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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ALLERGAN GENERIC DRUG PRICING SECURITIES LITIGATION	Case No. 2:16-cv-09449 (KSH) (CLW)

NOTICE OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION

To: All Counsel by ECF

COUNSEL:

PLEASE TAKE NOTICE that on November 17, 2021, at 1:00 p.m. in Courtroom 4D of the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101, or by

telephone or video conference (in the discretion of the Court), before the Honorable Cathy L. Waldor, Lead Plaintiffs Sjunde AP-Fonden and Union Asset Management Holding AG (collectively, "Lead Plaintiffs"), by and through their undersigned counsel, will and hereby do move the Court for orders granting Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation under Federal Rule of Civil Procedure 23 which will: (i) grant final approval of the proposed settlement of the above-captioned securities class action ("Settlement") on the terms set forth in the Stipulation and Agreement of Settlement dated as of July 8, 2021 (ECF No. 223-1); and (ii) approve the proposed plan for allocating the net proceeds of the Settlement to the Settlement Class.

PLEASE TAKE FURTHER NOTICE that, in support of the Motion, the undersigned intend to rely on the accompanying Memorandum of Law and the accompanying Joint Declaration of Matthew L. Mustokoff and John C. Browne and exhibits attached thereto, and the papers and pleadings filed in this Action, the arguments of counsel, and any other matters properly before the Court.

PLEASE TAKE FURTHER NOTICE that, proposed orders granting the relief requested herein will be submitted in connection with Lead Plaintiffs' reply submission, which will be filed no later than November 10, 2021, pursuant to the Court's July 30, 2021 Order Preliminarily Approving Settlement and Authorizing Dissemination of Notice of Settlement (ECF No. 228).

Dated: October 13, 2021

Respectfully submitted,

s/ James E. Cecchi

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CERTIFICATION OF SERVICE

I hereby certify that on October 13, 2021, I caused a true and correct copy of the foregoing Notice of Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 13, 2021

s/ James E. Cecchi

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ALLERGAN GENERIC DRUG PRICING SECURITIES LITIGATION	Case No. 2:16-cv-09449 (KSH) (CLW) **MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION**

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Court-appointed Lead Plaintiffs Sjunde AP-Fonden ("AP7") and Union Asset Management Holding AG ("Union" and together with AP7, "Lead Plaintiffs"), on behalf of themselves and the Settlement Class, respectfully move this Court, pursuant to Federal Rule of Civil Procedure ("Rule") 23, for: (i) final approval of the proposed settlement of the above-captioned action ("Action") on the terms set forth in the Stipulation and Agreement of Settlement dated as of July 8, 2021 (ECF No. 223-1) ("Stipulation"); (ii) approval of the proposed plan for allocating the net proceeds of the Settlement to the Settlement Class ("Plan of Allocation" or "Plan"); and (iii) certification of the Settlement Class for purposes of effectuating the Settlement.[1]

I. PRELIMINARY STATEMENT

After more than four years of hard-fought litigation, including two rounds of motion to dismiss briefing, comprehensive fact discovery, a contested motion for class certification, and arm's-length settlement negotiations facilitated by an experienced mediator, Lead Plaintiffs and Lead Counsel have succeeded in securing a $130 million cash common-fund recovery for the Settlement Class. Subject to the Court's final approval, this Settlement will resolve all claims asserted in the Action against Defendants and the other Defendants' Releasees. The Settlement provides an excellent result for the Settlement Class and readily satisfies the standards for final approval under Rule 23(e)(2).

[1] Unless otherwise defined, all capitalized terms have the meanings set forth in the Stipulation or in the Joint Declaration of Matthew L. Mustokoff and John C. Browne in Support of (A) Lead Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation; and (B) Lead Counsel's Motion for an Award of Attorneys' Fees and Litigation Expenses ("Joint Declaration" or "Joint Decl."). The Joint Declaration is an integral part of this submission and, for the sake of brevity herein, Lead Plaintiffs respectfully refer the Court to the Joint Declaration for a detailed description of, *inter alia*: the claims asserted, the procedural history of the Action, the negotiations resulting in the Settlement, the risks of continued litigation, compliance with the Court-approved notice plan, and the Plan of Allocation. Citations to "¶ __" herein refer to paragraphs in the Joint Declaration and citations to "Ex. __" herein refer to exhibits to the Joint Declaration.

As set forth herein, not only does the Settlement provide a near-term, certain recovery for the Settlement Class in a case that presented numerous risks, but it also represents a substantial percentage of the Settlement Class's damages—*i.e.*, between 13.4% and 23.4% of the maximum damages that could be realistically established at trial as estimated by Lead Plaintiffs' damages consultant, taking into account certain of Defendants' loss causation and damages arguments. *See infra* § II.C.5. This recovery range is *many multiples* of the median recovery in comparable cases.[2] The Settlement is also, to Lead Counsel's knowledge, the first to be achieved among the federal securities cases arising from the antitrust allegations at issue in the Action, which date back half a decade. And, notably, the $130 million recovery ranks as the 14th largest securities class action settlement in the history of the Third Circuit.

While Lead Plaintiffs believe that their claims are meritorious and supported by substantial evidence developed during discovery, they also recognize that, in the absence of settlement, they faced substantial risks to obtaining a larger recovery for the Settlement Class through further litigation. Indeed, at the time they reached their agreement to resolve the Action, Lead Plaintiffs' motion for class certification ("Class Certification Motion") was pending. In their opposition to the Class Certification Motion, Defendants advanced multiple arguments which could have shortened the Class Period or precluded class certification altogether.

Moreover, had they succeeded on their Class Certification Motion, Lead Plaintiffs would have faced significant risks to advancing the Settlement Class's claims at summary judgment and trial. For example, Defendants would argue, as they did at the motion-to-dismiss stage that, in order to establish liability, Lead Plaintiffs would have to prove an underlying antitrust conspiracy

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[2] *See* Ex. 8, at 6 (reporting that in 2020, the median securities class action settlement amount was 2.6% of estimated damages for cases with estimated damages between $500 and $999 million and, for years 2011 to 2019, it was 3.3%).

against Allergan before establishing any alleged securities law violation. The complexity of having to prove an antitrust "case" to establish liability greatly amplified Lead Plaintiffs' litigation risks. More specifically, Defendants would assert that Lead Plaintiffs would be unable to establish that Allergan engaged in anti-competitive misconduct and that the dramatic price increases alleged in the Action were the result of legitimate business reasons, such as supply shortages, increased product demand, and increased costs, rather than collusion. To further support this assertion, Defendants would rely on the fact that, to date, Allergan has yet to be criminally charged or found to have committed antitrust violations in connection with the sale of generic drugs during the Class Period. Relatedly, Defendants would argue that the Individual Defendants knew nothing about the alleged anti-competitive conduct and had no reason to believe that price collusion between Allergan and its competitors was occurring.

In addition, Defendants would have asserted various arguments regarding loss causation and damages, including that: (i) Lead Plaintiffs would be unable to establish loss causation as to either of the two alleged disclosures because each revealed, at most, that Allergan was *part of an investigation* of collusion—not that Allergan had been found to have actually engaged in misconduct; (ii) even if Allergan employees engaged in antitrust activities, any impact on Allergan's business was small and, therefore, would not have resulted in significant investment losses; and (iii) Lead Plaintiffs would be unable to isolate any impact of the news of Allergan's potential involvement in generic drug pricing collusion from other Allergan-specific information released on the same day. Defendants would also continue to press several significant arguments regarding the second alleged disclosure on November 3, 2016, aimed at shortening the Class Period.

As detailed in the Joint Declaration, based on their extensive prosecution of the claims in the Action, Lead Plaintiffs and Lead Counsel were well-informed of the strengths and weaknesses of the case prior to reaching the Settlement. The Settlement is the product of arm's-length negotiations between the Parties, including a formal mediation session before retired United States District Judge Layn R. Phillips ("Judge Phillips") and, at Judge Phillips' direction, the preparation and exchange of comprehensive mediation statements. ¶¶ 55-56. These hard-fought negotiations culminated in the Parties' acceptance of a mediator's recommendation to resolve the Action for $130 million in cash. ¶ 57. The Settlement is not "claims-made" and all Settlement proceeds, after the deduction of Court-approved fees and costs, will be distributed to Settlement Class Members who submit Claims that are accepted by the Court for payment.

In July 2021, the Court preliminarily approved the Settlement, finding it likely that the Court could approve the Settlement at final approval. Preliminary Approval Order, ¶ 4. The Settlement has the full support of the sophisticated, institutional investor Lead Plaintiffs (*see* Exs. 1 & 2), and the reaction of the Settlement Class to date has been positive. While the deadline for objections has not yet passed, following the dissemination of more than one million Notices to Settlement Class Members and nominees as well as publication of a summary notice online and in high-circulation media, there have been no objections to the Settlement or the Plan of Allocation. ¶¶ 12, 100.

Lead Plaintiffs and Lead Counsel respectfully submit that: (i) the Settlement meets the standards for final approval under Rule 23, and is a fair, reasonable, and adequate result for the Settlement Class; and (ii) the Plan of Allocation is a fair and reasonable method for equitably distributing the Net Settlement Fund. Lead Plaintiffs also request that the Court certify the Settlement Class for purposes of effectuating the Settlement.

II. THE SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e)(2) requires judicial approval of any class action settlement. Whether to grant such approval lies within the discretion of the district court. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004).[3] In exercising its discretion over a proposed settlement, a court should review the settlement in light of the strong judicial policy favoring settlement. *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010) (recognizing "strong presumption in favor of voluntary settlement agreements"). The Third Circuit has noted that the policy favoring settlement "is especially strong in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *Id.* at 595; *see also McDonough v. Horizon Blue Cross Blue Shield of N.J.*, 641 F. App'x. 146, 150 (3d Cir. 2015) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged.") (alteration in original).

Under Rule 23(e)(2), the Court should approve a proposed class action settlement if it finds it to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 436 (3d Cir. 2016) ("*NFL Players*"). In making this determination, Rule 23(e)(2) provides that a court should consider 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;

[3] Unless otherwise noted, all internal quotation marks, citations, and other punctuation are omitted, and all emphasis is added.

(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;

(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).

Consistent with this guidance, courts in the Third Circuit have long considered the following nine factors enumerated in *Girsh v. Jepson* in deciding whether to approve a proposed class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) stage of the proceedings and the amount of discovery completed; (4) risks of establishing liability; (5) risks of establishing damages; (6) risks of maintaining the class action through the trial; (7) 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; and (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 153, 157 (3d Cir. 1975); *see also Whiteley v. Zynerba Pharms., Inc.*, 2021 WL 4206696, at *2 (E.D. Pa. Sept. 16, 2021); *NFL Players*, 2016 WL 1552205, at *17.[4] The Third Court has further advised courts to consider, where applicable, the additional factors set forth in *In re Prudential Insurance Co. America Sales Practice Litigation Agent Actions*, 148 F.3d 283 (3d Cir. 1998). *See Zynerba Pharms.,* 2021 WL 4206696, at *3; *In re ViroPharma Inc. Sec. Litig.*, 2016 WL 312108, at *9 (E.D. Pa. Jan. 25, 2016).[5]

[4] "These factors are a guide and the absence of one or more does not automatically render the settlement unfair." *In re Valeant Pharms. Int'l, Inc. Sec. Litig.*, 2020 WL 3166456, at *7 (D.N.J. June 15, 2020).

[5] The Advisory Committee Notes to the 2018 amendments to Rule 23 explain that the four Rule 23(e)(2) factors are not intended to "displace" any factor previously adopted by the courts, but

As noted above, after considering the Rule 23(e)(2) factors at the preliminary approval stage, the Court determined the Settlement was fair, reasonable, and adequate, subject to further consideration at the Settlement Hearing. Preliminary Approval Order, ¶ 5. The Court's conclusion on preliminary approval applies equally now. Accordingly, as set forth herein, the Settlement is fair, reasonable, adequate, and warrants final approval under the Rule 23(e)(2) factors and Third Circuit law.

A. Lead Plaintiffs and Lead Counsel Have Adequately Represented the Settlement Class in this Action

In determining whether to approve a class action settlement, the Court should first consider whether Lead Plaintiffs and Lead Counsel "have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). *See Vinh Du v. Blackford*, 2018 WL 6604484, at *4 (D. Del. Dec. 18, 2018) ("The Third Circuit applies a two-prong test to assess the adequacy of the proposed class representatives. First, the court must inquire into the qualifications of counsel to represent the class, and second, it must assess whether there are conflicts of interest between named parties and the class they seek to represent."). This factor clearly weighs in favor of the Settlement.

Lead Plaintiffs and Lead Counsel have adequately represented the Settlement Class in both their prosecution of the Action and in negotiating and securing the Settlement. Lead Plaintiffs' claims, all of which are based on a common course of alleged wrongdoing by Defendants, are typical of other Settlement Class Members and Lead Plaintiffs have no interests antagonistic to the Settlement Class. *See id.* ("Plaintiff's interests are coextensive with, and not antagonistic to, the

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"rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23 advisory committee notes to 2018 amendments, subdivision (e)(2). Accordingly, Lead Plaintiffs discuss below the fairness, reasonableness, and adequacy of the Settlement principally in relation to the four Rule 23(e)(2) factors, but also discuss the application of the factors identified in *Girsh* and *Prudential*.

interests of the class since they all raise the same claims and seek the same relief.").[6] At all relevant times, Lead Plaintiffs diligently supervised and participated in the litigation on behalf of the Settlement Class. As detailed in their supporting declarations, Lead Plaintiffs' efforts included, *inter alia*, communicating regularly with Lead Counsel, reviewing pleadings and briefs, gathering and reviewing documents and information in response to Defendants' discovery requests, preparing and sitting for depositions, and actively participating in settlement negotiations. *See* Ex. 1, ¶¶ 7-9; Ex. 2, ¶¶ 7-9.

Likewise, Lead Plaintiffs retained counsel who are highly experienced in securities litigation. *See* Exs. 6A & 6B. Lead Counsel actively pursued the claims on behalf of the Settlement Class and aggressively negotiated a favorable Settlement through mediation. *See Alves v. Main*, 2012 WL 6043272, at *22 (D.N.J. Dec. 4, 2012), *aff'd*, 559 F. App'x 151 (3d Cir. 2014) ("courts in this Circuit traditionally attribute significant weight to the belief of experienced counsel that settlement is in the best interest of the class").

B. The Settlement Was Negotiated at Arm's Length with the Assistance of an Experienced Mediator

The Court should next consider whether the settlement was "negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). This includes consideration of other related circumstances to ensure the procedural fairness of a settlement, including whether there was sufficient discovery prior to settlement and whether the proponents of the settlement are experienced in similar litigation. *See generally Warfarin Sodium*, 391 F.3d at 535. Courts have also recognized that the participation of an experienced, respected mediator in the settlement process weighs in favor of a proposed

[6] *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) ("Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.").

settlement's procedural fairness. *See Alves*, 2012 WL 6043272, at *22 ("[t]he 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").[7] These considerations support approval of the Settlement

Here, following the completion of fact discovery and while Lead Plaintiffs' Class Certification Motion was pending, the Parties participated in a formal mediation with Judge Phillips on May 11, 2021. ¶ 56; *see also generally* Ex. 3. Prior to the mediation, the Parties prepared and exchanged detailed mediation statements and, at the mediation, the Parties responded to detailed merits- and damages-related questions from Judge Phillips and his staff. *Id*. Though a resolution was not reached during the May 2021 mediation, the Parties continued negotiating through Judge Phillips, who ultimately issued a mediator's recommendation to resolve the Action for $130 million in cash. ¶ 57. The Parties accepted Judge Phillip's proposal and memorialized their agreement in principle to settle the Action in a term sheet executed on June 15, 2021. *Id*. The Parties spent additional weeks negotiating the specific terms of the Stipulation. ¶¶ 58-60.

Likewise, the Settlement was negotiated by counsel with extensive experience in securities litigation, who were well versed in the strengths and weaknesses of the case.[8] The knowledge of

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[7] Indeed, courts have repeatedly and favorably cited Judge Phillips' participation in granting final approval of securities class action settlements. *See, e.g., In re Mannkind Corp. Sec. Litig.*, 2012 WL 13008151, at *5 (C.D. Cal. Dec. 21, 2012) ("The Court is completely confident that the negotiations and mediation [conducted by Judge Phillips] were conducted at arm's length, were the product of rational compromise on the part of all involved, and were in no way collusive."); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding a settlement fair where the parties engaged in "arm's length negotiations," including mediation before "retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases"); *In re Cigna Corp. Sec. Litig.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) (finding a presumption of fairness where "negotiations for the settlement occurred at arm's length, as the parties were assisted by a retired federal district judge who was privately retained and served as a mediator").

[8] *See Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014)

Lead Plaintiffs and Lead Counsel about the Action, and the proceedings themselves, had reached a stage where they could make a well-founded evaluation of the claims and propriety of settlement. As detailed in the Joint Declaration, prior to reaching the Settlement, Lead Counsel had conducted a comprehensive investigation into the claims asserted, including interviews with former Allergan employees (¶ 20), researched and prepared two detailed complaints (¶¶ 21, 25-27), briefed two rounds of motions to dismiss as well as the Class Certification Motion (¶¶ 22-24, 28-31,), completed substantial fact discovery, including the review and analysis of over 2.6 million pages of documents (¶¶ 49-54), deposed twenty current and former employees of Allergan and certain of Allergan's alleged co-conspirators (¶ 44), consulted extensively with various experts, including an economic consultant specializing in antitrust matters (¶¶ 46-48), and were on the verge of exchanging merits expert reports with Defendants (¶ 6). Approval of a settlement is warranted "[w]here a court can conclude that the parties had sufficient information to make an informed decision about settlement." *4 Newberg On Class Actions* § 13:49 (5th Ed.).

C. The Settlement Provides the Settlement Class Adequate Relief, Considering the Costs, Risks, and Delay of Litigation and Other Relevant Factors

Rule 23(e)(2)(C) overlaps considerably with many of the factors articulated by the Third Circuit in *Girsh*. All of these factors entail "a 'substantive' review of the terms of the proposed settlement" and evaluate the fairness of the "relief that the settlement is expected to provide to" the Settlement Class. Fed. R. Civ. P. 23(e)(2), advisory committee notes to 2018 amendments, subdivision (e)(2), paragraphs (C) and (D). As discussed below, these factors weigh in favor of the Settlement.

(opinion of counsel "experience[d] in prosecuting complex class actions [who] strongly believe the Settlement is in the best interests of the Class . . . is entitled to great weight").

1. The Complexity, Expense, and Likely Duration of the Litigation

Rule 23(e)(2)(C)(i) and the first *Girsh* factor support final approval of the Settlement, as courts consistently recognize that the expense, complexity, and possible duration of the litigation are key factors in evaluating the reasonableness of a settlement. *Girsh*, 521 F.2d at 157; *see also ViroPharma*, 2016 WL 312108, at *9 ("This factor is intended to capture the probable costs, in both time and money, of continued litigation."). Indeed, a settlement is favored where "continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial." *Talone v. Am. Osteopathic Ass'n*, 2018 WL 6318371, at *14 (D.N.J. Dec. 3, 2018); *see also In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) ("Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results.").

Courts consistently acknowledge that securities class actions are "notably complex, lengthy, and expensive cases to litigate[,]"[9] and this case was no exception. As discussed in the Joint Declaration and below, continued litigation of this Action presented numerous risks to Lead Plaintiffs' ability to establish liability and damages. ¶¶ 63-86. And, continuing to prosecute the Action through expert discovery, a ruling on Lead Plaintiffs' Class Certification Motion, summary judgment motions, trial, and the inevitable post-trial appeals would have imposed substantial additional costs on the Settlement Class and delay the Settlement Class's ability to recover. *See In re Ocean Power Techs., Inc., Sec. Litig.*, 2016 WL 6778218, at *12 (D.N.J. Nov. 15, 2016) ("Settlement is favored under this factor if litigation is expected to be complex, expensive and time consuming."); *see also generally In re Amgen Inc. Sec. Litig.*, 2016 WL 10571773, at *3 (C.D.

[9] *In re PAR Pharm. Sec. Litig.*, 2013 WL 3930091, at *4 (D.N.J. July 29, 2013) (citing examples).

Cal. Oct. 25, 2016) ("A trial of a complex, fact-intensive case like this could have taken weeks, and the likely appeals of rulings on summary judgment and at trial could have added years to the litigation.").[10] In contrast, the Settlement avoids the risk, expense, and delay of continued litigation while providing a substantial, near-term recovery for the Settlement Class.

2. The Risks of Continued Litigation

In assessing the fairness, reasonableness, and adequacy of a settlement, a court should also consider the "risks of establishing liability," "the risks of establishing damages," and "the risks of maintaining the class action through the trial." *Girsh*, 521 F.2d at 157. "These [*Girsh*] factors balance the likelihood of success and the potential damages award if the case were taken to trial against the benefits of immediate settlement." *In re Wilmington Tr. Sec. Litig.*, 2018 WL 6046452, at *5 (D. Del. Nov. 19, 2018). As discussed below, Lead Plaintiffs faced significant risks to achieving a better result for the Settlement Class through continued litigation.[11]

3. Risks to Establishing Liability and Damages

Although this Court sustained Lead Plaintiffs' claims in their entirety at the pleading stage, Lead Plaintiffs and Lead Counsel recognized that there were many factors that rendered the outcome of continued litigation, and ultimately a trial, in this Action uncertain.

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[10] Additionally, even if Lead Plaintiffs had prevailed at trial, Defendants would surely have appealed the verdict. Trial, post-trial motions, pre-judgment claims administration, and post-judgment appellate proceedings would have added significantly to the expense of this Action and delayed, potentially for years, any recovery to Settlement Class Members (with no assurance that plaintiffs would ultimately prevail or recover any more that the Settlement now provides). *See, e.g., In re BankAtlantic Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605, at *1 (S.D. Fla. Apr. 25, 2011) (granting defendants' judgment as a matter of law on the basis of loss causation, overturning jury verdict and award in plaintiff's favor), *aff'd on other grounds*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

[11] *See generally W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, 2017 WL 4167440, at *5-6 (E.D. Pa. Sept. 20, 2017) (approving settlement where "[e]stablishing liability would be difficult for the Class [and] [e]stablishing damages would also be no picnic" and finding "these factors weigh heavily in favor of approving the settlement").

First, the need to prove an antitrust "case within a case" to establish liability—specifically the falsity of Defendants' public statements that Allergan was not involved in anti-competitive conduct—greatly amplified Lead Plaintiffs' litigation risks. ¶ 74. Throughout the Action, Defendants took the position that, in order to establish liability, Lead Plaintiffs would have to prove an underlying antitrust conspiracy against Allergan before establishing any alleged securities violations. *Id*. To this end, Defendants would have likely argued that, on the factual record, Lead Plaintiffs could not establish that Allergan engaged in a wide-ranging antitrust conspiracy, or that the dramatic price increases at issue in the case were the product of collusion. *Id*. Defendants would have also likely contended that any arguments Lead Plaintiffs raised at summary judgement and trial based on a "market-allocation" theory—*i.e.*, a theory that Defendants conspired to divide up generic drug markets with their competitors in an attempt to maintain supracompetitive pricing without specifically agreeing on what prices to charge, represented a shift from Lead Plaintiffs' original theory of liability as pled, and in any event were based on the false premise that competitors could not independently decide to seek rough equivalent market share. *Id*.

Second, Lead Plaintiffs faced challenges to proving that Defendants made the alleged misstatements with the requisite intent—*i.e.*, scienter. *See, e.g.*, *Fishoff v. Coty Inc.*, 2010 WL 305358, at *2 (S.D.N.Y. Jan. 25, 2010), *aff'd*, 634 F.3d 647 (2d Cir. 2011) ("[T]he element of scienter is often the most difficult and controversial aspect of a securities fraud claim."). Had the Settlement not been reached, Defendants would continue to argue that none of the Individual Defendants knew about the anti-competitive conduct at issue or had reason to believe such conduct was occurring. ¶ 76. To support this contention, Defendants would assert that: (i) the Individual Defendants themselves were not involved in any collusive communications with competitors, (ii) the Individual Defendants had reason to believe that Allergan's drug price changes were driven

by legitimate business reasons; and (iii) the Individual Defendants adopted policies prohibiting anti-competitive behavior, and that any anticompetitive behavior (if any) was limited in scope such that there was no reason for the Individual Defendant to suspect their statements to the market were materially misleading. *Id*.

Finally, Lead Plaintiffs faced formidable challenges with respect to proving loss causation and the full amount of the Settlement Class's damages. ¶¶ 77-82. Defendants would assert at summary judgment and trial, as they did at the motion-to-dismiss stage, that Lead Plaintiffs would be unable to establish loss causation as to either of the two alleged corrective disclosures because each revealed, at most, that Allergan was *part of an investigation* of collusion—not that it had been found to be engaged in such misconduct, or even was the focus of such an investigation. *Id*.[12] Further, the fact that, to date, Allergan has not been criminally charged or found to have committed antitrust violations in connection with the sale of generic drugs during the Class Period would bolster this argument. *Id*.

In addition, with respect to damages in particular, Defendants would have continued to argue that, even if Allergan employees engaged in antitrust activities, any impact on Allergan's overall business was small and could not have resulted in large investment losses. ¶ 78. Defendants would further argue that Lead Plaintiffs would be unable to isolate any impact of the news of Allergan's potential involvement in generic drug pricing collusion from other Allergan-specific information released the same day. ¶ 80.[13] Defendants would also likely assert several arguments

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[12] *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345-46 (2005) (plaintiffs bear the burden of proving "that the defendant's misrepresentations 'caused the loss for which the plaintiff seeks to recover'").

[13] Disentangling the market's reaction to various pieces of news is a "complicated concept, both factually and legally." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004).

with respect to the second alleged corrective disclosure on November 3, 2016, namely that: (i) any allegedly concealed truth was fully disclosed by the first alleged corrective disclosure on August 6, 2015; (ii) the second alleged corrective disclosure—a *Bloomberg* article discussing the ongoing DOJ investigation—did not reveal any new facts; (iii) any alleged facts revealed by the second corrective disclosure were rendered moot by the fact that Allergan had sold its generic drug business (and associated liabilities) to Teva by the time the disclosure was made; and (iv) the stock rebounded following this disclosure. ¶ 81. Resolution of these issues—and ultimately, the Settlement Class's damages—would have hinged upon extensive expert discovery and testimony. Thus, "establishing damages at trial would lead to a battle of experts . . . with no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001); *see also Lazy Oil, Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 337 (W.D. Pa. 1997), *aff'd*, 166 F.3d 581 (3d Cir. 1999) ("[C]ourts have recognized the need to compromise where divergent testimony would render the litigation an expensive and complicated battle of experts.").[14]

4. Risks to Maintaining the Class Action Through Trial

Lead Plaintiffs' Class Certification Motion was pending when the Settlement was reached. In opposing that motion, Defendants advanced multiple arguments that, if successful, could have altered the landscape of this Action altogether. ¶ 50. Although Lead Plaintiffs believe the Court would have granted their Class Certification Motion, the Settlement removes this uncertainty and eliminates the risk that any certified class might have been decertified either before or during trial. *See* Fed. R. Civ. P. 23(c)(1)(C); *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 322 (3d Cir. 2011) ("a district court retains the authority to decertify or modify a class at any time during the litigation");

[14] Lead Plaintiffs also faced a statute of limitations risk with respect to their Section 14(a) claims. ¶ 83.

JPMorgan Chase, 2014 WL 1224666, at *11 ("The possibility of decertification . . . favors settlement.").

5. The Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The eighth and ninth *Girsh* factors—the reasonableness of the settlement in light of the best possible recovery and the risks of litigation—also weigh in favor of approving the Settlement. "In making [an] assessment [of these factors], the Court compares the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, with the amount of the proposed settlement." *PAR Pharm.*, 2013 WL 3930091, at *7; *In re AT&T Corp., Sec. Litig.*, 455 F.3d 160, 170 (3d Cir. 2006) ("[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved. . . . [r]ather, the percentage recovery, must represent a material percentage recovery to plaintiff in light of all the risks") (first alteration in original). The $130 million all cash Settlement meets this threshold.

Here, accepting certain (but not all) of Defendants' loss causation and damages arguments (¶¶ 77-82), the Settlement Amount represents between 13.4% (should Defendants prevail on their defense concerning the second corrective disclosure) and 23.4% (should Defendants also partially prevail on their defense concerning the impact of non-fraud related news on the first corrective disclosure date and establish that only half of the stock price decline on that date was caused by fraud) of the maximum damages that could be realistically established at trial as estimated by Lead Plaintiffs' damages consultant. ¶¶ 10, 104. This exceeds the median recovery in comparable cases.[15] Additionally, this range of recovery is *before* considering the myriad risks to liability—

[15] *See supra* note 2 (percentage of damages recovered in securities class action settlements was 2.6% of estimated damages for cases with estimated damages between $500 million and $999 million in 2020, and 3.3% of estimated damages for cases with the same range of estimated

any of which could have resulted in investors recovering less than the Settlement Amount, or nothing. *Id.*

6. Stage of the Proceedings and Amount of Discovery Completed

A settlement following sufficient discovery and genuine arms-length negotiation is "presumptively valid." *Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *5 (E.D. Pa. Dec. 9, 2016) ("[C]ourts generally recognize that a proposed class settlement is presumptively valid where . . . the parties engaged in arm's length negotiations after meaningful discovery.") (alterations in original). Further, "[a] court is more likely to approve a settlement if most of the discovery is completed because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case." *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012).

From the commencement of this Action in December 2016 through the Parties' agreement to settle in June 2021, Lead Plaintiffs and Lead Counsel spent substantial time and resources analyzing and zealously litigating the factual and legal issues involved in the Action. ¶¶ 6, 17-61. Before reaching the Settlement, Lead Plaintiffs, through their counsel, had completed fact discovery—which included, *inter alia*: analyzing more than 2.6 million pages of documents from Defendants and third parties; serving and responding to numerous discovery requests and subpoenas; litigating discovery disputes; preparing class certification and merits expert reports; and taking or defending twenty-four depositions. ¶¶35-45. Prior to settlement, Lead Plaintiffs, through their counsel, also briefed motions to dismiss, moved for class certification, and consulted with experts. ¶¶ 23, 29, 49-53, 46-48. In addition, Lead Plaintiffs and Lead Counsel prepared

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damages for years 2011 through 2019). *See also Wilmington Tr.*, 2018 WL 6046452, at *8 (noting "Third Circuit median recovery of 5% of damages in class action securities litigation").

detailed evidence-based mediation presentations, and participated in hard-fought settlement negotiations, including formal mediation with Judge Phillips. ¶¶ 55-57.

This substantial record demonstrates that, when the Settlement was reached, Lead Plaintiffs and Lead Counsel had more than enough information to make an informed decision about settlement based on the "strengths and weaknesses of their case." *Dartell v. Tibet Pharms., Inc.,* 2017 WL 2815073, at *5 (D.N.J. June 29, 2017) (finding, in a securities class action, the third *Girsh* factor weighed in favor of settlement where the parties had "fully briefed motions to dismiss, a motion for class certification, and [had] engaged in discovery," as well as the "engage[ment of] two experts").

7. The Ability of Defendants to Withstand a Greater Judgment

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the [s]ettlement." *Cendant*, 264 F.3d at 240; *In re Ikon Office Sols., Inc., Sec. Litig.,* 194 F.R.D. 166, 183 (E.D. Pa. 2000) (defendants' inability to pay a greater sum would support approval of settlement). Even the "fact that [defendants] could afford to pay more does not mean that [they are] obligated to pay any more than what the . . . class members are entitled to under the theories of liability that existed at the time the settlement was reached." *Warfarin Sodium*, 391 F.3d at 538; *see also In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *5 (D.N.J. Dec. 31, 2009) ("pushing for more in the face of risks and delay would not be in the interests of the class"). Here, while Defendants arguably could afford to pay more, Lead Plaintiffs respectfully submit that this factor should not be viewed as determinative by this Court, considering the other factors supporting approval of the Settlement.

8. The Reaction of the Settlement Class to Date

In assessing a settlement, courts in the Third Circuit also consider "the reaction of the class to the settlement." *Girsh*, 521 F.2d at 157; *NFL Players*, 821 F.3d at 438. The deadline for

Settlement Class Members to object to the Settlement or request exclusion from the Settlement Class is October 27, 2021. ¶ 12. As of the date of this filing, the Settlement has received no objections and there have been no requests for exclusion from the Settlement Class. *Id.*; Ex. 4, ¶ 12.[16] Lead Plaintiffs will address objections to the Settlement, if any, as well as any requests for exclusion in their reply.

9. The Relevant *Prudential* Factors Also Support the Settlement

In addition to Rule 23(2)(e) and traditional *Girsh* factors, the Third Circuit also advises courts to address the factors set forth in *Prudential*, where applicable. These factors are:

> [(1)] the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; [(2)] the existence and probable outcome of claims by other classes and subclasses; [(3)] the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved—or likely to be achieved—for other claimants; [(4)] whether class or subclass members are accorded the right to opt out of the settlement; [(5)] whether any provisions for attorneys' fees are reasonable; and [(6)] whether the procedure for processing individual claims under the settlement is fair and reasonable.

148 F.3d at 323. Each of the *Prudential* factors also weighs in favor of the Settlement.

With respect to the first *Prudential* factor, Lead Plaintiffs and Lead Counsel had a well-developed understanding of the strengths and weaknesses of the case based on their extensive investigation of the Settlement Class's claims, consultation with experts, substantial discovery, and mediation efforts. *See supra* § II.C.6. With respect to the second and third *Prudential* factors, as noted above, the Settlement, to Lead Counsel's knowledge, is the first to be achieved among the federal securities cases arising from the antitrust allegations at issue in the Action. With respect

[16] As discussed in the Joint Declaration, there has been one objection to Lead Counsel's request for attorneys' fees and expenses. ¶¶ 101-102.

to the fourth *Prudential* factor, Settlement Class Members were afforded the opportunity to opt out of the Settlement Class and, so far, none have chosen to do so. With respect to the fifth and sixth *Prudential* factors, Lead Counsel's request for attorneys' fees is reasonable as set forth below in § II.D, and in the accompanying Fee Memorandum, and the Plan of Allocation, which will govern the allocation of the Net Settlement Fund, is fair and reasonable as set forth below in § III.

D. The Remaining Rule 23(e)(2) Factors Support Final Approval

In evaluating the Settlement, Rule 23(e)(2) instructs courts to also consider: (i) the effectiveness of the proposed method of distributing the relief provided to the class, including the method of processing class member claims; (ii) the terms of any proposed award of attorney's fees, including the timing of payment; (iii) any other agreement made in connection with the proposed settlement; and (iv) whether class members are treated equitably relative to each other. Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv) & (e)(2)(D). These factors also support final approval of the Settlement.

First, the proposed method of distribution and claims processing ensures equitable treatment of Settlement Class Members. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D). Settlement Class Members' claims will be processed and the Net Settlement Fund distributed pursuant to a standard method routinely approved in securities class actions. The Court-authorized Claims Administrator, A.B. Data, Ltd. ("A.B. Data"), will review and process all Claims received, provide Claimants with an opportunity to cure any deficiency or request judicial review of the denial of their Claims, if applicable, and will ultimately mail or wire Authorized Claimants their *pro rata* share of the Net Settlement Fund, as calculated under the Plan. *See infra* § III; ¶¶ 94-100. Importantly, none of the Settlement proceeds will revert to Defendants. *See* Stipulation, ¶ 13.

Second, the relief provided by the Settlement remains adequate upon consideration of the terms of the proposed award of attorneys' fees, including the timing of any such Court-approved payments. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). As discussed in the accompanying Fee

Memorandum, the requested attorneys' fees of 23.8% of the Settlement Fund, to be paid only upon the Court's approval, are reasonable in light of the efforts devoted by Plaintiffs' Counsel over the past four+ years, the recovery obtained for the Settlement Class, and the significant risks Plaintiffs' Counsel shouldered at every step.[17] The request for attorneys' fees is also in line with attorneys' fee percentages awarded to counsel in other complex class actions in this Circuit. *See Wilmington Tr.*, 2018 WL 6046452, at *9 (finding 28% to be a "typical fee percentage" in the Third Circuit); *In re Datatec Sys., Inc. Sec. Litig.*, 2007 WL 4225828, at *8 (D.N.J. Nov. 28, 2007) (providing that fees of 25% to 33 1/3% of the recovery are typical in similar cases). Of particular note, the approval of attorneys' fee awards is entirely separate from the approval of the Settlement, and neither Lead Plaintiffs nor Lead Counsel may terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees. Stipulation, ¶ 16.[18]

Lastly, as previously disclosed, the only agreement the Parties entered into in addition to the initial Term Sheet and the Stipulation was a confidential Supplemental Agreement regarding requests for exclusion. *See* Stipulation, ¶ 36; *see also* Fed. R. Civ. P. 23(e)(2)(C)(iv). The Supplemental Agreement provides Allergan with the option to terminate the Settlement in the event Settlement Class Members who timely and validly request exclusion from the Settlement Class meet certain conditions. Stipulation, ¶ 36. This type of agreement is standard in securities class actions and has no negative impact on the fairness of the Settlement. *See, e.g.*, *Hefler v. Wells Fargo & Co.*, 2018 WL 4207245, at *11 (N.D. Cal. Sept. 4. 2018) ("The existence of a termination

[17] In connection with its fee request, Lead Counsel also seek payment from the Settlement Fund of Plaintiffs' Counsel's Litigation Expenses in the total amount of $2,558,093.51, which total expense amount *includes* requests for reimbursement of Lead Plaintiffs' reasonable costs in the aggregate amount of $84,850.00. ¶ 101.

[18] Pursuant to the Stipulation, Court-awarded attorneys' fees will be paid upon issuance of such an award. Stipulation, ¶ 16.

option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.").

For the reasons set forth above and in the Joint Declaration, the Settlement is fair, reasonable, and adequate when evaluated under any standard, or set of factors and, therefore, warrants the Court's final approval.

III. THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

Approval 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." *PAR Pharm.*, 2013 WL 3930091, at *3; *Ocean Power*, 2016 WL 6778218, at *23 (same). To meet this standard, a plan of allocation recommended by experienced and competent class counsel "need only have a reasonable and rational basis." *Par Pharm.*, 2013 WL 3930091, at *8. Generally, a plan of allocation that reimburses class members based on the relative strength and value of their claims is reasonable. *See Ikon Office Sols.*, 194 F.R.D. at 184; *see also In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (deeming plan of allocation "even handed" where "claimants are to be reimbursed on a *pro rata* basis for their recognized losses based largely on when they bought and sold their shares of [eligible] stock").

Here, the Plan (set forth in Appendix A to the Notice) was developed by Lead Counsel in consultation with Lead Plaintiffs' damages consultant, Chad Coffman, CFA, and his team at Global Economics Group, LLC. ¶ 96. The Plan is designed to equitably distribute the Net Settlement Fund to Settlement Class Members who timely submit valid Claims demonstrating they suffered economic losses from Defendants' alleged violation of the federal securities laws set forth in the Second Amended Complaint, as opposed to economic losses caused by market or industry factors or company-specific factors unrelated thereto. *Id.*

The Plan is based upon the estimated amount of alleged artificial inflation in the per share price of Allergan common stock and Allergan preferred stock (together, "Allergan Securities") during the Class Period. *Id*. To have a Recognized Claim under the Plan, a Claimant must have purchased or otherwise acquired their Allergan Securities during the Class Period (*i.e.*, between October 29, 2013 and November 2, 2016, both dates inclusive) and held such securities through at least one of the alleged corrective disclosures—on August 6, 2015 and November 3, 2016, that removed alleged artificial inflation related to that information. ¶ 97. Further, a Claimant's loss under the Plan will depend upon several factors, including whether the Claimant purchased/acquired Allergan common stock or Allergan preferred stock, the date(s) when the Claimant purchased/acquired their Allergan Securities during the Class Period, and whether such shares were sold and if so, when and at what price, taking into account the PSLRA's statutory limitation on recoverable damages. *Id*. Authorized Claimants will recover their proportional "pro rata" amount of the Net Settlement Fund based on their calculated loss as a percentage of all Authorized Claimants' calculated losses. *See Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 105 (D.N.J. Feb. 6, 2018) ("pro rata distributions are consistently upheld . . . ."); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8152913, at *5 (C.D. Cal. Sept. 12, 2005) (approving plan of allocation where allocation was "*pro rata* across the class").

The Plan was fully disclosed in the Notice and, to date, no objections to the Plan have been received. ¶ 100. Accordingly, Lead Plaintiffs and Lead Counsel believe the Plan is fair, reasonable, and adequate and should be approved. Fed. R. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D).

IV. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

As set forth in Lead Plaintiffs' motion for preliminary approval of the Settlement, the Settlement Class satisfies all of the requirements of Rules 23(a) and (b)(3). *See* ECF No. 223-4 at 20-28; Preliminary Approval Order, ¶¶ 1-3 (finding the Court will likely be able to certify the

Settlement Class in connection with final approval). None of the facts supporting certification of the Settlement Class have changed since Lead Plaintiffs submitted their preliminary approval motion. Accordingly, Lead Plaintiffs respectfully request that the Court certify the Settlement Class under Rules 23(a) and (b)(3) for purposes of effectuating the Settlement.

V. NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23, DUE PROCESS, AND THE PSLRA

Lead Plaintiffs have provided the Settlement Class with adequate notice of the Settlement. Here, notice satisfied both: (i) Rule 23, as it was "the best notice . . . practicable under the circumstances" and directed "in a reasonable manner to all class members who would be bound by the" Settlement, Fed. R. Civ. P. 23(c)(2)(B) & (e)(1)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974); and (ii) due process, as it was "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

In accordance with the Court's Preliminary Approval Order, A.B. Data began mailing and/or e-mailing copies of the Notice Packet to potential Settlement Class Members and nominees on August 27, 2021. *See* Ex. 5, ¶¶ 3-5. Through October 12, 2021, A.B. Data has mailed a total of 1,033,602 Notice Packets. *See id.*, ¶ 8. In addition, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and transmitted over *PR Newswire* on September 13, 2021. *See id.*, ¶ 9. A.B. Data also established a dedicated website, www.AllerganDrugPricingSecuritiesLitigation.com, to provide additional information about the Action and the Settlement as well as access to downloadable copies of the Notice and Claim Form

and other Settlement-related documents. *See id.*, ¶ 11.[19] Copies of the Notice and Claim Form can also be downloaded from Lead Counsel's websites, www.blbglaw.com and www.ktmc.com.

Collectively, the notices apprise Settlement Class Members of, *inter alia*: (i) the amount of the Settlement; (ii) the reasons why the Parties are proposing the Settlement; (iii) the estimated average recovery per affected share of Allergan common stock and per affected share of Allergan preferred stock; (iv) the maximum amount of attorneys' fees and expenses that will be sought; (v) the identity and contact information for representatives from Lead Counsel available to answer questions concerning the Settlement; (vi) the right of Settlement Class Members to object to the Settlement; (vii) the right of Settlement Class Members to request exclusion from the Settlement Class; (viii) the binding effect of a judgment on Settlement Class Members; (ix) the dates and deadlines for certain Settlement-related events; and (x) the opportunity to obtain additional information about the Action and the Settlement by contacting Lead Counsel, the Claims Administrator, or visiting the Settlement website. *See* Fed. R. Civ. P. 23(c)(2)(B); 15 U.S.C. § 78u-4(a)(7). The Notice also contains the Plan of Allocation and provides Settlement Class Members with information on how to submit a Claim Form in order to be eligible to receive a distribution from the Net Settlement Fund. *See* Ex. 4, Exs. A & B. The content disseminated through this notice campaign was more than adequate. *See In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013) ("Generally speaking, the notice should contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement or, when relevant, opting out of the class.").

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[19] On July 15, 2021, Defendants also issued notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 et seq. ECF No. 230-1, ¶ 3.

In sum, this combination of individual first-class mail to all Settlement Class Members who could be identified with reasonable effort, supplemented by notice in an appropriate publication, transmission over a newswire, and publication on internet websites, was "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). Comparable notice programs are routinely approved by Courts in this Circuit. *See, e.g.*, *Valeant*, 2020 WL 3166456, at *6; *Ocean Power*, 2016 WL 6778218, at *10; *ViroPharma*, 2016 WL 312108, at *5-6.

VI. CONCLUSION

For the reasons set forth herein and in the Joint Declaration, Lead Plaintiffs respectfully request that the Court grant final approval of the Settlement, approve the Plan of Allocation, and grant final certification of the Settlement Class for settlement purposes.

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Respectfully submitted,

s/ James E. Cecchi

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