptcy Court had “related to” jurisdiction over the action because it could affect both Chesapeake Energy Corporation and CHK Energy Holdings, Inc.’s estates.

48. On July 13, 2020, Defendants filed a motion to transfer this action to the United States Bankruptcy Court for the Southern District of Texas. *See In re: Chesapeake Energy Corporation, et al.*, Civil Action No. 20-33233, ECF No. 6 (the “Bankruptcy Action”). The motion was set for a hearing on August 25, 2020 (Bankruptcy Action, ECF No. 40), and the motion was granted. Bankruptcy Action, ECF No. 41.

49. On July 28, 2020, Lead Plaintiff filed a motion to remand the action back to the District Court of Dallas County, Texas. Bankruptcy Action, ECF No. 19.

50. On September 18, 2020, Defendants filed a motion for judgment on the pleadings for failure to (i) allege Lead Plaintiff’s statutory standing, and (ii) state an actionable securities claim. Bankruptcy Action, ECF No. 48. Defendants argued that Lead Plaintiff lacked standing because she could not trace her securities to the allegedly false and misleading Registration Statement. Defendants claimed that Lead Plaintiff’s acquisitions in FTSI securities were untraceable because unregistered securities were purportedly co-mingled with the securities issued under the Registration Statement at issue prior to Lead Plaintiff’s acquisitions. Defendants also raised similar arguments as in their Special Exception briefing that Lead Plaintiff did not adequately state a claim. Moreover, Defendants raised several arguments concerning Lead Plaintiff’s standing, negative causation, falsity, and damages that, if accepted, may have ended the litigation and would have substantially reduced or eliminated recoverable damages.

51. On September 22, 2020, FTSI filed a petition for bankruptcy protection in the United States Bankruptcy Court for the Southern District of Texas.

52. Both Lead Plaintiff's motion to remand and Defendants' motion for judgment on the pleadings were fully briefed at the time of settlement, with oral argument scheduled to take place for both motions on October 19, 2020.

53. On November 17, 2020, a status conference was held in the Bankruptcy Action. At the status conference, the parties announced their intention to proceed with a proposed settlement that involved the certification of a nationwide class. To ensure the validity of any approved settlement and avoid any prejudice to the parties, the Honorable David R. Jones, U.S. Bankruptcy Judge for the Bankruptcy Action, contacted Chief District Judge Lee Rosenthal for assistance and direction, and, after evaluating the circumstances, Judge Rosenthal graciously agreed to handle this matter. Accordingly, on November 18, 2020, Judge Jones entered an Order Transferring Adversary Proceeding, transferring proceedings to this Court. ECF No. 1.

6. Outside Bankruptcy Counsel

54. Following the filing of Chesapeake's bankruptcy petition, and in light of the action's subsequent removal *and* transfer to the Bankruptcy Court for the Northern District of Texas, and then to the Bankruptcy Court for the Southern District of Texas, Lead Counsel retained the firm of Lowenstein Sandler LLP ("Bankruptcy Counsel"), who are experienced bankruptcy counsel, in order to assist Lead Counsel in representing the Settlement Class's interests in and throughout the bankruptcy proceedings. Bankruptcy Counsel assisted Lead Counsel by providing advice and assistance with respect to, among other things, (i) identifying and navigating the rules, practices, and procedures of bankruptcy practice; (ii) researching, drafting, and arguing issues related to bankruptcy law; (iii) communicating with FTSI's and Chesapeake's bankruptcy counsel; and (iv) negotiating certain bankruptcy-related provisions in the settlement agreement.

55. Fees paid by Lead Counsel to Bankruptcy Counsel for their services in connection with this action total \$115,997.50.

G. Proceedings Before This Court

56. On November 20, 2020, Lead Plaintiff filed an Unopposed Motion for Preliminary Approval of Settlement and Approval of Notice to the Settlement Class (ECF No. 8) (“Motion for Preliminary Approval”), the Stipulation of Settlement (ECF No. 9), and the Declaration of Michael Joaquin (ECF No. 10).

57. On December 8, 2020, the Court held a Motion Hearing for the Motion for Preliminary Approval. Following the hearing, the Court granted the Motion for Preliminary Approval and entered an Order Preliminarily Approving Settlement and Providing for Notice. ECF No. 15.

III. MEDIATION AND SETTLEMENT

A. Results of the Mediation

58. On April 29, 2020, Lead Counsel, Defendants’ counsel, and certain of Defendants’ D&O Insurers met with David Murphy, Esq. of Phillips ADR, a highly experienced, neutral mediator, who presided over a full-day electronic mediation session on the ZOOM platform. In advance of the mediation session, the parties each submitted and exchanged detailed mediation statements and exhibits, which addressed, among other things, issues related to Lead Plaintiff’s standing, negative causation, falsity, and damages. The session ended without an agreement to settle.

59. For the months following the mediation, Mr. Murphy continued to participate in further discussions with the parties. On October 13, 2020, Mr. Murphy made a mediator’s proposal for the parties’ consideration, which both sides accepted.

60. The parties thereafter memorialized the settlement proposal in a term sheet and Memorandum of Understanding (the “MOU”) executed as of October 23, 2020. The MOU sets forth, among other things, the parties’ binding agreement to settle and release all claims against

the Defendants in the action in return for a cash payment of \$9,875,000 (that Defendants or Defendants' D&O Insurers shall fund) for the benefit of the Settlement Class, subject to certain terms and conditions, including execution of a customary stipulation and Court approval.

61. Under the terms of the MOU, the parties agreed, subject to Court approval, to certification of the Settlement Class defined as: "All persons or entities who purchased FTSI common stock in or traceable to the Company's February 2, 2018 initial public offering (the 'IPO'), including all persons who purchased or acquired FTSI common stock on or after February 2, 2018." MOU, ¶7.

62. Under the terms of the MOU, the parties have agreed that Lead Plaintiff and each of the other Settlement Class Members shall waive and release each and every Released Claim (including Unknown Claims) against the Defendants and the other Released Defendant Parties in exchange for payment by or on behalf of Defendants of \$9,875,000 in cash.

63. The Released Claims are defined in the Stipulation (*see* Stipulation, ¶1.19) as any and all claims, demands, losses, rights, and causes of action of any nature whatsoever, whether known or unknown, whether individual, class, direct, derivative, representative, or of any other type or in any other capacity, whether brought directly or indirectly against any Released Defendant Party, that: (i) Lead Plaintiff or any other member of the Settlement Class asserted or could have asserted in the Litigation, or could in the future assert in any forum, whether foreign or domestic, whether arising under federal, state, common, or foreign law, whether based on statements or omissions made directly to individual persons or broadly to the market, that arise out of or are based upon or relate in any way to any of the allegations, acts, facts, transactions, statements, events, matters, occurrences, representations or omissions involved, set forth or referred to in the Litigation; and (ii) relate in any way to the purchase or acquisition of FTSI common stock. Released Claims include "Unknown Claims," as defined in the Stipulation, ¶1.33.

64. The Released Defendant Party or Released Defendant Parties means Settling Defendants and their Related Parties. *See* Stipulation, ¶1.21.

65. Based on their investigation, prosecution, and mediation of the case, Lead Counsel concluded that the Settlement is fair, reasonable, and adequate to members of the Settlement Class, and in their best interests.

66. The Settlement is well within the range of reasonableness under the circumstances to warrant final approval of the Settlement. Moreover, Defendants raised several arguments concerning Lead Plaintiff's standing, negative causation, falsity, and damages that, if accepted, would have substantially reduced or eliminated recoverable damages. Finally, FTSI's and Chesapeake's bankruptcy filings also add to the risk of recovery for Lead Plaintiff and the Settlement Class as FTSI and Chesapeake would likely no longer be available to fund any judgment or settlement.

B. The Mediator's Fees

67. As explained above, counsel for the parties worked with highly experienced mediator David Murphy, Esq. of Phillips ADR.

68. Mr. Murphy's fees for conducting a full-day mediation session, and multiple follow-up mediation sessions leading to the settlement of the Litigation, are \$21,562.50.

IV. SUMMARY OF THE NOTICE AND PLAN OF ALLOCATION

A. The Plan of Allocation

69. The proposed Plan of Allocation is detailed in the long-form Notice and incorporated by reference into the Stipulation. The Notice was mailed to Settlement Class Members, posted online at www.FTSISecuritiesSettlement.com (the "Settlement Website"), and is downloadable.

70. The proposed Plan of Allocation is comparable to plans of allocation approved in numerous other securities class actions.⁵ The Plan of Allocation allocates the Net Settlement Fund among Settlement Class Members who submit valid Claim Forms on a *pro rata* basis based on the amount of each Claimant's Recognized Claim. The Net Settlement Fund consists of the \$9,875,000 Settlement Amount, plus accrued interest, after deduction of: (i) any Taxes and Tax Expenses; (ii) any Notice and Administration Expenses; and (iii) any attorneys' fees and litigation expenses awarded by the Court. Specifically, an Authorized Claimant's *pro rata* share shall be the Authorized Claimant's Recognized Claim divided by the total of Recognized Claims of all Authorized Claimants, multiplied by the total amount in the Net Settlement Fund.

71. The proposed Plan of Allocation reflects, and is based upon, Lead Plaintiff's allegation that Defendants misrepresented the existing business conditions at FTSI in its Registration Statement prior to its February 5, 2018 IPO, allowing Defendants to sell more than 22.4 million shares at a highly inflated price.

72. Additionally, Gilardi & Co. LLC, the Claims Administrator selected by Lead Counsel and approved by the Court, will process claims under the guidance of Lead Counsel, allow Claimants an opportunity to cure any deficiencies in their Claims or request that the Court review the denial of their Claims, and, lastly, mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund (per the Plan of Allocation), after Court-approval. Gilardi & Co. LLC has substantial experience as a claims administrator in securities class action cases such as this.

⁵ The formula for determining each Claimant's Recognized Loss Amount is found on page 11 of the Notice.

V. THE STRENGTHS AND WEAKNESSES OF THE CASE FAVOR SETTLEMENT

73. At the time the Settlement was reached, the parties had heavily litigated this case and participated in extensive settlement negotiations. A new motion for judgment on the pleadings was fully briefed and pending. As a result, Lead Counsel had sufficient knowledge and information to evaluate the strengths and weaknesses of Lead Plaintiff's claims and the propriety of the Settlement. While Lead Counsel believe the case against Defendants had merit and Lead Counsel were prepared to proceed to trial, they also realize that they faced considerable challenges and defenses on every element of the claims asserted. As discussed below, a number of factors made the outcome of continued litigation, and ultimately a trial in the action (and the inevitable appeals that would follow), uncertain. In addition, at the time of settlement, the parties were waiting to present oral argument to the Court on Defendants' motion for judgment on the pleadings – the outcome of which could have terminated the action and the Settlement Class' ability to recover altogether.

74. Some of the risks Lead Plaintiff faced are discussed in the following paragraphs. Lead Counsel carefully considered each of these risks. These risks were also thoroughly vetted during the parties' settlement discussions.

A. Risks Relating to Bankruptcy Proceedings

75. Lead Plaintiff's prospects for full recovery were substantially reduced by the bankruptcies of certain defendants, putting into question whether there would be sufficient assets to satisfy even a modest judgment. Moreover, release of those funds would likely be delayed due to further supervision from the bankruptcy courts because certain defendants have considered filing claims against the bankruptcy estates relating to liabilities incurred in defending this Litigation.

76. Lead Plaintiff's claims also faced complete dismissal on two separate theories in the pending motion for judgment on the pleadings. First, the motion again challenged the sufficiency of Lead Plaintiff's allegations, which could have resulted in the dismissal of the Settlement Class' claims with prejudice, notwithstanding that these claims were upheld by the Texas State Court. A similar result was not guaranteed here as there were further risks that the standard of review at the Federal Court would have been applied more stringently than under Texas's notice pleading standards. Second, Defendants argued that Lead Plaintiff did not have standing to sue because she could not trace her shares to the Registration Statement. Had the Court granted dismissal on standing grounds – at this juncture or at summary judgment – there was no guarantee that another plaintiff would step forward and be permitted by the Court to continue to represent the Settlement Class. As a result, even class members who could assert statutory standing would be left with no recovery.

B. Risks to Proving Materiality of the Alleged Omissions

77. Lead Plaintiff faced significant risks in proving that Defendants' alleged statements were false and misleading. For example, Lead Plaintiff faced risks in proving that Defendants omitted material information regarding whether demand for FTSI's services was surging at the time of the IPO. Defendants would argue that demand was surging at the time of the IPO and there is no evidence to state otherwise, and therefore Defendants' statements concerning demand for services were not misleading. Throughout the action and in their pending motion for judgment on the pleadings, Defendants argued that these statements were accurate in content and any allegedly omitted information had been disclosed and was known to investors before and during the IPO. Although Lead Plaintiff disputed Defendants' arguments on falsity and believes the evidence contradicts Defendants' claims, there was a risk that the Court at the dispositive motion for

judgment on the pleadings or a jury at trial could find otherwise for some or all of the alleged misstatements and omissions.

C. Defendants' Challenges to Causation and Damages

78. Lead Plaintiff also faced significant barriers to establishing damages. A defendant may avoid or limit liability by establishing that the damages suffered by plaintiffs were caused by something other than the allegedly inaccurate statement or omission in the registration statement. Although loss causation is not an element that Lead Plaintiff must plead under §11, Defendants could nonetheless reduce their liability by demonstrating that depreciation in the value of the relevant stock was attributable to factors other than the alleged misstatement or omission. Defendants also raised several arguments concerning negative causation and damages that, if accepted, would have substantially reduced or eliminated recoverable damages.

79. Defendants' motion for judgment on the pleadings could also reduce damages if it did not result in a full dismissal of the action. In essence, the motion argued that any purchases after the date in which co-mingled unregistered shares entered the market would eliminate standing for all transactions after that date. This would have the effect of eliminating standing for some Settlement Class Members who only purchased shares after such date while reducing the recoverable damages for other Settlement Class Members who purchased shares before and after such date.

D. Risks of Defendants' Dispositive Motions, Trial and Appeal

80. At the time the Settlement was reached, the parties had fully briefed Defendants' pending motion for judgment on the pleadings and were prepared for oral argument. While Lead Plaintiff and Lead Counsel believe that the claims asserted against Defendants have substantial merit, they also recognize that there were considerable risks involved in pursuing these claims through Defendants' dispositive motion.

81. Moreover, should Lead Plaintiff succeed on her opposition to Defendants' motion for judgment on the pleadings, the case would likely continue to a jury trial. Given the complex nature of the claims, Lead Plaintiff intended to rely heavily on expert opinions concerning materiality, causation, and damages and the inevitable *Daubert* motions would ensue. Assuming that the Court denied Defendants' inevitable *Daubert* motions and Lead Plaintiff's experts were allowed to testify, the jury would be faced with a "battle of the experts."

82. Even if Lead Plaintiff prevailed at trial, there is no assurance that she would have recovered an amount equal to, much less greater than, the Settlement Amount given Defendants' challenges to causation and damages. Moreover, even a positive outcome at trial does not guarantee an ultimate positive result for the Settlement Class given the threats of reversal by the trial court or an appellate court. Notably at the time of removal, Defendants' mandamus petition was pending before the Texas Supreme Court.

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

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

84. Lead Counsel have zealously litigated this case on behalf of the Settlement Class for almost two years. Lead Counsel undertook this effort on a contingency basis, and expended over 6,300 hours of professional and paraprofessional time litigating this action.

85. Lead Counsel respectfully request an award of 33% of the Settlement Amount and \$205,170.61 in expenses. Lead Plaintiff's Counsel have submitted separate declarations that provide additional support for the requested fees and expenses requested by each individual firm.

VII. LEAD PLAINTIFF'S REQUEST FOR AWARD PURSUANT TO 15 U.S.C. §77z-1(a)(4)

86. Lead Plaintiff Carol Glock requests an award of \$2,500 to compensate her for her time in representing the Settlement Class. As Lead Plaintiff, she actively represented the Settlement Class and worked with Lead Counsel to obtain a terrific result which warrants approval of the requested award. *See* Glock Decl., ¶¶2-4.

VIII. CONCLUSION

87. For all of the foregoing reasons, Lead Counsel respectfully request the Court grant final approval of the Settlement, approve the Plan of Allocation, award Lead Counsel's attorneys' fees in the amount of 33% of the Settlement Amount and \$205,170.61 in expenses, as detailed in Lead Plaintiff's Counsel's separate declarations and award Carol Glock \$2,500 for her time incurred in representing the Settlement Class.

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

Executed this 17th day of February, 2021.



SCOTT H. SAHAM

Executed this 17th day of February, 2021.



BRETT M. MIDDLETON

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on February 17, 2021, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the Electronic Mail Notice List.

s/ Scott H. Saham

SCOTT H. SAHAM

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: scotts@rgrdlaw.com