

<p>DISTRICT COURT, DENVER COUNTY, COLORADO Court Address: 1437 Bannock Street, Room 256, Denver, CO, 80202</p>	<p>DATE FILED: October 30, 2023 5:12 PM FILING ID: 398E9DD53CEA9 CASE NUMBER: 2017CV31757</p>
<p>Plaintiff(s) OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated</p> <p>v.</p> <p>Defendant(s) JAGGED PEAK ENERGY INC., et al.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: SHUMAN, GLENN & STECKER Rusty E. Glenn (Atty. Reg. No. 39183) 600 17th Street, Suite 2800 South, Denver, CO 80202 Tel.: (303) 861-3003; Fax: (303) 536-7849</p> <p>Scott+Scott Attorneys at Law LLP Deborah Clark-Weintraub (<i>admitted pro hac vice</i>) Thomas L. Laughlin, IV (<i>admitted pro hac vice</i>) Emilie B. Kokmanian (<i>admitted pro hac vice</i>) Mandeep Minhas (<i>admitted pro hac vice</i>) 230 Park Ave., 17th Fl., New York, NY 10169 Tel.: (212) 223-6444; Fax: (212) 223-6334</p>	<p>Case Number: 2017CV31757 Division: 209</p>
<p style="text-align: center;">MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES AND AWARD TO PLAINTIFF FOR ITS REPRESENTATION OF THE SETTLEMENT CLASS, AND MEMORANDUM OF LAW IN SUPPORT THEREOF</p>	

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Pursuant to Colorado Rule of Civil Procedure (“C.R.C.P.”) 23(e), Plaintiff Oklahoma Police Pension and Retirement System (“OPPRS” or the “Plaintiff”), on behalf of itself and the Settlement Class, respectfully submits this memorandum of law in support of its motion for an award of attorneys’ fees and expenses to Plaintiff’s Counsel, and an award to Plaintiff for its representation of the Settlement Class.

The terms of the Settlement are set forth in the Stipulation of Settlement dated August 21, 2023 (the “Stipulation”) filed with the Court that same day.¹

C.R.C.P. 121, Section 1-15(8) Certification. On October 26 and 30, 2023, undersigned counsel conferred with Defendants’ counsel. Defendants, through counsel, have informed undersigned counsel that they take no position with respect to the relief sought in the motion for award of attorneys’ fees and expenses and award to Plaintiff for its representation of the Settlement Class.

PRELIMINARY STATEMENT

As detailed in Plaintiff’s Motion for Final Approval of the Class Action Settlement and Plan of Allocation, and Memorandum of Law in Support Thereof (“Final Approval Motion”) the proposed \$8,250,000 all-cash Settlement achieved by Plaintiff and its Counsel in this Action is an excellent recovery given the inherent risks generally associated with complex securities class action cases, and the specific risks in this case, particularly, the difficulties Plaintiff and the Settlement Class would have faced in overcoming Defendants’ “negative causation” defense and

¹ All capitalized terms not otherwise defined herein have the meanings set forth in the Stipulation and the Declaration of Deborah Clark-Weintraub in Support of (i) Plaintiff’s Motion for Final Approval of Class Action Settlement and Plan of Allocation, and (ii) Motion for an Award of Attorneys’ Fees and Expenses and Plaintiff’s Request for an Award for Its Representation of the Settlement Class (“Weintraub Decl.”), submitted herewith. Unless otherwise indicated, citations are omitted and emphasis is added.

establishing damages. To achieve this result, Plaintiff and its Counsel engaged in nearly six years of determined litigation, including successful appeals to the Colorado Court of Appeals and Colorado Supreme Court, which resulted in the partial reversal of this Court’s initial decision to dismiss the Action in its entirety.

Plaintiff’s Counsel respectfully submit that the result obtained and the work necessary to achieve it merit approval of their request for an attorneys’ fee award of 30% of the Settlement Fund, or \$2,475,000, plus interest earned thereon from the date the Settlement proceeds were deposited into escrow.² As detailed herein, the requested fee is well within the range of percentage-based fees awarded in securities class actions. *Infra*, §I.A. A lodestar “cross-check” also supports the requested fee award as the latter equates to a *negative* multiplier of 0.83, meaning that Plaintiff’s Counsel are seeking to be paid for less than all of the hours they expended in prosecuting the Action. Plaintiff’s Counsel also seeks the reimbursement of \$84,811.44 in expenses incurred to litigate the Action. These costs are customary expenses typically incurred in similar cases, including for expert fees, legal and other research, mediation, travel and electronic discovery. *Infra*, §I.D.

Significantly, Plaintiff’s Counsel’s fee and expense request has the full support of Plaintiff. *See* OPPRS Aff., ¶¶9-12.³ Further, the Notice and Summary Notice informed Settlement Class Members of the potential amount of fees and expenses that Plaintiff’s Counsel would seek and, to

² As of October 10, 2023, the total Settlement Amount of \$8,250,000 had been deposited into an interest-bearing escrow account.

³ The “OPPRS Aff.” refers to the Affidavit of Ginger Sigler on behalf of Plaintiff Oklahoma Police Pension and Retirement System in Support of (i) Plaintiff’s Motion for Final Settlement Approval of Class Action Settlement and Plan of Allocation, and (ii) Motion for Award of Attorneys’ Fees and Expenses and Plaintiff’s Request for an Award for Its Representation of the Settlement Class, dated October 26, 2023, submitted herewith.

date, no objections to Plaintiff's Counsel's fee and expense request have been received. *See* Cavanaugh Aff., ¶16.⁴

Lastly, Plaintiff respectfully requests an award of \$10,000 for the time, effort and expense it has devoted to prosecuting this Action. Without Plaintiff's work, the Settlement Class would not have received this outstanding recovery. Again, the Notice and Summary Notice informed Settlement Class Members that Plaintiff would seek an award of up to this amount and there has been no objection to date.

In sum, for the reasons set forth herein and in the accompanying declarations and affidavits,⁵ Plaintiff and Plaintiff's Counsel respectfully request that the Court grant Plaintiff's Counsel's request for attorneys' fees and expenses and Plaintiff's request for an award for the time, effort, and expense it has devoted to prosecuting this Action.

FACTUAL AND PROCEDURAL STATEMENT

Plaintiff respectfully refers the Court to the accompanying Weintraub Declaration for a detailed discussion of the background and procedural history of the Action, the extensive efforts undertaken by Plaintiff and Plaintiff's Counsel during the Action, the risks of continued litigation, and the benefits of the Settlement. *See* Weintraub Decl., ¶¶15-57.

⁴ The "Cavanaugh Aff." refers to the Affidavit of Ann Cavanaugh Regarding Notice Dissemination, Publication, and Requests for Exclusion and Objections Received to Date, dated October 27, 2023, submitted herewith.

⁵ *See* Weintraub Decl.; OPPRS Aff.; Cavanaugh Aff.; Declaration of Daryl F. Scott on Behalf of Scott+Scott Attorneys at Law LLP in Support of Motion for Award of Attorneys' Fees and Expenses ("Scott+Scott Decl."); and Declaration of Rusty E. Glenn on Behalf of Shuman, Glenn & Stecker in Support of the Motion for Award of Attorneys' Fees and Expenses ("Shuman, Glenn & Stecker Decl.").

ARGUMENT

I. THE COURT SHOULD AWARD ATTORNEYS' FEES EQUAL TO 30% OF THE SETTLEMENT FUND AND EXPENSES TO PLAINTIFF'S COUNSEL

“[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Voulgaris v. Array Biopharma Inc.*, No. 17-cv-02789, 2021 U.S. Dist. LEXIS 249646, at *34 (D. Colo. Dec. 3, 2021), *aff’d*, 60 F.4th 1259 (10th Cir. 2023).⁶ The purpose of this doctrine “is to compensate class counsel fairly and adequately for services rendered and to prevent unjust enrichment of persons who benefit from a lawsuit without bearing its cost.” *Id.* Awarding attorneys’ fees from a common fund also “serve[s] to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature.” *Id.* at *35; *see also Kuhn v. State*, 924 P.2d 1053, 1060 (Colo. 1996) (“In class action lawsuits where a fund is created for the benefit of the class, either through settlement or judgment on the merits, the common fund doctrine is widely adhered to as a method for proportionately spreading the attorneys fees among the class members.”). Colorado courts have long evaluated whether attorneys’ fees are reasonable by applying the percentage-of-the-fund method as well as the relevant factors articulated by the Fifth Circuit in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) (the “Johnson factors”). *See, e.g., Brody v. Hellman*, 167 P.3d 192, 200-02 (Colo. App. 2007); *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *36 (noting that the Tenth Circuit has “express[ed] a preference for the percentage-of-the-fund approach”); *Paulson v. McKowen*, No. 19-cv-02639, 2023 U.S. Dist. LEXIS 43717, at *18 (D. Colo. Mar. 15, 2023) (“Because [the Action] is a common fund case and because [P]laintiff’s [Counsel’s] fee

⁶ “Because C.R.C.P. 23 is virtually identical to Fed. R. Civ. P. 23, cases applying the federal rule are instructive. . . .” *Higley v. Kidder, Peabody & Co.*, 920 P.2d 884, 889 (Colo. App. 1996).

request is for a percentage of the common fund, the Court [must] consider the request using the percentage of the fund approach.”). Moreover, Colorado courts generally perform a lodestar “cross-check” to confirm the fairness and reasonableness of the requested fee. *See, e.g., Brody*, 167 P.3d at 202 (applying lodestar crosscheck to determine whether requested percentage fee award was reasonable); *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *37 (same). Each of these analyses favors awarding the requested attorneys’ fees and expenses to Plaintiff’s Counsel.

A. The Requested Fee Award Is Reasonable Under the Percentage-of-the-Fund Method and Applicable *Johnson* Factors

Plaintiff’s Counsel respectfully submit that their work fully merits a fee award of 30% of the Settlement Fund, or \$2,475,000 (plus interest earned thereon from the date the settlement proceeds were deposited into escrow). *First*, such an award is consistent with Colorado state and federal court practice. Indeed, the Tenth Circuit has previously recognized that awards ranging between 22% and 37.3% are reasonable in holding that a fee award of 33% of an \$8.5 million settlement “f[ell] within the range of fee percentages awarded in securities class actions and other comparable complex class actions in th[at] Circuit.” *Voulgaris*, 60 F.4th at 1263-64; *see also Brody*, 167 P.3d at 203 (trial court did not abuse its discretion in awarding lead counsel 30% of the common fund.); *Paulson*, 2023 U.S. Dist. LEXIS 43717, at *20 (“A fee of one-third of the common fund is typical in complex cases.”); *In re Crocs, Inc. Sec. Litig.*, No. 07-cv-02351, 2014 U.S. Dist. LEXIS 134396, at *11 (D. Colo. Sept. 18, 2014) (courts in the Tenth Circuit have noted that “the typical fee award in complex cases is around one third of the common fund.”); *In re Oppenheimer Rochester Funds Group Secs. Litig.*, No. 09-md-02063, 2014 U.S. Dist. LEXIS 142673, at *48 (D. Colo. July 31, 2014) (“30% of the Settlement Funds is consistent with awards made within this District and in similar cases.”); *Lucken Family Ltd. P’ship, LLLP v. Ultra Res., Inc.*, No. 09-cv-01543, 2010 U.S. Dist. LEXIS 144366, at *13 (D. Colo. Dec. 22, 2010) (“The

customary fee awarded to class counsel in a common fund settlement is approximately one-third of the total economic benefit bestowed on the class.”).

Second, Plaintiff’s Counsel respectfully submit that the fee award is reasonable here given:

(i) the excellent results achieved by Plaintiff’s Counsel in the face of substantial risk (*see* Weintraub Decl., ¶¶42-44); (ii) the absence of any objections from any Settlement Class Member to date (*see* Cavanaugh Aff., ¶16); and (iii) Plaintiff’s full support of the requested award (*see* OPPRS Aff., ¶¶9-12). Colorado courts rely on the *Johnson* factors when determining the reasonableness of a percentage fee award. *See Brody*, 167 P.3d at 200; *Voulgaris*, 60 F.4th at 1263. These factors, which are rarely all applicable, *Paulson*, 2023 U.S. Dist. LEXIS 43717, at *19, are:

- (1) the time and labor involved;
- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee;
- (6) any prearranged fee—this is helpful but not determinative;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

Id. at *18-19. Here, each of these factors weighs in favor of approval of the requested 30% fee.

1. The Time and Labor Devoted by Plaintiff’s Counsel

The time and labor spent by Plaintiff’s Counsel litigating the Action on a fully contingent basis for six years supports the requested fee. Plaintiff’s Counsel’s efforts included:

- (i) undertaking a factual investigation of the case to identify and interview former employees, consultants, and contractors of Jagged Peak with knowledge of the events giving rise to Plaintiff’s claims;
- (ii) moving to remand the Action to this Court after it had been improperly removed by Defendants;
- (iii) drafting an Amended Complaint sufficiently detailed to partially withstand Defendants’ motion to dismiss;
- (iv) opposing Defendants’ motion to dismiss before this Court;

(v) briefing Plaintiff's successful appeal of this Court's order granting the motion to dismiss and Defendant's appeal to the Colorado Supreme Court; (vi) negotiating a Protective Order and Protocols for the Production of Electronically-Stored Information; (vii) drafting Initial Disclosures and Requests for Production to Defendants; (viii) drafting responses and objections to Requests for Production and Interrogatories propounded by Defendants; (ix) assisting Plaintiff in identifying and collecting documents responsive to Defendants' Requests for Production; (x) conducting numerous, lengthy meet and confer discussions with Defendants regarding the Parties' responses and objections to requested discovery and drafting detailed correspondence with respect to disputed discovery issues; (xi) reviewing documents produced by Defendants in response to Plaintiff's Requests for Production; and (xii) retaining and working with an expert on loss causation and damages to analyze reasonably recoverable damages based on Defendants' expected negative causation arguments. *See Weintraub Decl.*, ¶¶47-48, 68-71.

In addition, Plaintiff's Counsel spent considerable time on mediation efforts, including retaining and working with an expert to analyze causation and damages issues in connection with settlement negotiations, preparing a detailed mediation statement, attending the mediation, and participating in subsequent follow-up calls with the mediator. *See Weintraub Decl.*, ¶49. In total, Plaintiff's Counsel spent 2,913.4 hours⁷ prosecuting this Action over six years for a total lodestar of \$2,967,826.00 when multiplied by Plaintiff's Counsel's current billing rates. *See Scott+Scott Decl.*, ¶6; *Shuman, Glenn & Stecker Decl.*, ¶5. Considering the complexity and length of the case, the number of hours expended were reasonable and necessary.

⁷ This time does not include any time from August 21, 2023, onwards that has been devoted to preparing the final approval papers and will necessarily be spent from this date forward working with the Claims Administrator in connection with Settlement administration and distribution, among other things.

2. The Novelty and Difficulty of the Questions Raised in the Action

Courts have repeatedly recognized the notorious complexity of securities class action litigation. *See Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *39 (“Courts have long recognized that securities class actions present inherently complex and novel issues, which are constantly evolving.”); *In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *8-9 (same). This Action was no exception.

Resolving the issue of whether the Amended Complaint adequately alleged violations of the Securities Act took years. Ultimately, Plaintiff’s Counsel’s skill, perseverance, and diligent advocacy during the appeal process was successful in reviving the Action in part after this Court dismissed it in its entirety.⁸ Plaintiff’s Counsel’s ability to successfully navigate this issue and the complex causation and damages issues that presented substantial obstacles to recovery (*see* Weintraub Decl., at ¶¶22-26, 42-44, 72) and obtain the excellent Settlement before the Court fully supports the fee request.

3. The Customary Fee and Awards in Similar Cases

The requested fee of 30% of the Settlement Fund is within the range of fees customarily awarded by Colorado courts in similar cases. *Infra*, §I.A. As noted above, the Tenth Circuit has observed that fee awards ranging between 22% and 37.3% of a settlement fund are reasonable in cases such as this and recently affirmed an award of 33% in a class action that settled for \$8.5 million, which equated to a 2.8 multiplier. *See Voulgaris*, 60 F.4th at 1263.

⁸ Importantly, Plaintiff’s Counsel did not have the benefit of a roadmap such as a regulatory investigation or other litigation against Defendants. *See Brody*, 167 P.3d at 203 (noting that lead counsel “did all the legwork themselves, without the aid of a government investigation.”)

4. The Amount Involved and Results Obtained

“[T]he result achieved for the class is extremely important in determining an appropriate fee award.” *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *38; *see also In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *14 (“[T]he most critical factor in determining the reasonableness of a fee award is the degree of success obtained.”). Here, through their efforts in prosecuting the Action, Plaintiff’s Counsel obtained a Settlement of \$8,250,000, which represents between 7.6% and 15.5% of Settlement Class members’ maximum and reasonably recoverable damages estimated by Plaintiff’s expert, respectively. Such a result is “significant and excellent . . . in a complex securities class action with significant challenges both to liability and damages,” and supports Plaintiff’s Counsel’s requested fee. *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *39. Indeed, according to the 2022 annual survey and analysis of securities class action settlements published by NERA Economic Consulting, the median settlement value as a percentage of NERA-defined possible losses⁹ in securities class action cases with between \$50 million and \$99 million in possible losses filed and settled during the period December 2011-December 2022 was just 3.8%. *See Weintraub Decl.*, ¶46. Comparing the recovery in this Action to average recoveries across similar securities class actions confirms the excellent result obtained by Plaintiff’s Counsel.

Id.

5. The Skill Required to Perform the Legal Service Properly and the Experience, Reputation, and Ability of Plaintiff’s Counsel

“The skill required to maintain this action and the quality of Plaintiffs’ Counsel weighs in favor of the requested award.” *In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *10. Plaintiff’s Counsel are highly experienced in securities class action cases with a track record of success, and

⁹ NERA-Defined Investor Losses is a proprietary variable constructed by NERA assuming that investors had invested in stocks during the class period whose performance was comparable to that of the S&P 500 Index. *See* 2022 NERA Study at 17.

their high level of skill was an important factor in obtaining this outstanding Settlement in the face of the significant opposition of highly skilled and effective counsel for Defendants. *See* Weintraub Decl., ¶76-79; Scott+Scott Decl., Ex. C; Shuman, Glenn & Stecker Decl., Ex. A; *see also* *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *39-40 (supporting the reasonableness of the requested fee was lead counsel’s “extensive and significant experience in the highly specialized field of securities class action litigation” and the fact that they “face[d] formidable opposition from [defendants’ counsel], a firm that also ha[d] significant experience with securities litigation”); *Nakkhumpun v. Taylor*, No. 12-cv-01038, 2016 U.S. Dist. LEXIS 203072, at *14 (D. Colo. June 13, 2016) (holding that plaintiff’s counsel “achieved the Settlement with skill, perseverance, and diligent advocacy”); *In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *10 (defendants’ counsel being “equally skilled” favored approval of 30% fee award). The quality of Plaintiff’s Counsel’s work, as well as its skill, perseverance and diligence supports the requested fee award.

6. The Contingent Nature of the Fee and Undesirability of the Action

“The contingent nature of the fee and the concomitant risks of non-recovery also support the reasonableness of the fee request.” *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *40; *see also* *Paulson*, 2023 U.S. Dist. LEXIS 43717, at *20 (“Class counsel additionally took this case on a contingency basis . . . adding to the risk class counsel incurred by bringing the case.”). Indeed, “[a] contingent fee arrangement often weighs in favor of a greater fee because ‘[s]uch a large investment of money [and time] place[s] incredible burdens upon law practices.’” *In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *13. Here, Plaintiff’s Counsel prosecuted the Action over the span of six years without being compensated. They invested significant time and money and took the substantial risk that the litigation would be unsuccessful. In fact, this Court initially dismissed the Action, but Plaintiff’s Counsel persevered and successfully appealed the dismissal in part. Thus, the risk that Plaintiff’s Counsel “would recover no compensation for their extensive

efforts was ‘not merely hypothetical.’” *Id.* at *16. “In light of these difficulties, ‘public policy supports granting attorneys’ fees that are sufficient to encourage plaintiffs’ counsel to bring securities class actions” which “are often seen as undesirable.” *Id.*; *Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *39.

B. The Requested Fee Is Supported by a Lodestar Cross-Check

A lodestar “cross-check” fully supports Plaintiff’s Counsel’s fee request. This analysis involves comparing counsel’s fee request under the percentage-of-the-recovery method with its lodestar amount. *Id.* Here, Plaintiff’s Counsel spent 2,913.4 hours litigating the Action which amounts to a total lodestar of \$2,967,826.00.¹⁰ *See* Scott+Scott Decl., ¶6; Shuman, Glenn & Stecker Decl., ¶5. The requested fee of \$2,475,000 (plus interest earned thereon) equates to a *negative* multiplier of 0.83, meaning that Plaintiff’s Counsel are seeking to be paid for less than all of the hours they expended in prosecuting the Action. Given the substantial time and effort Plaintiff’s Counsel invested in prosecuting this Action (*infra*, §I.A.1.), the lodestar crosscheck demonstrates that requested fee’s reasonableness.

C. Plaintiff’s Endorsement of, and the Settlement Class’s Reaction to, Plaintiff’s Counsel’s Requested Fee Further Supports the Reasonableness of the Request

Plaintiff, who worked closely with Plaintiff’s Counsel’s in prosecuting the Action from its inception, fully supports the requested fee. *See* OPPRS Aff., ¶¶9-12. In addition, the Notice informed potential Settlement Class Members that Plaintiff’s Counsel would seek an award of attorneys’ fees of up to 30% of the Settlement Fund. *See* Cavanaugh Aff., Ex. A, Notice at 7. So far, no objections to this amount have been received. *Id.*, ¶16. The lack of objection from

¹⁰ Because the lodestar calculation is used for comparative purposes only, this Court need not “undertake an exhaustive lodestar analysis. . . . ‘Th[is] [Court] may rely on summaries submitted by the attorneys and need not review actual billing records.’” *In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, *12 n. 4.

Settlement Class Members supports the approval of the requested fee award. *See In re Crocs, Inc.*, 2014 U.S. Dist. LEXIS 134396, at *17 (“[T]he fact that none of the class members objected to the requested attorneys’ fees is significant and weighs in favor of the requested award.”).

D. Plaintiff’s Counsel’s Expenses Were Reasonably Incurred and Necessary to the Prosecution of the Action

Plaintiff’s Counsel’s reasonable out-of-pocket expenses should be reimbursed. *See Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *43 (“As with attorneys’ fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred.”); *In re Crocs, Inc. Sec. Litig.*, 2014 U.S. Dist. LEXIS 134396, at *17 (same). Here, Plaintiff’s Counsel requests reimbursement of a total of \$84,811.44 in litigation expenses, plus interest earned on such amount at the same rate as that earned by the Settlement Fund. These expenses consist primarily of expert fees, legal research, travel expenses in connection with the mediation (which was held at JAMS in Los Angeles, California) and oral argument before the Colorado Supreme Court, electronic discovery and database costs, and mediating the Settlement Class’ claims – all of which were critical to Plaintiff’s success in achieving the Settlement. *See Scott+Scott Decl.*, ¶¶7-9; *Shuman, Glenn & Stecker Decl.*, ¶6. Such expenses are properly recovered by counsel in complex litigation such as this one. *See, e.g. Voulgaris*, 2021 U.S. Dist. LEXIS 249646, at *43 (“Courts regularly award litigation costs and expenses, ‘including photocopying, printing, postage, court costs, research on online databases, experts and consultants, and reasonable travel expenses – in securities class actions, as attorneys routinely bill private clients for such expenses in non-contingent litigation.’”).

Additionally, the Notice informed potential Settlement Class Members that Plaintiff’s Counsel would seek up to \$150,000 in expenses, a higher amount than the total expenses for which Plaintiff’s Counsel seek reimbursement. *See Cavanaugh Aff., Ex. A, Notice at 7; In re Crocs, Inc.*,

2014 U.S. Dist. LEXIS 134396, at *17-19 (noting that plaintiff's counsel "request[ed] less than half of the [expenses] prospectively requested in the [n]otice."). So far, no objections to this amount have been received. *See* Cavanaugh Aff., ¶16. The lack of objections to this higher amount supports Plaintiff's Counsel's request for reimbursement of expenses.

II. THE COURT SHOULD APPROVE THE REQUESTED \$10,000 AWARD FOR THE TIME, EFFORT AND EXPENSE PLAINTIFF DEVOTED TO THIS ACTION

"Numerous courts have recognized that incentive awards are an efficient and productive way of encouraging members of a class to become class representatives, and awarding individual efforts taken on behalf of the class." *Patterson v. BP Am. Prod. Co.*, No. 2003CV9926, 2013 Colo. Dist. LEXIS 145, at *14 (Dist. Ct., Denver Cnty. Oct. 28, 2013) (collecting cases). The factors courts generally consider in determining the appropriateness of such an award include the actions Plaintiff took to protect the interests of the Settlement Class, the degree to which the Settlement Class has benefitted from those actions, and the amount of time and effort Plaintiff expended in pursuing the Action. *See Peace Officers' Annuity & Ben. Fund of Ga. v. Davita Inc.*, No. 17-cv-0304, 2021 U.S. Dist. LEXIS 71038, at *19 (D. Colo. Apr. 13, 2021); *Lucken Family Ltd. P'ship*, 2010 U.S. Dist. LEXIS 144366, at *16-17.

Here, all three factors warrant approving a \$10,000 award to Plaintiff. Plaintiff devoted significant time and effort in supervising the Action since its inception six years ago and has fully cooperated with Plaintiff's Counsel since then. *See* OPPRS Aff., ¶13. By way of example, Plaintiff communicated with Plaintiff's Counsel concerning the status and progress of the Action, reviewed pleadings and briefs, assisted Plaintiff's Counsel in collecting and producing documents in response to Defendants' requests for production, and conferred with Plaintiff's Counsel concerning mediation and settlement of this Action. Plaintiff's efforts and participation in the Action contributed to achieving a \$8.25 million Settlement for the benefit of all Settlement Class

Members. Without such efforts, it is possible that the Settlement Class would not have received any recovery.

Further, the proposed award is reasonable when compared to awards approved in similar settled class actions. *See e.g., Elna Sefcovic, LLC v. Tep Rocky Mt., LLC*, No. 17-cv-01990, 2019 U.S. Dist. LEXIS 243629, at *8 (D. Colo. Mar. 15, 2019) (awarding \$15K in total awards to plaintiffs in action that settled for approximately \$10M); *Shaw v. Interthinx, Inc.*, No. 13-cv-01229, 2015 U.S. Dist. LEXIS 52783, at *25-26 (D. Colo. Apr. 21, 2015) (awarding a \$10K award to each of five plaintiffs in action that settled for \$6M); *Lucken Family Ltd. P'ship*, 2010 U.S. Dist. LEXIS 144366, at *16 (awarding a \$10K award to the plaintiff in action that settled for approximately \$11M).

Lastly, the Notice informed potential Settlement Class Members that Plaintiff would seek a payment not to exceed \$10,000 (*see* Cavanaugh Aff., Ex. A, Notice at 7) and, to date, no objections to this request have been received. *Id.*, ¶16. Therefore, Plaintiff respectfully requests that the Court grant it an award of \$10,000 for the time, effort and expense it devoted to prosecuting this Action.

CONCLUSION

For all of the foregoing reasons, Plaintiff and its Counsel respectfully request that this Court (i) award Plaintiff's Counsel attorneys' fees of 30 % of the Settlement Amount and their requested expenses of \$84,811.44, plus interest on both amounts at the same rate as earned by the Settlement Fund, and (ii) award Plaintiff \$10,000 for its representation of the Settlement Class.

Dated: October 30, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2023, the foregoing document was served on the following counsel by the Colorado Court E-Filing System:

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DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 BANNOCK STREET, RM 256, DENVER, CO, 80202	Case No.: 2017CV31757 DATE FILED: October 30, 2023 5:12 PM FILING DIVISION: D3CEA9
Plaintiff(s) OKLAHOMA POLICE PENSION AND RETIREMENT SYSTEM, Individually and on Behalf of All Others Similarly Situated	CASE NUMBER: 2017CV31757
v.	
Defendant(s) JAGGED PEAK ENERGY INC., et al.	

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES TO PLAINTIFF'S COUNSEL AND AWARD TO PLAINTIFF FOR ITS REPRESENTATION OF THE SETTLEMENT CLASS

WHEREAS, the Court is advised that the Parties, through their counsel, have agreed, subject to Court approval following Notice to the Settlement Class and a hearing, to settle and dismiss with prejudice the Action upon the terms and conditions set forth in the Stipulation of Settlement, dated August 21, 2023 (the "Stipulation" or "Settlement");¹ and

WHEREAS, on August 23, 2022, the Court entered its Amended Order Granting Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice, and Setting Date for Hearing on Final Approval of Settlement (the "Preliminary Approval Order"), which preliminarily approved the Settlement and approved the form and

¹ As used herein, the term "Parties" collectively means Plaintiff Oklahoma Police Pension and Retirement System ("OPPRS" or "Plaintiff"), on behalf of itself and the Settlement Class, and Defendants Jagged Peak Energy Inc. ("Jagged" or the "Company), Joseph N. Jagers, Robert W. Howard, Shonn D. Stahlecker, Charles D. Davison, S. Wil Vanloh, Jr., Blake A. Webster, Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, J.P. Morgan Securities LLC, Goldman, Sachs & Co., RBC Capital Markets, LLC, Wells Fargo Securities, LLC, UBS Securities LLC, Keybank Capital Markets Inc., ABN AMRO Securities (USA) LLC, Fifth Third Securities, Inc., Petrie Partners Securities, LLC, Tudor, Pickering, Holt & Co. Securities, Inc., BMO Capital Markets Corp., Deutsche Bank Securities Inc., Evercore Group L.L.C., and Scotia Capital (USA) Inc. (collectively, "Defendants").

manner of Notice to the Settlement Class of the Settlement, and said Notice has been disseminated, and the Settlement Fairness Hearing having been held; and

NOW, THEREFORE, based upon Plaintiff's Counsel's motion for an award of attorneys' fees and expenses and Plaintiff's request for an award for its representation of the Settlement Class, and all of the filings, records, and proceedings herein, and it appearing to the Court upon examination that these awards are fair and reasonable, and a Settlement Fairness Hearing having been held after Notice to the Settlement Class to determine, among other things, if payment of an award of attorneys' fees and expenses to Plaintiff's Counsel and payment of an award to Plaintiff is fair, and reasonable, IT IS ORDERED, ADJUGED, AND DECREED that:

1. The provisions of the Stipulation, including definitions of the terms used therein, are hereby incorporated by reference as though fully set forth herein, and all capitalized terms used, but not defined herein shall have the same meaning as those set forth in the Stipulation.

2. The Court hereby finds and concludes that due and adequate notice was directed to all Persons who are Settlement Class Members, who could be identified with reasonable effort, advising them of the motion for an award of attorneys' fees and expenses and Plaintiff's request for an award for its representation of the Settlement Class, and of their right to object thereto, and a full and fair opportunity was accorded to all Persons who are Settlement Class Members to be heard. There were _____ objections to Plaintiff's Counsel's motion or Plaintiff's request.

3. The Court hereby awards Plaintiff's Counsel attorneys' fees in the amount of _____% of the Settlement Fund and \$_____, plus accrued interest, in payment of Plaintiff's Counsel's expenses incurred in the prosecution of the Action, which the Court finds to be fair and reasonable. The Fee and Expense Award and interest earned thereon shall be paid to Plaintiff's Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Stipulation.

4. Plaintiff's Counsel shall allocate the attorneys' fees awarded among themselves in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

5. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court considered and found that:

- (a) The Settlement created a fund of \$8,250,000 in cash, and Settlement Class Members who submit acceptable Proof of Claim Forms will benefit from the Settlement that has been achieved as a result of Plaintiff's Counsel's efforts;
- (b) The attorneys' fees sought by Plaintiff's Counsel have been reviewed and approved as reasonable by Plaintiff, an institutional investor who oversaw the prosecution and resolution of the Action;
- (c) Copies of the Notice were disseminated by first-class mail or email to over 17,000 potential Settlement Class Members and nominees, stating that Plaintiff's Counsel would apply for attorneys' fees in an amount not to exceed 30% of the Settlement Fund and litigation expenses in an amount not to exceed \$150,000, and there were ____ objections to the requested attorneys' fees and expenses, which are the same or less than the amounts stated in the Settlement Notice;
- (d) The Action raised a number of complex issues;
- (e) Had Plaintiff and Plaintiff's Counsel not achieved the Settlement, there was a significant risk that Plaintiff and the other members of the Settlement Class may have recovered less or nothing at all from Defendants;

- (f) Plaintiff's Counsel devoted more than 2,900 hours with a lodestar value of \$2,967,826.00 to this Action and have advanced \$84,811.44 in litigation expenses to achieve the Settlement;
- (g) The amount of attorneys' fees requested represents a negative multiplier of 0.83; with respect to the time expended by Plaintiff's Counsel in prosecuting the Action; and
- (h) The amount of attorneys' fees and litigation expenses to be paid from the Settlement Fund are fair and reasonable and consistent with awards in similar cases.

6. OPPRS is hereby awarded \$_____ from the Settlement Fund for its work in representing the Settlement Class. Such payment is appropriate considering its active participation as Plaintiff in the Action, as attested to by its affidavit submitted to the Court.

7. Any appeal of or challenge to this Court's award of attorneys' fees and expenses to Plaintiff's Counsel, and the award to Plaintiff for its representation of the Settlement Class shall in no way disturb or affect the finality of the Final Order and Judgment approving the Settlement and dismissing the Action with prejudice.

8. Exclusive jurisdiction is hereby retained over the Parties and Settlement Class Members for all matters relating to the Action, including administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

9. In the event that the Stipulation is terminated in accordance with its terms: (a) this Order shall be rendered null and void and shall be vacated *nunc pro tunc*; and (b) the Action shall proceed as provided in the Stipulation.

Dated this ____ day of _____, 2023.

BY THE COURT:

SARAH B. WALLACE
District Court Judge