IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE RESIDEO TECHNOLOGIES, INC. DERIVATIVE LITIGATION	Case No. 0:21-cv-01965 (WMW/ECW)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT

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Plaintiffs Riviera Beach Police Pension Fund, City of Hialeah Employees Retirement System, Jawad A. Ayaz, and Daniel Sanclemente respectfully submit this memorandum in support of their Motion for Final Approval of Settlement ("Motion") in connection with the above-captioned shareholder derivative action, brought on behalf of nominal defendant Resideo Technologies, Inc. ("Resideo" or the "Company").[1]

I. INTRODUCTION

The proposed Settlement of this shareholder derivative action is an outstanding result for Resideo and its shareholders, as it provides for the implementation of critical corporate governance reforms designed to, among other things, improve Board oversight, ensure the accurate disclosure of information to the markets, and reduce the risk of legal and regulatory exposure. The Corporate Governance Reforms (or the "Reforms"), which were designed with the assistance of a corporate governance expert, directly address the allegations of wrongdoing at issue in this action and would have been difficult or impossible to achieve if this litigation were to proceed to trial. As stated by Plaintiffs' corporate governance expert, Gonzaga Law School Professor Daniel Morrissey, "The Reforms bring needed oversight to the Company's risk management, particularly focusing

[1] Unless otherwise indicated, all capitalized terms have the same meaning as in the Stipulation and Agreement of Compromise, Settlement and Release dated February 3, 2023 (the "Settlement Agreement," "Stipulation," or "Stip.") (ECF No. 35-1) or in the accompanying Joint Declaration of Michael J. Barry and Thomas Curry in Support of Plaintiffs' Motion for Final Approval of Settlement ("Joint Declaration" or "Joint Decl."). Unless otherwise noted, all citations to "¶" or to "Ex." refer to paragraphs or exhibits to the Joint Declaration; all emphasis in this memorandum has been added; and all internal citations and quotation marks have been omitted.

on issues with its supply chain, manufacturing process, and product quality that were highlighted in the Complaint." Morrissey Decl., ¶45.

On February 13, 2023, the Court granted preliminary approval of the Settlement,[2] holding that "the Settlement appears to be the product of serious, informed, arm's-length negotiations" and that "the Court will likely be able to finally approval the Settlement under Rule 23.1 as being fair, reasonable, adequate, and in the best interests of Resideo." Preliminary Approval Order (ECF No. 38) at 2. The parties have fully complied with the Court-approved Notice plan, and Plaintiffs now respectfully request that the Court grant final approval of the Settlement and Plaintiffs' Counsel's requested attorneys' fees and expenses (the "Fee Award" or the "Fee and Expense Amount"), for the following reasons.

Benefits. In consideration for the release of the claims asserted in the Actions, Resideo will adopt and maintain for a minimum period of five years a suite of significant corporate governance measures that are directly tailored to address the central issues, allegations, and claims in the Actions. Stip., Ex. A. The Reforms will, *inter alia*: (i) enhance Board-level oversight of supply chain efficiency and optimization; (ii) facilitate

[2] As noted in the Stipulation, the Settlement will also resolve (i) a related derivative action pending in the Delaware Court of Chancery, captioned, *Bud & Sue Frashier Family Trust U/A Dtd 05/05/98 v. Fradin*, No. 2021-0556-PAF (Del. Ch.); and (ii) a litigation demand served by Stockholder Alice Burstein (collectively, along with the above-captioned action, the "Actions"). The Settling Parties are: (i) Riviera Beach Police Pension Fund ("Riviera Beach"), City of Hialeah Employees Retirement System ("Hialeah"), Jawad A. Ayaz ("Ayaz"), Daniel Sanclemente ("Sanclemente"), Bud & Sue Frashier Family Trust U/A DTD 05/05/98 ("Frashier"), and Alice Burstein ("Burstein," and collectively "Plaintiffs"); and (ii) Michael G. Nefkens, Joseph D. Ragan III, Niccolo de Masi, Paul Deninger, Roger Fradin, Jack Lazar, Nina Richardson, Andrew Teich, and Sharon Wienbar ("Individual Defendants"); and (iii) Nominal Defendant Resideo (together with the Individual Defendants, "Defendants").

the Company's continuous improvement of its governance oversight, risk management, and supply chain areas of focus; (iii) ensure the accurate and timely disclosure of information to the SEC and other public disclosures related to the Company's financial condition; (iv) enhance the independence and diversity of the Company's Board and leadership structure; (v) improve the Company's strategic planning; (vi) strengthen the Company's internal controls and accounting procedures; and (vii) provide enhanced training and technical guidance for employees with respect to integrity and compliance with the Company's Code of Business Conduct. These Reforms will reduce Resideo's exposure to legal and regulatory risks and, in turn, lead to a higher value for the Company.

Risks. Derivative actions are notoriously difficult and risky, and this case was no exception. The numerous difficulties that Plaintiffs would face if they were to continue to litigate include: the difficulty of litigating director oversight claims—described by the Delaware Court of Chancery as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment";[3] the difficulty of establishing demand futility under Rule 23.1 and Delaware law; the possibility that the Company would appoint a special litigation committee (an "SLC"), which could recommend the termination of Plaintiffs' claims; difficulties in ascertaining damages; and other risks inherent in complex litigation, such as motions for summary judgment, battles of the experts, a lengthy trial, and post-trial litigation and appeals. In the face of these risks, the likelihood that further

[3] *In re Caremark Int'l Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996).

litigation would secure a recovery greater than the benefits conferred by the Settlement was remote.

Lack of opposition to the Settlement. To date, not a single shareholder has objected to the Settlement or Plaintiffs' request for attorneys' fees, following a thorough notice program approved by this Court (ECF No. 38, ¶4).[4] Furthermore, Co-Lead Plaintiffs Riviera Beach and Hialeah are sophisticated institutional shareholders who have actively overseen the litigation since its inception and strongly endorse the Settlement.

The valuable Reforms conferred in the Settlement could not have been obtained without the skill and effective advocacy of Plaintiffs' Counsel, who have litigated the Actions since their inception on a completely contingent basis against highly respected defense counsel. In recognition of the substantial benefits achieved for Resideo as a result of Plaintiffs' Counsel's efforts, and with the assistance of Magistrate Judge Becky R. Thorson at a mediated settlement conference, Defendants agreed to pay an award of attorneys' fees, reimbursement of expenses, and service awards in the total amount of $1,600,000, subject to Court approval. The Fee and Expense Amount, which is in line with other similar fee awards in courts throughout the country, is a small fraction of the probable range of value of the Settlement's economic benefits to Resideo and warrants the deference traditionally accorded such arm's-length agreements among sophisticated parties.

Plaintiff also seeks approval of a modest $2,500 service award for each of the Plaintiffs and representative shareholders in the Actions, totaling $15,000, to be paid out

[4] The deadline for filing objections to the Settlement is May 17, 2023. Plaintiffs will address any objections received in their reply papers, to be filed on May 31, 2023.

of any fees awarded to Plaintiffs' Counsel. The service awards will compensate Plaintiffs for stepping forward and dedicating their time and resources to the successful prosecution of this matter on behalf of Resideo and its public shareholders.

For all of these reasons, Plaintiffs respectfully request that the Court finally approve the Settlement and the agreed Fee and Expense Amount and service awards and enter the Proposed Order and Final Judgment.[5]

II. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Legal Standard for Approval of Shareholder Derivative Settlements

Federal Rule of Civil Procedure 23.1(c) provides that "[a] derivative action may be settled . . . only with the court's approval." The Eighth Circuit has held that "[a] strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999). This policy is particularly strong in the shareholder derivative action context "because such litigation is notoriously difficult and unpredictable." *In re Xcel Energy, Inc., Sec., Deriv. & ERISA Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005); *see also Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005) ("The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."). The Court's role is to "determine whether the proponents of the settlement have shown that it fairly and adequately serves the interests

[5] For a detailed summary of the allegations in the Complaint, the relevant procedural history, and the settlement negotiations, *see generally*, the Joint Declaration and the Memorandum of Law In Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement (ECF No. 34), at 4-10.

of the corporation on whose behalf the derivative action was instituted." *Tracy v. Telemetrix, Inc.,* No. 8:12CV359, 2017 WL 5590217, at *2 (D. Neb. Nov. 16, 2017).

When considering approval of derivative settlements, courts will evaluate whether the settlement is fair, reasonable, and adequate. *See Tracy,* 2017 WL 5590217, at *2 (citing *Weiner v. Roth*, 791 F.2d 661, 662 (8th Cir. 1986)). The Eighth Circuit has identified the following factors that a court should consider in determining whether a settlement is fair, reasonable, and adequate: (1) the merits of the plaintiff's case, weighed against the terms of the settlement; (2) the complexity and expense of further litigation; (3) the defendant's financial condition; and (4) the amount of opposition to the settlement. *See In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 932 (8th Cir. 2005).

B. The Merits of the Plaintiffs' Case Weighed Against the Terms of the Settlement Favors Approval

"The most important consideration in deciding whether a settlement is fair, reasonable, and adequate is 'the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." *Cohn*, 375 F. Supp. 2d at 853 (quoting *Wireless Tel.*, 396 F.3d at 932). Because of the inherent uncertainty of derivative litigation, a plaintiff need only establish that, all things considered, "it is prudent to eliminate the risks of litigation to achieve specific certainty though admittedly it might be considerably less (or more) than were the case fought to the bitter end." *Id.* at 855.

While Plaintiffs believe that the claims asserted against Defendants in this litigation are meritorious, they recognize that considerable risks existed in establishing both liability

and damages. As detailed below, the Settlement creates substantial benefits for Resideo, while avoiding the risks of continued litigation.

1. The Benefits of the Settlement

Courts routinely approve settlements supported by the kinds of targeted corporate governance reforms that form the consideration for the Settlement here. *See Cohn*, 375 F. Supp. 2d at 853 (approving settlement based on corporate governance reforms—including the creation of a disclosure committee—that were "specifically designed to minimize the probability of violations of fiduciary duties and federal securities laws in the future"). As Professor Morrissey explains in his declaration:

> [T]he Settlement directly addresses the allegations of wrongdoing here. The Reforms should ensure accurate and timely reporting to the Board on the issues that were the subject of the alleged wrongful disclosures and give the Board enhanced oversight on crucial issues relating to the Company's operations and supply chain. The Reforms bring needed oversight to the Company's risk management, particularly focusing on issues with its supply chain, manufacturing process, and product quality that were highlighted in the Complaint, the Chancery Complaint, and the Demand Letter. They should go a long way to restoring the credibility of Resideo's statements to the investment public about its operations.

Morrissey Decl., ¶45. Notably, the Settlement requires the Company to spend $300,000 per year for five years to continuously improve certain governance oversight, risk management, and supply chain areas of focus, with the Board reviewing and approving this budget. Stip., Ex. A, §B.

The Reforms, which will remain in effect for three years (unless otherwise indicated) include the following (for a full list, see Stip. Ex. A):

- Supply Chain Efficiency and Optimization Oversight. Resideo agreed to enhance Board-level oversight of supply chain efficiency and optimization in several ways. The Settlement requires management to provide a report to the full Board on significant supply chain issues and optimization on an annual basis. Stip., Ex. A, §A(III). Additionally, the Audit Committee's charter will be amended so that the Audit Committee is responsible for evaluating "risks related to the company's supply chain, manufacturing processes and product quality," as well as "supply chain resiliency risks, product quality risk, risks related to cybersecurity and primary IT systems of record, and the steps management has taken to monitor and control such exposures." Stip., Ex. A, §A(I). The Nominating and Governance Committee's charter will also be amended to include responsibility for reviewing supply chain issues. Professor Morrissey opines that these measures "will make sure management is on top of any such problems and should ensure that Company leaders will no longer mislead public investors about them." Morrissey Decl., ¶50.

- Disclosure Committee. The Settlement formally creates a new management-level Disclosure Committee comprised of several top executives, including the CFO, General Counsel, Chief Compliance Officer, and the Vice President of Investor Relations. The Disclosure Committee must meet at least quarterly but may meet more frequently as circumstances warrant. The Disclosure Committee must review all annual and quarterly reports to be filed with the SEC, as well as other public disclosures, including earnings reports, press releases, and if practicable, pre-conference call scripts. The Disclosure Committee must pass on the accuracy of these disclosures before sending them to the Audit

Committee for their review. If warranted, the Disclosure Committee must also hold ad hoc meetings on the occurrence of events which may require the filing of an 8-K report with the SEC, so it can review in advance any press releases or other disclosures to be made in connection with them. As Professor Morrissey opines, "[T]his new Disclosure Committee is an extremely significant measure and will directly address deficiencies in the Company's reporting practices which allowed its officials to make numerous apparently false and misleading public statements about Resideo's operations." Morrissey Decl., ¶59.

- Innovation and Technology Committee ("I&T"). The Reforms require that the Company report to the existing I&T on major information technology projects or significant new product innovation or design projects. According to Professor Morrissey, this new requirement will ensure that the I&T and the Board have adequate information to exercise their oversight obligations and "will tighten up appropriate review of these issues by top Resideo officials so that all public disclosure about such matters will be truthful." Morrissey Decl., ¶54.

- Strategic Planning. The Settlement requires that, on no less than an annual basis, management must provide the Board with a strategic operating plan addressing topics such as alternatives to the Company's current structure, including mergers and acquisitions, joint ventures, disposition of capital assets, modifications of its current capital structure and plans for distributions to its shareholders. Following any material transactions, the plan must also evaluate the impact of such transactions on the Company. Stip., Ex. A, §I. Professor Morrissey opines that this Reform "will compel the Company's management and board to be proactive in all its business decisions….to make sure that

Resideo is managed most effectively for its shareholders and stakeholders." Morrissey Decl., ¶62.

- The Separation of the Company's CEO from the Chair of the Board. Stip. Ex. A, §C. Professor Morrissey explains that the separation of the CEO from the Chair of the Board "will make that leading director of Resideo independent from its top management official. In turn, it should make Resideo's CEO more accountable to the Company's ultimate governing authority, its Board of Directors." Morrissey Decl., ¶65.

- Majority of Independent Directors. Beginning in the next election cycle, the Company will formally require that at least 75% of its Board members be independent pursuant to New York Stock Exchange listing guidelines. Stip. Ex. A, §D. Having a majority of independent directors who are not beholden to management will give the Board "more freedom to exercise their important oversight function." Morrissey Decl., ¶66.

- Separation of the Company's Chief Compliance Officer and its General Counsel. Stip. Ex. A, §F. Professor Morrissey explains that the separation of the Chief Compliance Officer from the General Counsel is crucial because "[t]he latter officer usually works directly for the CEO while the former is given the broader, more independent responsibility of assuring that the Company follows all applicable laws and regulations." Morrissey Decl., ¶69.

- Diversity of Board of Directors. Beginning in the next election cycle, the Company will formally require that at least 30% of its Board consist of "Diverse" directors (defined as female, Black or non-white Hispanic, and/or from other populations historically underrepresented on the Board). Additionally, when seeking candidates for nomination to

the Board, Resideo will strive to include in each interview slate for nomination at least 30% Diverse candidates. Stip. Ex. A, §E. "The requirement that women and people of color be considered for Board positions will help promote this needed diversity at Resideo's top level of corporate governance." Morrissey Decl., ¶73.

- Employee Training. The Reforms require that all new hires and appropriate employee populations receive training in the expectation that they conduct themselves with integrity and abide by the Company's Code of Conduct. Stip. Ex. A, §N.

In his Declaration, Professor Morrissey discusses three ways in which the Reforms will confer considerable economic value upon Resideo.

First, the Reforms will enhance the value of Resideo's business through more effective oversight and management, which will result in better operational decisions, improved risk management, and complete and accurate public disclosures. These factors "correlate with higher profits for the Company," as corporate governance reforms like the ones here "will bring about a more productive workforce and a more involved board that will safeguard the interests of the shareholders." Morrissey Decl., ¶75.

Second, the Reforms will substantially improve Resideo's legal and regulatory compliance. As Professor Morrissey notes, "[r]educing the possibility of [losses from legal and/or regulatory violations] because of greatly improved transparency and accountability at the board level has significant economic value." Morrissey Decl., ¶85. The Reforms' value in significantly reducing the probability of a recurrence of the legal and reputational damage alleged here is self-evident, even if not readily quantifiable. Following Resideo's problematic spinoff from Honeywell, the Company lost nearly $2 billion in market

capitalization and was compelled to settle federal securities violation claims (the "Securities Class Action") for $55 million. Resideo would likely face even greater fallout in the event of a recurrence of similar alleged wrongdoing and failures in the future. Professor Morrissey opines that the economic value of materially reducing the probability that Resideo will suffer similar damage in the future likely approximates or exceeds any probable damages that might be recovered through further litigation. Morrissey Decl., ¶83.

Third, the Reforms lay the foundation for restoring investor confidence in the veracity of the Company's public disclosures, the integrity of its management, and the effectiveness of its corporate governance and Board oversight. As Professor Morrissey explains, this will confer real and substantial economic value over and above the improvements in operational performance and legal-regulatory risk reduction. Academic literature and well-regarded industry surveys confirm that investors pay substantial premiums for stock in companies with strong, independent board oversight, effective internal controls, and strong, shareholder-focused corporate governance regimes. Institutional investors are willing to pay a premium of about 18% for securities issued by a well-governed company. Morrissey Decl., ¶¶77-84. Even an extremely conservative "good governance" premium of just 3.6% above Resideo's market value (as of September 23, 2022, the date of Professor Morrissey's Declaration) would suggest an economic benefit of more than $100 million. Morrissey Decl., ¶84.

Finally, Resideo has agreed to maintain the Reforms for a minimum of three years—a meaningful amount of time intended to ensure the measures become embedded in the Company's policies, practices, and corporate culture, thus protecting against the

termination of these measures following the three-year period. *See, e.g., Cohn*, 375 F. Supp. 2d at 850 (finding that corporate governance measures which must be in place for no less than three years will "provide meaningful ways of avoiding the problems [the company] experienced in the recent past").

Courts widely recognize the substantial benefits conferred upon public corporations and their stockholders through the adoption of corporate governance reforms specifically tailored to the allegations of the case. *See*, *e.g.*, *In re NVIDIA Corp. Deriv. Litig*., No. C-06-06110-SBA (JCS), 2008 WL 5382544, at *3 (N.D. Cal. Dec. 22, 2008) ("strong corporate governance is fundamental to the economic well-being and success of a corporation"); *Allred on behalf of Aclaris Therapeutics, Inc. v. Walker*, Nos. 19-CV-10641 (LJL), 19-cv-10876 (LJL), 2021 WL 5847405, at *4 (S.D.N.Y Dec. 9, 2021) ("Reforms addressing the issues giving rise to the derivative suit are exactly the type courts deem to confer a substantial benefit on the company"); *In re Pfizer Inc. S'holder Deriv. Litig*, 780 F. Supp. 2d 336, 342 (S.D.N.Y. 2011) (recognizing corporate governance reform aspects of settlement would "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"); *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"). Moreover, 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).

2. The Risks of the Litigation

While shareholder derivative actions are already by their nature "notoriously difficult and unpredictable," this case was especially so. *In re Fab Universal Corp. S'Holder Derivative Litig*., 148 F.Supp.3d 277, 284 (S.D.N.Y. 2015); *Beaver Cnty. Employees' Ret. Fund v. Tile Shop Holdings, Inc*., No. 0:14-CV-00786-ADM-TNL, 2017 WL 2574005, at *3 (D. Minn. June 14, 2017) ("While all cases carry the potential for uncertain verdicts, securities cases in particular are complex and difficult to prove."); *In re Pacific Enters. Sec. Litig*., 47 F.3d 373, 378 (9th Cir. 1995) ("[D]erivative lawsuits are rarely successful"). Indeed, numerous difficulties made continued litigation of these claims—where Plaintiffs had not yet briefed Defendants' forthcoming motion to dismiss—extremely risky.

First, Plaintiffs faced the difficult task of establishing that demand on Resideo's Board was futile under Rule 23.1 and Delaware law. *See, e.g. Kamen v. Kemper Fin. Servs. Inc*., 500 U.S. 90, 96 (1991) (demand futility requires "extraordinary conditions"). While Plaintiffs believe that their demand futility allegations were sufficient to overcome a motion to dismiss, it is possible that the Court would determine that the Defendant Board members were not on notice of the supply chain problems and other issues that led to the stock drops and the ensuing securities fraud litigation. Accordingly, there was considerable risk that the Court would hold that demand was not futile and dismiss the case on those

grounds without even reaching the merits. *See Walker*, 2021 WL 5847405, at *4 (calling demand futility "a significant challenge under Delaware law").

Second, Plaintiffs' core fiduciary duty of oversight claim (a so-called "*Caremark*" claim) against the Director Defendants has been described by the Delaware Court of Chancery as "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *Caremark*, 698 A.2d at 967; *see also Pfizer,* 780 F. Supp. 2d at 342 (finding that the "substantial risks" posed by a *Caremark* claim were a factor weighing in favor of settlement approval); *In re Wells Fargo & Co. S'holder Deriv. Litig.*, No. 16-CV-05541-JST, 2019 WL 13020734, at *6 (N.D. Cal. May 14, 2019) (noting the difficulty of *Caremark* claims even after plaintiffs had survived motions to dismiss). *Caremark* claims are routinely dismissed at the pleadings stage, and Resideo's directors were further protected by an exculpatory provision in the Company's certificate of incorporation that eliminated liability except as to breaches of loyalty, acts taken in bad faith, or intentional misconduct. *See, e.g. Cent. Laborers' Pension Fund v. Dimon*, 638 F. App'x 34 (2d Cir. 2016) (affirming dismissal of *Caremark* claim); *In re Goldman Sachs Grp., Inc. S'holder Litig*., No. CIV.A 5215–VCG, 2011 WL 4826104, at *18 (Del. Ch. Oct. 12, 2011) (dismissing *Caremark* claim, holding that "[t]he likelihood of directors' liability is significantly lessened where, as here, the corporate charter exculpates the directors from [such] liability").

Third, even if Plaintiffs were able to defeat Defendants' motions to dismiss, Resideo would likely have formed a special litigation committee ("SLC") that would move to stay the action while it investigated Plaintiffs' claims, then upon conclusion of its investigation,

take over the action and move to terminate it. Under Delaware law, a properly appointed and constituted SLC, after an investigation and consistent with the Court's view of fairness, can take over and move to terminate a derivative action as not in the best interests of the company. Such a motion would likely be granted so long as the Company could establish that the investigation was independent, reasonable, and conducted in good faith, with the Court applying its own business judgment. *See Diep on behalf of El Pollo Loco Holdings, Inc. v. Sather,* No. CV 12760-CM, 2021 WL 3236322, at **23-24 (Del. Ch. July 30, 2021) (following court's denial of motion to dismiss, company appointed an SLC to investigate plaintiff's claims; after investigation, SLC filed motion to dismiss shareholder derivative litigation, which was granted by the court); *Kokocinski on behalf of Medtronic, Inc. v. Collins,* 850 F.3d 354, 368 (8th Cir. 2017) (affirming district court's dismissal of shareholder derivative action on the basis of SLC's report and related motion to dismiss).

Fourth, if Plaintiffs were able to establish demand futility and avoid termination of the litigation by the SLC, significant questions would remain about whether Plaintiffs could secure evidence sufficient to prove their claims. Motions for summary judgment by the Defendants would be predicated on the "business judgment rule," which affords directors the presumption that they acted on an informed basis and in the good faith belief that the actions taken were in the best interest of the company. *See, e.g.*, *In re Walt Disney Co. Deriv. Litig.*, 907 A.2d 693, 746-47 (Del. Ch. 2005), *aff'd*, 906 A.2d 27 (Del. 2006). Moreover, the discovery required to bring this case to trial would be exceedingly costly, complex, and time-consuming, as it would encompass an enormous volume of documents,

depositions of myriad fact witnesses, and preparation of expert reports and depositions of experts concerning subjects relevant to this derivative litigation.

Fifth, even if Plaintiffs successfully demonstrated liability, Plaintiffs would have encountered additional hurdles with respect to demonstrating damages. *In re Lloyd's Am. Tr. Fund Litig.*, No. 96 Civ.1262 RWS, 2002 WL 31663577, at *21 (S.D.N.Y. Nov. 26, 2002) ("The determination of damages … is a complicated and uncertain process, typically involving conflicting expert opinions. The reaction of a jury to such complex expert testimony is highly unpredictable."). One ascertainable basis for damages in this case—the related Securities Class Action—was relatively limited. The Securities Class Action settled for $55 million, but Resideo paid just $16 million of that settlement amount, with the Company's insurers paying the remaining portion. Other damages to the Company, such as non-pecuniary reputational harm, are amorphous and difficult to quantify. Given that the amount of any recovery at trial would be based on proportionate liability, there was a risk that a jury would find that Defendants were responsible for a modest fraction, if any, of Resideo's damages.

In light of the substantial benefits of the Settlement, the palpable risks of continued litigation reinforce that the Settlement is fair, reasonable and adequate.

C. Complexity and Expense of Further Litigation

Complex litigation, like class actions and shareholder derivative litigation, "place an enormous burden of costs and expense upon [ ] parties." *Marshall v. Nat'l Football League*, 787 F.3d 502, 512 (8th Cir. 2015). Assuming the Court would have denied Defendants' anticipated motions to dismiss, litigating this case would involve extensive

pre-trial proceedings, including voluminous document discovery; dozens of depositions; preparation of complex expert reports and discovery of the expert witnesses; the negotiation and completion of a complex and voluminous pre-trial order and exhibit lists; and extensive briefing on motions for summary judgment, motions to strike experts, and other motions *in limine*. If Defendants' motions for summary judgment were denied, trial would involve weeks of preparation, mock juries, and a lengthy trial, with numerous fact and expert witnesses, all of which would have greatly increased costs for the Parties. Following trial, any judgment would be subject to post-trial motions and a likely appeal, injecting further risk and uncertainty into the equation. *See, e.g.*, *Hubbard v. BankAtlantic Bancorp., Inc*., 688 F.3d 713, 725 (11th Cir. 2012) (affirming judgment as a matter of law following jury verdict partially in plaintiff's favor); *Tile Shop*, 2017 WL 2574005, at *3 (approving settlement, noting, "Even if Class Representatives were successful at trial, the likely post-trial motions and appeals would have taken years to resolve, during which time the Class would have received no distribution of any damages award.").

Indeed, a more favorable resolution than the proposed Settlement would have taken several years and occupied the attention of Resideo management and its executives, while an unfavorable outcome at ***any of those stages*** could have been fatal to the litigation. During this time, Resideo and its shareholders would not enjoy the significant corporate governance changes that Plaintiffs achieved in this Settlement. "Settlement at this juncture results in a substantial and tangible present recovery, without the attendant risk of trial" and thus "weigh[s] in favor of the proposed Settlement." *In re Telik, Inc. Sec. Litig.,* 576 F. Supp. 2d 570, 577 (S.D.N.Y. 2008) (approving settlement before any motion to dismiss

had been filed, citing as a factor the "costs and duration of litigating a motion dismiss, conducting merits and class discovery, conducting expert discovery, litigating a motion for summary judgment, preparing for trial, conducting the trial itself, [and] filing post-trial motions"); *see also In re Frontier Commc'ns Corp. S'holders Litig.*, No. 3:17-CV-01617-VAB, 2022 WL 4080324, at *11 (D. Conn. May 20, 2022) (approving settlement where motion to dismiss was granted and on appeal, holding "[a]bsent a settlement, [litigation] costs will only escalate as a result of discovery proceedings, motion practice, trials, and likely appeals").

The Settlement provides Resideo with immediate and meaningful benefits: namely, the Reforms intended to address and prevent the governance failures that gave rise to the litigation, while avoiding costly and uncertain continued litigation. *Fab*, 148 F.Supp.3d at 282 (derivative settlement "assures immediate corporate reforms . . . and will allow the Company to direct its full attention to its substantive business"); *Pfizer*, 780 F. Supp.2d at 341 (lauding governance reforms addressing inadequate compliance because the potential "savings to the company in avoiding such huge fines in the future will be substantial"). Moreover, the Settlement also spares this Court significant judicial resources and time. *Peace Officers' Annuity & Benefit Fund of Georgia v. DaVita Inc*., No. 17-CV-0304-WJM-NRN, 2021 WL 1387110, at *4 (D. Colo. Apr. 13, 2021) (the presumption in favor of settlement "is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation").

D. Defendants' Financial Condition

While one or more of the Defendants may have the financial ability to pay more than the Settlement, "this fact, standing alone, does not render the settlement inadequate." *Petrovic*, 200 F.3d at 1152; *In re UnitedHealth Grp. Inc. S'holder Deriv. Litig*., 631 F. Supp. 2d 1151, 1157–58 (D. Minn. 2009) (finding that defendants' financial condition weighed in favor of settlement even where one or more defendants could possibly pay more). Accordingly, this factor weighs in favor of approval of the Settlement.

E. Amount of Opposition to the Settlement

To date, counsel has not heard from any shareholder or representative of a shareholder indicating they are not satisfied with the Settlement. *Tile Shop*, 2017 WL 2574005, at *4 (lack of objections "strongly weighs in favor of approving the Settlement); *In re Centurylink Sales Pracs. & Sec. Litig*., No. CV 18-296 (MJD/KMM), 2021 WL 3080960, at *9 (D. Minn. July 21, 2021) (same); *Elliott v. Sperry Rand Corp*., 680 F.2d 1225, 1226–27 (8th Cir.1982) (finding no abuse of discretion even though both named plaintiffs objected to settlement and 790 of approximately 3,000 members objected). Though the deadline for shareholders to object to the proposed Settlement has not yet passed, the lack of objections to date weighs in favor of approval.[6]

F. Additional Factors

In addition to the factors above, the Court may also consider other factors, including (1) "procedural fairness to ensure the settlement is not the product of fraud or collusion,"

[6] This factor will be further addressed in Plaintiff's reply brief to be filed on May 31, 2023.

(2) "[t]he experience and opinion of counsel on both sides," (3) "the settlement's timing, including whether discovery proceeded to the point where all parties were fully aware of the merits," (4) "whether a settlement resulted from arm's length negotiations," and (5) "whether a skilled mediator was involved." *Khoday v. Symantec Corp*., No. 11-CV-180 (JRT/TNL), 2016 WL 1637039, at *7 (D. Minn. Apr. 5, 2016).

First, the Court has already determined that the notice complies with the due process requirements of Rule 23.1. ECF No. 38, ¶5. The notice was reasonably calculated to apprise Resideo shareholders of the pendency of the Action, of the effect of the proposed Settlement, of Plaintiffs' Counsel's request for approval of the Fee and Expense Amount, of their right to object to the Settlement and/or the Fee and Expense Amount, and their right to appear at the settlement hearing. Defendants' counsel will be filing proof of compliance with the notice provisions of the Preliminary Approval Order on or before May 31, 2023.

Second, counsel for Plaintiffs and Defendants endorse the Settlement. "[C]ourts give 'great weight' and are entitled to rely on the judgment of experienced counsel in its evaluation of the merits of a class action settlement." *Khoday*, 2016 WL 1637039, at *7. As discussed further in Section III.F below, Plaintiffs' and Defendants' counsel are highly experienced in shareholder derivative litigation, further supporting approval of the Settlement.

Third, through their in-depth investigation, their review of thousands of pages of internal Company documents produced in response to books and records demands pursuant to Delaware law, and their review of public documents, Plaintiffs were well-versed in the

strengths and the weaknesses of the Actions. Joint Decl., ¶¶ 7, 38, 40, 45. While the parties had not engaged in formal discovery, courts around the country routinely approve settlements before the commencement of formal discovery. *Schuler v. Medicines Co*., *et al*., No. CV 14-1149 (CCC), 2016 WL 3457218, at *7 (D.N.J. June 24, 2016) (approving settlement prior to discovery); *Phillips v. Triad Guar. Inc.*, No. 1:09CV71, 2016 WL 1175152, at *2 (M.D.N.C. Mar. 23, 2016) (although settlement came "prior to formal discovery, Lead Plaintiff and its counsel are well-informed of the strengths and weaknesses of the merits of the case"); *Vaccaro v. New Source Energy Partners L.P*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *5 (S.D.N.Y Dec. 14, 2017) (approving settlement where no discovery taken because plaintiffs were "well-informed" through review of public information).

Fourth, the Settlement was the result of protracted, arm's-length negotiations between experienced counsel over several months. The Fee and Expense Amount was separately negotiated with the assistance of Magistrate Judge Becky R. Thorson at a mediated settlement conference. *See CenturyLink*, 2021 WL 3080960, at *6 (approving settlement "negotiated over many months by experienced counsel and sophisticated parties using an experienced mediator").

In sum, these supplemental factors further support a finding that the Settlement is fair, reasonable, and adequate.

III. THE NEGOTIATED ATTORNEYS' FEES ARE FAIR AND REASONABLE

In undertaking this difficult litigation on a fully contingent basis, Plaintiffs' Counsel faced many challenges to proving both liability and damages. The Settlement was achieved through Plaintiffs' Counsel's skill, experience, and effective advocacy, all in the face of a skilled defense mounted by Defendants, who were represented by one of the top defense firms in the country.

Despite the risks of the litigation, Plaintiffs' Counsel collectively worked more than 2,457 hours, representing a total lodestar of $1,612,428.75, and incurred unreimbursed expenses of $53,238.67. In light of the benefits obtained for the Company and its shareholders, the complexity and risks of the Actions, and the skill and expertise of counsel, Plaintiffs' Counsel respectfully submits that a Fee and Expense Amount of $1,600,000 is fair and reasonable, and well within the range of attorneys' fees awarded in this Circuit and throughout the nation in similar complex cases. To date, no shareholder has objected to the Fee and Expense Amount, and Co-Lead Plaintiffs fully support the request as fair and reasonable.[7]

A. The Applicable Standard

Under the substantial benefit doctrine, where an action by a stockholder results in a substantial benefit to a corporation, plaintiff's counsel are entitled to an award of attorneys'

[7] The Fee Award will compensate counsel for Plaintiffs Riviera Beach, Hialeah, Ayaz, and Sanclemente, along with counsel for Plaintiff Frashier in the Delaware Chancery Action and counsel for stockholder for Alice Burstein, who served a litigation demand on the Company. Plaintiffs' Counsel's time and expense declarations are attached to the Joint Declaration as Exhibits H – P.

fees and expenses. *Mills v. Electric Auto–Lite Co*., 396 U.S. 375, 396 (1970). "To be entitled to an award of attorneys' fees and expenses, plaintiffs' counsel need not confer a monetary benefit on the corporation, rather corporate governance reforms and other non-monetary relief are sufficient." *Cohn*, 375 F. Supp. 2d at 861 (citing *Mills*, 396 U.S. at 396); *see also In re Rambus Inc. Deriv. Litig*., No. C 06–3513 JF (HRL), 2009 WL 166689, at *3 (N.D. Cal. Jan. 20, 2009) ("Following *Mills*, courts consistently have approved attorneys' fees and expenses in shareholder actions where the plaintiffs' efforts resulted in significant corporate governance reforms but no monetary relief."); *Ramey v. Cincinnati Enquirer, Inc*., 508 F.2d 1188, 1194 (6th Cir. 1974) ("services performed by plaintiffs' attorneys justify an award of fees, even though no fund had been brought into court and even though it may be impossible to assign an exact monetary value to the benefit").

To determine whether a requested fee award is reasonable, courts in the Eighth Circuit may consider any or all of the twelve factors listed in *Johnson v. Ga. Highway Express*, 488 F.2d 714, 717-20 (5th Cir. 1974). Of those twelve factors, courts in the District of Minnesota, including this Court, have focused most frequently on the following factors: (1) the benefit conferred; (2) the risks to which plaintiffs' counsel were exposed; (3) the novelty and difficulty of the issues; (4) the time, labor and skill required; (5) the reaction of the class; and (6) the comparison between the requested percentage and percentages awarded in similar cases. *In re Resideo Techs., Inc., Sec. Litig*., No. 19-CV-2863 (WMW/BRT), 2022 WL 872909, at *6 (D. Minn. Mar. 24, 2022) (citing *Xcel*, 364 F. Supp. 2d at 993). "Many of the factors overlap, and not all of the individual factors will apply in every case, affording the Court wide discretion in the weight to assign each factor."

Khoday, 2016 WL 1637039, at *9. As discussed below, these factors support the requested Fee and Expense Amount.

B. Courts Favor Negotiated Fees

The U.S. Supreme Court has endorsed the consensual resolution of the amount of attorneys' fees to be paid to plaintiffs' counsel in representative litigation. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("A request for attorney's fees should not result in a second major litigation. Ideally … litigants will settle the amount of a fee."); *see also Cohn*, 375 F. Supp. 2d at 861 ("[W]here, as here, the parties have agreed on the amount of attorneys' fees and expenses, courts give the parties' agreement substantial deference."). "[T]he court's intrusion upon what is otherwise a private consensual agreement … must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Just. v. Civ. Serv. Comm'n of City & Cnty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Where the fee negotiations were conducted at arm's-length and there is no evidence of collusion, courts accord "substantial deference" to the parties' agreement. *Cohn*, 375 F. Supp. 2d at 861; *see Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *25 (S.D.N.Y. Mar. 24, 2014) ("That the Attorneys' Fee Payment was later separately negotiated weighs in favor of its reasonableness."); *In re Bear Stearns Companies., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (parties' negotiated agreement on fee supports approval); *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568-70 (7th Cir. 1992) (market factors best understood by negotiating parties should

determine quantum of attorneys' fees); *Ingram v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (affording "substantial weight to a negotiated fee amount").

Here, the Court is not being called upon to fashion a fee and expense award; rather, it is being asked to determine whether the Fee and Expense Amount agreed to by well-represented parties at arm's-length and with the assistance of Magistrate Judge Becky R. Thorson at a mediated settlement conference, falls within the range of reasonableness. The Parties' agreement and the Company's approval of the Fee and Expense Amount merit substantial deference. Unlike in class actions, where the diverging interests of class counsel and absent class members at the fee stage warrant close judicial scrutiny, in this stockholder derivative matter, Resideo participated in the negotiations, was represented by counsel, and had every incentive to pay the lowest possible fee for the services rendered by Plaintiffs' Counsel. The Parties' conclusion that the agreed upon Fee and Expense Amount is fair and reasonable, is entitled to substantial deference, and the Court need not engage the traditional methods used to fashion an award. *See, e.g.*, *In re Google Inc. S'holder Derivative Litig.*, No. 4:11-cv-04248-PJH, Tr. of Fairness Hearing at 11:21-12:6 (N.D. Cal. Jan. 21, 2015) (in evaluating agreed fee amount in derivative action, "the Court's responsibility is a little different than in your typical class action given the determination by the corporate entity that the amount is satisfactory");[8] *In re comScore S'holder Derivative Litig.*, No. 1:16-cv-09855-JGK, Tr. of Final Approval Hearing at 20:15-21:12 (S.D.N.Y. June 7, 2018) (approving settlement and fee agreement endorsed by

[8] All unpublished authorities are attached to the Joint Declaration as Exhibit Q.

disinterested directors).

Magistrate Judge Thorson's role in the process further demonstrates that the fee negotiation was fair and conducted at arm's-length. *See In re AOL Time Warner S'holder Deriv. Litig.*, No. 02 CIV. 6302 (CM), 2010 WL 363113, at *24 (S.D.N.Y. Feb. 1, 2010) (mediator's involvement in fee negotiations "helps to ensure that the proceedings were free of collusion").

Under these circumstances, the Court should defer to the Settling Parties' agreement, particularly in view of its demonstrable reasonableness under the relevant factors, as discussed below.

C. The Benefits Conferred Merit the Requested Fee

As discussed in Section II.B.1 above, the Corporate Governance Reforms achieved in the Settlement confer substantial benefits on Resideo. While the economic value of the Reforms cannot be calculated with precision, Professor Morrissey discusses the fact that empirical studies and survey literature show a correlation between strong governance and stock performance, noting that "the probable range of value here will exceed by many multiples the likely amount of any monetary recovery." Morrissey Decl., ¶83. Professor Morrissey conservatively estimates that, over time, the "good governance" premium conferred by the Reforms represent a benefit to Resideo shareholders in excess of $100 million. Morrissey Decl., ¶84. *See Maher*, 714 F.2d at 461 (recognizing that "the effects of [a derivative] suit on the functioning of the corporation may have a substantially greater impact on it, both long- and short-term, than the dollar amount of any likely judgment"); *In re Schering-Plough Corp. S'holders Deriv. Litig.*, No. CIV. A. 01-1412, 2008 WL

185809, at *5 (D.N.J. Jan. 14, 2008) ("The adoption of the corporate governance and compliance mechanisms required by the settlement can prevent breakdowns in oversight that would otherwise subject the company to the risk of regulatory action . . . Effective corporate governance can also affect stock price by bolstering investor confidence and improving consumer perceptions."); *Pfizer,* 780 F. Supp. 2d at 342-43 (recognizing that the corporate governance reforms would "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.") The agreed Fee and Expense Amount reflects just a small fraction of the value of the benefit the Settlement confers on Resideo and its shareholders.

Notably, the Reforms constitute a form of relief that Plaintiffs could not have obtained at trial and that were, therefore, only achievable through a negotiated resolution. *Fulton Cnty. Employees' Ret. Sys. on Behalf of Goldman Sachs Grp. Inc. v. Blankfein*, No. 19-CV-1562 (VSB), 2022 WL 4292894, at *4 (S.D.N.Y. Sept. 16, 2022).

D. The Risks Faced by Plaintiffs' Counsel Support the Requested Fee and Expense Amount

"Courts have recognized that the risk of receiving little or no recovery is a major factor in awarding attorney fees." *Xcel*, 364 F. Supp. 2d at 994; *Cohn*, 375 F. Supp. 2d at 865 (same). "[A] financial incentive is necessary to entice capable attorneys, who otherwise could be paid regularly by hourly-rate clients, to devote their time to complex, time-consuming cases for which they may never be paid." *Centurylink*, 2021 WL 3080960, at *9.

Plaintiffs' Counsel undertook the litigation on a wholly contingent basis, advancing all expenses while assuming the risk of no recovery. Defendants' forthcoming motions to dismiss posed potential case-ending risk, as would any subsequent motions for summary judgment and trial. The substantial risks to Plaintiffs' Counsel support the requested Fee and Expense Amount.

E. The Novelty and Difficulty of the Issues Support the Requested Fee and Expense Amount

As discussed in Section II.B.2 above, Plaintiffs identified a number of risks inherent in proceeding with this complex litigation. These risks include, among other things, the difficulty of litigating director oversight claims in general; the difficulties of establishing demand futility under Rule 23.1 and Delaware law; the possibility that an SLC would be appointed and recommend the termination of Plaintiffs' claims; difficulties in ascertaining damages; and other risks inherent in complex litigation, such as motions for summary judgment, battles of the experts, a lengthy trial, and post-trial litigation and appeals.

Courts across the country routinely recognize that shareholder derivative litigation is "notoriously difficult and unpredictable." *Xcel*, 364 F. Supp. 2d at 1003. In the analogous securities fraud context, this Court has held that "many class-action lawsuits 'are inherently complex,' and early settlement 'avoids the costs, delays and multitude of other problems associated with them.'" *Resideo Techs., Inc.,* 2022 WL 872909, at *6; *accord CenturyLink*, 2021 WL 3080960 at *9; *Tile Shop*, No. 0:14–cv–00786–ADM–TNL, 2017 WL 2588950, at *2 (D. Minn. June 14, 2017). This factor weighs in favor of the requested Fee and Expense Amount.

F. The Time, Labor, and Skill of Plaintiffs' Counsel Support the Requested Fee and Expense Amount

The quality of the representation and the standing of Plaintiffs' Counsel are important factors that support the reasonableness of the requested fee. *See Khoday*, 2016 WL 1637039, at *10 ("The skill and extensive experience of counsel in complex litigation is relevant in determining fair compensation."). Co-Lead Counsel for Plaintiffs, Grant & Eisenhofer and Saxena White, are highly experienced and skilled practitioners in the field of shareholder derivative and securities litigation, and the firms have a long and successful track record in derivative and securities cases throughout the country, including within this District. See Joint Decl. ¶48 and Plaintiffs' Counsel's firm resumes, attached to Joint Decl. as Exhibit 3 to Exs. H – P.[9] *Xcel*, 364 F. Supp. 2d at 995 ("Plaintiffs' co-lead counsel have

[9] *See In re UnitedHealth Group Inc. S'holder Deriv. Litig.*, 631 F. Supp. 2d 1151, 1158 (D. Minn. 2009) (Grant & Eisenhofer served as co-lead counsel in $922 million derivative settlement related to options backdating); *Freeport-McMoRan Copper & Gold Inc. Deriv. Litig.*, 2015 WL 1565918 (Del.Ch. Apr. 07, 2015) (Grant & Eisenhofer served as co-lead counsel in $153 million derivative settlement that also involved corporate governance enhancements); *In re Del Monte Foods Co. S'holder Litig.*, No. 6027-VCL, 2011 WL 6008590 (Del.Ch. Dec. 01, 2011) (Grant & Eisenhofer served as co-lead counsel in $89 million settlement); *In re Dole Food Co., Inc. Stockholder Litig.*, 2015 WL 5052214, at *2 (Del. Ch. Aug. 27, 2015) (Grant & Eisenhofer served as class counsel in $148 million post-trial recovery); *In re Tyco Int'l Ltd., Sec. Litig.*, 2009 WL 873727 (D.N.H. Mar. 27, 2009) (Grant & Eisenhofer served as co-lead counsel in securities litigation that resulted in $3.2 billion settlement); *In re Wells Fargo & Co. S'holder Deriv. Litig*., 445 F. Supp. 3d 508 (N.D. Cal. Apr. 7, 2020) (Saxena White served as co-lead counsel in $240 million derivative settlement related to fake account scandal); *Emps. Ret. Sys. of City of St. Louis v. Jones*, No. 2:20-CV-4813, 2022 WL 14160253 (Aug. 23, 2022), at *2 (S.D. Ohio Aug. 2, 2022) (Saxena White served as co-lead counsel in $180 million derivative settlement related to political bribery scandal involving utility company FirstEnergy Corp.); *Plymouth Cnty. Ret. Sys. v. Patterson Companies, Inc*., No. 0:18-CV-00871-MJD-HB, 2022 WL 2111237, at *4 (D. Minn. June 10, 2022) (Saxena White served as co-lead counsel in securities class action settlement that resulted in $63 million settlement).

significant experience in representing shareholders and shareholder classes in federal securities actions around the country and in this district in particular").

The quality of opposing counsel is also considered by courts in evaluating a fee request. *See, e.g., Yarrington v. Solvay Pharms., Inc*., 697 F. Supp. 2d 1057, 1063 (D. Minn. 2010) (finding the fact that defendants' attorneys, "consist[ing] of multiple well-respected and capable defense firms" which "consistently challenged Plaintiffs throughout the litigation," supported class counsel's fee request); *Khoday*, 2016 WL 1637039, at *10 (same). Defendants were represented throughout the litigation by the highly experienced and prestigious law firm Willkie Farr & Gallagher LLP. Joint Decl., ¶48. This further supports the requested Fee and Expense Amount. In the face of this experienced, formidable, and well-financed opposition, Plaintiffs' Counsel were nonetheless able to successfully prosecute a case that resulted in an excellent outcome for Resideo and its shareholders.

The Joint Declaration details the substantial time and effort that Plaintiffs' Counsel[10] devoted to the litigation, which included (1) serving books and records requests under Delaware law, seeking internal Company documents related to the allegations in the

[10] Plaintiffs' Counsel includes Co-Lead Counsel for the Co-Lead Plaintiffs in this Action—Riviera Beach Police Pension Fund and City of Hialeah Employees Retirement System—Grant & Eisehhofer and Saxena White, along with counsel in the Delaware Consolidated Action that was transferred to this Court, The Brown Law Firm, P.C., Levi & Korsinsky, LLP, the Rosen Law Firm, and Farnan LLP, as well as local counsel for Plaintiffs, Reinhardt, Wendorf & Blanchfield. Plaintiffs' Counsel also includes counsel for Plaintiff Bud & Sue Frashier Family Trust U/A DTD 05/05/98 in the Delaware Chancery Action, Robbins LLP, and counsel for Alice Burstein, who served a litigation demand on the Company, Johnson Fistel LLP.

Complaint; (2) reviewing over 4,700 pages of internal documents produced by the Company, as well as other publicly available information; (3) drafting detailed complaints; (4) consulting with Professor Morrissey on the Reforms; and (5) engaging in extended, arm's- length settlement negotiations with Defendants. Joint Decl., ¶¶ 5, 22, 24-26, 28, 38, 39, 45.

Plaintiffs' Counsel devoted a total of 2,457.1 hours to the Actions, resulting in a lodestar of $1,612,428.75.[11] Joint Decl., ¶50. Although not required, courts in the Eighth Circuit sometimes verify the reasonableness of a requested fee award by cross-checking it against lodestar. *Xcel*, 364 F. Supp. 2d at 999 (holding that a lodestar multiplier "need not fall within any pre-defined range, so long as the court's analysis justifies the award, such as when the multiplier is in line with multipliers used in other cases"). Plaintiffs' Counsel's lodestar here of $1,612,428.75 (multiplying the number of hours expended by a reasonable hourly rate), when compared to the requested $1,600,000 Fee and Expense Amount, results in a modest negative multiplier of 0.99.[12] This multiplier is consistent with or below multipliers approved in this Circuit and in similar cases throughout the country. *See Cohn*, 375 F. Supp. 2d at 862 (E.D. Mo. 2005) ("In shareholder litigation, courts typically apply

[11] The details of the lodestar calculation, including the hours Plaintiffs' Counsel expended and their reasonable hourly rates are set forth in the declarations attached to the Joint Declaration as Exhibits H – P.

[12] Plaintiffs' Counsel also incurred $53,238.67 in unreimbursed litigation expenses during the prosecution of this Action. Joint Decl., ¶50. These expenses are listed in each firm's time and expense declaration attached to the Joint Declaration and reflect the kinds of expenses that courts find to be reasonable and reimbursable. *Khoday*, 2016 WL 1637039, at *12. Although the Fee and Expense Amount includes no separate award for expenses, expenses are excluded from the lodestar cross-check calculation here.

a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation."); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1052–54 (9th Cir. 2002) (listing 23 settlements and multipliers for each, in which the average multiplier is 3.28); *Xcel*, 364 F. Supp. 2d at 999 (approving multiplier of 4.7); *Keil v. Lopez,* 862 F.3d 685, 701 (8th Cir. 2017) (finding multiplier of 2.7 was in line with comparable cases); *Yarrington,* 697 F. Supp. 2d at 1067 (approving multiplier of 2.26); *Huyer v. Buckley*, 849 F.3d 395, 399–400 (8th Cir. 2017) (finding multiplier of 1.82 was "well within the range of multipliers awarded in this and other circuits").

G. The Reaction of the Stockholders Supports the Requested Fee and Expense Amount

As addressed in Section II.E, not a single shareholder has objected to the requested Fee and Expense Amount to date. "The lack of objections is strong evidence that the requested amount of fees and expenses is reasonable." *Tile Shop*, 2017 WL 2588950, at *3.

Furthermore, Co-Lead Plaintiffs Riviera Beach and Hialeah are sophisticated institutional shareholders of the exact type favored by both Congress and the Courts to serve in a leadership capacity in class actions and derivative cases. Plaintiffs have actively overseen the Action since its inception and believe "the terms of the Settlement are fair and reasonable and represent an excellent result for Resideo and its shareholders. Plaintiffs' declarations, Ex. B - C, ¶4. Additionally, Plaintiffs believe that the requested Fee Award is "fair and reasonable in light of the significant risks of the litigation, the benefit achieved, and the work performed by Plaintiffs' counsel on a fully contingent basis." *Id.*, ¶5. *See*

CenturyLink, 2021 WL 3080960, at *10 (institutional plaintiffs' endorsement of counsel's fee request as fair and reasonable weighs in favor of approval); *Resideo Techs., Inc*., 2022 WL 872909, at *7 (same).

In sum, all of the factors to be considered under Eighth Circuit law support a finding that the Settlement is fair, reasonable, and adequate.

H. A Comparison to Similar Cases Supports the Requested Fee and Expense Amount

In considering a request for attorneys' fees, "[C]ourts may consider the range of fees awarded in similar litigation[.]" *Cohn,* 375 F. Supp. 2d at 861. Courts have recognized that settlements in shareholder derivative actions that bring about corporate governance reforms without monetary recoveries can confer meaningful benefits to the corporation, and have accordingly awarded attorneys' fees and expenses in line with the amount requested by Plaintiffs here. *See*, *e.g.*, *In re Alphatec Holdings, Inc. Derivative S'holder Litig*., No. 37-2010-58586-CU-BT-NC, slip op. at 4 (Cal. Sup. Ct. San Diego Cty. Aug. 18, 2014) (approving $5.25 million fee for corporate therapeutics) and *Alphatec* Stipulation of Settlement at 9-13, 15; *In re F5 Networks, Inc. Derivative Litig*., No. C06-794-RSL, 2011 WL 13195985, at *1 (W.D. Wash. Jan. 6, 2011) ($5 million fee in governance-only settlement); *In re Southern Company S'holder Litig*., No. 1:17-cv-00725-MHC, slip op. at 7 (N.D. Ga. June 9, 2022) (ECF No. 108) (approving $3.5 million fee for corporate therapeutics) and *Southern Company* Stipulation of Settlement at 36-38 (ECF No. 99-1); *Nixon-Crenshaw v. Coley, et. al.*, No. 18-25289-CIV-Singhal/Goodman, slip op. at 4 (S.D. Fla. Sept. 30, 2021) (ECF No. 68) (granting attorneys' fees of $2.5 million) and *Dycom*

Stipulation of Settlement at 13-19, 22 (ECF No. 44); *In re MiMedx Group, Inc. S'holder Deriv. Litig.*, No. 1:18-cv-04486-WMR, slip. op. at 6 (N.D. Ga. Dec. 21, 2020) (ECF No. 149) (approving $3.5 million award of attorney fees and expenses) and *MiMedx* Stipulation of Settlement at 26, 29-30 (ECF No. 138-2); *In re HD Supply Holdings Inc. Deriv. Litig*. No. 1:17-cv-02977-MLB, slip op. at 7 (N.D. Ga. July 1, 2021) (ECF No. 50) (granting attorneys' fees of $1.9 million) and *HD Supply* Stipulation of Settlement at 22-23, 26 (ECF No. 31-2); *In re RTI Surgical Deriv. Litig*., No. 1:20-cv-3347-MFK, slip op. at 3 (N.D. Ill. Jan. 24, 2022) (ECF No. 94) (granting attorneys' fees of $1.5 million) and *RTI Surgical* Stipulation of Settlement at 13-19 (ECF No. 73).[13]

Given the meaningful corporate governance reforms achieved by this Settlement and the precedent fee awards highlighted above, Plaintiffs respectfully submit that their

[13] Indeed, courts across the country have awarded fees for governance settlements far in excess of those requested here. *See, e.g.*, *In re Fed. Home Loan Mortg. Corp. Sec. & Deriv. Litig.*, MDL 1584, Case Nos. 05-cv-2596 & 04-cv-2634 (Stipulation and Order Revising Oct. 27, 2006 Settlement at 3) (S.D.N.Y. Oct. 26, 2006) (ECF No. 131) (awarding $15.25 million in attorneys' fees for corporate governance reforms alone, including changes to board procedures, management procedures for reporting to the board, and other compliance, risk, and ethics-related policies); *City of Pontiac Gen. Employees' Ret. Sys. v. Langone and the Home Depot, Inc.*, No. 2006-cv-122302, slip. op. (Fulton County, Ga. June 10, 2008) (awarding $14.5 million in attorneys' fees for governance reforms that included changes to director nomination procedures, compensation practices, and shareholder access to the CEO); *Unite Nat'l Ret. Fund v. Watts*, No. Civ.A. 04CV3603-DMC, 2005 WL 2877899 at *5 (D.N.J Oct. 28, 2005) (awarding $9.2 million in attorneys' fees for governance reforms that included changes in policies concerning board composition, director nomination, and the functions of board committees); *Lambrecht v. Taurel,* No. 1:08-cv-68-WTL-TAB, 2010 WL 2985946, at *2-*3 (S.D. Ind. June 8, 2010) (awarding $8.75 million in attorneys' fees for a settlement based on substantial corporate governance and compliance reforms).

requested fee award is relatively modest, and well within the bounds of similar precedent actions.

IV. SERVICE AWARDS

Service awards "promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits." *Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1068 (D. Minn. 2010). Service awards "are not intended to 'compensate' plaintiffs, but instead serve to encourage people with legitimate claims to pursue the action." *Sauby v. City of Fargo,* No. 3:07-cv-10, 2009 WL 2168942, at *1 (D.N.D. July 16, 2009) (also upholding service awards of $5,000 and $10,000). Courts have recognized the oversight value that derivative and representative plaintiffs bring: "if there were no individual shareholders willing to step forward and pursue a claim on behalf of other investors, many violations of law might go unprosecuted." *In re Xcel Energy, Inc. Sec. Derivative & "ERISA" Litig.,* 364 F. Supp. 2d 980, 1000 (D. Minn. 2005) (also approving service award of $100,000 to be distributed among eight lead plaintiffs)

Here, Plaintiffs Riviera Beach, Hialeah, Ayaz, Sanclemente, Frashier, and Burstein closely monitored and participated in all stages of this case, including overseeing the work of litigation counsel in this action, receiving regular updates concerning the status of the litigation from its inception to the present, and reviewing significant filings. Each Plaintiff has submitted a declaration detailing their involvement in overseeing the prosecution of this litigation. *See* Exs. B – G. Accordingly, Plaintiffs seek service awards of $2,500 each for Riviera Beach, Hialeah, Ayaz, Sanclemente, Frashier, and Burstein for stepping forward to pursue and oversee this Action.

Courts have regularly granted service awards substantially higher than the modest sums requested by Plaintiffs here. *See, e.g.*, *Yarrington*, 697 F. Supp. 2d at 1068-69 (granting service award of $5,000 and citing cases involving significantly higher awards); *Emps. Ret. Sys. of the City of St. Louis v. Jones*, No. 2:20-CV-4813, 2022 WL 14160253, at *10 (S.D. Ohio Aug. 23, 2022) (approving service awards of $10,000 each for six plaintiffs); *In re Orchard Enterprises Inc. S'holder Litig.*, No. 7840-VCL, 2014 WL 4181912 at *13 (Del. Ch. Aug. 22, 2014) (overruling objection to payment of $12,500 to lead plaintiffs in settlement).

Pertinent here, the Court approved significantly higher reimbursements to the plaintiffs in the Securities Class Action, awarding $12,500 to the Gabelli Group and $10,000 to the Naya Group, for a total of $22,500. Plaintiffs respectfully submit that the service awards sought here are a fraction of those amounts and are eminently reasonable.

Given these sample precedents and the Court's award in the Securities Class Action, Plaintiffs respectfully submit that the requested service awards are more than reasonable and represent a fair award in the aggregate in light of the substantial benefits achieved and considerable efforts expended by Plaintiffs.

V. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court: (i) approve the Settlement, (ii) approve the requested Fee Award, and (iii) approve the requested service awards.

Dated: May 3, 2023

Respectfully Submitted,

/s/ Michael J. Barry

GRANT & EISENHOFER PA
Michael J. Barry
123 Justison Street
Wilmington, DE 19801
Telephone: (302) 622-7000
mbarry@gelaw.com

SAXENA WHITE P.A.
Thomas Curry
824 N. Market Street, Suite 1003
Wilmington, DE 19801
Telephone: (302) 485-0480
tcurry@saxenawhite.com

SAXENA WHITE P.A.
Adam Warden
7777 Glades Road, Suite 300
Boca Raton, FL 33434
Telephone: (561) 394-3399
awarden@saxenawhite.com

Co-Lead Counsel For Plaintiffs

REINHARDT WENDORF & BLANCHFIELD
Garrett D. Blanchfield, Jr. (#209855)
Brant D. Penney (#316878)
332 Minnesota Street, Suite W1050
St. Paul, MN 55101
Telephone: (651) 287-2100
g.blanchfield@rwblawfirm.com
b.penney@rwblawfirm.com

Local Counsel For Plaintiffs

THE BROWN LAW FIRM, P.C.
Timothy Brown
767 Third Avenue, Suite 2501
New York, NY 10017
Telephone: (516) 922-5427
tbrown@thebrownlawfirm.net

LEVI & KORSINSKY, LLP
Gregory M. Nespole
Ryan Messina
55 Broadway, 10th Floor
New York, NY 10006
Telephone: (212) 363-7500
gnespole@zlk.com
rmessina@zlk.com

THE ROSEN LAW FIRM, P.A.
Phillip Kim
275 Madison Avenue, 40th Floor
New York, NY 10016
Telephone: (212) 686-1060
pkim@rosenlegal.com

Plaintiffs' Executive Committee Members

FARNAN LLP
Brian E. Farnan
919 N. Market St., 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0300
bfarnan@farnanlaw.com

Liaison Counsel for Plaintiffs in in the Delaware Consolidated Action

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2023, I caused to be filed a true and correct copy of the foregoing with the Clerk of Court via CM/ECF. Notice of this filing will be sent electronically to all registered parties by operation of the Court's electronic filing system.

/s/ Michael J. Barry
Michael J. Barry