UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SHEET METAL WORKERS LOCAL 32 PENSION FUND, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. TEREX CORPORATION, et al., Defendants.	No. 3:09-cv-02083-RNC **(Consolidated)** CLASS ACTION DECLARATION OF ROBERT J. ROBBINS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

I, ROBERT J. ROBBINS, declare as follows:

1. I am a partner of the law firm Robbins Geller Rudman & Dowd LLP ("Robbins Geller" or "Lead Counsel"), the firm approved as Lead Counsel by the Court to represent Plaintiffs Sheet Metal Workers Local 32 Pension Fund and Ironworkers St. Louis District Council Pension Fund, and the firm that also represents additional plaintiff Sheet Metal Workers Local #218(S) Pension Fund (collectively "Plaintiffs") in the above-captioned action (the "Action").[1] I have been actively involved in the prosecution and resolution of this Action, am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my involvement in this Action and supervision of or communications with other lawyers and staff assigned to this Action. This declaration was prepared with the assistance of other lawyers at the firm, reviewed by me before signing, and the information contained herein is believed to be accurate based on what I know and what I have been told by others.

2. I submit this declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure, in support of: (a) Plaintiffs' request for final approval of the cash settlement of $10,000,000.00 (the "Settlement"); (b) Plaintiffs' request for approval of the proposed Plan of Allocation; and (c) Lead Counsel's application for an award of attorneys' fees and expenses, including an award to Plaintiffs for their time representing the Settlement Class.

I. PRELIMINARY STATEMENT

3. The Settlement, which this Court preliminarily approved in its Order Preliminarily Approving Settlement and Providing for Notice dated April 15, 2019 [ECF No. 119] (the "Preliminary Approval Order"), provides for the payment of $10,000,000.00 in cash, and any interest accrued thereon (the "Settlement Fund"), for the benefit of the Settlement Class to settle

[1] Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the Settlement Agreement dated March 27, 2019 ("Stipulation") [ECF No. 118-4].

all claims asserted in this Action and the release of all Released Claims by Plaintiffs and the Settlement Class Members against Defendants[2] and their affiliated persons and entities.

4. The Settlement is an excellent result considering the substantial risks posed by continuing litigation of the Action. Additionally, the Settlement has the support of the Plaintiffs. *See* Declaration of Ed Robison on Behalf of Sheet Metal Workers Local #218(S) Pension Fund ("Robison Decl."); Declaration of Daniel Villarruel on Behalf of Sheet Metal Workers Local 32 Pension Fund ("Villarruel Decl."); and Declaration of Tom Garrett on Behalf of Ironworkers St. Louis District Council Pension Fund ("Garrett Decl."), submitted herewith.

5. As set forth more fully below, Plaintiffs may not have achieved such a meaningful recovery for the Settlement Class if litigation continued. Even if Plaintiffs ultimately prevailed on a motion for class certification, at summary judgment, and at trial, any judgment would be inevitably subject to an appeal, and any potential recovery for the Settlement Class would be substantially delayed. Defendants' asserted defenses presented numerous risks concerning Plaintiffs' ability to prove liability, loss causation, and damages. In spite of these potential obstacles, Plaintiffs obtained a favorable settlement that will result in immediate recovery for the Settlement Class, and which eliminates the risk of continued litigation under circumstances where a favorable outcome was not guaranteed.

6. The Settlement was reached only after Lead Counsel: (a) reviewed and analyzed documents filed publicly by the Company with the U.S. Securities and Exchange Commission ("SEC"); (b) reviewed and analyzed other publicly available information, including press releases,

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[2] Defendants refers to: Terex Corporation ("Terex" or the "Company"); former President and Chief Operating Officer Thomas Riordan ("Riordan"); former Chairman and Chief Executive Officer Ronald M. DeFeo ("DeFeo"); former President and Chief Financial Officer Philip Widman ("Widman"); former President of Aerial Work Platform ("AWP") Tim Ford ("Ford"); and former Vice President, Controller, and Chief Accounting Officer Jonathan D. Carter ("Carter").

news articles, interviews, and other public statements issued by or concerning the Defendants, as well as research reports issued by financial analysts concerning the Company; (c) researched applicable law governing the claims and potential defenses; (d) consulted with internal Robbins Geller analysts and outside analysts on valuation, damages, and causation issues; (e) conducted an extensive investigation that included discussions with numerous former employees of Terex; (f) prepared a fact intensive Consolidated Class Action Complaint for Violations of the Securities Laws ("Complaint") [ECF Nos. 56, 57]; (g) researched and prepared a thorough opposition to Defendants' motion to dismiss the Complaint; (h) presented Plaintiffs' arguments during the hearing on the motion to dismiss; (i) stayed up to date on the issuance of relevant opinions and submitted notices of supplemental authority to the Court; and (j) participated in arm's-length negotiations led by an experienced and qualified mediator.

7. After Defendants answered the Complaint, the Settling Parties reached an agreement to settle this Action on February 8, 2019. The agreement was achieved when the parties agreed to a mediator's proposal following weeks of ongoing discussions facilitated by a mediator with extensive experience in the resolution of securities class actions, the Honorable Daniel Weinstein (Ret.) of JAMS.

8. Accordingly, it is respectfully submitted that: the Settlement and Plan of Allocation should be approved as fair, reasonable, and adequate; and Lead Counsel should be awarded 31% of the Settlement Fund and payment of the requested litigation expenses, including an award to Plaintiffs for their time representing the Settlement Class.

II. HISTORY OF THE LITIGATION

9. This is a federal securities class action against Terex, and former officers Riordan, DeFeo, Widman, Ford, and Carter, brought by Plaintiffs under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder on behalf of

all persons who purchased or otherwise acquired Terex common stock between February 20, 2008 and February 11, 2009, inclusive ("Settlement Class Period"). The initial complaint was filed on December 21, 2009. ECF No. 1. On September 13, 2010, the Court appointed Sheet Metal Workers Local 32 Pension Fund and Ironworkers St. Louis District Council Pension Fund to lead the prosecution of this litigation in accordance with the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). ECF No. 50. On December 3, 2010, Plaintiffs filed the Complaint. The relevant allegations in this Action are summarized below and more fully set forth in the Complaint.

A. Summary of Allegations

1. Overview

10. Plaintiffs allege in the Complaint that throughout the Settlement Class Period, Defendants engaged in deceptive practices to mask weak demand for the Company's products and improperly recognized revenue in violation of Generally Accepted Accounting Practices ("GAAP"), which Defendants allegedly concealed through materially false and misleading statements and material omissions. Specifically, Plaintiffs allege that Defendants made materially false and misleading statements because they failed to disclose that: (i) the Company did not properly and timely account for impaired assets in its Construction and Roadbuilding, Utility Products and other segments; (ii) the Company was experiencing declining demand for its products in its Construction, Materials Processing and Aerial Work Platform segments; and (iii) the Defendants lacked a reasonable basis for their positive statements about Terex and its prospects.

11. Plaintiffs further allege that through a series of partial disclosures the market learned of the Company's true financial condition and future business prospects. Plaintiffs allege the disclosures culminated in a goodwill impairment charge, withdrawal of the Company's heavily lauded "12 by 12 in '10" guidance, and the revelation of a substantial decline in demand for and sales of Terex's key products. Plaintiffs allege these disclosures caused Terex common stock to

decline more than 87% from its Settlement Class Period high, causing significant damage to Plaintiffs and the Settlement Class.

2. Defendants' Fraudulent Scheme

12. Plaintiffs allege that during the Settlement Class Period, Terex experienced a severe decline in demand for its products. The allegations of the Complaint detail Defendants' knowledge of the severity of declining demand and the methods by which Defendants defrauded the market in order to mask problems in Terex's financial performance and future business prospects. ¶¶65-67.[3] For example, the Complaint alleges that because of the decline in its business, Terex engaged in a series of fraudulent revenue recognition practices, including moving large amounts of inventory off-site at quarters' end to book sales in quarters where they would otherwise not occur, which was repeatedly employed so that Terex could meet market expectations during the Settlement Class Period. ¶¶72-103. Indeed, well-placed and knowledgeable confidential witnesses described in the Complaint detailed how employees were directed to move Terex products off-site just prior to quarter-end so that the Company could prematurely book the products as sold in order to meet the Company's quarterly sales goals. ¶¶80-93. In essence, the Complaint alleges that Terex would backdate sales in order to report positive financial performance. ¶81.

13. The Complaint also alleges that Terex induced customers to prematurely complete purchases in order to shift earnings into earlier quarters. ¶¶94-99. Plaintiffs also allege that Terex regularly delivered unfinished or defective products, such as trucks, in order to get those products moved out of Terex's facilities so that the Company could improperly book sales. ¶¶101-103. Additionally, the Complaint alleges Terex improperly reported intercompany transfers as sales in the Company's financial statements recognizing revenue of at least $350 million from these "sales"

[3] All citations to "¶__" or "¶¶__" are references to paragraphs of the Complaint.

in violation of GAAP. ¶¶112-132. These allegations are supported by several confidential witnesses with personal knowledge of the fraudulent practices. *See, e.g.*, ¶¶96-97; ¶¶101-103. Thus, the Complaint alleges Defendants failed to inform investors that Terex's financial results were based on a bevy of fraudulent practices that caused the price of Terex stock to be artificially inflated. ¶¶95-103.

14. Plaintiffs also allege that Defendants reported hundreds of millions of dollars of goodwill to the market, despite knowing it was materially impaired. ¶104. The Complaint alleges that following an in-depth analysis of Terex's divisions by a strategy expert, Riordan attempted to sell the Company's Roadbuilding division in mid-2007, an effort known as "Project Cowboy." ¶¶105-107. As a result of that process, the Complaint alleges Terex received an offer of between only $180-$190 million. ¶108. Plaintiffs allege the Roadbuilding division was unattractive to potential buyers because of the amount of goodwill Terex had on its books, which was included in the selling price. ¶109. Thus, the Complaint alleges that the failure of Project Cowboy alerted Defendants that the Company's goodwill was materially impaired during the Settlement Class Period.

3. Defendants' False and Misleading Statements

15. Plaintiffs allege that during the Settlement Class Period, Defendants consistently reported "strong demand" for Terex products. For example, a February 20, 2008 press release announcing Terex's financial results for the quarter and year-ended December 31, 2007 referenced "increased demand for most of our product categories" and "sharp increases in demand are also being experienced in Europe for construction equipment and aerial work platforms." ¶133. Thereafter, the Company's 2007 Form 10-K stated "Demand for infrastructure and energy has resulted in extraordinary demand for our cranes." ¶139. Similarly, during a May 8, 2008 conference call, DeFeo stated that in the Company's aerial work platform business "demand is still

fairly strong." ¶152. The Company also touted its strength during its May 30, 2008 conference call, when DeFeo stated "[T]he crane segment is operating at a fairly high level, incredibly strong demand which we see at least through 2010... [I]t is incredibly strong and I expect it to continue to be strong." ¶154. Similarly, during a July 24, 2008 conference call, DeFeo stated "[W]e continue to see strength in several of our businesses." ¶165. Plaintiffs allege, however, that the Company was already experiencing rapid declines in demand, fewer product sales, and a surplus of excess inventory, which rendered Defendants' statements materially false and misleading. ¶¶140, 155, 171.

16. As detailed above, Plaintiffs allege Terex engaged in a series of fraudulent revenue recognition practices and Defendants furthered their fraud by reporting overinflated goodwill in violation of GAAP, despite Defendants' knowledge that Terex's goodwill was severely impaired. ¶¶104-111; ¶¶223-237. These allegations, in conjunction with the allegations concerning Terex's fraudulent accounting practices designed to conceal the downward spiral of Terex's businesses, demonstrate the falsity of Defendants' Settlement Class Period statements regarding Terex goodwill.

4. The Truth Is Revealed Through a Series of Partial Disclosures

17. As alleged in the Complaint, by mid-2008, Defendants could no longer hide the deterioration of Terex's business, and Defendants were forced to reveal Terex's true financial condition. On May 6, 2008, June 25, 2008, July 23, 2008, and July 24, 2008, Terex announced business slowdowns in Roadbuilding, AWP, and construction, as well as a construction inventory build. ¶¶150, 156, 162-163. Each time, however, Defendants countered this negative news with false and misleading statements concerning Terex's strong and diversified revenue base, its increased sales and income, strong demand, and by touting that Terex was "going to make [its] 12 x 12 in '10 goal." *See, e.g.*, ¶¶154, 158, 159-160.

18. Then, on September 4, 2008, Plaintiffs allege that Terex shocked the market when it lowered its 2008 full-year and quarterly guidance and revealed that purported strong performance in Cranes and Mining was no longer expected to offset market softening in other areas. ¶¶172-173. In response, Terex's stock price dropped nearly 20%. But, as with their earlier statements, Defendants issued additional commentary that Plaintiffs allege was designed to mislead the market and further maintain the artificial inflation Terex's stock price. ¶¶175-176.

19. On October 22, 2008, Terex again lowered its earnings guidance. ¶¶183-184. This additional negative news caused Terex's stock price to drop nearly 14% on October 23, 2008, an additional 12% on October 24, 2008, and 4% more on October 27, 2008. ¶185. Offsetting the negative news, Defendants claimed that Terex segments would not "roll over all at once" and that despite the stock price decline, it was "traders of [Terex] common stock" who were "wrong." ¶186.

20. Then, on February 3, 2009, Terex again lowered its fourth-quarter and year-end 2008 guidance, with earnings dropping approximately 5% below the low end of the previous guidance. ¶192. Terex also revealed a forthcoming goodwill impairment estimated to be $600 million. *Id.* Just eight days later, on February 11, 2009, Defendants revealed a significant net loss for the fourth quarter 2008 of $421.5 million, including a charge of $460 million for the impairment of goodwill to Terex's Construction and Roadbuilding divisions. ¶195. The following day, February 12, 2009, Terex revealed the important "12 by 12 in '10" guidance could not be achieved without a "miracle." ¶196. In response, Plaintiffs allege the price of Terex stock dropped more than 30%. ¶198.

21. Plaintiffs also allege that on August 12, 2009 (after the close of the Settlement Class Period), the SEC charged Terex with accounting fraud, accusing the Company of "recording improper entries that misstated [Terex's] earnings and concealed intercompany imbalances in its

accounts" from 2000 through June 2004. ¶127. Terex agreed to settle the SEC action for $8 million on the date it was filed. ¶128. The SEC action alleged that improper accounting caused Terex to appear more profitable than it really was. ¶¶127-132.

B. Defendants' Motion to Dismiss

22. On January 18, 2011, Defendants filed a 55-page memorandum of law in support of their motion to dismiss the Complaint, supported by 35 exhibits. ECF No. 63. First, Defendants argued that Plaintiffs failed to and could not plead loss causation, or show that the revelation of the alleged fraud caused a decline in the price of Terex common stock. Defendants asserted that the decline was instead the result of the global financial crisis. Next, Defendants argued that the Complaint did not plead a "cogent" and "compelling" inference of scienter and that Plaintiffs failed to demonstrate Defendants' actual knowledge that the alleged false statements were false at the time they were made. Defendants further alleged that the PSLRA's "safe harbor" precluded any claim concerning Terex's forward-looking statements, including the Company's guidance. Finally, Defendants argued the Complaint failed to plead any false statements with particularity.

23. In response, Plaintiffs researched the applicable law and drafted a thorough memorandum of law in opposition to the motion. Among other things, Plaintiffs contended that when the Complaint's well-pled allegations that Defendants made numerous and unwavering misrepresentations concerning decreased demand for the Company's products and engaged in a variety of improper accounting practices in order to mask declining demand were considered, Defendants could not credibly portray Terex as a victim of unforeseen circumstances arising from the "global financial crisis." Plaintiffs asserted that Defendants' arguments were at odds with their public statements and the Complaint's detailed allegations, which were supported by 31 confidential witnesses. In their opposition, Plaintiffs argued at length that the Complaint more than satisfied the heightened pleading standards established by the PSLRA and Federal Rule of

Civil Procedure 9(b), including detailed arguments regarding why the Complaint detailed the falsity of Defendants' statements with particularity, provided specific facts that, when viewed cumulatively, demonstrated scienter, and adequately notified Defendants of the causal link between the misrepresentations and the claimed losses.

24. After Defendants' motion to dismiss was fully briefed, the parties participated in oral argument on March 25, 2012. ECF No. 72.

C. The Motion to Dismiss Ruling and Order

25. On March 31, 2018, the Court issued its Ruling and Order ("Order") granting in part and denying in part Defendants' motion to dismiss. ECF No. 97. Although the Order held that certain allegedly false statements were inactionable, other false statements were sustained. Specifically, the motion to dismiss was granted with regard to Plaintiffs' claims against defendants DeFeo, Widman, Ford, and Carter for failure to adequately plead scienter.[4] The Order also held that Plaintiffs' claims against Terex and Riordan would remain intact with respect to the false statements Riordan made regarding demand and sales in the Roadbuilding, AWP, and Construction segments. The Court further held that Plaintiffs adequately alleged loss causation for statements relating to historical, present, and future demand for the products in Terex's Roadbuilding, AWP, Construction segments. Plaintiffs' allegations were also found to be "sufficient to establish a cogent and compelling inference of scienter with respect to Mr. Riordan," as they detailed his personal trips to the Roadbuilding facilities, meetings with Terex executives, and his active concealment of problems in the AWP and Construction segments.

[4] Plaintiffs strongly believe that if the parties were to engage in discovery, sufficient evidence would confirm that the dismissed Individual Defendants knew or recklessly disregarded the falsity of the Settlement Class Period statements.

D. Riordan and Terex Answer the Complaint

26. On April 17, 2018, Defendants Terex and Riordan filed their Answer to the Complaint. ECF No. 105. In their Answer, Defendants Terex and Riordan denied that they made any false or misleading statements, denied that the price of Terex stock was artificially inflated, and denied allegations that they acted with scienter. In addition, Defendants Terex and Riordan asserted 32 affirmative defenses, including that their statements were protected by the PSLRA's safe harbor provision, that Plaintiffs' claims are barred for lack of loss causation because factors other than Defendants' statements constituted independent, intervening, and superseding causes for movements in the price of Terex stock, and that no act or omission attributed to any Defendant was the actual or proximate cause of any alleged injury suffered by Plaintiffs.

III. SETTLEMENT

27. Following the Court's Order on Defendants' motion to dismiss and Defendants' Answer, the Settling Parties agreed to attempt to resolve the case through mediation, and requested on several occasions that the Court stay further proceedings to facilitate these efforts. The parties agreed to retain Judge Weinstein, and he was provided with confidential submissions and facilitated the negotiations. Following a mediator's proposal made by Judge Weinstein, on February 8, 2019, the Settling Parties reached an agreement-in-principle to resolve the Action, which included, among other things, the Settling Parties' agreement to settle the Action in return for a cash payment of $10 million for the benefit of the Settlement Class, subject to the negotiation of the terms of a Settlement Agreement and approval by the Court. For the reasons more fully set forth herein, Lead Counsel believes this is a very good result under the circumstances of this Action.

IV. STRENGTHS AND WEAKNESSES OF THE CASE AND THE RISKS FACED BY PLAINTIFFS IN THE LITIGATION

28. In deciding to enter into the Settlement, Plaintiffs and Lead Counsel considered: (a) the likelihood of success at class certification, summary judgment, and at trial; (b) the range of possible recovery; (c) the point in the range of possible recovery at which a settlement is fair, adequate, and reasonable; (d) the complexity, expense, and duration involved in continuing litigation; (e) the amount of insurance coverage available and Defendants' ability to pay a judgment; (f) the time of, and possible substantial delay and increased risk of uncertainty of, any potential recovery to the Settlement Class if litigation continued; and (g) the expense of further litigation and its impact on the insurance funds available for payment of any settlement or judgment.

A. Risks of Establishing Liability and Damages

29. While Plaintiffs believe that their claims would be corroborated by the evidence presented at trial, they also recognize they faced hurdles to proving liability or even proceeding to trial. Defendants have articulated defenses to the claims that the Court may accept at summary judgment or a jury may have accepted at trial. Among other things, Defendants have strenuously contended, and would continue to contend, that Plaintiffs cannot prove the elements of falsity and scienter, pointing to the rapid decline of the global economy during the Settlement Class Period as the driving force behind any weakness in Terex's financial performance. For example, Defendants would have stressed that Terex suffered from the declining economy along with its peers in the industry, and that there was no way for Terex to anticipate the negative impact it would have on the Company's business. Given that the global financial crisis was nearly unprecedented in size and scope, Plaintiffs faced a significant hurdle in successfully proving falsity, loss causation, and scienter. If Defendants prevailed on any one of these grounds, the entire case could be at risk.

30. In addition, the allegations at issue took place over a decade ago. Locating percipient witnesses may have proved difficult and relevant non-party evidence may be lost. Although documentary evidence could be obtained from the Company, witness memories surrounding the circumstances of such documents surely would have faded. And although Plaintiffs were confident they would have been able to overcome this difficulty and support their claims with qualified and persuasive expert testimony, jury reactions to competing experts are inherently difficult to predict, and Defendants would have presented highly experienced experts to support their various defenses to liability. Plaintiffs also faced the possibility that the Court would limit or exclude their experts' testimony. This risk, if realized, would have further complicated Plaintiffs' chance of success in further litigation.

31. Finally, Plaintiffs faced risks in establishing loss causation and damages at trial. Defendants have maintained that to the extent Terex's common stock price declined during Settlement Class Period, it was caused by the global financial crisis and not the alleged fraud. There is no doubt that at class certification, Defendants would have presented expert testimony on the issue of price impact and argued that Plaintiffs could not successfully disaggregate the global financial crisis from the impact of the alleged fraud. As with contested liability issues, issues relating to causation and damages would have likely come down to an unpredictable "battle of the experts."

32. Accordingly, in the absence of a settlement, there was a real risk that the Settlement Class could have recovered an amount significantly less than the total Settlement Amount – or even nothing at all. Thus, the $10 million recovery now, particularly when viewed in the context of the risks and the uncertainties of further litigation, weighs in favor of final approval of the Settlement.

B. Possible Range of Recovery

33. Terex's available insurance and the Company's ability to pay were also factors considered by Plaintiffs and Lead Counsel in determining the reasonableness of the Settlement. In fact, had the case continued in litigation for several more years, as many securities fraud class actions do once discovery begins, the expenses of litigation would have consumed a substantial portion of the available insurance. In addition, Settlement Class Members' recovery would be subject to unforeseeable financial changes for the Defendants which could reduce their ability to pay a judgment exceeding available insurance.

34. Furthermore, the process of proving damages requires retaining an expert to perform a costly economic analysis, exchanging expert reports and rebuttal reports, taking expert depositions, briefing *Daubert* motions, and/or holding *Daubert* hearings, briefing summary judgment, and prevailing at trial.

35. The amount of recoverable damages may also be greatly impacted by a court's ruling at summary judgment, or a jury's determination of liability at trial, with regard to the specific alleged statements found to be false and misleading. Indeed, in its Order on the motion to dismiss, the Court held that Plaintiffs failed to state claims under the PSLRA for several categories of false and misleading statements and failed to plead scienter as to certain of the Individual Defendants. Those complex determinations, as well as the appropriate length of a class period, can significantly impact the amount of the recoverable damages.

36. Therefore, there was substantial uncertainty regarding the amount of provable damages that could be obtained in this Action. Had the Action continued, especially in light of the Order, loss causation and damages issues would have been hotly contested issues that would have evolved into a "battle of the experts," making the outcome of further litigation unpredictable. For these reasons, securing a substantial settlement at this stage of the litigation was a meaningful

achievement that avoids the considerable expense, delay, and the risks associated with further litigation.

C. Reaction of the Class

37. To date, I am informed that no Settlement Class Member has objected to any aspect of the Settlement. If any objections are received, Lead Counsel will address them in its reply to be filed on July 17, 2019.

D. Stage of Proceedings

38. At the time of Settlement, the Settling Parties had sufficient information to evaluate the strengths and weaknesses of their respective cases. Plaintiffs conducted an extensive investigation of their claims and prepared a detailed Complaint. Plaintiffs had access to an extensive factual investigation and analysis relating to the events and transactions beginning with the initial complaint, including the review of Terex's SEC filings, news reports, and other publicly available information regarding the Company. Lead Counsel's thorough investigation continued with the drafting of a detailed consolidated complaint, which included the accounts of numerous confidential witnesses obtained through Lead Counsel's extensive investigation; opposing Defendants' motion to dismiss; argument on the motion; and participating in negotiations with Defendants' counsel overseen by an accomplished and experienced mediator, Judge Weinstein.

E. Compliance With the Court's Preliminary Approval Order

39. The Court's Preliminary Approval Order was entered on April 15, 2019. ECF No. 119. Among other things, the Preliminary Approval Order appointed Gilardi & Co. LLC ("Gilardi") as the Claims Administrator and directed Gilardi to cause the mailing of the Notice and the Proof of Claim and Release (together, the "Notice Package") by first-class mail to all Settlement Class Members identifiable with reasonable effort, no later than May 6, 2019. ECF No. 119, ¶7. Pursuant to the Preliminary Approval Order, and under Robbins Geller's supervision,

Gilardi has mailed over 129,000 copies of the Notice Package to potential Settlement Class Members and nominees. *See* Declaration of Mishka Ferguson Regarding Notice Dissemination and Requests for Exclusion Received to Date, ¶3 ("Ferguson Decl."), submitted herewith.

40. The Preliminary Approval Order also directed Gilardi to cause the Summary Notice to be published once in *The Wall Street Journal*, and once over a national newswire service no later than April 22, 2019. ECF No. 119, ¶7. Pursuant to the Preliminary Approval Order, Gilardi caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over the *Business Wire* on April 22, 2019. *See* Declaration of Carole K. Sylvester Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date, ECF No. 123, ¶11.

41. Gilardi also maintains and posts information regarding the Settlement on a dedicated website established for the Action, www.TerexSecuritiesSettlement.com, to provide Settlement Class Members with information concerning Settlement, as well as downloadable copies of the Notice Package, the Stipulation, and the Preliminary Approval Order, and maintains a toll-free telephone number for shareholder inquiries.

V. THE PLAN OF ALLOCATION

42. Upon approval by the Court, the Plan of Allocation governs the method by which the Net Settlement Fund will be distributed to the Settlement Class Members who submit valid, timely Proof of Claim and Release forms ("Authorized Claimants"). The Plan of Allocation was fully described in the Notice distributed to the Settlement Class Members, and provides for a pro-rata distribution to those Authorized Claimants who have a net loss arising out of transactions involving Terex common stock purchased or acquired during the Settlement Class Period. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than $10.00.

43. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, and as is more likely, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants. To date, no objections to the Plan of Allocation have been filed.

44. Specifically, the Plan of Allocation provides for the calculation of claims as follows:

Inflation Period	Inflation per Share
February 20, 2008 – September 3, 2008	$8.29
September 4, 2008 – October 22, 2008	$1.99
October 23, 2008 – February 11, 2009	$0.11

45. For shares of Terex common stock purchased or acquired on or between February 20, 2008 through February 11, 2009, the claim per share shall be as follows:

(a) If sold prior to September 4, 2008, the claim per share is $0.00.

(b) If sold on or between September 4, 2008 through February 11, 2009, the claim per share shall be the lesser of: (i) the inflation per share at the time of purchase less the inflation per share at the time of sale; and (ii) the difference between the purchase price and the selling price.

(c) If retained at the end of February 11, 2009 and sold on or before May 11, 2009, the claim per share shall be the least of: (i) the inflation per share at the time of purchase; (ii) the difference between the purchase price and the selling price; and (iii) the difference between the purchase price and the average closing price up to the date of sale as set forth in the table below.

(d) If retained at the close of trading on May 11, 2009, or sold thereafter, the claim per share shall be the lesser of: (i) the inflation per share at the time of purchase; and (ii) the difference between the purchase price and $10.89.

Date	Price	Closing Price
12-Feb-09	$9.45	$9.45
13-Feb-09	$9.67	$9.56
17-Feb-09	$8.05	$9.06
18-Feb-09	$8.09	$8.82
19-Feb-09	$7.77	$8.61
20-Feb-09	$8.18	$8.54
23-Feb-09	$7.57	$8.40
24-Feb-09	$8.40	$8.40
25-Feb-09	$8.44	$8.40
26-Feb-09	$7.89	$8.35
27-Feb-09	$8.92	$8.40
2-Mar-09	$7.73	$8.35
3-Mar-09	$7.78	$8.30
4-Mar-09	$8.62	$8.33
5-Mar-09	$7.77	$8.29
6-Mar-09	$7.63	$8.25
9-Mar-09	$7.90	$8.23
10-Mar-09	$9.28	$8.29
11-Mar-09	$9.32	$8.34
12-Mar-09	$9.85	$8.42
13-Mar-09	$9.60	$8.47
16-Mar-09	$9.59	$8.52
17-Mar-09	$9.81	$8.58
18-Mar-09	$10.07	$8.64
19-Mar-09	$9.89	$8.69
20-Mar-09	$9.12	$8.71
23-Mar-09	$10.40	$8.77
24-Mar-09	$10.46	$8.83
25-Mar-09	$10.26	$8.88
26-Mar-09	$10.94	$8.95
27-Mar-09	$10.95	$9.01
30-Mar-09	$9.43	$9.03
31-Mar-09	$9.25	$9.03
1-Apr-09	$9.74	$9.05
2-Apr-09	$10.54	$9.10
3-Apr-09	$11.22	$9.16
6-Apr-09	$11.09	$9.21
7-Apr-09	$10.43	$9.24
8-Apr-09	$10.55	$9.27
9-Apr-09	$12.01	$9.34

Date	Price	Closing Price
13-Apr-09	$12.37	$9.42
14-Apr-09	$11.94	$9.48
15-Apr-09	$12.38	$9.54
16-Apr-09	$12.56	$9.61
17-Apr-09	$12.70	$9.68
20-Apr-09	$11.30	$9.72
21-Apr-09	$12.10	$9.77
22-Apr-09	$11.67	$9.81
23-Apr-09	$11.77	$9.85
24-Apr-09	$12.98	$9.91
27-Apr-09	$12.41	$9.96
28-Apr-09	$12.34	$10.00
29-Apr-09	$13.50	$10.07
30-Apr-09	$13.80	$10.14
1-May-09	$14.90	$10.23
4-May-09	$15.50	$10.32
5-May-09	$16.03	$10.42
6-May-09	$16.58	$10.53
7-May-09	$15.42	$10.61
8-May-09	$17.90	$10.73
11-May-09	$16.02	$10.82
12-May-09	$15.29	$10.89

46. For Settlement Class Members who held Terex common stock at the beginning of the Class Period or made multiple purchases, acquisitions, or sales during the Class Period, the First-In-First-Out ("FIFO") method will be applied to such holdings, purchases, acquisitions, and sales for purposes of calculating a claim. Under the FIFO method, sales of Terex common stock during the Settlement Class Period will be matched, in chronological order, first against common stock shares held at the beginning of the Settlement Class Period. The remaining shares of Terex common stock during the Settlement Class Period will then be matched, in chronological order, against Terex common stock shares purchases or acquired during the Settlement Class Period.

VI. LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES

47. Lead Counsel respectfully requests that the Court award 31% of the $10 million Settlement for attorneys' fees. Lead Counsel believes such a fee is reasonable and appropriate in light of the resources the firm expended in prosecuting the case, and the inherent risk of

nonpayment from representing the Settlement Class on a contingent basis. Lead Counsel further requests an award of $174,450.49 in litigation expenses and charges. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's separate Memorandum of Law in Support of Motion for Final Approval of Settlement and Approval of Plan Allocation and for an Award of Attorneys' Fees and Expenses and an Award to Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Brief"), submitted herewith.

A. Time, Labor, and Fee Percentage Requested

48. Lead and Liaison Counsel have devoted a significant amount of time and resources into the research, investigation, and prosecution of this litigation. Submitted herewith is the Declaration of Robert J. Robbins Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Declaration") and the Declaration of Jon P. Whitcomb Filed on Behalf of Diserio Martin O'Connor & Castiglioni LLP in Support of Application for Award of Attorneys' Fees and Expenses (the "Diserio Martin Declaration") (collectively "Fee Declarations"). Included with the Fee Declarations are schedules that summarize the lodestar of the firms' personnel who performed work on the case, as well as expenses incurred by category after having both been reviewed and reduced in the exercise of billing judgment. In particular, the Fee Declarations, and the fee and expense schedules contained within, indicate the amount of time spent on this case by each attorney and member of the professional support staff employed by Lead and Liaison Counsel, and the lodestar calculations based on their current billing rates.

49. Lead and Liaison Counsel have expended more than 3,300 hours in the investigation, prosecution, and resolution of the Action.

50. Robbins Geller has significant experience in representing investors in securities fraud cases, including in this District.

51. Lead Counsel's representation of the Settlement Class in this case required considerable pre-filing investigation and analysis of public information; thoroughly researching the law pertinent to the claims and defenses asserted; drafting a lengthy and detailed consolidated complaint; preparing a comprehensive brief in opposition to Defendants' motion to dismiss; consulting with internal experts; preparing for and arguing at the motion to dismiss hearing; and preparing for and participating in settlement negotiations. Lead Counsel's substantial experience and advocacy were required in presenting the strengths of the case during settlement negotiations in an effort to achieve the best possible settlement and convince Defendants, their insurers, defense counsel, and the mediator of the risks Defendants faced from not settling.

52. The fee request is based upon a percentage of the recovery after discussion with and approval by Plaintiffs. Robison Decl., ¶11; Villarruel Decl., ¶9; and Garrett Decl., ¶9. The fee request is consistent with other requests approved by judges in this District and nationwide, as set forth in the Brief.

B. The Risk, Magnitude, and Complexity of the Litigation

53. As detailed above, this Action involved complex issues of law and fact that presented considerable risk to Plaintiffs' claims. This case involved litigating complex violations of §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Thus, when Lead Counsel undertook this representation, there was no assurance that the litigation would survive a motion to dismiss, a motion for summary judgment, trial and/or any appeals, and therefore there was no assurance Lead Counsel would recover any payment for its services.

54. Lead Counsel accepted the representation of the Settlement Class on a contingent basis in this securities fraud class action wherein, even if a recovery was obtained, any payment for Lead Counsel's services was likely to be delayed for several years. These cases present formidable challenges as there are numerous decisions in favor of defendants at each stage of

litigation. The motion to dismiss raised complex and challenging arguments, requiring experience and considerable effort to prepare a thorough and persuasive opposition. An early recovery was unlikely at the outset of this litigation as these cases rarely settle prior to a motion to dismiss and typically require several years of litigation. Indeed, this Action was filed nearly a decade ago. If this case had not settled, Lead Counsel was fully prepared to litigate this case through the complex stages of fact discovery, expert discovery, class certification, summary judgment, trial, and appeal. Each of those stages of litigation poses considerable challenges and expense in cases of this nature. Proving fraud, as well as analyzing and proving loss causation and damages, requires substantial expertise and effort.

C. Quality of the Representation

55. Lead Counsel worked diligently to obtain an excellent result for the Settlement Class. From the outset, Lead Counsel employed considerable resources and spent considerable time researching and investigating facts to support a pleading that could survive a motion to dismiss and position the litigation for class certification and, ultimately, trial. Theories of damages were complex and Lead Counsel devoted time analyzing potential damages and a class-wide method of calculating damages.

56. The recovery obtained for the Settlement Class is the direct result of the significant efforts of highly-skilled and specialized attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel are among the most experienced securities class action attorneys in the country. The Settlement represents a substantial recovery for the Settlement Class, one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel.

57. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced securities litigation lawyers from

Fried, Frank, Harris, Shriver & Jacobson LLP, which is among the largest and most well-respected defense firms. Defense counsel has a reputation for vigorous advocacy in the defense of complex securities cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the excellence of Lead Counsel's representation.

58. When Lead Counsel undertook to represent Plaintiffs and the Settlement Class, it was with the expectation that it would have to devote a significant amount of time and effort in its prosecution and advance large sums of expenses on experts, case-related travel, discovery, and mediation(s). The time spent by Lead Counsel on this case was at the expense of the time that it could have devoted to other matters. Lead Counsel undertook this case solely on a contingent fee basis, assuming a substantial risk that the case would yield no recovery and leave us uncompensated. Unlike counsel for Defendants, who are paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began in 2009, approximately ten years ago. When Lead Counsel undertook to represent Plaintiffs and the Settlement Class in this matter, it was with the knowledge that we would spend many hours of hard work against very capable defense lawyers with no assurance of ever obtaining any compensation for our efforts. The only way we would be compensated was to achieve a successful result.

59. As discussed above, the Settlement is a very good result for the Settlement Class in light of the risk and obstacles to recovery presented in this case, and the difficulty in establishing liability and damages at trial if Plaintiffs would have ultimately been successful in certifying a class and prevailed at the summary judgment stage. Instead of facing many additional years of uncertain, costly and time-consuming litigation, the Settlement will provide Settlement Class Members a benefit now without the risk of no recovery if the litigation were to continue.

VII. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

60. Lead and Liaison Counsel also request payment of litigation expenses and charges in connection with the prosecution and resolution of this litigation, in the total amount of $174,450.49. *See* Fee Declarations, submitted herewith.

61. These expenses are reasonable and were necessary for the successful prosecution of this litigation. Counsel were aware that they may not recover any of these expenses unless and until this litigation was successfully resolved against Defendants. Accordingly, we took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Plaintiffs' claims.

62. The requested expenses reflect routine and typical expenditures incurred in the course of litigation, such as the costs of travel, document duplication, investigator and consultant fees, mediation fees, and expedited mail delivery, for example. These expenses are reasonable and were necessary for the successful prosecution of the litigation.

63. Finally, as detailed in the Robison, Villarruel, and Garrett Declarations, and as more fully described in the Brief, each Plaintiff has devoted significant time to the representation of the Settlement Class, and awards of $2,500, $2,500, and $2,500, respectively, are appropriate under 15 U.S.C. §78u-4(a)(4), and should be approved.

VIII. CONCLUSION

64. In light of the significant recovery to the Settlement Class and the substantial risks of this litigation, as described above and in the accompanying memorandum in support of the Settlement and fees and expenses, I respectfully submit that the Settlement and Plan of Allocation should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, counsel respectfully submits that the Court should award a fee in the amount of 31% of the

Settlement and fees and expenses, I respectfully submit that the Settlement and Plan of Allocation should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, counsel respectfully submits that the Court should award a fee in the amount of 31% of the Settlement Amount, plus $174,450.49 in expenses, plus the interest earned thereon at the same rate and for the same period as that earned on the Settlement Amount until paid, and $2,500, $2,500, and $2,500 to Plaintiffs Villarruel, Robison and Garrett, respectively.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19th day of June, 2019, at Boca Raton, Florida.

ROBERT J. ROBBINS