CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.
JAMES E. CECCHI
LINDSEY H. TAYLOR
5 Becker Farm Road
Roseland, NJ 07068
Telephone: 973/994-1700
973/994-1744 (fax)
jcecchi@carellabyrne.com
ltaylor@carellabyrne.com

Co-Liaison Counsel

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

AHMAD ODEH, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. IMMUNOMEDICS, INC., et al., Defendants.	No. 2:18-cv-17645-EP-ESK **(Consolidated)** CLASS ACTION

LEAD PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR (I) FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (II) ATTORNEYS' FEES AND EXPENSES AND AWARDS TO LEAD PLAINTIFFS PURSUANT TO 15 U.S.C. §78u-4(a)(4)

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SECONDARY AUTHORITIES

Lead Plaintiffs Boris Saljanin and Construction Industry and Laborers Joint Pension Trust ("Lead Plaintiffs")[1] respectfully submit this memorandum of law in support of their motion for final approval of the cash settlement (the "Settlement"), the Plan of Allocation, an award of attorneys' fees and expenses, and awards to Lead Plaintiffs for their work on behalf of the Class.

I. OVERVIEW

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Lead Plaintiffs seek final approval of a $40 million plus accrued interest all-cash Settlement of this action. This Settlement, which resulted from arm's-length mediations and discussions overseen by first David Murphy, Esq. and, subsequently, Bruce Friedman, Esq., represents an exceptional recovery for the Class and should be approved. The Settlement follows four years of hard-fought litigation, including motion to dismiss briefing; the review of 1.4 million pages of documents; the exchange of voluminous written discovery, including interrogatories and requests for admission; nine fact and expert depositions; and extensive discovery, briefing, and argument concerning class certification. Through these efforts, following the Court's comprehensive decision largely denying Defendants' motion to dismiss, Lead Counsel gained a full

[1] Unless otherwise stated or defined, all capitalized terms used herein have the meanings provided in the Stipulation of Settlement (the "Stipulation") dated January 20, 2023 (ECF 269-3). All internal citations are omitted unless otherwise indicated.

understanding of all of the relevant issues, which they brought to bear in negotiating and ultimately agreeing to the Settlement.

The Settlement easily satisfies the requirements of Rule 23(e)(2), meets each of the *Girsh* factors,[2] and balances the objective of attaining the highest possible recovery against the many risks and costs of continued litigation. This includes the risk that, as in any complex case, the Class could receive nothing, or a far lower sum, after trial and any appeals. Additionally, the Plan of Allocation set forth in the Notice should be approved because it treats Class Members equitably.

Lead Counsel's request for an award of attorneys' fees and expenses, and Lead Plaintiffs' requests for awards pursuant to 15 U.S.C. §78u-4(a)(4), should be approved as well as they are reasonable and well within the range approved in similar matters. Lead Counsel devoted substantial time on a contingent basis to this complex matter, despite not knowing how long the litigation might last or whether there would ultimately be any recovery. At each stage of the litigation, Lead Counsel faced off against highly sophisticated defense counsel. Lead Counsel thoroughly investigated Lead Plaintiffs' potential claims, filed two amended complaints, successfully opposed Defendants' motion to dismiss as to the vast bulk of Lead Plaintiffs' claims, fully briefed Lead Plaintiffs' motion for class certification, and engaged in extensive discovery. Defendants and third parties produced over 1.4 million pages of

[2] *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975).

documents, and Lead Counsel deposed 7 fact witnesses, three of whom were a former officer or director of Immunomedics. All of this work was completed expeditiously and resulted in the superb result presented here for final approval. Lead Plaintiffs respectfully request final approval of the proposed Settlement and Plan of Allocation, and the award of attorneys' fees and expenses, and class representative awards.

II. PROCEDURAL HISTORY

This case has a substantial procedural history which is detailed in the Joint Declaration of Tor Gronborg and Jacob A. Walker in Support of Motion for (I) Final Approval of Settlement and Approval of Plan of Allocation; and (II) Attorneys' Fees and Expenses and Awards to Lead Plaintiffs Pursuant to 15 U.S.C. §78u-4(a)(4) ("Joint Declaration" or "Joint Decl."), filed concurrently herewith. Following is a brief summary.

The case began on December 27, 2018, when Ahmad Odeh filed the initial complaint in *Odeh v. Immunomedics, Inc., et al.*, No. 18-cv-17645-EP-ESK, in the United States District Court for the District of New Jersey (the "Court"). ECF 1. In accordance with the Private Securities Litigation Reform Act of 1995 ("PSLRA"), the Court appointed Lead Plaintiffs and Lead Counsel on September 10, 2019. ECF 34.

Following months of investigation, on November 18, 2019, Lead Plaintiffs filed the Consolidated Complaint. ECF 41. The Consolidated Complaint alleged, among other things, that during the Class Period (February 9, 2018 through January 17, 2019,

inclusive), Defendants violated §10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and that the Individual Defendants violated §20(a) of the Exchange Act when they made materially false and misleading statements and failed to disclose that Immunomedics had suffered a data integrity breach at its Morris Plains, New Jersey manufacturing facility, imperiling the BLA for the biologic then known as IMMU-132. *Id*. Lead Plaintiffs further alleged that the price of Immunomedics common stock was artificially inflated as a result of the misrepresentations and omissions and subsequently declined when the facts related to Defendants' alleged misrepresentations were revealed in a series of disclosures between December 20, 2018, and January 17, 2019, resulting in financial losses to those who purchased or otherwise acquired Immunomedics common stock at the inflated prices. *Id.*

On January 17, 2020, Defendants moved to dismiss the Consolidated Complaint. ECF 48. Lead Plaintiffs filed their opposition to that motion on March 6, 2020 (ECF 50), and Defendants filed their reply on May 21, 2020 (ECF 58). On July 31, 2020, the Court issued a Letter Order denying Defendants' motion to dismiss in its entirety. ECF 59. Defendants answered the Consolidated Complaint on September 11, 2020. ECF 63.

On January 11, 2021, the Settling Parties conducted a formal mediation with David Murphy, Esq., but failed to reach a settlement.

Following substantial written and document discovery from third parties, including the FDA, and Defendants, together with Lead Counsel's continued investigation of the allegations, Lead Plaintiffs filed their First Amended Complaint for Violations of the Federal Securities Laws on July 19, 2021. ECF 130. The amendment added several additional alleged false and misleading statements, as well as an additional alleged disclosure of the fraudulent conduct on November 7, 2018. *Id*. The First Amended Complaint is the operative complaint (the "Complaint"). On August 18, 2021, Defendants answered the Complaint. ECF 135.

Following 13 months of class certification discovery, including multiple expert reports and depositions, on June 2, 2022, Lead Plaintiffs moved to certify the class. ECF 215. The parties fully briefed the motion for class certification, as well as Defendants' related motion to strike portions of the expert report of Lead Plaintiffs' market-efficiency expert. ECF 215, 226, 227, 239, and 248. Lead Plaintiffs' motion for class certification and Defendants' motion to strike were pending at the time the parties agreed to settle the Litigation.

On November 20, 2022, the parties engaged in a second formal mediation, utilizing the services of Bruce Friedman, Esq. as the mediator. Following a full-day mediation session, the parties ultimately accepted Mr. Friedman's proposal to settle the Litigation.

On February 23, 2023, the Court entered an Order granting Lead Plaintiffs' unopposed motion to approve the form and manner of providing notice of the Settlement of this action to potential Class Members (the "Preliminary Approval Order"). ECF 276. Notice was provided in accordance with the Preliminary Approval Order. *See* Declaration of Luiggy Segura Regarding (A) Notice Packet Dissemination; (B) Publication/Transmission of Summary Notice; and (C), Requests for Exclusion Received to Date ("Segura Decl."), ¶¶3-12, attached as Ex. 3 to the Joint Declaration. In response to the Notice, to date, not a single person or entity has requested exclusion from the Class. *See id.*, ¶15. Objections to the proposed Settlement are due by May 25, 2023. To date, no objections have been filed.

III. NOTICE HAS BEEN PROVIDED TO THE CLASS IN COMPLIANCE WITH RULE 23, DUE PROCESS, AND THE COURT'S PRELIMINARY APPROVAL ORDER

Rule 23(e), which governs notice requirements for class action settlements, provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). In addition, Rule 23(c)(2)(B) requires that a certified class receive "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B).

Here, the Notice and Summary Notice were approved by the Court in the Preliminary Approval Order (ECF 276) and fully comply with Rule 23. Among other

disclosures, the Notice apprises Class Members of the nature of this Litigation, the definition of the Class, the claims and issues in the Litigation, and the claims that will be released in the Settlement. The Notice also: (i) advises that a Class Member may enter an appearance through counsel; (ii) describes the binding effect of a judgment on Class Members; (iii) states the procedures and deadline for Class Members to exclude themselves from the Class or to object to the proposed Settlement, the Plan of Allocation, or the requested attorneys' fees and expenses; (iv) states the procedures and deadline for submitting a Proof of Claim; and (v) provides the date, time, and location of the Settlement Hearing. In addition, the Notice and Summary Notice satisfy the PSLRA's disclosure requirements (15 U.S.C. §78u-4(a)(7)) by stating, among other things: (i) the amount of the Settlement determined in the aggregate and on an average per-share basis; (ii) that the Settling Parties do not agree on the average amount of damages per-share that would be recoverable if Lead Plaintiffs prevailed at trial, and stating the issues on which the Settling Parties disagree; (iii) that Lead Counsel intend to apply for an award of attorneys' fees and expenses, including the amount of the requested fees and expenses determined on an average per-share basis; (iv) contact information for Lead Counsel; and (v) the reasons the Settling Parties are proposing the Settlement.[3] The contents of the Notice and Summary Notice therefore satisfy all applicable requirements.

[3] *See* Segura Decl., Ex. A (Notice).

In the Preliminary Approval Order, the Court "approve[d] the form, substance, and requirements of the Notice . . . and Proof of Claim and Release." Preliminary Approval Order, ¶7. The notice program has since been carried out. The Claims Administrator, JND Legal Administration ("JND"), commenced mailing the Notice and the Proof of Claim form on March 10, 2023 to all Class Members who could be reasonably identified, as well as securities brokers and other financial institutions whose clients may be Class Members. *See* Segura Decl., ¶¶3-7. As a result of these efforts, a total of 43,266 Notice packets have been sent to potential Class Members and nominees. *Id.*, ¶11. On March 17, 2023, JND published the Summary Notice in *The Wall Street Journal* and over *PR Newswire*, and on March 9, 2023, it posted copies of the Notice, Proof of Claim, Stipulation, and Preliminary Approval Order on the website maintained for the Settlement, www.ImmunomedicsSecuritiesSettlement.com. *Id.*, ¶¶12, 14.

This combination of notice by mail to all Class Members who could be identified with reasonable effort, supplemented by publication in a widely-circulated newspaper, over a newswire, and on a website, is typical of notice plans in securities class actions, and constitutes "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); *see also, e.g.*, *Kanefsky v. Honeywell Int'l Inc.*, 2022 WL 1320827, at *3 (D.N.J. May 3, 2022).

IV. THE SETTLEMENT WARRANTS THE COURT'S FINAL APPROVAL

It is well established that the settlement of class action litigation is favored. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *Nyby v. Convergent Outsourcing, Inc.*, 2017 WL 3315264, at *3 (D.N.J. Aug. 3, 2017) ("The 'law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"). Settlement spares litigants the uncertainty, delay, and expense of a trial and appeals while simultaneously reducing the burden on judicial resources. The Third Circuit Court of Appeals has reiterated that there is a "strong presumption in favor of voluntary settlement agreements." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010). "This presumption is especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'" *Id.* at 595.

Rule 23(e)(2) identifies the following factors to be considered at final approval:

> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;

> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;
>
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
>
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
>
> (iv) any agreement required to be identified under Rule 23(e)(3); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

These factors are considered alongside, and largely overlap with, those set forth by the Third Circuit in *Girsh v. Jepson*:

> "(1) the complexity, expense and likely duration of the litigation . . . ; (2) the reaction of the class to the settlement . . . ; (3) the stage of the proceedings and the amount of discovery completed . . . ; (4) the risks of establishing liability . . . ; (5) the risks of establishing damages . . . ; (6) the risks of maintaining the class action through the trial . . . ; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery . . . ; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . . ."

521 F.2d at 157.[4] The Third Circuit has also explained that there is an initial presumption that a settlement is fair if: "'(1) the settlement negotiations occurred at

[4] The *Girsh* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5 (D.N.J. Mar. 26, 2010).

arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Warfarin*, 391 F.3d at 535.

As detailed below, each of these factors supports final approval of the Settlement.

A. Lead Plaintiffs and Lead Counsel Have More Than Adequately Represented the Class

The first factor under Rule 23(e)(2) concerns the adequacy of representation provided by the class representatives and class counsel. *See* Fed. R. Civ. P. 23(e)(2)(A). This overlaps with the third *Girsh* factor, which focuses on the stage of the proceedings and the amount of discovery completed. *See Girsh*, 521 F.2d at 157; *see also Warfarin*, 391 F.3d at 535 (noting similar considerations for applying presumption of fairness).

The Court has expressed confidence in the abilities of Lead Plaintiffs and Lead Counsel to pursue this Litigation by appointing each to their respective positions. ECF 34. The Court's confidence was well-placed, as Lead Counsel and Lead Plaintiffs have vigorously pursued this Litigation. Among many other undertakings, Lead Counsel filed the Consolidated Complaint and the Complaint, briefed Defendants' motion to dismiss, and Lead Plaintiffs' motion for class certification. Lead Counsel also engaged in extensive discovery, in which Defendants and third parties produced over 1.4 million pages of documents and Lead Plaintiffs conducted

depositions of expert and fact witnesses, served and responded to more than 700 interrogatories and requests for admission, and briefed and argued discovery disputes. In addition, experts on both sides produced expert reports regarding market efficiency, price impact, and damages and were deposed.

Lead Counsel brought substantial litigation experience to this case. Lead Counsel Robbins Geller and Block & Leviton have successfully prosecuted hundreds of securities class actions on behalf of investors. *See, e.g.*, *In re AT&T Corp. Sec. Litig.*, 2005 WL 6716404, at *9 (D.N.J. Apr. 25, 2005) ("Lead Counsel [Robbins Geller] are highly skilled attorneys with great experience in prosecuting complex securities action[s], and their professionalism and diligence displayed during [this] litigation substantiates this characterization."); *Thieffry on Behalf of Synchronoss Techs., Inc. v. Waldis*, 2018 WL 2357759, at *5 (D.N.J. May 24, 2018) ("While I recognize that each counsel is well qualified, I am particularly persuaded by [Block & Leviton's] experience in large securities class actions . . . . I find that the experience garnered from such representations will benefit the shareholders in this suit."); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, 2019 WL 4877563, at *3 (D.N.J. Oct. 3, 2019) (noting that Robbins Geller is "capable of adequately representing the class, both based on their prior experience in class action lawsuits and based on their capable advocacy on behalf of the class in this action").

Lead Plaintiffs and Lead Counsel have thus more than adequately represented the Class under Rule 23(e)(2)(A), and have secured "an adequate appreciation of the merits of the case" by means of substantial discovery and litigation. *See Warfarin*, 391 F.3d at 537. *See also Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 240 (D.N.J. 2005) ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012) ("courts in this Circuit traditionally 'attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class'"), *aff'd*, 559 F. App'x 151 (3d Cir. 2014). The court should "'give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their cause of action.'" *See Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *4 (E.D. Pa. Apr. 5, 2019).[5] Bringing their experience and knowledge of this case to bear, Lead Counsel believe that the Settlement is in the best interests of the Class.

[5] *See also In re Prudential Ins. Co. Am. Sales Pracs. Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998) (identifying "the extent of discovery on the merits" as a relevant factor in evaluating class action settlements); *In re Philips/Magnavox Television Litig.*, 2012 WL 1677244, at *11 (D.N.J. May 14, 2012) ("'Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent.'").

B. The Settlement Negotiations Were Conducted at Arm's Length and Under the Oversight of Experienced Mediators

The second factor under Rule 23(e)(2) considers whether the Settlement was negotiated at arm's length. *See* Rule 23(e)(2)(B); *see also Warfarin*, 391 F.3d at 535 (citing arm's-length negotiations as a factor in assessing presumption of fairness).

With the benefit of discovery, the Settling Parties engaged in extensive arm's-length negotiations, including mediations and conferences conducted by experienced mediators. The Settling Parties engaged in two mediation sessions, first with Mr. Murphy on January 11, 2021, and then with Mr. Friedman on November 30, 2022. In advance of each mediation, the parties submitted detailed mediation statements. Negotiations were protracted, complex, and challenging, and included discussions about the merits of Lead Plaintiffs' case and Defendants' defenses. After extensive discussions and negotiations during the second formal mediation, the mediator recommended a settlement of $40 million in cash to be paid into an interest bearing account within 20 days of the agreement, and the Settling Parties ultimately agreed to settle the case. *See In re Viropharma Sec. Litig.*, 2016 WL 312108, at *11 (E.D. Pa. Jan. 25, 2016) (approving settlement after arm's-length negotiation overseen by mediator after parties "had fully briefed the main issues in the case and conducted merits-based . . . discovery").

The mediators' direct participation helped ensure that negotiations were non-collusive and conducted at arm's length. *See Bredbenner v. Liberty Travel, Inc.*, 2011

WL 1344745, at *10 (D.N.J. Apr. 8, 2011) ("Participation of an independent mediator in settlement negotiations 'virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.'"); *see also Sanders v. CJS Sols. Grp., LLC*, 2018 WL 1116017, at *2 (S.D.N.Y. Feb. 28, 2018) ("[T]he settlement was negotiated for at arm's length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement.").

C. The Settlement Is Adequate Considering the Costs, Risks, and Delay of Trial and Appeal

The third factor under Rule 23(e)(2), which overlaps with several of the *Girsh* factors (*i.e.*, factors 1, 4-9), concerns the adequacy of the Settlement in light of the costs, risks, and delay that trial and appeal would impose. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). "Securities fraud class actions are notably complex, lengthy, and expensive cases to litigate." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013). This case was filed over four years ago, and undoubtedly faces many risks and delays were litigation to continue, including at summary judgment, trial, and appeal. Proceeding through these stages of litigation would significantly prolong the time until any Class Member could receive a financial recovery.

1. Risks of Establishing Liability and Damages

Lead Plaintiffs believe that their case is strong but acknowledge that there were risks involved in further litigation. Defendants' arguments, including the arguments

in their opposition to class certification, highlight the risks Lead Plaintiffs would face proving their claims. Defendants have maintained, for example, that Lead Plaintiffs cannot invoke the presumption of class-wide reliance under *Basic v. Levinson*, 485 U.S. 224 (1988), claiming that the allegedly concealed information was fully available to the market earlier than alleged. ECF 226. Even if Lead Plaintiffs' motion for class certification was successful, these claims would likely serve as a basis for an appeal under Federal Rule of Civil Procedure 23(f), the outcome of which would be uncertain and the litigation of which would entail additional delays and expenses. Defendants repeatedly and explicitly stated they would pursue such an appeal, if warranted.

Defendants have also argued that Lead Plaintiffs could not establish the element of scienter, because the evidence did not support that any statements were made with the requisite intent to defraud. And Defendants have likewise challenged Lead Plaintiffs' theory of loss causation (and therefore recoverable damages), maintaining that losses on the alleged "corrective disclosure" dates were not caused by any alleged fraud. Instead, Defendants argue, the disclosures largely represented the materialization of the risks that the Company previously and adequately disclosed both before and during the Class Period.

In opposition to Lead Plaintiffs' motion for class certification, and based on their expert's analysis, Defendants argued, in part, that there was no price impact regarding the corrective disclosure dates. ECF 226, at 13-18. At trial, Lead Plaintiffs'

claims would be the subject of complex expert testimony, including testimony offered by Defendants' experts, that would conflict with Lead Plaintiffs' expert analysis. However, such a "battle of the experts" at trial would have necessarily involved substantial expenses and risks. *See In re CIGNA Corp.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) (approving settlement in "complex" case that "could have depended on a jury's assessment of the credibility of various witnesses called by both sides" and in which there were "considerable risks in establishing damages, particularly in view of the determined and respectable loss causation arguments put forward by Defendants"); *Par Pharm.*, 2013 WL 3930091, at *6 (noting "the inherent unpredictability and risk associated with damage assessments in the securities fraud class-action context"). "Thus, even if [Lead] Plaintiff prevailed on the issue of liability, significant additional risks would remain in establishing the existence of damages." *In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *20 (D.N.J. Nov. 15, 2016).

While Lead Plaintiffs remain confident in their positions in response to these arguments, they pose undeniable risks. Any one of these arguments, if successful, could have resulted in the claims at issue being severely curtailed or even eliminated.[6]

[6] *See Huffman*, 2019 WL 1499475, at *4 (Courts should "'give credence to the estimation of the probability of success proffered by class counsel, who are experienced with the underlying case, and the possible defenses which may be raised to their cause of action.'").

Moreover, any trial victory for Lead Plaintiffs would almost certainly have been appealed by Defendants, which at a minimum would have resulted in substantial delays before any financial recovery. "Compared to the costs and risks of continued litigation, the settlement avoids these uncertainties and provides the . . . class with substantial and certain relief." *The Shou Kao v. CardConnect Corp.*, 2021 WL 698173, at *7-*8 (E.D. Pa. Feb. 23, 2021). Accordingly, this factor weighs in favor of approving the Settlement.

2. The Settlement Falls Well Within the Range of Reasonableness

Girsh requires the Court to evaluate the proposed Settlement alongside "'a range of reasonable settlements in light of the best possible recovery (the eighth *Girsh* factor) and . . . in light of all the attendant risks of litigation (the ninth factor).'" *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *9 (D.N.J. Feb. 9, 2010) ("*Merck/Vytorin*"). In making a "range of reasonableness" assessment, courts do not need to make a precise estimate of damages. *See In re N.J. Tax Sales Certificates Antitrust Litig.*, 2016 WL 5844319, at *8 (D.N.J. Oct. 3, 2016) (granting final approval where "it is not possible to predict the precise value of damages that Plaintiffs would recover if successful"). Given the complexity of this case and the risks and delay in continued litigation, the $40 million Settlement is an exceptional result. Considering that the case has been litigated for more than four years, and the significant amount of the recovery, the Settlement here falls well within the range of

reasonableness given the attendant risks and uncertainties of continued litigation and should be finally approved. *See Girsh*, 521 F.2d at 157.

The recovery under the Settlement – $40 million in cash, plus interest which has been accruing since December 2022 – far surpasses many securities class action settlements in this Circuit, and is clearly within the range of reasonableness. *See, e.g.*, *Li v. Aeterna Zentaris Inc*., 2021 WL 2220565, at *1 (D.N.J. June 1, 2021) (noting approval of settlement of $6.5 million); *Viropharma*, 2016 WL 312108, at *14-*15 (approving settlement of $8 million); *Par Pharm.*, 2013 WL 3930091, at *9, *11 (approving settlement of $8.1 million); *In re Vicuron Pharms., Inc. Sec. Litig.*, 512 F. Supp. 2d 279, 281-82 (E.D. Pa. 2007) (approving settlement of $12.75 million). In addition, the recovery here is several times larger than the median securities class action settlement values over the last ten years, which range from $6 million to $15 million.[7] This result also exceeds the 2.9% average percentage recovery in securities class actions settled between 2011 and 2022 where investor losses ranged from $100 million to $199 million. *See id.* at 17, Fig. 18. That is why Lead Counsel, based on their experience and expertise, accepted the mediator's recommendation and agreed to settle this case for $40 million in cash.

[7] Janeen McIntosh, Svetlana Starykh, and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Economic Consulting Jan. 24, 2023), at 15, Fig. 17, attached as Ex. 7 to the Joint Decl.

D. The Settlement Satisfies the Remaining Rule 23(e)(2) Factors

The remaining factors of Rule 23(e)(2) require courts to consider: (i) the effectiveness of the proposed method for distributing relief; (ii) the terms of the proposed attorneys' fees, including the timing of payment; (iii) the existence of any other "agreements"; and (iv) whether the settlement treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv); Fed. R. Civ. P. 23(e)(2)(D).

1. The Proposed Method for Distributing Relief Is Effective

The proposed methods of notice and claims administration process are effective and provide Class Members with the necessary information to receive their *pro rata* share of the Net Settlement Fund. The notice and claims processes are similar to those commonly used in securities class action settlements and provide for straightforward cash payments based on the trading information provided. *See supra* §III (describing notice process).

2. The Requested Attorneys' Fees Are Reasonable

As set forth in §VI, *infra*, Lead Counsel's request for an award of attorneys' fees is reasonable and appropriate.

3. The Parties Have No Other Agreements Besides an Agreement to Address Requests for Exclusion

As discussed in connection with the motion for preliminary approval, Lead Plaintiffs and Defendants have entered into a supplemental agreement which provides

that Defendants will have the right to terminate the Settlement in the event that valid requests for exclusion from the Class exceed the criteria set forth in that agreement.

4. Class Members Will Be Treated Equitably, and the Reaction of the Class Supports Final Approval

Rule 23(e)(2)(D) requires the Court to consider whether Class Members will be treated equitably. All Class Members will be treated equitably under the terms of the Stipulation, which provides that each Class Member that properly submits a valid Proof of Claim form will receive a *pro rata* share of the monetary relief based on the terms of the Plan of Allocation, so long as the recognized loss would result in a recovery of $10 or more.

Further, out of the thousands of potential Class Members, there have been no objections or any requests for exclusion to date. Segura Decl., ¶15. To the extent that any objections to the Settlement are made subsequent to this filing, they will be addressed in Lead Plaintiffs' reply.

Each factor identified in Rule 23(e)(2) and the Third Circuit's *Girsh* opinion is satisfied. Moreover, pursuant to *Warfarin*, the Settlement is entitled to a presumption of fairness. 391 F.3d at 535. Given the litigation risks involved and the complexity of the underlying issues, the recovery of $40 million in cash is outstanding, and could not have been achieved without the commitment of Lead Plaintiffs and the hard work of Lead Counsel. Lead Plaintiffs respectfully submit that the Settlement is fair, reasonable, and adequate, and should be granted final approval.

V. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

The Notice contains the Plan of Allocation, which details how the Settlement proceeds are to be divided among Class Members who submit claims. *See* Segura Decl., Ex. A (Notice at 13-17). "The '[a]pproval of a plan of allocation of a settlement fund in a class action is governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.'" *Merck/Vytorin*, 2010 WL 547613, at *6 (alteration in original). In determining whether a plan of allocation is fair, reasonable, and adequate, "courts give great weight to the opinion of qualified counsel." *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) ("*Schering-Plough I*") (approving plan of allocation). "As numerous courts have held, a plan of allocation need not be perfect" and "'need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.'" *Christine Asia Co., Ltd. v. Yun Ma*, 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019).

Here, the proposed Plan of Allocation is fair and reasonable. As discussed during the conference with the Court on January 31, 2023, it was prepared by Lead Plaintiffs' loss causation and damages expert, Gregg Edwards, Vice President and Senior Economist at Forensic Economics, Inc., based on his economic analysis of

Immunomedics' stock price during and immediately after the Class Period.[8] The calculations of damages throughout the Class Period were derived from the expert's event study analysis, which estimated the amount of artificial inflation in the prices of Immunomedics shares on a daily basis, as well as additional analysis undertaken by the expert, and account for the statutory requirements of the PSLRA. *Id.* The Plan of Allocation calls for the distribution of the Net Settlement Fund (*i.e.*, the Settlement Amount after the deduction of Notice and Administration Expenses, Taxes and Tax Expenses, and all Court-approved attorneys' fees, expenses, and class representative awards) on a *pro rata* basis, as determined by the ratio between each valid claim and the sum of all valid claims. The calculation of each claim will depend upon several factors, including when and at what price the securities were purchased, acquired, or sold. Once each claim is calculated and verified, and the distribution ratio is determined, the Net Settlement Fund shall be distributed to Authorized Claimants who are entitled to a distribution of at least $10.00. Any amount remaining following the initial distribution will be further distributed among Authorized Claimants to the extent economically feasible. If any funds remain after re-distribution, and further re-distribution of funds remaining in the Net Settlement Fund would not be cost effective, any remaining balance shall be donated to an appropriate non-sectarian,

[8] Mr. Edwards' *curriculum vitae* was previously submitted to the Court as Exhibit 1 to ECF 215-3.

non-profit charitable organization(s) unaffiliated with any party or their counsel serving the public interest selected by Lead Plaintiffs' Counsel.

This method of distributing settlement funds is fair and reasonable. *See, e.g.*, *Par Pharm.*, 2013 WL 3930091, at *8 (approving similar plan of allocation); *Viropharma*, 2016 WL 312108, at *15 (same). For all of these reasons, the Plan of Allocation should be approved.

VI. THE REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES SHOULD BE APPROVED

"In a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The PSLRA provides that "[t]otal attorneys' fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class." 15 U.S.C. §78u-4(a)(6). The ultimate determination of the proper amount of attorneys' fees rests within the sound discretion of the court based on the facts of the case. *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 280 (3d Cir. 2009).

Here, Lead Counsel requests an award of attorneys' fees of 29.5% of the Settlement Amount and expenses of $591,035.89, plus interest earned on these amounts at the same rate and for the same period as earned by the Settlement Fund. Also, Lead Plaintiffs seek awards totaling $24,937.50, pursuant to 15 U.S.C. §78u-4(a)(4), in connection with their representation of the Class.

These requests are fair and reasonable, and consistent with fees, expenses, and class representative awards typically granted in similar matters. The Settlement is an exceptional result for the Class in the face of significant risks, and was achieved expeditiously. Doing so involved substantial outlays of costs and attorney and staff time, with no guarantee of any ultimate recovery. Further, Lead Counsel brought substantial experience to their work on this case and skillfully overcame defense counsel's determined opposition.

A. Attorneys' Fees Should Be Awarded Based on a Percentage of the Common Fund

It is well established that an attorney "who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also, e.g.*, *Viropharma*, 2016 WL 312108, at *15 (same). "Courts use the percentage of recovery method in common fund cases on the theory that the class would be unjustly enriched if it did not compensate the counsel responsible for generating the valuable fund bestowed on the class." *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821 (3d Cir. 1995).

The Supreme Court has recognized that it is appropriate to award counsel a reasonable percentage of the common fund as a fee. *See Boeing*, 444 U.S. at 478-79. This is because the percentage method aligns counsel's interests with those of the Class. The Third Circuit has similarly recognized that "[t]he 'percentage-of-recovery

method is generally favored in cases involving a common fund.'" *Gelis v. BMW of N. Am., LLC*, 49 F.4th 371, 379 (3d Cir. 2022). The lodestar method, by contrast, has been limited to statutory fee-shifting cases and cases where the nature of the recovery does not allow the determination of the settlement's value. *Id.* at 379. In addition, it has been criticized in the class action context for incentivizing billing "excessive hours" and drawing out litigation, while failing to incentivize lawyers to seek the largest recovery possible. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 256 (3d Cir. 2001) ("*Cendant I*"). Further, the Third Circuit has noted that "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 188 n.7 (3d Cir. 2005). Courts in this Circuit likewise recognize that the percentage-of-recovery method is preferred in common fund cases because it rewards counsel for success and penalizes it for failure. *Hall v. Accolade, Inc.*, 2020 WL 1477688, at *10 (E.D. Pa. Mar. 25, 2020).

B. The Requested Fee Is Fair and Reasonable Under the *Gunter* Factors

When evaluating proposed fee awards, courts in the Third Circuit consider several factors, including

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the Settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of

> the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs' counsel; and (7) the awards in similar cases.

Gunter v. Ridgewood Energy Corp., 223 F.3d 190, 195 n.1 (3d Cir. 2000). These factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Id.* Each factor supports the requested 29.5% fee.

1. The Size of the Common Fund Created and the Number of Persons Benefited by the Settlement

In awarding fees, the "most critical factor is the degree of success obtained." *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Viropharma*, 2016 WL 312108, at *16 (same). To assess this factor, courts "'consider[] the fee request in comparison to the size of the fund created and the number of class members to be benefitted.'" *Ocean Power*, 2016 WL 6778218, at *26 (quoting *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011)).

Here, the $40 million recovery is an outstanding result that provides an immediate cash recovery to a large Class of investors. There were substantial risks to proceeding and proving liability and damages. Joint Decl., ¶¶141-151. If this Litigation were to continue absent the Settlement, insurance proceeds would continue to be depleted by defense costs, decreasing the likelihood of obtaining a comparable recovery in the future. In light of these and other factors, the mediator recommended that the Settling Parties accept a $40 million cash resolution, and they did so. As discussed above, the recovery is far greater than many securities class action

settlements that have been approved in this Circuit, and several times the median settlement values of securities class action settlements over the last ten years. *See supra* §IV.C.2.

Additionally, the "number of class members to be benefitted" by the Settlement is large, since the Class includes all persons and entities who purchased or otherwise acquired Immunomedics common stock from February 9, 2018 through January 17, 2019, inclusive. Thousands of investors who bought Immunomedics common stock during that period will benefit from the Settlement. *See supra* §III (over 43,200 copies of the Notice were sent to potential Class Members and nominees). For these reasons, the first *Gunter* factor clearly weighs in favor of approving the negotiated fee.

2. Reaction of Class Members to the Fee Request

Over 43,200 copies of the Notice of this Settlement, including the fee request, have been provided to potential Class Members and nominees. Segura Decl., ¶11. To date, counsel have received no objections to the fee request (or any other provision of the proposed Settlement). Thus, the reaction of the Class weighs in favor of approval of the requested fee. *See Cendant I*, 264 F.3d at 235 (stating that "[t]he vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement"); *see also Ocean Power*, 2016 WL 6778218, at *13 ("A lack of significant objections by class members weighs in favor of approving the

settlement."). In addition, because Lead Plaintiffs approve of the requested fee,[9] "the Court should afford the fee requested a presumption of reasonableness." *ViroPharma*, 2016 WL 312108, at *15.

3. The Skill and Efficiency of Counsel

The third *Gunter* factor – the skill and efficiency of the attorneys involved – is measured by the "'quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.'" *Id.* at *16. Here, each of these considerations demonstrates the skill and efficiency of Lead Counsel and supports the requested fee.

The important work of Lead Counsel should be recognized in this respect. Among other things, during the four-plus years of litigation, Lead Counsel investigated Defendants' conduct, drafted a detailed Consolidated Complaint and the Complaint, successfully opposed Defendants' motion to dismiss as to key claims, engaged in extensive discovery, obtaining over 1.4 million pages of documents from Defendants and third parties and deposed numerous fact and expert witnesses, fully briefed Lead Plaintiffs' motion for class certification, defended Lead Plaintiffs'

[9] *See* Declaration of Mike Theirl in Support of Motion for Final Approval ("Theirl Decl."), ¶9; Declaration of Boris Saljanin in Support of Motion for Final Approval ("Saljanin Decl."), ¶9, attached as Exs. 1 and 2, respectively, to the Joint Decl.

expert's deposition, and deposed Defendants' class certification expert. The action was vigorously and efficiently litigated to a successful conclusion.

In addition, Lead Counsel were opposed by Defendants' highly sophisticated counsel from one of the preeminent and largest firms in the country, who skillfully pressed every available argument at each stage of the Litigation.

This outstanding result was only possible due to Lead Counsel's vast experience and expertise. *See supra* §IV.A; *see also* the firm resumes of Block & Leviton and Robbins Geller attached to their firm-specific declarations (Joint Decl., Exs. 4-5). *See also Lawrence E. Jaffe Pension Plan v. Household Int'l, Inc. et al.*, No. 1:02-cv-05893 (N.D. Ill.) (Robbins Geller obtaining $1.575 billion settlement after 14 years of litigation and prevailing at jury trial); *HsingChing Hsu v. Puma Biotechnology, Inc.*, No. 8:15-cv-00865 (C.D. Cal.) (Robbins Geller securing 2019 jury verdict in securities fraud class action); *Colleen Witmer v. H.I.G. Cap., LLC*, C.A. No. 2017-0862-LWW (Del. Ch. Feb. 11, 2022), Tr. 36:5-6 ("Congratulati[ng] [Block & Leviton] on a phenomenal settlement."); *Tomaszewski v. Trevena, Inc., et al*, No. 2:18-cv-04378-CMR (ECF 125) (E.D. Pa. Aug. 2, 2021) ("[Block & Leviton] has conducted the litigation and achieved the Settlement with skillful and diligent advocacy."); *Snap Inc. Sec. Cases*, No. JCCP4960 (Cal. Sup. Ct. Cty. L.A. Mar. 26, 2021) (Mot. for Final Approval Hearing), Tr. 12:13-15 ("In this case, [Block & Leviton and Robbins Geller] achieve[d] excellent results for the members of the class.

The issues were complicated with respect to matters raised on the Securities Act."); *In re: Amicus Therapeutics, Inc. Sec. Litig.*, No. 3:15-cv-07350-PGS-DEA (Order and Final Judgment) (ECF 73, at 16) (D.N.J. Nov. 15, 2017) ("[Block & Leviton] achieved the Settlement with skill, perseverance and diligent advocacy for the Class"). Defendants undoubtedly considered the skill and expertise of Lead Counsel when they decided to forego further legal challenges and agreed to settle this case for $40 million in cash. Ultimately, this outstanding result is the best indicator of the skill and expertise that Lead Counsel brought to this matter. *See In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 436 (D.N.J. 2004) ("Indeed, 'the results obtained' for a class evidence the skill and quality of counsel.").

4. The Complexity and Duration of the Litigation

As detailed in §II and VI.B.3 *supra*, as well as in the Joint Declaration, this Litigation has spanned over four years and involved significant activity. Each stage of litigation presented obstacles that Lead Counsel skillfully overcame. To secure this recovery, Lead Counsel analyzed a large quantity of complex, jargon-laden documents concerning the pharmaceutical industry, including clinical trials and manufacturing processes, and their impact on Immunomedics' stock price; secured key admissions in depositions of Immunomedics' employees; and wove the documentary and deposition evidence into a narrative that could demonstrate that the relevant statements were materially false and misleading. Further, because this case involves multiple

corrective disclosures, Lead Counsel had to establish that each such disclosure in fact revealed corrective information to the market, and marshalled expert opinion that the stock price declines on the relevant dates were not caused by market-wide, industry-specific, or other Immunomedics-specific factors. Even at the class certification stage, Lead Plaintiffs' and Defendants' experts differed as to the proper measure of damages as an economic matter.

In light of the complexity and duration of this case, this factor clearly favors approval of the requested attorneys' fees.

5. The Risk of Non-Payment

Lead Counsel prosecuted this case on a contingent basis. Thus, without a settlement or a trial victory, they would go unpaid. This created an incentive to litigate the case aggressively and seek the best recovery possible. "'Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.'" *High St. Rehab., LLC v. Am. Specialty Health Inc.*, 2019 WL 4140784, at *13 (E.D. Pa. Aug. 29, 2019); *see also CardConnect*, 2021 WL 698173, at *10 (no guarantee of success on merits or on class certification supports one-third fee request); *Schering-Plough I*, 2012 WL 1964451, at *7 (approving 33.3% fee; noting that "the risk created by undertaking an action on a contingency fee basis militates in favor of approval").

6. The Significant Time Devoted to This Case

The significant time that counsel devoted to this case favors approval of the requested attorneys' fees. Lead Plaintiffs' Counsel invested more than 23,900 hours of attorney and support staff time over the course of over four years, and incurred $591,035.89 in expenses prosecuting this case for the benefit of the Class, without promise of payment of attorneys' fees or expenses if Lead Plaintiffs did not prevail on their claims. *See* Declaration of Tor Gronborg Filed on Behalf of Robbins Geller Rudman & Dowd LLP, ¶¶4-5, Declaration of Jacob A. Walker Filed on Behalf of Block & Leviton LLP, ¶¶4-5, Declaration of James E. Cecchi Filed on Behalf of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., ¶¶3-4 (collectively, "Firm Declarations"), Exs. 4-6 to the Joint Decl.

7. The Range of Fees Typically Awarded

"While there is no benchmark for the percentage of fees to be awarded in common fund cases, the Third Circuit has noted that reasonable fee awards in percentage-of-recovery cases generally range from nineteen to forty-five percent of the common fund." *Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *12 (E.D. Pa. Sept. 16, 2021) (holding that this factor weighs in favor of approval where 33% fee request "[fell] in the middle" of the range of fees granted in comparable securities class actions in the Third Circuit); *see also Kanefsky*, 2022 WL 1320827, at *11 (finding 29.2% fee request "well within the reasonable range of awards approved

by the Third Circuit and is consistent with similar class action settlements"); *Viropharma*, 2016 WL 312108, at *17 (noting that "[i]n this Circuit, 'awards of thirty percent are not uncommon in securities class actions'") (citing cases).

Courts have frequently awarded fee percentages similar to or higher than the fee of 29.5% requested in this case, even on large recoveries. *See, e.g.*, *In re Novo Nordisk Sec. Litig.*, No. 3:17-cv-00209 (ECF 361) (D.N.J. July 13, 2022) (awarding attorneys' fees of 29% of $100 million recovery); *City of Sterling Heights Gen. Emps.' Ret. Sys. v. Prudential Fin., Inc.*, 2016 WL 10570211, at *1 (D.N.J. Sept. 29, 2016) (awarding attorney's fees of 30% of $33 million recovery); *Alaska Elec. Pension Fund v. Pharmacia Corp.*, 2013 WL 12153597, at *1-*2 (D.N.J. Jan. 30, 2013) (awarding attorneys' fees of 27.5% on $164 million recovery); *In re Aetna Inc.*, 2001 WL 20928, at *13-*16 (E.D. Pa. Jan. 4, 2001) (awarding attorneys' fees of 30% on $82.5 million recovery); *see also In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 818-19 (3d Cir. 2010) (affirmed attorneys' fees of 30% on $21.5 million recovery). Because the requested fee is reasonable in relation to fees typically awarded in similar cases, this factor favors approval of the requested fee award.[10]

[10] In evaluating attorneys' fee requests, courts in the Third Circuit have also considered factors such as whether the fee award "reflects commonly negotiated fees in the private marketplace," and any benefit received from the efforts of government agencies. *See Merck/Vytorin*, 2010 WL 547613, at *12-*13. These additional factors also favor approval of the requested fee here, as the advancement of this case was based upon the efforts of counsel, not government agencies, and a 29.5% fee is lower

C. The Requested Fee Is Reasonable Under a Lodestar Cross-Check

Courts in the Third Circuit may also use a "lodestar cross-check" to confirm the reasonableness of a percentage fee. *See Moore v. GMAC Mortg.*, 2014 WL 12538188, at *2 (E.D. Pa. Sept. 19, 2014) (stating that the "lodestar cross-check is 'suggested,' but not mandatory"). If used, the lodestar cross-check "should not displace a district court's primary reliance on the percentage-of-recovery method." *In re AT&T Corp.*, 455 F.3d 160, 164 (3d Cir. 2006). Placing too much emphasis on the lodestar method "may encourage attorneys to delay settlement or other resolution to maximize legal fees" and "may also compensate attorneys insufficiently for the risk of undertaking complex or novel cases on a contingency basis." *In re Ikon Off. Sols, Inc., Sec. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. 2000). Given its limited value, some courts consider a lodestar review "an inevitable waste of judicial resources." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49 (2d Cir. 2000).

When used, the Third Circuit has recognized that the lodestar cross-check "need entail neither mathematical precision nor bean-counting," and that "district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005); *accord CardConnect*, 2021 WL 698173, at *10-*11. The lodestar cross-check

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than commonly negotiated contingent fees. *See id.*, at *13 (noting that contingent fees in the private marketplace are commonly 30% to 40%).

involves simply comparing counsel's "lodestar" to the fee resulting from the requested percentage award and assessing the reasonableness of the resulting multiplier. The appropriate multiplier varies based on the specifics of each case and "need not fall within any pre-defined range, provided that the [d]istrict [c]ourt's analysis justifies the award." *Rite Aid*, 396 F.3d at 307. However, the Third Circuit has recognized that percentage awards that result in multipliers "'ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.'" *Veritas Software*, 396 F. App'x at 819; *accord CardConnect*, 2021 WL 698173, at *11; *Wood v. AmeriHealth Caritas Servs., LLC*, 2020 WL 1694549, at *10 (E.D. Pa. Apr. 7, 2020); *see also Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16; noting that "multiples ranging from 1 to 8 are often used in common fund cases" to "compensate counsel for the risk of assuming the representation on a contingency fee basis").

Here, Lead Plaintiffs' Counsel have spent a total of 23,965.85 hours of attorney and paraprofessional time on this matter, for a total lodestar amount of $14,475,899.00. *See* Fee Declarations. The resulting overall negative lodestar multiplier is 0.8, which is well below the range of reasonableness based on the cases cited above.

D. Reasonably Incurred Expenses Should Be Awarded

Lead Plaintiffs' Counsel also request payment of expenses and charges incurred in connection with the prosecution of this Litigation in the aggregate amount of $591,035.89. Counsel in class actions "are entitled to reimbursement of expenses that were 'adequately documented and reasonable and appropriately incurred in the prosecution of the class action.'" *Viropharma*, 2016 WL 312108, at *18 (citing *Abrams v. Lightolier Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *accord AmeriHealth*, 2020 WL 1694549, at *10; *see also Schering-Plough I*, 2012 WL 1964451, at *8 (approving litigation expenses and noting that "[t]his type of reimbursement has been expressly approved by the Third Circuit").

The expenses borne by Lead Plaintiffs' Counsel are documented in the accompanying Firm Declarations. These expenses consist of the typical categories, such as experts, document hosting and production, online legal and financial research, mediation fees, filing fees, and copying. *Id.* These expenses were reasonable and necessary to the prosecution of the claims and achieving the Settlement and are of the same type routinely approved in securities class actions. *See Viropharma*, 2016 WL 312108, at *18 (approving costs and expenses for, among other things, experts, travel, copying, postage, telephone, filing fees, and online and financial research); *Yedlowski v. Roka Bioscience, Inc.*, 2016 WL 6661336, at *23 (D.N.J. Nov. 10, 2016) (approving costs and expenses for experts, investigation, mediation, publishing notice,

and online legal research, and noting that "[c]ourts have held that all of these items are properly charged to the [c]lass").

The requested expense amount is significantly lower than the expenses approved in many other securities class actions. *See, e.g.*, *AT&T Corp.*, 455 F.3d at 169 (approving expenses of nearly $5.5 million); *In re Merck & Co., Inc. Sec., Derivative & "ERISA" Litig.*, 2016 WL 11575090, at *5 (D.N.J. June 28, 2016) (approving award of $9.5 million in expenses); *Ikon*, 194 F.R.D. at 197 (approving award of over $3.5 million in expenses); *In re Lucent Techs., Inc. Sec. Litig.*, No. 2:00-cv-621 (ECF 236) (D.N.J. July 23, 2004) (approving award of $3.5 million in expenses). Further, this amount is less than the expense figure of up to $650,000 set out in the Notice, and to date, there have been no objections to that proposed amount. For all of these reasons, the requested expense award should be approved.

E. The Requested Awards Pursuant to 15 U.S.C. §78u-4(a)(4) Are Reasonable

The Third Circuit has "favor[ed] encouraging class representatives, by appropriate means, to create common funds and to enforce laws." *In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *37 (D.N.J. Oct. 1, 2013) ("*Schering-Plough II*"). The PSLRA makes clear that it does not limit "the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). In enacting this provision, "Congress explicitly acknowledged

the importance of awarding appropriate reimbursement to class representatives." *Schering-Plough II*, 2013 WL 5505744, at *37; *see also Bredbenner*, 2011 WL 1344745, at *22 ("The purpose of these payments is to compensate named plaintiffs for 'the services they provided and the risks they incurred during the course of class action litigation,'" and to "'reward the public service' of contributing to the enforcement of mandatory laws."). Thus, courts provide awards under 15 U.S.C. §78u-4(a)(4) to compensate class representatives for their time and effort in representing the class.

Lead Plaintiffs Boris Saljanin and Construction Industry and Laborers Joint Pension Trust seek awards of $12,500.00 and $12,437.50, respectively, for their estimated time devoted to supervising counsel and participating in the Litigation. *See* Saljanin Decl., ¶10; Theirl Decl., ¶10. The declarations describe Lead Plaintiffs' activities directly related to representing the Class, including: (a) consulting with counsel regarding the Litigation and the Court's orders; (b) reviewing and commenting upon pleadings, motions, and briefs; (c) reviewing correspondence and status reports from counsel; (d) responding to discovery requests and collecting documents for production; (e) preparing for and participating in depositions; (f) conferring with counsel concerning litigation strategy; and (g) monitoring settlement negotiations. *See* Saljanin Decl., ¶¶3-10; Theirl Decl., ¶¶3-10.

The requested class representative awards are reasonable and are less than or equal to awards in many similar cases. *See, e.g.*, *Utah Ret. Sys. v. Healthcare Servs. Grp., Inc.*, 2022 WL 118104, at *13 (E.D. Pa. Jan. 12, 2022) (awarding $12,500 to class representative); *Par Pharm.*, 2013 WL 3930091, at *11 (approving award to lead plaintiff of $18,000); *Aeterna Zentaris*, 2021 WL 2220565, at *2 (approving awards of $17,000 to each of the three lead plaintiffs). Lead Plaintiffs respectfully request that the proposed awards be approved. There are no objections to these requests.

VII. CONCLUSION

For all the reasons stated above and in the accompanying declarations, Lead Plaintiffs respectfully request that the Court (i) grant their motion for final approval of the Settlement and the Plan of Allocation; (ii) award attorneys' fees of 29.5% of the Settlement Amount and payment of expenses of $591,035.89, plus interest on both amounts at the same rate and for the same period as earned by the Settlement Fund; and (iii) award Lead Plaintiffs Boris Saljanin and Construction Industry and Laborers Joint Pension Trust $12,500.00 and $12,437.50, respectively, pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Class.

DATED: May 11, 2023

Respectfully submitted,

CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.

s/ Lindsey H. Taylor

LINDSEY H. TAYLOR

JAMES E. CECCHI
LINDSEY H. TAYLOR
5 Becker Farm Road
Roseland, NJ 07068
Telephone: 973/994-1700
973/994-1744 (fax)
jcecchi@carellabyrne.com
ltaylor@carellabyrne.com

Co-Liaison Counsel

ROBBINS GELLER RUDMAN
& DOWD LLP
TOR GRONBORG (*pro hac vice*)
ELLEN GUSIKOFF STEWART (*pro hac vice*)
DEBRA J. WYMAN (*pro hac vice*)
TRIG R. SMITH (*pro hac vice*)
JENNIFER N. CARINGAL (*pro hac vice*)
RAPHAELLA FRIEDMAN (*pro hac vice*)
JOSEPH J. TULL (*pro hac vice*)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)
torg@rgrdlaw.com
elleng@ rgrdlaw.com
debraw@rgrdlaw.com
trigs@rgrdlaw.com
jcaringal@rgrdlaw.com
rfriedman@rgrdlaw.com
jtull@rgrdlaw.com

BLOCK & LEVITON LLP
JEFFREY C. BLOCK (*pro hac vice*)
JACOB A. WALKER (*pro hac vice*)
MICHAEL GAINES (*pro hac vice*)
BRENDAN JARBOE (*pro hac vice*)
MARK BYRNE (*pro hac vice*)
260 Franklin Street, Suite 1860
Boston, MA 02110
Telephone: 617/398-5600
617/507-6020 (fax)
jeff@blockleviton.com
jake@blockleviton.com
micael@blockleviton.com
brendan@blockleviton.com
mark@blockleviton.com

Co-Lead Counsel for Lead Plaintiffs and the Class

SEEGER WEISS LLP
CHRISTOPHER A. SEEGER
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
Telephone: 212/584-0700
212/584-0799 (fax)
cseeger@seegerweiss.com

LITE DePALMA GREENBERG LLC
SUSANA CRUZ HODGE
570 Broad Street, Suite 1201
Newark, NJ 07102
Telephone: 973/623-3000
973/623-0858 (fax)
scruzhodge@litedepalma.com

Co-Liaison Counsel