UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Jonathan Corrente, et al., *Plaintiffs*, v. The Charles Schwab Corporation, *Defendant*.	Case No. 4:22-cv-470-ALM Hon. Amos L. Mazzant, III

PLAINTIFFS' COUNSEL'S MOTION FOR AN AWARD
OF ATTORNEY'S FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

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Pursuant to Federal Rule of Civil Procedure 23(h), Plaintiffs' counsel Bathaee Dunne LLP, Burke LLP, Korein Tillery PC, and Capshaw DeRieux LLP (collectively, "Plaintiffs' counsel") respectfully move for: (i) an award of attorney's fees in the amount of $8,250,000; (ii) payment of Plaintiffs' counsel's litigation expenses in the amount of $686,492.60; and (iii) service awards of $5,000 to class representatives Jonathan Corrente, Charles Shaw, and Leo Williams (the "Class Representatives") in connection with litigating the claims in this action on behalf of the settlement class.

INTRODUCTION

Plaintiffs' counsel have zealously prosecuted this case over more than three years on an entirely contingent basis, securing a rare, favorable outcome for the settlement class. This suit is one of only two successful post-merger Section 7 challenges this century—and also appears to be the only antitrust class action with an outcome favorable to a plaintiff in the Fifth Circuit in at least the last twenty years, as well as the first successful class action challenging practices related to payment for order flow. The proposed settlement of this case—which posed a challenge to the merger between The Charles Schwab Corporation ("Schwab") and TD Ameritrade Holding Corporation ("TD Ameritrade") under Section 7 of the Sherman Act—would provide meaningful injunctive relief to current and future retail investors of the newly merged entity through a third-party antitrust compliance program. Such a favorable outcome was no easy feat. Rather, it was the result of Plaintiffs' counsel's thorough investigation, vigorous advocacy, diligent discovery, and, ultimately, prudent mediation on behalf of the class.

Plaintiffs' counsel took their obligations seriously. They diligently reviewed hundreds of thousands of pages of documents, analyzed voluminous structured trading data, briefed and successfully argued discovery motions, surmounted a motion to dismiss, deposed key witnesses, engaged nationally recognized antitrust and financial experts to develop econometric models

demonstrating liability and damages, and reached a settlement only after Schwab agreed to develop and implement a meaningful antitrust compliance program that brings significant relief to the class. Plaintiffs' counsel achieved this favorable outcome following a robust negotiation process and hard-fought, arm's length negotiations between the parties, aided by a renowned mediator.

The antitrust compliance program Schwab has agreed to develop—with the assistance of an independent consultant team from Fried Frank possessing deep subject matter expertise—will address what the Class Representatives and the class believe are the critical harms of the lawsuit: namely, ensuring that Schwab is seeking the best price execution for the trades of its customers and pushing its market-maker partners to compete on that basis. The adoption of the antitrust compliance program and anticipated increased competition and improved price improvements will benefit Schwab's more than 24 million current and future customers, providing immediate and substantial benefits to those Rule 23(b)(2) class members. Additionally, only equitable claims of the Rule 23(b)(2) injunctive relief class will be released, allowing any current or past Schwab or TD Ameritrade customers to pursue money damages claims—whether individually or on a classwide basis—if they so choose. This settlement is an undeniable win with immediate future benefits for the injunctive relief class without prejudicing any class members who wish to seek monetary relief for past harms.

This outcome was never assured, nor easy to achieve. Plaintiffs' counsel squared off against a large team of attorneys representing Schwab—first from Wilmer Cutler Pickering Hale and Door LLP, and then ultimately from Gibson, Dunn & Crutcher LLP and King & Spalding LLP, some of the largest, most distinguished, and most expensive law firms in the world. As compensation for their efforts in the face of such formidable opposition and substantial litigation risks, Plaintiffs' counsel now respectfully seek reasonable compensation for their attorney's fees

(amounting to less than the value of the time they invested in this case), litigation expenses, and service awards for the Class Representatives.

BACKGROUND

On June 2, 2022, Plaintiffs filed a class action complaint challenging the merger between Schwab and TD Ameritrade (the "Merger") under Section 7 of the Clayton Act, seeking damages and injunctive relief. *See* Compl., Dkt No. 1; Declaration of Yavar Bathaee ("Bathaee Decl.") ¶ 4.[1] Plaintiffs allege the Merger substantially lessened competition in an asserted Retail Order Flow Market ("ROFM"), harming Schwab brokerage customers in the form of reduced price improvement on trades through their brokerage accounts. *Id.* ¶¶ 4-5.

On August 29, 2022, Schwab filed a motion to dismiss, which the Court denied on February 24, 2023. Dkt. Nos. 18, 40. Discovery opened following the parties' Rule 26(f) conference on October 12, 2022. On December 1, 2022, Plaintiffs served their First Set of Interrogatories and Requests for Admission on Schwab. Bathaee Decl. ¶ 6.

On March 15, 2023, Plaintiffs deposed Schwab through its Rule 30(b)(6) designee, a Senior Vice President. Bathaee Decl. ¶ 8. Plaintiffs also deposed four key Schwab and Ameritrade executives prior to settlement discussions: Schwab's Managing Director of Market and Execution Services; Managing Director of Corporate Development; Managing Director of Trading Order Management and Risk; and Managing Director of Trading Operation, Equity, Options and Futures Trading Operations. *Id.* In addition, Schwab produced approximately 218,319 documents

[1] Plaintiffs' Counsel have submitted four declarations in support of their motion for an award of attorney's fees, litigation expenses, and service awards. Those declarations come from each of the four firms that performed work on this matter: Bathaee Dunne LLP, Burke LLP, Korein Tillery PC, and Capshaw DeRieux LLP.

comprising 950,021 pages, of which Plaintiffs have conducted a thorough review for merits and expert purposes. *Id.*

Plaintiffs' experts conducted extensive statistical analysis to investigate and test the hypothesis that the Merger reduced price improvement on trades below the levels that would have prevailed absent the Merger. This analysis involved processing and analyzing approximately 6.5 terabytes of data for more than 6 billion trades, not to mention extensive negotiations between counsel over what data would be produced and the security protocols governing the data. Bathaee Decl. ¶ 10.

During discovery, Plaintiffs filed two motions to compel against Schwab. Dkt. Nos. 80, 109; Bathaee Decl. ¶ 11. Discovery proceeded until July 2024, when the parties jointly moved for the appointment of a mediator and a stay of most case deadlines to facilitate settlement discussions. Dkt. No. 140.

By mutual agreement, the Hon. Nancy F. Atlas (Ret.), held a full-day, in-person mediation session on July 9, 2024, with the parties. Burke/Bathaee Decl. ¶ 20. Although the parties did not reach a resolution at the mediation, they conceived of a conceptual framework for a potential resolution and resolved to continue further negotiations thereafter with Judge Atlas's assistance. *Id.* ¶ 21. On July 24, 2024, the parties jointly requested that the Court formally appoint Judge Atlas to serve as a mediator. Dkt. No. 140. The Court granted this request on July 29, 2024, mooting the pending discovery motions and staying all other case deadlines except for Plaintiffs' deadline to file a motion for class certification and associated expert reports, which it reset to October 7, 2024. Dkt. No. 141. After providing a status report on August 23, 2024, indicating that the negotiations had made significant progress, the parties jointly reported on September 27, 2024, to the Court that they had reached an agreement in principle with respect to settlement that had been reduced to a

signed term sheet. Dkt. Nos. 142, 145; Bathaee Decl. ¶ 22. On October 1, 2024, the Court stayed all remaining case deadlines, and since then, the parties have provided further status reports on the process of finalizing the settlement. Dkt. No. 146. After months of further negotiation, the parties executed the Stipulation and Agreement of Settlement (the "Stipulation of Settlement") on December 12, 2024. Bathaee Decl. ¶¶ 22-23. Details as to the settlement class, settlement relief, scope of release, and notice to the class are provided in Plaintiffs' Motion for Final Approval of Settlement.

Following execution of the Stipulation of Settlement, the parties mediated the issue of attorneys' fees and litigation expenses before Judge Atlas on January 24, 2025. As a result, they reached an agreement whereby Plaintiffs' Counsel would seek an award of attorneys' fees not to exceed $8,250,000, and reimbursement of litigation expenses not to exceed $700,000. This agreement is reflected in the notice provided to the Class and on the settlement website. Bathaee Decl. ¶ 24.

ARGUMENT

I. PLAINTIFFS' COUNSEL'S REQUEST FOR ATTORNEY'S FEES IS REASONABLE AND SHOULD BE APPROVED

Plaintiffs' counsel respectfully seek a fee award based on the lodestar method, resulting in a fee of $8,250,000. This number accounts for the over 14,000 hours of time spent litigating this matter since 2022 (valued at $10,803,933.50 based on Plaintiffs' Counsel's current hourly rates) with an approximately 0.763 multiplier. In *Longden v. Sunderman*, the Fifth Circuit held that "this circuit utilizes the 'lodestar method' to calculate attorneys' fees." 979 F.2d 1095, 1099 (5th Cir. 1992) (*citing Copper Liquor, Inc. v. Adolph Coors Co.*, 684 F.2d 1087, 1092 (5th Cir. 1982)). The lodestar is computed by multiplying the number of hours reasonably expended by the prevailing hourly rate in the community for similar work. *Id*. The court then adjusts the lodestar upward or

downward depending on the respective weight of the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), which are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorneys; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation 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 length and nature of the attorney-client relationship; and (12) awards in similar cases. *Id*. at 717-719. The lodestar method is an appropriate means for awarding fees in an injunctive relief class settlement. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 324 (W.D. Tex. 2007) ("In civil rights and other injunctive relief class actions, courts often use a lodestar calculation because there is no way to gauge the net value of the settlement or any percentage thereof.") (cleaned up).

A. The Requested Attorney's Fees Are Reasonable Under the Lodestar Method

The first step in the lodestar calculation is to determine the "compensable hours" from the attorneys' records, including only hours reasonably expended. *Shipes v. Trinity Indus.*, 987 F.2d 311, 319 (5th Cir. 1993). The burden is on the fee applicant to establish "entitlement to an award and document the appropriate hours expended and hourly rates." *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 324 (5th Cir. 1995). Once this first step is complete, the Court must then "select an appropriate hourly rate based on prevailing community standards for attorneys of similar experience in similar cases." *Shipes*, 987 F.2d at 319. These two numbers are multiplied to produce the lodestar. *See Riley v. City of Jackson*, 99 F.3d 757, 760 (5th Cir. 1996) (noting the "lodestar is computed by multiplying the reasonable number of hours by a reasonable hourly rate").

1. Plaintiffs' Counsel's Hours Are Reasonable

The hours that Plaintiffs' counsel have expended in this case are reasonable. Plaintiffs' counsel have dedicated over 14,000 hours to this matter, calculated conservatively, since this case was filed in June 2022. *See* Bathaee Decl. Ex. 1; Burke Decl. Ex. 1; Bell Decl. Ex. 1; DeRieux Decl. Ex. 1. Prior to filing the comprehensive complaint, Plaintiffs conducted a meticulous investigation that lasted over a year. Bathaee Decl. ¶¶ 3-4. Since then, counsel have diligently pursued the claims, successfully briefing and defeating Schwab's motion to dismiss. Dkt. Nos. 18, 40; Bathaee Decl. ¶ 6. Plaintiffs engaged in extensive discovery, reviewing hundreds of thousands of pages of documents produced by Schwab and deposing several of Schwab's executives—with many more waiting in the wings—and filing two motions to compel. Bathaee Decl. ¶¶ 8, 10-13. In anticipation of class certification, Plaintiffs' counsel invested significant time working with experts to develop a damages model using the 6.5 terabytes of financial data provided by Schwab. Bathaee Decl. ¶ 10. Subsequent to reaching a settlement with Schwab, Plaintiffs' counsel worked with the notice administrator, Ankura and Schwab, to develop a direct notice campaign to reach over 24 million class members. Plaintiffs' counsel responded to scores of telephone and email inquiries from class members seeking additional information. Bathaee Decl. ¶ 25.

The case has been staffed leanly. Lead counsel discussed and assigned tasks according to the needs of the case. Efficiency was essential and helped prevent duplicative or redundant work. Tasks were also efficiently allocated based on complexity, with lower billing rate attorneys handling document review and higher billing rate attorneys managing key brief writing and analysis. Bathaee Decl. ¶ 31. Plaintiffs' counsel have provided breakdowns of the hours spent by each timekeeper, as well as that timekeeper's billing respective billing rate, and a breakdown of hours spent by task. *See* Bathaee Decl. Ex. 1; Burke Decl. Ex. 1; Bell Decl. Ex. 1; DeRieux Decl. Ex. 1. Plaintiffs' Counsel are not seeking fees for work related to their attorneys' fees request,

including time spent preparing for and participating in the January 24, 2025 fee mediation, as well as work performed on this fee application. Bathaee Decl. ¶¶ 22, 26. In calculating their lodestar, Plaintiffs' Counsel used June 30, 2025 as the cut-off date and are not seeking compensation for work performed after that date or for any future work in this matter. This includes assisting Settlement Class Members with inquiries and monitoring the Compliance Program over the next four years. *Id.*

2. Plaintiffs' Counsel's Hourly Rates are Reasonable

The hourly rates Plaintiffs' counsel charged—ranging from $400 for attorneys focused on document review to $1,500 for senior partners[2]—in litigating this case are reasonable. "The touchstone principle in evaluating the reasonableness of the rates charged is that the moving party must demonstrate—through 'satisfactory evidence'—that 'the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.'" *CHU de Quebec - Universite Laval v. DreamScape Dev. Grp. Holdings, Inc.*, 2023 WL 2746933, at *6 (E.D. Tex. Mar. 31, 2023) (quoting *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011)). "In the community where this Court sits, attorney rates vary considerably based on the work performed and the attorney's skill and reputation." *Id.* at *7. Judges in the Eastern District of Texas have looked to rates charged in the "Dallas-Fort Worth metroplex" to consider the reasonableness of a fee award. *Id.*; *see also Pizza Hut, LLC v. Ronak Foods, LLC*, 2022 WL 18456981, at *3 (E.D. Tex. Dec. 22, 2022) (rejecting argument that rates should be compared to local Texarkana attorneys because "[a]ttorneys from across the nation

[2] Mr. Steve Tillery, a preeminent plaintiffs' attorney in the United States with over 40 years of experience in complex litigation, is the only exception. He charges $1,750 per hour and is solely involved in the highest level of case strategy decisions for this action, resulting in modest hours billed to this case.

advocate for their clients in this Court, and the caliber of attorneys seen locally is very high. In this case, the Court finds that Pizza Hut reasonably sought an out-of-town firm with experience especially relevant to the case at bar.").

Higher rates are also warranted in cases litigated by a "select group of top attorneys." *CHU de Quebec,* 2023 WL 2746933, at *7. Relatedly, the "experience, reputation and ability of the attorney and the skill required by the attorneys" also factor into the determination. *C.C. & L.C. v. Baylor Scott & White Health*, 2022 WL 4477316, at *7 (E.D. Tex. Sept. 26, 2022) (quoting *King v. United SA Fed. Credit Union*, 744 F. Supp. 2d 607, 612 (W.D. Tex. 2010)).

The hourly rates Plaintiffs' counsel seek are reasonable. To begin, the subject matter of this suit is singularly complex, at the intersection of two of the most complex areas of law: antitrust and securities. *See Sanger Ins. Agency v. HUB Int'l, Ltd.*, 802 F.3d 732, 734 (5th Cir. 2015) ("The liability issues that arise in antitrust litigation often involve 'complicated legal, factual, and technical (particularly economic) questions.'" (quoting MANUAL FOR COMPLEX LITIGATION (FOURTH) § 30 (2004)); *Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 515 (2017) (describing the securities market as one in which "complex transactions and events can be obscure and difficult for a market participant to analyze or apprehend"). The complexity and difficulty (as well as the risk) of this litigation cannot be understated. If resolved, this case will be the only successful challenge to PFOF-related practices—an area that has been unsuccessfully attacked in myriad suits over the last thirty years. *See, e.g.*, *In re Robinhood Order Flow Litig.*, 2022 WL 9765563 (N.D. Cal. Oct. 13, 2022); *Zola v. T.D. Ameritrade, Inc.*, 172 F. Supp. 3d 1055 (D. Neb. 2016); *Gilman v. Wheat, First Secs., Inc.*, 896 F. Supp. 507 (D. Md. 1995); *Gilman v. BHC Secs., Inc.*, 1995 WL 747738 (S.D.N.Y. Dec. 18, 1995).

Moreover, Clayton Act Section 7 anti-merger cases are "exceedingly rare." H.R. Rep No. R44971, "Pre-Merger Review and Challenges Under the Clayton Act and the Federal Trade Commission Act," Sep. 27, 2017, n.110. The class action mechanism adds an additional layer of complexity to these already-complex legal and factual issues. *See Morrow v. Baker*, 2023 WL 2009926, at *5 (5th Cir. Feb. 15, 2023) ("class actions tend to be extremely complicated and protracted") (citation omitted). From Plaintiffs' counsel's research, this suit is one of only two successful post-merger Section 7 challenges this century. *See Steves & Sons, Inc. v. Jeld-Wen, Inc.*, 988 F.3d 690 (4th Cir. 2021). It also appears to be the only antitrust class action in the Fifth Circuit over the past two decades to result in a favorable outcome for plaintiffs. Bathaee Decl. ¶ 28.

The success of this case would have been impossible without the experience and expertise of Plaintiffs' counsel. In short, there are only a handful of lawyers in the country who could have prosecuted this novel, antitrust-based challenge to payment for order flow and achieved the results in this case. Plaintiffs' counsel's extensive experience speaks for itself through the results in this case—and is confirmed through their extensive experience in antitrust and complex class action litigation. And the experience and quality of Plaintiffs' opposing counsel should not be understated. Schwab was represented by three of the most prestigious firms in the United States, with lawyers in Texas and other states: Gibson, Dunn & Crutcher LLP, King & Spalding LLP, and Wilmer Cutler Pickering Hale and Door LLP. The hourly rates of those firms are significantly higher than those sought by Plaintiffs in this case. *See, e.g.*, *ATX Debt Fund 1, LLC v. Paul*, 2024 WL 2093387, at *5 (S.D.N.Y. May 9, 2024) (noting that Gibson Dunn requested hourly rates of "$595 per hour to $685 per hour for senior paralegals, $775 per hour to $1,265 per hour for associates, and $1,535 to $1,975 for partners"); *Macquarie Mexico Real Estate Mgmt. S.A. de C.V. v. Hoiston Int'l Enters., Inc.*, 2021 WL 4952693, at *7 (S.D.N.Y. Oct. 1, 2021) (noting hourly rates

for King & Spalding partners up to $1,750; associates up to $1,070; and a Managing Clerk at $520); *Segar v. Barr*, No. 77-cv-81-EGS (D.D.C. June 19, 2020), Dkt. Nos. 443-2 & 443-6 (WilmerHale declaration stating that its 2019 median hourly rate for partners was approximately $1,340, with some partner rates up to $1,570; and stating that associate hourly rates ranged from $550 to $915). Plaintiffs' counsel's requested hourly rates are reasonable in comparison to (and, in fact, below) the rates charged by its adversaries in this case.

Finally, the requested hourly rates are in line with those recently awarded in other complex cases in Texas. *See, e.g.*, *Doyle v. Reata Pharms., Inc.*, 2024 WL 4579921, at *1 (E.D. Tex. Mar. 29, 2024) (Mazzant, J.) (after performing lodestar cross-check, awarding 30% of Settlement Fund to plaintiffs' counsel); *Doyle*, No. 4:21-cv-987-ALM (E.D. Tex. Feb. 26, 2024), Dkt. No. 81-1 (noting that hourly rates for Plaintiffs' counsel were up to $1,250 for partners, from $400 to $800 for associates, and $350 to $400 for staff attorneys); *see also In re Fieldwood Energy, LLC*, 2024 WL 4713011, at *5 (Bankr. S.D. Tex. Nov. 7, 2024) (approving hourly rates for partners up to $1,750; associates from $600-$850; paralegals $400).

Plaintiffs' counsel have been unable to identify any other analogous, recently decided complex antitrust class action suits in the Eastern District of Texas to compare the reasonableness of Plaintiffs' counsel's requested hourly rates. In fact, this matter appears to be the only antitrust case with an outcome favorable to a plaintiff in that jurisdiction in at least the last twenty years. With that in mind, Plaintiffs' counsel's requested fee award is slightly higher than what has been awarded in less complex matters in the Eastern District of Texas. *See, e.g.*, *CHU de Quebec*, 2023 WL 2746933 (granting hourly rates up to $900); *Cruson*, No. 4:16-CV- 912-ALM, 2021 WL 3702483 (Mazzant, J.) (awarding attorney's fees at rates up to $951.22 in a complex commercial case); *Crane v. Rave Rest. Grp., Inc.*, No. 4:20- CV-13-ALM, 2022 WL 403291, at *5 (E.D. Tex.

Feb. 9, 2022) (Mazzant, J.) (awarding attorney's fees up to $925 per hour for skilled counsel in a case involving breach of contract and fraud claims); *In re Syngenta Prods. Liab. Litig.*, 2024 WL 2835167 (awarding fee using hourly rates up to $950 per hour); *VDPP, LLC v. Volkswagen Grp. of Am., Inc.*, 2024 WL 3856797, at *2 (S.D. Tex. Aug. 13, 2024) (awarding fee using hourly rates up to $979 per hour). Given the complexity and difficulty of this case, the sophistication of counsel involved, and Defendants' counsel's prevailing rates, Plaintiffs' counsel's requested hourly rates are reasonable.

Warren T. Burns, a seasoned antitrust attorney based in the Dallas-Fort Worth area, confirms the reasonableness of the hourly rates requested by Plaintiffs' counsel. His firm's rates—ranging from $1,100 to $1,500 for partners and $700 to $900 for associates—have been approved by numerous federal courts. Burns Decl. ¶ 7. Mr. Burns emphasizes that the Eastern District of Texas has a limited number of firms regularly engaged in complex, nationwide antitrust class actions. *Id.* ¶ 8. He also notes that the inherent risk and contingency-based nature of challenging a merger of large financial institutions—especially after the DOJ declined to challenge the merger—narrows the field even further. *Id*. Drawing on his decades of experience, he observes that very few plaintiffs' lawyers possess the necessary expertise and risk tolerance to take on such cases. Those who do, including Mr. Burns' firm, typically operate nationally, as the laws they seek to enforce are likewise national in scope. *Id*. ¶ 9. Mr. Burns's firm applies the same rates consistently without regard to jurisdiction. *Id*. ¶ 7. The hourly rates submitted by Plaintiffs' Counsel are within (and indeed, in many cases, below) the range of previously-approved rates at Mr. Burns's firm, which is yet another datapoint indicating the reasonableness of Plaintiffs' requested hourly rate.

B. The *Johnson* Factors Confirm the Reasonableness of the Requested Fees

Upon calculating the lodestar, courts in this circuit next consider whether the lodestar should be adjusted based on application of the *Johnson* factors. See *Johnson v. Georgia Highway*

Express, Inc., 488 F.2d 714 (5th Cir. 1974). Each relevant *Johnson* factor[3] supports Plaintiffs' counsel's reasonable request here for the lodestar without multiplier.

1. The Time and Labor Required

Although the time and labor required in this case is presented in the calculation of the lodestar, there is evidence that the amount of time expended was reduced significantly by the experience of counsel. *See Garza v. Sporting Goods Props., Inc.*, 1996 WL 56247, at *30 (W.D. Tex. Feb.6, 1996) (considering reduction of time and labor required due to experience of counsel). Here Plaintiffs' counsel's experience in utilizing technology-assisted review, and organizing and deduping large document databases, significantly reduced the amount of time spent on document review and analysis compared to the blunt force technique of putting a large body of reviewers on the matter. In addition, Plaintiffs' counsel's experience in working with industrial organization economists and financial industry experts, particularly in the context of class actions and preparing certification reports, resulted in modest expert costs and further reduced the aggregate lodestar.

Moreover, Plaintiffs' counsel's work did not finish when the parties reached a settlement. Finalizing the settlement agreement, moving for preliminary approval, preparing and providing notice to the class, responding to class member inquiries, and working with experts to quantify the value of the settlement were time-consuming, detail-oriented tasks. Moreover, pursuant to the Stipulation, even more work remains for Plaintiffs' counsel in overseeing finalization of the independent consultant's proposals for Schwab's antitrust compliance program and in monitoring compliance with the final report over a four-year period following final approval of the settlement,

[3] Note that Plaintiffs' counsel did not address the *Johnson* factors it deemed irrelevant: the preclusion of other employment by the attorney due to the acceptance of the case, whether the fee is fixed or contingent, time limitations imposed by the client or the circumstances, and the nature and length of the professional relationship with the client have no bearing on this fee application.

if granted. *See* Settlement Agreement § 2.2. This time is not included in Plaintiffs' counsel's lodestar request and should weigh in favor of approving the requested lodestar's conservative amount. *See In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015), *aff'd sub nom.*, 674 F. App'x 37 (2d Cir. 2016) ("Considering that the work in this matter is not yet concluded for Plaintiffs' Counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable.").

2. The Novelty and Difficulty of the Questions

There is no doubt this case is both novel and difficult. *See Garza*, 1996 WL 56247, at *30 (considering novelty and difficulty of questions involved in class action litigation). As noted above, private merger challenges are rare, and as class actions they are rarer yet. *See supra* § I.A.2. The subject matter; the merger of two major, multibillion brokerage firms; and the study of the complex securities trading markets (including the routing of client orders, payment-for-order-flow, price improvement, and the role of market makers in facilitating the trading of stocks by Schwab/TD Ameritrade's customers) multiply the difficulty. To class counsel's awareness, no such analogous challenge to a merger of this size and complexity by private litigants has ever been successful before, nor has any class action challenging payment for order flow ever obtained a favorable result for the plaintiffs. Bathaee Decl. ¶ 28.

3. The Skill Required to Perform the Legal Services Properly and the Experience, Reputation, and Ability of Plaintiffs' Counsel

Plaintiffs' counsel assembled an exceptional team to represent the class. Each member brought a special expertise to the litigation. Prosecuting antitrust claims through the vehicle of a class action requires a unique skill set and the bar total membership is correspondingly modest.

Adding in facility with financial products and financial institutions narrows that number further. Plaintiffs' counsel in this case include some of the most experienced attorneys on antitrust class actions, especially actions concerning financial services. For example, Mr. Christopher Burke has been appointed lead counsel in many high-stakes financial services antitrust class actions, including, but not limited to, *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (S.D.N.Y.) ($2.3 billion settlement); *In re GSE Bonds Antitrust Litig.*, No. 19-cv-01704 (S.D.N.Y.) ("GSE litigation") ($386.5 million settlement); and *Alaska Electrical Pension Fund v. Bank of America Corp*., No. 14- cv-7126 (S.D.N.Y) ($504.5 million settlement). Indeed, the work of Plaintiffs' counsel has been highly praised in other cases. For instance, in the FX case, renowned mediator Kenneth Feinberg concluded that the settlements "represent[] some of the finest lawyering toward a negotiated resolution that I have witnessed in my career." Mr. Feinberg also described many of the same counsel involved in this case as "superlative, sophisticated, and determined plaintiffs' lawyers." FX. Dkt. Nos. 925 at 2, 926 at ¶ 29. This legal skill and acuity enabled Plaintiffs' counsel to reach a settlement at this stage, avoiding expensive and prolonged additional fact and expert discovery by the parties in favor of an amicable resolution.

On the other side, Schwab was represented by extraordinarily talented and experienced lawyers. Despite the opposition they faced and considerable hurdles to their case (many of which would remain should settlement not be reached and approved), Plaintiffs' counsel were able to work together with Schwab to reach a favorable settlement. This, too, confirms the reasonableness of the modest fee award Plaintiffs' counsel seek. *See Schwartz v. TXU Corp.*, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005) ("In addition, defendants were represented by highly experienced lawyers from prominent and well-respected law firms. . . . The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs'

attorneys. The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation.")

4. The Customary Fee and Awards in Similar Cases

As previously mentioned, this case appears to be the only antitrust class action this century to achieve favorable injunctive relief in the Fifth Circuit. Bathaee Decl. ¶ 28. Consequently, Plaintiffs' counsel have not found a comparable case to benchmark their fee request. However, customary attorney's fees in antitrust class actions are often higher than in other cases, especially when, as in this instance, the case involves the financial services industry. *See, e.g.*, *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, No. 1:05-md-01720-MKB-JAM (E.D.N.Y.), Dkt. 9179-1 at 43 (Defendants agreed to pay Equitable Relief Class Counsel attorney's fees and expenses up to $170 million). Additionally, the requested fee award here is within a similar range of awards in class suits in the circuit that likewise obtained solely or primarily injunctive relief. *See, e.g., DeHoyos v. Allstate Corp.,* 240 F.R.D. 269 (W.D. Tex. 2007) (awarding $11.7 million lump sum of attorney's fees and expenses, utilizing a 1.68 lodestar multiplier); *ODonnell v. Harris Cnty., Texas*, 2019 WL 6219933 (S.D. Tex. Nov. 21, 2019) (awarding approximately $7 million in fees and expenses). Plaintiffs' counsel's requested attorney's fees are more than reasonable given the complexity of this case.

5. The Amount Involved and the Results Obtained

The injunctive relief obtained here—an antitrust compliance program at Schwab—is significant and will benefit current and future Schwab customers. The parties' Stipulation Settlement contemplates the creation and implementation of an antitrust compliance program (the "Compliance Program") to address many of Plaintiffs' antitrust concerns regarding the now-combined TD Ameritrade and Schwab investment trading platform—which Plaintiffs have alleged contributes to customers receiving inferior price improvement on their trades. The parties have

agreed to engage a team of attorneys at Fried, Frank, Harris, Shriver and Jacobson, LLP (the "Consultant") to design the program.

Plaintiffs' economic experts Dr. Hal Singer and Ted Tatos provide an in-depth assessment of the extent to which the proposed antitrust compliance program will reasonably benefit Schwab's retail customers, including in the form of reduced trading costs. Declaration of Hal J. Singer, Ph.D. and Ted P. Tatos, MS, PStat ("Singer/Singer Decl.") ¶ 2. Their report considers provisions of the Stipulation of Settlement that would result in greater price improvement relative to the NBBO as an outcome of implementing the Compliance Program. More specifically, Dr. Singer and Mr. Tatos present two potential considerations for inclusion in the Compliance Program: (1) the exploitation of cognizable efficiencies resulting from the merger to the benefit of consumers in the form of improved execution quality, and (2) an alternative means of evaluating market maker offers in exchange for order flow. *Id*. ¶¶ 47-77.

Dr. Singer and Mr. Tatos explain that implementing the Compliance Program—consistent with the merger guidelines framework—is expected to benefit Schwab's current and future retail investors by promoting competition and transparency, deterring pricing manipulation and degradation, and enhancing price outcomes that ultimately reduce trading costs. *Id*. ¶¶ 5, 48-80. Dr. Singer and Mr. Tatos have also performed a valuation of the injunctive relief that will be afforded to the settlement class through the Compliance Program, estimating the value of this injunctive relief at between 1.8% to 2.4%, yielding additional price improvement to the class of between $10.7 million and $14.5 million per month—and thus a value of well over $100 million to the class. *Id.* ¶ 85. This estimated value highlights the excellent result obtained by Plaintiffs' counsel on behalf of class members. When considering that courts in this circuit commonly approve fee awards of 25% to 33.3% of the total relief obtained, the fee requested by Plaintiffs'

counsel is comparatively modest. *See McCumber v. Invitation Homes, Inc.*, 2024 WL 4183526, at *3 (N.D. Tex. July 30, 2024) ("Attorneys' fees in this Circuit routinely range from 25% to 33.33% of the total recovery"); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

All things considered, the Compliance Program provides significant and valuable relief to Schwab's current and future retail investors. This factor weighs in favor of Plaintiffs' counsel's moderate and reasonable fee request for their lodestar without multiplier.

6. The "Undesirability" of the Case

Courts have recognized the undesirability of a case as another important factor in determining a fair fee award. *See Alberti v. Klevenhagen*, 903 F.2d 352, 352 (5th Cir. 1990) (affirming district court's undesirability enhancement, reasoning an enhancement for undesirability of case is required to attract competent counsel to accept certain cases); *Forrest v. Dynamic Sec., Inc.*, 2002 WL 31256202, at *2 (E.D. La. Oct. 4, 2002) (listing undesirability of case as one of permissible factors to consider in adjusting lodestar amount). Thus, factors such as the financial burden on counsel (considerable here) and the demands of handling a class action of the size and complexity of this case, may cause a case to be considered "undesirable." *Garza v. Sporting Goods Properties, Inc*., 1996 WL 56247, at *33 (W.D. Tex. Feb. 6, 1996) (*citing In re Shell Oil Refinery*, 155 F.R.D. 552, 572 (E.D. La. 1993)). Indeed, "taking on this type of litigation against major corporations where the prospective relief involves decisions by corporate management at a high level is as intimidating a legal task as someone can take." *Id.* This factor, too, justifies awarding Plaintiffs' counsel their lodestar as attorney's fees, as few attorneys would take on the risk of challenging a well-resourced financial institution on a core business practice in a multi-year, complex class action.

II. PLAINTIFFS' COUNSEL'S REQUESTED LITIGATION EXPENSES ARE APPROPRIATE

The appropriate analysis to apply in determining which expenses are compensable in a class action case is whether such costs are of the variety typically billed by attorneys to clients. *Abrams v. Lightolier*, 50 F.3d 1204, 1225 (3d Cir. 1995) (determining expenses are recoverable if it is customary to bill clients for these expenses); *Harris v. Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994) (stating "Harris may recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client") (internal quotation and citations omitted); *Dowdell v. City of Apopka*, 698 F.2d 1181, 1192 (11th Cir. 1983) (concluding "all reasonable expenses incurred in case preparation, during the course of litigation, or as an aspect of settlement of a case" may be recovered as costs in civil rights case); *see also Tex. State Teachers Ass'n v. San Antonio Indep. Sch. Dist.*, 584 F. Supp. 61, 66 (W.D. Tex. 1983) (awarding "all reasonable expenses incurred in case preparation [and] during the course of litigation" (quoting *Dowdell*, 698 F.2d at 1192)).

In this case, class counsel incurred $686,492.60 in expenses. These expenses include costs for filing fees, expert witnesses and consultants, court reporting and videographers for depositions, and travel. *See* Bathaee Decl. Ex. 2; Burke Decl. Ex. 2; Bell Decl. Ex. 2; DeRieux Decl. Ex. 2.

The expert expenses, in particular, are appropriate and modest given the complexity of the case, the volume of data they analyzed, and the difficulty inherent to financial markets cases. At the time of settlement, Plaintiffs' experts were working on statistical analyses to investigate and test the hypothesis that the merger between Schwab and TD Ameritrade reduced price improvement below the levels that would have prevailed absent the merger. Bathaee Decl. ¶ 10. To accomplish this, Plaintiffs' experts and consultants received 6.5 terabytes of trading data from 2019 to 2023 from Schwab, encompassing 6.4 billion trades. Among various methodologies

considered, Plaintiffs' experts were in the process of using the 2019 to 2023 trade data that Defendants provided to estimate a multivariate regression model that, controlling for possible confounding factors, would estimate the effect of the merger on the prices that Plaintiff class members paid for their trades. *Id.* And, as explained above, Plaintiffs' Counsel also worked with their experts to provide opinions in support of settlement regarding the benefits of the injunctive relief to class members. *Id.*

III. PLAINTIFFS' REQUESTED SERVICE AWARDS ARE WARRANTED

Plaintiffs' counsel respectfully seeks a service award of $5,000 to each Named Plaintiff. "Federal courts consistently approve incentive awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they shoulder during litigation." *DeHoyos*, 240 F.R.D. at 339. Service awards must be "fair and reasonable." *Halleen v. Belk, Inc.*, 2018 WL 6701278, at *4 (E.D. Tex. Dec. 20, 2018). In assessing proposed service awards, courts consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *C.C. & L.C. v. Baylor Scott & White Health*, 2022 WL 4477316, at *8 (E.D. Tex. Sept. 26, 2022) (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)). "District courts in the Fifth Circuit routinely award $5,000-$10,000 per named plaintiff." *Duncan v. JPMorgan Chase Bank, N.A.*, 2016 WL 4419472, at *16 (W.D. Tex. May 24, 2016) (cleaned up).

Here, the Class Representatives expended considerable time and resources in furtherance of their duties to the settlement class. The Class Representatives participated in discovery, including working with counsel to identify and produce detailed financial records from all retail brokerages where they had accounts over a multi-year period, responding to one set of interrogatories and one set of requests for admission, and preparing responses to a second set of

interrogatories that ultimately were not served due to the standstill on discovery prior to settlement. The Class Representatives reviewed pleadings, motions, and other documents; and frequently communicated with Plaintiffs' Counsel concerning the status of the case, court documents, strategy, and settlement over the three years that this case has been litigated. Corrente Decl. ¶¶ 9-13; Shaw Decl. ¶¶ 9-13; Williams Decl. ¶¶ 9-13. In light of these efforts and diligence, the service awards the Class Representatives request are fair and reasonable. The amount requested is also consistent with, or less than, awards granted in similar cases—including those where strictly injunctive relief was obtained by the class. *See, e.g., In re Philips Recalled CPAP, Bi-Level PAP, & Mech. Ventilator Prods. Litig.*, 2024 WL 4988339, at *17 (W.D. Pa. Dec. 5, 2024) (approving $5,000 incentive awards in injunction-only settlement); *Lilly v. Jamba Juice Co.*, 2015 WL 2062858, at *7 (N.D. Cal. May 4, 2015) (same); *Grant v. Cap. Mgmt. Servs., L.P.*, 2014 WL 888665 (S.D. Cal. Mar. 5, 2014) (same); *Fresco v. Auto. Directions, Inc.*, 2009 WL 9054828, at *10 (S.D. Fla. Jan. 20, 2009), *amended in part*, 2009 WL 10666915 (S.D. Fla. Apr. 22, 2009) (approving $15,000 incentive awards in injunction-only settlement); *Peoples v. Annucci*, 180 F. Supp. 3d 294, 303 (S.D.N.Y. 2016), *injunctive relief extended*, 2022 WL 7164199 (S.D.N.Y. Sept. 30, 2022) (approving $80,000, $40,000 and $9,900 incentive awards in injunction-only settlement).

CONCLUSION

For the foregoing reasons, Plaintiffs' Counsel respectfully request that the Court (i) award attorney's fees in the amount of $8,250,000; (ii) award payment of Plaintiffs' Counsel's litigation expenses in the amount of $686,492.60; and (iii) award a $5,000 service award to each Named Plaintiff, for a total of $15,000 in service awards.

Dated: July 17, 2025

Respectfully submitted,

/s/ Christopher M. Burke
Christopher M. Burke (*pro hac vice*)
cburke@burke.law
BURKE LLP
402 West Broadway, Suite 1890
San Diego, CA 92101
Tel: (619) 369-8244

Chad E. Bell (*pro hac vice*)
cbell@koreintillery.com
KOREIN TILLERY P.C.
205 North Michigan Avenue, Suite 1950
Chicago, IL 60601
Tel: (312) 641-9750

/s/ Yavar Bathaee
Yavar Bathaee (NY 4703443)*
yavar@bathaeedunne.com
Andrew Wolinsky (NY 4892196)
awolinsky@bathaeedunne.com
BATHAEE DUNNE LLP
445 Park Avenue, 9th Floor
New York, NY 10022
Tel: (332) 322-8835

Brian J. Dunne (CA 275689)
bdunne@bathaeedunne.com
Edward M. Grauman (TX 24081931)
egrauman@bathaeedunne.com
BATHAEE DUNNE LLP
901 South MoPac Expressway
Barton Oaks Plaza I, Suite 300
Austin, TX 78746
Tel: (213) 462-2772

Elizabeth L. DeRieux (TX 05770585)
ederieux@capshawlaw.com
S. Calvin Capshaw (TX 03783900)
ccapshaw@capshawlaw.com
CAPSHAW DERIEUX LLP
114 E. Commerce
Gladewater, TX 75647
Tel: (903) 236-9800
Fax: (903) 236-8787

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on July 17, 2025, the above document was served on counsel of record for all parties via the CM/ECF system.

/s/ Yavar Bathaee

CERTIFICATE OF CONFERENCE

I certify that the meet and confer requirement in Local Rule CV-7(h) has been complied with and that the motion is unopposed by Defendant The Charles Schwab Corporation.

/s/ Yavar Bathaee