James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744

Liaison Counsel for Lead Plaintiffs and the Settlement Class

John C. Browne
Lauren A. Ormsbee
Michael Mathai
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1448

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

Matthew L. Mustokoff
Margaret E. Mazzeo
Jonathan F. Neumann
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

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 COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES

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 Counsel Kessler Topaz Meltzer & Check, LLP and Bernstein Litowitz Berger & Grossmann LLP, Court-appointed Lead Counsel for Court-appointed Lead Plaintiffs Sjunde AP-Fonden and Union Asset Management Holding AG (collectively, "Lead Plaintiffs") and the Settlement Class, will and hereby do move the Court, pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, for an order granting an award of attorneys' fees and litigation expenses in the above-captioned securities class action.

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, a proposed order 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

James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com
decklund@carellabyrne.com

Liaison Counsel for Lead Plaintiffs and the Settlement Class

Matthew L. Mustokoff
Margaret E. Mazzeo
Jonathan F. Neumann
KESSLER TOPAZ
MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
mmustokoff@ktmc.com
mmazzeo@ktmc.com
jneumann@ktmc.com

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

John C. Browne
Lauren A. Ormsbee
Michael M. Mathai
BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1448
johnb@blbglaw.com
lauren@blbglaw.com
michael.mathai@blbglaw.com

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

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 an Award of Attorneys' Fees and Litigation Expenses 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

James E. Cecchi
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com

Liaison Counsel for Lead Plaintiffs and the Settlement Class

James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744

Liaison Counsel for Lead Plaintiffs and the Settlement Class

Matthew L. Mustokoff
Margaret E. Mazzeo
Jonathan F. Neumann
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

John C. Browne
Lauren A. Ormsbee
Michael Mathai
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1448

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

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 COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT 1

ARGUMENT 5

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND 5

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND 6

III. THE REQUESTED FEE IS REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR THE LODESTAR METHOD 7

A. The Requested Fee Is Reasonable Under the Percentage-of-Recovery Method 7

B. The Reasonableness of the Requested Fee Is Confirmed by a Lodestar Cross-Check 8

IV. THE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE 10

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request 11

B. The Reaction of the Settlement Class to the Settlement and Fee Request To Date Supports Approval of the Fee Request 11

C. The Skill and Efficiency of Plaintiffs' Counsel Support Approval of the Fee Request 14

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request 15

E. The Risk of Non-Payment Supports Approval of the Fee Request 17

F. The Significant Time Devoted to this Case by Plaintiffs' Counsel Supports Approval of the Fee Request 18

G. The Requested Fee of 23.8% of the Settlement Fund is within the Range of Fees Typically Awarded in Actions of this Nature 19

H. The Fact that All Benefits of the Settlement Are Attributable to the Efforts of Plaintiffs' Counsel Support Approval of the Fee Request 19

I. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request 19

V. LEAD COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED 20

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS UNDER 15 U.S.C. §78U-4(A)(4) 21

VII. CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

CASES

Alaska Elec. Pension Fund v. Pharmacia Corp.,
No. 03-1519, slip op. (D.N.J. Jan. 30, 2013) (ECF No. 405) 8

In re Am. Int'l Grp., Inc. Sec. Litig.,
916 F. Supp. 2d 454 (S.D.N.Y. 2013)...12

In re AremisSoft Corp. Sec. Litig.,
210 F.R.D. 109 (D.N.J. 2002)..8, 14

In re AT&T Corp. Sec. Litig.,
455 F.3d 160 (3d Cir. 2006)...6, 9, 19

In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.,
148 F. Supp. 3d 303 (S.D.N.Y. 2015)...8

Bateman Eichler, Hill Richards, Inc. v. Berner,
472 U.S. 299 (1985)...5

Blum v. Stenson,
465 U.S. 886 (1984)...20

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)...5

In re Broadcom Corp. Sec. Litig.,
2005 WL 8153006 (C.D. Cal. Sept. 12, 2005) 8

In re Brocade Sec. Litig.,
No. 05-cv-2042, slip op. (N.D. Cal. Jan. 26, 2009) (ECF No. 496) 8

In re Cendant Corp. Sec. Litig.,
404 F.3d 173 (3d Cir. 2005)..5, 7

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000)...14

In re Datatec Sys., Inc. Sec. Litig.,
No. 04-525(GEB), 2007 WL 4225828 (D.N.J. Nov. 28, 2007) 7, 15

In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.,
582 F.3d 524 (3d Cir. 2009)...5, 6, 10, 20

In re Equifax Inc. Sec. Litig.,
No. 1:17-cv-03463-TWT, slip op. (N.D. Ga. June 26, 2020) (ECF No. 179).........................23

Fogarazzo v. Lehman Bros., Inc.,
No. 03-5194(SAS), 2011 WL 671745 (S.D.N.Y. Feb. 23, 2011)....................15

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995)....................7

In re Genta Sec. Litig.,
No. 04-2123(JAG), 2008 WL 2229843 (D.N.J. May 28, 2008)....................15

Gunter v. Ridgewood Energy Corp.,
223 F.3d 190 (3d Cir. 2000)....................5, 10

Hensley v. Eckerhart,
461 U.S. 424 (1983)....................11

In re Ikon Office Sols., Inc., Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).................... passim

In re Ins. Brokerage Antitrust Litig.,
297 F.R.D. 136 (D.N.J. 2013)....................7

J.I. Case Co. v. Borak,
377 U.S. 426 (1964)....................5

In re Linerboard Antitrust Litig.,
MDL 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004) *amended*, MDL 1261,
2004 WL 1240775 (E.D. Pa. June 4, 2004)....................11

Louisiana Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.,
No. 03-CV-4372 (DMC), 2009 WL 4730185 (D.N.J. Dec. 4, 2009)....................7

Maley v. Del Glob. Techs. Corp.,
186 F. Supp. 2d 358 (S.D.N.Y. 2002)....................7

In re Marsh & McLennan Cos., Inc. Sec. Litig.,
No. 04-8144(CM), 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009)....................22, 23

Missouri v. Jenkins,
491 U.S. 274 (1989)....................9

New York State Teachers' Ret. Sys. v. Gen. Motors Co., et al.,
Civil Case No. 14-11191 (E.D. Mich.)....................14

In re Ocean Power Techs., Inc.,
No. 3:14-CV-3799, 2016 WL 6778218 (D.N.J. Nov. 15, 2016)....................6, 19, 20

In re Par Pharm. Sec. Litig.,
No. 06-3226 (ES), 2013 WL 3930091 (D.N.J. July 29, 2013)....................5, 23

In re Processed Egg Prods. Antitrust Litig.,
No. 08-md-2002, 2012 WL 5467530 (E.D. Pa. Nov. 9, 2012)..20

In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions,
148 F.3d 283 (3d Cir. 1998)..10, 19, 20

In re Rite Aid Corp. Sec. Litig.,
146 F. Supp. 2d 706 (E.D. Pa. 2001) 8

In re Rite Aid Corp. Sec. Litig.,
362 F. Supp. 2d 587 (E.D. Pa. 2005) 8

In re Rite Aid Corp. Sec. Litig.,
396 F.3d 294 (3d Cir. 2005)..6, 9

In re Royal Dutch/Shell Transp. Sec. Litig.,
No. 04-374(JAP), 2008 WL 9447623 (D.N.J. Dec. 9, 2008) 23

In re Safety Components, Inc. Sec. Litig.,
166 F. Supp. 2d 72 (D.N.J. 2001) 20

In re Schering-Plough Corp. Enhance ERISA Litig.,
No. 08-1432, 2012 WL 1964451 (D.N.J. May 31, 2012)..18

In re Schering-Plough Corp. ENHANCE Sec. Litig.,
No. 08-397 (DMC) (JAD), 2013 WL 5505744 (D.N.J. Oct. 1, 2013)............................9, 23

Schuler v. Medicines Co.,
No. CV 14-1149 (CCC), 2016 WL 3457218 (D.N.J. June 24, 2016)...........................6, 10

In re Signet Jewelers Ltd. Secs. Litig.,
2020 WL 4196468 (S.D.N.Y. July 21, 2020) 8

Silverman v. Motorola, Inc.,
2012 WL 1597388 (N.D. Ill. May 7, 2012), *aff'd*, 739 F.3d 956 (7th Cir.
2013) 8

In re Snap Inc. Sec. Litig.,
Case No. 2:17-cv-03679-SVW-AGR, slip op. (C.D. Cal. Mar. 9, 2021) (ECF
No. 400) 8

Stevens v. SEI Invs. Co.,
No. 18-4205, 2020 WL 996418 (E.D. Pa. Feb. 28, 2020) 10

Sullivan v. DB Invs.,
667 F.3d 273 (3d Cir. 2011)..6, 9

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007)....................5

Trief v. Dun & Bradstreet Corp.,
840 F. Supp. 277 (S.D.N.Y. 1993)....................17

In re Veritas Software Corp. Sec. Litig.,
396 F. App'x 815 (3d Cir. 2010)....................10

In re Veritas Software Corp.. Sec. Litig.,
No. 1:04-cv-00831-SLR, slip op. (D. Del. Aug. 5, 2008) (ECF No. 144)....................23

In re ViroPharma Inc. Sec. Litig.,
No. 12-2714, 2016 WL 312108 (E.D. Pa. Jan. 25, 2016)....................4, 11, 20

W. Palm Beach Police Pension Fund v. DFC Glob. Corp.,
No. CV 13-6731, 2017 WL 4167440 (E.D. Pa. Sept. 20, 2017)....................23

In re Warner Commc'ns Sec. Litig.,
618 F. Supp. 735 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986)....................15, 17

In re Weatherford Int'l Sec. Litig.,
11 Civ. 1646 (JCF) (S.D.N.Y.)....................14

In re Wilmington Trust Sec. Litig.,
No. 10-cv-0990-ER, 2018 WL 6046452 (D. Del. Nov. 19, 2018)....................7, 8

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005)....................5

STATUTES

15 U.S.C. §78U-4(A)(4)....................22

15 U.S.C. § 78u-4(a)(6)....................7

Court-appointed Lead Counsel, Bernstein Litowitz Berger & Grossmann LLP ("BLB&G") and Kessler Topaz Meltzer & Check, LLP ("KTMC"), respectfully submit this memorandum of law in support of their motion for: (i) an award of attorneys' fees for all Plaintiffs' Counsel[1] in the amount of 23.8% of the Settlement Fund;[2] (ii) an award of $2,473,243.51 in litigation expenses reasonably and necessarily incurred by Plaintiffs' Counsel in prosecuting and resolving the Action; and (iii) awards of $13,600.00 to Sjunde AP-Fonden ("AP7") and $71,250.00 to Union Asset Management Holding AG ("Union," and together with AP7, "Lead Plaintiffs") for their costs incurred directly related to their representation of the Settlement Class, as authorized by the Private Securities Litigation Reform Act of 1995 (the "PSLRA").[3]

PRELIMINARY STATEMENT

The proposed Settlement, which provides for a $130,000,000 cash payment for the benefit of the Settlement Class, is an outstanding result. The recovery obtained was achieved as a direct result of the skill, tenacity, and effective advocacy of Lead Counsel, assisted by the other Plaintiffs' Counsel firms, who litigated this Action for over four years against highly skilled defense counsel, including successfully surmounting Defendants' motion to dismiss and conducting extensive

---

[1] Plaintiffs' Counsel consists of (i) Lead Counsel BLB&G and KTMC; (ii) Court-appointed Liaison Counsel Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C. ("Carella Byrne"); and (iii) additional counsel, The Rosen Law Firm, P.A. ("Rosen Law") and Motley Rice LLP ("Motley Rice").

[2] The 23.8% fee request represents a blended rate of 25% of the first $100 million of the $130 million Settlement Amount and 20% of remaining $30 million of the Settlement Amount, rounded down from 23.846%.

[3] Capitalized terms that are not defined in this memorandum of law have the same meanings as set forth in the Stipulation and Agreement of Settlement dated as of July 8, 2021 (ECF No. 223-1) ("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."), filed herewith. Citations to "¶ __" herein refer to paragraphs in the Joint Declaration and citations to "Ex. __" herein refer to exhibits to the Joint Declaration.

discovery. Plaintiffs' Counsel, who litigated this Action on a fully contingent fee basis, faced significant challenges to proving both liability and damages that posed the serious risk that there might be no recovery whatsoever in the Action.

As detailed in the accompanying Joint Declaration,[4] Lead Counsel vigorously pursued the claims in this Action for the benefit of the Settlement Class. Among other things, Lead Counsel, with the assistance of the other Plaintiffs' Counsel firms: (i) conducted a wide-ranging investigation concerning the alleged misstatements made by Defendants, including numerous interviews with former Allergan employees and a thorough review of publicly available information (¶ 20); (ii) drafted the Consolidated Amended Class Action Complaint filed on May 1, 2017 ("First Amended Complaint") and the Second Amended Class Action Complaint filed on November 28, 2017 ("Second Amended Complaint") (¶¶ 21, 27); (iii) researched and drafted detailed briefing in opposition to Defendants' motion to dismiss the First Amended Complaint and Defendants' motion to dismiss the Second Amended Complaint (¶¶ 22-25, 28-30); (iv) participated in oral argument on Defendants' motion to dismiss the Second Amended Complaint (¶ 31); (v) consulted extensively with experts in damages, loss causation, market efficiency, and antitrust matters (¶¶ 46-48); (vi) prepared and filed Lead Plaintiffs' motion for class certification, including an accompanying expert declaration on market efficiency and class-wide damages (¶ 49); (vii) undertook extensive fact discovery efforts, which included obtaining, reviewing, and analyzing more than 2.6 million pages of documents, serving numerous subpoenas

[4] The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the services Plaintiffs' Counsel provided for the benefit of the Settlement Class; the nature of the claims asserted; the negotiations leading to the Settlement; the risks and uncertainties of the litigation; and the facts and circumstances underlying Lead Counsel's request for an award of attorneys' fees and expenses.

on third parties, and deposing 20 fact witnesses (¶¶ 36-37); (viii) prepared a detailed mediation statement that addressed both liability and damages (¶ 56); and (ix) engaged in extensive arm's-length settlement negotiations with Defendants through a mediator to resolve the Action (¶¶ 55-57).

The Settlement achieved through Plaintiffs' Counsel's efforts is a particularly favorable result when considered in light of the substantial litigation risks in the Action, including the risks associated with proving Defendants' liability and establishing loss causation and the Settlement Class's full amount of damages. These risks are detailed in the Joint Declaration at paragraphs 63 to 86 and are summarized in the memorandum of law supporting the Settlement. These risks posed a real possibility that Lead Plaintiffs and the Settlement Class would not be able to recover or would have recovered a much lesser amount if the Action proceeded.

As compensation for their efforts on behalf of the Settlement Class and for the risk of nonpayment they faced in bringing and prosecuting the Action on a contingent basis, Lead Counsel now seek an attorney-fee award for all Plaintiffs' Counsel in the amount of 23.8% of the Settlement Fund. The requested fee is well within the range of fees that courts in this Circuit have awarded in securities class actions with comparable recoveries on a percentage basis. Further, the requested fee represents a multiplier of approximately 1.64 on Plaintiffs' Counsel's total lodestar, which is well within the range of multipliers typically awarded in class actions with significant contingency risks such as this one.

Moreover, the fee request has the full support of Lead Plaintiffs. *See* Declaration of Richard Gröttheim, submitted on behalf of AP7 (Ex. 1) ("Gröttheim Decl."), ¶ 11; Declaration of Jochen Riechwald, submitted on behalf of Unition (Ex. 2) ("Riechwald Decl."), ¶ 11. AP7 and Union—both sophisticated institutional investors that actively supervised the Action—have each endorsed

the fee request and believe that a 23.8% fee award is reasonable in light of the result achieved in the Action, the quality of the work counsel performed, and the risks of the litigation. *Id.* As a result, the fee request is entitled to a "presumption of reasonableness." *In re ViroPharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *15 (E.D. Pa. Jan. 25, 2016) ("Where the Lead Plaintiff approves the Lead Plaintiff's counsel's request[ed] fee award – as Lead Plaintiff does here – the Court should afford the fee requested a presumption of reasonableness.").

In addition, while the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, just one potential objection to the fee and expense application has been received. ¶¶ 12; 102, Ex. 10. The objection, submitted by Dr. Stephen Francis Schoeman, is invalid because it fails to provide any documentation to establish that Dr. Schoeman is a member of the Settlement Class—a threshold standing requirement to object. However, even if Dr. Schoeman's objection were valid, for the reasons discussed below, the objection is without merit and should be rejected by the Court, as other similar objections filed by Dr. Schoeman have been rejected by other courts. *See* Section IV.B. below.[5]

For all the reasons set forth herein and in the Joint Declaration, Lead Counsel respectfully submit that the requested attorneys' fees and expenses are fair and reasonable under applicable legal standards and, therefore, should be awarded by the Court.

[5] The formal deadline for submitting objections is October 27, 2021. As provided in the Court's Preliminary Approval Order (ECF No. 228), Lead Plaintiffs will file reply papers no later than November 10, 2021. The reply papers will respond further to Dr. Schoeman's objection and any other objections received.

ARGUMENT

I. PLAINTIFFS' COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND

It is well settled that an attorney who maintains a lawsuit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("attorneys whose efforts create, discover, increase, or preserve a common fund are entitled to compensation"); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009); *In re Par Pharm. Sec. Litig.*, No. 06-3226 (ES), 2013 WL 3930091, at *9 (D.N.J. July 29, 2013).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys' fees from a common fund ensure that "competent counsel continue to be willing to undertake risky, complex, and novel litigation." *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (citations omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."). Indeed, the Supreme Court has emphasized that private securities actions, such as the instant action, provide "'a most effective weapon in the enforcement' of the securities laws and are 'necessary supplement to [SEC] action.'" *Bateman Eichler, Hill Richards, Inc. v. Berner,* 472 U.S. 299, 310 (1985) (quoting *J.I. Case Co. v. Borak,* 377 U.S. 426, 432 (1964)); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007).

Courts in this Circuit have consistently adhered to these teachings. *See, e.g., Schuler v. Medicines Co.*, No. CV 14-1149 (CCC), 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) ("Under the common fund doctrine, 'a private plaintiff, or plaintiff's attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys' fees.'") (quoting *Diet Drugs*, 582 F.3d at 540); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. In the Third Circuit, the percentage-of-recovery method is "generally favored" in cases involving a settlement that creates a common fund. *See Sullivan v. DB Invs.*, 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method "because it allows courts to award fees from the [common] fund 'in a manner that rewards counsel for success and penalizes it for failure.'"); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Rite Aid*, 396 F.3d at 300; *see In re Ocean Power Techs., Inc.*, No. 3:14-CV-3799, 2016 WL 6778218, at *24 (D.N.J. Nov. 15, 2016). The Third Circuit also recommends that the percentage award be "cross-check[ed]" against the lodestar method to ensure its reasonableness. *See Sullivan*, 667 F.3d at 330.

The use of the percentage of recovery method also comports with the language of the PSLRA, which states 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) (emphasis added); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002) (when drafting the PSRLA, Congress "indicated a preference for the use of the percentage method"). Thus, "the PSLRA has made percentage-of-recovery the standard for determining whether attorneys' fees are reasonable." *Cendant*, 404 F.3d at 188 n.7.

III. THE REQUESTED FEE IS REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY METHOD OR THE LODESTAR METHOD

A. The Requested Fee Is Reasonable Under the Percentage-of-Recovery Method

The requested fee of 23.8% of the Settlement Fund is reasonable under the percentage-of-recovery method. While there is no absolute rule, courts in the Third Circuit have observed that fee awards generally range from 19% to 45% of the settlement fund. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *Ikon*, 194 F.R.D at 196. Fees most commonly range from 25% to one-third of the recovery. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery"); *Louisiana Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (same); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-525(GEB), 2007 WL 4225828, at *8 (D.N.J. Nov. 28, 2007) (same); *see also In re Wilmington Trust Sec. Litig.*, No. 10-cv-0990-ER, 2018 WL 6046452, at *9 (D. Del. Nov. 19, 2018) (finding 28% to be a "typical fee percentage" in the Third Circuit).

A review of attorneys' fees awarded in securities class actions with comparably sized settlements in this Circuit strongly supports the reasonableness of the requested 23.8% fee. *See*

Alaska Elec. Pension Fund v. Pharmacia Corp., No. 03-1519, slip op. at 4 (D.N.J. Jan. 30, 2013) (ECF No. 405) (awarding 27.5% of $164 million settlement) (Ex. 11); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 130-31 (D.N.J. 2002) (awarding 28% of $194 million settlement); *In re Rite Aid Corp. Sec. Litig.*, 362 F. Supp. 2d 587, 590-91 (E.D. Pa. 2005) (awarding 25% of $126.6 million settlement); *In re Rite Aid Corp. Sec. Litig.* ("*Rite Aid II*"), 146 F. Supp. 2d 706, 734-36 (E.D. Pa. 2001) (awarding 25% of $193 million settlement); *In re Wilmington Trust Sec. Litig.*, No. 10-cv-00990-ER, 2018 WL 6046452, at *9 (D. Del. Nov. 19, 2018) (awarding 28% of $210 million settlement); *Ikon*, 194 F.R.D. at 192-197 (awarding 30% of $111 million settlement net of expenses). In addition, Lead Counsel's fee request is consistent with fees awarded by courts in other Circuits in similarly sized securities class action settlements. *See, e.g., In re Snap Inc. Sec. Litig.*, Case No. 2:17-cv-03679-SVW-AGR, slip op. at 1-2 (C.D. Cal. Mar. 9, 2021) (ECF No. 400) (awarding 25% of $154,687,500 settlement) (Ex. 12); *In re Signet Jewelers Ltd. Secs. Litig.*, 2020 WL 4196468 at *24 (S.D.N.Y. July 21, 2020) (awarding 25% of $240 million settlement net of expenses); *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 148 F. Supp. 3d 303, 305 (S.D.N.Y. 2015) (awarding 25% of $180 million settlement); *Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *4 (N.D. Ill. May 7, 2012) (awarding 27.5% of $200 million settlement), *aff'd*, 739 F.3d 956, 958-59 (7th Cir. 2013); *In re Brocade Sec. Litig.*, No. 05-cv-2042, slip op. at 13 (N.D. Cal. Jan. 26, 2009) (ECF No. 496) (awarding 25% of $160 million settlement) (Ex. 13); *In re Broadcom Corp. Sec. Litig.*, 2005 WL 8153006, at *4 (C.D. Cal. Sept. 12, 2005) (awarding 25% of $150 million settlement).

B. The Reasonableness of the Requested Fee Is Confirmed by a Lodestar Cross-Check

The Third Circuit recommends that district courts use counsel's lodestar as a "cross-check" to determine whether the fee that would be awarded under the percentage approach is reasonable.

See Sullivan, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.[6] "The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider its calculation under the percentage-of-recovery method." *Rite Aid*, 396 F.3d at 306. "Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award under the [percentage] method." *In re Schering-Plough Corp. ENHANCE Sec. Litig.*, No. 08-397 (DMC) (JAD), 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013).

Through October 6, 2021, Plaintiffs' Counsel have spent over 38,971 hours on the prosecution and resolution of this Action. ¶ 114. Plaintiffs' Counsel's lodestar—which is derived by multiplying the hours spent on the litigation by each firm's current hourly rates for attorneys, paralegals, and other professional support staff—is $18,852,455.25.[7] *Id.* Accordingly, the requested 23.8% fee, which equates to $30,940,000 (plus interest on that amount at the same rate as earned by the Settlement Fund), represents a multiplier of approximately 1.64 on counsel's lodestar.

In complex contingent litigation such as this Action, fees representing multiples above the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. Indeed, lodestar multipliers "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."

---

[6] Under the full "lodestar method," a court multiplies the number of hours each timekeeper spent on the case by the hourly rate, then adjusts that lodestar figure by applying a multiplier to reflect such factors as the risk and contingent nature of the litigation, the result obtained and the quality of the attorneys' work. The multiplier is intended to "account for the contingent nature or risk involved in a particular case and the quality" of the work. *Rite Aid*, 396 F.3d at 305-06.

[7] The Supreme Court has approved the use of current hourly rates to calculate the base lodestar figure as a means of compensating for the delay in receiving payment, inflation, and the loss of interest. *See Missouri v. Jenkins*, 491 U.S. 274, 284 (1989).

Stevens v. SEI Invs. Co., No. 18-4205, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16); *see also In re Veritas Software Corp. Sec. Litig.*, 396 F. App'x 815, 819 (3d Cir. 2010); *Ikon*, 194 F.R.D. at 195 (approving a 2.7 multiplier, noting it was "well within the range of those awarded in similar cases").

Accordingly, the 23.8% fee request here is reasonable under both the percentage-of-the-fund approach and the lodestar approach.

IV. THE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

Under Third Circuit law, district courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common fund cases. *See, e.g., Gunter,* 223 F.3d at 195 ("We give [a] great deal of deference to a district court's decision to set fees."). Nonetheless, in exercising that broad discretion, the Third Circuit has noted that a district court should consider the following factors in determining a fee award:

> (1) the size of the fund created and the number of beneficiaries, (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, (7) the awards in similar cases, (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations, (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained, and (10) any innovative terms of settlement.

Diet Drugs, 582 F.3d at 541 (citing *Gunter*, 223 F.3d. at 195 n.1; *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998)). These fee award factors "need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest." *Id*. at 545; *Schuler*, 2016 WL 3457218, at *9. Each of these factors supports the award of the reasonable 23.8% fee requested by Lead Counsel here.

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("most critical factor is the degree of success obtained"); *In re Viropharma Inc. Sec. Litig.*, No. 12-2714, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016).

Here, Lead Counsel, on behalf of Lead Plaintiffs, secured a Settlement that provides for a substantial and certain payment of $130,000,000. The Settlement also benefits a large number of investors. To date, the Claims Administrator has mailed 1,033,602 copies of the Notice to potential Settlement Class Members and their nominees. *See* Declaration of Adam D. Walter, submitted on behalf of the Claims Administrator, A.B. Data, Ltd. (Ex. 4) ("Walter Decl."), ¶ 8. Accordingly, while the claim-submission deadline is not until December 27, 2021, a large number of Settlement Class Members can be expected to benefit from the Settlement Fund. *See In re Linerboard Antitrust Litig.*, MDL 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) *amended*, MDL 1261, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (size of benefitted population "is best estimated by the number of entities that were sent the notice describing the [Settlement].").

B. The Reaction of the Settlement Class to the Settlement and Fee Request To Date Supports Approval of the Fee Request

The Notice, which has been sent to over 1,000,000 potential Settlement Class Members and their nominees and posted on a publicly accessible website, provided a summary of the terms of the Settlement and stated that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 24% of the Settlement Fund. *See* Notice, attached as Exhibit A to Walter Decl., at ¶¶ 5, 54. The Notice also advised Settlement Class Members that they could object to the Settlement or fee request and explained the procedure for doing so. *See id.* at ¶¶ 63-64. While the

October 27, 2021 objection deadline set by the Court has not yet passed, as noted above, just one potential objection has been received to date.

As noted above, as a threshold matter, the objector, Dr. Stephen Francis Schoeman, has not demonstrated that he is even a Settlement Class Member and has failed to satisfy the basic requirements for submitting an objection. The Preliminary Approval Order requires objectors to provide documentation showing their purchases or acquisitions of Allergan common and/or preferred stock during the Settlement Class Period, and those requirements are set out in the Notice.[8] However, while Dr. Schoeman—a retired attorney—states in his objection that he is a member of the Settlement Class, he has not provided any information or documentation establishing membership in the Settlement Class and, thus, he lacks standing to object. *See In re Am. Int'l Grp., Inc. Sec. Litig.*, 916 F. Supp. 2d 454, 459 (S.D.N.Y. 2013) (it is "uncontested that [an objector who is not a class member] does not have standing under Rule 23 to object to the Settlement"). For this reason alone, Dr. Schoeman's objection should be rejected.

Even if Dr. Schoeman could establish standing, his objection is baseless. Dr. Schoeman's primary objection appears to be that the Notice does not provide sufficient details about the litigation expenses and fee award requested by Lead Counsel. *See* Schoeman Objection, Ex. 10, at 1 ("[T]here is NO DETAILED LISTING at all of the alleged "Litigation Expenses" NOR ANY DETAILED [ ] explanation for the requested payment of the proposed "'24% of the Settlement Fund!'"). However, Dr. Schoeman's complaint about not having the detailed listing of expenses and explanation of the fee award is solved by the detailed fee and expenses information filed with the Court today with this submission. Pursuant to the Court's Preliminary Approval Order, and consistent with class action practices that have been approved hundreds of times by the District of

[8] *See* Preliminary Approval Order, ECF No. 228, at ¶ 19; Notice ¶ 64.

New Jersey and other courts throughout the country, Lead Counsel are filing with the Court today this Memorandum of Law and accompanying declarations in support of their fee and expense application, two weeks in advance of the objection deadline. Lead Counsel's submission sets forth ample support for their fee and expense request, including extensive detail regarding the work performed by Plaintiffs' Counsel on behalf of the Settlement Class, as well as a detailed listing of the expenses incurred by Plaintiffs' Counsel for which payment is sought. Lead Counsel's submission also demonstrates that the fees and expenses requested are appropriate given the quality and amount of work performed, the favorable result for the Settlement Class, and the applicable fee and expense jurisprudence. Lead Counsel's submission will be made available for review by Settlement Class Members on the public docket and the settlement website. Also, while Lead Counsel have no duty to provide individual Settlement Class Members with copies of the Court filings which are available electronically, Lead Counsel will serve copies of the papers directly on Dr. Schoeman by first class mail.

Dr. Schoeman's additional objections to the form of notice being inadequate and untimely are vague and wrong. The Notice mailed to Settlement Class Members, as approved by the Court under the Preliminary Approval Order, is a model form of notice, and the amount of time between the mailing of the Notice and the deadline for submitting objections, as well as the timing of the Settlement Hearing, is constitutionally sufficient and consistent with normal practice. Indeed, the fact that Dr. Schoeman was able to file a letter objection in advance of Lead Counsel even filing their final approval papers proves that the notice system is working perfectly. Finally, Lead Counsel decline to respond to Dr. Schoeman's baseless suggestions that this incredibly successful litigation, which was brought against a well-funded adversary and has been a matter of public record for years, was a "shakedown."

Moreover, Dr. Schoeman has submitted similar objections to other federal courts, which were summarily rejected. *See New York State Teachers' Ret. Sys. v. Gen. Motors Co., et al.*, Civil Case No. 14-11191 (E.D. Mich.); *In re Weatherford Int'l Sec. Litig.*, 11 Civ. 1646 (JCF) (S.D.N.Y.).

In their reply memorandum, which will be filed after the formal objection deadline passes, Lead Counsel will respond further to Dr. Schoeman's objection and any other objections received.

C. The Skill and Efficiency of Plaintiffs' Counsel Support Approval of the Fee Request

Lead Counsel's efforts, assisted by the other Plaintiffs' Counsel firms, have resulted in a favorable outcome for the benefit of the Settlement Class. *See AremisSoft*, 210 F.R.D. at 132 ("the single clearest factor reflecting the quality of class counsels' services to the class are the results obtained.") (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000)).The substantial and certain recovery obtained for the Settlement Class is the direct result of the significant efforts of highly skilled attorneys who possess substantial experience in the prosecution of complex securities class actions.[9] Lead Counsel's success in identifying key confidential witnesses through their investigation, in overcoming Defendants' motion to dismiss in a case with very substantial risks, and in pushing the litigation through the completion of fact discovery, created the circumstances in which Lead Plaintiffs were able to obtain the $130 million Settlement. In addition, Lead Counsel's reputation as attorneys who will zealously carry a meritorious case through trial and appellate levels further enabled them to negotiate the very favorable recovery for the benefit of the Settlement Class.

[9] The experience of Lead Counsel and the other Plaintiffs' Counsel firms is set forth in their firm resumes, which are attached to the Joint Declaration as Exhibits 6A-4, 6B-3, 6C-3, 6D-3, and 6E-3.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel. *See, e.g., Ikon*, 194 F.R.D. at 194; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) ("The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work."). Here, Defendants were represented ably by Quinn Emanuel Urquhart & Sullivan, LLP, a prominent firm with undeniable experience and skill. The ability of Lead Counsel to obtain a favorable outcome for the Settlement Class in the face of this formidable legal opposition further confirms the quality of Lead Counsel's representation.

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request

Securities litigation is regularly acknowledged to be particularly complex and expensive litigation, usually requiring expert testimony on several issues, including loss causation and damages. *See, e.g., Fogarazzo v. Lehman Bros., Inc.*, No. 03-5194(SAS), 2011 WL 671745, at *3 (S.D.N.Y. Feb. 23, 2011) ("securities actions are highly complex"); *In re Genta Sec. Litig.*, No. 04-2123(JAG), 2008 WL 2229843, *3 (D.N.J. May 28, 2008) ("This [securities fraud] action involves complex legal and factual issues, and pursuing them would be costly and expensive."); *In re Datatec Sys., Inc. Sec. Litig.*, No. 04-525(GEB), 2007 WL 4225828, *3 (D.N.J. Nov. 28, 2007) ("[R]esolution of [accounting and damages issues] would likely require extensive and conceptually difficult expert economic analysis. . . . Trial on [scienter and loss causation] issues would [be] lengthy and costly to the parties."). Here, in addition to the complexity of securities litigation, this Action also involved complex antitrust issues – *i.e.*, a "case within a case."

The $130,000,000 recovery is substantial in light of the complexity of this case and the significant risks and expenses that the Settlement Class would have faced by litigating to trial. At the time the Settlement was reached, Lead Counsel, assisted by the other Plaintiffs' Counsel firms

and on behalf of Lead Plaintiffs, had, among other things, (i) conducted a wide-ranging investigation concerning the allegedly fraudulent misrepresentations made by Defendants, including interviews with former Allergan employees and a thorough review of publicly available information (¶ 20); (ii) drafted and filed two detailed amended complaints (¶¶ 21, 27); (iii) researched and drafted extensive papers in opposition to Defendants' motions to dismiss the amended complaints (¶¶ 22-25, 28-30); (iv) moved for class certification (¶ 49); (v) undertook and completed extensive fact discovery efforts, which included numerous meet and confers, obtaining, reviewing, and analyzing more than 2.6 million pages of documents, serving numerous subpoenas on third parties, and deposing 20 fact witnesses (¶¶ 36-37); (vi) consulted extensively with experts in the areas of loss causation, damages, and antitrust matters (¶¶ 46-48); and (vii) engaged in an extensive arm's-length mediation process, including a full day, remote mediation session and the preparation of detailed mediation statements that addressed both liability and damages (¶¶ 55-57).

Nonetheless, had this litigation continued, Lead Plaintiffs, through Plaintiffs' Counsel, would have been required to advance their case through a ruling on class certification and conduct and complete substantial expert discovery (including preparation of expert reports and expert depositions). After the close of expert discovery, it would be highly likely that Defendants would move for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and motions *in limine* would have to be filed and argued. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. Indeed, in complex securities cases, even a victory at the trial stage does not guarantee a successful

outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 ("Even a victory at trial is not a guarantee of ultimate success. If Lead Plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself."). Considering the magnitude, expense, and complexity of this securities case – especially when compared against the significant and certain recovery achieved by the Settlement – Lead Counsel's fee request is reasonable. Accordingly, this factor weighs in Lead Counsel's favor.

E. The Risk of Non-Payment Supports Approval of the Fee Request

Lead Counsel undertook this Action on an entirely contingent fee basis, taking the risk that the litigation would yield no or very little recovery and leave them uncompensated for their time, as well as for their out-of-pocket expenses. As explained in detail in the Joint Declaration, Lead Counsel faced numerous significant risks in this case that could have resulted in no recovery or a recovery smaller than the Settlement Amount. Courts across the country have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., Warner Commc'ns*, 618 F. Supp. at 747-49 (citing cases). This is particularly true in securities litigation, such as this Action, because securities litigation has long been regarded as "notably difficult and notoriously uncertain." *See Trief v. Dun & Bradstreet Corp.*, 840 F. Supp. 277, 281 (S.D.N.Y. 1993).

Plaintiffs' Counsel have not been compensated for any of their time or expenses since the case began in 2016. Since that time, Plaintiffs' Counsel have expended over 38,971 hours in the prosecution of this litigation with a resulting lodestar of $18,852,455.25 and incurred $2,473,243.51 in litigation expenses. "Courts routinely recognize that the risks created by undertaking an action on a contingency fee basis militates in favor of approval." *In re Schering-*

Plough Corp. Enhance ERISA Litig., No. 08-1432, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012).

Because the fee in this matter was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. This factor strongly favors approval of the requested fee.

F. The Significant Time Devoted to this Case by Plaintiffs' Counsel Supports Approval of the Fee Request

As set forth above, since the inception of the case, Plaintiffs' Counsel have expended over 38,971 hours and incurred $2,473,243.51 in expenses prosecuting this Action for the benefit of the Settlement Class. As more fully discussed above and in the Joint Declaration, this Action was vigorously litigated and defended. This includes, *inter alia,* the considerable time spent in the initial investigation of the case; working extensively with experts; seeking out and interviewing confidential witnesses/former employees with key information that would be used to support the Complaint's allegations; researching complex issues of law; preparing and filing the two amended complaints; researching and briefing the issues in connection with Defendants' two motions to dismiss; preparing, undertaking, and defending discovery; preparing Lead Plaintiffs' motion for class certification, including an accompanying report from a market efficiency and damages expert; reviewing and analyzing over 2.6 million pages of documents produced by Defendants and certain non-parties, deposing 20 fact witnesses, preparing for the mediation, drafting a detail mediation statement, and engaging in extensive settlement negotiations. At all times, Lead Counsel conducted their work with skill and efficiency, conserving resources and avoiding any duplication of efforts. The foregoing unquestionably represents a very significant commitment of time, personnel, and out-of-pocket expenses by Lead Counsel, assisted by the other Plaintiffs' Counsel firms, while taking on the substantial risk of recovering nothing for their efforts.

G. The Requested Fee of 23.8% of the Settlement Fund is within the Range of Fees Typically Awarded in Actions of this Nature

As discussed above in Part III, the requested fee of 23.8% of the Settlement Fund is well within the range of fees awarded in comparable cases, when considered as a percentage of the fund or on a lodestar basis. Accordingly, this factor strongly supports approval of the requested fee.

H. The Fact that All Benefits of the Settlement Are Attributable to the Efforts of Plaintiffs' Counsel Support Approval of the Fee Request

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing, because this can indicate whether or not counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338. While the U.S. Department of Justice and several state Attorneys General launched investigations into the alleged generic drug price-fixing conspiracy and some of the Attorney Generals' allegations were referenced in the Complaint (among numerous other independent allegations), no such government investigation or prosecution has produced an admission of fault by any Defendant, and, accordingly, the entire value of the Settlement achieved is attributable to the efforts undertaken by Plaintiffs' Counsel in this litigation. This fact increases the reasonableness of the requested fee award. *See, e.g., AT&T*, 455 F.3d at 173.

I. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request

A 23.8% fee is also consistent with typical attorneys' fees in non-class cases. *See Ocean Power*, 2016 WL 6778218, at *29. If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery. *See, e.g., id.*; *Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."); *Blum v.*

Stenson, 465 U.S. 886, 902 n.19 (1984) (Brennan, J., concurring) ("In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers."). Lead Counsel's requested fee of 23.8% of the Settlement Fund is fully consistent with these private standards.

* * *

Accordingly, the application of the Third Circuit's factors makes clear that Lead Counsel's requested fee of 23.8% of the Settlement Fund is fair and reasonable.[10]

V. LEAD COUNSEL'S APPLICATION FOR REASONABLY INCURRED LITIGATION EXPENSES SHOULD BE APPROVED

Lead Counsel also respectfully request that this Court approve payment of $2,473,243.51 for litigation expenses that Plaintiffs' Counsel incurred in connection with this Action. All of these expenses, which are set forth in declarations submitted by Plaintiffs' Counsel, were reasonably necessary for the prosecution and settlement of this Action. Counsel in a class action are entitled to recover expenses that were "'adequately documented and reasonable and appropriately incurred in the prosecution of the class action.'" *ViroPharma*, 2016 WL 312108, at *18; *accord In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

The expenses for which Lead Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, document management costs, expert/consultant fees, on-line research, court reporting and transcripts, photocopying, postage expenses, and mediation. The largest category of expenses was for the retention of Lead Plaintiffs' experts and consultants in the fields

[10] Another factor the Third Circuit asks district courts to consider is whether the settlement contains "any innovative terms." *Diet Drugs*, 582 F.3d at 541; *Prudential*, 148 F.3d at 340. This Settlement does not, because Lead Counsel believe that an all cash recovery is the best remedy for the injury suffered by the Settlement Class. In these circumstances, the lack of innovative terms "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg Prods. Antitrust Litig.*, No. 08-md-2002, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012).

of market efficiency, loss causation, damages, and antitrust matters including price fixing and market allocation, which total $2,058,245.65, or approximately 83% of the total litigation expenses incurred by Plaintiffs' Counsel. Plaintiffs' Counsel also incurred expenses of $38,821.25 for mediation costs, and $151,942.72 for the combined costs of on-line legal and factual research, among others.

A complete breakdown by category of the expenses incurred by Plaintiffs' Counsel is set forth in Exhibit 7 to the Joint Declaration. These expense items are billed separately by Plaintiffs' Counsel, and such charges are not duplicated in the firm's hourly rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for payment of litigation expenses in an amount not to exceed $4,000,000, which may include the reasonable costs and expenses of Lead Plaintiffs directly related to their representation of the Settlement Class. *See* Walter Decl. Ex. A at ¶¶ 5, 54. The total amount of expenses requested by Lead Counsel is $2,558,093.51, which includes $2,473,243.51 for litigation expenses incurred by Plaintiffs' Counsel and, as further described below, $84,850.00 in reimbursement for costs incurred by Lead Plaintiffs – an amount well below the amount listed in the Notice. To date, there has been one objection related to the expense application, which has been addressed above.

VI. LEAD PLAINTIFFS SHOULD BE AWARDED THEIR REASONABLE COSTS UNDER 15 U.S.C. §78U-4(A)(4)

In connection with their request for an award of Litigation Expenses, Lead Counsel also seek an award of a combined $84,850.00 in costs incurred by Lead Plaintiffs AP7 and Union directly related to their representation of the Settlement Class. The PSLRA specifically provides that an "award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class" may be made to "any representative party serving on behalf of a class."

15 U.S.C. § 78u-4(a)(4). Here, each of the Lead Plaintiffs seek an award based on the time dedicated by their employees in furthering and supervising the Action.

Specifically, AP7 seeks an award of $13,600.00 and Union seeks an award of $71,250.00. *See* Gröttheim Decl. at ¶¶ 14-16; Riechwald Decl. at ¶¶ 14-16. Each of the Lead Plaintiffs took an active role in the litigation and has been fully committed to pursuing the claims on behalf of the proposed class since they became involved in the case. During the course of the litigation, Lead Plaintiffs, among other things: communicated with Lead Counsel regarding case strategy and developments, reviewed and commented on pleadings and briefs filed in the Action, worked with counsel to respond to discovery requests, consulted with Lead Counsel regarding settlement negotiations, and evaluated and approved the proposed Settlement. *See* Gröttheim Decl. at ¶¶ 4-7; Riechwald Decl. at ¶¶ 4-7. In addition, representatives of each of the Lead Plaintiffs prepared for and testified at depositions in connection with the class certification motion, and representatives of Lead Plaintiffs participated in the May 11, 2021 mediation session that preceded the proposed Settlement. Gröttheim Decl. at ¶ 8; Riechwald Decl. at ¶ 8. These efforts required representatives of Lead Plaintiffs to dedicate considerable time and resources to the Action that they would have otherwise devoted to their regular duties.

Numerous courts have approved reasonable awards to compensate lead plaintiffs for the time and effort they spent on behalf of a class. In *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, No. 04-8144(CM), 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009), the court awarded $144,657 to the New Jersey Attorney General's Office and $70,000 to certain Ohio pension funds to compensate them "for their reasonable costs and expenses incurred in managing this litigation and representing the Class." *Id.* at *21. As the court noted, their efforts were "precisely the types of activities that support awarding reimbursement of expenses to class representatives." *Id.*; *see also*

In re Royal Dutch/Shell Transp. Sec. Litig., No. 04-374(JAP), 2008 WL 9447623, at *29 (D.N.J. Dec. 9, 2008) (awarding "$150,000 to Lead Plaintiffs [Pennsylvania State Employees' Retirement System and the Pennsylvania Public School Employees' Retirement System] to compensate them for their reasonable costs and expenses directly relating to their representation of the Class pursuant to 15 U.S.C. § 78u–4(a)(4)"); *In re Equifax Inc. Sec. Litig.*, No. 1:17-cv-03463-TWT, slip op. at 4 (N.D. Ga. June 26, 2020) (ECF No. 179) (awarding $121,375.00 to Union Asset Management Holding AG in PSLRA case); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 1 (D. Del. Aug. 5, 2008) (ECF No. 144) (awarding each lead plaintiff $15,000 in PSLRA case); *Par Pharm.*, 2013 WL 3930091, at *11 (awarding $18,000 to lead plaintiff in PSLRA case based on time and effort devoted to the case); *W. Palm Beach Police Pension Fund v. DFC Glob. Corp.*, No. CV 13-6731, 2017 WL 4167440, at *10 (E.D. Pa. Sept. 20, 2017) (approving PSLRA award reimbursing ATRS for the cost of time spent by its employees calculated in the same manner as here); *Schering-Plough Corp. ENHANCE*, 2013 WL 5505744, at *3, *37-*38 (same).

The awards sought by Lead Plaintiffs are reasonable and justified under the PSLRA based on the time their employees devoted to the Action on behalf of the Settlement Class, and should be granted.

VII. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 23.8% of the Settlement Fund; $2,473,243.51 in payment of the reasonable litigation expenses that Plaintiffs' Counsel incurred in connection with the prosecution and resolution of the Action; and an aggregate of $84,850.00 in reimbursement of Lead Plaintiffs' collective costs in representing the Settlement Class in the Action.

Dated: October 13, 2021

/s/James E. Cecchi
James E. Cecchi
Donald A. Ecklund
CARELLA, BYRNE, CECCHI, OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com
decklund@carellabyrne.com

Liaison Counsel for Lead Plaintiffs and the Settlement Class

Matthew L. Mustokoff
Margaret E. Mazzeo
Jonathan F. Neumann
KESSLER TOPAZ MELTZER & CHECK, LLP
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
mmustokoff@ktmc.com
mmazzeo@ktmc.com
jneumann@ktmc.com

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class

John C. Browne
Lauren A. Ormsbee
Michael M. Mathai
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1251 Avenue of the Americas
New York, New York 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1448
johnb@blbglaw.com
lauren@blbglaw.com
michael.mathai@blbglaw.com

Co-Lead Counsel for Lead Plaintiffs and the Settlement Class